

BEFORE THE ARBITRATOR

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 In the Matter of the Arbitration :
 of a Dispute Between :
 :
 GENERAL TEAMSTERS UNION LOCAL 662 : Case 3
 : No. 44806
 and : A-4717
 :
 FRIDAY CANNING CORPORATION :
 :

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys
 at Law, by Mr. Scott D. Soldon, appearing on behalf of the Union.
 Mr. Darrell L. Krause, Corporate Director, Human Resources, appearing on

behalf

ARBITRATION AWARD

General Teamsters Union Local 662, hereinafter referred to as the Union, and Friday Canning Corporation, hereinafter referred to as the Employer, are parties to a collective bargaining agreement which provides for the binding arbitration of disputes arising thereunder. The Union made a request, with the concurrence of the Employer, that the Wisconsin Employment Relations Commission designate a member of its staff to hear and decide a grievance over the meaning and application of the terms of the agreement. The parties waived their contractual provision providing for an arbitration board as well as the time limit for the issuance of a decision and the undersigned was designated as the sole arbitrator. Hearing was held in New Richmond, Wisconsin on January 16, 1991. The hearing was not transcribed and the parties filed post-hearing briefs which were exchanged on February 1, 1991.

BACKGROUND

The Employer is in the business of canning fresh vegetables for human consumption. Its operations are divided into three departments; field, plant and warehouse. The plant or processing department consists of fifteen regular employes who work on two shifts. The grievant is classified as a Sanitation Crew Leader and is assigned to the second shift in the plant department. The grievant has held this position for approximately three years and the Sanitation Crew Leader's wage rate is Bracket 3. The Sanitation Crew Leader makes sure that all the production equipment gets cleaned and takes care of the chemicals used in cleaning. Each year when corn is canned, referred to as the corn season or corn pack, which runs for about two months commencing the end of July and ending in September, the grievant acts as the Corn Room Supervisor or Crew Leader in the corn room. The grievant reports around 5:00 p.m. and takes over from the day shift Corn Room Crew Leader and is responsible for the corn room operations until processing ends for the day and then performs his Sanitation Crew Leader duties until cleanup is completed. The Corn Room Crew Leader duties on the first shift are performed by the Processing Leadperson with a wage rate in Bracket 2. When acting as Crew Leader in the corn room, the grievant makes sure there is enough corn to process, that the necessary people are on the line, that the equipment is operating properly, that the knives are sharp and properly adjusted and the debris is being properly removed. If equipment breaks down, the grievant calls maintenance to repair it. In 1990, the corn pack began on or about August 10 and ended on or about September 21. On October 2, 1990, the grievant filed a grievance asserting that he should have received Bracket 2 pay for his performance of the duties of the Crew Leader in the corn room on the second shift with the date of occurrence being September 24, 1990. Since as far back as 1983, the first shift corn room crew leader has been the Processing Leadperson in Bracket 2 and the second shift Corn Room Crew Leader has been the Sanitation Crew Leader in Bracket 3. The duties of the Corn Room Crew Leader are essentially the same on the first and second shift, but the pay has always been Bracket 2 and Bracket 3 respectively. The Employer denied the grievance which was appealed to the instant arbitration.

ISSUE

The parties stipulated to the following:

Did the Employer violate the collective bargaining agreement by failing to pay Bracket 2 pay to the grievant? If so, what is the remedy?

PERTINENT CONTRACTUAL PROVISIONS

ARTICLE 7

WORK WEEK

For the purpose of computing rates of pay and overtime the normal work week shall be forty (40) hours and the normal work day shall be eight (8) hours.

All time worked in excess of eight (8) hours per day or forty (40) hours per week, whichever is greater, shall be paid for at the rate of time and one-half. Employees required to work on Sundays shall be offered a minimum of four (4) hours work.

The Employer guarantees each regular employee forty-five (45) hours per week with a minimum of five (5) hours paid at the rate of time and one-half, during the period from June 15th through November 15th.

. . .

ARTICLE 17

CONDITIONS OF EMPLOYMENT

. . .

Section 5. Any employee temporarily transferred from a job classification carrying a higher rate of compensation to one carrying a lower rate shall continue to receive their regular rate.

Any employee being temporarily transferred from a job classification carrying a lower rate to one carrying a higher rate shall receive the wages paid in the higher classification, provided they work the majority of the hours of the normal work week in the higher classification.

. . .

ARTICLE 20

WAGE RATES AND CLASSIFICATIONS

Job Classifications are bracketed as follows:

Bracket 1A

Bracket 1

Canning Foreperson
Processing Foreperson
Plant Maintenance A
Warehouse Maintenance

Bracket 2A

Bracket 2

Field Maintenance A
Shipping and Receiving Leadperson
Plant Maintenance B
Head Cook
Label Department Leadperson and Inventory Control
Forklift Class A & Case Stacker Operator
Label & Casing Machine Operator
Processing Leadperson

Bracket 3A

Bracket 3

Field Maintenance B
Palletizing Leadperson
Sanitation Crew Leader
Plant Maintenance C
Warehouse Utility Person
Forklift Class A
Assistant Cook
Carton Printing Machine Operator
Label Machine Operator
Forklift Class A & Utility

UNION'S POSITION

The Union contends that the grievance should be granted pursuant to Article 17, Section 5. It maintains that the facts are undisputed that the grievant worked more than a majority of his hours in the normal work week in the corn processing area performing the same duties as the Processing Leadperson, and thus is entitled to the pay of the higher classification.

