BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
GENERAL TEAMSTERS UNION, LOCAL 662	Case 1 No. 44849 A-4723
and	
CHIPPEWA SPRINGS CORPORATION	

Appearances:

Mr. James J. Newell, President, General Teamsters Union, Local 662, on behalf of the Union.

Mr. James V. Schroeder, General Manager, Chippewa Springs Corporation, on behalf of the Employer.

ARBITRATION AWARD

The Union and the Company named above are parties to a 1989-1992 collective bargaining agreement which provides for final and binding arbitration of certain disputes. The Union made a request, with the concurrence of the Company, that the Wisconsin Employment Relations Commission appoint an arbitrator to resolve a grievance regarding a change in the time of wage payments. The undersigned was appointed and contacted the above parties, who agreed to stipulate to the exhibits and record without a hearing in the matter. The parties submitted briefs by January 28, 1991.

ISSUE:

The parties stipulated that the following issue is to be decided:

> Did the Employer violate the Collective Bargaining Agreement by unilaterally changing the time of payment of wages from weekly to bi-weekly commencing with the payroll period for weeks ending November 3 and 10, 1990, and continuing to date? If so, what is the appropriate remedy?

CONTRACT PROVISIONS:

> ARTICLE VII - MAINTENANCE OF STANDARDS
>
> The Employer agrees that all conditions of employment in his individual operation relating to wages, hours of work, overtime differentials and general working conditions shall be maintained at not less than the highest minimum standards in effect at the time of the signing of this Agreement, and the conditions of employment shall be improved wherever specific provisions for improvement are made elsewhere in this Agreement.
>
> ARTICLE XI - MANAGEMENT RIGHTS
>
> Subject to applicable laws and terms of this Agreement, the management of the business and the operation of the plant and the direction of the working force and the authority to carry out all duties, functions and responsibilities incident thereto, is vested exclusively in the Company.
>
> ARTICLE XII - GRIEVANCE AND ARBITRATION PROCEDURE
>
> . . .
>
> SECTION 3
>
> . . .
>
> (5) It is understood that the arbitrator shall not have the authority to change, alter or modify any of the terms or provisions of this Agreement.

BACKGROUND:

The parties submitted the following statement for factual background:

> The parties are signatory to a Collective Bargaining Agreement covering various classifications of employees stipulated therein which runs from June 1, 1989 to and including June 30, 1992. Payment of wages had been on a weekly basis through all prior Labor Agreements, including the current Agreement, until the payroll period for weeks ending November 3 and 10, 1990. At this time the Company instituted a unilateral change in the time of wage payment to a bi-weekly basis which continues to date. Subsequent to the change, the Company and the union discussed the problem and were unable to achieve a mutually satisfactory resolution. The Union thereafter requested, with the concurrence of the Employer, that the dispute be considered a grievance and be submitted to Arbitration for final and binding resolution.

The parties also submitted three joint exhibits. First, Joint Exhibit #1:

> October 16, 1990
>
> TO: All Employees
>
> RE: Payroll Payment Changes
>
> As you are aware over the last several weeks many cost saving programs have been instituted by Chippewa Springs Corporation.
>
> As part of that program we have released our previous accounting firms and consolidated all outside accounting services with one firm which will handle all statements, tax work and payroll.
>
> By way of this notice and in keeping with this cost saving program there will be a change in the payroll system. This memo will serve as an advance notice of the change you can expect in payroll timing and payment procedure.
>
> Effective with the payrolls for the weeks ending November 3 and 10, 1990 a paycheck will be issued on Thursday, November 15, 1990.
>
> After that date all payrolls for both Minneapolis and Chippewa Falls will be on a two week cycle. Therefore the next payrolls will be on Thursday, November 29, 1990, Thursday, December 13, 1990 and every two weeks thereafter.
>
> This new procedure will result in savings of half the previous expenses for payroll. If you have any questions regarding this change please contact Jim Schroeder, Mitch Berg or myself. Thank you for your cooperation during this transition it is appreciated.
>
> Allan P. Jarocki
> Controller

Joint Exhibit #2 is as follows:

> November 1, 1990
>
> TO: All Employees
>
> RE: Payroll Payment Changes
>
> This notice is a reminder that the following payroll change will be taking place.
>
> Effective with the payrolls for the weeks ending November 3 and 10, 1990 a paycheck will be issued on Thursday, November 15, 1990.

