In the Matter of Arbitration Between

USAIRWAYS, INC.

AND

Heavy Maintenance Visits

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS,
DISTRICT LODGE 141-M

Hearings held April 30, May 3 and 4, 2004

Before the System Board of Adjustment
Richard Bloch, Esq., Chairman
Donna Lewis, Company appointed member
David Neigus, Union appointed member

APPEARANCES

For the Company
Robert Siegel, Esq.
Tom Jerman, Esq.
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For the Union
Robert A. Bush, Esq.
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OPINION

Facts

On October 6, 2003, the Company announced its decision to contract out heavy maintenance work (hereinafter, "HMV" or "S-Checks") on Airbus narrowbody aircraft, beginning in October 2003. Upon learning of the Company's decision, the Union filed suit in Federal District Court, seeking an injunction. The District Court issued an

injunction prohibiting the subcontracting.[1] On appeal, however, the decision was reversed, although the Appellate Court made no finding on the ultimate merits of the case. The parties presented the contractual question concerning the propriety of the subcontracting to the System Board of Adjustment.

Issue

Does the Company violate the labor agreement by assigning heavy maintenance work on Airbus narrowbody aircraft to an outside vendor? If so, what is the appropriate remedy?

Union Position

The Union maintains the collective bargaining agreement contains clear and precise language prohibiting outsourcing of airframe heavy maintenance work. During the fifty-four year history of these parties' collective bargaining relationship, says the Union, the Company has never outsourced this kind of work unilaterally. On certain occasions when, due to lack of facilities, it was necessary to contract out such work, the Company sought waivers from the Union, which were granted on several occasions, without prejudice. Company attempts to loosen the contractual restrictions themselves, however, have been rejected by the Union. Moreover, even assuming, without conceding, the relevance of a "lack of facilities" argument, the Union claims there is no persuasive evidence supporting the conclusion that the Company cannot currently perform the work. For these reasons, the Union requests a cease and desist order prohibiting the Company from continuing to outsource Airbus HMV work as well as an

[1] See Union exhibit 1, tab 2., p.18.

order requiring the Company to perform all such work in-house. Additionally, employees affected by the contracting out decision should be made whole.

Company Position

The Company reads the contract as retaining to it the authority to subcontract the disputed work in situations where it does not possess the requisite skills, equipment and facilities. Arbitration history between these parties, says the Company, reflects such a reading of the contract. Moreover, the Company observes that, during 2002 negotiations, the IAM sought unsuccessfully to modify the language supporting the Company's ability to proceed in just this manner.

Additionally, the facts demonstrate that the Company's maintenance hangars are, currently, fully utilized with existing work, a condition that will continue into the foreseeable future. As a result, that the Company does not have the necessary equipment to perform Airbus S-Checks. It requests, therefore, that the grievance be denied.

Relevant Contract Provisions

ARTICLE 1.
PURPOSE OF AGREEMENT

(A) The purpose of this Agreement is, in the mutual interest of the Company and the employees, to provide for operation of the services of the Company under methods which will further, to the fullest extent possible, the safety of air transportation, the efficiency of operation, and the continuation of employment under conditions of reasonable hours, proper compensation and working conditions. It is recognized by this Agreement to be the duty of the Company and of the employees to cooperate fully for the attainment of these purposes. To further these purposes, the Company or an International Representative of the Union may request a conference at any time to discuss and deal with any general condition that may arise under the application of this Agreement.

ARTICLE 2.
SCOPE OF AGREEMENT

(A) The Company recognizes, in accordance with Certification Case No. R-2146, by the National Mediation Board, dated April 12, 1949, the Union as sole and exclusive bargaining agent for all classes and grades of Mechanical employees of the Company working within the continental limits of the United States and its possessions, including Maintenance Control Technicians (MOC), Senior Quality Assurance Auditors, Quality Assurance Auditors, Senior Technical Documentation Specialists, Technical Documentation Specialists, Senior Planner, Planners, Lead Ground Communication Technicians, Ground Communication Technicians, Lead Inspectors, Inspectors, Lead Mechanics, Mechanics (all classes), Lead Stock Clerks, Stock Clerks, Lead Utilitymen, and Utilitymen.

(B) 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.

