

BEFORE THE ARBITRATOR

In the Matter of the Arbitration :
of a Dispute Between :
: :
CARPENTERS' LOCAL #2190, MIDWESTERN : Case 5
INDUSTRIAL COUNCIL OF THE UNITED : No. 50023
BROTHERHOOD OF CARPENTERS AND : A-5149
JOINERS OF AMERICA :
: :
and :
: :
MARSHALL ERDMAN AND ASSOCIATES, INC. :
: :

Appearances:

Gillick, Murphy, Wicht & Prachthausen, Attorneys at Law, 300 North Corporate Drive, Suite 260, Brookfield, Wisconsin 53045, by Mr. George F. Graf, appearing on behalf of the Union.
Melli, Walker, Pease & Ruhly, S.C., Attorneys at Law, Suite 600, Insurance Building, 119 Martin Luther King, Jr. Boulevard, P. O. Box 1664, Madison, Wisconsin 53701-1664 by Mr. Thomas R. Crone, appearing on behalf of the Company.

ARBITRATION AWARD

Carpenters' Local #2190, Midwestern Industrial Council of the United Brotherhood of Carpenters and Joiners of America, hereafter the Union, and Marshall Erdman and Associates, Inc., hereafter the Company, are parties to a collective bargaining agreement which provides for the final and binding arbitration of grievances arising thereunder. The Union, with the concurrence of the Company, requested the Wisconsin Employment Relations Commission to appoint a staff member as a single, impartial arbitrator to resolve the instant grievance. On November 24, 1993, the Commission designated Coleen A. Burns, a member of its staff, as impartial arbitrator. Hearing was held on January 27, 1994, in Madison, Wisconsin. The hearing was not transcribed and the record was closed on March 1, 1994, upon receipt of written argument.

ISSUE:

The Company frames the issue as follows:

Did the Company violate Article VI, Section 1 when it selected Carrie Albrecht for the newly created position of Special Panel Verification/Hardware Inspection over the two grievants?

The Union frames the issue as follows:

Did the Company violate the Collective Bargaining Agreement by awarding the posting of the Special Panel Verification/Hardware Inspection position to a junior employe, Carrie Albrecht, rather than to one of the senior grievants?

The Arbitrator frames the issue as follows:

Did the Company violate the Collective Bargaining Agreement by awarding the position of Special Panel Verification/Hardware Inspection to Carrie Albrecht, rather than to one of the two senior grievants?

If so, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE:

ARTICLE VI OPERATING PROCEDURES
Section 1 Job Postings

All new jobs and vacant jobs will be posted on the Company's bulletin boards for a minimum of three working days. If a successful bidder is selected, the Company will notify that successful bidder within five (5) working days. The Company will place the successful bidder on the job as soon as reasonably possible.

In those instances where employees are considered equal on the basis of an employee's work record, skill, job experience, ability to do the work, length of service will generally be recognized in awarding new jobs and transfers.

BACKGROUND:

On September 14, 1993, the Company posted the following opening in the Packaging Department, first shift:

JOB OPENING: Special Panel Verification/Hardware
Inspection

CLASSIFICATION: Class "C"

JOB DESCRIPTION: The person selected for this position will inspect all hardware that is used in Furniture Packaging area. In addition this person will be required to monitor the movement and verify that the special panels produced in Machining are accounted for and available for shipment in Furniture Shipping Department.

QUALIFICATIONS:

1. Must be detail oriented and a self-starter
2. Understand standard of quality required
3. Possess a good mechanical aptitude and understand hardware functions
4. Possess good math skills and be able to use a calliper.
5. Have good attendance and

- strong organizational skills.
- 6. Able to function as a backup forklift driver as needed.
- 7. Must be able to lift 50 lbs.

Anyone interested in receiving considerations for this position sign below by 4:00 P.M. September 17, 1993.

Fourteen employes bid on the position. The position was awarded to Carrie Albrecht, the least senior of the employes bidding for the job. On October 1, 1993, the Union filed the instant grievance alleging that the selection of Albrecht violated Article VI, Section 1, and the contract as a whole. The grievance was denied and, thereafter, submitted to arbitration. The Union has acknowledged that, as of the date of hearing, only two of the original fourteen grievants continued to pursue the grievance, i.e., Jane Neuman and Linda Solchenberger. Jane Neuman is the senior of the two grievants.

DISCUSSION:

The Union argues that Article VI, Section 1, of the labor contract is a "relative ability" clause, wherein seniority becomes the determining factor if qualifications are relatively or substantially equal. In the alternative, the Union argues that Article VI, Section 1, is a "hybrid" clause, wherein all of the factors, including seniority, are weighted equally. The undersigned does not find the Union's arguments to be persuasive.

