

collective bargaining agreement, effective through April 1, 1971, covering the wages, hours and working conditions of said employees; and that said agreement contains the following material provision:

ARTICLE X - WAGES

Section 1. All employees are to be paid in accordance with the job evaluation plan in existence between the parties.

The collective bargaining agreement does not provide for final and binding arbitration of grievances, but rather contains the following provisions with respect to grievance procedures:

Section 3. The parties shall utilize the following system of presenting and adjusting complaints and grievances and any other topic of collective bargaining:

- (a) Step 1. An employee who has a complaint may present such complaint orally to his foreman. The employee may have the department steward present for such discussion if he so desires. The foreman shall notify the employee of his answer within four (4) hours of the employee's regular shift time.

Step 2. If no satisfactory settlement is reached, the complaint may become a grievance and shall be reduced to writing on triplicate blanks furnished by the Union. Two (2) copies of the written grievance shall be submitted to the foreman and one retained by the Union. The foreman shall submit his disposition of the grievance in writing within twenty-four (24) hours and return one copy of the grievance to the Union.

Step 3. If the decision of the foreman is not satisfactory, the steward shall add to the grievance in writing the reason such decision is not satisfactory and then present the grievance to the shift chief steward who shall attempt to make a settlement with the shift superintendent. The latter shall make his disposition of the grievance in writing within forty-eight (48) hours.

Step 4. In the event a settlement is not reached, the grievance shall be turned over to the chief steward who shall present the grievance to the general superintendent. The general superintendent shall submit his disposition of the grievance in writing within forty-eight (48) hours. The president of the Local Union may, upon request, be present at this stage.

Step 5. In the event a settlement is still not reached, the matter is then referred to the Union Bargaining Committee, who will request a meeting with the Company's Bargaining Committee to attempt to arrive at a satisfactory settlement. Both parties shall have the right to call in their outside chosen representatives to be present at this stage to assist in arriving at a mutual agreement.

4. That prior to October 1965, there were only two classifications in the welding shop of Respondent, Labor Grade 7 Welders and Labor Grade 5 Welders; that Labor Grade 5 Welder was and still is a higher rated and higher paid classification than Labor Grade 7 Welder; that Labor Grade 7 Welders were used to perform regular production work and Labor Grade 5 Welders were used primarily on experimental work; that as a result of a Union request during collective bargaining in 1965, the Complainant and Respondent agreed that a new Labor Grade 6 Welder classification would be created and that a total of eight employees would hold said classification, with three Labor Grade 6 Welders being assigned to each of the first two shifts, and two being assigned to the third shift; that said classification was a higher rated and higher paying classification than Labor Grade 7 Welder; and that Labor Grade 6 Welder classification was given the following job description, dated October 10, 1965:

"Operates any of the several types of welding machines such as stick, arc, mig, and innershield (squirt and automatic). Makes proper setting of current and uses rod or wire according to specifications and/or instructions from foreman. Must understand A. W. S. Code and manufacturer's number. Must be able to understand and use normal shop drawings.

Performs production welding on large and difficult weldments such as those where parts do not fit properly, where jigs or fixtures do not function properly, and where special attention must be given to distortion because of follow up assembly operations.

Performs difficult maintenance welding assignments and rework jobs. May be called upon to assist foreman to resolve any unusual job difficulties. Occasionally performs experimental work.

Follows safe work procedures and wears protective clothing at all times."

5. That the creation of a Labor Grade 6 Welder classification in October of 1965 did not change the work assignments of the Labor Grade 7 Welders, who continued to do the normal production work, including the jobs in dispute herein; that from 1965 to April of 1969, Labor Grade 6 Welders served as "floaters" or trouble shooters who would go into a production area in the welding department when requested by the foreman to resolve difficult welding problems that may have arisen in that area; and that once the problem was resolved, the Labor Grade 7 would continue with the job as the Labor Grade 6 Welder moved elsewhere.

6. That negotiations over the present collective bargaining agreement were concluded in April, 1969; and that among other things

the parties agreed upon the job descriptions of Labor Grade 7 and Labor Grade 6 Welders, with the job description of the Labor Grade 7 Welder [referred to therein as Labor Grade 7 Welder - C (Arc Production)] providing as follows:

"Set up and operate various types of welding machines.