The duties of aircraft cleaning, lavatory servicing, potable water servicing, receipt and dispatch, ancillary duties associated with receipt and dispatch, and operation of ground power units may be performed by employees covered by this Agreement and/or other employees and vendors as described in Article 4 paragraphs J and N at those locations/shifts where such covered employees are not staffed. Aircraft towing may be performed by employees not covered by this Agreement at those locations/shifts where such covered employees are not staffed. It is not the intent of this paragraph to have non-Mechanical and Related employees perform such work on shifts where covered employees are staffed except as provided for elsewhere in this agreement. It is the Company's intent, however, to utilize all its equipment and facilities in performing work in its own organization. In the event that a situation should develop whereby the

equipment and facility limitations are not available or sufficient to perform such work, the Company will confer with the Union in an effort to reach an understanding with respect to how the problem is to be resolved. Receipt and dispatch, including the ancillary duties associated with receipt and dispatch, of Commuter Aircraft may be accomplished by employees not covered by the mechanic and related agreement.

LETTER OF CLARIFICATION

(A) As a clarification of Article 2 (Scope of Agreement) of the Agreement between US Airways, Inc., and the International Association of Machinists and Aerospace Workers, it is agreed that:

1. Section (B) of said Article 2 is recognized by both parties as prohibiting the "farming out" of the types of work specified in said Section (B).

2. The intent of said Section (B) is that the types of work specified therein (and in Article 4 of the aforementioned Agreement) shall be accomplished by the employees of US Airways, Inc., described in the said Article 4.

3. The preceding clarification shall apply to the aforementioned Agreement, and any and all supplements thereto or modifications thereof reached under the Railway Labor Act, as amended, and shall be and remain in effect until modified by mutual agreement or until a contradictory renegotiated Article 2 of the aforementioned Agreement is made effective, whichever occurs first.

(B) This clarification is agreed to, signed and effective this 6th day of August, 1952.

CLARIFICATION OF ARTICLE 2(B)

Relative to Article 2 (Scope of Agreement) of the Agreement between US Airways, Inc., and the International Association of Machinists and Aerospace Workers, it is agreed that, within the limits hereinafter specified, the following listed exceptions to the coverage of Article 2 shall not be deemed in violation thereof:

(D) It is understood and agreed that the Company intends to work toward having at least one of its own mechanics based at each station on the system where there is an overnight airplane, and in consideration of this, the Union agrees that where there is one (1) mechanic based at a station his duties may include general assignments in addition to those outlined in Article 4, paragraph (F) of this Agreement.

(G) Types of work customarily contracted out, such as parts and material where 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.

(I) Due to lack of facilities, the Company may subcontract the major overhaul of aircraft engines during the life of this Agreement.

(J) Major overhaul or repair of automotive and ground equipment of the type now being subcontracted.

Analysis

Resolution of this dispute requires a careful review of the controlling language. 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.

In1952, the parties found it necessary to draft a "Letter of Clarification", reiterating the overall intent of the Scope article - - Article 2 - - to prohibit "farming out" the types of work enumerated therein, but proceeding to establish certain "listed exceptions to the coverage of Article 2" that, it was agreed, would not be considered contract violations. Subsection (G) of the Clarification Letter originally established an exception to the subcontracting prohibition for:

> (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.

In 1974, this exception was supplemented with the following *caveat*:

> 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.

In the 1975 agreement, the Scope Article was amended to add the following phrase:

> In the event that a situation should develop whereby the equipment and facility limitations are not available or sufficient to perform such work, the Company will confer with the Union in an effort to reach an understanding with respect to how the problem is to be resolved.[2]

These phrases underlie the dispute dividing the parties to this proceeding. As a general matter, the Company says that Article 2(B), taken together with paragraph (G) of the Letter of Clarification, permit the Company to subcontract so long as (1) it does not have the necessary facilities or equipment and (2) it first meets with the Union to discuss alternative ways to approach the work. The Union, for its part, says the bargained language is comprehensive and that, save only the particular bargained circumstances set forth in the agreements, the Company may not subcontract. Specifically, says the Union, "lack of facilities, tools and equipment" is not an exception that has been agreed upon by the parties.

As indicated above, the language at issue in this case is comprehensive, reflecting the intent, both in the original drafting and in the bargained supplements that followed, to ensure that machinist work would be done by bargaining unit personnel. And, without question, the heavy maintenance work at issue here has, in fact, been performed in-house

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[2] See Article 2 (B) Supra, p. 4.

for all of the fifty-four year relationship of these parties. This is not to say the language is free from interpretative issues.[3] To the contrary, as observed above, the parties themselves have found it necessary to draft "clarification" language, and its terms have been the subject of many grievances and prior arbitrations.

This Board has carefully examined the language itself, its genesis and its application to the facts of the current case. Having done so, we conclude the grievance has merit: This contract broadly restricts subcontracting. Exceptions exist to the basic prohibition, but outsourcing the heavy maintenance work does not fall within the realm of those carefully negotiated exceptions.