Upon review of the language of Article VI, Section 1, it is evident that there is no reference to "relative ability." Construing the plain language of Article VI, Section 1, the undersigned is persuaded that seniority comes into play only when the factors of work record, skill, job experience, and ability to do the work are considered "equal."

Grievant Solchenberger

The Company argues that, without exception and at all levels of management, Grievant Solchenberger was considered to lack the communication skills and assertiveness possessed by Carrie Albrecht and necessary to perform the Special Panel Verification duties. The initial question to be considered is whether communication skills and assertiveness are factors which may be considered when determining whether or not the competing applicants are equal in "work record, skill, job experience, and ability to do the work."

At the time of the posting, the Special Panel Verification/Hardware Inspection position was a new position, which combined two distinct work functions. As the Union argues, the Special Panel Verification duties are primarily those of an "expediter." The primary "expediting" duty is to monitor the progress of the Special Panel orders through the various plant departments, e.g., machining, packaging and shipping, to ensure that the panels are produced and shipped in a timely manner. The Hardware Inspection function primarily involves the inspection, storage and retrieval of hardware inventory. The storage and retrieval duties include the operation of a forklift. 1/

The employe who performs Special Panel Verification duties interacts with employes in a variety of departments to verify the status of the panels, as well as to address problems, such as having missing panels machined. The undersigned is satisfied that communication skills and assertiveness are factors which may be considered when determining whether or not applicants competing for the Special Panel Verification/Hardware Inspection position are equal in "work record, skill, job experience, and ability to do the work." Having reached this conclusion, it is necessary to consider whether or not the Company has a reasonable basis to conclude that the communication skills and assertiveness of Grievant Solchenberger are not equal to those of the successful applicant, Carrie Albrecht.

Tom Wipperfurth, a Company supervisor since 1987, interviewed nearly all of the employes who bid for the position of Special Panel Verification/Hardware Inspection, including Carrie Albrecht and Grievants Solchenberger and Neuman. 2/ Following the interviews, Tom Wipperfurth selected four applicants to be interviewed by Production Manager Paul Duren, i.e., Jeff Breunig, Daryl Haas, Todd Hahn, and Albrecht. In making this selection, Tom Wipperfurth gave consideration to his personal experience with the applicants, if any; the interview performance of the individual applicants; and the opinions of the applicants' supervisors.

1/ Not being persuaded that Albrecht's prior fork lift experience was a determining factor in the Company's decision to offer the position to Albrecht, rather than Grievant Solchenberger, the undersigned has not addressed this factor in her Award.

2/ At the time of the interviews, a few bidders were no longer interested in the position.

Tom Wipperfurth recalls that, during the interview, he had to "drag the answers" out of Grievant Solchenberger, but that Albrecht was "very outgoing" and "straight to the point." According to Tom Wipperfurth, the interview performances persuaded him that Grievant Solchenberger was not sufficiently "aggressive" to perform the requisite duties and that Albrecht was "not the type of person to back down."

Since Grievant Solchenberger did not testify at hearing, Tom Wipperfurth's testimony concerning Grievant Solchenberger's demeanor during the interview is uncontradicted. Albrecht, who did testify at hearing, confirmed, by demeanor and testimony, that she "was not the type of person to back down."

Tom Wipperfurth recalls that, following his interview with Grievant Solchenberger, he had a discussion with Grievant Solchenberger's supervisor, Geof Tripalin. While Tom Wipperfurth did not recall the specifics of the conversation, he did recall that he and Tripalin agreed that, although Grievant Solchenberger was a good employe, she was not "the leader" that the Company was looking for and that she would have difficulty "dealing" with the many departments within the Company.

Tripalin confirmed that Tom Wipperfurth questioned him regarding the bidders which he supervised, including Grievant Solchenberger. According to Tripalin, he gave Grievant Solchenberger a high rating as an employe, but indicated that he had reservations with respect to her ability to assert herself, deal with others and communicate effectively. When asked to explain the basis for these reservations, Tripalin stated that, when Grievant Solchenberger needed to communicate with him regarding work assignments or requests for days off, she tended to relay information through a third party, rather than speaking directly to Tripalin, even after Tripalin had instructed Grievant Solchenberger to speak directly with Tripalin. Grievant Solchenberger did not testify at hearing and Tripalin's testimony regarding his experiences with Grievant Solchenberger is uncontradicted.

According to Tom Wipperfurth, his discussion with Albrecht's supervisor, Cathy Stewart, occurred prior to his interview with Albrecht. Tom Wipperfurth recalls that Stewart gave Albrecht "a lot of praise" and indicated that Albrecht did whatever was asked without argument.

