

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

TEAMSTERS LOCAL UNION, No. 43

and

PORCARO FORD, INC.

Case 2
No. 69915
A-6412

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by **Attorney Nathan D. Eisenberg**, 1555 North RiverCenter Drive, Suite 202, Milwaukee, Wisconsin 53212, on behalf of the Union.

Mr. Anthony Porcaro, President, and **Ms. Sheryl Volpano**, Comptroller, Porcaro Ford, Inc. 6001 Washington Ave., Racine, Wisconsin 53406 on behalf of the Employer.

ARBITRATION AWARD

Teamsters Local Union No. 43 (herein the Union) and Porcaro Ford, Inc. (herein the Employer) are parties to a collective bargaining agreement dated May 19, 2009 and covering the period from April 16, 2008 to April 15, 2011, which provides for arbitration of certain disputes between the parties. On June 7, 2010, the Union filed a request with the Wisconsin Employment Relations Commission (WERC) to initiate grievance arbitration over the removal of Bryan Langlois from the bargaining unit. The undersigned was selected from a panel of WERC staff members to hear the dispute and a hearing was conducted on October 5, 2010. The proceedings were not transcribed. The parties filed briefs by November 5, 2010 whereupon the record was closed.

ISSUES

The parties stipulated to the following statement of the issues:

Did the Employer violate the agreement when it designated Bryan Langlois as Assistant Parts Manager and excluded him from the bargaining unit?

If so, what is the appropriate remedy?

PERTINENT CONTRACT LANGUAGE

ARTICLE 1. RECOGNITION

Section 1. The Employer recognizes the Union as the exclusive bargaining agent for a single collective bargaining unit consisting of the employees of the employer engaged in the classifications of work set forth in Article 9 of this agreement, excluding lot helpers and general clean-up employees, **quick lane personnel (as required by Ford Quick Lane Operating Requirements)**, professional employees, managerial employees and managerial trainees, new and used car salesmen, office clerical employees and guards and supervisors as defined in the National Labor Relations Act, as amended.

Section 2. The Employer hereby assigns all work within the classifications set forth in Article 9 below to employees in the bargaining unit covered by this Agreement. No person excluded from the bargaining unit shall perform work usually performed by employees within the unit. Such work shall include the passing of parts over the counter, the chasing and stocking of parts, all automotive service, maintenance and set-up work, and tasks incidental thereto. Parts Managers, to be a maximum of one (1) for each employer, will not be subject to the foregoing restrictions.

BACKGROUND

Porcaro Ford, Inc. is an automobile dealership in Racine, Wisconsin. Previously, it was operated as Towne Ford, but was purchased by the Porcaro Group in 2007. For many years Towne Ford was in a collective bargaining relationship with Teamsters Local Union No. 43, which represented a number of Towne Ford employees, including the Parts Counter Employees, Apprentice Parts Counter Employees and Parts Helpers and Drivers. After the changeover in ownership, the relationship continued and the 2008-11 agreement in effect at the time of the events pertinent hereto was negotiated between Local 43 and Porcaro Ford, Inc.

At the time the Porcaro Group bought the dealership, Tom LeFever and Duane Cheevers were employed as Parts Countermen and Bryan Langlois was employed as a Parts Driver. All were members of the bargaining unit. In 2009, LeFever was promoted to the position of Parts Manager and, thus, was excluded from the bargaining unit per Article 1, Section 2 of the contract. Cheevers subsequently left employment with the Company and was not replaced, leaving Langlois as the only Parts employee in the bargaining unit, performing some duties of the Parts Counterman along with those of the Parts Driver. In May 2010, Local 43 learned that Langlois had been promoted to the position of Assistant Parts Manager and was also removed from the bargaining unit, leaving no bargaining unit employees in the Parts Department. Local 43 filed a grievance over Langlois' removal from the unit, which was

denied by the Company, whereupon the matter proceeded to arbitration. Additional facts will be referenced, as necessary, in the DISCUSSION section of the award.

POSITIONS OF THE PARTIES

The Union

The Union asserts that Article 1, Section 2, of the contract limits the number of managerial employees in the Parts Department to one. At the time the grievance was filed, the Company employed both a Parts Manager and an Assistant Parts Manager Under the clear language of the contract, this was a violation. For this reason, alone, the grievance should be sustained.

The circumstances giving rise to the grievance also support its being sustained. For over thirty years, the Company has been taking bargaining unit work and assigning it to non-bargaining unit employees. As a result, the Parts Department, which used to have three bargaining unit members, now has none. The work of the former Parts Counter men is now done by the Manager and Assistant Manager and the work of the former Parts Driver is now done by a non-bargaining unit Customer Service Driver. Gradually, the bargaining unit is being starved of members. Arbitrators have long recognized that transferring bargaining unit work outside the unit violates the recognition clause of most contracts. The Company incorrectly asserts that bargaining unit work is determined on a day to day or hour to hour basis. There is no support for this proposition and, in fact, the definition of bargaining unit work is regarded as a mandatory subject of bargaining. The Employer may not unilaterally make such determinations.

The Company asserts that Langlois was being cross-trained, but there is no evidence he was performing anything other than bargaining unit duties. The contract defines all parts work as being bargaining unit work, presumably including work done by the Parts Manager. What the Company ignores is that under Article 1, Section 2, only the Parts Manager is exempt. There is no exception for an Assistant Parts Manager. There is also no merit to the Company's assertion that this provision has been violated in the past by the simultaneous existence of a Parts and Service Manager and a Parts Manager. The fact is that, despite the similarity of the titles, there is no evidence that the Parts and Service Manager ever exercised managerial control over the Parts Department.

