BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

CARNES COMPANY

and

SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL 565

Bumping Grievances of Dave Herring Carrie Anderson and Kenneth Scheel

Case 54
No. 41210
A-4360

Appearances:
Mr. Paul Lund, Business Manager, Sheet Metal Workers Local 565, 1602 South Park Street, Madison, Wisconsin, appearing on behalf of the Union.
Mr. Marshall R. Berkoff, Michael, Best & Friedrich, 250 East Wisconsin Avenue, Milwaukee, Wisconsin, appearing on behalf of the Company.

ARBITRATION AWARD

The Wisconsin Employment Relations Commission designated the undersigned arbitrator to hear and determine a dispute concerning the above-noted grievances pursuant to the grievance arbitration provisions of the parties' 1986-89 collective bargaining agreement, herein Agreement.

The parties presented their evidence and arguments to the Arbitrator at a hearing held in Madison, Wisconsin on January 19, 1989. Following distribution of a transcript, the parties completed briefing on March 1, 1989, at which time the hearing was closed and the matter fully submitted.

ISSUES

At the hearing, the parties stipulated to the following issues:

> 1. Did the Company violate the Grievants' rights under Article 13, Section 4,(4) when it decided that the employes were not "able to satisfactorily perform the work" in the instances referenced in the grievances?
>
> 2. If so, what remedy, if any, is appropriate?

PERTINENT PORTIONS OF THE AGREEMENT

ARTICLE 13

SENIORITY

Section 4 - When it becomes necessary to reduce the work force by laying off employees, the Company will follow these procedures:

1. The least senior employees within a classification in any department involved in a reduction will be the first to leave the department.

2. The Company will, by seniority, place such displaced employee in other departments when he can maintain his present classification.

3. If it is not possible for the displaced employee to maintain his classification, he will be offered one of the following options:

   3.1 He will be offered a job in a classification having a comparable pay rate.

   3.2 He may take a lower rated job provided his seniority allows or;

   3.3 He may take a voluntary layoff.

   In the event the employee elects 3.2 or 3.3 above, he will not be recalled or upgraded until there is an opening in his classification.

4. If the employee cannot be placed through 2 or 3 above, he may bump any less senior employee on any job provided he is able to satisfactorily perform the work.

The Company shall advise the Union of such layoff together with a list of the employees so affected three (3)

> working days in advance. An employee who feels his seniority was not given proper consideration may have access to the grievance procedure, provided that he lodges his complaint prior to the date of layoff or transfer.

FACTUAL BACKGROUND

The Company manufactures air movement and air distribution equipment used in commercial construction. It has manufacturing facilities in Verona, Wisconsin and, until June 30, 1988, in Madison, Wisconsin. The Company also has a manufacturing plant in Sanford, North Carolina.

In 1988, the Company lost its lease for its Madison plant and determined to close that plant and move production to its Verona and Sanford facilities. On April 1, 1988, the Company advised the approximately 40 employes at the Madison plant of the impending closing and informed them that efforts would be made to transfer them to the Verona plant, which was also covered by the Agreement. About June 9, 1988 the Company posted a list of employes to be transferred to Verona, which included the jobs those employes were to be transferred into. Thirty-eight of the forty Madison employes were in fact transferred, and seven employes were laid off in Verona as a result. Some of the transferred employes kept their present classifications, but in order to absorb the additional work force a number of changes were necessary, and approximately seventeen employes from Madison were assigned in Verona to classifications which had lower pay rates. Also, eight Verona employes were bumped into lower-paying jobs, in addition to those who were laid off. In all, seventy-two employes had their jobs eliminated or changed as a result of the consolidation of work. The three Grievants in this matter, Dave Harring, Carrie Anderson and Kenneth Scheel were all classified as Welder A when working in Madison. They were notified by the June 9 posting that they would be classified as Welder B in Verona, at a loss of some seventy-seven cents per hour. Each of the three employes filed a grievance contending that the Company could and should have assigned the employe in question to a higher-rated job.

Harring testified that immediately after the posting he had requested Plant Manager Brian Gilmore to classify him as Maintenance Mechanic B instead of Welder B. He further testified that because of his job experience with the Company and his experience at another company building aluminum yachts he believed he was qualified to do general maintenance work. Harring admitted unfamiliarity with all of the details of the Maintenance Mechanic B position, but contended that from his observation it appeared to be an entry-level maintenance position.

