

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

WIS-PAK OF WATERTOWN, INC.

and

TEAMSTERS UNION LOCAL NO. 695

Case 18
No. 55033
A-5571

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by **Ms. Andrea F. Hoeschen, Esq.**, 1555 North Rivercenter Drive, Suite 202, Milwaukee, Wisconsin 53212, appearing on behalf of the Union.

Lindner & Marsack, S.C., by **Mr. Dennis G. Lindner, Esq.**, 411 East Wisconsin Avenue, Milwaukee, Wisconsin 53202, appearing on behalf of the Employer.

ARBITRATION AWARD

According to the terms of the 1993-98 collective bargaining agreement between Wis-Pak of Watertown, Inc. (Company) and Teamsters Union Local No. 695 (Union), the parties requested that the Wisconsin Employment Relations Commission designate a member of its staff to hear and resolve a dispute between them regarding the proper interpretation of the wage structure contained in the parties' labor contract. The Commission designated Sharon A. Gallagher to hear and resolve the dispute. A hearing on the matter was held at Watertown, Wisconsin on August 14, 1997. A stenographic transcript of the proceedings was made and received by August 20, 1997. The parties submitted their initial briefs by October 7, 1997 and waived the right to file reply briefs.

ISSUES

The parties stipulated that the following issues should be determined in this case:

Did the Company violate the collective bargaining agreement by hiring outside employes at the top of the wage progression? If so, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

ARTICLE 15 - RATES OF PAY

15.1 The following rates of pay, as set forth in Exhibits “A” and “B” attached hereto, shall remain in effect during the term of this Agreement.

...

15.3 When a classification is established or a substantial change in production methods in any classification occurs, the Company and the Union will mutually agree upon a rate for such classification. Failure to agree will automatically invoke arbitration.

...

ARTICLE 31 - INDIVIDUAL AGREEMENTS

31.1 The Employer agrees not to enter into any agreement or contract with its employees, individually, or collectively, which in any way conflicts with the terms and provisions of this Agreement or which in any way may be considered a proper subject for collective bargaining. Any such agreement shall be null and void.

...

ARTICLE 35 - JOB POSTING

35.1 When new jobs are created or vacancies occur which the Company determines to fill, and transfers become necessary, such jobs shall be posted for at least five (5) working days. Employees desiring these jobs shall sign such posted notice. Other than Maintenance positions and Lead positions, the Employer shall award the job to the senior qualified bidder. In filling Lead positions and Maintenance positions, qualifications as determined by the Company shall be the sole criteria in filling the position. These positions may be filled by qualified new hires. When the Company determines that qualifications of candidates both internal and external are equal, the most senior existing employee will be awarded the job. In the absence of any qualified candidate, the Company may train a bargaining unit employee. A copy of all job postings and awards shall be sent to the Local Union. The Employer will place the successful bidder on the new job within ten (10) days if practical.

...

35.4 An employee selected under the job posting and bidding provisions under this Article shall be given a period up to a maximum of thirty (30) days in which to demonstrate his ability to handle the new job duties competently, except that if an employee demonstrates his inability to perform the work prior to the expiration of the period, he may be returned to his old job with no loss of seniority.

...

35.6 During such training period, the employee shall receive the lowest rate of pay (present pay or new position pay) until the trainee is able to perform the job alone or a maximum of thirty (30) days.

...

Plant Hourly Rate
Effective October 1, 1997

BRACKET 1 Electrician			\$16.00	+Merit \$1.00
BRACKET 2 Maintenance Leadperson				\$15.49
BRACKET 2a Assistant Electrician		<u>30 Days</u> \$15.04	<u>6 Mos.</u> \$15.27	<u>12 Mos.</u> \$15.49
BRACKET 3 Machinist				\$15.22
BRACKET 4 Master Maint. Mechanic				\$14.91
BRACKET 5 Lead Lab Tech.				\$14.42
BRACKET 6 Maintenance Mechanic Fork-lift Mechanic Building & Repair Maint.	<u>Prob Rate</u> \$13.53	<u>6 Mos</u> \$13.75	<u>12 Mos.</u> \$13.99	<u>18 Mos.</u> \$14.21
BRACKET 7 Leadperson				\$14.13

