

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**LOCAL LODGE NO. 697, INTERNATIONAL BROTHERHOOD OF
BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS,
FORGERS AND HELPERS, AFL-CIO**

and

FELKER BROTHERS CORPORATION

Case 1
No. 55550
A-5619

Appearances:

Mr. Howard L. Cole, International Representative, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO, appearing on behalf of the Union.

Foley & Lardner, Attorneys at Law, by **Ms. Ann I. Mennell**, appearing on behalf of the Company.

ARBITRATION AWARD

Local Lodge No. 697, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO, herein the Union, and Felker Brothers Corporation, herein the Company, jointly requested the Wisconsin Employment Relations Commission to designate the undersigned as an arbitrator to hear and to decide a dispute between the parties. The undersigned was designated as the arbitrator. Hearing was held in Marshfield, Wisconsin, on November 11, 1997. A stenographic transcript was made of the hearing and a copy of said transcript was received on November 21, 1997. The parties completed the filing of post-hearing arguments on December 22, 1997.

ISSUE

The parties were unable to stipulate to the issues and agreed that the arbitrator should frame the issues.

The Union stated the issues as follows:

Did the Company violate the contract by not assigning machine tool builders to operate the newest heat treat/annealing oven? If so, what shall the remedy be?

The Company stated the issues as follows:

Was the grievance timely? Did the Company violate the collective bargaining agreement by classifying the annealing furnace work as semiskilled. If so, what is the proper remedy?

The undersigned believes the following to be an accurate statement of the issues:

Was the grievance timely filed? If so, did the Company violate the contract by classifying the work on the new annealing furnace as semiskilled work? If so, what is the proper remedy?

BACKGROUND

The Company manufactures stainless steel pipe products. There are approximately 215 employees covered by the contract between the Company and the Union. The employees, for the most part, are divided into two broad groups: semiskilled and skilled. The skilled workers hold specific job classifications, whereas most of the semiskilled employees are in the general classification of semiskilled. Semiskilled employees can bid into certain skilled classifications. The Company has developed an extensive skill advancement guideline to set out the qualifications and skills required for an employee to progress from one skilled job to another. The skill advancement guideline was first placed in the parties' 1990-93 contract.

In October of 1996, at the monthly Company/Union meeting, the Company informed the Union that it was seeking approval for the purchase of an annealer. At the Company/Union meeting in November of 1996, the Company informed the Union that the purchase of an annealer had been authorized. Shortly after said meeting, the Company's plant manager showed the new annealer to the president and vice-president of the Union's local and told them that he planned on assigning semiskilled employees to operate the annealer. The local officers did not agree or disagree with said statement, but merely asked to be notified when the annealer began operating.

The annealer was placed in operation on February 26, 1997, with the work being performed by semiskilled employees. At the monthly Company/Union meeting held on May 6, 1997, the Union representatives questioned whether the work on the new annealing furnace was properly classified as semiskilled work or whether the work should be assigned to the skilled classification of machine tool builder. In a memorandum to the local Union representatives

dated May 13, 1997, the Company set forth its reasons for assigning semiskilled employes to operate the annealer. On May 22, 1997, the Union filed a grievance alleging that the Company violated the contract by not assigning the work on the new annealer to employes in the skilled classification of machine tool builder.

At the time it purchased the new annealer, the Company had two other smaller annealers, which were located in the tool room area by the machine shop. The two smaller annealers have been used primarily for making tools or other items for internal use by the Company. However, the smaller annealers have been used to run production parts for sale to a customer when shipping schedules did not allow sufficient time to send the parts to a subcontractor for annealing. When the smaller ovens were used for production runs, a machine tool builder usually operated the annealer. Prior to purchasing the new annealer, the Company had subcontracted most of the annealing work, approximately 90-95%.

POSITION OF THE UNION

The Company never informed the Union of its intent to strictly enforce the contractual time limits. There had been a long-standing practice of trying to resolve grievances without regard to the time limits. Further, the Union was never notified when the annealer went into production. Moreover, the grievance was of a continuing nature, since each use of the annealer was a new violation of the contract. The grievance should be considered to have been filed on a timely basis.

The Union never agreed that semiskilled employes should operate the new annealer. One of the required skills for classification as a machine tool builder is the ability to "understand and be able to apply heat treating." If the parties had thought heat treating was not a part of the machine tool builder job, then it would be unnecessary to have language referring to heat treating. Production of customer-demand products annealed in the plant was always performed by machine tool builders. Such production was not of a minimal nature, but amounted to hundreds of pieces over the years. Machine tool builders continue to use the other two annealing ovens.

