BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

LOCAL 7815, UNITED PAPERWORKERS
INTERNATIONAL UNION, AFL-CIO, CLC

and

FWD CORPORATION

Case 63
No. 53801
A-5446

Appearances:

Mr. Donald O. Schaeuble, International Representative, UPIU Region X, AFL-CIO, CLC, appearing on behalf of the Union.

Foley & Lardner, Attorneys at Law, by Mr. George D. Cunningham, appearing on behalf of the Employer.

ARBITRATION AWARD

Local 7815, United Paperworkers International Union, AFL-CIO, CLC, hereinafter referred to as the Union, and FWD Corporation, hereinafter referred to as the Employer, are parties to a collective bargaining agreement which provides for the final and binding arbitration of disputes arising thereunder. The Union, with the concurrence of the Employer, requested that the Wisconsin Employment Relations Commission designate a member of its staff to act as an arbitrator to hear and decide a grievance over the meaning and application of the terms of the agreement. The undersigned was so designated. Hearing was held in Clintonville, Wisconsin, on April 18, 1996. The hearing was not transcribed and the parties filed post-hearing briefs which were received on May 29, 1996.

BACKGROUND:

The basic facts underlying the grievance are not in dispute. On August 4, 1995, the Employer posted an opening for a Group Leader, Receiving, Job Code 4140, in Labor Grade 3 on the first shift. 1/ Seven employes signed the posting for the position. 2/ The job was awarded to

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1/ Ex. 9.

2/ Id.

the most senior employe who tried it but then declined it. 3/ The next most senior employe who posted for the job was then awarded the position and he tried it, then was transferred back to his old job. 4/ The next senior employe who posted for it was then awarded the position but he too declined it after trying the job. 5/ The immediate supervisor told the third bidder that she would be willing to give him additional time and training if he felt he wasn't given a fair shot at the job. The third bidder confirmed that he was no longer interested in the position. The Employer withdrew the posting and abolished the 4140 job and created a new position of Receiver Department Relief Person at the lower paid Labor Grade 4, Job Code 4120 and reposted the position. 6/ The job was awarded to the most senior employe who signed the new posting. Two of the employes who posted for the 4140 job who were next in seniority as well as the Union filed grievances over the Employer's failure to give them the opportunity to try out for the job. 7/ These were denied and appealed to the instant arbitration.

ISSUE:

The parties stipulated to the following:

> Did the Company violate the collective bargaining agreement by rescinding the 4140 job posting, changing the job and then reposting the changed job as 4120?
>
> If so, what is the appropriate remedy?

3/ Ex. 13.

4/ Ex. 14.

5/ Ex. 15.

6/ Exs. 8 and 10.

7/ Exs. 3, 4 and 5.

PERTINENT CONTRACTUAL PROVISIONS:

COST-OF-LIVING ADJUSTMENTS

. . .

(43) A job evaluation plan, The National Position Evaluation Plan, involving the appraisal of skill, effort, job conditions and responsibility factors has been installed for the purpose of establishing fair wage differentials between various jobs on an impartial and equitable basis and by a measuring device of recognized stability.

It is agreed that the evaluation of existing jobs is correct, and a list of same has been furnished to the Union prior to the signing of this Agreement. Such listed jobs are not subject to the grievance procedure. All new jobs, combined jobs, and changes in labor grade of existing jobs will be posted as required by Paragraph (67.2) of the Labor Agreement. It is further understood, simple changes and upgrading of filled existing jobs will not be posted. A copy of new and revised job descriptions and classifications will be furnished to the Union for review at least five (5) days prior to the posting of such jobs. If a disagreement exists on such job it will be posted with the terms "Rating currently under review" to alert employees that the rating may be changed and is currently subject to the grievance procedure.

. . .

POSTING JOB OPENINGS

(67.2) In order to encourage promotion, a list of all permanent job openings indicating job title, shift and labor grade will be posted on the Company bulletin boards, in addition, the posting will indicate the location of the job and have a current job description for that job attached for informational purposes so that the employees will know where their primary assignment will be. Employees or laid off employees, qualified and with sufficient seniority shall be notified and may bid on such job openings by filing application for transfer, in accordance with Paragraphs (55)

> and (56), within three (3) working days of such posting; in the event the applicant is qualified he will be notified on the job award and a listing of bidders showing the award will be posted; transfers to such job will be effected within a period not exceeding twenty (20) days. The Company will give an employee who has been awarded the job, up to ten (10) working days to demonstrate that he is qualified and the employee will be given up to ten (10) working days to decide whether he wants to accept or decline the job. Failure to qualify, such employee will revert back to his former position. Employees on lay-off, after such three (3) day posting, are eligible for recall only. Job openings filled for a specified temporary period shall be re-posted when the temporary period is to be exceeded. No employee will be held on a "00" or a temporary job. If any other job becomes available these employees will be allowed to post for such other jobs.

