BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
LOCAL UNION #2832, MIDWESTERN INDUSTRIAL COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA	Case 26 No. 42738 A-4494
and	
EGGERS INDUSTRIES, INC.	

Appearances:

Mr. Conrad Vogel, Assistant Business Representative, Midwestern Industrial Council, United Brotherhood of Carpenters and Joiners of America, 1614 Washington Street, Two Rivers, Wisconsin 54241-3099, appearing on behalf of Local Union #2832.

Mr. Gary Milske, Personnel Manager, Eggers Industries, Inc., Neenah Division, 164 North Lake Street, Neenah, Wisconsin 54956, appearing on behalf of Eggers Industries, Inc.

ARBITRATION AWARD

Local Union #2832, Midwestern Industrial Council, United Brotherhood of Carpenters and Joiners of America (hereinafter Union) and Eggers Industries, Inc. (hereinafter Employer or Company) have been parties to a collective bargaining agreement at all times relevant to this matter. Said agreement provides for arbitration of unresolved disputes involving the interpretation or application of any provision of said agreement by an arbitrator appointed by the Wisconsin Employment Relations Commission. On August 28, 1989, the Union and Employer jointly requested the Commission to initiate grievance arbitration in this matter. On September 27, 1989, the Commission appointed James W. Engmann, a member of its staff, as the impartial arbitrator in this dispute. A hearing was held on October 23, 1989, in Neenah, Wisconsin, at which time the Union and the Employer were afforded the opportunity to present evidence and to make arguments as they wished. No transcript was made of the hearing. The Union and the Employer exchanged briefs on November 29, 1989, and waived the filing of reply briefs. Full consideration has been given to the evidence and arguments of the Union and the Employer in reaching this decision.

STATEMENT OF FACTS

The basic facts are not in dispute. The Company employs one part-time employe and between zero and 20 temporary employes. The Company employs between 203 and 206 full-time employes, including represented and non-represented employes. The number of employes in the bargaining unit is less than 200, though the precise number is not in the record.

PERTINENT CONTRACT LANGUAGE

ARTICLE ONE - RECOGNITION

> 1.1 The Company recognizes the Union as the exclusive collective bargaining agency (sic) for all production and maintenance employees, and "Over-the-Road" truck drivers; excluding administrative, professional, supervisory, clerical, part-time and temporary employees.
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> . . .
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> 1.4 Any employee hired on a part-time (7 hours per day or less), or on a temporary basis (such as a student or retiree) is not required to join the Union, but is required to pay to the Union a working permit fee equal to the regular monthly dues of members of Local Union 2832 for each month employed. Upon written notice to the employer that any part-time or temporary employee has been delinquent in their payments, the employer will discharge such employee unless said delinquency is made up within twenty-four (24) hours after receiving such written notice. The Company agrees to employ part-time employees at a ratio not to exceed 10% of the total work-force.

Part-time or temporary employees are governed by rules as follows:

1) If they worked twelve (12) days in a calendar month, they must pay the working permit fee.

2) They are not subject to the grievance machinery.

3) They can be terminated without notice or severance pay and for any cause or no cause.

4) They are not covered by the same benefits as probationary employees or Union employees.

5) In the event that temporary or part-time employee's status is changed to permanent, full-time, they immediately come under the existing Union security clause Article 1.2, and their seniority will date from the first day of this current temporary or part-time employment period.

6) Temporary help will not be offered overtime unless permanent employees in the department will not volunteer to perform the overtime or are not able, as determined by the Company, to perform the work.

7) A temporary employee (student) will be paid at the general labor rate unless he is qualified and fills a skilled job, in which case he will be paid $.50 per hour less than the rate for that classified skill job.

However, it is agreed that no temporary or part-time employee will be hired while regular full-time Union employees are on layoff status and/or the Company is working less than a 40 hour week, unless such regular employees decline the work available or a special skill is required to perform the work.

STATEMENT OF THE ISSUE

The parties stipulated to framing the issue as follows:

Is the Company violating the collective bargaining agreement by exceeding the 10% of the total work force limit set by the collective bargaining agreement?

If so, what is the remedy?