BRACKET 8 Lab Tech. Syrup Blender		<u>Prob Rate</u> \$13.27	<u>6 Mos.</u> \$13.52	<u>12 Mos.</u> \$13.70
BRACKET 9 Filler Operator Utility		<u>Prob. Rate</u> \$13.12	<u>30 days</u> \$13.25	<u>12 Mos.</u> \$13.41
BRACKET 10 Machine Operators Depalletizer Packer Palletizer Lift Truck Operators General Take-Away			<u>Prob Rate</u> \$12.94	<u>30 days</u> \$13.12

Effective June 1, 1990 new hires will receive the following rates:

Start	70 % of contract rate
6 Months	80% of contract rate
1 Year	90% of contract rate
18 Months	100% of contract rate

Plant Leadman with over six (6) years' service will receive an additional Fifteen Cents (15 cents) per hour.

FACTS

The Company, at its Watertown facility, is engaged in the blending, packaging and distribution of Pepsi-Cola products. Scott Jones (who is Union Steward and who filed the instant grievance) has been employed by the Company for the past twelve years. The Company operates four shifts: A and B Crews work from 6:00 a.m. to 6:00 p.m. and C and D Crews work from 6:00 p.m. to 6:00 a.m. The Company employs a little more than 200 employees at its Watertown plant.

During the past two years, Jones has been employed as a Maintenance Mechanic on D Crew. Jones received this position by means of a job posting, after passing a one-hour written examination and a welding and caliper test upon which he had to receive a minimum of 75 percent. He passed these examinations and received the Maintenance Mechanic job on or about September 17, 1995. Jones had no prior schooling for his Maintenance Mechanic job when he signed the posting therefor. Jones had worked at a canning factory for approximately six years and had done some relief operator work as well as Maintenance Mechanic work there. When Jones became a Maintenance Mechanic, he started at the probationary rate and remained at that

rate for thirty days, whereupon he received a 22 cent per hour raise. After six months and twelve months in the job, Jones received 20 cents per hour raises; and after eighteen months in the job, he received full pay (\$14.21 per hour). As of the instant hearing, he had been at the top rate for approximately five months. During his time as a Maintenance Mechanic, Jones has shown new hires how to operate plant machinery. In this regard, Jones helped familiarize new hire, David Kravitz, with machinery at the plant. Jones believes he is still training on his maintenance job and that training has not yet been completed.

Jones filed the grievance in this case a couple of weeks after he found out that new hires were started at the top rate, not at the probationary rate of pay as he had been. Jones became aware of this when someone on a different crew mentioned this fact to him; and he investigated the situation thereafter. He spoke to his supervisor, Mike Weihert, and asked Weihert how the Company could bring in new hires at the top pay. Weihert responded that due to the tight job market, it was the Company's feeling that no one would accept employment at the 70 percent rate for the Maintenance Mechanic positions.

The type of posting that Jones signed prior to his selection as a Maintenance Mechanic read in relevant as follows:

...

**JOB TITLE: MAINTENANCE MECHANIC
C - CREW CONTINUOUS OPERATION**

REPORTS TO:

- 1. Maintenance Manager**
- 2. Maintenance Leadman**
- 3. Shift Supervisor**

Job Summary: Under the supervision of the maintenance manager, lead person or shift supervisor the maintenance mechanic is to maintain the quality performance of production, auxiliary and repair equipment necessary to run a safe and efficient plant operation.

Job Duties/Essential Functions

- Provide timely response of all trouble calls, diagnose and remedy problems, document all tasks performed.
- Repair and replace equipment and apparatus in an efficient, safe and sanitary manner.
- Perform preventative maintenance, document tasks completed, amount of time taken to perform duties and any deficiencies found.

