BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 953

and

BALDWIN-TELECOM, INC.

Case 1
No. 56235
A-5658

Appearances:

Mr. James S. Dahlberg, National Representative, IBEW Local No. 953, 2206 Highland Avenue, Eau Claire, Wisconsin 53701, appearing on behalf of the Union.

Weld, Riley, Prenn & Ricci, S.C., by **Attorney Stephen L. Weld,** 4330 Golf Terrace, Suite 205, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, appearing on behalf of the Company.

ARBITRATION AWARD

Baldwin-Telecom, Inc. and International Brotherhood of Electrical Workers, Local Union 953 are parties to a collective bargaining agreement that was in effect at all times relevant to this proceeding. The agreement provides for binding arbitration of disputes. The parties, by joint request dated February 24, 1998, initiated grievance arbitration and requested the Commission to appoint a panel of WERC-employed arbitrators. By letter of March 26, 1998, Attorney Weld, Counsel for the Employer, advised the Commission that the agreement called for a panel of five independent, not staff, arbitrators. However, by Weld's letter of March 26, 1998 the parties agreed to the selection of Paul A. Hahn as arbitrator. Hearing in this matter was held on June 15, 1998 in Baldwin, Wisconsin. No transcript was made of the hearing. The parties filed briefs with the Arbitrator for mutual exchange. The Union's brief was received on June 29, 1998; the Employer's brief was received on July 8, 1998. Copies of the briefs were forwarded to the parties by the Arbitrator on July 8, 1998 and the record was closed.

To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards by the Commission and its staff, footnote text is found in the body of this decision.

ISSUE

Stipulated Issue

The parties stipulated to the following issue:

Did the Employer violate Article 10, Paragraph G of the collective bargaining agreement when it failed to provide an initial set of tools to existing employes; if so, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

ARTICLE 1 – RECOGNITION

Baldwin Telecom, Inc., recognizes the International Brotherhood of Electrical Workers, Local Union 953 as the exclusive and sole bargaining representative for all regular full time and regular part time telephone and cable television installation, repair and service employees employed by the Employer at its Baldwin, Wisconsin facility; excluding temporary employees, seasonal employees, office clerical employees, janitorial employees, guards and supervisors as defined in the Act.

. . .

ARTICLE 5 – GRIEVANCE PROCEDURE

. . .

Definition: For the purpose of this Agreement, a grievance is defined as any complaint regarding the interpretation or application of a specific provision of this Agreement as it pertains to wages, hours and conditions of employment. A grievant may be an employee, a group of employees, or the Union.

. . .

Decision of the Arbitrator: The arbitrator selected shall meet with the parties at a mutually agreeable date to hear testimony relating to the grievance. Upon completion of the hearing, the Arbitrator shall render a written decision which shall be final and binding upon both parties. The decision of the arbitrator shall be limited to terms and conditions set forth in this Agreement. Nothing in the foregoing shall be construed to empower the arbitrator to make any decision amending, changing, subtracting from, or adding to the provisions of this Agreement.

. . .

ARTICLE 10 – GENERAL PROVISIONS

. . .

E. The Employer agrees to provide the initial set of three (3) summer and three (3) winter uniforms plus a winter parka and a summer jacket. Thereafter, the Employer will pay the cost of replacing the uniforms, parka or jacket. The replaced items shall be returned to the Company. Failure to wear the uniforms will result in discipline. Failure to wear clean and neat uniforms will result in discipline. The uniforms may not be worn when not working.

. . .

G. The Employer agrees to provide the initial set of hand tools, ladders, meters, fishing tools and lineman's test set (butt in). Thereafter, employees shall purchase their own hand tools and file the receipts with the Employer to be eligible for reimbursement of the cost. Said tools may not be used for personal use. The Employer shall have the right to inspect the replaced tool. Employees shall exchange the worn out or broken equipment for the new equipment. The Employer shall provide lockers for the employees to store their hand tools.

H. On separation, the uniforms and tools shall be turned over to the Company.

BACKGROUND

This grievance involves Baldwin Telecom, Inc. and International Brotherhood of Electrical Workers Local No. 953 representing employes of the Company set forth in Article 1 – Recognition. (Jt. Ex. 1) The Union alleges a contractual violation by the Company for a refusal by the Company to issue an initial set of hand tools and other equipment to existing employes pursuant to Article 10 - General Provisions, Paragraph G. The Company takes the position that Paragraph G of Article 10, only applies to newly hired employes. This refusal by the Company to provide hand tools to existing employes led to the filing of the grievance by the Union and a request to proceed to arbitration. (Jt. Ex. 3)

Baldwin Telecom, Inc. (located in Baldwin, Wisconsin) is involved in the installation and repair of telephones, alarm systems and cable television. Joint Exhibit 1, the collective bargaining agreement, is the initial labor agreement between the parties. The parties commenced negotiations in early 1997 and concluded their negotiations with a signed agreement on September 10, 1997. The parties negotiated the following provision in the labor agreement:

ARTICLE 10 – GENERAL PROVISIONS

. . .