Follow standardized and prescribed procedures of a routine nature.

Use rod or wire as specified on blueprints.

Place work on table or fixture and weld from all angles to specified dimensional requirements.

Report all difficulties or irregularities to Foreman.

Check quality of work periodically for conformance to welding specifications.

Detect and recognize defective welds, machine malfunctions, etc. and report same to Foreman.

Under general supervision; instructions and guidance furnished on new work, variations, set-ups and operating difficulties.

Work from drawings and layouts; use rule, scale, fixed gauges, dividers, etc. to check set-ups and inspect work.

May do some simple rework such as missed welds or poor welds performed by welders of the same or lower labor grade.

Use hand cutting torch to cut material to proper shape generally of a simple or routine nature such as trimming augers, etc.

Follow methods and procedures utilized in selection of voltage and current for particular types and sizes of material.

Requires a basic knowledge of welding fundamentals together with progressive job instruction and shop experience of nine to twelve months to become familiar with materials, techniques and procedures.

Set up and use safety devices supplied or required."

The parties further agreed upon the following job description of the Labor Grade 6 Welder [referred to therein as Labor Grade 6 Welder - B (Arc)]:

"Set up and perform production welding on large and difficult weldments such as those where parts do not fit properly, where jigs or fixtures do not function properly, and where special attention must be given to distortion because of follow-up assembly operations.

Weld pilot run work without fixtures of a fairly complicated nature.

Work involves operation of all types of welding machines.

Perform difficult maintenance welding assignments and difficult rework jobs.

Assist Foreman to resolve unusual job difficulties.

Work from drawings and job layouts; use rule, square, templates and gauges to check set-ups and inspect work.

Observe methods and procedures utilized in selection of voltage and current for particular types and sizes of material.

Assist others in lower skill classifications on such items as set-ups, current and voltage settings, tips, penetration, variations, etc., when requested by Foreman.

Use hand torch to perform cutting and burning on work of a more complicated nature than that of the Welder-C Classification.

Requires a basic knowledge of welding techniques and procedures together with one to two years of progressive job instruction and shop experience to become familiar with machines, materials, techniques and procedures.

Set up and use all safety devices supplied or required."

7. That in the negotiations leading up to the aforementioned collective bargaining agreement executed in April of 1969, the Complainant Union initially requested that Respondent add additional Labor Grade 6 Welders to its work force; that Respondent replied that it did not need any additional Labor Grade 6 Welders, as it had a sufficient number of Labor Grade 6 Welders to use on a "floating" basis; that Respondent ultimately agreed to add five additional Labor Grade 6 Welder positions to each shift (providing a total of 23 Labor Grade 6 positions); that since there was no need for further "floaters," Labor Grade 6 Welders would be placed in certain "trouble" areas on a regular basis alongside Labor Grade 7 Welders; that Respondent stated that these areas would be work stations for the Labor Grade 6 Welders placed there, and that in being so placed the Labor Grade 6 Welders would be on hand to handle difficult problems which occur in those areas; that when the Labor Grade 6 Welders would not be performing their troubleshooting function in their area, they would perform the normal production work which has always been assigned to the Labor Grade 7 Welder classification, including the jobs in dispute here; and that at no point did Respondent agree that the jobs listed in paragraph 4 of the complaint, all of which are normal production jobs, should be considered as exclusively Labor Grade 6 Welder work.

8. That some of the welding work on the jobs listed in paragraph 4 of the complaint, especially in the early stages of production, involves work on large and difficult weldments; and that in such situations the work on the large and difficult weldments is performed by Labor Grade 6 Welders, while the Labor Grade 7 Welders work on less difficult parts of the same piece or on other pieces in the line.

9. That on July 24, 1969, the Complainant filed the following grievance:

"COMPLAINT Labor Grade 6 Welding Classification: The final operation on frame job involved is being welded by two Grade 7's and two Grade 6's. It seems unfair that the two Grade 7's do the same welding as the 6's for Grade 7 pay. The job does not meet Grade 6 classification as 'troublesome', parts don't fit, etc, so why have two 6's on it?? Especially when Grade 7 men are available? If this job 'is' considered Grade 6, then we should have Grade 6 pay for doing the same work."