- Perform start-up and shut-down of equipment, involving energizing and de-energizing of equipment.
- Perform bench repairs in a timely manner
- Operate power tools, hand tools, welding and cutting tools and manlifts as required.
- Maintain work area in a clean and orderly fashion and conform to all quality and safety regulations.
- Complete and accurate reporting of daily maintenance work reports.
- Report any unsafe operating conditions, practices and personnel.
- Must be capable of following written and verbal instructions in order to perform assigned maintenance tasks.
- Applicant required to provide a list of qualifications.

QUALIFICATIONS:

Requires education as normally acquired in four (4) years of technical school or equivalent and substantial job experience as a manufacturing maintenance mechanic. Requires ability to meet minimum of 75 points on each test for the written mechanical and problem solving, and physical welding and measurement aptitude tests. Must be available for emergency call-ins, capable of handling varying work loads. Must be able to attend and travel to technical schools. Must be able to work in damp, noisy areas, changing climate conditions both inside and outside. Required to lift 50 pounds on a daily basis. Must supply own tools and tool box.

...

Jones was also involved in negotiations for the contract that is currently in effect at the Company on the Union's negotiation team. 1/ Jones stated that Exhibit A was negotiated to include a longer time for the different jobs to get to top pay due to the necessity of more training and the increasing difficulty of the work. Kravitz told Jones that he (Kravitz) had prior experience in maintenance work and had experience as a Maintenance Mechanic and Manager of a Maintenance Department before his hire at the Company. Jones believed that the Union did not negotiate job posting language and he did not know if the Union had any input into the language of the above-quoted job posting.

Jones was of the opinion that an Assistant Electrician position requires more skills than a Maintenance Mechanic position and a Machinist position requires more skills than and different skills than a Maintenance Mechanic position. The Company generally promotes or hires from within to fill Master Maintenance Mechanic positions and these are not posted; Machinist positions at the Company are not considered an upgrade, but are posted and Maintenance Mechanics have successfully bid for these. The last Machinist position was filled internally by

a Maintenance Mechanic. Regarding the Assistant Electrician positions at the Company, Maintenance Mechanics have bid for these positions in the past but have never received these jobs.

David Tervola, Human Resources Director at the Company for the past year and one-half as well as Human Resources Manager for the nine years prior thereto, represented the Employer in negotiations for the last three labor agreements with the Union. Tervola stated that effective June 1, 1990, the 70 to 100 percent contract rates were negotiated by the parties because of labor costs; that the parties' intent was to apply this as a two-tier wage schedule to the semi-skilled or general laborer positions in the plant; and that this 70 to 100 percent wage progression was not a training progression by intent of the parties. Since 1990, the Company has applied this 70 to 100 percent wage progression to Bracket 9 and Bracket 10 hires; it has not hired new Maintenance Mechanics or Electricians from the outside at the 70 to 100 percent wage progression rates; nor has the Company hired outside employees for the Maintenance and Lead Worker positions and placed them on the six, twelve and eighteen month rates in Exhibit A. Since 1990, the Company has not hired an Assistant Electrician from within. Tervola believed that the parties intended to apply the 70 to 100 percent rates only to Bracket 9 and 10 positions because the upper brackets (Brackets 8 through 6) were normally filled from within.

Company Representative Tervola testified as follows:

(By Mr. Lindner)

Q. Now I notice in effect also that it says, "Effective June 1, 1990, new hires will receive the following rates". Do you recall what the purpose was of establishing that progression of 70, 80, 90, 100 percent progression?

A. That was put in primarily because of labor costs; and the intent of it was for the lower brackets, the semi-skilled or general labor positions.

Q. So I mean, wasn't that progression based upon – it was a two-tier wage progression as opposed to a training progression; is that correct?

A. Correct.

Q. And that has – And that progression historically since 1990 has been made applicable to new hires in brackets 9 and 10?

...

Q. What brackets has that provision been applicable to?

...

(The Witness): Brackets 9 and 10.

