BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

TEAMSTERS LOCAL UNION NO. 43

and

PROFESSIONAL TRANSIT MANAGEMENT OF RACINE, INC.

Case 4
No. 67059
A-6297

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C. by **Attorney Andrea F. Hoeschen**, 1555 N. RiverCenter Drive, Suite 202, P.O. Box 12993, Milwaukee, Wisconsin 53212, on behalf of the Union.

Attorney John C. Ravasio, 6450 Branch Hill-Guinea Pike, Suite 203, Loveland, Ohio 45140, on behalf of the Employer.

ARBITRATION AWARD

At all times material, United Brotherhood of Carpenters, Local 1349 (herein the Union) and Eggers Industries, Inc. Employer (herein the Employer) were parties to a collective bargaining agreement covering the period from February 18, 2004 to August 19, 2007. On January 8, 2007, the Union filed a request with the Wisconsin Employment Relations Commission (WERC) to initiate grievance arbitration over the Employer's demotion of James Retzlaff (herein the Grievant). The undersigned was appointed to hear the dispute and a hearing was conducted on June 22, 2007. The proceedings were transcribed and the transcript was filed on July 2, 2007. The parties filed initial briefs by September 4, 2007, and the Employer filed a reply brief by September 17, 2007, whereupon the record was closed.

ISSUES

The parties stipulated to the following statement of the issues:

> Did the Company violate the collective bargaining agreement by paying Robert Mosley the new hire rate for Part-Time Operators when it hired him as a full-time Mechanic's Helper?

If so, what is the appropriate remedy?

PERTINENT CONTRACT LANGUAGE

ARTICLE 27. WAGES

The straight time hourly rate for employees covered by this agreement shall be as follows:

		7/1/05	7/1/06	7/1/07
(a)	Drivers			
	Start	$13.07	$13.46	$13.86
	After 60 days	$13.47	$13.87	$14.29
	After 1 year full-time	$17.49	$18.01	$18.55
	After 1 year part-time	$14.94	$15.39	$15.85
(b)	Dispatcher Clerks-Secretaries	$17.49	$18.01	$18.55
(c)	Mechanics	$20.38	$20.99	$21.62
(d)	Mechanic Helpers	$17.67	$18.20	$18.75
(e)	Driver Trainer	$1.00 above top driver's rate		
(f)	Student Rate	Current state minimum wage		

Three-step progressive wage rate for all operators hired after July 1, 2005 will be as follows:

Full-time Operators	7/1/05	7/1/06	7/01/07
Start	$13.07	$13.46	$13.87
After 60 Days	$13.47	$13.88	$14.29
After 1 Year	$14.94	$15.38	$15.84
After 2 Years	$16.48	$16.97	$17.48
After 3 Years	$17.49	$18.01	$18.55

Part-time Operators	7/1/05	7/1/06	7/1/07
Start	$12.88	$13.26	$13.66
After 60 Days	$13.28	$13.68	$14.09
After 1 Year	$13.91	$14.32	$14.75
After 2 Years	$14.42	$14.85	$15.30
After 3 Years	$14.94	$15.38	$15.84

Taxi Operators	7/1/05	7/1/06	7/1/07
Start	$10.30	$10.61	$10.93
After 60 Days	$10.56	$10.87	$11.20
After 1 Year	$11.59	$11.94	$12.29
After 2 Years	$12.10	$12.47	$12.84
After 3 Years	$12.88	$13.26	$13.66

Mechanics Helpers Identical to part-time operator's wage scale.

The Paratransit Operator wage scale and progression will be identical to the Part-time Operator scale and progression.

Part-time Operator going to full-time will move into the wage progression that is consistent with their total number of years worked.

BACKGROUND

Professional Transit Management of Racine, Inc. (herein the Company) operates the public transportation system for the city of Racine, Wisconsin. Teamster Union Local #43 represents the Company's non-management employees, which includes drivers, dispatchers, mechanics, mechanic helpers and clerical employees. On August 1, 2005, the parties entered into a collective bargaining agreement covering the period from July 1, 2005 to June 30 2008. Among other items, the contract included a new wage schedule applicable to drivers and mechanic helpers hired after July 1, 2005. Significant features of the new schedule included the creation of new schedules for part-time drivers and taxi drivers, which had not previously existed, the addition of two new pay steps in all driver classifications and the tying of the wage for the mechanic helpers to the part-time drivers' rate. The mechanic helper classification for employees hired before July 1, 2005 had its own wage rate. The former rate was slightly higher than that of full-time drivers, whereas under the new language newly hired mechanic helpers would be paid significantly less.