The Union argues that the defenses raised by the Employer are without merit. It notes that the "Corn Room Crew Leader" is not a classification under the contract nor is there any "job description" for such a classification. Additionally, it points out the "job descriptions" for Sanitation Crew Leader and Processing Leadperson were drafted for use in this arbitration and may not be accurate. It notes that when the Union had previously asked for job descriptions, the Employer refused to provide any. It submits that the documents prepared for this litigation have no significance. The Union claims that the Employer's argument that the instant case is similar to that of a Mechanic A working side by side with a Mechanic B or a Mechanic C is erroneous because the individuals working together easily divide responsibilities according to their respective classifications. According to the Union, the work as Corn Room Crew Leader on each shift does not differ according to classification because each must perform the same basic duties during each shift. It argues that the instant case is more similar to the transfer of a general Laborer to a fork lift or depalletizer operator position where the Laborer gets the higher pay. It insists that the grievant similarly deserves the higher pay in the instant case. The Union disagrees with the Employer's contention that it could use a seasonal employe for this job because nothing in the contract permits it and the Employer has never tried it before and hopefully will not in the future.

The Union submits that the grievant's situation fits the plain language of the contract, the equities are in his favor, he has performed the duties designated and is entitled to the pay and the Employer should be ordered to pay it.

EMPLOYER'S POSITION

The Employer contends that the grievance is not timely. It submits that what is being grieved has been going on for eight years and the grievant never grieved this in 1988 or 1989 when he worked under the same conditions. It questions why in 1990 did the grievant allege the occurrence of the grievance was September 24, 1990 when the corn pack ended on September 21, 1990? It maintains that the grievant knew he wasn't getting Bracket 2 pay when he received his paychecks during the corn pack, yet the alleged September 24, 1990 occurrence as well as the filing of the grievance took place after the corn pack was over so the grievance is not timely.

The Employer contends that the alleged violation of Article 17, Section 5 is misplaced. It argues that Article 17, Section 5 applies to temporary transfers where a regular employe fills in for another regular employe at a higher bracket when that employe is absent. It submits that the second shift Corn Room Crew Leader is not a temporary transfer but is a position filled by whoever is available including seasonal employes. It claims that has been the practice for the past eight years and points out there are not enough regular employes to fill all Crew Leader positions and that is why seasonals are used. It maintains that the second shift corn room job is not a Processing Leadperson job. It submits that the Processing Leadperson Bracket 2 job performs other leadperson and maintenance functions other than just one product

line. It notes that the Corn Room Crew Leader is not a bid job and can be done and is done by seasonals. The Employer argues that the grievant works in the corn room simply to allow him to work additional hours and when the corn pack is not in progress the grievant does other seasonal work such as running the steamer, driving waste truck or general clean up.

The Employer asserts that the grievant does not perform the Bracket 2 Processing Leadperson function. It points out that workers have various skills acquired through formal schooling, on the job training or years of experience in doing certain work, yet at times they may do the same work as others and at other times they perform duties unique to their special skills and abilities that others do not perform. It refers to the jobs listed in the contract, namely Plant Maintenance A, B and C in Brackets 1, 2 and 3 who sometimes do the same work but also do work according to their special skills when needed. Here, it points out that the grievant does no maintenance, but the Processing Leadperson is able to perform 90-100% of his own maintenance. It also notes that the grievant bid for a maintenance C position but withdrew because he felt he was not qualified to perform the plant maintenance skill functions, and yet he is claiming in this grievance he is performing the Processing Leadperson job. It submits that the Processing Leadperson job and the grievant's job are not the same and do not require the same skills and abilities.

The Employer contends the Union is attempting to get in arbitration that which it failed to get in negotiation. It alleges that in the last negotiations, the Union sought Bracket 2 pay for the Sanitation Crew Leader which demand was subsequently dropped. The Employer submits that past practice and the traditional interpretation of Article 17, Section 5 should only be changed through contract negotiations.

In conclusion, the Employer contends that to apply Article 17, Section 5 to every situation where an employe feels he is doing the same work merely because higher rated employes are working on a similar job would destroy the concept of the bracket system and ignore the special skills acquired by seniority, on the job training, and formal schooling to acquire the knowledge for a job vacancy. Otherwise, according to the Employer, multiple administrative problems would ensue. It concludes that Article 17, Section 5 only applies to transfers and not to the instant case.