Supervisor Mike Weihert testified that he was responsible in part for setting the qualifications for the Maintenance Mechanic position and he also determines whether inside applicants are qualified to be trained for Maintenance Mechanic positions. The qualifications for the Maintenance Mechanic position have been upgraded – the Company now requires four years of technical school or a journeyman's certificate as well as extensive experience to fill these positions. (To be a Journeyman one must have served a four-year apprenticeship). Weihert stated that Jones, Willing, Dibble and Mosher were all hired by the Company to fill Bracket 6 Maintenance Mechanics jobs from their positions within the Company; that none of these employees had the qualifications required by the posting; that the Company interviewed them and put these employees through both mechanical and written tests and that each received at least 75 percent or better on these tests; that absent other qualified applicants, the Company then hired them and placed them on the eighteen-month contractual wage progression. According to Weihert, Scott Jones' resume did not demonstrate that he met the Maintenance Mechanic qualifications. Weihert confirmed Jones' belief that Jones was still being trained in his Maintenance Mechanic position as of the date of the hearing herein.

Weihert believed that those hired from outside to fill a Bracket 6 Maintenance Mechanic position were all hired at the top rate for that position as they were fully qualified for the positions they received prior to their hire. Robert Schuld was hired at \$13.86 per hour; Schuld had been a Maintenance Mechanic at Wis-Pak for three years, had been promoted to Maintenance Mechanic through a job posting and had served the eighteen month contractual wage progression; Schuld then quit his position at Wis-Pak and worked elsewhere for one and one-half years and thereafter applied for a Maintenance Mechanic opening at the Company. Paul Saxby had worked at Wis-Pak many years ago as a Maintenance Mechanic; Saxby then worked approximately ten years as a Maintenance Mechanic for another Company before he was rehired by Wis-Pak. Anthony Amato was hired as an Electrician by the Company and had the equivalent experience of a journeyman's certificate as an Electrician at that time. Robin Rice was hired by the Company as an Assistant Electrician and had experience as an Electrician for many years prior to his hire by Wis-Pak. David Kravitz was hired by the Company after many years of experience as a Maintenance Mechanic. When John Flint was hired as a Maintenance Mechanic by the Company, he had a journeyman Machinist card which he had possessed since 1972.

There is a difference between familiarization and training regarding a position. Any person hired from the outside would need to be familiarized with how to operate the equipment at the factory to find out where the tools and parts are located, to be shown how to prepare certain paperwork and how to perform some ordinary maintenance on some specialized machinery used at the Company, before they can be truly proficient at such operation. The outside hires did not need training as did the inside hires to the Maintenance Mechanic positions, but they did not need familiarization.

The Maintenance Mechanics hired from the outside served probationary periods of thirty days each. Weihert stated that there is nothing in the contract that requires the Company to hire employees from within for Maintenance Mechanic jobs when they lack qualifications therefor; and that the Company has refused to allow employees who have signed postings to test or be considered further for jobs if they are initially found to be unqualified. Weihert stated that for the inside employees who were hired into the available Maintenance Mechanic positions (despite their lack of qualifications), more than eighteen months on the job is required for them to be real assets to the Company and that the Company has always required inside hires to Maintenance Mechanic positions to go through the full eighteen month contractual wage progression prior to their receiving top pay.

In an undated communication from the Company to the Union, the Company listed the following facts which are not disputed:

...

The following individuals followed the normal wage progression for the maintenance bracket as stated in the contract:

	Hire Date	Job Award Date
Scott Jones	3/25/86	9/17/95
Lynn Willing	10/12/87	8/20/95
Gerald Dibble	3/7/94	6/18/95
Elmer Mosher	4/4/84	5/22/95
Kevin Kemmerling	6/13/94	Started at Asst. Electrician

The following individuals were hired in the top of the bracket scale:

	Date of Hire	Starting Wage
David Kravitz	10/23/95	13.56
John Flint	2/19/96	12.56
Robert Schuld	12/30/96	13.86

Anthony Amato	1/15/97	13.65	
Paul Saxby	7/2/97	13.86	
Robin Rice	8/16/95	14.84 (Asst.	Electrician)

...

