

BEFORE THE ARBITRATOR

In the Matter of the Arbitration  
of a Dispute Between

GENERAL TEAMSTERS UNION LOCAL 662

and

WISCONSIN TRUSS, INC.

Case 11  
No. 54311  
A-5501

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, by  
Ms. Naomi E. Soldon, appearing on behalf of the Union.  
Mr. Barry Bohman, Assistant Manager, appearing on behalf of the Company.

ARBITRATION AWARD

General Teamsters Union Local 662, hereinafter referred to as the Union, and Wisconsin Truss, Inc., hereinafter referred to as the Company, are parties to a collective bargaining agreement which provides for the final and binding arbitration of disputes arising thereunder. The parties mutually agreed to the undersigned to act as the sole arbitrator to hear and decide a grievance over the meaning and application of the terms of the agreement. Hearing was held in Cornell, Wisconsin, on November 5, 1996. The hearing was not transcribed and the parties filed post-hearing briefs which were exchanged on December 10, 1996.

BACKGROUND:

The basic facts underlying the grievance are not in dispute. The Company assigned six individuals to work the third shift, one of whom was a supervisor. A grievance was filed over the Company's failure to grant paid lunches for all shifts based on six people assigned to the third shift. 1/ The grievance was denied on the basis that only five employees were assigned to the third shift and the supervisor assigned to that shift did not trigger paid lunches. On July 2, 1996, the parties met and orally agreed to a settlement of the grievance. On July 11, 1996, the Union repudiated the settlement agreement and on July 14, 1996, the Company stated that its part of the agreement was also voided out and it continued to exclude management personnel from the required number to trigger paid lunches for the first and second shifts.

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1/ There is no dispute that there were more than six employees on the first and second shifts.

ISSUE:

The parties were unable to agree on a statement of the issues. The Union states the issue as follows:

Whether the Company violated the collective bargaining agreement by failing to pay all employees for lunch periods, and if so, what is an appropriate remedy?

The Company states the issue as follows:

Whether or not supervisors (management) are to be considered under the terms of the agreement?

The undersigned frames the issue as follows:

Did the Company violate Article IV, Section 6 of the collective bargaining agreement by excluding a supervisor in determining that the number of people on the third shift was less than six so that all shifts did not get a paid lunch break? If so, what is the appropriate remedy?

PERTINENT CONTRACTUAL PROVISIONS:

**ARTICLE I  
RECOGNITION**

Section 1.

Wisconsin Truss, Inc., (hereinafter referred to as Employer) recognizes **General Teamsters Union Local 662 affiliated with the International Brotherhood of Teamsters, AFL-CIO** (hereinafter referred to as Union) as the sole collective bargaining representative of all full-time and regular part-time Employees employed by the Employer in connection with its truss manufacturing operations at Cornell, Wisconsin, excluding all office and office clerical, secretarial, managerial, engineering, and

drafting Employees, **temporary Employees**, independent contractors and their Employees, professional Employees, guards, and supervisors as defined in the Act.

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Section 4.     Definition of Employees.

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d.) Seasonal, casual Employees. Any Employee hired as a seasonal or casual worker shall not be considered a "seniority" or "regular" Employee. Such status shall apply to Employees hired during the busy season from May 1 to November 1. **(6 month period may be varied - see sub paragraph F.)** Such status also pertains to Employees hired to cover situations such as Christmas, deer hunting season and like situations. It also applies to Employees hired to cover situations such as replacements for absenteeism and vacations. It applies to student summer employment (but does not apply to student/summer Employees now hired who are union members as of 7/25/93). It being intended that the employer may employ extra help as long as such employment does not cause any layoff to regular Employees and as long as regular Employees are not unemployed and available.

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**ARTICLE II**  
**RIGHTS OF THE PARTIES**

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Section 7.     Miscellaneous.

b.) Nothing herein will prevent supervisors (management) from doing any work which the Union Employees may be doing or prevent supervisors from "taking a shift". Supervisors (management) will be working supervisors without restrictions on their work activity. This shall not be used to allow the Employer to hire additional workers under the guise of supervision (management) during periods when Union members are

laid off.

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**ARTICLE IV  
HOURS OF WORK AND OVERTIME**

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Section 6.      Paid lunch breaks

The one-half (1/2) hour lunch break will not be paid unless a three (3) shift, operation exists, then the lunch period will be paid.

When a third shift of five (5) or less people is used, then only the third shift would get a paid lunch break. **If there are six (6) or more people** on all shifts, then all shifts get the paid lunch break.

. . .

UNION'S POSITION:

The Union contends that the contract language requires paid lunch breaks because six human beings worked on the third shift. It submits that the parties disagree over the term "people" in Article IV, Section 6 and whether it refers to bargaining unit employees or any employees. It observes that where disputed language is clear and unambiguous, arbitrators give it its plain meaning. It maintains that the common understanding of "people" is that it is "human beings in general." It argues that there is nothing ambiguous about the word "people" and no extrinsic evidence need be considered to determine its meaning, and consequently, Article IV, Section 6 must be interpreted to mean that the Company must provide paid lunch breaks whenever six or more human beings are working on the third shift.