One begins with the observation that, in drafting the Scope clause, the bargaining parties proceeded with the clear understanding that bargaining unit work was to be preserved unless otherwise excepted. Article 2 is clear enough on that point, encompassing as it does the broadest conceivable range of Machinist duties. That said, in 1949, there were exceptions. The parties agreed, for example, that, the Company could continue its practice of returning to manufacturers "parts and subassemblies for repair or replacement that cannot be repaired on the property due to lack of equipment or because of warranty." As indicated above, the parties subsequently added other specific exceptions via their 1952 "Letter of Clarification" and, in 1974, they modified Article 2 by adding the obligation to "confer in the event that a situation should develop whereby the equipment and facility limitations are not available or sufficient to perform such work." These two add-ons figure prominently in the current dispute.

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[3] See n.2, Infra, for example.

In the Company's view, Article 2 (B) provides the basic exception to the subcontracting prohibition in cases where equipment and facility limitations exist:

> In the event that a situation should develop whereby the equipment and facility limitations are not available or sufficient to perform such work, the Company will confer with the Union in an effort to reach an understanding with respect to how the problem is to be resolved.[4]

This language, the Company argues, confirms the Company's right to subcontract in any case where facilities or equipment are inadequate, so long as it first meets with the Union to discuss available alternatives. "The only reasonable interpretation of this provision,", says the Company, "is that if the parties cannot reach an 'understanding' to perform the work in-house, the Company has the right to exercise its fundamental management prerogative to subcontract the work."[5]

Standing alone, these terms may be read as lending some credence to the Company's position that equipment and facility limitations are both relevant and, in this case, controlling with respect to its ability to contract out the heavy maintenance. However, the bargaining history of this language compels the conclusion that its intended impact is far more narrow than that suggested here by the Company. Given the comprehensive nature of the Scope provision that had been drafted and implemented some 25 years earlier, subject only to carefully crafted, relatively precise exceptions, it would be surprising, at the least, to find that the parties, in the single "confer" sentence

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[4] This important portion of Article 2(B) is hardly a model of clarity. Arguably, in providing for situations "whereby the equipment and facility *limitations are not available*", the parties drafted language that was precisely contrary to their mutual intent. Notwithstanding this, the Board does understand the intended impact of the clause, but the draftsmanship issue is, at least, a reflection of the patchwork nature of these provisions.

[5] Company post-hearing brief, p.3.

quoted above, had essentially eviscerated the prevailing structure of the Scope clause itself. The bargaining history paints a different picture, as will be noted.

In 1974, modifications to the existing Letter of Clarification shed some light on the parties' approach to contracting out. Then-current language in Subsection (G) was supplemented by the following italicized sentence:

> 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.*

An IAM member of the bargaining committee that drafted the language offered unrebutted testimony[6] that the above-quoted language was intended to restrict Company's ability to buy "knockoff" parts from outside vendors as an alternative to having IAM-represented employees fabricate them. As such, the modification to the language was intended to narrow it, making it clear - - or clearer - - that, while subcontracting was permitted with respect to parts the Company "could not be expected to manufacture,"[7] work that could be manufactured or repaired in-house would be kept there. But, testifies Victor Mazzocco, this language generated numerous complaints, in response to which the parties determined to attempt to review such situations in advance, rather than treating them *post hoc*.[8] This was the scenario that led the parties to agree in, the 1975 contract, to confer in advance. Corresponding to this agreement was the formation of a variety of

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[6] Tr. 177-178.
[7] Clarification letter, Subsection (G).
[8] Tr. 182-184.

committees charged with the tasks of reviewing subcontracting issues related to those items that had been customarily contracted out by the Company. These included the Turbine Engine Committee, the Plant Maintenance Committee, the Make or Buy Committee, Auto Shop, and the Component Committee.[9] In no sense was this activity reflective of a relationship where subcontracting was considered an unfettered managerial prerogative. To the contrary, this history reflects parties attempting to deal, realistically and responsively, with an existing environment of comprehensive contractual constraints.

Under the circumstances, the conclusion is that, contrary to the Company's characterization, neither the terms of Section 2(B) nor the Clarification serve to construct a *carte blanche* that, premised on lack of facilities and "conferring", somehow frees the Company from existing bargained prohibitions on contracting out.[10] As originally drafted, the collective bargaining agreement, during the 1950's and 1960's, provided an explicit exception that allowed subcontracting for "major airframe overhaul." Significantly, however, that leeway was granted "only to the extent that such

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[9] See Joint exhibit 5, p. 12. As the Union observes, Heavy Maintenance had never been contracted out, and none of the Committees was charged with reviewing that area.