G. The Employer agrees to provide the initial set of hand tools, ladders, meters, fishing tools and lineman's test set (butt in). Thereafter, employees shall purchase their own hand tools and file the receipts with the Employer to be eligible for reimbursement of the cost. Said tools may not be used for personal use. The Employer shall have the right to inspect the replaced tool. Employees shall exchange the worn out or broken equipment for the new equipment. The Employer shall provide lockers for the employees to store their hand tools.

Prior to the collective bargaining agreement, employes who were hired by the Company came to the job with some tools they had been required to purchase by the Technical schools where they received their training. The Company at the time of hire had supplemented and purchased tools for the employes that they would need to perform their job and had replaced worn out and lost tools at the Company's expense. The Company did not keep any record of tools that they supplied to employes when they were hired or tools that were supplied to employes when they requested same because they were worn out or lost. Further, the Company did not keep any records of whether employes returned tools, purchased by the Company, when the employe left the Company's employment.

The Union drafted and proposed the initial bargaining proposal regarding the Employer providing an initial set of tools. (Jt. Ex. 4) The initial sentence of Article 10, Paragraph G did not change during the course of several months of collective bargaining negotiations. During the course of those collective bargaining negotiations neither party, Union nor Employer, discussed whether the initial set of tools would be provided to new employes, current employes, or both.

The parties also negotiated language in Article 10, Paragraph E regarding the Employer providing an initial set of uniforms. Contrary to the lack of discussion regarding an initial set of tools, the parties discussed and agreed during the course of their collective bargaining negotiations that a set of uniforms would be provided to all employes. In other words, there was to be no differentiation between current or existing employes and new hires. The parties also negotiated into their contract a provision (Article 10, Paragraph H) that upon separation uniforms and tools would be turned over to the Company.

Shortly after the contract was signed in September, 1997, a current employe asked Plant Superintendent Duane Russett when he would receive his initial set of tools. Russett checked with Company management and informed the employe and union steward Jeff Segelstrom that it was the Company's interpretation that the initial set of tools was only to be provided to new hires. Current employes would not receive an initial set of tools but would have tools replaced on an as-need basis when worn out or lost. Discussions took place between representatives of the Union and the Company, but the parties were unable to reach resolution of the issue of whether an initial set of tools would be provided to current employes.

The parties processed the grievance through the contractual grievance procedure and were unable to resolve the grievance.

The hearing in this matter was held by the Arbitrator on June 15, 1998 in the City of Baldwin, Wisconsin. The hearing closed at 3:15 p.m. The hearing was not transcribed. The parties were given the opportunity to file briefs and did so with the exchange of briefs through the Arbitrator occurring on July 8, 1998.

POSITIONS OF THE PARTIES

Union

It is the position of the Union that Article 10, Paragraph G makes no "delineation" between newly hired employes and existing employes. It puts the burden on the Employer that it did not during the course of collective bargaining negotiations make any statement or take the position that an initial set of tools would only be provided to newly hired employes. The Union refers to the uniform language (Article 10, Paragraph E) to support its argument that, as with uniforms, all employes, existing and new hires, would receive an initial set of tools. The Union argues that each provision of the labor agreement applies to each member of the bargaining unit unless the parties agree to language expressly limiting the application or provision of the agreement to a particular group of employes, which in this case the agreement does not. The Union argues that Article 10, Paragraph H, regarding the return of tools to the Employer upon termination of employment, would not make any sense because of the Employer's lack of records unless the Employer provided an initial set of tools to all employes, existing and new hires. Lastly, the Union position and proposed remedy is that the existing employes should receive an initial set of tools or that employes who had to purchase tools in the interim of this grievance should be reimbursed.

Company

The position of the Company is that interpreting the contract as argued by the Union would lead to the Company providing a duplicate set of tools to existing employes and that a duplicate set of tools cannot be considered an initial set. The Employer argues that by providing existing employes with a duplicate set of tools the Arbitrator would go beyond what the contract language requires, and this would be tantamount to rewriting the collective bargaining agreement. The Employer disputes the Union argument that the similarity between the tools provision and the uniform provision requires the Employer to provide tools to existing employes. The Employer argues that there were extensive negotiations and discussions regarding uniforms during the collective bargaining process and that "during the course of face-to-face negotiations, the parties specifically agreed that Article 10, Paragraph E would apply to both existing employes and new hires." The Employer points out that there was no such agreement with respect to Article 10, Paragraph G.

