

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
**LOCAL 7815, UNITED PAPERWORKERS INTERNATIONAL
UNION, AFL-CIO, CLC**

and

FWD CORPORATION

Case 66
No. 55202
A-5587

Appearances:

Mr. Donald O. Schaeuble, International Representative, United Paperworkers International Union, appearing on behalf of the Union.

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

ARBITRATION AWARD

Local 7815, United Paperworkers International Union, AFL-CIO, CLC, herein the Union, requested the Wisconsin Employment Relations Commission to designate a member of its staff as an arbitrator to hear and to decide a dispute between the parties. FWD Corporation, herein the Company, concurred with said request and the undersigned was designated as the arbitrator. The parties stipulated to waive the contractual Arbitration Board and to have the undersigned be the sole arbitrator. Hearing was held in Clintonville, Wisconsin, on October 9, 1997. A stenographic transcript of the hearing was not made. The parties completed the filing of post-hearing briefs on January 12, 1998.

The hearing dealt with two separate grievances, both of which arose from job postings.

RELEVANT CONTRACTUAL PROVISIONS

ARTICLE V

...

PROMOTION

(56) Seniority shall be given preference in promotion except to positions outside the jurisdiction of this contract. It is understood and agreed that in all cases of promotion, the following factors shall prevail:

- (a) Length of Service
- (b) Knowledge, Training and Skill

When factors in (b) are relatively equal, length of service shall govern. In evaluating factor (b), the Company shall be the judge and in so doing will not use the individual's production record as the sole basis of consideration. The Company shall give consideration to those employees whose applications are on file. Qualifications being sufficient, as above indicated, such position shall be awarded to the person so found to be qualified, using the factors hereinafter set forth.

...

(56) (a) The principles of Paragraph (56) shall apply to filling all jobs, but if the job in question is rated in Labor Grades 4 through 9, the senior applicant among applicants that possess the knowledge, training and skill to perform the job satisfactorily after a reasonable amount of training time will be awarded the job. The Company will be the judge of this competency and the evaluation will be based on a measurement of past related experience or training and/or demonstration by the employee of knowledge or skills.

...

(56) (b) (1) Paragraphs (56)(a) and (b) above have been placed in this Labor Agreement to ensure that the senior people who bid on these jobs from within our bargaining unit have first choice on job postings within the guidelines of such paragraphs.

(56) (c) Job classifications rated in Labor Grades 1 through 3 will be awarded to the most senior applicant that possesses all the qualifications required by the job description. Rate placement will be in accordance with paragraph (49.1)(a) of this agreement.

...

Scott Gerbig Grievance:

ISSUE

The parties stipulated to the following issue:

Did the Company violate paragraphs 56-56(c) of the labor contract in awarding the Millwright Specialist job to Bill Wanta instead of Scott Gerbig?

BACKGROUND

In January of 1997, the Company posted a vacancy for a Millwright Specialist position, due to the upcoming retirement of Ward Stuebs, who had held the position for 21 years. After interviewing the applicants and discussing the applicants with some of the supervisors and with Stuebs, Daryl George, the Company's Maintenance Manager, awarded the position to William Wanta. George concluded that, although none of the applicants had all of the qualifications for the job, Wanta was more qualified than was Scott Gerbig. Gerbig filed a grievance based on the fact that he had more seniority than Wanta.

Gerbig worked for the Company from January 7, 1965 to July 25, 1980, at which time he voluntarily left the employ of the Company. Gerbig returned to work at the Company on October 24, 1983, which date is his current seniority date. Gerbig has worked on various machines at the Company and has done some repairs on those machines alone and on other occasions he has helped the millwright with the repairs. Gerbig has had some experience working with hydraulic systems and air tools.

Wanta has been employed at the Company since May 27, 1986. At the time of the posting, Wanta was a Tow Motor Repairer in the Maintenance Department. In that job he repaired various equipment, including cranes, forklifts, golf carts and hand tools. Some of the repair work involved hydraulic systems. He also had helped Stuebs in changing bearings and working on shears and other machines. Wanta also had held the classification of Maintenance B for about three years. Wanta testified that he did not know how to do all of the work of the Millwright Specialist when he was awarded the position.

Stuebs testified that he had spent quite a bit of time talking with George before retiring, so George would be familiar with Stuebs' duties and that they also discussed the applicants for the posting. Stuebs also said that he was the only employe at the Company who knew how to do some of the Millwright Specialist duties. When Stuebs had to repair Gerbig's machine, Gerbig had worked with him, since the operators always helped with the repair of their machines. However, Wanta had worked with Stuebs regularly on repair projects, since Wanta also was in a maintenance classification.

POSITION OF THE UNION

George was not aware of all the skills needed for the job, since he had been with the Company for just a short time. Wanta did not have all the skills required for the job at the time he was awarded the job. If the Company was going to deviate from the contract by offering training, then it should have offered the training to the senior employe. Gerbig testified that he had all the

skills to do the job. The job of Millwright Specialist should be awarded to Gerbig.