DISCUSSION

The Employer has raised an issue of timeliness with respect to the grievance, however, the stipulated issue in this matter concerns only the merits of the grievance, and thus, any issue of timeliness would be waived. Additionally, the grievance involves pay for work performed which would be an on-going grievance. The grievant's filing the grievance upon receiving his pay-check would be timely because it would be at that time that he would know that the Employer was not paying anything other than the normal rate. Additionally, the employe must meet the condition of working the majority of the hours of a normal work week in a higher classification pursuant to Article 17, Section 5, and for example, as August 10, 1990 was a Friday, the grievant may not have fulfilled that requirement for that week. Therefore, any issue with respect to timeliness would relate to the remedy rather than to the merits of the grievance because each week where Article 17, Section 5 applied would be a grievable event. It must be concluded that the issue of timeliness has been waived or only goes to the amount of remedy, if any, and the grievance is arbitrable on its merits.

Article 17, Section 5 provides that an employe temporarily transferred from a job classification carrying a lower rate to one carrying a higher rate shall receive the wages paid in the higher classification. The Corn Room Crew Leader is not a classification listed in the contract and does not have a wage rate assigned to it, but is a duty assigned to other classifications. Although the Employer argues that Article 17, Section 5 only applies to a temporary transfer of a regular employe to the position of another regular employe with a higher rate who is absent, this interpretation is too restrictive. On the other hand, the mere performance of some duties that a higher rated classification performs does not automatically entitle an employe to the wage of the higher rated classification. In any plant, there may be a certain overlapping of duties or common duties that both the higher rated and lower rated employes perform. The contractual job classifications of Plant Maintenance A, B and C in Pay Brackets 1, 2 and 3 respectively would undoubtedly bear out that each perform certain common duties but their rates are different based on the performance of uncommon duties. Another example by way illustration would be an auto mechanic and a car washer. The mechanic may drive the car to test it or to take it to the bay where it is worked on. Likewise, the car washer would drive the car to the bay where it is washed and cleaned and then to a parking place. Both drive the car in the performance of their respective duties but this particular duty or part of the job would not establish that the car washer was performing the car mechanic's job.

Arbitrators have held the mere performance of some duties of the higher rated classification does not entitle the lower rated employe to the higher rated pay rather what is required is that the lower rated employe must perform

the key or core elements of the higher rated job. 1/ The issues in this case are: (1) What are the key or core elements of the higher rated job of Processing Leadperson? and (2) Did the grievant actually perform these key or core elements of the higher rated job?

With respect to the direct evidence of the duties, the Employer submitted job descriptions for the two positions. 2/ These job descriptions were developed for the hearing and the Employer has not in the past established job descriptions. Under these circumstances, this evidence is entitled to no weight in determining the key or core duties of the Processing Leadperson's job. Thus, the job descriptions do not establish the key or core duties of the higher rated job.

Donald F. Freier, the Divisional Personnel Manager, testified that the difference between the Processing Leadperson and the Sanitation Crew Leader was the maintenance responsibility of the Processing Leadperson, who has specialized training on the equipment. Further testimony revealed that when both are functioning as the Corn Room Crew Leader this factor is not applicable as maintenance is performed by others. That still leaves the question open as to whether the Corn Room Crew Leader job is a key or core duty of the Processing Leadperson.

When the parties negotiated different rates for the Processing Leadperson and the Sanitation Crew Leader they must have done so based on their knowledge of the respective duties of each position. The Processing Leadperson and Sanitation Crew Leader have performed the Corn Room Crew Leader duties for at least eight years. 3/ It follows that the parties knew this practice but continued to agree in negotiations to a wage differential. This certainly implies that the Corn Room Crew Leader duties are common to both positions and are not the key or core duties resulting in the pay differential. Additionally, no grievances with respect to the differential have been filed in the past years except the instant grievance even though the Sanitation Crew Leader performed these duties and got the regular rate and not the higher rate. The grievant performed this duty for the past three years and only after the third year did he file a grievance. Given this long line of past practice and lack of grievances, the difference in pay rates established by the parties in negotiations must be because the Corn Room Crew Leader's duties are common to both jobs and are not the uncommon duties for which the parties have agreed that the Processing Leadperson should be paid a higher rate. Therefore, the Corn Room Crew Leader duties are not the key or core duties of the Processing Leadperson's job and the grievant's performance of these duties does not entitle him to the higher rate of pay.

Based on the above and foregoing, the record as a whole and the arguments of the parties, the undersigned issues the following

AWARD

The Employer did not violate the collective bargaining agreement by failing to pay Bracket 2 pay to the grievant for the performance of Corn Room Crew Leader duties, and therefore, the grievance is denied.

Dated at Madison, Wisconsin this 21st day of February, 1991.

By _____
Lionel L. Crowley, Arbitrator

1/ Wilson Jones Co., 51 LA 35 (Daugherty, 1968); Union Carbide Nuclear Co., 37 LA 411 (Seligson, 1961).

2/ Exs 5 and 6.

3/ Ex-4.