BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	: Case 5 : No. 45994 : A-4808
INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITHS, FORGERS AND HELPERS, LOCAL LODGE 696	: Case 6 : No. 45995 : A-4809
and	
MARINETTE MARINE CORPORATION	

Appearances:
Mr. Howard L. Cole, Representative, on behalf of the Union.
Mr. Gordon F. Wicklund, Vice-President, Human Resources, on behalf of the Company.

ARBITRATION AWARD

The above-entitled parties, herein the Union and Company, 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 October 24, 1991 in Marinette, Wisconsin. The hearing was not transcribed and the Union made oral argument in lieu of filing a brief. The Company then filed a brief which was received by November 30, 1991.

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

ISSUES:

The parties have agreed to the following issues:

1. Did the Company violate the contract when it assigned Adrian Chaltry to operate the crane in Area 645 rather than to grievant Dale Barber and, if so, what is the appropriate remedy?

2. Did the Company violate the contract when Designer/Engineer Dan Roehm performed certain bargaining unit work and, if so, what is the appropriate remedy?

DISCUSSION:

1. The Barber Grievance

Crane Operator Barber in May, 1990 was transferred from Area 645 to the paint department where he worked for about three months and where he earned the same rate of pay as he did before. Fellow Crane Operator Chaltry, who has less seniority than Barber, was also transferred to another department at that time, but he shortly thereafter was transferred back to Area 645 where he continued to work as a Crane Operator while Barber continued to work in the Paint Department.

It is undisputed that Barber is fully able to perform the Crane Operator's job in Area 645, as he has done so for many years without complaint from the Company. The Company chose to retain Chaltry over Barber because it believes that Chaltry is better qualified than Barber.

The Company subsequently laid off both Barber and Chaltry. It then recalled Barber to his Crane Operator's position, but not Chaltry.

The Union challenges the Company's earlier assignment of Barber to the Paint Department while retaining Chaltry as a Crane Operator by primarily arguing that Barber is just as able as Chaltry and that Barber therefore should have been retained as a Crane Operator rather than Chaltry. It thus argues that there are no particular skills for that job and that Barber thus should have been retained in Area 645 over Chaltry by virtue of his seniority. The Union also asserts that the Company has violated Article X of the contract and that the Company is improperly trying to expand upon the language in Article XIV, Section 4, of the contract which deals with temporary transfers. As a remedy, the Union seeks an order requiring the Company in the future to assign such work to the most senior qualified employe.

The Company, in turn, maintains that it has the right to temporarily transfer employes up to six months under Article XIV, Section 4, and pursuant to the understanding reached between the parties in their 1987 contract negotiations. It thus asserts that the disputed assignment here is similar to the hundreds of similar temporary assignments in the last few years and that the grievance therefore should be denied.

The resolution of this issue involves application of Article XIV, Section 4, of the contract which provides:

> **Section 4:** TEMPORARY TRANSFERS The employee may be transferred between occupational groups to perform work for up to six (6) cumulative months in any contract year. At the end of six (6) months, the employee, if he so requests in writing, will be returned to his home occupational group according to seniority within thirty (30) days of making the request. The transferred employee will continue to progress in his regular pay progression while transferred. It is understood by the parties that the above temporary transfer language supercedes the work force realignment language of Article X, Section 2, Paragraph 3. It is also agreed that work performed by an employee outside of his occupational group for periods of not more than **two (2) work days per week shall not require a temporary transfer.**

This language on its face supports the Company because it clearly gives it the right to make temporary transfers "between occupational groups" for up to six months - which is exactly what it did here when it transferred Barber from a Crane Operator to a Painter, while at the same time it retained Chaltry as a Crane Operator.

The only possible basis for holding otherwise is the language found in Article X, Section 4, of the contract which provides in pertinent part:

> "When it is necessary to temporarily transfer employees to realign the work force following a layoff, or reduction in occupational group, the junior employees will be transferred from occupational group necessary for the realignment."

Since the Company reduced the size of the occupational group in Area 645 by transferring Chaltry and Barber elsewhere and by then thereafter only taking

back Chaltry before both he and Barber were laid off, it can be argued that this language - standing alone - required the Company to retain Barber over Chaltry.

However, this language must be harmonized with Article XIV, Section 4, which expressly gives the Company the right to do what it did here. Since Article XIV, Section 4, came into existence after the parties had agreed to Article X, Section 4, it appears that this later language was meant to supercede the latter.

Indeed, bargaining history establishes just that. Thus, Vice-President of Human Resources Gordon F. Wicklund testified here that the Company in the 1987 negotiations between the parties obtained the language now found in Article XIV, Section 4, because it needed greater flexibility in assigning employes to different tasks. Wicklund added that the prior contract only provided for 30-day temporary transfers and that, as a result, productivity suffered under that more restrictive language. Going on, he said that the parties eventually agreed to Article XIV, Section 4, because the Company insisted that it be given the ability to temporarily transfer employes between jobs in order to maximize their services.