The Company's decision to end the subcontracting of annealing work and to do the work in-house does not make annealing new work. It is the same work which the machine tool builders have been performing, but in a bigger oven. The Company should have negotiated the wage rate for the new annealer, rather than making a unilateral change. Since the work being performed is unchanged, there is no evidence of a change in operations justifying the reclassification of the work to a lower pay range.

The Union requests that the annealing work be assigned to the machine tool builders and that the semiskilled employes, who performed the work, be paid the difference between their hourly rate and the machine tool builder rate for all hours those employes worked on the annealer.

POSITION OF THE COMPANY

The grievance was not timely filed. The purchase of a new annealer was discussed in both the October and November 1996 Company/Union meetings. In November of 1996, the Company's plant manager showed the new annealer to local Union officers and informed them that he planned to assign the work to employees in the semiskilled classification. The annealer went into operation on February 26, 1997, but the Union first raised the issue of the classification of the employees performing the annealing work on May 8, 1997. As early as November of 1996, the Union was put on notice that the annealer would be going into operation and it should have known when the machine began production. The grievance was not filed within the ten-day period required by the contract. Neither did the Union request an extension of time for filing the grievance. Although the Company may have overlooked late grievances in the past, arbitration law is clear that even a well-established past practice cannot alter the unambiguous language of the contract.

The annealing work was new work and was not equivalent to the annealing work performed by the machine tool builders. The two annealers used by the machine tool builders are much smaller than the new annealer and were never meant to manufacture product for customers. Rather, the smaller annealers were used primarily for making tools or other equipment for internal use by the Company. Until the new annealer went into production, approximately 95% of the annealing of products for customers was subcontracted. The tool room annealers were used for annealing products for customers only on sporadic occasions.

The contractual skill advancement criteria are not job descriptions. The skills listed for each job classification do not create a right for that job classification to forevermore have the exclusive rights to perform any work listed as those skills. There are numerous instances where more than one job classification is responsible for mastering a certain task. The guidelines were intended to provide criteria for measuring skills and readiness for advancement and to ensure adequate training of employees.

The Company properly applied the comparable pay for comparable work provision in the contract. The annealing work is repetitive in nature, similar to other tasks performed by the semiskilled workers, such as the pickling process. Such repetitive work is in contrast to the heat treating work performed by the machine tool builders. In fact, only one machine tool builder is fully familiar with all heat treating processes which might be used, in addition to annealing.

The Company requests that the grievance be denied.

RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 3. WAGES AND JOB CLASSIFICATIONS

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Section 3. Job Classification Descriptions

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Machinist Posting, Progression & Qualifications

Skill II machinist shall be selected by posting. After 24 months in the skill II job an employee may progress to skill I; after 18 months in skill I an employee may progress to Machinist Specialist I; after 18 months in Machinist Specialist I an employee may progress to Machine Tool Builder. Each progression step includes satisfying the Standard Skill Advancement Guideline (Schedule D) requirement.

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Section 7. New Work

Whenever new work is required which has not been previously classified, the Company will meet and discuss the work with the Union. The parties will agree on the rate of pay for the new work in accordance with the principle of comparable pay for comparable work. This will be handled as an agenda item at the monthly Company/Union meeting. If no agreement is reached, the Company will put a rate into effect and the parties will continue discussion for 60 days. If no final agreement is reached, the matter is subject to the grievance procedure.

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ARTICLE 5. GRIEVANCE AND ARBITRATION

Section 1. Grievances

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Any grievance not presented in writing to the Plant Superintendent or his designee within ten (10) working days of the date of the action giving rise to the grievance or within ten (10) working days of the date on which the employee first received knowledge or (or should have received knowledge of) or (sic) been made reasonably aware of the cause of the grievance, will be barred. Either party may extend the time limits by written mutual agreement.

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ARTICLE 16. MANAGEMENT

The Company shall have the unqualified and undisputed right to manage its own affairs in all and every respect except that in the exercise of such management the Company will not contravene the terms of this Agreement.