Stewart confirmed that she and Tom Wipperfurth discussed Albrecht's bid for the Special Panel Verification/Hardware Inspection position and that she considers Albrecht to be a very good worker. According to Stewart, Albrecht has very good communication skills, is highly motivated, learns quickly, accepts responsibility, and works well with others.

Tom Wipperfurth recalls that, prior to forwarding the four names to Duren, he discussed all of the bidders with his immediate supervisor, Packaging Manager Robert Stockton. Stockton confirms this testimony and recalls that he agreed with the four names selected by Tom Wipperfurth.

Stockton, who knew Grievant Solchenberger personally, recalls discussing her bid with Tripalin. Stockton further recalls that Tripalin indicated that Grievant Solchenberger was a good worker, but that she did not have fork lift experience and that Tripalin was concerned that she would not be sufficiently assertive. Based upon his discussions with Tom Wipperfurth and Tripalin, Stockton concluded that Grievant Solchenberger lacked the requisite communication skills and was not "tough enough" to handle the personalities from all of the other departments. Stockton, who did not know Albrecht personally, recalled that her supervisor, Stewart had indicated that Albrecht was mistake free, a leader on the line, and the type of individual that they were seeking.

Duren, who is Stockton's immediate supervisor, interviewed the four applicants selected by Tom Wipperfurth. Duren recalls that Albrecht was very personable and self-confident. According to Duren, he was left with the impression that Albrecht was a self-starter, assertive, and could do what was needed to get the job done.

Carole Holman, Union Chief Steward, was the only Union witness to testify at hearing. Holman offered the opinion that Grievant Solchenberger was aggressive and assertive. Apparently, this opinion was based upon the fact that Grievant Solchenberger had performed Line Monitor duties. According to Holman, a Line Monitor must be aggressive because the Line Monitor assigns duties to the line.

The record establishes that Albrecht and Grievant Solchenberger both performed Line Monitor duties. While Holman does not claim to have observed either employe perform Line Monitor duties, the supervisors of each employe did testify concerning the performance of these duties. According to Tripalin, Grievant Solchenberger's performance of Line Monitor duties was "adequate." According to Stewart, Albrecht performed her Line Monitor duties "very well."

Summary

As the Company argues, the testimony of Company supervisors, at several levels of management, demonstrates a shared opinion that Grievant Solchenberger, unlike Albrecht, lacked the communication skills and assertiveness necessary to perform the duties of the Special Panel Verification/Hardware Inspection position. Despite the Union's argument to the contrary, neither the evidence of Grievant Solchenberger's performance of Line Monitor duties, nor any other record evidence, warrants the conclusion that the opinions of the Company's supervisors are unfounded.

The undersigned is persuaded that the Company has a reasonable basis to conclude that the "work record, skill, job experience, and ability to do the work" of Grievant Solchenberger does not equal that of Carrie Albrecht. Accordingly, the Company did not violate the collective bargaining agreement when it awarded the position of Special Panel Verification/Hardware Inspection to Carrie Albrecht, rather than to Grievant Solchenberger.

Grievant Neuman

In arguing that the "work record, skill, job experience, and ability to do the work" of Grievant Neuman is not equal to that of Carrie Albrecht, the Company relies upon two factors: work attendance and interpersonal skills. The factor of work attendance is considered first.

At the time that Tom Wipperfurth interviewed the applicants for the

position of Special Panel Verification/Hardware Inspection, he reviewed the 1993 attendance records of the applicants. 3/ Tom Wipperfurth, who understood that Albrecht had not used any sick leave and that Grievant Neuman had used five sick leave days, was concerned because he "expected people to be here."

As the Union argues, Grievant Neuman was not disciplined for her use of sick leave. Indeed, her supervisor, Paul Wipperfurth, acknowledged that her level of sick use was acceptable. These points, however, do not alter the fact that, during the period reviewed, Grievant Neuman's attendance record was not as good as Albrecht's. As the Company argues, attendance records are "work records" and, as such, may be considered under the provisions of Article VI, Section 1.

Given the testimony at hearing, the undersigned is persuaded that the determining factor in the Company's decision to reject Grievant Neuman's bid was supervisory opinion that Grievant Neuman lacked the interpersonal skills necessary to perform the Special Panel Verification work. Specifically, the Company argues that Grievant Neuman, unlike Albrecht, was abrasive to co-workers and supervisors.

Given the nature of the "expediter" duties of the Special Panel Verification/Hardware Inspection position, the undersigned is satisfied that it is appropriate for the Company to consider interpersonal skills when determining the "work record, skill, job experience, and ability to do the work" of competing applicants. Having reached this conclusion, it is necessary to consider whether or not the Company has a reasonable basis to conclude that Grievant Neuman lacked the interpersonal skills of Albrecht.