After that date all payrolls for both Minneapolis and Chippewa Falls will be on a two week cycle. Therefore the next payrolls will be on Thursday, November 29, 1990, Thursday, December 13, 1990 and every two weeks thereafter.

Employees taking a full weeks vacation may request that a check be issued in advance for that vacation as long as they provide reasonable notice.
Since we will be on a two week payment schedule, reasonable notice shall mean the request should be submitted in writing at least two weeks in advance.

This new procedure will result in savings of half the previous expenses for payroll. If you have any questions regarding this change please contact Jim Schroeder, Mitch Berg or myself. Thank you for your cooperation during this transition it is appreciated.

Allan P. Jarocki
Controller

Joint Exhibit #3 is the grievance with handwritten notes following it:

GRIEVANCE RELATING TO PAY PERIOD

TO: Chippewa Springs Corporation
600 E. Park Ave.
Chippewa Falls, Wisc. 54729

This grievance is hereby being filed against Chippewa Springs Corporation for reasons that the Company in question refused to pay its employees on a weekly base's, which is every Tuesday of each week. The Company has decided to pay its employees every other week with pay day falling on every other Thursday, the Company made the change effective November 3, 1990, ignoring the Union bargaining process, plus violating ARTICLE VII - MAINTENANCE OF STANDARDS of the Union Contract Agreement with General Teamsters Union Local 662, Eau Claire, Wisc.

The Union Employees of Local 662 is hereby requesting that the pay period be changed back to there regular weekly pay day which was Tuesday of every week.

Respectfully submitted on 11/05/90

Keith A. Hagar /s/ Keith Hagar - Shop Steward

(Handwritten notes omitted.)

Finally, the Company submitted the following letter as Company Exhibit #1:

Jim Newell
Union Representative
Teamsters Local 662

Dear Jim:

This letter is a formal request by Chippewa Springs Corporation to reopen the 1989 bargaining contract for concession bargaining.

Since the close of negotiations in 1989 Chippewa Springs sales have declined while expenses continued to climb. We ended December 1989 with the Company experiencing a $41,172 loss. Year to date financial compilations by the accounting firm of Dahl, Stienessen & Lentz show us at a $69,111.84 loss at the end of August with two of our worst sales months yet to come.

On September 13, 1990, Chippewa Springs Corporation took out a loan based on equipment for the amount of $120,742 just to pay expenses to current. This essentially used up all available and previously agreed to financing with the bank except a working capital line. Holding loans totaling better than $1 million the bank was extremely interested in seeing how we resolved to stay in business at the rate of loss we were showing.

To project a break-even point by year end we proposed the following plan of cuts to the bank:

Administration - Chippewa Falls:

* Bob Williams and Jim Schroeder will take 15% and 10% wage cuts respectively.
* Drop the nonunion 401K pension plan.
* Merge all outside accounting into one firm.
* Combine office duties and lay off one person.
  Drop plane hanger and insurance.
* Drop office cleaning services.

Total Savings $4354.00 per month

Chicago Sales:

* Discontinue the Chicago/Milwaukee sales area.
* Release D. Richardson and L. Hermsen.
* Drop all advertising.
  Hire a broker.

Total Savings $10,460.00 per month

Transportation:

* Cancel Semi-Tractor insurance until sold.

Total Savings $100.00 per month

Minnesota Sales Force:

* Increase areas covered by all three sales people with B. Nowacki covering the midwest.

Total Increase: $460.00 per month

Minnesota Distribution Office:

* Cut office overtime for two clerical people.
* Eliminate overtime for two warehouse personnel.
* Increased cost of diesel fuel due to removal of an underground tank.
* Park 1981 Ford delivery vehicle and save repair costs.
* Drop office cleaning services.