"DISPOSITION It seems to me we have too many Grade 6 men due [by Foreman] to the fact Grade 6 men are lead men. And we are so tight on the line. It was my decision to use them"

On July 31, 1969, the Plant Superintendent replied to the grievance to the Chief Steward as follows:

"The labor grade 6 classification states that they assist others of lower skill classifications and assist foremen to resolve unusual job difficulties.

You will have to agree there were problems with this job to get frames correct and work load divided to meet our requirements.

Grade 6 welder should be a better weld and also be able to cope with the above problems more readily than a grade 7, therefore, all shifts concerned used grade 6 welders on this job.

However, if you consider the work should be done by grade 7 men, we then have too many grade 6 men and we will gladly remove some labor grade 6 men at once."

On October 1, 1969, the General Superintendent issued the following final reply of the Respondent to the grievance:

"This grievance concerns the use of Grade 6 and Grade 7 welders on the third shift. Differences in the assignment of welders on each of the three shifts has been investigated and discussed with the Union several times during the past weeks due to the complaint that the third shift was not using Grade 6 and 7 welders properly.

The following established policy will be followed on all three shifts. Whenever there is group welding, one Grade 6 welder

will be assigned to the group. The others in the group will be Grade 7 welders. The Grade 6 welder may be assigned within the group as required to assist wherever Grade 6 skill may be required as a result of an unusual difficulty."

Upon the basis of the above and foregoing Findings of Fact, the Examiner makes the following

CONCLUSION OF LAW

That the Respondent Gehl Company has not violated Article X of the collective bargaining agreement in its payment of Labor Grade 7 Welders, and accordingly, has not committed an unfair labor practice within the meaning of Section 111.06 (1)(f) of the Wisconsin Employment Peace Act.

Upon the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Examiner makes the following

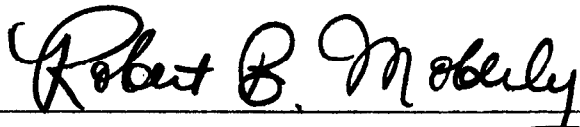
ORDER

IT IS ORDERED that the charge in paragraph 4 of the complaint filed in the instant matter, relating to the alleged assignment of Labor Grade 7 Welders to perform the work of Labor Grade 6 Welders, be, and the same hereby is, dismissed.

Dated at Milwaukee, Wisconsin, this 30th day of October, 1970.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Robert B. Moberly, Examiner

ALLIED INDUSTRIAL WORKERS OF AMERICA,
LOCAL 579, AFL-CIO.

VS.

Respondent.

No. 9474-B

procedures set forth in the collective bargaining agreement to have the Respondent rescind such violations.

Paragraph 4 of the complaint, as amended, complained that

"4. Starting on or about August 1969, Respondent began assigning Welders Labor Grade 7 to perform the following work which is Labor Grade 6 work:

WELDING:

043246-main frame, CB600
042962-center, cutter knife head, CB600
042957-cutter knife head, right, "
042964-cutter knife head, left, "
043154-blower outlet, CB600
all assessor screens, CB600, 1 1/2 to 4" size
CT300---

043355-main frame
043479-deflector
043471-bloweroutlet
043435-cylinder
043403-cylinder support

H7070A-auger, HA85B
043698-auger, HA300
H7555G-reel, MA188
044679-gatherer frame, CA600
044510-gatherer frame, TR600
FC72B parts:
R13013B, drawbar
R13015A, main frame
R13147-disc
R13022C-cylinder
R13014H-drawbar, hitch
042414-main frame, HK108
042428-trough, HK108
S16160-reel, cam, "
041134-reel, HK108, after serial no 2500, 042460
D400F, main frame, FB85
042130-main frame, MX115
042287-mixer auger, MX115
042112-conveyor support, MX115
9H185E-conveyor trough, MX65
17H147C-mixer tank, MX65
040467-conveyor trough, MX115
040166-conveyor auger, MX115
17H136A-main frame, MX65
042160-mixer tank, MX115"

The complaint did not state what section of the collective bargaining agreement was allegedly violated by the above action, but at the hearing Counsel for Complainant stated that the conduct complained of violated Article X of the collective bargaining agreement, which provides as follows:

ARTICLE X - WAGES

Section 1. All employees are to be paid in accordance with the job evaluation plan in existence between the parties.