Teamster Business Agent Joe Ashworth has been involved in collective bargaining with the Company for approximately the last eight years. Ashworth stated that during negotiations for the current collective bargaining agreement, the parties agreed to change Article 35.1 to allow the Company to fill Lead and Maintenance positions based upon qualifications determined by the Company rather than with the senior qualified bidder, as had been done in the past contract. However, Ashworth said that the Company did not seek to change any of the language that appears in Exhibit A of the collective bargaining agreement regarding new hire rates from 70 to 100 percent and that language on Exhibit A was in the collective bargaining agreement prior to the currently effective 1993-98 agreement. Ashworth believed that the change in Article 35.1 allows the Company to more easily hire employees into the Lead and Maintenance positions from the outside. Prior to the settlement of the 1993-98 contract, the Company had hired most of its Lead and Maintenance employees from within, from entry level positions in Brackets 9 and 10. In regard to the negotiation of the 70-100 percent wage progression, Ashworth testified as follows:

(By Ms. Hoeschen)

Q. And were you involved in the negotiations in which the 70, 80, 90, 100 percent progression was adopted?

A. Yes, I was.

Q. Do you recall the parties agreeing that this progression would apply only to certain brackets?

A. I don't know any bracket that was carved out as to not applying to.

Q. Was there an understanding that there were some brackets that it was less likely to apply to just because most hiring was done from inside?

A. Not that I recall. I recall it applied to everybody.

Ashworth stated that pursuant to Article 35 as it now appears in the labor agreement, the Company can hire the most qualified applicant from inside or outside the Company; and that in the absence of anyone who meets the job qualifications, the labor agreement allows the Employer to train bargaining unit employees to fill open positions; and that all of the Grievants were trained by the Company in their Maintenance Mechanic positions. Ashworth was unaware that employees had been hired into both the Maintenance Mechanic and Electrician positions since 1990 who had not gone through the 70 to 100 percent wage progression. No grievances have been filed between 1990 and 1997 regarding the issues in dispute in this case. Union Steward Jones was also unaware that other employees had been hired at the top of the wage progression prior to his conversation with Weihert which led to the filing of the instant grievance.

POSITIONS OF THE PARTIES

Union

The Union argued that the contract language unambiguously requires the Company to put all new hires through the 70-100 percent wage progression. The Union noted that Exhibit A uses the mandatory word "will" and that Article 15.1 in describing rates of pay states that such rates "shall remain in effect during the term of this Agreement." The Union noted that there was no language in the contract that would allow the Company to deviate from this scheme.

The Union noted that in this case it would be appropriate to apply the legal principal that express mention of one item implies the exclusion of all others. In this regard, the Union asserted that the contract language does not incorporate any training wages, but rather establishes wages solely on the basis of whether an employee is a new or internal hire and the length of the employee's service in his position. The Union contended that the Company's (claimed) difficulty in finding qualified Maintenance Mechanics and Electricians should not allow it to bypass the clear language of the contract. Here, the Union urged, the contract uses such terms as "start rate" and "contract rate" which makes it clear that the Company may not deviate from these prescribed rates.

The Union argued that the Company's assertion that the undersigned should read a training rate into the contract is not supported by the clear language of the contract, the bargaining history or past practice. In this regard, the Union noted that as the contract is clear, any reference to bargaining history is unnecessary. However, the Union asserted that a review of the negotiation history between the parties would support the Union's assertions herein. In this regard, the Union noted that the Company offered no bargaining notes or any specific recollections from witnesses which would support its claims, while Union agent Ashworth offered specific testimony on these points.

Furthermore, the Union noted that the testimony herein demonstrated that the Company has never treated the steps in its wage progression as training wages. In this regard, the Union noted that the Company has placed outside hires at the top of the wage bracket without previously evaluating their skills; that the Company has not evaluated new hires after their probationary period to determine if they are actually capable of performing the work; and that the Company never evaluates internal hires to determine if they should proceed more quickly to a higher training wage rate or remain longer at a lower rate of pay in the progression. Thus, the Union urged that if the wage progressions in Exhibits A and B were really training wages, employees who learned faster or slower would progress either faster or slower through the progression, respectively.