[10] Predictably, the parties differ as to whether the requirement to confer, once satisfied, frees the Company to proceed or whether, as the Union contends, it is merely a condition precedent the Union's granting a waiver. As Arbitrator John Dunsford noted in a 1992 decision, to be discussed in greater detail below:

> The primary purpose of the cited provision is to get the parties to discuss how the problem might be resolved under [circumstances involving unavailable equipment or facilities].However, where there is an exception to the "scope" clause of Article 2(B) set forth in one of the letters of clarification, the "confer" clause cannot be applied so readily. In principal, the same requirement of conferring may still obtain, but the difference of opinion between the parties will now center on whether the "scope" provision or the exception provision applies to the situation. The disagreement will be over whether there is a contractual requirement that the work in question has to be done in-house. (At p. 22.)

Dunsford did not resolve the question of the precise impact of conferring. He found, instead, that, in that case, the parties had, in fact, conferred, so as to devitalize the Union's claim on that particular point. (See Dunsford opinion pp. 22 *et seq.*)

subcontracting will not result in layoff or loss of straight time pay of mechanical personnel."[11] This exception was removed from the labor agreement following the 1964 negotiations. Moreover, even the limited right to outsource "major airframe overhaul," assuming the lack of available facilities, was qualified by the requirement that there be no layoff or loss of straight time pay.

Under the circumstances surrounding the origin of this language, it simply cannot be argued that the 1975 modification overturned all this. Had the parties intended this type of sweeping authorization, there would have been no need to retain an explicit "facilities exception" in Paragraph (I) of the Clarification of 2(B)[12] which permits subcontracting of "major engine overhauls."[13]

From the above discussion, it may be seen that the Company's reliance on the second sentence of paragraph (G) of the clarification letter is misplaced. The genesis of that sentence is set forth above; it is tied to the concepts discussed in that subsection - - types of work that are customarily contracted out - - with specific reference to parts that cannot be fabricated in-house. The bargaining history leads to no contrary conclusion, nor does arbitration precedent, as will be noted.

The Company directs the Board's attention to a 1992 System Board decision by Arbitrator John Dunsford. This decision, it says, underscores the parties' agreement to permit subcontracting where the Company lacks the necessary facilities and equipment even, says the Company, in situations where, as here, the work has not been customarily contracted out.

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[11] See Union's exhibit 2, tabs 3-8.
[12] See p.6, Supra.
[13] See also Paragraph (E).

In that decision, it is claimed, the Board adopted a more lenient approach to subcontracting in the context of performing CFM-56 engine overhaul work outside the bargaining unit. That case involved, among other things, Subparagraph (I) of the clarification letter, which stated:

> Due to lack of facilities, the Company may subcontract the major overhaul of aircraft engines during the life of this Agreement.

The Arbitrator rejected the Company's claim that this language, taken together with Article 2(B), granted the Company unlimited rights to subcontract. Ultimately, however, the Board found (1) there was a demonstrable lack of facilities to perform the contested work and (2), that the parties had, in effect, "conferred". Thus, the grievance was denied.

The Company cites the case as holding that the Company had a general right to subcontract in the face of inadequate skills, equipment and facilities:

> After rejecting the various arguments advanced by the parties, Arbitrator Dunsford adopted a standard for determining whether the Company could subcontract that largely tracked the above-quoted portion of IAM's brief, holding that "the operative standard in the relationship of the parties" in determining the Company's ability to subcontract "has been whether the Company possessed the *requisite skills, equipment and facilities"* to do the work in-house. (Dunsford award at 27 (emphasis added).) While he did not reference the specific paragraph citation, he did reference the specific phrase—skills, equipment and facilities—which appears only in paragraph (G) (and the IAM brief). Based on this standard, Arbitrator Dunsford denied the IAM's grievance because, he found, the Company did not have existing facilities and equipment to perform the CFM-56 engine overhaul work. (Dunsford award at 27-32.)[14]

But that case was about engine overhaul work. The Board did characterize the operative standard as whether the Company possessed requisite skills, equipment and facilities, but

[14] Company brief p. 13.

(again) it did so in the context of whether it possessed those skills "to do certain engine overhaul work."[15] Under the circumstances, the Company's attempts to attribute more global significance to the Board's findings are, we conclude, unpersuasive.

