

BEFORE THE ARBITRATOR

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 In the Matter of the Arbitration :
 of a Dispute Between :
 :
 LABORERS INTERNATIONAL UNION OF :
 NORTH AMERICA, LOCAL 140, AFL-CIO :
 :
 and : Case 16
 : No. 43763
 : A-4611
 SPARTA MANUFACTURING COMPANY :
 :

Appearances:

Mr. Darrel D. Lee, Business Manager, appearing on behalf of the Union.
Gleiss and McAlpine, Attorneys, by Mr. Michael J. McAlpine, appearing on
 behalf of the Company.

ARBITRATION AWARD

The Company and Union above are parties to a 1989-92 collective bargaining agreement which provides for final and binding arbitration of certain disputes. The parties requested that the Wisconsin Employment Relations Commission appoint an arbitrator to resolve the grievance of Joseph Griffin, concerning the award of the first shift laboratory technician position.

The undersigned was appointed and held a hearing in Sparta, Wisconsin on June 14, 1990, at which time the parties were given full opportunity to present their evidence and arguments. No transcript was made, both parties filed briefs, and the record was closed on June 28, 1990.

STIPULATED ISSUES:

1. Did the Company violate the collective bargaining agreement when it awarded the first shift laboratory technician position to Lowell Scott instead of Joseph Griffin?
2. If so, what is the remedy?

RELEVANT CONTRACTUAL PROVISIONS:

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ARTICLE V

SENIORITY

Section 1.

Seniority shall prevail on the date of employment except where other provisions are specifically made in the terms of this Agreement. Seniority is the relative status of employees with respect to their length of service during employment.

Section 2.

If a layoff is necessary, employees who are qualified in working in special classifications shall not be laid off in favor of an employee with greater seniority. If there is more than one employee working in a special classification the one with the least seniority shall be laid off first. Special classifications are defined as follows: cupola tender, cupola repairman, laboratory technician, pattern-room and maintenance.

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Section 5. Promotions.

(a) The Company agrees that when a job opening occurs, employees shall have an opportunity to bid on such job openings. When qualifications and ability are equal, then seniority will be the consideration. All job openings shall be posted for one week. Jobs posted for one week with no employees bidding, such jobs shall be filled with the youngest man on the seniority list or a new man. When employees bid job openings and are awarded the job, he shall undergo a two (2) week probationary period, the job getting reposted if his performance is not satisfactory. The employee shall be allowed one week to reconsider the bidding of the job and is awarded that job, he must be placed on that job within ten (10) working days. After a satisfactory probationary period, he shall remain on that job for a period of at least (6) months or the job no longer exists.

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DISCUSSION:

Grievant Joseph Griffin has been employed by the Company since May 31, 1977, and has worked as a blaster and forklift driver. Prior to employment with the Company, however, the Grievant worked at other employers, and during the course of that employment did metal analysis for five years.

In December, 1989 the Company's first shift laboratory technician, Jim Kroger, was promoted to personnel manager. This created an opening for first shift laboratory technician, which was posted on December 20. The Grievant bid for the job, along with several other bidders who were junior to him. One of the other bidders was Lowell Scott, and when the posting period was up, Scott was given the first shift technician position. The Company then posted the second shift laboratory technician position, which was Scott's current position, but the Grievant did not bid in that instance. Griffin testified that the Company never told him formally that he had been denied the laboratory technician first shift position, but that he knew this from the events which followed. The employee who received the second shift laboratory technician job, Don Roetter, was transferred to the first shift to work in the laboratory during a training period of some six weeks. The fact that this would be done was noted on the second shift posting; Scott remained on the second shift until Roetter's training period was completed, and he was then transferred to the first shift pursuant to his prior successful bid for that position.

The Grievant had job experience in foundries over a number of years, and also as a precision machinist at Ingersoll-Rand. After his Ingersoll-Rand employment, which included his metal analysis experience, the Grievant bought a farm and farmed for ten years; then he returned to industrial work with the Company. He did not work in the laboratory during his employment with the Company.

Foundry Superintendent George Giudice testified that Scott was given the first shift laboratory technician position because in the Company's judgment he had superior qualifications and ability for the position to all other bidders.

Giudice testified that Scott had worked for the past seven years as second shift laboratory technician, and had been employed in that work earlier prior to an intervening period of layoff. Giudice testified that it takes four to six weeks to train a laboratory technician, and that he knows whether the qualifications of a bidding employee are equal to others' qualifications by the job the employee is currently doing and by how well he does it. Giudice admitted, however, that he did not make a practice of questioning bidders as to their qualifications. Giudice testified that the laboratory technician position is a particularly significant one to the Company because of the job's potential for running scrap or alternatively passing defective material as sound.