Therefore, the Union asserted that the evidence demonstrated that the Company's wage rates are simply too low to attract qualified applicants and that this is the true reason why the Company has paid its outside hires at the top rate. However, the Union urged that the Company should, in fairness, negotiate changes in the labor agreement to allow it to hire outside applicants at a higher wage or restructure the wage schedule so that it can meet the Company's needs.

The Union further asserted that the Company, by its actions herein, has violated Article 31 by essentially dealing directly with employees regarding their wage rates, when the Union is the bargaining unit employees' exclusive bargaining agent for these purposes. Thus, the Union sought an order that the Company cease and desist from placing new hires at the top wage rate on the wage progression; and that the Company be ordered to pay its employees who bid internally for the Maintenance Mechanic positions at the higher rate of pay which the Company paid to outside hires for these positions retroactively to their hire date into the Brackets 6 or 2.a. In the alternative, the Union suggested that the undersigned "fashion a remedy sufficient to discourage further violations" such as two week's differential pay for all Maintenance Mechanic personnel who earned less than the outside hires.

The Company

The Company noted that the labor agreement provides for several positions which have no requirement of training or any progression to accommodate a learning curve: Master Maintenance Mechanic and Leadpersons. Thus, the Company urged that this is evidence that the Bracket wage rate progressions were intended to accommodate a training and/or learning curve for employees for certain jobs. In this regard, the Company noted that for its least challenging jobs (Brackets 9 and 10) the progression is minimal. The Company further noted that Union Steward Jones confirmed that for the more skilled jobs there is a longer wage progression and that it was in fact due to the need to train employees that these progressions were agreed upon by the parties.

Thus, the Company asserted that the Union's arguments were specious that new hires should be put not only through the 70 to 100 percent wage progression but also through the eighteen month wage progression contained in Bracket 6. The Company pointed out that it had hired outside Maintenance Mechanic Michael Kozera in May, 1994 (more than a year before the grievance herein was filed) at the top wage rate and that the Union did not object thereto. The Company also pointed out that despite the Union's arguments to the contrary, Union agent Ashworth stated that negotiated changes were made in Article 35.1 in order to facilitate the Company's hire of Maintenance employes from the outside and to grant the Company the right to determine qualifications and to fill lead maintenance positions based solely thereon.

Thus, the Company argued, its ability to more easily hire outside applicants would be completely destroyed by the Union's contention that the 70 to 100 percent new hire progression is applicable to Maintenance new hires. In a tight labor market, the Company noted, a Maintenance Mechanic hired between June 5, 1995 and October 1, 1996 making 70 percent of the probationary rate would have been hired at \$9.02 per hour with a progression to \$12.00 per hour, rates far less than would be required to attract and retain qualified applicants. Thus, the Company urged that its ability to hire outside skilled Maintenance Mechanics gained in the current collective bargaining agreement would be nullified were the Union to prevail herein.

In addition, the Company took exception to the Union's argument that Maintenance Mechanics hired from the outside should be forced to go through the eighteen month wage progression set forth in Bracket 6. In this regard, the Company noted that Maintenance Manager Weihert stated that the outside new hires were all experienced and capable of performing the Maintenance Mechanic and Electrician jobs they were given at the time of their hire. The Company contended that only basic familiarization with employe protocol and equipment, not training, was necessary for these employes to fully perform their job duties.

Even if it could be argued that the Maintenance Mechanic employes hired from the outside should be subject to the eighteen month wage progression set forth in Bracket 6, the Company asserted, no appropriate argument could be made that the four Grievants should be elevated immediately to the top of the eighteen month progression, there being no quality of work argument in this case. Indeed, if the undersigned found that the eighteen month wage progression should be applied to the Maintenance Mechanics and Electricians hired from the outside, the appropriate remedy in this case, in the Company's view, would be to order the Company to cease and desist with respect to future contract violations. For all of these reasons, the Company urged that the grievance should be denied and dismissed in its entirety.

