

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration :  
of a Dispute Between :  
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LOCAL UNION 2832, MIDWEST INDUSTRIAL : Case 29  
COUNCIL, UNITED BROTHERHOOD OF : No. 43550  
CARPENTERS AND JOINERS OF AMERICA : A-4588  
 :  
and :  
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EGGERS INDUSTRIES, INC. :  
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Appearances:

Mr. Conrad Vogel, Business Representative, Midwest Industrial Council,  
United Brotherhood of Carpenters and Joiners of America, on behalf  
of Local Union 2832.  
Mr. Gary Milske, Personnel Manager, on behalf of Eggers Industries, Inc.

ARBITRATION AWARD

Local 2832, United Brotherhood of Carpenters and Joiners of America, hereinafter the Union, and Eggers Industries, Inc., hereinafter the Company, jointly requested that the Wisconsin Employment Relations Commission appoint a staff arbitrator to hear and decide the instant dispute between the Union and Company in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. The undersigned was appointed to arbitrate in the dispute and a hearing was held before the undersigned on May 10, 1990 in Neenah, Wisconsin. There was a stenographic transcript made of the hearing and the parties submitted post-hearing briefs in the matter by June 25, 1990. Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following Award.

ISSUES

The parties could not agree on a statement of the issues and left it to the Arbitrator to frame the issues.

It is concluded that the issues to be decided may be stated as follows:

- (1) Is the grievance properly before the Arbitrator?
- (2) Did the Company violate the parties' Agreement when it eliminated Bob Mindel's Strikes and Bolts job and posted a Utility I position after combining the Cylinder Lock Machine with the Strikes and Bolts Machine? If so, what is the appropriate remedy?

CONTRACT PROVISIONS

The following provisions of the parties' 1987-1990 Agreement are cited:

ARTICLE TEN - SENIORITY

10.1 The Company recognizes the principle of seniority in layoff, rehiring, transfers and upgrading; except as to promotions to positions not covered by this agreement, as outlined in Article One - Section One.

10.2 New employees shall not acquire any seniority during their first thirty-one (31) calendar days of employment nor during a thirty (30) day probationary extension period. If they are retained by the Company after that period, their seniority shall begin with the original hiring date of their last employment by the Company. The Company retains the right to discharge new employees during, or at the end of, both the probationary or extension of probationary period, with or without cause, and the discharge may not be made the subject of a grievance, either by the employee or by the Union.

10.3 All seniority shall be based upon continuous service with the Company. Continuous service shall mean uninterrupted employment, but shall include absences under written leave of absence, periods of layoff due to lack of work, except as hereinafter provided, and periods of absence due to illnesses or accidents.

10.4 When vacancies of a permanent nature exist in skilled job classifications covered by this agreement, and when new production and maintenance job classifications are installed by the Company in these classifications, the job openings will be posted for bidding for a period of forty-eight (48) hours.

- (a) Interested employees may apply for such job openings by completing a job application form provided by the Company submitting same to the Company during the posting period.
- (b) Until such job openings are successfully bid, they may be filled from any available source. However, it is understood and agreed by both parties to this agreement that the Company will make every effort to temporarily fill these openings with an employee who holds the same or greater job rate classification.
- (c) Employees should not bid from department to department or job to job just to change jobs. The change should involve either an improvement in their hourly rate of pay or be necessitated by a physical limitation, personality conflict, desire for less responsibility, or some other good cause. The Company has the right to refuse bids from employees who have previously bid successfully for a job within the last twelve (12) months.
- (d) Applications for job openings shall be acted upon by the Company within a reasonable period of time following the posting period. In filling these job openings, the Company will consider plant seniority, ability, experience and physical fitness equally. If the company's choice is not the applicant with the most seniority, the Company will meet with the Union Committee and consult with the Committee before posting of the successfully bidder. The Company will consider (sic) any facts presented by the Committee before making its final decision on the matter.
- (e) The Company shall furnish the Union with a list of applicants and their respective seniority numbers immediately following the posting period. The Company shall also notify the Union in writing the name of the successful job bidder at least eight (8) hours prior to the anticipated transfer of the employee involved and eight (8) hours prior to the posting of such information to Company bulletin boards.
- (f) Successful job bidders may elect to decline their new job and return to their former job at any time within the first fifteen (15) work days from their date of transfer. Prior to the completion of this fifteen (15) day period, the employee's foreman will counsel the employees regarding their progress to date on their new job. It is understood that this counselling will have no bearing on the subsequent decision to pass or fail the employee at the end of their probationary period. Job bidders who decline to return to their former job within a period of fifteen (15) work days and then fail to satisfactorily complete the probationary period involved shall be transferred to a general labor job or temporarily to a skilled class, at the Company's discretion.