Kroeger also testified, stating that he participated in the promotion decision and considered Scott's nine years of total experience in the laboratory technician position the major factor, while also noting that Scott had three years of college and had worked in a chemical lab in a prior employment. Kroeger testified that there had been a number of changes in the laboratory operations over the years and that Scott was familiar with them since 1981. In his judgement, Kroeger said, Scott had higher qualifications for the job than Griffin, though he admitted that he would not state that Griffin did not have the ability to perform as laboratory technician.

Both Kroeger and Giudice testified that the reason for training the new second shift technician on the first shift was that it was more convenient for the Company because most of the work of laboratory technician takes place during the first shift, when more metal is poured.

The Union contends that Griffin properly bid for the laboratory technician position on the first shift, and was never notified that Scott had been given the position. The Union argues that Griffin could have been trained as laboratory technician on the first shift within the same period of time that Donald Roetter was trained for the second shift, and that therefore the Company would have been supplied with a competent first shift laboratory technician within the same period of time overall. The Union argues that which shift an employe was to be trained on was irrelevant and is solely an excuse for denying Griffin's seniority rights. The Union contends that the Company demonstrated that it did not need a laboratory technician of Scott's experience on the first shift by the fact that it used a trainee as a laboratory technician on the first shift for some six weeks. The Union also contends that the statement on the notice for the first shift position that a "science and math background" were preferred was irrelevant in the absence of any definition as to what degree or quantity of experience was being sought. The Union requests that Griffin be offered an opportunity to qualify for the first shift laboratory technician position and be reimbursed for any losses in the interim.

The Company contends that while seniority is a consideration in promotions, it controls the outcome only after the Company has determined that qualifications and ability are otherwise equal. The Company contends that it must make quality products on time to satisfy its customers, and that the priority of qualifications and ability is therefore logical. It argues particularly that the laboratory technician position is shown to require more emphasis on qualifications and ability than most jobs by the fact that it is a "special" classification under Article V, Section 2. The Company argues that in choosing Scott over Griffin, Giudice took into account the educational and employment history that Scott brought to the Company, his laboratory technician experience with the Company, and the Company's need to assure that the first shift laboratory technician position would be filled by the best - qualified employe. The Company argues that it had the management right to determine which employe was most qualified and most able, and did so fairly on the evidence presented. The Company requests that the grievance be denied.

On review of the evidence I am satisfied that the Company did not violate Article IX, Section 5 of the Agreement in this promotion decision. It is clear from the record that there is no evidence that Griffin would be incompetent or untrainable to fill the position of laboratory technician. That, however, is not the standard the parties have provided for by contract. The language of Section 5 does, as the Company argues, give first consideration to whether qualifications and ability are "equal". Only in that event does seniority become the controlling factor.

Here, the Company has demonstrated that the laboratory technician position is one which carries particular requirements for the Company in terms of accuracy of work and importance to the production process. The testimony that most of the work of the laboratory technician is performed on the first shift was not rebutted. Scott clearly has greater qualifications in laboratory technician work than Griffin, even if I were to assume that their underlying levels of ability were the same. Thus when qualifications and ability are considered together, Scott's seven years of recent continuous experience in laboratory technician work for this Company clearly outweigh the Grievant's prior experience in metal analysis for another company. Meanwhile, I can find nothing in the Agreement violated by the Company's decision to train the new second shift employe under Kroeger's close supervision prior to transferring Scott to his permanent first shift assignment. It was clear from the posting for the second position that the Company intended to do this, and that does not demonstrate that the Company did not need the more experienced employe on the first shift for the future; Kroeger might as a matter of necessity have to spend substantial time training the second shift employe for some period, but it is reasonable for the Company to maintain that its more experienced employe should be used in the position which has the greatest demonstrated need for his skills. I therefore conclude that the Company did not violate the collective bargaining agreement in promoting Scott in preference to Griffin for this position. That it not to say, however, that I condone the Company's failure to question employes as to their qualifications. It may be that employes have abilities and qualifications of which management is ignorant if it does not ask; and if the record in this case had demonstrated that unbeknownst to the Company, Griffin in fact had qualifications superior to Scott's, there might have been a different result.

For the foregoing reasons, and based on the record as a whole, it is my decision and

AWARD

1. That the Company did not violate the collective bargaining agreement when it awarded the first shift laboratory technician position to Lowell Scott instead of Joseph Griffin.

2. That the Grievance is denied.

Dated at Madison, Wisconsin this 13th day of August, 1990.

By _____
Christopher Honeyman, Arbitrator