BEFORE THE ARBITRATOR

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| In the Matter of the Arbitration of a Dispute Between | |
| TEAMSTERS, CHAUFFEURS & HELPERS LOCAL UNION NO. 43 | Case 5 No. 45455 A-4763 |
| and | |
| RACINE HEAT TREATING COMPANY | |

Appearances:
Mr. Charles Schwanke, President, appearing on behalf of the Union.
Mr. James Romanshek, President, appearing on behalf of the Company.

ARBITRATION AWARD

Pursuant to a request by Teamsters, Chauffeurs & Helpers Local Union No. 43 herein the Union, and the subsequent concurrence by Racine Heat Treating Company, herein the Company, the undersigned was appointed Arbitrator by the Wisconsin Employment Relations Commission on April 16, 1991, pursuant to the procedure contained in the grievance-arbitration provisions of the parties' collective bargaining agreement, to hear and decide a dispute as specified below. A hearing was conducted by the undersigned on May 23, 1991 at Racine, Wisconsin. The hearing was not transcribed. The parties did not file briefs.

After considering the entire record, I issue the following decision and Award.

ISSUES:

The parties stipulated to the following issues:

1. Did the Company violate the contract by laying off the grievant and not recalling him when work was available?

2. If so, what is the appropriate remedy?

In addition, the Company raised the following procedural issue:

1. Was the grievance properly and timely filed and processed?

DISCUSSION:

At all times material herein, Mario O. Nevarez, hereinafter the grievant, was a part-time employee of the Company.

The instant dispute arises from the Company's decision on January 5, 1991, to lay the grievant off due to a lack of work, and its failure to recall him thereafter during a period of time it was hiring other part-time employees.

The grievant filed a grievance claiming if there was work he should be recalled. The grievant also claimed that he was in fact discharged because of his involvement in a shooting incident which occurred in Racine. The grievant states he was not "involved" but just a witness.

The Company initially raises a procedural objection to the Arbitrator's jurisdiction claiming the grievance was not timely and properly processed.

The Agreement on this point provides in Article IV, Section 4.2, the grievance procedure, that a grievance shall not be considered if based on an event that occurred "more than ten (10) working days immediately prior to the date on which the grievance is first presented or should reasonably have been known to exist." The Agreement also provides in Section 4.5 that grievances which are presented in accordance with Section 4.2 must be processed according to certain steps, time limits and conditions set forth therein. The Agreement further provides in Section 4.6 that "all parties agree to follow each of the foregoing steps in processing grievances."

The Company argues that the grievant failed to process his grievance according to the various steps, time limits and requirements of the grievance procedure. The Company claims it is crucial to the performance of the Company and good labor-management relations for the contractual grievance procedure to be followed. The record, however, supports a finding that the parties have not strictly followed the time limits and other requirements found in the grievance procedure. To the contrary, the parties have processed most grievances in a very loose, informal manner. When questioned, the Company's President, James Romanshek, was unable to give one example of a grievance processed according to

the strict time limits and conditions contained in Article IV.

In the instant case, the Union steward, Ismael Soto, spoke to his supervisor within a few days of learning the Company had hired a part-time employee instead of recalling the grievant. Said Union steward then attempted to resolve the dispute informally, but without success. Thereafter, a written grievance was filed, the parties met to discuss same and the matter was submitted to arbitration. The above substantially complies with the parties' practice in processing grievances. Therefore, based on all of the foregoing, the Arbitrator rejects the Company's procedural objections. The Arbitrator turns next to the merits of the case.

The Company argues that part-time employees do not gain seniority under the Agreement and, therefore, do not have any seniority for recall purposes. The Union, on the other hand, feels part-time employees have the right to exercise seniority in the event of recall.

Article V entitled "Seniority" defines seniority in Section 5.1 as "an employee's right of preference with respect to layoffs and recall to work from layoffs measured from the employee's last date of employment." In reference to layoff and recall, Section 5.2 provides:

> 5.2 Layoff and Recall. In the event of layoff, temporary and part-time employees shall be laid off first. If further layoffs are necessary, seniority shall prevail, providing that the remaining employees are able in the judgment of the Company to perform the work available. In the event of recall employees shall be recalled in the reverse order of layoff, subject to the same condition. An employee has the right to exercise his seniority at the beginning of the next week following layoff.

Section 5.8 contains the only other contractual reference to part-time employees' seniority as follows:

> 5.8 Part time employees hired after January 25, 1989 shall not be entitled to health and welfare or pension benefits or seniority in preferential hiring for full time employment.

Except as noted above, Article V does not restrict the seniority rights of part-time employees pertaining to layoffs and recall to work from layoffs. Section 5.1, which defines seniority as "an employee's right of preference with respect to layoffs and recall" does not exclude part-time employees. Section 5.2 which provides for a layoff and recall procedure also does not exclude part-time employees from coverage. Said provision does provide "in the event of layoff, temporary and part-time employees shall be laid off first." However, contrary to the Company's assertion that part-time employees do not have any seniority under the Agreement, the record indicates that part-time employees are laid off based on their seniority. 1/ Section 5.2 also states that "In the event of recall, employees shall be recalled in the reverse order of layoff. . . ." (emphasis added) Again, part-time employees are not excluded from the recall provision. 2/ As noted previously, Section 5.8 does provide that part-time employees hired after a certain date are not "entitled to health and welfare or pension benefits or seniority in preferential hiring for full-time employment." However, that is not at issue here. The grievant is not applying for benefits or for full-time employment. He merely wishes to exercise his seniority for recall purposes to an available part-time position.

The Company claims that the parties did not intend Article V to give seniority or recall rights to part-time employees. However, the Company did not offer any evidence of bargaining history to support this claim. And, as noted above, the language of Article V read in its entirety covers part-time employees. Therefore, the Arbitrator rejects this argument of the Company.

The Company also argues that it has been successful using part-time employees because of its discretion to hire qualified employees. The Company maintains that this ability to maintain a quality work force will be lost if part-time employees have recall rights. However, Section 5.2 provides that in the event of recall employees shall be recalled in the reverse order of layoff subject to the condition that in the judgment of the Company they are able "to perform the work available." Therefore, the Arbitrator also rejects this argument of the Company.

Finally, the Company argues that this situation has not occurred before - that part-time employees have been laid off; others hired and no grievance filed. However, the Union offered persuasive evidence that this is the first time a part-time employee on layoff has sought to exercise his recall rights at

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1/ Undisputed testimony of Company Pesident James Romanshek.

2/ Full-time employees may have super seniority with respect to recall but that is another issue.

a time the Company was hiring other part-time employees. Consequently, the Arbitrator rejects this argument of the Company as well.

For a remedy, the Union requests that the grievance be sustained, and the grievant reinstated based on seniority to a part-time position. The Union does not request any make whole remedy.

Based on all of the above, the Arbitrator finds that the answer to the issue as stipulated to by the parties is YES, the Company violated the contract by laying off the grievant and not recalling him when work was available.

In light of the above, it is my

AWARD

1. That the grievance is sustained and the Company is ordered to reinstate the grievant, Mario O. Nevarez, to a part-time position based on his seniority and according to the procedure contained in Article V of the contract.

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

By _____
Dennis P. McGilligan, Arbitrator