10.5 In rehiring employees after a layoff, the Company will notify such employees in person, by mail, or telegraph, at their last address on record, and five (5) calendar days will be considered as a reasonable time in which to report to work.

10.6 Loss of Seniority: An employee shall lose his or her seniority for the following reasons:

- (a) If an employee leaves the service of the Company voluntarily.
- (b) If the employee is discharged for just cause. (Unjust discharges shall be considered under Article Thirteen of this Agreement).
- (c) If the employee fails to report to work within five (5) calendar days after having been notified by the Company, as provided, at the employee's last address on the record following a layoff, expired written leave of absence or absence without leave, unless an explanation acceptable by the Company is given.
- (d) If the employee is unemployed by the Company, due to a layoff, for one (1) year, except that an employee shall retain his or her seniority for two years if he has been in continuous service with the Company for a period of at least five (5) years prior to layoff.

10.7 Seniority shall be plant wide. In the event of a layoff, employees with the least seniority shall be laid off first. Recall to work shall be in the inverse order of the layoff. Before making any exceptions to the strict seniority rule, the Company shall meet with the union to show that such exception is necessary to prevent an impairment in production.

An impairment in production, as used in this section, shall mean that exception to seniority may be made where the layoff of an individual employee or employees affects a particular operation, due to lack of replacement equally qualified to perform the work or refusal of such qualified employee or employees to accept the job.

10.8 If a bargaining unit employee is transferred by the Company to work outside the bargaining unit, they shall accumulate plant seniority for a probationary period not exceeding six (6) months, unless an extension is mutually agreed to by the Company and the Union.

If the employee eventually returns to the bargaining unit after they have successfully completed their probationary period, they shall not lose any of the time which they accumulated while previously a member of the bargaining unit.

#### ARTICLE THIRTEEN - GRIEVANCE PROCEDURE

13.1 A grievance within the meaning of the grievance procedure is any difference between the Company and an employee covered by this agreement as to any matter involving interpretation or application of any of the provisions of this agreement. Should any grievance arise, the employee or employees concerned shall continue to work as assigned by the Company, and the procedure hereafter set forth shall be followed in the settlement of the grievance. All grievances shall be presented within five (5) working days from the date the employee knew, or reasonably could have known, that the cause of such grievance occurred. Grievances not presented within the time limits specified shall be deemed waived. If the employee has a grievance arise under this contract that he cannot settle with his foreman, it shall be handled as follows:

STEP ONE: By the Shop Steward and the foreman in the department concerned with the

employee present.

STEP TWO: If not settled in the above manner, the grievance shall be reduced to writing, signed by the aggrieved employee, and turned over to their departmental Shop Steward. Two authorized representatives of the local Union shall take up the matter with the Personnel Manager, all of whom shall attempt to dispose of this grievance within forty-eight (48) hours. If mutually agreeable, other interested parties may be invited to attend. If they are unable to dispose of such grievance within that period of time, the grievance shall be referred to an Arbitration Committee, hereinafter described.

13.2 Any dispute or grievance involving the interpretation or application of this agreement shall be submitted to arbitration by the Union or the Company.

a. An Arbitration Committee, composed of two (2) representatives of the Company and two (2) representatives of the local Union shall consider all grievances referred to them and if they are unable to agree within forty-eight (48) hours after receipt of such grievance, they shall select an arbitrator within two (2) days. In the event the parties are unable to agree upon an arbitrator within two (2) days, they shall request the Wisconsin Employment Relations Commission to appoint an arbitrator immediately.

13.3 The decision of the arbitrator shall be final and binding upon both parties. Each party shall bear one-half of the expense of such arbitration. There shall be no stoppage of work by the Union during the term of this contract unless the Company will fail to abide by the decision of the arbitrator. There shall be no lock-out by the Company during the term of this contract unless the Union shall fail to abide by the decision of the arbitrator.

#### BACKGROUND

The Company operates a manufacturing plant located in Neenah, Wisconsin and the Union is the exclusive collective bargaining representative for the production and maintenance employes and over-the-road truck drivers employed by the Company. In 1989 the Company undertook a reorganization of a number of its departments, including the Hardware Department. The Company's Personnel Manager, Gary Milske sent the Union the following letter dated May 26, 1989 in that regard:

Local Union 2832  
UNITED BROTHERHOOD OF CARPENTERS  
AND JOINERS OF AMERICA  
164 N. Lake Street  
Neenah, WI 54957

Gentlemen:

This letter is to officially notify you that the following jobs are being eliminated due to the purchase of new equipment and the reorganization of the hardware department.

