

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration :
of a Dispute Between :
ALLIED INDUSTRIAL WORKERS OF :
AMERICA, AFL-CIO, INTERNATIONAL :
UNION LOCAL 815 :
and : Case 38
FWD CORPORATION : No. 42029
: A-4424
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Appearances:
Habush, Habush and Davis, S.C., by Mr. Kenneth R. Loebel, 777 East Wisconsin Avenue, Milwaukee, Wisconsin, appearing on behalf of the Union.
Ms. Barbara J. Kraetsch, Lindner and Marsack, S.C., 411 East Wisconsin Avenue, Milwaukee, Wisconsin, appearing on behalf of the Company.

ARBITRATION AWARD

Local 815, Allied Industrial Workers, AFL-CIO, hereinafter the Union, and FWD Corporation, hereinafter the Company, are parties to a collective bargaining agreement, effective October 1, 1987 through September 30, 1990, which provides for final and binding arbitration of grievances concerning the meaning or application of any provision of the collective bargaining agreement. Pursuant to a request for arbitration, the undersigned was appointed by the Wisconsin Employment Relations Commission to arbitrate a dispute over the pay rate of an employee. Hearing on the matter was held in the Company's offices, Clintonville, Wisconsin on July 28, 1989. Post-hearing arguments were received by the undersigned by September 12, 1989. Full consideration has been given to the testimony, evidence and arguments presented in rendering this award.

ISSUE

During the course of the hearing the parties agreed to leave framing of the issue to the undersigned. The undersigned frames the issue as follows:

Did the Company violate the collective bargaining agreement when it posted the job of a long-time department Leadman who retired as a Labor Grade 3, Leadman, Welder-Layout and Setup Man?

If yes, what is the appropriate remedy?

PERTINENT CONTRACTUAL PROVISIONS

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(43) A job evaluation plan involving the appraisal of skill, effort, job conditions and responsibility factors has been installed for the purpose of establishing fair wage differentials between the various jobs on an impartial and equitable basis and by a measuring device of recognized stability.

It is agreed that the evaluation of existing jobs is correct, and a list of same has been furnished the Union prior to the signing of this Agreement. Such listed jobs are not subject to grievance procedure. All new jobs and changes in existing jobs will be evaluated under said plan. A copy of new and revised job write-ups will be furnished the Union on said jobs within ten (10) days from date of same, and such new job descriptions and classifications shall be subject to the grievance procedure. When evaluation of a job has been completed, a copy will be furnished to the Union.

. . .

(109.1) Any employee who is responsible for instructing, directing, laying out work and expediting materials, in addition to the regular work requirements of his/her job description, shall be entitled to leadman's classification with an additional labor grade to his/her regular labor grade for the job description without the above described leadman's responsibilities. Leadmen shall not give direct orders to employees, nor have any of the disciplinary responsibilities of the supervisors.

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BACKGROUND

The Company operates a manufacturing facility in Clintonville, Wisconsin. This facility produces fire trucks and apparatus, heavy tractors, waste maintenance trucks and large snow plows. A variety of skills are used to manufacture and assemble the Company's product. Specific phases of the Company's operations are concentrated by Department. Amongst the various Company departments is the Cab Assembly Department, which is responsible for the cab portion of the vehicles produced by the Company.

The instant matter arose when employee Al Pethke retired. Pethke, for a number of years, guided this department, having the title Leadman, Line Assembly. Pethke was paid at Labor Grade 3 rate. However, no job description had ever been developed for Pethke's position. Further, when assembly line work became obsolete in the Cab Assembly Department, although Pethke's job duties changed, his title and labor grade did not. At the time of the hearing, the assembly work in this department primarily specialized in welding, and Welder-Layout and Setup Men, Assemblers, and Sheet Metal Workers constituted this department's work force. Further, whenever the task Pethke was assigned to required welding, another employee from this department accompanied him and performed the welding task.

After Pethke resigned, the Company posted the vacancy as Leadman, Line Assembly. Thereafter, the Company concluded the job title did not reflect the prevailing duties being performed in the Cab Assembly Department. The Company then reposted the job as Leadman, Welder-Layout and Setup, Labor Grade 3, as this title more correctly reflected this department's current operations. Welder-Layout and Setup Man is a Labor Grade 4 position. A labor grade incentive, per the collective bargaining agreement, was added for Leadman responsibilities.

Dan Shira, a Welder-Layout and Setup Man from the Department, applied for and received the posting. Thereafter, the Union, on May 6, 1988, filed the instant grievance alleging the job posting was incorrect and that the job Shira was performing was incorrectly graded. In effect, the Union asserted, the change in job duties (Shira now performed welding duties that Pethke had not) changed the job to that of a Fitter, Labor Grade 3. The Union concluded that the changed job should have been posted as a Leadman, Fitter, Labor Grade 2, and grieved that the job should be properly posted or revised to reflect the previous duties performed by Pethke.