Anderson testified that she had requested to bump into either the spray painter or set-up man classifications and contended in testimony that she was familiar with the work of both classifications. Anderson testified that she had served as a spray painter for the Company during two periods, one some twenty years ago and the second more recently, when she was disqualified from the job after a few days at her own request because the position then required lifting of very heavy parts. Anderson admitted lack of knowledge of the more complex parts of the spray painting operation. Anderson testified that she was qualified to do set-up work because she had set up brake presses, a drill press and a cut off machine during certain slack times in her regular welding job.

Scheel testified that he had requested to bump into the set-up man classification and that he considered himself qualified for set-up work because he had done set-up on troughers as well as on saws that he used in the Madison plant. Scheel also admitted that he had not done set-up work on roll forming machines and that the set-up employes do not normally set up saws or circle shearers, another machine he himself had experience setting up. Scheel testified that he received some instruction in the Welder B job after serving as a Welder A, because the products were different and he could not step in immediately without assistance. All three Grievants testified that they each received approximately one to two weeks of occasional assistance on their new jobs following the layof/fdisplacements.

Plant Manager Brian Gilmore testified that when the Madison plant closed the Company went through a complex process of determining which employes could be transferred and what levels they had the right to bump into. Gilmore stated that he defined for this purpose the term "satisfactorily" in Agreement Article 13, Section 4,(4) as meaning "the employe can do the work in the labor classification as he is assigned to it on the day that he is assigned to it." (Tr. 69) Gilmore testified that he had used this standard in two prior instances in previous years and that in the one instance in which a grievance was filed it was subsequently dropped. Gilmore testified that the skills of the three Grievants, as well as others, were assessed based on their written job record and their initial applications, and that none of the Grievants was capable of performing satisfactorily in the jobs each requested as of the date they would have been assigned.

With respect to Harring, Gilmore testified that the Maintenance Mechanic B job is not an entry level maintenance job, but rather involves complex repair work on a wide variety of plant equipment, as well as electrical work. Gilmore testified that this job requires basic metal-working capabilities and

understanding--although welding was not a big part of the job--and that ability to work from blueprints or sketches and to make tables, carts and press guards was required. Gilmore testified that, while Harring's background as he knew it would shorten the time period necessary for full performance of this position (which he estimated at twelve to eighteen months in full), he believed Harring would still need from nine to twelve months' training on the job to become fully proficient.

As to the requests by Anderson and Scheel to become set-up men, Gilmore testified that the set-ups both employes described having performed were not normally performed by set-up men, but rather by the operator classification associated with the particular piece of equipment. Gilmore testified that set-up men perform their work on roll forming and punch press machines, which use large and complex dies to form different types of shapes in different types of metals. Gilmore testified that lengthy experience characterizes the set-up men in the plant and that errors in this job can easily destroy expensive dies as well as raw stock. Gilmore testified that Anderson or Scheel would require two years' training to become fully proficient in the set-up man classification.

With respect to Anderson's request to bump into the spray painter classification, Gilmore testified that the spray painter classification still requires lifting and maneuvering large parts, the reason why Anderson had requested dis-qualification from that position previously. But Gilmore also testified that since the last time Anderson held the position for a significant period of time --some twenty years ago--the spray painting function has changed substantially in its requirements. He testified that the reason why Anderson left spray painting the first time was because of reductions in that classification as a result of mechanizing much of the painting function. Gilmore testified that following the mechanization, the remaining hand-performed spray painting became more specialized, and among other things required the spray painters to learn to mix paints, including 2-part epoxy paints, and to operate airless as well as the former air spray equipment. He testified that one of the spray painters also has to know about touchup work and management of the electro-deposition painting equipment, both of which are skills which were not required of the Grievant previously. Gilmore testified that errors in spray painting create scrap or require rework of product which has otherwise been virtually completed, consequently upsetting production or creating shipment delays. He stated that six to twelve months' experience is required in the spray painter classification to reach acceptable performance.

POSITION OF THE UNION

All of the Grievants gave management an opportunity to consider their descriptions of past work experience, both with the Company and at other employers, and these were reasonably related to the type of work entailed in the jobs they were seeking.