On May 4, 2007, one of the mechanic helpers, Thomas Lui, gave notice of his resignation, effective May 18. On May 7, the Company posted the position and listed a starting wage rate of $13.26 per hour, which was the staring rate under the contract for part-time drivers hired after July 1, 2005 and was now also the rate applicable to newly hired mechanic helpers. The wage rate for mechanic helpers hired prior to July 1, 2005 was $18.20 per hour. Robert Mosely, a part-time driver for the Company since 2003, posted for and was awarded the position. At that time his wage rate as a part-time driver was $15.39 per hour and upon staring his new position on May 21 Mosely's wage rate was reduced to $13.26 per hour. The Union filed a grievance over Mosely's wage rate on May 30. Unbeknownst to the Union, Mosely filed a grievance on his own behalf on May 31. On June 5, Curtis Garner, the General Manager of PTM, denied the Union's grievance. On June 6, Garner met privately with Mosley and resolved his grievance by increasing his wage rate to 15.38 per hour, which was the applicable 3 year wage rate for a part-time driver, retroactive to May 21, and gave him an

additional 6 casual days. The Union pursued its grievance through the contractual process, culminating in this arbitration. Additional facts will be referenced, as necessary, in the **DISCUSSION** section of this award.

POSITIONS OF THE PARTIES

The Union

The Union asserts that the clear language of the contract makes the new wage scale only applicable to newly hired employees. The Grievant was originally hired before July 1, 2005, so the new wage scale does not apply to him. He is entitled to the wage for mechanic helpers hired before July 1, 2005, which was $18.20 per hour at the time he was awarded the position. Date of hire is commonly understood to refer to the date an employee first is hired into a place of employment. If date of hire changed with every bid into a position the seniority system would crumble, calculating benefits would be difficult and employees would be discouraged from advancing in their careers. The Grievant was hired in 2003 and any other interpretation would cause him to forfeit his earned seniority. This dispute is also resolved by the language of Article 4, which specifies that part-time employees moving to full-time will have their original date of hire used for seniority purposes. Thus the wage grid established for employees hired after July 1, 2005 does not apply to the Grievant.

Also, the language regarding mechanic helpers in the new section of Article 27 clearly only applies to part-time employees. By tying the wage of mechanic helpers to that of part-time operators, the parties were clearly referring to two part-time positions. If it applied to all mechanic helpers, then the full-time employees would have to have had their wages cut, which did not happen. The Company conceded that the originally posted wage of $13.26 was wrong when it increased the Grievant's wages rate to $15.38. This was also in error because it was based on the language applicable to new hires going from part-time to full-time, which is not the case here.

The bargaining history supports the Union. Union Bargaining Agent Wesley Gable testified that the new wage scale was introduced by the Company in the 2005 negotiations as a cost reduction measure, in part by allowing the Company to hire part-time mechanic helpers and paratransit drivers for the first time at a reduced pay rate. Nothing was said in negotiations about the new wage scale applying to existing employees posting or transferring into new positions. Since the Company was proposing this major change in wage structure, it had a duty to be clear as to its intentions. If it was not, it must bear the loss for any misunderstanding. Further, in its attempt to settle with the Grievant by increasing his wage to that of a three year employee, the Company acknowledged that he was not a new hire, but a four year employee who should be entitled to the pre-existing wage rate.

The Company's attempt to settle separately with the Grievant does not affect this grievance. The contract is clear that the Union is the exclusive bargaining representative and any attempt to negotiate directly with employees constitutes an unfair labor practice. The

Union was unaware of the settlement with Mosely, which did not address the Unoin's grievance, and cannot be held to its terms. Finally, although the Company raised a timeliness objection, the grievance was timely because it could not have been filed before Mosely began his job on May 21 and it was filed on May 30, which was within the window of seven working days set forth in the contract.

The Employer

The Company asserts that the position was correctly posted and filled. Once the mechanic helper vacancy became known, the Company posted the position according to the contract. The Grievant was the unanimous choice of the selection committee for the position and was an appropriate choice to fill it. Furthermore, the Grievant is earning the top rate for the position of mechanic helper, so there is no remedy required.

Where contract language is clear and unambiguous, it controls and there is no need for interpretation. Article 27 clearly lists the appropriate wage for all employees covered by the agreement. The contract is also clear that part-time employees do not accrue and carry over seniority when they move to a full-time position. The Grievant was a part-time driver and, thus, had no seniority when he moved into the mechanic helper position, nor could he have carried it over if he was full-time under the contract, because he was in a different classification. Thus, he was a new hire, for purposes of the wage language, and was paid the appropriate wage.

The Union asserts that the Grievant should be paid under the old wage schedule, which would not be correct. Since he was hired after July 1, 2005, he is subject to the wage scale applicable to part-time operators. There is no language providing for employees transferring into the mechanic helper position to be paid under the old scale. The new scale does reflect the parties' intent to reduce the wage rate of the mechanic helper position over time by tying it to the part-time operator rate. This did not harm the Grievant, because he was paid at the top rate for the position due to his years of service and so his wage rate effectively did not change.