The Employer puts the burden on the Union since it was the Union's proposal regarding Article 10, Paragraph G to specify in said paragraph if it was to apply to existing employes and new hires. The Employer sets forth legal argument that ambiguity in contract language, not

removed by any other rule of interpretation, may be removed by construing the ambiguous language against the party who proposed it. The Employer argues that the Union's initial proposal as to the pertinent sentence, regarding provision of an initial set of tools, did not change during the revisions to the tools proposal during contract negotiations. The Company's position is that the burden is on the Union to prove that an initial set of tools was to be provided to existing employes, as well as new hires.

The Employer, anticipating the Union's Article 10, Paragraph H argument regarding the return of uniforms and tools to the Company, argues that Paragraph H does not require terminating employes to return to the Company uniforms and tools which they purchased personally. Only one employe has left since the contract has been effective and that employe was not required to turn over tools or uniforms that he had purchased.

Lastly, the Company states that the language must be construed against the Union, as the drafter, and since the Union did not confirm in the contract language that the initial set of tools was to be provided to existing employes, the initial set of tools is to be provided only to new hires. This being the case, the position of the Company is that the grievance should be dismissed.

DISCUSSION

The parties seek through binding arbitration an interpretation of Article 10, Paragraph G of their collective bargaining agreement. The Union position is that the words " initial set of hand tools" applies to current as well as new employes. The Company argues that the language only applies to new employes. The burden of proof in this case is on the Union as the grieving party. This is particularly so in this case because the language in dispute comes from a proposal initially made by the Union for negotiations for the parties' first labor agreement. As there is clearly no mutual intent as to the meaning of the language, and as the language in the paragraph itself does not make clear who should receive the tools, I must use accepted arbitral methods to determine the correct interpretation of the language.

Pre-contract negotiations is an acceptable method to determine the meaning of language that is ambiguous or unclear as to its meaning. In this case, the witnesses for both parties testified that during contract negotiations it was never discussed which employes were to receive an initial set of hand tools. The initial proposal, as it relates to the Employer providing an initial set of hand tools, went unchanged during the course of negotiations. 1/

1/ Joint exhibits 4 through 8 track the course of bargaining of Article 10, Paragraph G regarding the provision of hand tools. Other aspects of the proposal changed but the first sentence requiring the Employer to provide the initial set of hand tools did not change. In this case, the pre-contract negotiations do not establish the meaning of the language in Paragraph G.

The parties do have some history as to the practice of employes being provided tools by the Employer prior to the first labor agreement. Union witness Segelstrom testified that he was employed by the Employer directly after his schooling at a technical school. Segelstrom stated that he brought all the tools with him that he had been required to buy to complete his technical school course work. Segelstrom was not provided any additional tools at his time of hire, but the Employer has replaced his worn out tools during the course of his employment. Segelstrom testified that the Employer provided a set of tools to new employe Carl Christenson when he started employment on or about May 1, 1998. Employer witness Duane Russett, plant superintendent, testified that most employes received their training before hire at the Indianhead Technical School in Rice Lake, Wisconsin and that the Employer has supplemented the tools the employes had at school with the necessary tools at their time of hire. After hire, there have been special tools developed for the industry that the Employer has provided to all employes. Employer witness Larry Knegendorf, General Manager, and an employe for 21 years, testified that when he was hired he received a set of tools. Knegendorf testified that the Employer has supplied supplemental tools to new hires and has replaced worn or lost tools for current employes. These three witnesses testified creditably on the past practice, and I find that the record establishes that, if a new employe were hired who did not have tools or all the tools that he needed, the Employer would provide the necessary tools. This practice does not establish that the Employer has agreed to provide current employes with an initial set of tools.

The Union makes several arguments to support its position. One of those arguments is that during negotiations the Employer never tried to limit the language of Article 10, Paragraph G to just new employes. I do not find this argument persuasive for the simple reason that both parties could make the same argument. The Employer argues the Union never said the language was to apply to current employes. I find that where the language is ambiguous, as it is here where it does not state specifically which employes should receive an initial set of tools, it is the language drafter, in this case the Union, that had the burden of ensuring during contract negotiations that it made clear which employes were to receive an initial set of hand tools.

