STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DISTRICT 10, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, Complainant,

vs.

THERMAL TRANSFER PRODUCTS, LTD, Respondent.

Case 2
No. 59039
Ce-2206

Decision No. 29973-A

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by **Attorney Heather A. Rastorfer**, 1555 North RiverCenter Drive, Suite 202, P.O. Box 12993, Milwaukee, Wisconsin 53212, appearing on behalf of District 10, International Association of Machinists and Aerospace Workers.

Foley & Lardner, by **Attorney Roxana E. Cook**, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-5367, appearing on behalf of Thermal Transfer Products, Ltd.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

District 10, International Association of Machinists and Aerospace Workers filed a complaint with the Wisconsin Employment Relations Commission on July 11, 2000, alleging that Thermal Transfer Products, Ltd., had committed unfair labor practices in violation of Secs. 111.06(1)(a) and (f), Stats. by violating the terms of the parties' collective bargaining agreement by unilaterally and arbitrarily denying the reclassification of Lee Hansen's position. On August 31, 2000, the Commission appointed Lionel L. Crowley, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as

provided in Sec. 111.07(5), Stats. Hearing on the complaint was held in Racine, Wisconsin on October 11, 2000. The parties filed post-hearing briefs which were exchanged on December 5, 2000. The Examiner, having considered the evidence and arguments of counsel, makes and issues the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. District 10, International Association of Machinists and Aerospace Workers, hereinafter referred to as the Union, is the exclusive collective bargaining representative for certain employees of Thermal Transfer Products, Ltd. and the Union's principal offices are located at 1650 South 38th Street, Milwaukee, Wisconsin 53215.

2. Thermal Transfer Products, Ltd., hereinafter referred to as the Employer, is an employer whose principal place of business is 5215 21st Street, Racine, Wisconsin 53406-5024.

3. The Union and the Employer are parties to a collective bargaining agreement which does not provide for the final and binding arbitration of disputes arising thereunder. The collective bargaining agreement contains the following:

> **NOTES, GENERAL**
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> . . .
>
> 6. If there is a SIGNIFICANT change in any employee's job, that change could be the basis for a possible re-classification. Any request for possible re-classification must be submitted, in writing, to the immediate supervisor (lead person) with a copy to his or her committee person stating, in detail, the possible justification for the request. A board of review made up of the following* will review the request, and will make a written recommendation to management if the request is justified. If, in the opinion of the "board", the request is NOT valid, the committee person will reply to the original applicant the reason for denial. In the event of an impasse regarding the possible reclassification of an employee between the committee representatives and the factory management, top management will make the final decision.
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> Requests for possible re-classification will be processed one at a time, and a final decision will be made on possible action within forty-five (45) days.

***Board of Review Members:**
Factory Superintendent
Committee Persons
Department Foreman/Lead Person (Shift Supervisor, if no department foreman)

. . .

4. Lee Hansen, a Utility Person in the Weld Shop, put in a request for a job classification on January 31, 2000 (Ex. 2). Hansen's labor grade was an 8 and he requested a reclassification to a labor grade 5. Sometime in early February, 2000, Committee Persons Ruth Wisniewski and Jane Redmond met with the Human Resources Manager, Nick LoCicero and discussed the reclassification. The Board did not agree on a reclassification and the Board reached impasse. Subsequently, on or about February 21, 2000, Nick LoCicero, Factory Superintendent Fran Striker and General Manager Barry Fentz reviewed the request for job reclassification and determined that the position did not have significant changes to justify a reclassification. On or about February 28, 2000, LoCicero informed Wisniewski the request for reclassification was denied. On February 28, 2000, a grievance was filed over the denial of the Hansen reclassification request (Ex. 3).

5. The evidence was insufficient to establish that there were significant changes in Hansen's job description or duties and the Employer's decision to deny Hansen's reclassification request was neither arbitrary nor capricious.

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

CONCLUSION OF LAW

The Employer's denial of Mr. Hansen's reclassification request did not violate the terms of the parties' collective bargaining agreement, and therefore, the Employer has not violated Secs. 111.06(1)(f) or (a), Stats.

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

ORDER

IT IS ORDERED that the complaint be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin this 21st day of December, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Lionel L. Crowley, Examiner

THERMAL TRANSFER PRODUCTS, LTD.

MEMORANDUM ACCOMPAYING FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

In its complaint initiating this proceeding, the Union alleged that the Employer violated Secs. 111.06(1)(a) and (f), Stats., by violating the parties' collective bargaining agreement by unilaterally and arbitrarily denying Lee Hansen's reclassification request. The Employer answered the complaint denying that it violated the collective bargaining agreement and alleged that it exercised its discretion on Hansen's reclassification request in a non-arbitrary and non-capricious manner.