The practice of the parties in applying the language has been mixed. For example, following acquisition of Boeing 757 and 767 aircraft in the late 1980's, and the Airbus aircraft in the late 1990's, the Company has routinely outsourced landing gear overhaul, although such work on other aircraft landing gear had customarily been done in-house prior to that time. According to the evidence, on one occasion, the Company's Director of Operations requested a waiver from the Union to do such work[16] and it was granted,[17] only "to the extent necessary to maintain the integrity of the flight operation" and with the understanding "that all such subcontracting work will be brought in-house by April 1, 1989 or the date of the operational merger with Piedmont Airlines, whichever is sooner.[18] In 1989, another such waiver was sought. The parties were unable agree to the terms of the waiver, and the Company went forward anyway. No grievance was filed. On other occasions, the Company requested waivers, and in some instances did certain work without such requests. In 1999, faced with a dearth of hangar bay space, the

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[15] The full text of that portion of the Board's decision states:

> "In consideration of the many years in which major overhauls on the JT8Ds have been performed in house, and the absence of either a bargaining history or a record of periodic Company affirmation to support a claim of unrestricted freedom to subcontract, a majority of the System Board concludes that the operative standard in the relationship of the parties has been whether the Company possessed the requisite skills, equipment and facilities to do certain engine overhaul work." (At page 27.)
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> In 1992, Arbitrator Lawrence Holden denied the Union's grievance concerning the subcontracting of an engine transport function, holding, in part, that it was a one-time incident and could be considered *de minimis*.

[16] See Tr. 189-190.

[17] Union exhibit 12.

[18] *Id.*

Company sought the Union's agreement to subcontract HMV work on Boeing 737's.[19] After having appealed repeatedly, and unsuccessfully, for that right, the Company ultimately modified its existing facilities, recalled hundreds of mechanics and erased the backlog of Boeing HMV work.[20]

But these varying practices, rather than settling the ultimate question of contractual rights, tend instead to show the normal day-to-day functioning of parties attempting to accommodate the practical realities of the working relationship. We cannot conclude either that the Company, by seeking waivers on occasion or that the Union, by failing to object to certain outsourcing, had somehow waived their contractual prerogatives. Ultimately, it is the contract that will control. In this case, its terms do not support the claim that unavailable facilities will justify the subcontracting of heavy maintenance.

Even were the claim of unavailability of resources controlling on the outsourcing issue, the record on this is thin, at best. The Airbus was acquired by the Company in October of 1998 and the Company was, or should have been, well aware of maintenance obligations, particularly with respect to HMV work. Such functions, which involve, among other things, stripping the aircraft to its skeleton and examining for corrosion, leaks, cracks and other structural problems, must be performed within five years of acquisition. Prior to November of 2002, the Company resources included a hangar that was both designed and designated to perform S-checks. When the Company emerged from bankruptcy in November of 2002, its original plans were to divest itself of the oldest

[19] Tr. 113-115, see also Union exhibit 11.
[20] See Tr., p. 125.

Airbuses and, by so doing, delay the deadline for heavy maintenance checks until April of 2004. However, the Company ultimately decided to retain 279, instead of 264 aircraft, which left it with more Airbuses than originally anticipated. The parties spend substantial time arguing the feasibility and logistics of, for example, moving some line maintenance, now performed indoors, outside to open up hangar space. With due regard for inconvenience and some expense attributable to the new plans, it may not be concluded from the record that such accommodations are impossible. But, for the reasons set forth above, firm conclusions on this part of the dispute are unnecessary. In the final analysis, to permit the Company to rely on Article 2(B) or any of its progeny to outsource heavy check would run starkly contrary to the intent of comprehensive contractual commitments to avoid outsourcing. This is not to say the Company's protests about being required to perform work it cannot do are not serious or cause for concern. But the proper function of this System Board is to interpret and apply the language of the agreement. If the Company is now faced with a bona fide dilemma, it is one that could have been, and to a certain extent was, recognized early on, but never accommodated in bargaining. As clearly reflected in this labor contract, the parties recognized the need for a "lack of facilities" exception in certain limited instances. But they did not incorporate it as a general premise. That circumstances now suggest the wisdom of having done so in no way empowers this Board to read one into the agreement. For these reasons, the grievance will be granted. The Company is ordered to cease and desist in outsourcing Airbus HMV work. The matter is remanded to the parties for the purpose of making whole affected employees. The Board will retain jurisdiction as to disputes, if any, arising over that portion of the remedy.

AWARD

The grievance is granted. The Company is ordered to cease and desist from the practice of outsourcing Airbus narrowbody heavy maintenance checks. Affected employees are to be made whole.

Richard I. Bloch, Chairman

Donna Lewis
Company-Appointed Member
Dissenting

David Neigus (concur)
David Neigus
Union-Appointed Member