

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**BREWERY WORKERS LOCAL 9,  
UAW, AFL-CIO**

and

**MILLER BREWING COMPANY**

Case 20  
No. 55580  
A-5622

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Appearances:

Murphy, Gillick, Wicht and Prachthauser, by **Mr. George F. Graf**, on behalf of the Union.

Quarles & Brady, by **Mr. Eli A. Leichtling**, on behalf of the Company.

**ARBITRATION AWARD**

The above-captioned parties, herein "Union" and "Company", are privy to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in Brookfield, Wisconsin, on September 16, 1997. The hearing was transcribed and the parties thereafter filed briefs which were received by November 4, 1997.

Based upon the entire record and the arguments of the parties, I issue the following Award.

**ISSUE**

The parties have agreed to the following issue:

Whether the Company violated Articles V and/or VI of the contract when it refused to recall grievant Randy Scott Chenoweth to a job in its Powerhouse and thereby displace an employe with less plantwide seniority after Chenoweth obtained a Second Class Stationary Engineer's License and, if so, what is the appropriate remedy?

## **BACKGROUND**

The Company makes beer at its Milwaukee, Wisconsin, facility.

Grievant Chenoweth worked there from June, 1978, to January 5, 1996, when he was laid off along with other employes. Earlier, Chenoweth requested a transfer to the Powerhouse Department on June 9, 1984. Said request, which is still on file, was denied. At the time of his January 5, 1996, layoff, Chenoweth was classified as an Oiler in the Oiling Department. After his layoff, Chenoweth received a Second Class Stationary Engineers' License ("Second Class License"), on October 6, 1996, from the City of Milwaukee.

Chenoweth on October 8, 1996, asked the Company to recall him to the Powerhouse. At that time, there were Powerhouse employes who had less seniority than Chenoweth. The Company refused to do so on the ground that Chenoweth was not qualified to work in the Powerhouse. As a result, there was extensive testimony at the hearing regarding Chenoweth's qualifications, along with the qualifications which the Company believes are necessary for an Engineer to possess in its Powerhouse.

Chenoweth testified that he over the years had taken various courses to qualify for his Second Class License and other licenses; that he is now working with boilers in his present job with Northwest General Hospital; that he for about three (3) years worked with boilers at International Stamping Company before he took his job with the Company in 1978; that he believes he is qualified to work in the Powerhouse because he has "the schooling, the knowledge, and the license"; and that he needs some training and orientation to do so.

On cross-examination, he said that the pressure boilers at International Stamping Company had about 50 horsepower and measured about 20 by 4 feet; that he started up those boilers "probably maybe two dozen times"; that he did not have any refrigeration or engine room experience with generators and turbines there; that he needed a license from the City of Milwaukee to legally work as a Second Class Engineer; that the boilers at Northwest General Hospital have about 60 pounds of pressure; that he does not know their horsepower; that they measure about 4 by 25 feet; that his only refrigeration experience at his present job involves chillers; that he has no experience working with CO2 or cryogenic systems; and that while he related all of this information to a Union officer, he has not spoken directly to Company representatives regarding the training and experience he has gained after October, 1996, when he asked to be recalled to the Powerhouse.

Union officer Eckhard Tetzlaff, who works in the Fermenting Division of the Brewing Department, testified about the training offered to employes who transfer into his area when there are layoffs. He said all operational jobs there "need training" and that said training can take up to about three (3) or four (4) weeks.

Union Recording Secretary James Robinson testified that he informed Company representatives after the third step of the grievance proceeding about Chenoweth's post-October, 1996, training and experience. He also testified about employees with medical restrictions who were recalled to work and about Wayne C. Durham's hire by the Company pursuant to an arbitration award which allowed him to work in the Powerhouse after he was laid off by Joseph Schlitz Brewing Company. Durham had previously worked as an Operating Engineer in a powerhouse before he started working for the Company and hence was fully qualified for that position at the time he took it.

Union Steward Jim Laczewski, who works in the Powerhouse, testified that a vacancy occurred in the Powerhouse in 1996 after the Company terminated Powerhouse employee Michael Lofton.

Assistant Brewing Manager Jacqueline Reese testified that in order to avoid layoffs, the Company transfers employees to Brewing Department jobs that require "minimal type of training." She disputed Tetzlaff's testimony by stating that transferred employees into the Brewing Department only need about one (1) week or less of training.