Total Savings: $1,220.00 per month

Manufacturing Plant:

  Drop janitor status.
* Drop supervisor's overtime.
* Park company van - no personal use.
  Suspend pension plan.

Total Savings $6,007.00 per month

* Cuts already completed or in action.

The cuts in total would be $21,681 per month and if we can maintain the current sales which are running around 95% of the 1989 case sales we should be able to accomplish a break-even point. Furthermore we plan to liquidate two assets to achieve more working capital. The assets include a 1944 Howard airplane and a 1978 Peterbuilt semi-tractor.

As you will note our plan of cuts includes three areas of concern for the union if the company is to survive. First we need to drop the semi driver position from our contract and sell the semi-tractor (This would happen only if Bruce Bejin is unable to return as a driver.). Second we need to drop the janitor status from the contract thus making all warehouse employees bottling employees. Finally we need to cut expenses under the union plan by a minimum of $3,500 a month. Our suggestion is to drop the union pension which is of near equal value.

The current condition in which the company finds itself is caused by a rapid shift in market conditions, particularly in carbonated water products. Because of lower overhead, our competition is consistently able to sell their products at a lower price than Chippewa. This has had the inevitable effect of eroding our company's sales.

The situation is not impossible to turn around. We believe that Chippewa's long-term emphasis must gradually shift from carbonated beverages to spring water products. This, combined with control of expenses, can assure the company's future survival and growth.

Since time is of the essence, we will be expecting to hear from you by Friday September 21, 1990

Sincerely,

Jim Schroeder /s/
The Management
Chippewa Springs Corporation

THE PARTIES' POSITIONS:

The Union:

The Union states that the letter designated as Company Exhibit #1 constituted a formal request by the Company to reopen the 1989 bargaining contract for purposes of concession bargaining, and that the Company's intent to change the time of payment of wages was included as part of the proposal which read: "Merge all outside accounting into one firm." The Union further states that while it categorically rejected the request to reopen the contract, it did agree informally to try to work something out with the Company toward easing the financial distress the Company was experiencing. When a mutually satisfactory accommodation could not be worked out and the bargaining unit rejected the Company's give-back proposals, the matter was dropped with the exception of the implementation of the time of wage payment change.

The Union argues that the Company's actions shows that the Company acknowledged that it was bound to the terms and conditions of the labor agreement, including the historical time of wage payment, unless the Union agreed to reopen the contract and engage in concession bargaining, and the Union rejected the proposal to reopen the contract to avoid being put in the position of having unilateral changes implemented pursuant to the Company's proposals. The Company chose to implement the wage payment change anyway, and the Union contends that a party to a collective bargaining agreement should not be able to achieve through arbitration that which it was unable to obtain through bargaining.

The Union further asserts that while the Company believes it has the right to change the time of wage payments under the Management Rights clause, that clause states that it is "Subject to applicable laws and the terms of this Agreement." One of the terms of the labor agreement is the Maintenance of Standards clause, which mandates that all conditions of employment relating to

wages are protected to the extent of the highest minimum standards in effect at the time the labor agreement was signed.

The weekly payment of wages meets all the tests of a binding practice, the Union submits. It is unequivocal, clearly acted upon in the past, and readily ascertainable over the entire history of the bargaining relationship between the

parties as a fixed, accepted, and established practice. The Union calls the time of payment of wages an enforceable major condition of employment rather than a mere "gratuity."

The Union also notes that Article XXXI, Jury and Witness Duty, refers to "weekly wage" and "weekly earnings." Thus, the Company's action impacts on other areas of the labor contract. Article XXVII, Vacations, provides that employees giving reasonable notice are to be given their vacation pay before starting their vacation. The "reasonable notice" was satisfied by one week advance notice, given the prior weekly payment of wages, and the Union states that the Company now seeks to amend this requirement to two weeks advance notice, as shown in Joint Exhibit #3 (the November 1, 1990 letter). Also, Article XXVIII, Holidays, Section 3, states that "All employees who are employed during the pay period that any of the above holidays occur in shall receive eight (8) hours of pay for each of the above holidays." The effect would be that the employee only entitled to holidays falling within a week in which he performed work would now be entitled to holidays falling in any two week period during which he performed any work. While the Union acknowledges that this would be a better benefit from the Union's standpoint, it is not what the parties negotiated.