Management had no reasonable basis on which to conclude that Harring could not satisfactorily perform the work of a Maintenance Mechanic B, or that Carrie Anderson was not able to satisfactorily perform the work of a set-up man or a spray painter, or that Ken Scheel was not able to satisfactorily perform the work of a set-up man. The criterion of "no related work history indicated in the Company's records," which was used by Gilmore, was a deficient basis for concluding that the employes did not have the ability to "satisfactorily perform the work." The Company has relied on the most technical or complex aspects of the jobs in which the employes wish to be placed, in attempting to show that the employes could not handle the basic functions of these jobs.

The Agreement language does not imply that the Grievants have to possess the skill, job knowledge, and experience of the incumbents in the jobs in which they wanted to bump. The contract requires only that they possess the ability to satisfactorily perform the work. The Agreement clause controlling bumping is classified as a "sufficient ability" clause in Elkouri and Elkouri, How Arbitration Works, 3rd edition at p. 570. The cited work there specifies that, under a "sufficient ability" clause, minimum qualifications are enough and it is necessary only to determine whether the employe with greater seniority can in fact do the job.

All three of the grievants have the ability to perform the work of the classifications they are seeking. This is a lesser requirement than needing to have the skill, job knowledge and experience to perform that work satisfactorily; and it is clear that the skill, job knowledge and experience necessary to perform the work in an accomplished fashion is not expected of any new entrant into a position, as the Company has shown by granting an orientation period to employes exercising bumping, including the Grievants in their Welder B positions.

Accordingly, the Company has failed to demonstrate that it acted reasonably in deciding to deny the grievants their requested classifications, because the only way the Company could determine their ability to perform the work was to permit them a reasonable trial period with similarly reasonable instructional orientation. The Arbitrator should order that the grievants be given reasonable trial periods to demonstrate their ability to "satisfactorily perform the work" in the respective positions they sought, and order back pay

in the event that they successfully demonstrate that ability.

POSITION OF THE COMPANY

Gilmore testified without contradiction that the term "satisfactorily perform the work" means that the employe must be able to do the work of the classification on the day he is assigned to it. The Company has no obligation to train an employe who bumps into a job, and its orientation actions for employes are a matter of the Company's interest and common sense rather than a contractual requirement.

Nothing in the Grievants' work records, work histories or employment applications indicated that they could satisfactorily perform the jobs which they requested. Also, nothing which they added to this information in their discussions with Gilmore indicated that they could satisfactorily perform the work. The Company engaged in a complex and careful evaluation of the work abilities of a large number of employes in order to allocate jobs fairly, and the assignment of these three Grievants to the Welder B classification was not arbitrary or unreasonable.

All three of the employes involved admitted that they could not do all of the work of the classification. Harring had cleared C02 lines, cut pipe threads and hooked up some air piping and sensor motors, as well as some carpentry and basic wiring work, none of which was work performed for the Company. But the Maintenance Mechanic B job is not an entry level job. It involves the skills of electrician, carpenter, millwright, mechanic, painter and grounds maintenance, and it requires training acquired by trade or vocational school or trade experience of three to five years according to the job description. There is no evidence that Harring could, in particular, repair a wide variety of plant machinery and equipment, and his welding experience is not a primary part of the Maintenance Mechanic B job. While he has certain fundamental skills as a result of his prior employment, the equipment repair experience and training is entirely lacking. Harring could not therefore be said to be able to satisfactorily perform the work on the day of appointment.

Anderson, admitted that when she had previously been a spray painter, the painting line was altogether different. Unlike then, the spray painter now has to mix his or her own paint and to do touch up work on products coming through the main electrodeposition line. The painters also now need to be able to pre-treat metal by applying iron phosphate to it--not a skill required in 1967,--and must be able to mix and apply epoxy resins, as well as to apply catalysts, enzymes and lacquer thinners. None of these skills was required when the Grievant previously held the spray painter position at length, and when the Grievant held that position for a short time in 1973, she sought to be disqualified because of the heavy lifting requirements, which still exist. Thus Anderson cannot reasonably claim that she is presently able to satisfactorily perform the job of spray painter.

