

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

TEAMSTERS LOCAL UNION 662, IBT

and

ASTEN JOHNSON APPLETON SITE

Case 1

No. 69960

A-6417

(Jurisdictional Dispute Grievance)

Appearances:

Soldon Law Firm, LLC, by **Attorney Kyle A. McCoy**, 6319 29th Avenue NW, Rochester, Minnesota 55901, appeared on behalf of the Union.

Gill & Gill, S.C., by **Attorney Gregory B. Gill, Sr.**, 128 North Durkee, Appleton, Wisconsin 54911, appeared on behalf of the Employer.

ARBITRATION AWARD

Teamsters Local Union 662, IBT, hereinafter referred to as the Union, and Asten Johnson Appleton Site, hereinafter referred to as the Employer or the Company, are parties to a collective bargaining agreement (Agreement) which provides for final and binding arbitration of certain disputes, which Agreement was in full force and effect at all times mentioned herein. The parties asked the Wisconsin Employment Relations Commission to assign an arbitrator to hear and resolve the Union's grievance regarding the jurisdiction of work assignments of certain employees. The undersigned was appointed as the Arbitrator. A hearing into the matter was held in Appleton, Wisconsin, July 26, 2011, at which time the parties were given the opportunity to present evidence and arguments. The hearing was transcribed and is the official record of the hearing. The parties filed post-hearing briefs by October 8, 2011 at which time the record was closed. Based upon the evidence and the arguments of the parties, I issue the following decision and Award.

ISSUE

The parties were unable to stipulate to a statement of the issue and asked the Arbitrator to frame the issue.

The Union would frame the issue as follows:

Did the Company violate the collective bargaining agreement when it scheduled Non-Production Assistant Machinists to work in the weaving department? If so, what is the appropriate remedy?

The Employer would frame the issue as follows:

Whether or not the Company violated the flex agreements (initially executed November 18, 2002 and amended May 1, 2004 and remains in effect) that had been negotiated by and between the Company and the two Unions which relates to the use of Production Assistants (PA's).

The Arbitrator frames the issue as follows:

Did the company violate the Flexibility Agreement when it assigned Finishers to temporary PA status (or "PA's for a day") and then assigned two "PA's for a Day" to replace a Weaver at a loom?

If so, what is the proper remedy?

RELEVANT CONTRACTUAL PROVISIONS

FLEXIBILITY AGREEMENT (November 18, 2002) (pertinent parts) (Implementation of Flexible Loom Preparation)

As discussed in several meetings with both shop committees and in meetings with PA's and Weavers, our site needs more flexibility in work scheduling.

. . .

During our discussions, we heard concerns from both IAM and Teamsters shop committees, as well as from Weavers and PA's. The primary concern was job security.

. . .

Our intention is not to give the PA work to the weavers or give the weaver's work to the PA's. Our intention is to survive in the long run through improvements in the operation.

. . .

Flexible work scheduling of loom preparation will be implemented for a 4-month trial period, during which time, any issues that arise will be worked out by management and the unions.

. . .

The following jobs can be scheduled to Weavers or PA's in any combination:

Can Warper Preparation including loading and unloading spools, threading reeds, drawing knots and any other work preparatory to winding canisters.

Loading and unloading canisters

Material Handling as related to loading and unloading cans and spools

Casting of looms

Tying of Sackings, replacing of ends at warp startup or at other times when appropriate

Sanding of fuzz-balls, incidental reed cleaning, heddle cleaning or adding/removing of heddles during threading. This does not include scheduling Weavers to the reed bench or full cleaning of reeds on the loom with chemical cleaning agents.

Housekeeping around the looms such as picking up after oneself, sweeping platforms, wiping of surfaces

Pulling knots under instruction of knot-tie team member. A knot tie team member will be scheduled if available without shutting down looms.

Threading

FLEXIBILITY AGREEMENT (May 1, 2004) (pertinent parts)

Flexible Work Scheduling 2004 – Letter of Understanding

The Company and both union's shop committees have agreed to limited changes allowing more flexible work scheduling in the plant. The following jobs can be done by any associate depending on department work-loads on any given day.

Project Work (kaizen, UFO, Safety, 5S)

Fabric Inspection – including cleaning and trimming on the inspection frame

Warp Startup tasks – allowing greater involvement of EMT's

Fabric Changeovers on Looms – allowing greater involvement of Weavers

Furthermore all parties agree to the following:

There will be no layoffs or displacements resulting from flexible work scheduling

The Company will address any concerns brought forth by either committee

The parties will meet weekly if needed to address any issues arising

If we schedule the Inspection frame to an associate other than a displaced Finisher or Finisher fill-in, the Associate who was passed over will be paid Finishing rate according to progression

Associates will be trained before being asked to do work they don't normally perform

We will maintain a common sense approach to work scheduling

The two committees will work out reasonable expectations for cross functioning of warp startups and fabric changeovers

Running Loom in automatic will be done by weavers

Usual startup procedures may be performed by qualified EMT

Startup work will be done with safety-first mindset by any associate

PA duties on startup/warp startup will not be affected

Qualified Weavers may enter preloaded programs (shed patterns) and make pattern adjustments per setup sheet/tech. changes

Both groups agree to record any changes/info on setup sheet and Maint. Log book

The IAM contract's language change in 2.6(f) will have a new effective date of 7-1-05

This agreement remains in effect through October 31, 2004 and will be renewed if the parties agree.