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APPENDIX B

SCHEDULE D
STANDARD SKILL ADVANCEMENT GUIDELINE

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MACHINIST TOOL BUILDER - To be eligible and capable of performing the available work as a Machinist Tool Builder the individual must have completed 18 months working in machinist specialist 1, met all the requirements for machinist 1, completed the "Advanced Machine Tool Techniques" course with a minimum grade of "C", commit to participate in on-going specialty seminars scheduled on company time and expense and demonstrate the ability to perform the tasks listed below:

Tasks Required - The individual must have demonstrated the ability to satisfactorily perform the following tasks:

1. Be able to perform close tolerance machining.
2. Be able to machine elbow dies & tube mill rolls
3. Be able to build jigs and Fixtures from prints
4. Understand and be able to apply heat treating
5. Be able to plan operation sequence, determine appropriate machine tools to use, determine set up requirements including jigs and be able to perform all operations required on special "machine building" type projects assigned to machine shop. ie: building new edge trimmer, fixturing for elbow welders, modifying an existing machine, etc.
6. Be able to perform non-electrical type repairs on machine tools and maintain machine tools.
7. Be able to make decisions/problem solve.

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DISCUSSION

The record is clear that the Union did not file the grievance at issue herein within the ten-day period following the date on which the new annealer was put into operation. Although the

Company did not notify the Union when the new annealer started production, it is difficult to

accept the Union's assertion that, for over two months, it was unaware the annealer was in production until just prior to the Company/Union monthly meeting on May 6, 1997. However, Section 7, Article 3 of the contract specifies that if no agreement on the rate of pay for new work is reached, then the Company will implement a rate and the parties will continue discussion for 60 days. There is nothing in the record to show that the Company attempted to continue discussion over the wage rate once the new annealer went into operation with the operators being paid at the semiskilled rate. If the Company had notified the Union of the wage rate being paid to the operators when the annealer actually went into production, then its position on timeliness may have been more persuasive. Even if the Company had provided such notification, Union witnesses testified, without contradiction, that the parties have a past practice of not enforcing the ten-day requirement for filing grievances, because they attempt to resolve issues before the issues are filed as formal grievances. Generally speaking, the Company is correct in asserting that a well-established past practice cannot alter unambiguous contractual language. Nevertheless, where the parties have been lax as to observing the contractual time limits, as appears to be the case herein, the undersigned does not believe the time limits should be strictly enforced until notice has been given that one of the parties intends to demand strict adherence to the contractual time limits in the future. Since such notification was not given to the Union by the Company prior to the filing of the instant grievance, the undersigned finds that the grievance was timely filed and that the merits of the grievance should be determined.

The Union's position on the merits of the grievance rests primarily on two assertions: (1) the fact that one of the seven itemized tasks which a machine tool builder is expected to be able to satisfactorily perform reads "Understand and be able to apply heat treating," and, (2) the practice over the past twenty-five years of having production heat treating performed by machine tool builders.

With respect to the first argument of the Union, the arbitrator does not agree with the Union's interpretation of the meaning of the language found in the contract under the tasks required of a machinist tool builder. The itemizing therein of certain skills required to attain the classification of machinist tool builder does not mean that all of the work in the plant utilizing those skills will be performed only by said classification. Rather, the Company has a more reasonable interpretation when it concludes that the listing of requirements does not reserve to the machinist tool builder classification all the work in the factory which uses the listed skills, but instead, sets forth the range of skills an employe needs to master before the employe can progress into the higher paid classification for which the multiple skills are required. One, perhaps the primary one, of the reasons for giving higher wage rates to skilled employes than are given to semiskilled employes is that the skilled employes are expected to have an ability to perform work requiring either a higher level of a skill or multiple skills. Further, the Company accurately points to several examples where more than one job classification is responsible for mastering the skill necessary to perform a certain task, which also contradicts the Union's interpretation.

The record does not support a finding that the operation of the new annealer requires a skill level higher than the level possessed by the semiskilled employes. The undersigned is persuaded that the training necessary to operate the new annealer is quite different from the more

extensive training required to attain the classification of machinist tool builder, which classification is expected to be able to perform different heat treating applications, one of which is annealing.

The record establishes that at least one of the employes classified as a machinist tool builder has done production work on the two smaller annealers. Apparently, such production was necessary for orders which did not have a sufficient lead time for the orders to be sent to a subcontractor. The Company has been utilizing subcontractors to perform most of the annealing of parts being produced for customers for several years and the two small annealers have been utilized primarily for the production of items to be used internally by the Company, such as dies. Such a background does not rise to the level of a binding past practice, which practice would prevent the Company from treating the work on the new annealer as new work and assigning the work to the semiskilled classification.

Based on the foregoing and the evidence as a whole, the undersigned enters the following

AWARD

That the grievance was filed on a timely basis and, therefore, it is arbitrable on the merits; that the Company did not violate the contract by assigning the work on the new annealing furnace to employes classified as semiskilled; and, that the grievance is denied and dismissed.

Dated at Madison, Wisconsin, this 13th day of March, 1998.

Douglas V. Knudson /s/

Douglas V. Knudson, Arbitrator