It is also of no importance that Langlois did not object to his removal from the bargaining unit. The harm here was to the bargaining unit as a whole and an employee does not have the right to negotiate away bargaining unit claims in an individual agreement with the employer. Langlois' opinion does not determine whether his position should be in the bargaining unit, or else it would create a unilateral contract between employer and employee. The bargaining unit has the right to protect its work and positions, regardless of the desires of

an individual employee. As a result, Langlois and the unit are entitled to be made whole by the payment of any wages, benefits and Union dues that have been reduced or withheld due to Langlois' removal.

The Employer

The Employer maintains that the promotion of Langlois to Assistant Parts Manager was an attempt to cross-train him in order to be able to use him in two separate departments. Under the terms of the agreement, Langlois would not be able to perform the duties of a Service Writer as a member of the bargaining unit, because professional and/or managerial employees are clearly excluded under Article 1, Section 1 of the contract. The promotion allowed the Employer to retain Langlois in the context of a poor economy and the Arbitrator is requested to permit it to continue to do so.

DISCUSSION

In this case, the parties have been in a collective bargaining relationship for several years. The bargaining unit was created when the Employer was Towne Ford, Inc. In 2007, Towne Ford was purchased by Porcaro Ford, Inc, which then continued the collective bargaining relationship with Local 43. In all relevant respects the 2008-11 contract negotiated between the parties is identical with the agreement between Local 43 and Towne Ford.

Article 1, Section 1 specifies that Local 43 is the exclusive bargaining representative for the employees engaged in the classifications of work set forth in Article 9, exclusive of helpers, general clean-up employees, quick lane personnel, professional and managerial employees, managerial trainees, auto salesmen, clerical employees, guard and supervisors. The classifications set forth in Article 9 comprise primarily auto maintenance and repair employees and include Parts Counter Employees and Parts Helpers & Drivers. Article 1, Section 2 assigns all work performed by those classifications to the bargaining unit and prohibits anyone excluded from the bargaining unit from performing those duties, which are defined as the passing of parts over the counter, chasing and stocking of parts, all automotive service, maintenance and set up work and tasks incidental thereto. An exception to the above exclusion is made for one Parts Manager.

As noted above, when the Porcaro group took ownership of the dealership there were two Parts Counter Employees and a Parts Driver, all bargaining unit members, but there was not a Parts Manager. Subsequently, one of the Parts Counter Employees was promoted to Parts Manager and the other left his employment without being replaced. The Parts Manager continued doing bargaining unit work according to the exception in Article 1, Section 2 and the Parts Driver, Brian Langlois, was the only Parts employee remaining in the bargaining unit. In May 2009, Porcaro created a position of Assistant Parts Manager. Langlois was promoted to this position and assigned additional duties, including working as a Service Writer. At that point, the Company stopped deducting and remitting Union dues on the premise that Langlois was now a management employee and was, therefore, no longer a member of the bargaining unit.

The Company asserts that it needed to cross-train Langlois to perform duties outside the Parts Department due to the economic downturn. It also maintains that it needed to remove Langlois from the bargaining unit because the assignment of new duties to a bargaining unit employee would have made it vulnerable to a grievance. Gerald Jacobs, Secretary-Treasurer for Local 43 and the Bargaining Agent for the Porcaro bargaining unit, testified that in his opinion the assignment of new duties would not be cause for a grievance and that the Local's primary concern was the removal of work from the unit and the reduction of unit positions. The contract does not specify how specific duties are to be assigned, but Jacobs' position is consonant with the view adopted by many arbitrators that, absent a specific limitation in the contract, the authority to assign work and direct the work force is a reserved right of management. *Common Law of the Workplace*, p. 111, (BNA, 1998, Theodore St. Antoine, ed.) The Company asserts that a Service Writer is excluded from the bargaining unit as a professional and/or managerial employee, but neither the contract, nor the record, establish that the position of Service Writer is, in fact, professional or managerial. Further, Langlois was given the position of Assistant Parts Manager, not Service Writer. In my view, therefore, the Company's position is questionable, at best.

What is not questionable is that the contract is very specific about who may and may not perform bargaining unit work. Specifically, it reserves all Parts Department work to bargaining unit employees, with the exception of one Parts Manager. The purpose of this language is clearly to prevent the very thing the Union is concerned about, the gradual degradation of the bargaining unit by the assignment of bargaining unit work to non-bargaining unit employees. By limiting the assignment of bargaining unit work outside the unit to one Parts Manager, Article 1, Section 2 of the contract insures that parts work will continue to be done by bargaining unit employees unless otherwise specifically provided.

The Company does not address the language of Article 1, Section 2. If the Company wants to expand the right to assign bargaining unit work outside of the bargaining unit, it must bargain for it. Until it does so, under the current language it cannot assign parts work outside the bargaining unit to anyone other than one Parts Manager, currently Tom LeFever. There is no basis for barring the Company from creating a new position and placing Langlois in it. Under the contract, however, any parts work that is not performed by the Manager must be performed by bargaining unit personnel. In my view, therefore, during the time that Langlois has continued to perform bargaining unit work, and for as long as he continues to do so, the Union is entitled to the receipt of his Union dues.

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

AWARD

The Employer did not violate the agreement when it designated Bryan Langlois as Assistant Parts Manager, but did violate the agreement when it continued to have him perform bargaining unit work, but did not deduct and remit Union dues to the Union. As and for a remedy, the Company shall deduct and remit Union dues from Langlois' wages effective from the date of this award.

Dated at Fond du Lac, Wisconsin, this 18th day of January, 2011.

John R. Emery /s/

John R. Emery, Arbitrator

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