On cross-examination, she acknowledged that certain employees from the recently-eliminated Oiling Department transferred to the Brewing Department; that some of them required training that lasted "about five weeks"; that other employees required training which lasted from two to four weeks; that these senior Oilers bumped less senior Brewing Department employees; and that other Brewing Department employees were laid off at the time. Reese added that employee Bob Kayzel was placed on "inactive" status because of his medical restriction and that after a grievance was filed, Kayzel was trained for "several weeks" for an operational job in "H" house.

Plant Services Manager Melinda DeLuca, who is responsible for the Powerhouse, testified: "we consider ourselves the largest refrigeration system in the state." She added that there are four boilers, the largest of which produces 100,000 pounds an hour, and that the two smallest produce 40,000 pounds an hour. They are about five stories high, about 40 to 60 feet deep, and about 20 feet across. She said that the boiler operation has become more complex because employees now must operate them without any second or third shift supervision and that Powerhouse employees must operate the water softening system, the dearoter (which processes steam and returning condensate), carbon purifiers, ammonia compressors, evaporate condensers, turbine generator, the process hot water system, cooling tower, and the CO2 compressors.

DeLuca testified that the Company's operations were accurately depicted in a diagram (Company Exhibit 1), which, *inter alia*, showed the following:

**POWERHOUSE ORGANIZATION  
&  
OPERATING AREAS**

**BOILER ROOM**

ONE OPERATOR  
PER SHIFT

MAJOR OPERATION  
RESPONSIBILITY:

- \* 400 PSIG STM BOILERS
- \* DEARATORS
- \* WATER SOFTENERS
- \* CARBON PURIFIERS
- \* BOILER FEED WATER  
PUMPS

**UTILITIES  
OFFICES**

**ENGINE ROOM**

ONE OPERATOR PER SHIFT

MAJOR OPERATION  
RESPONSIBILITY:

- \* AIR COMPRESSORS
  - \* AMMONIA COMPRESSORS
  - \* TURBINE GENERATION  
W/ SYNCHRONIZING PANEL
  - \* CO2 SYSTEM
  - \* EVAPORATIVE CONDENSORS
  - \* PROCESS HOT WATER  
SUPPLY
  - \* COOLING TOWER

**REFRIGERATION  
OPERATOR**

ONE OPERATOR PER SHIFT

MAJOR OPERATION  
RESPONSIBILITY (PLANT WIDE): 8 MAINTENANCE

- \* HVAC
- \* REFRIGERATION
- \* AMMONIA PUMP OUT
- \* FERMENTING CO2  
COLLECTION

**OVERALL ORGANIZATION**

12 OPERATORS (4 GROUPS OF 3)

20 TOTAL

On cross-examination, DeLuca acknowledged that she is engaged in a cross-training program aimed at obtaining "multi-skilled operators and maintenance persons" and that not all of the Boiler room Operators can now perform all of the engine room operations and *vice-versa*.

She estimated that an experienced person with a Second Class License would need "four to six months to be a proficient Boiler Room Operator" and that Chenoweth also would need at least that much training because his prior experience with other boilers is not much help because, in her words: "They're not the same animal." She explained all of the various operations he would have to run, a task made more difficult by the fact that there is only one other Boiler Room Operator and Engine Room and Refrigeration Operator per shift. She further stated that former Boiler Room Operator Bob Sadowski was the least senior Powerhouse employe in October, 1996, when Chenoweth asked to be recalled and that Sadowski bid for a maintenance position in the Powerhouse in November, 1996, which subsequently was awarded to him. Hence, it is Sadowski who would be bumped from his position if Chenoweth were to be recalled at the present time. DeLuca explained how Sadowski was being cross-trained for refrigeration maintenance ("Reefer"), and she named the various other Powerhouse employes who have been cross-trained. She added that all maintenance employes in the Powerhouse "must relieve in one of those areas."

Robert Marshall, the supervisor in the Powerhouse utilities department, testified that it would take six or nine months to properly train Chenoweth as a Boiler Operator without any supervision "Because of the type of equipment we have, very complicated." He explained that Chenoweth has only worked with "package boilers" which are far less complicated than those used by the Company and which therefore "require a lot of hands-on operation for light-off, for warm up, and for operation." He said that it would probably take "over a year to be able to train somebody to take Mr. Sadowski's position" and that the Powerhouse is a hazardous place to work because it uses high temperature ammonia, "superheated steam from the boiler room", high voltage, and transformers.

On cross-examination, he stated that it would take at least six months to fully train a Boiler Room Operator to become an Engine Room Operator.