The Union further argues that since the uniform and tool language is almost identical it should be clear that if current employes were to receive an initial set of uniforms, the same logic should be applied to the provision of tools by the Employer. The problem with this argument is that Union witness Segelstrom and Employer witnesses Russett and Knegendorf testified that there were extensive discussions during negotiations that current as well as new employes would receive an initial set of uniforms. The circumstances were also different for the uniform issue. Russett testified that the Employer was concerned that employes were not wearing their uniforms properly. Russett testified that the Employer was going to take a harder stand on enforcing the wearing of proper uniforms. Before the contract the employes had to pay one half the cost, which also was discussed as part of the uniform negotiations. Russett testified that Union representative Michalke was concerned that not all employes had a full set of uniforms, and that if the Employer was going to discipline employes for not wearing uniforms, the Employer should supply all employes with uniforms at its cost. Therefore the uniform language of Article 10, Paragraph E does not support the Union's position; the circumstances and practice were different and the parties specifically discussed who was to receive an initial set of uniforms.

The Union also argues that Article 10, Paragraph H, which requires employes to return uniforms and tools upon their termination would not make sense as, heretofore, the Company has not kept a record of who has received tools from the Company; by starting with an initial set for all employes, the Company would now have a record of tools to be returned. While the Union argument makes some sense, it is apparent even with the leaving of employe Lon Winger, after the contract was signed, the Company, as Russett, testified, has never required employes to return tools. I find the Union's argument in this regard to be too speculative to require the Employer to pay for an initial set of tools for existing employes without more proof. Further, I have not been asked to specifically interpret Paragraph H nor is it a monument to clarity as to what tools are to be returned. Lastly, I must consider the specific language before me for interpretation and, while contract language must be read together, I find nothing in Paragraph H or the remainder of the contract to help me interpret the meaning of the word "initial" in the context of the record the parties made before me at the hearing.

It is required of me, in the absence of supporting facts to interpret ambiguous language, to give the words of the labor agreement their plain or ordinary meaning. The standard is what a reasonable man would think the words to mean. 2/ I find that the better and more acceptable meaning of the word "initial" in this case is to be the first set of tools that an employe receives. To interpret the provision as the Union argues would give current employes a second set of tools since they already have one set. As the Employer points out, this would give the current employes a "duplicate" set of hand tools. I cannot believe this is what the parties intended; if it is what the Union intended, it was the Union's responsibility, as the proponent of this benefit proposal, to make that clear. Based on the parties' practice before the contract it makes more sense that the parties wished to codify the practice that the Employer would ensure that a newly hired employe would have the set of tools he needed to do the job; a job applicant would be able to accept a job offer without the need to buy tools in order to take the job. The testimony of Russett established that the Employer already has purchased some tools for existing employes, either when they were hired or where specialized tools, such as the 66/110 punch tool, were needed by all employes. (Jt. Ex.9) It does not make common sense, nor is it reasonable that the Employer would agree to purchase another one of these tools and incur this cost without specific agreement by the Employer to do so. At approximately $300 cost for a set of hand tools, the expense to the Employer would not be insignificant. (Jt. Exs. 9 and 10)

2/ The Arbitrator, it has been said, should "look at the language in light of experience and choose that course which does the least violence to the judgement of a reasonable man." [and] Arbitrators often apply the "reasonable man standard" to interpret ambiguous contract language. Elkouri & Elkouri, How Arbitration Works, 5th edition, p. 514 (1997).

I am persuaded that the language at issue is ambiguous because it does not make clear who is to receive the initial set of hand tools. Under well-accepted arbitration case law the Union as the drafter of the language (it was the Union's initial proposal and never changed) must have

the language construed against it. 3/ I am further persuaded that the plain meeting of the words "initial set of hand tools", under the record in this case, applies to new employes only. The current employes have their set of tools and have negotiated a commitment into the contract to have the Employer continue its practice of replacing worn out and broken tools. Pursuant to the arbitration clause I am bound not to add terms to the labor agreement; to find other than I have in this case would add a term to the agreement to which the parties did not agree. The Employer did not violate the collective bargaining agreement when it refused to provide existing employes with an initial set of hand tools. I therefore cannot sustain the Union's grievance and it is denied.

3/ It is a standard rule of contract interpretation that ambiguous language will be construed against the party who proposed or drafted it. Enforcement of this rule is practical because it promotes careful drafting of language and careful disclosure of what the drafter intends by his language. Elkouri & Elkouri, How Arbitration Works, 5th edition, pp. 509-510 (1997).

AWARD

The grievance is denied.

Dated at Madison, Wisconsin this 11th day of August, 1998.

Paul A. Hahn /s/
Paul A. Hahn, Arbitrator

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