If the agreement is not renewed, the Company's position is that the Inspection Frame, as a new piece of equipment is subject to flexible scheduling, or a utility classification. If the agreement is not renewed, the IAM's position is that the Inspection Frame is part of the Finishing department. This disagreement will then remain to be resolved.

BACKGROUND

The Company engages in the manufacture of woven products for use in the paper industry. It employs, among others, Weavers and PA's (Production Assistants). The Teamsters Local 662 represents Company Weavers, the Machinists Union represents Production Assistants. The Machinists also represent Finishers who, on occasion, are designated by the Company, as temporary PA's, also known as "fill-in PA's" or PA's for a day".

In 2002 the parties entered into the "Flexibility Agreement" set forth above. Although there are two documents (the second agreement entered into in 2004), pursuant to stipulation they are to be read as one, referred to as the "Flexibility Agreement" or "Flex Agreement" and incorporated into the parties' CBA.

Prior to the implementation of the "Flexibility Agreement" above, the Weavers and PA's (a Weaver and PA together) were primarily responsible for the operation of the looms. The Flexibility Agreement allowed the Company to modify its scheduling to avoid strict scheduling limitations which apparently prevented such things as scheduling looms in one or two loom combinations instead of running three in combination; scheduling the odd jobs associated with the loom operations and being forced to shut down equipment when the right combination of Weavers and PA's were not available. This resulted in the occasional use of two PA's working a loom in the place of a Weaver. The Teamsters were concerned about job security, i.e. losing Weaver work to PA's and so the agreement provided that no Weaver work would go to PA's and no PA work would go to Weavers. It also provided for the specific jobs which could be scheduled to Weavers or to PA's in any combination, i.e. two PA's working together in the event there is no Weaver available.

PA's are all Machinists. Machinists also represent "Finishers". The Company, at some point after the Flexibility Agreement went into effect, began using Finishers to "fill into a PA position" for short periods of time. These were referred to (by the Union) as PA's for the day or "fill-in PA's."

This grievance arose when two Finishers or "fill-in PA's" were assigned Weaver jobs unloading canisters while Weavers were on layoff status. This, the Union believed, was contrary to the Flexibility Agreement since this particular job (unloading canisters) is identified in the Flexibility Agreement as being reserved for PA's and Weavers.

THE PARTIES' POSITIONS

The Union

The clear and unambiguous language of the Parties' agreement and flexibility agreement requires that only a combination of Weavers and PA's, not "fill-in PA's", may work a loom. Fill-in PA's are machinists who are temporarily assigned as PA's. By giving two non-PA's ('for the day' fill-in Finishers) work reserved to regular PA's and specifically set forth in the Flexibility Agreement as such, "the Company upends the parties' Agreements." If there is no ambiguity in the agreement there is no need to resort to extrinsic evidence to glean the intent of the parties.

The parties' working interpretation of the Flexibility Agreement comported with the intent of the parties while the recent change does not. The evidence shows that a recent change to the Machinists contract was used by the Company in an attempt to adversely affect the Teamsters (Weavers) jurisdictional work. Joe Teska, the Company's Manufacturing Team Leader, believed that a recent change in the Machinists contract language allowed the Company to re-interpret the Flexibility Agreement. In short, prior to Teska's re-interpretation, the Flexibility Agreement allowed two permanent PA's to work some of the Weaver (loom) jobs. After the re-interpretation, two "fill-in" PA's were allowed to work those jobs. The Union has no objection to two "permanent PA's" doing the loom work but allowing two "fill-in PA's" to do so does not comply with the terms of the Agreement and threatens Teamster work jurisdiction.

The Company's e-mail (to Zeegers) attempt to alter the language of the flex agreement was an admission of agreement violation. The proposed changes would support the Company's new "interpretation":

7.7 - Flexibility - All job assignments and scheduling decisions lie exclusively at the discretion of management to most effectively meet immediate operational needs including all work historically considered exclusive to the IBT or the IAM.

The Union rejected this language because it would put Teamster jobs at risk. Contrary to the Company's assertion, this does not constitute an "offer of compromise" since it did not approach the Union's Business Agent. Also, there is no "compromise" contained in the e-mail.

If taken to its logical conclusion, the Company's practice would remove all Weaver work from Teamster jurisdiction. This grievance is primarily concerned with a misrepresentation allowing non-PA's to perform Weaver and PA work, but its continued application could result in an overall disenfranchisement of the Teamster Weavers. The Company could layoff all Weavers and replace them with "fill-in PA's."