DISCUSSION

Article 15.1 incorporates Exhibits A and B into the contract without further elaboration relevant to this case. Exhibits A and B list hourly pay rates for various classifications which are

organized into groups called "Brackets." These Brackets appear to group jobs on the basis of complexity, experience and/or training. In Brackets 2a, 6, 8, 9 and 10, for example, the jobs have a probationary rate and/or a 30 day rate, a six month, 12 month and (Bracket 6 only) an 18 month pay step.

The Company has argued that the pay steps in each of the Brackets are learning/training steps and that employees enter these Brackets not as normal transfers or promotions from similar positions, but as new jobs for which they must apply and qualify and which require new duties, skills, training and experience on the job. In my view, the Company's argument is a valid one. The following classifications appear to have steps which would require learning/training: Brackets 2, 3, 4, 5 and 7. The Company observed that in regard to the more skilled jobs (Lead jobs, Machinist and Master Maintenance Mechanic) no learning/training wage steps are built into those classifications. In addition, I note that Union Steward Jones confirmed that the Master Maintenance Mechanic and Machinist positions have been posted by the Company and filled from within the plant by Maintenance Mechanic employees.

Based upon this evidence, the presence of the pay step rates in Exhibits A and B shows an intent by the parties to have regular increases across the contract term for certain positions based upon learning, training and experience on the job, while other positions require no such learning/training time, as employees who have filled these jobs have generally gained this experience in the lower job Brackets. In support of this conclusion, I note that Union Steward Scott Jones confirmed that in negotiations for the current labor agreement, the parties included a longer pay step progression for some jobs due to the necessity of training on the job and the increased difficulty of the work in those positions. The contract also shows that for jobs which require less skill, experience and ability (such as the jobs contained in Bracket 10), the number of pay steps is limited. Thus, it is reasonable to conclude that training/experience time has been built into the contract in both Brackets 2a and 6.

The question arises, however, what purpose the 70 to 100 percent wage progression has in the contract. There is no conflict in the testimonial evidence on this point -- the 70 to 100 percent wage progression was placed in the agreement as a two-tier pay system. The language of Exhibits A and B clearly shows that the 70 to 100 percent wage progression applies to "new hires". The Company has argued that the 70 to 100 percent pay progression was placed in the contract to apply only to less skilled jobs in Brackets 9 and 10. However, nowhere in the contract is such a limitation spelled out.

As the term "new hires" is not qualified or limited, it must be interpreted to include new hires in all classifications. In Sections 35.1 and 35.4, the contract makes a definite distinction between "employees" "internal" candidates or "bidders" and "qualified new hires" or "external" candidates. In my view, and given the organization of the pay steps contained in Exhibits A and B, there is no question that the 70 to 100 percent pay progression was intended by the parties

to be applicable only to new external hires, not to internal contractual bidders who would have no incentive to bid for jobs if their pay were then cut to 70 percent of the new position pay (or remain at their present pay).

The Company pointed to its hire of Maintenance Mechanic Kozera in May, 1994 at the top rate to demonstrate that it has the right to hire outside applicants at top pay. However, I note that both Union witnesses denied having any knowledge prior to the instant hearing of Kozera's hire at top pay. 2/ The Company also asserted that should the grievance be sustained, this would abrogate the Company's ability (recently acquired in the new language of Section 35.1) to set qualifications and easily hire qualified new hires for Lead and Maintenance positions. Although it is true that the Company's ability to hire and retain qualified Lead persons and Maintenance employees would likely be greatly curtailed were the grievance sustained, I cannot find that the Company's ability to hire these workers would be destroyed, as the Company has claimed. In this regard, I note that the Company did not place data in this record to show what competitive rates for Lead and Maintenance Mechanic positions would be and it failed to point to any provision in the contract which would require that I recognize such statistics.