DISCUSSION

This is a contract interpretation case. In 2005, the parties bargained new language into their collective bargaining agreement creating a two-tier wage structure. The effect of this change was to add steps to the wage scale for full-time and part-time operators so that the top wage rate would remain the same for those classifications, but the time required for employees to reach the top step would be increased from one year to three. At the same time, the wage rate for mechanic helpers, which had been slightly higher than that for full-time operators, would now be the same as that of part-time operators, which was substantially lower. The new rates would apply to employees hired after July 1, 2005, and existing employees would be grandfathered under the existing wage scale.

The issue here arises over the meaning of the term "hired." The Grievant has been employed by the Company since 2003. In 2007, while working as a part-time operator, he posted for, and was awarded, a position as a mechanic helper. The Union believes that his original date of hire, January 4, 2003, controls, and that he should receive the wage rate applicable to mechanic helpers under the old schedule. The Company asserts that his posting into a new classification constitutes a new hire under the contract, and so the wage scale applicable to employees hired after July 1, 2005 should apply.

Generally, an employee is considered to be "hired" at the time they commence employment for the employer. Beyond that point, they may move to different positions and classifications within the workplace through various processes, including transfer, posting, promotion, demotion and bumping subsequent to layoff, but, absent contract language to the contrary, these are not considered to be new hires. I look, then, to the contract for guidance as to whether the term "hired," as used in Article 27, was intended to have some meaning other than that which is typically applied to it.

In the first place, the contract is replete with references to part-time employees that make it clear that they are members of the bargaining unit and are covered by the agreement. There is, therefore, no serious contention that the Grievant was not an employee of the Company at the time he was awarded the mechanic helper position. Article 4 provides that no seniority shall accrue for part-time employees, but also provides that a part-time employee who accepts the first offered full-time position shall retain his or her original date of hire for seniority purposes. It also states that seniority shall not be carried over for movement between classifications. In my view this language is not intended to imply that part-time employees aren't really employees because they don't accrue seniority, nor that movement between classifications constitutes a new hire. The more likely purpose of the language is to protect the seniority of full-time employees in their classifications in the event of layoffs, while at the same time recognizing the experience of part-time employees once they achieve full-time status and giving significance to their original date of hire. I do not take the language to mean, therefore, that a part-time employee moving to full-time status was intended to be regarded as a new hire. Rather, the fact that the original date of hire is used for seniority purposes tends to negate that impression. Article 4 also establishes rules for posting into vacant positions. Notably, it states that a vacant bargaining unit position shall be posted within the unit for seven calendar days before filling the position from outside the unit and that, within the unit, filling of the position shall be according to seniority among qualified applicants. This was the process that was followed in the case of the Grievant. Here, again, the contract does not indicate that an employee who moves to a new position through signing an internal posting is considered to be a new hire. Based on the contract language, therefore, it would seem that the term "hired" should be given its usual meaning, which would mean that the Grievant was not a new hire as a mechanic helper, as that term is typically understood.

The Company asserts, however, that there is no contract language supporting the Union's position that the hiring language in the new wage scale was not intended to apply to transfers. I find, however, that, since a transfer is not usually considered to be a new hire,

there is no need for specific language excluding it. Rather, if transfers were intended to be treated as new hires, the contract, bargaining history, or practice of the parties would need to reflect that intent and they do not. Since the Grievant was not a new hire, therefore, he should have received the wage rate for mechanic helpers applicable to employees hired before July 1, 2005, which was $18.20 per hour and, after July 1, 2007, $18.75 per hour. [1]

For the reasons set forth above, therefore, and based upon the record as a whole, I hereby issue the following

AWARD

The Company violated the collective bargaining agreement by paying Robert Mosley the new hire rate for part-time operators when it hired him as a full-time mechanic helper. It shall, therefore, make him whole by forthwith adjusting his wage rate to that of a mechanic helper hired prior to July 1, 2005, paying him backpay from May 21, 2007 commensurate with the difference between his wage rate and the rate he would have been paid computed under the original wage scale for mechanic helpers, together with any additional benefits to which he would have otherwise been entitled.

Dated at Fond du Lac, Wisconsin, this 18th day of March, 2008.

John R. Emery /s/
John R. Emery, Arbitrator

[1] I note the Company's argument that the Grievant's claims were resolved on June 6, 2007 in the settlement of his own grievance against the Company. I reject that argument because, as the Union notes, the Union was not involved in the grievance, nor advised of the settlement prior to the arbitration in this matter. Since the Union is the sole bargaining agent for the bargaining unit and Article 24 of the contract expressly provides that all grievances are to be processed through duly authorized representatives of the Employer and Union, I find the Employer's individual settlement with the Grievant to be of no effect with respect to this grievance.

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