UNION'S POSITION:

The Union reiterates that three employes were given a try at the job and the supervisor told the third bidder that he would be given more training if he gave the job a second try. It contends that on the surface this looks impressive for the supervisor, especially when the supervisor testified that one of the reasons for not re-evaluating the job earlier was that she was too busy and didn't have time to do the evaluation. It asks was it because she did not want the other two junior employes in the job. It points out that the job was originally posted over 30 days before the third employe declined the job and the normal next step should have been to give the next most senior employe the opportunity to try out for the job. It claims that it is ironic that with the new posting these two employes never got a try at the new job because it was awarded to an employe who did not sign the first posting. The Union states that it does not disagree with the Employer on posting job 4120. It bases its grievance on discrimination. It argues that the supervisor admitted she would have left the job as 4140 had the third employe taken the job. It submits that the Company is discriminating against the two employes by not giving them a chance at job 4140. It seeks a remedy that the two employes be given the opportunity to try out for the 4140 position.

EMPLOYER'S POSITION:

The Employer contends that pursuant to the contract, it can change jobs at any time including during a posting and even when an incumbent is in the position. It submits that the supervisor did not change the job at the original posting because she didn't take the time to carefully evaluate what she needed but after working through three applicants' trial periods, she reviewed the job and could see a new job was needed. It points out that the Union admitted at the

hearing that had the job been changed prior to the original posting, no grievance would have been filed. The Employer observes that it is conceded that the change was legitimate because the Group Leader position was not needed as there was no longer any group to lead and the job did not include picking parts which was what was needed. The Employer claims that the job was evaluated under the mutually accepted job evaluation plan and there was no grievance or complaint about the evaluation of the new job.

The Company maintains that the Union conceded that the grievance had no contractual support and rather contended the case should be viewed as raising an "ethical" issue. It insists that the Union's position cannot be sustained because the arbitrator's function is judicial and not legislative and the Union is asking the arbitrator to disregard the terms of the contract. It contends that there is no "ethical" issue in this case as the Employer followed the contract which requires it to post a job if it is new, substantially changed, or the result of a combination of duties. It asserts that it was obligated to post the job because it was re-evaluated to a different labor grade and a new bidder senior to the previous applicants wanted this job and the Employer was required to award him the job he wanted. The Employer argues that there is no ethical problem with considering the first three bidders to fill the job and then only considering others for the revised job because a supervisor may be willing to accept a job that is not exactly what she needs to be fair to an employe actually working in the job but this is not unethical. It submits the grievants were not prejudiced or treated unfairly as jobs must be posted if substantially changed even where there is an incumbent and if the grievants were given a trial or the job and then it was re-evaluated and required posting, the grievants would be in the same position.

The Employer submits that the Union created a communications problem which it could have easily avoided. It used the supervisor's answer that she would not have changed the job if the third bidder had accepted it as somehow retaining the old position. It insists that the Union could have told the grievants that the contract allows the Employer to modify jobs if it follows the job evaluation procedure which it did and then the job must be reposted even if there is an incumbent and this is not only contractually required but fair as a senior bidder may want the new job. It observes that had the Union given this honest and principled explanation, the parties could have saved the time and expense of hearing a grievance that the Union admits has no contractual validity. It requests that the grievance be denied.

DISCUSSION:

The Union has failed to cite any specific provision of the collective bargaining agreement that it claims was violated by the Employer. The Employer posted Job Code 4140 and seven employes posted for it. After three tried the job and the third declined it, the Employer re-evaluated it and reposted it as Job Code 4120. The Union's argument appears that because the Employer gave three employes a try at the job, it in fairness or equity was obligated to give the remaining bidders a try at the job. It admits that had the job originally been posted as 4120 no

grievance would have been filed.

In Paragraph (43), the parties have agreed to a job evaluation plan. It is undisputed that the Employer complied with this provision and the record evidences that the establishment of Job Code 4120 was proper. 8/ The Union's admission that had this been originally posted, no grievance would have been filed, establishes that the job evaluation was proper. Paragraph (43) provides that all changes in the labor grade of existing jobs will be posted as required in Paragraph (67.2) of the agreement. There was a change in labor grade and the job had to be posted and was. Nothing in the agreement prohibits the Employer from changing a job after it is posted. For example, a job could be posted and 25 employes sign for it. It would make no sense that the Employer had to allow all 25 to try out for the job before it could make a change but in essence that is what the Union is asserting here. The Union may be seeking some relief for an employe who feels that he should have been given a shot at the job but this does not create a contractual violation. The evidence establishes that the Employer did not violate any provision of the contract but complied with Paragraphs (43) and (67.2). Thus, the grievance lacks merit.

Based on the above and foregoing, the record as a whole and the arguments of the parties, the undersigned issues the following

AWARD

The Employer did not violate the collective bargaining agreement by rescinding the 4140 job posting, changing the job and then reposting the changed job as 4120, and therefore, the grievance is denied in all respects.

Dated at Madison, Wisconsin, this 19th day of July, 1996.

By Lionel L. Crowley /s/
Lionel L. Crowley, Arbitrator

8/ Ex. 8.