POSITIONS OF THE PARTIES

1. Union

The Company, except for its grievance response, always agreed that the language in Article 1.4 of the collective bargaining agreement did apply to temporary employes. In fact, when questioned by the Union about total number of employes, the Company always supplied the total to the Union within the Company meaning. The total number of temporary employes must be interpreted as applying to the total number of employes in the bargaining unit. These are the employes under the Union's jurisdiction. A net total of the Company's employes would have no meaning at all to the Union. The Recognition Clause, Section 1.1, states what the total work force is.

Based on the contractual language and past practice the Union respectfully requests that the arbitrator order the Company not to exceed the contractual limits on temporary help as set forth in the collective bargaining agreement and, also, to make all affected employes whole.

2. Company

Article 1.4 is very clear. The Company agrees to employ part-time employes at a ratio not to exceed 10% of the total work force. At the present time the Company has one part-time employe, well below the 10% limit.

In Article 1 there is a distinction between part-time and temporary employes. Had the Company wanted to limit itself to employing temporary employes at a ratio not to exceed 10% of the work force, the Company would have changed the sentence to say that. The word "temporary" was never added because it was never the Company's intent to limit itself in hiring temporary employes.

Finally, the term "total work force" in Article 1.4 refers to both plant and office employes. Therefore, even if temporary employes are included in the 10% ratio, the Company would be allowed to employ 20 temporary employes. Since the Company never hired more than 20 temporary employes, the Company did not violate Article 1.4.

DISCUSSION

The language at issue in this case states, "The Company agrees to employ part-time employees at a ratio not to exceed 10% of the total work force." The record is clear that the Company employs one part-time employe among its approximately 200 employes. On its face, the Company's ratio of part-time employes does not exceed 10% of its employes.

The record is also clear that the Company has employed up to 20 temporary employes at any one time. The Union argues that the sentence in dispute applies to temporary employes as well. If the Union is correct, this becomes a closer case. The Company argues that it is still in compliance with the 10% ratio since it defines the total work force as all employes, bargaining unit members as well as non-represented employes. This gives it between 203 and 206 employes which allows for 20 part-time and temporary employes. The Union argues that the term "total work force" applies to bargaining unit employes only. Although that number is not in the record, it is less than 200 and so the Company would have violated the agreement by having 20 temporary employes.

In drafting this agreement, the parties showed that they distinguished between part-time and temporary employes. In Article 1.4(6) the parties agreed that temporary employes will not be offered overtime if permanent employes are available to perform the work. This subsection does not apply to part-time employes. In Article 1.4(7) the parties agreed that temporary employes are paid at the general labor rate unless qualified and filling a skilled job; even then, they are paid less per hour than the normal rate. This section does not apply to part-time employes.

Yet the Union argues that when the term "part-time employees" is used by itself, it is meant to include the term "temporary employees". This is not supported by the remainder of Article 1 which shows that when the parties wanted to include both terms, they did so. In Article 1.1, both part-time and temporary employes are specifically excluded from the collective bargaining unit. In Article 1.4, the parties agreed that the Company would discharge both part-time and temporary employes if they did not pay the Union's working permit fee. Article 1.4(1), (2), (3) and (4), state rules governing both part-time and temporary employes. In Article 1.4(5) the parties agreed that if part-time or temporary employes become permanent full-time, the seniority date would be dated from the first date of the current temporary to part-time period.

The fact that the parties refer at times to both part-time and temporary employes and at other time to temporary employes shows they did distinguish between types of employes in drafting the sentence in dispute. Thus, when the sentence states "part-time employees" and does not refer to temporary employes, the language must be read as written. The parties showed they could write language for both part-time and temporary employes; since they did not do so in this case, the language in dispute pertains to part-time employes only.

The Union argues that the Company has always agreed that this sentence applies to temporary employes. The Company disputes this assertion. The Union put in very little evidence to support it allegation. Absent concrete evidence showing the parties agreed that the sentence in dispute included temporary employes, I read the sentence as it is written to pertain only to part-time employes.

As the Company is not in violation of Article 1.4, regardless of the definition of total work force, I do not reach a decision as to the definition of that term.

For these reasons, based upon the foregoing facts and discussion, the arbitrator issues the following

AWARD

1. The Company is not violating the collective bargaining agreement in that it is not exceeding the 10% of the total work force limit for part-time employes set by the collective bargaining agreement.

2. The grievance is denied and dismissed.

Dated at Madison, Wisconsin this 22nd day of February, 1990.

By _____
James W. Engmann, Arbitrator