The record also shows that neither Anderson nor Scheel could satisfactorily perform the set-up work required of the set-up classification. This is so because while both Grievants have performed some set-ups, the record demonstrates clearly that the set-ups they have performed are not actually done by the set-up classification and that that classification performs far more complex work on machinery with which both Anderson and Scheel are entirely unfamiliar. Thus neither Anderson nor Scheel is presently able to perform satisfactorily as a set-up man.

There is a distinction between bumping situations and posting of vacant positions, in the way arbitrators have traditionally treated the qualifications of employes. Employes, when applying for a new position, may often be acceptable under many labor agreements when they do not yet have all of the job's required ability, but in bumping situations a fully qualified employe must be displaced to make room for the would-be bumper, and more skill is generally required. Citing, Elkouri and Elkouri, How Arbitration Works, 4th edition, at Note 199, p. 626. The Agreement does not say that a learning, trial or orientation period is to be part of a right to bump. Harring in particular admitted that he could not walk right in and do the job of Maintenance Mechanic B. Scheel, meanwhile, expressly requested that he be trained to perform as a set-up man. These training and orientation requirements of the Grievants are not required by the Agreement.

For the foregoing reasons, the Union has not demonstrated that any of the Grievants were satisfactorily able to perform the work of the jobs they claim. Accordingly, the grievances should be denied.

DISCUSSION

It is clear from the testimony that all three Grievants possess some skills and experience which might help to qualify them as applicants for a position as Maintenance Mechanic B, spray painter or set-up man. But it is also clear from the testimony that none of the Grievants is capable of performing significant aspects of these positions as of the date the bumping requests were made. Indeed, in several instances, the Grievants' testimony

betrayed a lack of understanding of what the position really was.

The record amply demonstrates that the core of the Maintenance Mechanic B position is equipment repair and that Harring had little or no experience in such functions. The record also demonstrates more than adequately that the primary function of the set-up man is complex set-up work on roll forming and punch press equipment and that neither Anderson nor Scheel had any experience with those functions. With respect to the spray painter position, the record reflects that Anderson had performed related work, but it also demonstrates that she had not been able to satisfactorily perform the heavy lifting required and further that she had not had experience in a number of the aspects of the job as it was redesigned after the late 1960's, when she last held it for any length of time.

The case thus turns on an interpretation of the Agreement term, "able to satisfactorily perform the work."

Simply put, the Agreement language in question makes no express or implied provision for a trial period or for an obligation to undertake lengthy and involved training of the sort that the record establishes would be necessary to bring the Grievants to a present ability to even minimally satisfactorily perform the work of the positions they are requesting. Rather, the disputed "able to satisfactorily perform the work" language--especially because it is in the context of bumping incumbents rather than promoting to fill a vacancy--requires that at the time the bump is to occur, the employe must reasonably appear able to perform the job in all significant respects. Whether the Company could deny an employe the right to bump to a job where he or she needed no more than the sort of brief orientation that the Grievants were given regarding their Welder B jobs is not a question presented herein and so no opinion is expressed on that question.

The record evidence establishes convincingly that even with a reasonable orientation to the jobs but without more involved and lengthy training, none of the Grievants would have been immediately capable of performing the more demanding, yet significant parts of the jobs in question. The Arbitrator is persuaded that the Grievants' deficiencies are in areas central to the jobs and not in fringe requirements which only the most experienced incumbents could reasonably be expected to meet.

Accordingly, the Arbitrator concludes that the Grievants are not entitled to the trial period requested by the Union and that the Company did not violate Article 13, Section 4,(4) of the Agreement when it assigned Dave Harring, Carrie Anderson and Kenneth Scheel to positions as Welder B instead of to the positions they requested to bump in to.

DECISION AND AWARD

For the foregoing reasons, and based on the record as a whole, it is the decision and Award of the undersigned Arbitrator on the Stipulated Issues above that:

1. The Company did not violate the Grievants' rights under Article 13, Section 4,(4) when it decided that the employes were not "able to satisfactorily perform the work" in the instances referenced in the grievances.

2. The grievances are denied, and no consideration of remedy is necessary or appropriate.

Dated at Madison, Wisconsin this 20th day of July, 1989.

By ______________________________
Marshall L. Gratz, Arbitrator