Employe Relations Manager Mike Braunschweiger testified that he had reviewed the past practices on this issue and that he could not find any instances of where an involuntarily laid-off employe had ever been recalled to a position which was not vacant at that time and which therefore required that another employe be laid-off in order to make way for the laid-off employe. He also said that no employes were laid off when Durham was hired by the Company. He added that injured employes are placed on inactive status or a medical leave of absence; that they are not laid-off; and that injured employes "most likely" would be returned to their former departments. He also said that Chenoweth was not recalled in October, 1996, because he at the time of his January, 1996, layoff did not have a Second Class License; because he then "wasn't capable and qualified for the position"; and because Chenoweth "could not be trained in a reasonable period of time."

Responding to Laczewski's claim that Chenoweth could have been recalled to replace Lofton, Braunschweiger said that Lofton was reinstated following his initial discharge and that the Company did not recall Chenoweth in the interim because it wanted to see how the Lofton situation would be eventually resolved.

On cross-examination, Braunschweiger testified that he did not know the full circumstances regarding Durham's hiring; that he did not know whether injured employees were placed on "medical layoffs" more than three (3) years ago; that the contract does not define what constitutes a reasonable training period; that the contract does not contain any time limits for training; and that "the amount of time required to train Mr. Chenoweth. . . was too long." He added that anything more than a one-month training period was too long; that while Chenoweth in October, 1996, had the requisite licensing requirements to work in the Powerhouse, it was a "moot point" because he already was disqualified for that position when he was laid-off in January, 1996; and that he agreed with DeLuca and Marshall as to how long it would take to properly train Chenoweth for a Powerhouse position. Saying that he had never heard the term "medical layoff" in his 22 years of employment with the Company, he did not dispute Robinson's testimony relating to medical leaves of absence.

### **POSITIONS OF THE PARTIES**

The Union argues that the Company violated the contract when it refused to recall Chenoweth in October, 1996, because the parties agreed in Articles V and VI of the contract that in the event of a lay off, "junior employees will be laid off and the senior employee will be given every opportunity to remain at work." The Union claims that there is no contract language to the effect that a senior employee "must be capable and qualified only at the time of the layoff"; that Chenoweth in October, 1996, became qualified to work in the Powerhouse after he was laid off; that the Company thus is required to give him whatever training period is needed because Article VI, Section 6, provides for "reasonable training opportunities"; and that the Company in the past has provided such training to employees out on medical leave and to employees who have been transferred to other jobs. It further maintains that since Chenoweth has had a pending transfer request on file since 1984, "he should have been able to implement this transfer request and avoid layoff". As a remedy, the Union asks that Chenoweth be granted a Powerhouse position and that he be made whole because of the Company's refusal to award him that position.

The Company, in turn, asserts that it is not required under the contract to recall involuntarily laid-off employees at a time when laid-off employees would not normally be recalled and that, moreover, Chenoweth is not capable and qualified to work in the Powerhouse even if he were to be granted a reasonable training opportunity.

## **DISCUSSION**

This case largely turns on Articles V and VI of the contract which state:

### **ARTICLE V - DEPARTMENT ASSIGNMENTS AND TRANSFER**

#### **Section 1**

Weekly assignments of employees to departments identified in Article III, Seniority shall be made as follows:

- (a) The Company will determine the number of employees to be assigned to each department. Employees will be assigned to their departments in accordance with their department seniority.
- (b) Employees who do not have sufficient department seniority to be assigned to their regular department will be assigned to any department to fill an available opening or to displace a junior plant seniority employee in order to avoid layoff in accordance with Article VI, Layoff and Recall.
- (c) Following assignment to departments, employees will be placed on a shift in accordance with their shift preference and plant seniority.

#### **Section 2**

Following the start of the work week, an employee may be assigned to another department when the employee's job is discontinued or in order to meet operational needs without regard to seniority.

#### **Section 3**

Stewards shall be the last to be assigned from their department and shift provided they are capable and qualified to perform the work available in the department.

### **ARTICLE VI - LAYOFF AND RECALL**

#### **Section 1**

All weeks of vacation accrued for the purposes of minimizing layoffs are to be scheduled in accordance with the provisions of Article XXIII, Vacations,

Section 15(f). Employees shall be laid off in accordance with their seniority in the Company, the employee with the least plant seniority to be laid off first, provided that the retained employees shall be capable and qualified to perform the work available.

