

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

LABORERS INTERNATIONAL UNION OF
NORTH AMERICA, LOCAL 140, AFL-CIO

and

SPARTA MANUFACTURING COMPANY

Case 17
No. 43764
A-4612

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 layoff grievance of Charles McLendon.

The undersigned was appointed and held a hearing on June 14, 1990 in Sparta, Wisconsin, 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 by laying off Department Steward Charles McLendon?
2. If so, what is the remedy?

RELEVANT CONTRACTUAL PROVISIONS

ARTICLE III

UNION REPRESENTATIVES

Section 1. Steward

The Employer recognizes the right of the Union to designate not more than one (1) steward for each shift for such Union business as may from time to time be delegated to him by the Union. The stewards will handle all grievances which may occur on their shift between any employee or employees and the Company. A steward when so designated must remain on his regular shift while his shift is working unless agreed upon by the Business Manager of the Local Union or shop steward at which time an alternate will be appointed. All grievance activities shall be conducted in a manner which shall cause as little interruption as possible of the working time of all concerned. If practical, grievance activities should be deferred to non-working time. When stewards engage in any Union activity on Company time, they shall notify their supervisors prior to the Union activity and when they return to their normal work assignments.

Section 2. Shop Steward

A shop steward shall be appointed by the Business Manager of the Local Union for the purpose of supervising all other shift stewards. The shop steward must remain working while the plant is in operation and shall be deleted from the seniority list only at time of layoff.

Section 3.

The purpose of a shop steward and shift steward is to promote a better understanding between the Company and the employees and to make every effort to settle grievances quickly and amicably with the least amount of friction.

DISCUSSION

The facts are essentially undisputed. On January 10, 1990, the Company announced that a general layoff was planned for the following week, excepting only maintenance employees and a limited clean-up crew. A meeting was held between the Company representatives, the Union's

shop steward, and the first and second shift stewards, which were Charles McLendon and Dennis Schaller respectively. The seven clean-up personnel were taken from the top of the seniority list, and did not include McLendon. Another steward, Carson Jotham and shop steward Norman Dearman were both maintenance men and were accordingly scheduled to work. After the meeting, Dearman told McLendon to go back in to the office and tell the Company that McLendon would be working the following week because he was first shift steward. McLendon did so, and Foundry Superintendent George Giudice agreed at the time. But on the following day Giudice discussed the matter with Dearman, and Dearman informed Giudice that there was no need for the Company to have McLendon come in to work because between Dearman and Jotham there would already be two stewards working. Giudice informed McLendon of this and McLendon told Giudice he should discuss the matter with the Union's business manager, Darrel Lee.

The grievant testified that he himself was told by both Lee and Dearman to report to work on Monday, January 15, and that he did so. Giudice sent him home. Dearman did not testify as to whether he had told the grievant to come to work on that day, but he did confirm Giudice's account of their discussion in that he agreed that he had told Giudice that the Company did not have to maintain McLendon on the first shift because Carson Jotham was being moved to the first shift for the week in question.

Dearman testified that the second and third shifts were completely laid off, and that when there is a complete layoff the steward also is laid off. Dearman also testified that Jotham's normal shift as a maintenance man was the third shift.

Both McLendon and Giudice testified that under their understanding of the contract Jotham was no longer a steward once he was re-assigned to the first shift, because he was shift steward of the third shift. Giudice testified, however, that Dearman appointed Jotham an alternate steward on the first shift. The following week, a meeting was held between Dearman, McLendon and Schaller, at which they discussed ways to resolve the matter prior to filing a grievance, but Dearman maintained that he had authority to substitute Jotham for McLendon as first shift steward, and the matter remained unresolved. McLendon then filed his grievance.

The Union contends that under Article 3, Sections 1 and 2, the Company recognizes the right of the Union to designate one steward for each shift (i.e. department) and that the steward is to remain on his shift while that shift is working. The Union contends that the provision for the Business Manager or the Shop Steward to appoint an alternate is intended to cover situations where the shift steward cannot be present because of vacations, illness and the like. The Union contends that Jotham was not regularly employed on the first shift and could not be appointed as an alternate, and that both Union and Company witnesses testified that once Jotham was moved to the first shift., his steward status was suspended. The Union argues that shop steward Dearman was confused in maintaining that there were two stewards on the first shift and therefore no need for the grievant to work, and that the Company was made aware of this when the grievant reported for work on Monday, January 15. The Union contends that the Company triggered the grievance by

contending that Darrel Lee did not have authority to dictate which employe would work. The Union requests that McLendon be made whole for the one-week layoff.

The Company contends that the Union internally disagrees as to the interpretation of Article 3, Section 1, and that the Company was provided with differing opinions as to what the Company's obligation was. The Company contends that the specific provision of the labor agreement was that a steward so designated must remain on his "regular shift" while his shift was working, and that in this instance the first shift regular crew was not working. The Company notes that what was operating was a work crew consisting of a combination of maintenance workers and a limited crew of seven senior employes to do clean-up work. The Company reasons that this fact justifies its reliance on the shop steward's opinion that McLendon was not needed to work. The Company also argues that it would be inequitable to allow the Union to grieve an action which the shop steward on the scene had specifically agreed to. The Company requests that the grievance be denied.

In analyzing the Company's actions here, I note immediately that there is no evidence of any bad faith by the Company. The evidence is clear that the Company was prepared to keep McLendon at work as soon as the demand for him was made on January 10, and that the Company reversed its position only after Dearman specifically told the Company that this was not necessary. The fact that the Company then maintained that position after Lee attempted to countermand Dearman's position can be found a violation of the Agreement only if the contract language clearly demonstrates that Dearman was in error; the purpose of having a shop steward is, after all, to enable the parties to resolve disagreements at the plant level as frequently as possible.

The operative sentence is "A steward when so designated must remain on his regular shift while his shift is working unless agreed upon by the Business Manager of the Local Union or shop steward at which time an alternate will be appointed." Leaving aside the question of whether the maintenance and clean-up crew constituted a "regular shift" because it worked in the daytime, this language on its face allows either the Business Manager or Shop Steward to appoint an alternate. The sole condition required for the appointment of an alternate is not the illness or unavailability of the regular steward, but the agreement by one of the two Union officers named. In this instance, one of the two Union officers named did agree with the Company to appoint an alternate steward. Therefore, the Company has not violated the specific language involved by having the alternate serve as steward for this purpose and laying McLendon off.

To conclude otherwise would offend against both the language of this clause, by writing into it a requirement that the shop steward may act to appoint an alternate only in the absence of an opposing instruction from the Business Manager, and the general purpose for which such "super-seniority" clauses are placed in collective bargaining agreements. The general intent of a super-seniority clause, it is widely known, is not primarily to provide additional work opportunities for stewards as opposed to other members of the bargaining unit, but to ensure the availability of a steward whenever any other employe may have a problem or a grievance. An interpretation

which would require the Company unnecessarily to employ additional stewards, at the expense of senior employes who would presumably be laid off in their place, is inherently suspect.

In finding that the Company has not violated Article 3, Section 1, however, I rely primarily on the plain language of that clause. The clause on its face specifies that either the Business Manager or the Shop Steward may appoint an alternate; one of them has done so; and there the matter ends. Any remaining dispute as to lines of authority within the Union must be settled within the Union, and cannot be laid at the door of the Company.

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 by laying off Department Steward Charles McLendon.

2. That the grievance is denied.

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

By Christopher Honeyman /s/
Christopher Honeyman, Arbitrator