BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	:	
THE BUCKSTAFF COMPANY	:	
	:	Case 9
	:	No. 47398
and	:	A-4922
LOCAL NO. 1363, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA	:	

Appearances:
Mr. George F. Graf, Attorney, for the Union.
Mr. Jack Walker, Attorney, for the Employer.

ARBITRATION AWARD

Pursuant to the terms of their 1991-1994 bargaining agreement, the parties asked the Wisconsin Employment Relations Commission to assign the undersigned as arbitrator. Hearing was held in Oshkosh, Wisconsin on September 9, 1992. A stenographic transcript of the hearing was prepared and the parties filed written argument, the last of which was received October 19, 1992.

ISSUE:

The parties stipulated that the issue to be resolved is the following:

> Did the Company violate the collective bargaining agreement by failing to recall the grievants on April 6, 1992 and, if so, what remedy is appropriate?

DISCUSSION:

The Union asserts that the Ellis' seniority entitled them to be recalled from layoff to perform roundtable saw work on April 6. The work in dispute was in Department 19 and was scheduled to be performed on April 6 by Koehler and 1/ Whitty, both of whom were returning from layoff. However, because Rymer unexpectedly returned to work on April 6 from a medical leave, the disputed work was actually performed by Rymer and Whitty. Koehler worked on a molder.

Both parties agree that because the layoff in question was temporary departmental seniority controls the Ellis' entitlement to be recalled to work. The parties also agree that the roundtable work in question is Department 19 work which the Ellises were qualified to perform. The parties disagree over whether the Ellises, Koehler and Whitty were Department 19 employes for the purposes of recall from layoff.

The Union contends that Kohler and Whitty and Roger Ellis were Department 20 employes, while Mary Ann Ellis was a Department 19 employe. The Union reasons that as a Department 19 employe, Mary Ann Ellis was entitled to perform Department 19 work instead of Department 20 employes Kohler and Whitty. The Union further argues that because Roger Ellis has more seniority than Koehler or Whitty, his entitlement to work was greater than theirs. The Union cites the Employer-generated "Union Personnel Listing" document as establishing the department which should govern employe recall rights.

Citing Article XV, Section 1.2 of the contract 1/ the Employer contends that an employes' departmental identity is established by the job they are regularly performing. The Employer argues it has historically applied the Article XV standard for temporary layoff and recall. It further asserts that the "Union Personnel Listing" document has never been used as a basis for layoff and recall. Given the foregoing, the Employer argues that the grievants were Department 20 employes who thus have no contractual entitlement to the Department 19 work in question.

Article VII, Section 1 provides:

> In determining layoffs, seniority shall apply where skill and efficiency to perform the available work are relatively equal; seniority meaning the last one hired shall be the first one laid off and the last laid off shall be the first rehired; when seniority is applied on a temporary layoff, it shall be applied on a departmental basis, and a general layoff, it is to be applied on a plant-wide basis.

The Article VII contract language does not specifically state how an employe's department is to be established. The choice confronting the Arbitrator in this case is whether to define an employe's department based on the departmental location of the work they regularly perform or based upon their grouping on the "Union Personnel Listing". The Arbitrator finds the location of work being regularly performed to be the most reasonable manner to determine an employe's department for the purpose of Article VII interpretation.

In reaching this conclusion, I readily acknowledge the Union's accurate assertion that the definition of "regular jobs" in the Article XV transfer and assignment language need not have any particular relevance to defining an employe's department for temporary layoff and recall purposes. I do not rely upon Article XV when reaching my result. Instead, I rely on a fundamental

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1/ For the purpose of definitions an employe's regular jobs are those performed by him on a reoccurring basis, and when an employee performs work on a job other than his regular job for no more than nine (9) consecutive work hours he shall be considered to be on a temporary assignment; when for more than nine (9) consecutive work hours but less than sixty (60) consecutive workdays he shall be considered to be temporarily transferred; when for more than sixty (60) consecutive workdays, he shall be considered to be permanently transferred.

reality underlying a layoff/recall provision which is that an employe is laid off from and returns to a job. Where, as here, jobs are grouped on a departmental basis and an employe has been regularly performing a job within a single department, the job defines the employe's department.

By contrast, the departmental groupings on the "Union Personnel Listing" seemingly have no particular relationship to the work currently being performed on a regular basis. Although the Ellises had been working together on a regular basis at the time of the layoff, they are not in the same departmental grouping on the "Union Personnel Listing". Although Whitty had regularly been performing Department 19 work prior to layoff, he is found in the Department 20 employe grouping. Given these discrepancies, I simply do not find it reasonable that the parties intended the departmental groupings on the "Union Personnel Listing" to govern temporary layoff and recall rights.

The Ellises had been regularly performing Department 20 work prior to their layoff. For the purposes of temporary layoff and recall rights, they were Department 20 employes entitled to be recalled to Department 20 work. As the work in dispute was Department 19 work, they were not entitled to be recalled from layoff on April 6 to perform it. Thus the grievance is denied.

Dated at Madison, Wisconsin this 22nd day of December, 1992.

By Peter G. Davis /s/
Peter G. Davis, Arbitrator

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