## **Section 2**

In the event of a layoff of employees, transfers of employees from department to department shall be made in accordance with the provisions of Article V, Department Assignments and Transfer provided that:

- (a) Employees transferred are capable and qualified to perform the work to which they may be assigned in the department to which they are transferred.
- (b) There must be capable and qualified employees retained in the department from which the transfer is being made to perform all available work in that department.
- (c) Stewards shall be last to be transferred provided they are capable and qualified to perform the work available.
- (d) An employee subject to transfer must accept transfer or be placed on voluntary layoff.

## **Section 3**

Laid off employees shall be recalled as follows:

- (a) Employees shall be recalled in reverse order of layoff.
- (b) Any employee who fails to report for work within the required three (3) working days shall be considered a quit. However, recalled employees may be reinstated to the top of the recall list provided that, within seven (7) calendar days of the notice of recall, they supply the Company an acceptable reason for their failure to report.
- (c) Employees on layoff who are recalled may refuse such recall, provided they notify the Company of their refusal within one (1) working day of receipt of notice. In the event such timely notice



is given, the employees' name shall not be placed on the recall list until they notify the Company in writing of their availability. Such employees must accept in reverse order of seniority when there are no regular employees left on layoff.

- (d) Employees shall at all times record their current address and telephone number with the Company and the Union by written notice on forms to be provided by the Company.

#### **Section 4**

No layoff shall be effective unless the employee to be laid off is notified in writing prior to the middle of the shift before such layoff is to take place provided the employee is available. Such employee's shop steward shall be notified of the layoff in writing not later than the middle of the steward's shift, but not sooner than the middle of the affected employee's shift, provided that the steward is available.

#### **Section 5**

The Company shall notify the Union weekly of all vacations, full week of holidays, recalls, layoffs, transfer resulting from layoffs, and absences due to illness of more than fifteen (15) working days' duration. Written notice of all transfers and requests for transfers, weeks and days of vacation scheduled to minimize layoffs along with copies of all recall and layoff lists will be given to all stewards. Written notice of all changes in shift assignments within a department shall be given to all stewards within the department affected. A departmental seniority record including shift preference shall be maintained in each department and shall be available to stewards in the department. Shift supervision will make adjustments when necessary in order to comply with the contract.

#### **Section 6**

The phrase "capable and qualified", as used in this Article and elsewhere in this contract, is defined as the ability to perform the work without training, except in the case of permanent vacancy. In addition, the following shall eliminate an employee from consideration for a specific job:

- (a) Where they do not possess the proper license required on the job.

- (b) Where the job requires mechanical skill, but they have not had acceptable experience in that mechanical branch.
- (c) Where they have a known handicap which might prevent them from performing the job satisfactorily or safely.

Employees who may become subject to layoff out of seniority order because they are not capable and qualified will be provided reasonable training opportunities to obtain the necessary ability to perform the work.

### **Section 7**

An employee not subject to layoff may apply for a voluntary layoff in place of a less senior employee scheduled for layoff provided that the retained employees shall be capable and qualified to perform the work available. Employees requesting voluntary layoff must submit a written request to the Company at least seven (7) days prior to the Monday of the workweek in which the voluntary layoff would commence. An employee on voluntary layoff shall be placed at the top of all recall lists. Also, an employee on voluntary layoff may request to return to work at any time even though a laid off employee would not normally be recalled. Such requests must be made in writing to the Company at least ten (10) days prior to the Monday of the workweek in which the employee wishes to return to work. No request to return to work from voluntary layoff will be honored unless the employee has been laid off for a period of at least two (2) weeks. (Emphasis added).

...

None of this language on its face expressly gives laid-off employees the right to be recalled to positions already held by junior employees when they become qualified for said positions after their initial, involuntary layoffs. By the same token, none of this language on its face expressly prohibits such an involuntarily laid-off employee from being recalled in this fashion.

Article VI, Section 7 however, does address what is to be done when an employee who accepts an involuntary layoff wishes to return to work. It states: "an employee on voluntary layoff may request to return to work at any time even though a laid-off employee would not normally be recalled." This proviso shows two things: (1), the parties knew how to draft contract language providing for the recall of laid-off employees when they normally would not be recalled; and (2), the recalls referenced in the contract are limited to employees who take a voluntary layoff.

The Union therefore in effect wants this proviso to be read as: "an employe on voluntary or involuntary layoff may request to return to work at any time even though a laid-off employe would not normally be recalled." Since Article XXVI, Section 4, Step 3, of the contract provides that an arbitrator has "no right to amend, modify, ignore or add to the provisions of this agreement", it is improper to amend Article VI, Section 7, by adding the word "involuntary" to this proviso, which in essence is what the Union wants me to do. Hence, Article VI, Section 7, must be applied just as it reads, i.e., that only employes on voluntary layoff can be recalled even though there is no vacant slot at the time. Since Chenoweth is on an involuntary layoff, he cannot be recalled unless there is a vacant position for which he is qualified.