Union's Position

The Union contends that under the clear meaning of the parties' collective bargaining agreement, top management was precluded from denying Hansen's reclassification request because all Board of Review members agreed that his position should be reclassed. It asserts that where the language of the agreement is clear and unequivocal, it must be given the meaning expressed. It submits that Hansen complied with the requirement of a written request to his immediate supervisor, lead worker Quinton Vincent. It claims the "board of review" approved the reclassification in that Quinton Vincent supported it and Ruth Wisniewski and Jane Redmond met with Nick LoCicero and all agreed the position should be reclassified. It observes that Reed Brouhelden, A.O. Division Manager, also approved the reclassification. It takes the position that it was not the Union's fault that Fran Striker, the Factory Superintendent/Plant Manager was not included in the "board of review" as LoCicero and Brouhelden were management representatives on the "board of review". It argues that the Employer incorrectly relies on the last sentence in paragraph 6 because there was no impasse as the "board of review" had unanimously agreed that the position should be reclassed. It submits that the subsequent meeting of February 21, 2000 is irrelevant because there was no impasse which would trigger action by top management. It concludes that under the clear and unequivocal language, because the "board of review" agreed that Hansen's position should be reclassified, top management was not properly included in the decision.

The Union, arguing in the alternative, contends that if the contract language is ambiguous, the Union still prevails. It applies the rule of construction that ambiguous language should be given a construction that is reasonable and equitable to both parties. It maintains that its position is more reasonable and the Employer's construction leads to a harsh and unreasonable result. It points out that if top management can deny a reclassification absent an impasse by the "board of review", this essentially reads the "board of review" out of the decision-making process. It insists that it is more reasonable to interpret the language to

include the lead person rather than LoCicero be involved in the decision. It also argues that ambiguous language should be construed against the drafter which in this case was the Employer. It requests a finding that the Employer violated Secs. 111.06(1)(a) and (f), Stats., when it denied Hansen's reclassification request absent impasse by the "board of review". It asks for an order granting the reclass and any other remedies deemed appropriate.

Employer's Position

The Employer contends that the appropriate standard of review is the "arbitrary and capricious" standard. It states that the parties have agreed upon a job reclassification process which invites input from the Union but places the ultimate decision in the hands of management, so the Commission should not do a *de novo* review. It claims that the Union offered no proof that the Employer bargained away its right to make the final decision regarding reclassification and the Union practically concedes in its complaint that "arbitrary or capricious" is the appropriate standard. It cites arbitral authorities which confirms management's inherent right to make changes in employees' job assignments. It claims that if the Employer did not act in an arbitrary and capricious manner, the complaint must be dismissed.

It argues that it did not act arbitrarily or capriciously in denying Mr. Hansen's reclassification because the process was fair and reasonable and the evidence did not establish that there was a significant change in his job responsibilities. It observes that the agreement requires that there be a SIGNIFICANT change in the employee's job to be reclassified. It submits only one out of nine responsibilities changed in Mr. Hansen's job, and this is closely related to duties expressed in the contract and are not "SIGNIFICANT". The Employer alleges that the decision to deny the reclassification was made in good faith after thorough consideration and Mr. LoCicero met with Ms. Wisniewski and Ms. Redmond to review and discuss it and it was also reviewed by LoCicero, Mr. Striker and Mr. Fentz, and a final decision rendered on February 28, 2000, well within the 45-day period required by the contract.

The Employer submits that the Union's arguments fail to demonstrate that the Employer's decision was arbitrary or capricious, or that the decision was wrong. It anticipates that the Union might argue that a meeting should have been held between the Committee members, the Plant Manager and Mr. Hansen's lead worker, but the contract does not require such a meeting and Mr. LoCicero met with Ms. Wisniewski and Ms. Redmond. It points out that the Union never requested a formal Board of Review meeting.

It anticipates that the Union may also dispute the composition of the Board of Review in that Mr. LoCicero should not have served in place of the Plant Manager, or that Quinton Vincent, not Shift Supervisor Reed Brouhelden should have served as the third Board member. It insists these arguments are without merit. It notes that Mr. LoCicero's selection was logical and more fair to Mr. Hansen as he was more knowledgeable than Mr. Striker, who had been employed by the Employer for only four weeks. It points out that the Union never complained that Mr. Brouhelden and/or Mr. LoCicero were not proper members. It submits that the Union introduced no evidence except Mr. Hansen's hearsay testimony that Mr. Vincent thought the request looked good or that Mr. Vincent or Mr. Striker would have voted for the reclassification. It concludes that the Union failed to carry its burden of proof that Mr. Striker or Mr. Vincent would have voted for the reclassification and any argument about the composition of the Board should be disregarded.