In addition, the Company contended that to force external hires to progress not only through the 70 to 100 percent pay progression as well as the pay steps contained in each of the Brackets would be absurd, as all six external hires were highly experienced and fully qualified to perform the jobs they received at the time of their hire. I agree. It is only logical that the 70 to 100% progression must be a percentage of top pay. The Company would have been able to hire these six fully qualified external hires at top pay but for the existence of the language regarding the 70 to 100 percent progression in the agreement. Therefore, the Company violated Article 31 and Exhibits A and B by hiring Kravits, Flint, Schuld, Amato, Saxby and Rice at the top pay from their dates of hire.

The fact that the Company has violated the contract as described herein does not mean that the five internal bidders (Jones, Willing, Dibble, Mosher and Kemmerling) are due any backpay or that they should be treated differently by the Company. Indeed, the Company undisputedly placed each of the five internal bidders in Maintenance Mechanic positions despite the fact that they were not qualified therefor. The Company could do this pursuant to Article 35 in order to train those internal bidders on the job and the Company was within its rights to pay those bidders the "lowest rate of pay". 3/ Thus, it is clear that the contract allows the Company to pay internal bidders at the rate of pay of their former position or at the lowest pay step for the new position they bid into, whichever is less. As such, the five employees whose situation is being addressed in this grievance are due no backpay.

Furthermore, as there is no contractual language to support a conclusion that these bidders are entitled to be moved ahead in the step pay plan for Maintenance Mechanics, faster

than those steps would indicate, and no award of such accelerated movement shall be granted herein. 4/ Rather, the evidence supports an award ordering the Company to cease paying the six external hires involved herein at a rate of pay higher than the appropriate percentage (70 to 100 percent) of top pay. 5/

Based upon the above analysis as well as the relevant evidence and argument herein, I issue the following

AWARD

The Company violated the collective bargaining agreement by hiring outside employees at the top of the wage progression. Therefore, the Company shall, as of the date of the instant grievance, cease paying Flint, Schuld, Amato and Saxby at top pay without first applying the appropriate percentage (70 to 100 percent) to their pay rates, as applicable. 6/

Dated at Oshkosh, Wisconsin this 19th day of December, 1997.

Sharon A. Gallagher /s/

Sharon A. Gallagher, Arbitrator

ENDNOTES

1/ The record does not reveal how long Jones served on the Union's bargaining team.

2/ Even if one were to find the contract language ambiguous (which I do not), the evidence regarding past practice would be of no assistance in filling in the contractual gaps herein, as only one person (Kozera) was hired at top pay and without the knowledge of the Union. In regard to the evidence of bargaining history, I note that neither the Union nor the Company offered any bargaining notes or proposals for the record in this case and that the evidence given by Ashworth and Weihert was conclusory, directly contradictory and consequently of no help in this area.

3/ As employes/internal bidders could not be considered "new hires", the 70 to 100 percent pay progression is not applicable to them.

4/ Backpay awards are essentially designed to remedy injuries. The internal hires here have not been injured. The external hires have received benefits they were not contractually entitled to. This is precisely the type of case that the parties should address further in collective bargaining.

5/ By issuing this Award, I have not addressed or decided the affect of the 70 to 100 percent pay progression upon the various Brackets in general. Rather, I have only determined that as the Company has hired six external applicants for jobs in Brackets 6 and 2a, who it deemed were fully qualified to perform the duties of their positions as of their dates of hire and that those six new hires' pay rates could logically be set at 70 to 100 percent of top pay in Brackets 6 and 2a, as applicable. I note that the Union did not specifically contest the six new hires' qualifications or the Company's finding that they were qualified. On this point, the fact that some or all of these six new hires needed assistance to familiarize themselves with Company equipment and procedures does not necessitate a conclusion that these six new hires were unqualified for the positions they received.

6/ As both Kravitz and Rice appear to have worked for the Company for more than two years as of the date of this Award, the 70 to 100 percent pay progression would not apply to them at this time. In addition, this Award does not address the issue of recoupment of excess wages paid by the Company to external hires in the past. As the contract is silent on this point and the Union has made no arguments thereon, this issue is left to the Company to determine.