As a remedy, the Union asks that the Arbitrator order the Company to immediately reinstate its practice of paying employees on a weekly basis as in the past to restore the status quo ante.

The Company:

The Company states that it had been using two accounting firms, with one doing the payroll and financial compilation, and the other doing tax statements and financial reviews required by the bank. At the Chippewa Falls location, the payroll was called into the accounting firm on Mondays, and General Manager James Schroeder picked the payroll up Monday evenings so that it was distributed in Chippewa Falls on Tuesdays. Before Schroeder joined the Company, the payroll was mailed and there was no guarantee that it would arrive on Tuesdays. The Twin Cities location called in payroll information on Wednesdays, and checks were mailed to Chippewa Falls. The checks were usually received on Thursdays and placed in a delivery truck going to Minneapolis. The payroll days were not firm, but if the payroll were called in before 3:00 p.m. on Wednesday, the payroll would be on the first truck that left Chippewa Falls for Minneapolis after mail was picked up at the post office at 8:00 a.m. on Thursdays. The payroll was later in Minneapolis because of having route drivers paid on commission, and the information needed to figure commissions was not fully entered until Wednesday morning. The Chippewa Falls location added a route driver in 1986, but that driver agreed to take a guaranteed paid amount and delay his commission, or the Chippewa Falls location would also have had a Thursday pay day.

The Company states that it needed changes from a cumbersome and inefficient payroll and outside accounting process that equated into a major expense. On September 17, 1990, the Company sent a letter to James Newell, President of Local 662, explaining the savings from planned changes. The letter was written because of the poor financial position of the Company, and one of the changes was to combine all accounting into a local Chippewa Falls firm. Since both check runs were to be done on the same day, Thursday became the new pay day. By switching from weekly to bi-weekly, the Company cut the payroll fee in half.

The Company asserts that it had the right to make the payroll changes pursuant to Article XI, Management Rights, which gives the Company the authority to carry out all duties, functions, and responsibilities in managing its business. The accounting functions necessary for the management of a business are clearly vested solely with management, the Company contends. The Company further states that accounting and payroll are no more a negotiable part of a bargaining contract than the choice of a bank, selection of an accounting firm, or the election of the vendors it buys from.

With respect to Article VII, Maintenance of Standards, the Company states that its intent and interpretation of that language is that an employee's wage level must be maintained at the highest pay bracket that the employee qualifies for when working at different locations in the plant. For example, in an employee being paid at the janitor class was used in bottling, that employee would be paid at the bottling rate. Or a maintenance man used in production would be paid at the higher maintenance rate. The Company argues that the labor contract does not imply that the accounting process, of which payroll in an integral part, is subject to compromise as part of the bargaining contract. Finally, the Company notes that accounting and payroll changes are partially out of its control because of the use of an outside accounting firm.

DISCUSSION:

The parties agree that the Company made a unilateral change from paying employees on a weekly basis to a bi-weekly basis in November of 1990. While the Company argues that it has the general right to make payroll changes pursuant to Article XI, the Management Rights clause, that clause is

specifically limited by the "terms of this Agreement," and one of the terms of the labor agreement in the Maintenance of Standards clause, Article VII. Therefore, a close look at the Maintenance of Standards clause is in order to determine whether the change being grieved falls within that clause.

The Maintenance of Standards clause in this contract is a broad clause, which states in part: "The Employer agrees that all conditions of employment in his individual operation relating to wages, hours of work, overtime differentials and general working conditions shall be maintained at not less than the highest minimum standards in effect at the time of the signing of this Agreement . . ." (Emphasis added.) The Company's position is that this language protects wage levels and forces the Company to pay the highest pay bracket when employees work in different locations. However, this clause does more than that. It clearly states that all conditions of employment and general working conditions are to be maintained.