At the hearing it was stipulated that the "job evaluation plan" in Article X refers to the job descriptions which have been negotiated between the parties.

Paragraph 5 of the complaint complains of the alleged assignment of Press Brake Workers Labor Grade 7 to Labor Grade 5 work, but at the hearing the parties agreed to indefinitely postpone the hearing on this portion of the complaint without prejudice to either party's position on the issue.

ISSUE

Is the Respondent Company violating Article X, Section 1 of the collective bargaining agreement by failing to pay Labor Grade 7 Welders the Labor Grade 6 Welder rate of pay when they work on the jobs set forth in paragraph 4 of the amended complaint?

POSITIONS OF THE PARTIES

The Complainant contends that virtually all welding on jobs listed in paragraph 4 of the amended complaint requires welding on "large and difficult weldments," and therefore falls within the job description set forth for Labor Grade 6 Welder. It states that since Labor Grade 7 Welders perform this work, they should receive the Labor Grade 6 Welder rate of pay for such work.

The Respondent states that the Union has failed to establish that it attempted to utilize the grievance procedure provided in the contract to resolve the issue presented here, and that the Wisconsin Employment Relations Commission therefore is without jurisdiction in the matter. Assuming arguendo that the Commission has jurisdiction, the Respondent contends that the evidence shows that the jobs enumerated in paragraph 4 of the amended complaint have always been classified as Labor Grade 7 Welder work and that no change was made by the parties in such classification when they negotiated the present contract.

DISCUSSION

During the course of the hearing, Complainant withdrew its claims with respect to the following positions listed in paragraph 4 of the complaint:

043479-deflector
R13013B, drawbar
R13014H-drawbar, hitch

In addition, the Examiner notes that no evidence at all was presented with respect to the following jobs listed in paragraph 4 of the complaint:

- all accessory screens, CB600, 1 1/2 to 4" size
- 043355-main frame
- H7070A-auger, HA85B
- 043698-auger, HA300
- H7555G-reel, MA188
- R13147-disc
- 042414-main frame, HK108
- 042287-mixer auger, MX115
- 042112-conveyor support, MX115
- 040467-conveyor trough, MX115
- 040166-conveyor auger, MX115

The above-cited portions of the complaint which were withdrawn and those for which no testimony was presented are herewith dismissed.

The Complainant states that under Article X of the collective bargaining agreement, an employee who is required to perform work at a higher paying classification is entitled to be paid at the higher rate of pay. This contention is not contested by the Respondent, although there may be some dispute as to how long an employee would have to work at the higher graded work in order to receive the higher rate of pay.

There is also no dispute that the Labor Grade 6 Welder classification is a higher rated and accordingly higher paid classification than a Labor Grade 7 Welder. The job descriptions of both classifications are set forth in Finding of Fact No. 6, supra. The primary question is whether the welding work on the jobs set forth in paragraph 4 of the complaint is work intended to be considered as exclusively Labor Grade 6 welding work. Labor Grade 7 Welders admittedly work on these jobs, and Complainant contends that the jobs fall within the following portion of the current job description for the Labor Grade 6 Welder:

"Set up and perform production welding on large and difficult weldments such as those where parts do not fit properly, where jigs or fixtures do not function properly, and where special attention must be given to distortion because of follow-up assembly operations."

Almost identical language was contained in the preceding job description for the Labor Grade 6 Welder. That job description, dated October 10, 1965, read, in pertinent part, as follows:

"Performs production welding on large and difficult weldments such as those where parts do not fit properly, where jigs or fixtures do not function properly, and where special attention must be given to distortion because of follow up assembly operations."