Lock Machine Operator	-	Jeff Spilski
Hardware Machine Operator	-	Gerald Flauger
Lock & Bore Machine Operator	-	Pat Meulemans
Hardware Machine Operator	-	LaVern Schwandt
Hardware Machine Operator	-	Bob Werth
Special Benchman I	-	Harley Blowers
Special Benchman I	-	Ken Klein
Special Benchman I	-	Pete Van Dyke
Utility Operator II	-	Bruce Schinke
Strikes and Bolts	-	Bob Mindel
Lock & Bore Machine	-	Russ Klockzien

Hardware Machine Operator - Reynold Nelson  
Hardware Machine Operator - Scott Van  
Dinter

Sincerely,

Gary Milske  
Personnel Manager  
EGGERS INDUSTRIES

As part of the reorganization the Company combined the Cylinder Lock Machine with the Strikes and Bolts Machine, the Cylinder Lock Machine being higher rated (Class 9 vs. Class 5). 1/ The Company posted it as a new position, Utility I position, at the time considering the operation of the combined machine to be a part-time position. The former operator of the Cylinder Lock Machine, Jeff Spilski, was awarded the position. Spilski had operated both the Cylinder Lock Machine and Strikes and Bolts Machine in the past; however, the former operator of the Strikes and Bolts Machine, Bob Mindel, had not operated the Cylinder Lock Machine and had not been trained to do so. Originally the Company intended that the combined machine would cut openings for both locks and strikes and bolts; however, a new hardware machine now cuts the holes for locks. As it turned out, the position is full-time and primarily is cutting strikes and bolts, although part of the cavity is now cut by the combined Cylinder Lock Machine, rather than the hand-held mortiser used in the past. The Company has since offered to re-post the position as a full-time position.

The Union grieved the Company's removal of Mindel from the Strikes and Bolts Machine position and the posting of the Utility I position to operate the combined machine. Mindel did not grieve the matter. At the May 10, 1990 hearing before the Arbitrator the Company submitted the following note from Mindel dated May 9, 1990 in support of the Company's contention that the grievance should not be heard:

May 9-90

I Robert Mindel I did not wish to file this grievance. I request that this grievance (sic) be dropped.

Yours truly  
Robert P. Mindel

The parties then proceeded to arbitration before the Arbitrator with the Company raising the issue of arbitrability as the threshold issue.

#### POSITIONS OF THE PARTIES

##### Union

With regard to the Union's right to bring this grievance, the Union asserts that Mindel's note is not notarized and that since the Company did not raise this issue prior to hearing, it should not be considered a valid issue at this point. The Union also cites Section 10.2 of the Agreement as identifying the right of the Union to file a grievance:

The Company retains the right to discharge new employees during, or at the end of, both the probationary or extension of probationary period, with or without cause, and the discharge may not be made the subject of a grievance, either by the employee or by the Union.

Further, the record shows that the Union has filed many grievances in the past which were processed by the Company without objection.

As to the merits, the Union asserts that the Strikes and Bolts job merely changed, there was not a vacancy, and that in the past the current operator was trained for the changed job, not removed. It contends that in this case there was no showing that Mindel could not have been trained to perform the changed job and that the fact the wage rate was raised is irrelevant. The Union notes that the Company argued it did not think the new job would be full-time and points out that the record shows the Strikes and Bolts job was not full-time before the change, and that the job turned out to be full-time. The Union also asserts that the Company's analogy to the case of Harley Blowers is not appropriate as the situation is not comparable. There the Company wanted the

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1/ Lock Machine Operator paid \$9.98/hr. vs. Strikes & Bolts at \$9.48/hr.

flexibility to cut hinges on the benchman job and posted a Benchman I position to fill that need, as Benchman II do not cut hinges. The Union concludes that if the Company's position is upheld, the Company could post every operator's job anytime changes are made in operation.

Company

As to the issue of the Union's right to bring the instant grievance, the Company cites the following from Section 13.1 of the Agreement:

If the employee has a grievance arise under this contract that he cannot settle with his foreman, it shall be handled as follows:

STEP ONE: By the Shop Steward and the foreman in the department concerned with the employee present.

According to the Company, since Mindel never attempted to settle anything with his department manager, and did not wish to, and considering his note of May 9, 1990, this grievance should be denied.

As to the merits of the grievance, the Company asserts that the new position created requires someone being able to cut strikes and bolts and cylinder locks, and also to be able to operate other machines in the Special Machinery Department. It cites the testimony of the former manager of that department, Dan Miller, that in the past when jobs were reclassified to a higher pay rate, they were posted for bidding. The Company cites as an example Harley Blowers, where cutting hinges was added to his job and it was posted for bid as Benchman I.

