BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
SUB-ZERO FREEZER COMPANY, INC.	Case 61 No. 44463 A-4682
and	
SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, AFL-CIO, LOCAL NO. 565	

Appearances:
Mr. Donald D. Emerich, Personnel Director, on behalf of the Company.
Mr. Paul Lund, Business Manager and Financial Secretary/Treasurer, on behalf

ARBITRATION AWARD

The above-entitled parties, herein the Company and Union, are privy to a collective bargaining agreement providing for final and binding arbitration before a Wisconsin Employment Relations Commission staff arbitrator. Pursuant thereto, I heard this matter on November 13, 1990, in Madison, Wisconsin. The hearing was not transcribed and both parties filed briefs which were received by December 27, 1990.

Based upon the entire record, I issue the following Award.

ISSUE:

Did the Company violate the contract when it refused to allow grievant Jerome Cunningham - who was then working second shift on the Mainline I assembly line - to bump to the first shift Mainline I assembly line and, if so, what is the appropriate remedy?

DISCUSSION:

Assembler Cunningham works under a wage incentive system where his compensation is based upon his production. In November 1989 he successfully went from his first shift job to a posted Assembler opening on the second shift which has only one production line-Mainline I. After working there for nine months, he submitted a preference for the Mainline I assembly line on the first shift. He then had more seniority than some of the Assemblers on Mainline I and Mainline II, the Company's second assembly line in the first shift. There is no Mainline II assembly line on second shift.

The Company refused to let him bump to the Mainline I assembly line on first shift pursuant to its policy of only allowing such bumping to the least senior job which in this situation was on Mainline II. It therefore allowed him to bump to Mainline II, which unlike Mainline I, produces a new model designated as "570". Since assembly of the new model necessitates some getting use to, employees working on it generally earn less in incentive pay than when working on a well established model.

Cunningham filed the instant grievance on July 26, 1990, 1/ stating "I do not agree with your policy on shift preference." Cunningham explained here that he is earning about $60 dollar a week less in his new position than he did when he worked on Mainline I on the second shift.

In support of his grievance, the Union primarily argues that Cunningham is entitled to bump into the "identical job operations" that he had on second shift - i.e. working on Mainline I, rather than Mainline II. It notes that there are differences as to how these two lines operate and that Cunningham has not been able to earn his normal incentive pay on his new job because of the "significant learning and familiarization" he has had to undergo when he switched over to Mainline II. The Union also argues that it never agreed with the Company that a person in Cunningham's shoes could not switch between the two assembly lines.

The Company maintains that the grievance should be denied because the parties have previously agreed that employees could exercise a shift preference only over the least senior person on the shift and that the Union previously agreed that qualified employees working second shift on Mainline I could not automatically transfer to Mainline I on the first shift. It adds that the grievant was well aware of its policy on this score and that, furthermore, the contract does not "give him permission to pick his job if there are multiple bump options nor does the language guarantee consistent level of incentive earnings."

1/ Unless otherwise noted, all dates herein after refer to 1990.

This latter point is well taken, as there is no guarantee that employees will always earn a certain level of incentive earnings. Hence, Cunningham knew or should have known that his overall earnings could drop when he changed shifts and jobs. In addition, part of Cunningham's loss of earnings stem from the fact that he no longer is receiving a night differential.

The Company is likewise correct in pointing out that sustaining Cunningham's grievance would open the way for considerably more bumping than has occurred in the past and that that would disrupt the Company's operations, to say nothing of the turmoil caused within the bargaining unit as employees bumped each other in an effort to always seek those jobs offering the greatest incentive pay. Absent clear contract language, it cannot be assumed that the Company would put itself in the position of facing such disruptions of its operations. Indeed, both parties recognize this, as the Sub Zero Incentive Plan states that: "efficient production is the goal of both the Company and the Union . . . ."

Elsewhere, Article XIV, Section 1, B (b) of the contract provides, inter alia, that "The most senior employee in the bargaining unit shall have shift preference based upon seniority within their classification and job".

Well here, Cunningham is classified as an Assembler and the Company allowed him to bump into another Assembler's position on Mainline II on the first shift. The Company therefore adhered to Article XIV, 1, B (b)'s mandate that employees are to "have shift preference based upon seniority within their classifi-
cation . . . " (emphasis added).

The Union asserts that the additional use of the word "job" in said proviso means that Cunningham was entitled to bump into a "job" which was absolutely identical in all respects to the one he had on the second shift - i.e. working on Mainline I.

There are several problems with this claim.

One, the Union has failed to prove that the parties in the past have used this same interpretation in applying this part of the contract. The absence of any such past practice strongly indicates that the Company's interpretation of the word "job" is the correct one.

Two, acceptance of the Union's claim would totally negate the use of the word "classification" in said provision since its narrow view of a "job" definition by definition could only be in the same classification. One of the cardinal rules in arbitration is that when faced with two opposing interpretations, one of which will give meaning to particular words or phrases and one which negates such words or phrases, arbitrators should select the former interpretation because parties normally do not use words unless they want them to mean something.

Application of that principle here means that the word "classification" must be given its natural meaning and that, as a result, Cunningham was only entitled to bump within his classification to another assembler position on the first shift even if it was on Mainline II.

In light of the foregoing, it is my

AWARD

1. That the Company did not violate the contract when it refused to allow grievant Jerome Cunningham to bump to the first shift Mainline I assembly line.

2. That the grievance is hereby denied.

Dated at Madison, Wisconsin this 4th day of March, 1991.

By _____
Amedeo Greco, Arbitrator