But, even if the contract were to be construed in the fashion urged by the Union, the record establishes through Supervisor Marshall's testimony that Chenoweth needs about 6-9 months of training before he could fully work on his own. While the Union asserts that such a prolonged training period is reasonable, I disagree, because this record fails to show that any other employes in the past have ever been given that much training. For while the Union points out that other employes have been trained up to several months for their new positions and that the Company also has offered such training to employes on medical leaves of absence, none ever approached the prolonged level of training that Chenoweth needs to properly work alone in the Powerhouse on complex machinery he has never handled.

It is true that Chenoweth now is licensed to work in the Powerhouse and that he has had some experience in working with boilers, first at International Stamping Company (his prior employer), and now at Northwest General Hospital. However, those boilers are far less complex than the ones found in the Powerhouse. As a result, Chenoweth has had no experience in dealing with some of the more complex Powerhouse operations. He therefore at present is not "capable and qualified" to work there.

The Union nevertheless points out that Powerhouse employes are not expected to know how to operate all of the Powerhouse operations; that the Company recently has cross-trained Powerhouse employe Sadowski; and that the Company has trained other employes for somewhat long periods of time. Thus, Sadowski was cross-trained as a Reefer for about six months and Tetzlaff testified about employes who were trained for about four weeks or more. His testimony was corroborated by both Rausch and DeLuca who testified to the same general effect.

Here, though, Chenoweth is not properly trained for even one of the three Powerhouse positions, which is why his situation is different from Sadowski who was fully trained as a Boiler Operator before being cross-trained as a Reefer. Thus, after Sadowski spent six months learning how to be a Reefer, he became fully qualified for two Powerhouse operations. Chenoweth, by contrast, would only be qualified for one Powerhouse position after his 6-9 month training period. Chenoweth thus would need an extra six months or so before being

qualified to work in a second Powerhouse operation. Sadowski, then, is worth twice as much to the Company as Chenoweth as far as ability to work in the Powerhouse is concerned, which is why the Company can legitimately draw the line on Chenoweth who has zero experience in working with the Powerhouse's complex machinery. For as the Company rightfully notes, it has voluntarily offered training "to promote operational efficiency, and not for the convenience of the employe who otherwise would be laid off".

The Company similarly can draw the line between the way it has trained other employes with the extensive on-the-job training that Chenoweth needs. For except for Sadowski whose situation in any event is different from Chenoweth for the reasons just noted, this record fails to establish that the Company has ever trained an employe for more than 1-2 months. It thus is too great a leap for the Union to now insist that the Company must train Chenoweth for 6-9 months under Article VI, Section 6, of the contract which requires the Company to provide "reasonable training opportunities. . ." The key word here is "reasonable" because it implies some kind of limitation. This is contrary to the Union's claim which presupposes that the Company is required to provide "unlimited training opportunities."

It is true, as the Union correctly points out, that Article VI, Section 6, on its face does not contain any time limitation on what constitutes "reasonable training opportunities. . ." But, at some point, such a line must be drawn if the word "reasonable" is to have any meaning at all. Absent any past history of regularly training employes for more than two or so months for initial entry into a department, it is unreasonable to ask the Company to spend up to six months to properly train Chenoweth given the fact that the Company in Article 1, Section 3, of the contract retains the right to establish "performance and related standards. . ."

I also find without merit the Union's claim that Chenoweth should have been recalled after Lofton was terminated, as the record shows that the Union itself at that time pressed for Lofton's return to work which is what eventually happened. As a result, there was no permanent vacancy at that time for Chenoweth to fill.

Also without merit is the Union's claim that Chenoweth should have been recalled because former Schlitz Brewing Company employe Durham was hired for the Powerhouse, as the record shows that Durham, unlike Chenoweth, had formerly worked in a powerhouse and hence was able to start work for the Company with very little training.

In light of the above, it is my

**AWARD**

That the Company did not violate Articles V or VI of the contract when it refused to recall grievant Randy Scott Chenoweth to a job in the Powerhouse after he obtained a Second Class Stationary Engineer's License; his grievance is therefore denied.

Dated at Madison, Wisconsin, this 9th day of January, 1998.

Amedeo Greco /s/

Amedeo Greco, Arbitrator