The Company asserts in this case the job was posted as a Utility I position since the Company at the time felt the work on the combined machine would only be part-time, and having a Utility I Operator on it would allow the Company to utilize him in other areas when there was no work on the machine. The Company now agrees it is a full-time job, but asserts it is a new job and not the old strikes and bolts job. In that regard the Company asserts the new position is also required to cut cylinder locks and operate all machines in the department, while the job description for the Strikes and Bolts position at item 4 specifically excepted "Hdwe. Machine Operator, Lock Machine Operator and Specialty Benchman I." Since Mindel could only operate the Strikes and Bolts Machine and Spilski could operate both the Lock Machine and Strikes and Bolts, and most other machines in the department, Spilski would have been awarded the position even if the Company had originally posted the job as a new full-time Hardware Machine Operator. The Company concludes that by combining the two machines, a new position at a higher pay rate and added responsibility was created, making it necessary under Section 10.4 that the position be posted for bid.

#### DISCUSSION

##### Issue No. 1

The Company contends the grievance should not be considered since it was filed by the Union and not an employe and the affected employe has indicated he wants the grievance dropped. The record indicates the Company did not raise this issue prior to hearing even though it was aware from the start that the Union, and not an individual employe, had filed and processed the grievance. More importantly, the record also indicates the Union has filed and processed grievances in the past without objection from the Company and there is no indication in the record that the Company has attempted to enforce such a requirement before this case. For those reasons the Company is precluded from attempting to enforce such a requirement as to this grievance and is found to have waived its right to object at this point with regard to the instant grievance being heard. Thus, the Arbitrator will decide the merits of the grievance. 2/

##### Issue No. 2

The crux of the dispute is whether, as the Company contends, a new position was created when the Company combined the Cylinder Lock Machine and the Strikes and Bolts Machine, or, as the Union contends, it was merely a change in the operation of the job which the Union asserts in the past resulted in the present operator being trained and not in a new position being posted for bidding. The Company cited the Benchman II to Benchman I change where the job was posted and the Union cited several instances where the existing operator was trained on the changes and there were no postings. Rather than a standard practice, it appears the parties have looked at each situation as it arose. Upon reviewing the record the Arbitrator is convinced that when the change was decided the Company believed that the job would not be full-time on the combined machines and that the work would at times entail cutting cylinder locks. As it turned out; however, the job became full-time and with rare exception now consists of cutting strikes and bolts. The Company asserts that the situation is essentially the same as what occurred when the Benchman II position was upgraded to Benchman I on the basis that the person in the

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2/ See Elkouri and Elkouri, How Arbitration Works (3rd ed.) p. 119 and the cases cited therein where similar results were reached.

position would be required to cut hinges whenever needed, and that had been infrequent. The work performed by that employe had not changed with the exception of that responsibility, yet the job was posted and the employe had to bid on it and was not automatically placed in the higher rated position.

Both parties have made a good case; however, in this instance the Arbitrator concludes that the record supports the Company's position that there was a sufficient change in the job to justify posting it as a new position. The higher rated job of cutting cylinder locks was combined with the strikes and bolts job and although cutting locks is now rarely done on the combined machines, that higher rated work can be done on them when needed. The operator is required to know how to operate the combined machines and the operator in the former strikes and bolts job was not required to have that ability or to perform such work. Although this case has aspects in common with the prior instances cited by both parties, this situation is concluded to be more analogous to the Benchman I situation than to the situations where the machine or operation was changed for the purpose of performing the same work. Thus, the Company did not violate the Agreement when it eliminated the Strikes and Bolts position and posted a new position for bid. Nevertheless, the Company has conceded that its initial expectations for the position were in error in that it should have been posted as a full-time position, rather than as a Utility I position, due to the amount of strikes and bolts work now being performed. The record confirms that is the case. On that basis it is concluded that once it became evident that the position was full-time, the Company was required to post the correct position and violated Section 10.4 of the Agreement when it failed to do so. Therefore, the Company has been directed to properly re-post the position as a full-time position.

Based upon the foregoing, the record and the arguments of the parties, the undersigned makes and issues the following

AWARD

1. The grievance is properly before the Arbitrator.
2. The Company violated Section 10.4 of the parties' Agreement when it posted the new position created when the Cylinder Lock Machine and Strikes and Bolts Machine were combined as a Utility I position, rather than as a full-time position. Therefore, the Company is directed to immediately re-post the position pursuant to Section 10.4 as a full-time position. The undersigned will relinquish his jurisdiction in the case thirty (30) calendar days from the date of this Award unless he is contacted in writing by either side prior to that time regarding a problem as to the implementation of this Award and the relief ordered herein.

Dated at Madison, Wisconsin this 18th day of October, 1990.

By \_\_\_\_\_  
David E. Shaw, Arbitrator