

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

ELLSWORTH CO-OP CREAMERY

and

TEAMSTERS GENERAL UNION LOCAL 662

Case 13
No. 62125
A-6055

Appearances:

Stephen L. Weld, Weld, Riley, Prens & Ricci, S.C., Attorneys at Law, 3624 Oakwood Hills Parkway, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, appearing on behalf of Ellsworth Cooperative Creamery.

Andrea F. Hoeschen, Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, 1555 North Rivercenter Drive, Suite 202, P. O. Box 12993, Milwaukee, Wisconsin 53212, appearing on behalf of Teamsters General Union Local 662.

ARBITRATION AWARD

Pursuant to the terms of the 2002-2005 contract between Ellsworth Co-op Creamery (Employer) and Teamsters General Union Local 662 (Union), the Wisconsin Employment Relations Commission assigned me to arbitrate an October 4, 2002 grievance that alleges the Employer created a new production/packaging area and improperly failed to offer the new work to Union-represented employees or to require that employees performing the work become Union-represented.

Hearing was held in Ellsworth, Wisconsin on June 4, 2003. The hearing was not stenographically recorded. The parties filed post-hearing briefs by July 14, 2003.

ISSUE

The parties were unable to reach agreement on a statement of the issue to be resolved through this Award but gave me the authority to frame the issue after considering their respective positions. Having considered the matter, I concluded that the following statement of the issue is appropriate:

Did the Employer violate the contract by using non-bargaining unit employees to package cheese curds with the vacuum chamber machine and by refusing to bargain a wage rate for employees using the vacuum chamber machine. If so, what remedy is appropriate?

DISCUSSION

The Employer processes 1,500,000 pounds of milk each day into various dairy products including cheese curds. The vast majority of the curds (98%) are packed into large barrels by Union-represented employees for shipment to cheddar cheese processors. Union-represented employees also package special curd orders in 20-40 pound boxes.

For at least the last 36 years, the Employer has sold a very small portion of its curd production in individual 12-16 ounce packages directly to individual customers who stop at the Employer's retail store and to retailers for resale. Non-bargaining unit members -- typically office staff -- have always done all of the retail curd packaging.

Until 1997, the individual packages of cheese curds were bagged by hand. Beginning in 1997, a heat sealer machine located in the Employer's office/retail store area was used to package the individual curd bags. In October 2002, in addition to the heat sealer, a vacuum machine located away from the office/retail store area came into use to package individual curd bags. The vacuum machine has been used an average of 12 work hours a week (4 hours a week using 3 employees) and produces 175 bags per hour. The heat sealer continues to be used to package the substantial majority of the individual curd bags.

The introduction of the vacuum machine prompted several bargaining unit employees to file the instant grievance which states:

The Ellsworth Creamery has created a new production/packaging area and did not offer postings to union employees, instead they are using office workers to perform this job.

As a remedy, the grievance asks:

That they offer the positions to union workers and anyone who does take the job, must join the union.

The grievance alleges that the Employer's action violated the Job Bidding provisions of Article 5 Section 5 and "any other Articles and Sections pertaining to this grievance."

Critical to the Union's position in this matter is the premise that the curd packaging in question is bargaining unit work. I conclude otherwise because the work has always been performed by non-unit employees -- primarily office clerical staff who are explicitly excluded from the bargaining unit by Article 2, Section 1 of the contract itself. Thus, although the Union correctly points out that the packaging work is similar to work performed by unit employees, the long standing and unequivocal practice of having only non-unit employees performing this specific type of packaging persuades me that it remains outside the scope of the Job Bidding provisions of Article 5.

The Union contends that I should discount or ignore the practice because it is at odds with clear contract language that makes curd packaging work bargaining unit work. The allegedly clear language the Union cites is a portion of Exhibit A which provides:

Any employee whose classification does not appear in Section 1 or any employee doing work similar or related to the classifications that appear in Section 1, shall be classified accordingly.

Because the packaging of individual bags of curds is "similar" to work performed by the Section 1 classifications of "Warehouse, Barrel or Bagger Men", the Union argues it is clearly unit work. However, the Union argument does not account for the presence of the contractual language excluding the office clerical staff who perform the bulk of the packaging work from the unit. Given this contractual exclusion, it can hardly be said that the contract contains clear contract language that should override the long-standing practice.

The Union also argues the Employer's action violated Article 6, Section 3 of the contract which requires the bargaining of wage rates "where new types of equipment involving operations or classifications for which rates of pay are not established . . ." If read in isolation, this contract provision does have a literal application to this case. New equipment is involved and contractual rates of pay are not established. However, this argument ignores the explicit Article 2, Section 1 contractual exclusion of office clericals from the bargaining unit. Reading Article 6, Section 3 in conjunction with Article 2, Section 1, I conclude that because the new equipment is not being used to perform bargaining unit work, this contractual provision does not apply to this dispute and does not trigger an Article 6 bargaining obligation.

The Union also contends that it is appropriate to "accrete" the "new" employees performing this packaging work into the bargaining unit. My understanding of the facts presented at hearing establishes that the packaging work on the new machine continues to be

performed by office clericals who are explicitly excluded from the unit. Thus, there are no “new” employees eligible for accretion.

As is obvious from my rationale, the explicit contractual unit exclusion of office clericals plays a critical role in my determination that the packaging in question is not unit work. Thus, my finding of no violation is limited to packaging work performed by employees falling within the office clerical exclusion.

Dated at Madison, Wisconsin, this 5th day of January, 2004.

Peter G. Davis /s/

Peter G. Davis, Arbitrator

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