The Employer

The Union has the burden of proof and has failed to meet it. Hence, the grievance must be denied. Andy Zeegers, the Union's sole witness, testified that two members of the Machinists Union were scheduled to unload cans on a loom, a job specifically reserved for Weavers and PA's. These two were not PA's although they were employees of the Company. The Company maintains that the two were, in fact, PA's and that their use in this instance meets the "spirit, intent and letter of the flex agreement."(sic)

Zeegers also testified that the Flex Agreement was designed to protect job security. Job security is enhanced by following the intent, letter and spirit of the Flex Agreement since job security is enhanced when inefficiency is eliminated.

Zeegers testified that in the past employees assigned to work in the PA department were allowed to do so even if they were not permanent PA's. He had no idea regarding how long people were allowed to do temporary work. He did not know what the practice was relative to defining PA's. He did say that if a past practice was open and practiced without objection and everyone knew or should have known about it, then that would be a past practice. His actual knowledge of the facts surrounding how this particular position was staffed and whether or not temporary PA's could do the work was not established. Hence, the Union failed to prove its case. The Union rested with Zeegers and offered no further testimony.

Mike Schommer, on behalf of the Company, testified that he negotiated the Flex Agreement and that its purpose was to make the operation more efficient. The Agreements never caused a layoff and, in fact, has prevented them. Also, in the past, although many PA's had been temporarily assigned as such, the Union never objected to the practice. Employees had been assigned as PA's on a temporary basis going back to the early 1980s with no objection.

Joe Teska testified on behalf of the Company and confirmed Schommer's testimony. He also clarified that prior to 2002 a fill-in list was used (to fill the temporary PA positions) and that after 2002 only temporarily assigned PA's or regular PA's could do the work because the intent was to use employees from departments that were slow to avoid inefficiency and lay-offs.

The grievance must be denied in its entirety.

DISCUSSION

The fundamental question in this dispute is the definition of a Production Assistant (PA) as it is used in the context of the Flex Agreement. Does it include part-time PA's or is it limited to the PA's listed in the IAM Agreement as "custodians"? The Flex Agreement refers to PA's but, contrary to the Union's argument, does not answer this question. The Union argues that PA's are restricted to "full-time" PA's, i.e. those PA's defined in the Machinists contract as "PA, Custodians." The Company on the other hand, insists that the word PA includes anyone working in that position, even if only on a temporary basis, such as Finishers. The Company has, according to the testimony of thirty-two year employee Mike Schommer, used "fill-in" PA's (Finishers) for as long as he can remember. Because the parties have a differing view as to the meaning of the term PA, one must look to the contract to determine whether it is ambiguous in its reference to PA's.

A contract term is said to be ambiguous if it is susceptible to more than one meaning, that is, if "plausible contentions may be made for conflicting interpretations." ARMSTRONG RUBBER CO., 17 LA 741, 744 (Gorder, 1952). The first paragraph of the Flex Agreement says:

As discussed in several meetings with both shop committees and in meetings with PA's and Weavers, our site needs more flexibility in work scheduling. The area this is most needed is the loom preparation work *currently shared between Weavers and PA's*. (My emphasis)

The emphasized language is clear and not susceptible to more than one plausible meaning. It means that the parties intended to refer to PA's as *currently* used. In other words, as they had been used prior to the existence of the Flex Agreement. Hence, I do not find the language itself to be ambiguous.

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The testimony of Mike Schommer, a thirty-two year employee, in answer to Mr. Gill's question relative to the 2002 Flex Agreement and the use of the PA's buttresses this conclusion:

Q. If people were assigned in 2002 to temporarily be a PA, then they would be allowed to do the work in question; correct?

A. Correct.

Q. And in the 2004 Agreement, that didn't change either, did it?

A. No.

. . .

Q. Would you consider that the use of people temporarily assigned as PA's to do the work in question is something that's been well established?

A. It's been, as I said, going on for as long as I remember. We've had (a) PA fill-in list to try to level the work so that, you know, you can move people around.

Q. And when PA's would assist in the work that's being complained about, it was done, as far as you know, during your tenure, without any objection from either Union whether they were permanently assigned as PA's or temporarily assigned as PA's?

A. That's correct.

The un-impeached testimony of Joe Teska, a four year employee and the Manufacturing Team Leader in charge of Operations, also supports this conclusion:

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By Mr. Gill:

Q. Can you summarize for me why this grievance was denied?

A. Because we believed it did not violate the Flex Agreement in the first place. The Flex Agreement states that we can use – if I can refer to one of these – we may use PA’s and weavers in any combination to do any sorts of jobs, one of which was loading cans. So the fact that we had two fill-ins doing that job to us did not violate the Flex Agreement.

This case is a result of the fact that the parties failed to specifically limit the definition of PA in the Flex Agreement. Before the Flex Agreement went into effect the Company used Finishers as temporary PA’s. They did the same thing afterwards. Nothing changed other than the fact that the Flex Agreement broadened the role of the PA’s. If the Parties had intended to limit fill-in PA’s to working a loom with a Weaver, (and prevent two fill-ins from working a loom without a Weaver) they could have, and should have, said so.

In light of the above, it is my

AWARD

The grievance is dismissed in its entirety.

Dated at Wausau, Wisconsin, this 4th day of January, 2012.

Steve Morrison /s/

Steve Morrison, Arbitrator

SM/gjc
7782