It is useful to consider this issue in the context of past practice and the past bargaining history of the parties. There is no

dispute that the production work listed in paragraph 4 of the amended complaint was assigned to Labor Grade 7 Welders both before and after the Labor Grade 6 Welder classification was created in October of 1965. Prior to October 1965, there were only two classifications in the welding shop, Labor Grade 7 Welders and Labor Grade 5 Welders. Labor Grade 5 Welder was the higher rated and higher paid classification. Labor Grade 7 Welders were used to perform regular production work and Labor Grade 5 Welders were used primarily on experimental work. In the 1965 negotiations, the Complainant contended that a further classification was needed between the Labor Grade 5 and the Labor Grade 7 Welders. As a result of collective bargaining, the Respondent agreed to create a Labor Grade 6 Welder classification and to provide eight positions having that classification, with three Labor Grade 6 Welders being assigned to each of the first and second shifts, and two being assigned to the third shift.

The creation of the Labor Grade 6 Welder classification in October of 1965 did not change the work assignments of the Labor Grade 7 Welders. The latter continued to do the normal production work, including the jobs in dispute herein. The undisputed functions of the original Labor Grade 6 Welders were to act as floating trouble shooters to resolve difficult welding problems, as described by the Respondent's Personnel Manager:

"They were to be used as 'floaters.' Whenever difficulties arose, they were going into this area and help resolve the difficulties. They also performed any difficult maintenance work on difficult rework. The concept at that time was to serve as trouble shooters so they would not always have to contact the foreman. In case difficulties arose, they could put in a Grade 6 man and they could resolve the problem.

. . .

it could be difficulties where parts don't fit properly, jigs and fixtures don't function properly, that he would go in and work on this; and the concept at that time was if the jigs or fixtures do not function properly, the Grade 6 would go in and work in this area until the problem was resolved. Then they could put a Grade 7 in; he would go to another area."

The negotiations over the present collective bargaining agreement were concluded in April, 1969. In the negotiations therefor, the Complainant Union initially requested that Respondent add additional Labor Grade 6 Welders to its work force. The Respondent replied that it did not need any additional Labor Grade 6 Welders, as it had a sufficient number of Labor Grade 6 Welders to use on a "floating" basis. Respondent ultimately agreed to add five additional Labor Grade 6

Welder positions to each shift, providing for a total of 23 Labor Grade 6 Welder positions. However, since the Company had no need for further "floaters" the parties agreed that Labor Grade 6 Welders would be placed in certain "trouble" areas on a regular basis alongside Labor Grade 7 Welders. Respondent stated that these areas would be work stations for the Labor Grade 6 Welders placed there, and that in being so placed the Labor Grade 6 Welders would be on hand to handle difficult problems which occur in those areas. It was intended that when the Labor Grade 6 Welders would not be performing their trouble-shooting functions in their area, they would perform the normal production work which has always been assigned to the Labor Grade 7 Welder classification, including the jobs in dispute here. However, at no point did Respondent agree that the normal production work in these areas should henceforth be considered as exclusively Labor Grade 6 Welder work.

In view of the above past practices and negotiating history, the Examiner cannot, as requested by the Complainant, find that the jobs listed in paragraph 4 of the complaint constitute Labor Grade 6 Welder work. It is undisputed that the jobs claimed to be Labor Grade 6 Welder work under this contract are essentially the same production jobs that Labor Grade 7 Welders performed between October 1965 and April 1969. Furthermore, the pertinent part of the job descriptions with respect to large and difficult weldments was almost exactly the same in the 1965 job description of Labor Grade 6 Welder as it is in the 1969 job description for that position. Yet the jobs in question were performed by Labor Grade 7 Welders at their usual rate of pay between 1965 and 1969 with the acquiescence of the Complainant and without any claim for Labor Grade 6 Welder payment for this work. As correctly contended by counsel for the Respondent, there is applicable here the basic principle of contract construction that when language is carried forward from one contract to the next contract without basic change, it will be considered to have the same meaning and application under the later contract as it had under the former. Upon a consideration of all the circumstances, the Examiner concludes that the jobs in question do not fall under the job description for Labor Grade 6 Welder.

