

BEFORE THE ARBITRATOR

In the Matter of the Arbitration :
of a Dispute Between :
 :
LOCAL UNION 565, SHEET METAL WORKERS' : Case 67
INTERNATIONAL ASSOCIATION (AFL-CIO) : No. 48110
 : A-4984
and :
 :
SUB-ZERO FREEZER COMPANY, INC. :
 :

Appearances:

Mr. Paul Lund, Business Manager, on behalf of the Union.
Mr. Donald D. Emerich, Personnel Director, 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. Pursuant thereto, I heard this matter in Madison, Wisconsin, on November 6, 1992. The hearing was not transcribed and the parties thereafter filed briefs which were received by December 18, 1992.

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

ISSUE

Since the parties were unable to jointly agree upon the issue, I have framed it as follows:

Did the Company violate the contract when it failed to promote grievant Stanley Anderson from Maintenance Mechanic Assistant to Maintenance Mechanic and, if so, what is the appropriate remedy?

DISCUSSION

Anderson, who has been employed by the Company since 1978 and who works as a Maintenance Mechanic Assistant on the second shift from 2:30 p.m. - 10:30 p.m., took and passed, on the second try, a three (3) day written examination lasting two (2) hours a day for the Maintenance Mechanic classification in July, 1992. The latter position paid 71 cents an hour more than what Anderson was earning as a Maintenance Mechanic Assistant and it would have allowed him to bump to the day shift - something he wanted to do because of his wife's illness.

Before he took the test, Anderson was told by Maintenance Supervisor Gregg Schmitt that even if he passed the test, he nevertheless would have to gain more experience before he would be promoted to that higher classification. Anderson at that time did not object to, or in any other way dispute, Schmitt's statement.

At one time, the Company required employes to have about two years' experience before taking the test. The Company ultimately concluded that that was unfair because employes with sufficient experience would have to wait too long before taking the next test - which is given every six months.

To rectify that problem, Vice-President Dennis Laumann in a February, 17, 1989, letter to Union Business Manager Paul Lund stated that upon successfully passing the test, Maintenance Mechanic Assistants would be promoted to

Maintenance Mechanics. The letter added: "the Company has the right to modify the requirements for Maintenance Mechanic at any time." As a result, the Company now lets employes take the test whenever they want to, but it does not promote them, even if they pass the test, unless they have sufficient experience.

The basic question here therefore boils down to whether the Company can refuse to promote Anderson and other successful test takers in light of Laumann's prior letter.

The Union argues that it cannot because Laumann's letter and Anderson's favorable evaluation form "should be deemed the controlling evidence in this dispute." It thus maintains that the Company was obligated to formally notify the Union and Anderson of its intention to modify Laumann's letter "before, not after its implementation. . ." As a remedy, the Union requests that Anderson be awarded the Maintenance Mechanic position and back pay.

The Company, in turn, contends that the "contract clearly gives management the right to promote employees and that would include determining whether an employee is eligible to be promoted." It therefore argues that it has the right to insist that applicants for the Maintenance Mechanic position have a certain amount of experience even after passing the test for that position. It also maintains that Laumann's letter does not preclude it from doing so because there was a great need for Maintenance Mechanics at the time the letter was written; because it retains the right to modify the requirements of the Maintenance Mechanic position at any time; and because the Laumann's letter did not waive the Company's right to decide for itself whether employees are qualified to perform the Maintenance Mechanic's duties.

In resolving this issue, it first is necessary to point out that, absent any contract language to the contrary, an employer normally can determine whether employees are qualified for particular positions and whether vacancies exist. Indeed, Article XVI of the contract here expressly provides that the Company has the exclusive right to promote employees, subject only to other provisions of the contract.

Well here, there is no other provision specifying that the Company is precluded from deciding that Anderson is not qualified for the Maintenance Mechanic provision because of his lack of experience. No express provision of the contract therefore has been violated.

The Union's case therefore rests entirely upon Laumann's 1989 letter to Lund. But that letter on its face expressly states that the Company retains the right to review this requirement "every two years" and that it has the right to "modify the requirements for Maintenance Mechanics at any time." The Company did just that two years later by changing its practice so that it now allows applicants to take the Maintenance Mechanic's test before they have the required experience, and to then determine whether they should be promoted after they have gained more experience.

This certainly is a reasonable exercise of the Company's right to determine employee qualifications under Article XVI of the contract and to upgrade employes under Article VIII, Section 1, of the contract. That is why the grievance must be denied.

It would have been better for the Company to have told the Union of this change prior to the events giving rise to this grievance, as that would have eliminated some of the controversy surrounding this issue. But the failure to do so, however, does not affect the Company's right to make the change, as it retained the unilateral right to do so under the plain language of Laumann's

letter and the contract.

In denying the grievance, I am mindful of Anderson's legitimate desire to change shifts so that he can better tend to pressing family matters. Such a shift change, however, cannot be achieved upon the basis of the present record which shows that he is not qualified to be a Maintenance Mechanic because of his lack of sufficient experience. Any possible shift change therefore will have to be effectuated through other means.

In light of the above, it is my

AWARD

That the Company did not act improperly when it failed to promote grievant Stanley Anderson; the grievance is therefore denied.

Dated at Madison, Wisconsin this 8th day of March, 1993.

By Amedeo Greco /s/
Amedeo Greco, Arbitrator