POSITION OF THE COMPANY

Gerbig admits that he has never regularly performed machine repair and similar Millwright functions for the Company. Rather, Gerbig's career at the Company has been in a series of machine operator positions. Occasional experiences in making minor repairs to a machine or in assisting maintenance employees in troubleshooting the problems with the operator's machine do not prepare an operator to fill the plant's top Millwright position. Wanta possessed lower level, concentrated maintenance experience, which is necessary for the Millwright position. In addition to interviewing the applicants, George did get feedback from Stuebs and other supervisors before making his choice. The Company fairly and properly exercised its judgment, as provided by the contract, in awarding the position to Wanta.

DISCUSSION

The undersigned agrees with the Company's conclusion that neither Gerbig nor Wanta possessed all of the qualifications required by the job description. In such a situation the contractual language would permit the Company to seek an applicant from outside the Company should it choose to take such an approach to filling the vacancy. However, said language does not prevent the Company from deciding to promote an employee from within even if the employee does not possess all of the qualifications required by the job description. Paragraph 56 then becomes relevant to the selection process.

George testified the choice between Gerbig and Wanta was a difficult one, but he finally decided that, even though Gerbig had more seniority than Wanta, Wanta possessed sufficiently more relevant experience than Gerbig and that said experience justified the selection of Wanta.

Based on the testimony and the exhibits, the undersigned finds that the selection of Wanta, rather than Gerbig, for the Millwright Specialist position did not violate the contract. George made a reasonably comprehensive investigation of the skills needed to perform the job and of the experience of the applicants prior to awarding the job. Initially, George met with Stuebs prior to posting the job to become familiar with the skills and experience which he should look for in the applicants. After the posting period expired, George interviewed both Gerbig and Wanta to explore the experience of each applicant. George also reviewed the written summary of his background and qualifications which Gerbig submitted with his application. George then discussed the applicants with other supervisors who were familiar with the applicants. Prior to awarding the job, George discussed the applicants with Stuebs. Stuebs, the retiring Millwright, had worked with Wanta and he believed that Wanta was capable of doing the work of the Millwright Specialist. Stuebs was not as familiar with Gerbig's abilities. While Gerbig had some experience in assisting with equipment repairs, his experience was not as extensive as Wanta's experience. Wanta was already working in a maintenance position and, consequently, he had more direct relevant experience. It is the finding of the undersigned that the Company did follow a rational and adequate process both in evaluating the skills and experience of the applicants and in determining that Wanta possessed more of the qualifications

required by the job than did Gerbig. Therefore, because the knowledge, training and skills of Wanta and Gerbig were not relatively equal, the Company was not required to select the more senior applicant.

Based on the foregoing, the undersigned enters the following

AWARD

That the Company did not violate Paragraphs 56-56(c) of the labor contract in awarding the Millwright Specialist job to William Wanta instead of Scott Gerbig; and, that the grievance is denied and dismissed.

Scott Zempel Grievance:

ISSUE

The parties stipulated to the following issue:

Did the Company violate paragraphs 56-56(c) of the labor contract in awarding the Refurb & Ladder Assembler job to Mike Koepke instead of Scott Zempel?

BACKGROUND

In March of 1997, the Company posted an open position of a Refurb & Ladder Assembler, which is a labor grade 3 position. Said position involves the tear down and reassembly of several models of fire trucks, including ladders and ladder turntables on certain models of the trucks. The position was created to permit an employe to be able to work on a variety of tasks. It is anticipated that the work time of an employe in the position will be spent in the following approximate manner: 50% on truck refurb, 30-40% on turntable work, and 10-20% on ladder work. After interviewing each of the applicants, the Company awarded the job to Mike Koepke, who has a seniority date of January 15, 1990. Scott Zempel, who has a seniority date of January 13, 1982, filed a grievance contesting the selection of Koepke.

Zempel has held the classification of Ladder Assembly Repairman for about thirteen years. In that position Zempel basically works on ladders, both new and refurbished. He previously worked for Oshkosh Truck for about three years, i.e., 1976-79, where he did perform some refurb work on turntables and trucks. However, Zempel has not done refurb work on turntables and/or trucks at the Company. While in the Air Force, prior to working at Oshkosh Truck, Zempel did work on hydraulic systems.

During his tenure with the Company, Koepke has worked on refurbishing trucks, which involves basically taking the truck completely apart and then rebuilding the truck so it looks new. Koepke has worked on approximately 70% of the parts contained in the turntables on a truck, although he has never done a complete turntable refurb alone. Koepke has worked on ladders, but only as a helper to another employe. Koepke testified that he did not know how to perform all aspects of the job when he started in the Refurb & Ladder Assembler position.

During the negotiations which culminated in the current contract, the Union proposed to eliminate all of paragraph 56 after the phrase "(a) Length of Service." Said proposal was not agreed to by the Company. Instead, the parties agreed to leave paragraph 56 as it had been in the prior contract and to add the language found in paragraphs 56(a), 56(b) and 56(c) of the current contract.