The Union also appears to contend that since Labor Grade 6 and 7 Welders have, subsequent to April 1969, worked alongside each other in certain production areas in the welding department, the job on which they work must be deemed to be within their Labor Grade 6 Welder classification. However, the Examiner is satisfied from the record

that the Labor Grade 6 Welders were placed in these areas not because the normal production work performed there is included exclusively in their classification, but rather because there is insufficient "floating" and trouble-shooter type of work to keep them occupied full time. Consequently, some of the Labor Grade 6 Welders are placed alongside Labor Grade 7 Welders on a regular basis in certain trouble areas so that they are available to perform their trouble-shooting function when the need arises. However, as noted earlier these areas also serve as work stations for the Labor Grade 6 Welders, and when they are not performing their trouble-shooting function in the area it was contemplated that they perform the normal production work which has always been assigned to the Labor Grade 7 classification, namely the jobs in dispute herein.

Admittedly there are occasions when the Labor Grade 6 Welder performs work normally performed by Labor Grade 7 Welder, but this performance does not make the work exclusively Labor Grade 6 Welder work. The job description of Labor Grade 6 Welder is not limited to work which is too difficult or complex for Labor Grade 7 Welders. Rather, it was anticipated in the formulation of the job descriptions that the Labor Grade 6 Welders would be performing work normally performed by Labor Grade 7 Welders when there was insufficient difficult welding to keep the Labor Grade 6 Welders occupied.

Basically, in this case the Complainant is trying to obtain through litigation a benefit which it did not obtain at the collective bargaining table, i.e., to have the work which always has been performed by Labor Grade 7 Welders upgraded so as to be entitled to the rate of pay given Labor Grade 6 Welders. Since there was no agreement to so upgrade this work, the Respondent cannot be said to have violated the collective bargaining agreement by declining to pay the rate received by Labor Grade 6 Welders for such work.

Complainant contends that even if the jobs in paragraph 4 of the complaint do not involve large and difficult weldments all of the time, at least work on the first five hours, as a rough average, of production of the items set forth in paragraph 4 of the complaint, and all of the time spent on production of mixer tanks MX65 and MX115 constitute work on large and difficult weldments. The Examiner agrees that some of such work involves work on large and difficult weldments. However, the Examiner also accepts the testimony of the head foreman of the welding department who stated that in those situations the Labor Grade 6 and 7 Welders may both work on the same line and even on the same piece, but

if a large and difficult weldment occurs it is performed by the Labor Grade 6 Welder, and the Labor Grade 7 Welder works on some other part of the piece.

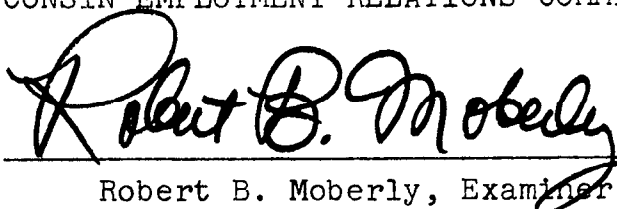
Finally, it is not apparent from the record that the parties have diligently exercised the contractual grievance procedure with respect to the jobs in question. The failure of a union to comply with the grievance procedure as set forth in the collective bargaining agreement can place an employer at a disadvantage and perhaps result in unnecessary litigation. The only grievance the Union was able to produce at the hearing, set forth in Finding of Fact No. 9, appears to complain not that the Labor Grade 7 Welders are performing Labor Grade 6 Welder work, which is the complaint in this case, but rather complains that Labor Grade 6 Welders are performing work which is not "troublesome" enough to be within their classification. The Union failed to show that it had filed and processed particularized grievances alleging specific instances where Labor Grade 7 Welders performed Labor Grade 6 Welder work.

The Respondent, on the other hand, failed to introduce evidence showing that the grievance procedure had not been exhausted. In view of the disposition of this case on the merits it is unnecessary to decide whether a union has the burden of proof on the exhaustion question, or whether the matter is one of affirmative defense for the employer to prove. But if the parties desire to proceed further on the issue raised in paragraph 5 of the complaint, involving Press Brake Operators, it is suggested that more complete evidence be presented with respect to whether the grievance procedure has been exhausted on the questions to be raised.

Dated at Milwaukee, Wisconsin, this 30th day of October, 1970.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Robert B. Moberly, Examiner