In conclusion, the Employer contends that the Union presented little evidence of any change in Mr. Hansen's job and presented no evidence of any "SIGNIFICANT" change. It states that while Mr. Hansen may be hard-working and a good employee, the Union must not be permitted to use this argument to circumvent the plain language of the parties' contract and thereby force the reclassification of a job which has not significantly changed.

DISCUSSION

Section 6 of "Notes, General" of the parties' collective bargaining agreement provides that if there is a significant change in any employee's job, that change could be the basis for a possible reclassification. The procedure for a reclassification is also set out. The employee must submit the written request to his immediate supervisor and the request is reviewed by a board consisting of two committee persons, and the Factory Superintendent and the Department Foreman/Lead Person. The Board makes a written recommendation to management if the request is justified. In case of an impasse, top management makes the final decision.

The Union contends that the Board of Review approved Mr. Hansen's reclassification request. The evidence fails to support this contention. It claims that the Lead Person, Quinton Vincent, approved the request. Mr. Hansen testified that he gave the written reclassification request to Mr. Vincent and that Mr. Vincent "looked over it in front of me, said it looked good to him, and that he was going to pass it on to Reed." (Tr. 12). This does not establish that Mr. Vincent approved the request. All it proves is that Mr. Vincent felt that the request looked good, probably as to form or format, or that it was well-written but there is no indication that agreed to the reclassification, especially when it was to a level 5, when even the Committee members agreed that a 5 was not warranted (Tr. 18-20). The grievant testified that Reed Brouhelden told him he liked the reclassification request and was going to pass it on to Nick LoCicero (Tr. 12). The mere fact that Mr. Brouhelden "liked it" does not establish that

he approved it. It is noted that at a later meeting with Mr. Brouhelden and LoCicero, Mr. Hansen was told that they were denying the request (Tr. 13). The grievant testified that Mr. LoCicero came to him after the request had been turned in and said it looked good and was very professional, but a 5 was pretty much out of the question (Tr. 12). Mr. LoCicero stated it was possible that a 6 or 7 would be agreeable (Tr. 13). Here, again there was no agreement on the reclassification but merely a remark that the form of the request looked good and was professional. It is concluded that the evidence presented as to the request looking good was not an approval of any of the three managers.

A meeting occurred in February, 2000, of the Committee members, Ms. Redmond and Ms. Wisniewski and Nick LoCicero and Ms. Redmond testified they agreed that a 5 was too high but they did agree on a 6 or 7. (Tr. 20). Mr. LoCicero denied any agreement to a 6 or 7 (Tr. 38). It seems logical that had the parties reached an agreement, it would be a definite wage scale number. Agreeing to a 6 or 7 leaves open the question, was it a 6 or was it a 7? This is not definite enough to signify an agreement. Thus, the evidence presented fails to prove that the Board members reached an agreement.

The reclassification procedure provides that if the request is justified, a written recommendation to management will be made. No such written recommendation was offered in evidence. This fact supports a conclusion that no agreement was reached on the recommendation. It is concluded that there was no agreement by the Board of Review and while Committee members favored a reclassification to a 6 or 7, the management members did not agree. Inasmuch as there was no agreement, it must be concluded that the Board of Review was at an impasse.

The reclassification procedure provides that if the Board reaches impasse, then top management makes the final decision. Here, impasse was reached and top management including Mr. LoCicero, Mr. Striker and Mr. Fentz reviewed the request, and concluded that there was not a significant change in Mr. Hansen's job to warrant a reclassification. There was no evidence that top management abused its discretion, or acted in an arbitrary and capricious manner in reaching its decision. The Union did not argue that the decision of top management was unreasonable, but merely that it could not make any decision because there was no impasse. Having concluded that there was an impasse, top management could make the final decision and absent evidence that its decision was arbitrary or capricious, it is concluded that the Employer did not violate the terms of the parties' collective bargaining

agreement. Because the denial of Mr. Hansen's reclassification request did not violate the parties' agreement, the Employer did not violate Secs. 111.06(1)(f) or (a), Stats., and the complaint has been dismissed.

Dated at Madison, Wisconsin this 21st day of December, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Lionel L. Crowley, Examiner

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