Thereafter, the matter was processed to arbitration, in accordance with the parties' grievance procedure.

The record demonstrates that labor grades for job titles are a product of job evaluations. The parties have agreed that evaluations of existing jobs are correct and that such listed jobs are not subject to the grievance procedure. The distinctions between a Fitter and a Welder-Layout and Setup Man are as follows:

FITTER

Experience

4 (88) Over 3 years.

Initiative and Ingenuity

4 (56) Lay out reference points and dimensions on metal stock, structural shapes, or work pieces such as castings, plates, tubes or machined or fabricating parts to indicate processing to be done such as machining, welding or assembly, analyzing specifications and computing dimensions according to knowledge of the product, subsequent processing, basic shop mathematics and lay-out procedures where fixtures are not available. Must have the ability, and is required to weld, as specified in Initiative and Ingenuity as outlined in "Welder, Layout and Set-up Man" classification.

WELDER-LAYOUT AND SETUP MAN

Experience

3 (66) 2 to 3 years.

Initiative and Ingenuity

4 (56) Layout out (sic) work, setting up, fitting and tacking parts in proper location in accordance with blue print

specifications, for self or others, on frames, or outriggers, fenders, shrouds, skirts, battery boxes, compartment boxes, water tanks, cabs or ladders; judgment required to weld parts and assemblies where no drawings are available. A qualifying requirement for occupant of this position is that he uses blueprints and measuring instruments. Required to operate automatic or semi-automatic welder using submerged arc, shielded arc, inner shield and stick electrode procedures; may be required (see Page 2 attached) to use acetylene welding process. Vary welding technique to meet conditions in base metal; required to weld fabricated parts of various shape and design with or without available fixtures. Weld a variety of metals including aluminum and stainless steel. Other duties as assigned.

The parties do not dispute that a job description has not been developed for the duties performed by Shira. Nor do they dispute that Shira performs Leadman duties for which, in accordance with Article IX, paragraph 109.1, he is to receive an additional labor grade. The fundamental issue, therefore, is whether Shira performs Fitter or Welder-Layout and Setup Man duties.

At the hearing, Shira testified that in the past he had been a Fitter and that his present duties require him to perform duties he did when he was a Fitter. This includes more non-routine tasks than what he did as a Welder-Layout and Setup Man. These tasks include difficult setups, layouts by hand, welding without fixtures, trouble-shooting and, in effect, covering up engineers' mistakes.

Also, at the hearing, John Krenek, an Industrial Engineer employed by the International Union, testified that he had reviewed the duties performed by Shira and concluded because of the non-routine, non-repetitive nature of Shira's work, its trouble-shooting aspect and degree of skills and experience necessary to perform those tasks, that Shira's duties were those of a Fitter. However, Krenek acknowledged he had not observed Shira's work routine, that his opinion was subjective, and that other industrial engineers might disagree with his opinion.

The Company's Manager of Industrial Relations, Stephen Smiles, testified that the posting of positions is predicated on requisitions which come through his office. Smiles stated it was his decision to rescind the Leadman, Line Assembly posting and repost it as Leadman, Welder-Layout and Setup Man. This decision was a result of the fact that the Welder-Layout and Setup Man position was the prevailing job in the department. Smiles asserted that the Company did not create a new job. Smiles also testified that the normal work of the position was to expedite, layout and instruct. Smiles acknowledged he walked through the Company's facility with Hahn and also acknowledged he had never observed Shira performing his duties.

Union's Position

The Union contends the Company incorrectly posted the position as a Welder-Layout and Setup Man when the duties the Company expected the position to perform were those of a Fitter. The Union does not dispute that the position was properly posted as a "Leadman." However, the Union points out the position's previous occupant never performed welding duties and when the duties of the position required welding, another employee performed this function. The Union argues that the Company's contention that the Leadman position was posted as a Welder-Layout and Setup Man because that position was the prevailing position in the Department ignores the fact the previous incumbent performed no welding duties. The Union points out that Smiles, the only witness called by the Company, had no actual knowledge of the position's duties. The Union also points out that the position's foreman, who would have knowledge of the position's duties, was not called by the Company to refute Shira's testimony.

Here, the Union points to Shira's testimony that he had a conversation with the foreman which led Shira to post for the position in the belief he would be a Fitter. The Union argues that when Shira became Leadman, his duties changed and that they changed significantly. Further, that Shira was expected to do Leadman work but also work which drew on his experience as a Fitter. This work was non-routine layout and setup. The Union contends this is the substance which distinguishes a Fitter from a Welder-Layout and Setup Man. Here the Union argues that had Shira's duties not changed, he would be appropriately classified.