The question then becomes -- is the payment of wages on a weekly basis a condition of employment, particularly one that is related to wages, or a general working condition? If so, it is protected by the Maintenance of Standards clause. The Arbitrator finds that the weekly wage payment is a condition of employment related to wages. First, it was general in its scope and applied to all employees. Secondly, a change in the payment of wages from weekly to bi-weekly has a direct impact on all employees. While the payment of wages in a bi-weekly manner is rather common in many industries, the change from a weekly to bi-weekly adversely affects employees. Employees plan their budgets and all their expenses around the timing of the payment of their wages. Employees at this Company had an advantage of receiving money for work performed in a faster manner prior to the change, thereby gaining quicker access to their funds for their own distribution of them. When payment of money due is delayed, the person holding the money has the advantage by potentially earning interim interest on such money. Thus, the faster the receipt of money earned, the more advantage to the person who earned it. The payment of wages on a weekly basis is of some benefit to employees -- not a "fringe" benefit in the classic sense of that term -- but at least an advantage to employees. Conversely, the elimination of that weekly paycheck is a disadvantage.

Moreover, the change from weekly to bi-weekly payroll affected other sections of the contract such as Article XXVII, Article XXXI, and Article XXXIII(B). Articles XXXI and XXXIII refer respectively to "weekly wage" and "weekly earnings" which indicate the status quo when the parties entered into the contract. But Article XXVII, Vacations, while not referring directly to weekly wages, is specifically affected by the change as shown by Joint Exhibit #3. The contract states that: "Employees, upon giving reasonable notice, shall be given their vacation pay before starting their vacation." The parties interpreted this to mean that one week's notice was "reasonable" for getting advance vacation pay. However, the Company clearly intended to change that practice by its letter of November 1, 1990, where it states: "Since we will be on a two week payment schedule, reasonable notice shall mean the request should be submitted in writing at least two weeks in advance." This again changed the conditions of employment which employees had previously enjoyed under the contract.

Based on the foregoing, the Arbitrator concludes that the weekly wage payment is a condition of employment related to wages which falls within the

Maintenance of Standards clause, and therefore, is one which is to be maintained during the term of the labor contract under the standards called for in the labor contract.

The Company also argues that it needed a change from a cumbersome and inefficient payroll that was a major expense. The Company claims it cut the payroll fee in half by the change from weekly to bi-weekly payroll. While it is highly likely that the Company cut its payroll expenses in half, there is no evidence on the record to determine what kind of savings the Company experienced by this change. The letter from Schroeder to Newell shows that the Company would save $4,354.00 per month if it made several changes, such as two people (including Schroeder) taking wage cuts, dropping a nonunion 401K pension plan, merging all outside accounting into one firm, combining office duties and laying off one person, dropping plane hanger and insurance, and dropping office cleaning services. The change in payroll anticipated by the merger of outside accounting into one firm is likely to be a small part of the savings, with other items, such as the layoff of one person, cuts in wages, dropping plane hanger and insurance, etc., likely to take the lion's share of the $4,354.00 per month savings. Thus, there is a lack of economic justification for changing the payroll from weekly to bi-weekly. While the Company notes that payroll changes are partially out of its control, the timing of the payroll is not out of its control.

Finally, the Company sought to bargain over the matter, as well as several other matters, but the Union refused to reopen the contract. The Company should have been aware that certain unilateral changes, following such a refusal to reopen the contract, would potentially violate the contract.

Therefore, I conclude that the Company violated the labor contract, specifically the Maintenance of Standards clause, by its unilateral change of the payment of wages from a weekly to bi-weekly basis. The remedy is for the Company to resume paying employees on a weekly basis as soon as feasible upon the receipt of this Award.

AWARD

The grievance is sustained.

The Employer violated the Collective Bargaining Agreement by unilaterally changing the time of payment of wages from weekly to bi-weekly commencing with the payroll period for weeks ending November 3 and 10, 1990.

The Employer is order to resume the payment of wages on a weekly basis as soon as feasible upon the receipt of this Award.

Dated at Madison, Wisconsin this 19th day of February, 1991.

By Karen J. Mawhinney /s/
Karen J. Mawhinney, Arbitrator