Wicklund's testimony was challenged by employe Mike Tanguay who testified that bargaining unit members believed at the time that this language only applies if more senior employes are not qualified to do the jobs in issue. Tanguay, however, was not on the bargaining committee and he thus is unable to overcome Wicklund's testimony as to what was then agreed to at the bargaining table.

Past practice also supports the Company because over the last several years it has frequently transferred senior employes in this fashion without any objection from the Union. This clearly shows that the Company's interpretation of Article XIV, Section 4, is correct and that what it has done here is fully consistent with how both parties have interpreted this language over the last several years.

Given this past practice and bargaining history, it thus must be concluded that Article XIV, Section 4, allowed the Company to temporarily assign Barber to the paint department while at the same time keeping Chaltry on as a Crane Operator even though he had less seniority. This grievance is therefore denied.

2. The Tessmer Grievance

This grievance centers upon the Company's assignment in January - February, 1991, of Dan Roehm, a salaried employe and a Design Engineer, to oversee the work of bargaining unit members Donald Tessmer and Robert Schemer for about three weeks when they worked on a changeover package on a Navy minesweeper. Since neither Tessmer nor Schemer had any prior electrical training, and since Roehm helped design the changeover package and hence was very familiar with it, Roehm taught them how to use certain tools and how to do specific electrical tasks involving the pulling of electrical wiring; stripping wire; working on electrical boxes and meters; reading schematic diagrams, etc. In doing so, Roehm performed various instructional tasks and stayed with these two employes for much of their time. This drew Tessmer's repeated complaints that this was bargaining unit work which should have been performed by a journeyman or leadman, rather than by a salaried employe such as Roehm.

In apparent response to these complaints, Roehm put on a red hat which designated him as a foreman. At that point, testified Tessmer, Roehm "started acting like a foreman" and "more or less left us on our own."

Tessmer also said, "I thought we were trained very good" by Roehm, but added, "I don't think I should have learned it from Mr. Roehm. I should have learned it from a Union person."

His grievance thus asserts claims that only bargaining unit members such as journeymen or leadmen are entitled to do the kind of hands-on training work performed by Roehm. The Union also claims that this is the first time that a salaried employe has performed such production work and it thus complains that "we don't want to lose our jobs to management." As a remedy, it requests that the most senior qualified journeyman or leadman be paid for the three weeks that Roehm performed these tasks.

In response, the Company contends that Roehm's instruction was similar to the kind of instruction regularly given by other management personnel in the past and that it has the right to train its employes in the manner it deems best. While acknowledging that journeymen and leadmen in the past have done some of this training, the Company nevertheless maintains that there is nothing in the contract prohibits Roehm from doing what he did here.

The record on this issue indeed shows, as the Union correctly points out, that leadmen and journeymen have regularly performed the kind of instructional tasks which Roehm performed here. In addition, the training here marked the first time that a non-foreman such as Roehm did so to the extent that he did. It therefore is readily understandable as to why the Union has protested over this situation.

However, the record also shows that Roehm's efforts were all centered around training and that he did not perform any run-of-the-mill production work. This is an important difference because, absent any contract language to the contrary, an employer generally has the inherent right to train its employes in any way it sees fit. Indeed, Article XII of the contract, entitled "Foremen and Leadmen", expressly states that Company foremen "should perform no work requiring the use of tools except for the purpose of demonstration, instruction and checking the work of the other employes."

Furthermore, Article III, the Management Rights clause, expressly gives the Company the right to "direct the working force...". Inherent in that right is management's right to instruct bargaining unit members on how to do their work provided only that management personnel not do any production work themselves.

Thus, Roehm's efforts were all directed at teaching unskilled bargaining unit members on how to do certain electrical work - training which Tessmer acknowledged was very beneficial. It therefore may have helped prevent several possible layoffs while at the same time broadening the level of skills of the two employes herein. Viewed in this light, a good case therefore can be made for the proposition that the disputed work herein actually <u>increased</u> the amount of available bargaining unit work.

In any event, the fact remains that there is nothing in the contract prohibiting this kind of training. The grievance hence must be denied.

In light of the above, it is my

<u>AWARD</u>

1. That the Company did not violate the contract when it assigned Adrian Chaltry to operate the crane in Area 645 rather than grievant Dale Barber; the grievance is therefore denied and dismissed.

2. That the Company did not violate the contract when Designer/Engineer Dan Roehm performed certain bargaining unit work; the grievance is therefore denied and dismissed.

Dated at Madison, Wisconsin this 11th day of December, 1991.

By Amedeo Greco /s/
Amedeo Greco, Arbitrator

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