The Union takes the position that absent proof that another meaning was intended, words must be given their usual and generally accepted meaning. It refers to the dictionary definition of "people" as "human beings, persons." It insists that bargaining unit status is not required and there were six persons on the third shift and the Company did not pay for all lunch periods, thereby violating the agreement, and it should be ordered to make its employees whole.

The Union claims that it is not estopped from arguing the grievance's merits where there was no meeting of the minds on the settlement and any settlement was procured by fraud. It notes that arbitrators consistently conclude that where there is no meeting of the minds, no agreement

has been reached. It contends that it is unclear whether the parties reached any settlement of the grievance as there is no signed document and there is a Company letter stating that because the Union is standing by its initial interpretation, the Company intends to do the same. It argues that there was no meeting of the minds as the Union understood it was waiving back pay and the Company would begin paid lunch breaks and the Company understood that after the waiver of back pay, it could take action to relieve it from future paid lunches. It submits that under these circumstances, there was no meeting of the minds and no settlement agreement. Additionally, the Union takes the position that any settlement agreement is unenforceable because it was procured by fraud. It alleges that the Company intended to reduce the work force to avoid paying for lunch breaks but kept its intentions a secret until after the settlement. The Union asks that the grievance be sustained and the employees be made whole.

#### COMPANY'S POSITION:

The Company contends that there was a grievance settlement which would clear up any misunderstanding as to the interpretation of Article IV, Section 6 commencing on July 1, 1996, and the only bad faith is the Union's abolishment of its terms. The Company observes that there was no discussion or agreement as to how long the shifts would remain as manned and scheduling is done by economics and production needs. It argues that it could remove one person from the third shift until production needs required additional employees and, in fact, production increased and lunches were paid but the Company has varied the number of employees on a shift throughout the year and past years. The Company asserts that it relies on agreements to settle disputes and the Union could have requested paid lunches for a certain period of time but it did not do so and the Union could not change the settlement set out in the July 5, 1996 letter by claiming it was insufficient on July 11, 1996. It asks that the grievance be denied.

#### DISCUSSION:

The parties are in disagreement as to whether the parties entered into a settlement agreement of the instant grievance. The Union has asserted that there was no meeting of the minds on the settlement and it was procured by fraud. The Company claims there is a settlement agreement which the Union attempted to repudiate because it did not like the deal. The undersigned concludes that on July 2, 1996, the parties did reach a settlement of the grievance. 2/ The Union subsequently repudiated this agreement on July 11, 1996. 3/ Generally, one party cannot unilaterally repudiate an agreement and the Company could have enforced the terms of the

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2/ Co. Ex. 1.

3/ Co. Ex. 2.

settlement agreement against the Union as it seeks to do in this proceeding. However, the Company accepted the repudiation on July 14, 1996, wherein it stated in a letter to the Union:

Since our agreement is not agreed to anymore in your eye's, (sic) the agreement to add supervisor's (sic) when counting how many people are on the third shift is voided out also. Article IV; Section 6; (sic) shall be as we stated before without management personnel which included supervisors. 4/

Essentially the Company went back to the position it maintained prior to the settlement agreement. What we have here is a mutual rescision of the settlement agreement because both parties went back to their original positions, and thus it no longer exists and cannot be enforced by either party.

Inasmuch as there is no longer any settlement agreement, the merits of the grievance must be addressed. The grievance involves an interpretation of Article IV, Section 6. Article IV, Section 6 states, in part, as follows:

. . . **If there are six (6) or more people** on all shifts, then all shifts get the paid lunch break.

The interpretation of this provision centers on the definition of the word "people" and whether it includes supervisors who are excluded from the bargaining unit. A review of the collective bargaining agreement reveals that the word "people" only appears in Article IV, Section 6. The parties use the terms employes, Union members, members, individual, bargaining unit employes, production workers, truck drivers, seasonal, casual and temporary employes. If the parties intended to limit Article IV, Section 6 to bargaining unit employes, they could have done so easily by use of that term or employes which is used over and over in the contract. The term "people" used in its ordinary and common parlance is much broader than employe and refers to all persons. Used in the context of Article IV, Section 6, the term "people" means everyone including supervisors assigned to the shift. Thus, it is concluded that Article IV, Section 6 requires paid lunches wherever there are six persons which includes supervisors as well as bargaining unit employes. Inasmuch as there were six people on the third shift for a period of time prior to July 1, 1996, the Company violated the agreement by refusing to pay lunches to all shifts as required by Article IV, Section 6.

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

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4/ Id.





AWARD

1. The Company violated Article IV, Section 6 of the collective bargaining agreement by excluding a supervisor in determining that the number of people on the third shift was less than six.
2. The Company is directed to immediately make employees whole by paying them for the lunch break when the Company had six people on the third shift commencing on or about May 20, 1996.
3. The undersigned will retain jurisdiction for a period of thirty (30) days from the date hereof solely for the purpose of resolving any dispute with respect to the remedy herein.

Dated at Madison, Wisconsin, this 15th day of January, 1997.

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