POSITION OF THE UNION

Based on his uncontested testimony, Zempel has all the qualifications to perform the work of the Refurb & Ladder Assembler position. Koepke admitted at the hearing that he did not possess all of the qualifications required by the job description. Koepke had only observed the testing of ladders and had never performed the testing alone.

The Company did not think that Zempel had any experience in the body work part of the job, but he had done such work at Oshkosh Truck. If the Company had done the proper investigation of the background of the applicants, then it would have been aware of the skills of each of the applicants and it would have awarded the posting to Zempel.

The Company violated the contract by awarding the job to the junior employe who did not possess all of the qualifications required by the job, while the senior employe did possess all of those qualifications. Further, the Company is training Koepke, but was not willing to train Zempel. Since the Company made the choice, it must explain the basis for the choice.

Zempel should be awarded the position of Refurb & Ladder Assembler.

POSITION OF THE COMPANY

During the negotiations culminating in the current contract, the parties negotiated changes in the selection process for vacant jobs. Senior applicants with "core competency" skills would not only be given Labor Grade 4-9 jobs, but the Company would provide such employes with training for those positions. However, the "qualifications/seniority" balance was altered substantially so as to give more emphasis to qualifications for Labor Grade 1-3 jobs. This grievance implies that the Union is still analyzing Labor Grade 1-3 openings in a "seniority first" manner, disregarding the clear language and the intent of the changes made to the job selection process in 1995.

The contract specifies that in evaluating knowledge, training and skill, the Company shall be the judge. In the contested position, ladder expertise constituted only 10-15% of the total work. While working on ladders is skilled and important work, it does not provide the breadth of experience needed for the entire job. Although Koepke has only limited experience on ladders, he had experience in the other operations involved in completely rebuilding a truck. Thus, Koepke was fully qualified to perform 85-90% of the work. Clearly, the Company properly exercised its contractual authority to judge Koepke qualified and to bypass the grievant. It was proper for the Company to assign little value to Zempel's work both as a jet mechanic over twenty years ago and his limited assembly experience at Oshkosh Truck.

Even if Koepke failed to meet every specific requirement, he came close enough to be deemed qualified. The remedy should not require the Company to award the job to another employee who met even fewer of the requirements than did Koepke.

DISCUSSION

It is clear that Zempel has a great deal of experience in the refurb and assembly of ladders, since that has been his primary work for the past thirteen years for the Company. However, he has done little, if any, refurb and assembly of turntables and trucks while he has worked for the Company. Zempel did have some experience in the refurb of trucks during the three years he worked for a prior employer, Oshkosh Truck, although that experience, by his own testimony, was of a limited nature and occurred a number of years ago. While the Union argues that the Company failed to fully investigate Zempel's experience, the written summary of his experience, which was prepared by a Company supervisor who interviewed Zempel, clearly lists his experience in "disassemble and assembly of trucks at previous employer, also hydraulic experience gained in Air Force Jet Mechanic." The same supervisor interviewed Koepke and prepared a written summary of that interview as well. Further, the Company's Human Resources Director, Kathy Leete, testified that the written summaries of the experience of both Zempel and Koepke were considered in comparing their skills and experience. The Company did make an adequate investigation into the experience of Zempel.

After comparing the respective skills and experience of Zempel and Koepke, the Company determined that, although neither Zempel nor Koepke possessed all the qualifications required by the job description, Koepke would require much less training than Zempel would require. Based on the testimony and evidence presented at the hearing, the undersigned concludes that the Company's decision to award the position to Koepke was reasonable. It is true that Zempel has much more experience in working with ladders. However, Koepke has more experience in the tear down and reassembly of trucks than does Zempel, and, Koepke's experience in this area is more recent than is Zempel's experience, since much, if not all, of Zempel's experience with trucks was when he worked for Oshkosh Truck. Similarly, Koepke has more experience working on turntables than does Zempel and, again, Koepke's experience in this area is more recent than most of Zempel's experience. Thus, the undersigned concurs with the Company's conclusion that, although neither Koepke nor Zempel possessed all of the

qualifications required by the job description for the position of Refurb & Ladder Assembly, Koepke possessed significantly more of the qualifications than did Zempel and, consequently, he would require less training than Zempel would require. Therefore, since the knowledge, training and skill of the applicants were not relatively equal, the Company could award the position to the less senior employe. If both Zempel and Koepke had met all of the qualifications of the job, and had been relatively equal in knowledge, training and skill, then the contract would have required that the job be awarded to the senior employe. Such was not the case in this matter.

Based on the foregoing, the undersigned enters the following

AWARD

That the Company did not violate paragraphs 56-56(c) of the labor contract in awarding the Refurb & Ladder Assembler job to Mike Koepke instead of Scott Zempel; and, that the grievance is denied and dismissed.

Dated at Madison, Wisconsin, this 3rd day of April, 1998.

Douglas V. Knudson /s/

Douglas V. Knudson, Arbitrator