BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 2832	Case 34 No. 44827 A-4720
and	
EGGERS INDUSTRIES, INC.	

Appearances:
Gillick, Murphy, Wicht & Prachthauser, Attorneys at Law, by Mr. George F. Graf, appearing on behalf of the Union.
Mr. Gary J. Milske, Personnel Manager, appearing on behalf of the Employer.

ARBITRATION AWARD

United Brotherhood of Carpenters and Joiners of America, Local Union 2832, hereinafter referred to as the Union, and Eggers Industries, Inc., hereinafter referred to as the Employer, as parties to a collective bargaining agreement which provides for the final and binding arbitration of disputes arising there-under. The parties jointly requested that the Wisconsin Employment Relations Commission designate a member of its staff to act as the sole arbitrator to hear and decide a grievance over the meaning and application of the terms of the agreement. The undersigned was so designated. Hearing was held in Neenah, Wisconsin on March 14, 1991. The hearing was transcribed and the parties made oral arguments as to their respective positions and the record was closed.

BACKGROUND

The Employer created a new position of reveneer coordinator and set the wage rate at class 5. The Union filed a grievance alleging that the newly created position was underrated and the wage rate should be upgraded and the employe made whole. The Employer denied the grievance asserting that nothing in the parties' collective bargaining related to how jobs are rated and the instant job was properly rated using the Employer's Job Evaluation Plan. A threshold issue was raised concerning whether the Union could arbitrate the grievance on the merits and only that issue was submitted to the Arbitrator in the instant dispute.

ISSUE

Is the Union entitled to arbitrate the grievance on the merits or is it foreclosed from doing so by a prior arbitration between the parties?

PERTINENT CONTRACTUAL PROVISIONS

ARTICLE TWO - MANAGEMENT CLAUSE

2.1 The management of the plant and direction of the working forces, including the right to hire, suspend or discharge for just cause; to assign jobs, to promote and/or transfer employees within the plant, to increase and decrease the working force, to establish standards, to determine products to be handled, fabricated or manufactured, the schedules of production and the methods, processes and means of production or handling are vested exclusively in the Company.

2.2 The Company shall have the exclusive right to determine hours of employment and the length of the work week and to make changes in the details of employment of the various employees from time to time, as it may deem necessary for the efficient operation of the business. It is recognized that a reduction of hours does not constitute a lay-off. Whenever the Company intends to reduce hours, it shall notify the Union of same at least five (5) working days in advance of the reduction, and the representatives of the Union and the Company shall meet at least three (3) working days prior to the date on which the hours shall be reduced to discuss the matter. In addition, representatives of the Union shall have the right to meet with the representatives of the Compnay (sic) at a time mutually convenient to both parties to discuss other items covered by this section when a change in

these items is anticipated; provided that the management rights contained in Section 1 of this Article will govern the final determination of any such discussion.

. . .

ARTICLE TEN - SENIORITY

. . .

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 posed for bidding for a period of forty-eight (48) hours.

. . .

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.

. . .

UNION'S POSITION

The Union contends that it has the right to arbitrate the merits of the grievance which is to challenge the results of the Employer's actions. It submits that the prior arbitration between the parties involved a different issue, that being whether the Employer could initially establish a new classification and a new rate for it without the Union's consent or agreement. It argues that the Arbitrator held that the Employer could act unilaterally and the Union could challenge the Employer's actions by showing it had acted arbitrarily, capriciously or had acted unreasonably. The Union points out that the instant grievance does not say that the Employer cannot create the new position or set a new wage rate for it, rather the grievance is over the correctness of the Employer's action. The Union insists that the prior award does not foreclose it from litigating the merits of the Employer's actions and this position is supported by the transcript of the prior arbitration as well as the award itself. It asks that the grievance be heard on the merits.

EMPLOYER'S POSITION

The Employer contends that Sections 2.1, 2.2 and 10.4 of the parties' collective bargaining agreement clearly gives it the unilateral right to establish jobs and slot them in certain wage rates. It claims that the prior arbitration award supports its position. The Employer submits that the only time to negotiate over the classification and wage rate is at negotiation time and if there is any disagreement with the initial establishment of a classification and wage rate, it should be deferred until the next round of negotiations and brought up at that time. It maintains that under the prior award it has the right to create new jobs and to unilaterally decide what the wage rate should be. It points out that the contract language and job evaluation program has not changed since the prior award. It takes the position that the grievance is controlled by the prior award.

DISCUSSION

A review of the prior arbitration award between the parties establishes that the Employer can initially establish a new job classification and a corresponding wage rate unilaterally without first negotiating with the Union. 1/ While the prior award held that the Employer did not have to bargain with the Union, it did not preclude the Union from challenging the reasonableness of the Employer's decision. 2/ The Arbitrator stated as follows: "In the absence of any evidence that the Employer either departed from his usual practices in establishing the disputed classifications or that he acted arbitrarily or capriciously, I am unable to find a violation of the contract." 3/ Additionally, the transcript of the proceedings in that case indicates the Employer's representative stated the following:

> The Company has made its determination in this case and if the Union is to challenge the Company's action, they

---

1/ Ex. - 2.

2/ Id.

3/ Id.

> bear the burden of proving that the Company acted in a discriminatory and capricious manner and/or violated the agreement. 4/

Thus, the prior award gave the Employer the right to establish new classifications and set the rate without first bargaining the rate with the Union. Although the contractual language precludes the Union from bargaining over the rates set by the Employer, the agreement does not preclude the Union from challenging the fairness of the Employer's conduct. 5/ The grievance in this matter does not seek negotiations or require negotiations prior to the rate being set but asserts that the rate set is too low. 6/ In other words, the grievance challenges the reasonableness of the Employer's actions in setting the new job rate. There is an implied standard that the Employer will be fair and consistent in establishing the appropriateness of a job rate, and if the Employer acts arbitrarily, capriciously or in violation of its own procedures, the Employer violates that standard. Therefore, it must be concluded that the Union is entitled to a hearing on the merits of the grievance.

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

AWARD

The instant grievance is arbitrable and the prior award does not preclude a hearing of grievance on its merits.

Dated at Madison, Wisconsin this 25th day of March, 1991.

By _____
Lionel L. Crowley, Arbitrator

4/ Ex. - 3, at p. 7.

5/ For a discussion of these principles, see, Elkouri & Elkouri, How Arbitration Works, (4th Ed., 1985) at 483-485, 488-492.

6/ Ex. - 4.