While acknowledging that Grievant Neuman was aggressive, Tom Wipperfurth maintains that Grievant Neuman, unlike Albrecht, is tactless and has a bad attitude. It is evident that Wipperfurth's opinion of Grievant Neuman is primarily based upon two factors, i.e., his prior experience as a supervisor of Grievant Neuman and the comments of her current supervisor, Paul Wipperfurth. 4/

According to Tom Wipperfurth, he supervised Grievant Neuman for at least one year. Tom Wipperfurth recalls that, during the time that he supervised Grievant Neuman, employees from the Sales Department had complained to him that Grievant Neuman was "back talking" when they brought her orders.

While Tom Wipperfurth did not ask Paul Wipperfurth for a recommendation on Grievant Neuman's qualifications for the position of Special Panel Verification/Hardware Inspection, he did consider information that he had received in prior discussions with Paul Wipperfurth, i.e., that Paul Wipperfurth had complained that Grievant Neuman repeatedly argued with Paul Wipperfurth about certain job assignments and that she did not get along with her coworkers.

Paul Wipperfurth acknowledged that he had frequent discussions with Tom Wipperfurth concerning Grievant Neuman. Paul Wipperfurth confirmed that Grievant Neuman would argue with him about assignments and that he had received complaints from co-workers that Grievant Neuman was hard to get along with. According to Paul Wipperfurth, he personally observed that Grievant Neuman "ran hot and cold" with her fellow employees.

As discussed above, Packaging Manager Stockton was involved in the bid

3/ At that time, there were approximately eight months of attendance records available for review.

4/ Paul and Tom Wipperfurth are cousins.

selection process. According to Stockton, he was aware of Paul Wipperfurth's opinion of Grievant Neuman because Paul Wipperfurth had complained that Grievant Neuman frequently would argue with Paul Wipperfurth about work assignments.

It is true that Paul Wipperfurth was present during a grievance meeting which was attended by Grievant Neuman. It is also true that, at this meeting, Paul Wipperfurth not only failed to raise any concerns about Grievant Neuman, but, in fact, indicated that he did not have any problems with Grievant Neuman's work performance.

As the Union argues, there is an inconsistency between statements which Paul Wipperfurth made at the grievance meeting and at hearing. However, upon review of the record as a whole, the undersigned is persuaded that Paul Wipperfurth was not candid at the grievance meeting because he did not want to confront Grievant Neuman. Thus, it is the statements which Paul Wipperfurth made at the grievance meeting, rather than the statements which he made at hearing, which have been discredited.

Tom Wipperfurth acknowledges that he relied upon the opinion of Albrecht's supervisor, Cathy Stewart, when he assessed Albrecht's interpersonal skills. According to Tom Wipperfurth, Stewart gave Albrecht a very good recommendation and confirmed that Albrecht completed performed task assignments without argument. At hearing, Stewart confirmed that she discussed Albrecht with Tom Wipperfurth. Stewart further confirmed that Albrecht was a very good employe, who got along well with others. According to Stewart, she never received any complaints about Albrecht.

Paul Wipperfurth, who supervised Albrecht for a period of six to ten weeks when she was filling in for an employe who was on leave, confirmed that Albrecht accepted assignments without complaint. According to Paul Wipperfurth, no employe other than Grievant Neuman ever complained about Albrecht and, when he investigated Grievant Neuman's complaints, he determined that they were unfounded.

Grievant Neuman did not testify at hearing. Union Steward Holman, who acknowledged that she had never worked with Grievant Neuman, stated that she was told by Grievant Neuman's Line Monitor that Grievant Neuman was a good employe.

Summary

The testimony of Company supervisors demonstrates a shared opinion that Grievant Neuman, unlike Albrecht, does not interact well with co-workers and supervisors. Despite the Union's argument to the contrary, the record evidence does not demonstrate that the opinions of the Company's supervisors are unfounded.

The undersigned is persuaded that the Company has a reasonable basis to conclude that the "work record, skill, job experience, and ability to do the work" of Grievant Neuman does not equal that of Carrie Albrecht. Accordingly, the Company did not violate the collective bargaining agreement when it awarded the position of Special Panel Verification/Hardware Inspection to Carrie Albrecht, rather than to Grievant Neuman.

AWARD

1. The Company did not violate the Collective Bargaining Agreement by awarding the position of the Special Panel Verification/Hardware Inspection to Carrie Albrecht, rather than to one of the two senior grievants.

2. The grievance is dismissed.

Dated at Madison, Wisconsin, this 2nd day of June, 1994.

By Coleen A. Burns /s/
Coleen A. Burns, Arbitrator