Company's Position

The Company contends it correctly posted the Leadman vacancy in the Assembly Department. The Company acknowledged that the previous incumbent did not perform Welder duties. However, the Company argues that it properly posted the Leadman vacancy according to the work performed in the department and the parties' collective bargaining agreement. The Company argues that it reviewed the department's functions and Leadman duties. It then determined that the Leadman should be able to completely handle the predominant job in the department in order to effectively accomplish the trouble-shooting responsibilities. Accordingly, under Article IX, paragraph 109.1, the job was posted as Leadman, Welder-Layout and Setup Man. The Company asserts it did not create a new job. Further, the Company argues, the combination of a regular department job and Leadman duties, according to contract language, did not create a new job requiring evaluation.

The Company also contends Shira's Leadman duties did not affect his basic job classification as a Welder-Layout and Setup Man. The Company points out the job evaluations have been mutually agreed upon and argues the Union cannot assert they are flawed. The Company also asserts Shira received the proper labor grade for his position. The Company points out Shira, as a Welder-Layout and Setup Man, was in Labor Grade 4. Pursuant to paragraph 109.1, employees with Leadman responsibilities are entitled to an additional labor grade. The Company points out the additional labor grade was posted and received by Shira.

The Company also points out that the Union's industrial engineer did not observe Shira performing his duties. Thus, no objective measurement was conducted, and the industrial engineer's opinion is of no value when weighed against the parties' mutual agreement. The Company also argues the Union is attempting to modify the contractual agreement regarding job evaluations and is attempting to confuse the issue by asserting the existing job evaluations are invalid.

DISCUSSION

The record demonstrates that the job performed by Shira's predecessor, Leadman, Line Assembly, had never been evaluated. No job evaluation existed for this position. Thus, the Union is not barred by paragraph 43 from grieving the position's wage rate. The record also demonstrates that when the job was reposted as a Leadman, Welder-Layout and Setup Man, the Company, in effect, changed the duties of Leadman, Line Assembly, or it created a new job because it added welding functions to the position's duties. However, no evaluation of the position was made even though paragraph 43 specifically requires new or changed jobs to be evaluated. The undersigned concludes that when the Company reposted the position as Leadman, Welder-Layout and Setup Man prior to performing a job evaluation, the Company violated paragraph 43.

The record also demonstrates that the decision to repost the position and call it a Welder-Layout and Setup Man position was based upon the fact that such a position is the prevailing job in the Cab Assembly Department. However, nothing in either paragraph 43 or paragraph 109.1 requires a Leadman to perform a department's prevailing job in order to be a leadman. Clearly, paragraph 109.1 states a leadman's responsibilities are instructing, directing, laying out work and expediting materials. These responsibilities are in addition to the employees' regular work, whatever that may be. The undersigned notes here that the Leadman, Line Assembly did not know how to weld, yet he was the Leadman for Welder-Layout and Setup Man positions. The undersigned, therefore, finds no basis for the Company's conclusion of identifying the position in question herein as a Welder-Layout and Setup Man, particularly when no previous evaluation of the Leadman, Line Assembly position existed and when an evaluation was not made after welding duties were added to the position.

The record also demonstrates that there is very little distinction between a Fitter and a Welder-Layout and Setup Man. A Fitter is required to do all the things and more than the Welder. In effect, it is a distinction of degree of skills rather than types of work performed. Thus, Shira's work duties could fall within the scope of either job classification. However, Shira had previously been a Fitter. Shira was aware of the distinctions between the two positions because he had performed both. No witness who had knowledge of this new position was called by the Company to refute Shira's testimony. Further, James Anklam, the Union's Vice-President, who is also a Fitter, testified that Shira was doing Fitter work because of the type of trouble-shooting and prototype work on new cabs that Shira performed. Here also, no evidence was brought forth by the Company to dispute Anklam's testimony. 1/

1/ Industrial Engineer John Krenek also testified that Shira's duties were those of a Fitter. However, Krenek also testified he had not seen Shira perform his duties and that his opinion was subjective. The undersigned, therefore, concurs with the Company's argument that Krenek's testimony is of no value.

Based upon the above and foregoing, and the evidence, testimony and arguments presented by the parties, the undersigned concludes the Company violated the collective bargaining agreement when it posted the position of Leadman, Welder-Layout and Setup Man without first performing a job evaluation as required by paragraph 43 of the collective bargaining agreement. The undersigned also finds great weight must be given to the testimony of Shira and Anklam as to whether Shira is performing Fitter duties because the distinction between the two positions is degree of skill rather than type of work performed. The undersigned, therefore, concludes Shira is performing the duties of a Fitter and should be compensated at the Labor Grade 2 rate of pay.

The Company is directed to make Shira whole as of the date of filing the grievance, May 6, 1988. The grievance is sustained.

AWARD

The Company violated the collective bargaining agreement when it posted the Labor Grade 3, Leadman, Welder-Layout and Setup Man position. The Company is directed to make Dan Shira whole and to pay Dan Shira the Labor Grade 2 rate of pay retroactive to the date of filing of the grievance, May 6, 1988.

Dated at Madison, Wisconsin this 3rd day of November, 1989.

By _____

Edmond J. Bielarczyk, Jr.,

Arbitrator