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The bargaining agreement concerns union rights and benefits which restrict the employer, and it is important that the contract set out a comprehensive management rights clause to preserve management rights to run the business. For example, the contract might include the following:

Nothing in this agreement shall be deemed to limit or restrict the employer in any way in the exercise of the customary functions of management, including the right to make such rules not inconsistent with the terms of this agreement relating to its operation as it shall deem advisable, and the right to hire, suspend, discharge or otherwise discipline an employee for violation of such rules or for other proper and just cause.

The right to select and hire, to promote to a better position, to discharge, demote or discipline for cause, and to maintain discipline and efficiency of employees and to determine the schedules of work as recognized by both union and employer are the proper responsibility and prerogative of management to be held and exercised by the company in a fair and just manner, and while it is agreed that an employee feeling himself to have been aggrieved by any decision of the employer in respect to such matters, or the union in his behalf, shall have the right to have such decision reviewed by top management officials of the employer under the grievance machinery herein set forth, it is further agreed

that the final decision of the employer made by such top management officials shall not be further reviewable by arbitration.

Another example is the following:

It is agreed and understood that the employer has the sole and exclusive right to manage his business without limitation in any manner whatsoever unless, and only to the extent, expressly limited by a specific provision of this Agreement. It is further agreed and understood that the employer has the sole right to: determine the number of employees; make work assignments; direct the employees as to when, how and where they will be employed; determine the methods, machines, processes, tools, labor-saving devices and materials to be used; judge the satisfactory performance of work; make and enforce reasonable rules for the maintenance of discipline, order and efficiency. Failure of the employee to recognize, abide by, and cooperate with, the employer when the above provisions are exercised shall be deemed just cause for disciplinary action.

A clause which is perhaps even stronger is:

The employer retains the sole right to manage its business, including but not limited to the right to decide the number and location of projects, the machines, tools and equipment to be used, the type construction to be done, the method, place, and company or individuals to conduct any and all prefabricating or subcontracting, the schedules of production, processes of assembling, together with all de-

signing, engineering and the control of semi-manufactured and finished parts which may be incorporated into the finished construction; to hire, discharge, lay off assign, transfer and promote employees and to determine the starting and quitting time and the number of hours to be worked; and all other rights and prerogatives including those exercised unilaterally in the past, subject only to such exercise of these rights as are expressly provided in this agreement.

It should be noted the latter clause incorporates a right to subcontract by the employer. As a matter of tactics, incorporating a subcontracting provision in the management rights clause is advisable. By integrating a fabrication clause with a management rights clause, the fabrication clause is less conspicuous and possibly less likely to be objected to by the union.

Admittedly, such provisions are strong, but it can be argued that if the company is to prosper it must have the authority to make the best bargain it can for work and services. The company should insist that the primary consideration for their granting any contractual benefits to the union is the inclusion of a strong management rights clause. Such a provision is basically the foundation of the agreement insofar as the management is concerned. Furthermore, if an agreement is executed without a management rights clause, the union will undoubtedly later contend that by such exclusion, management abrogated any of its historical rights which are not expressly set out in their agreement. Management negotiations must strongly insist upon the inclusion of a definitive management rights clause. □