

Nor, the Union says, did the Company intend to call attention to its "Employment of Relatives" policy in 1995: Instructions for this first published procedure on the hiring of relatives from Employment Manager Billy Scraggs to Vice President for Personnel Ralph Rogers declared that "Since this is an existing policy, there should be no special announcements concerning its being printed and placed in the [General Operations] manual" (C-6).

Moreover, emphasizes the Union, none of the Union witnesses were familiar with the word "nepotism" (used by the handbook since at least 1998 in listing "violation of the Company Anti-Nepotism Policy" as an action for which an individual "may become subject to immediate discharge on the first offense") until, prompted by Walton's discharge explicitly for such violation, they looked it up in a dictionary. And, indeed, because nepotism is defined as the act of one relative bestowing or exercising favoritism upon another relative, the Union argues that the Company has failed to demonstrate in what manner the grievant has benefited from the fact that his uncle was also employed by the Company—that is, how Mr. Walton violated the "Anti-Nepotism Policy." Thus the grievant was discharged for something that he did not do, in the eyes of the Union.

In addition, the Union stresses, applying the employment of relatives policy contained in the General Operations Manuals was sometimes quite confusing for the Company itself and required conference among

managers to determine how policy should be applied in a given situation—as in the Geisbecker-Crawford case, where Manager of Industrial Relations Bowman was (the Union contends) not sure what the policy was, and where an employee was first assured that he did not violate the policy, then told that he had done so, and then (following a conference by the Company with a retired Personnel Director) retained in employment because the original interpretation of the Company was deemed to be correct. In further support of its argument that the Company was confused regarding the policy, the Union cites manager Hayes' asking the grievant on October 30, 2006, whether his uncle was "blood or marriage related" (Tr., 35) and Hayes' reassurance to Walton that "no matter what happened, don't worry" (Tr., 36).

The Union also contends that none of the documentation presented by the Company indicates that Walton must be discharged in the sense that what he had been accused of is a mandatory dischargeable offense: The Company documentation in the form of the 1998, 2000, and 2003 handbook language (C-2, C-8, and C-9, respectively) says specifically that individuals "may" be discharged for such offenses.

For all of these reasons, the Union requests the Board to restore Keith W. Walton, a seven-and-one-half-year veteran highly rated by his plant manager, to his job of Maintenance Mechanic at the Manatee Plant, and to make him whole for all wages, seniority, benefits, and overtime hours denied him during the period of his improper discharge.

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* Case 11 A Laid-off Glass Worker

THE ISSUE

Did the Company violate the Labor Agreement when Ronald Petrie was on layoff by working the remaining Glass Department employees on overtime and temporarily transferring other employees into the department without recalling Mr. Petrie?

BACKGROUND

Following completion of his work on March 20, 1997, Glass Department employee Ronald Petrie was laid off and from then through April 3, 1997, when Jeff Smith retired, there were just four people in the glass room, as contrasted with five, counting Petrie, for the 2 weeks preceding March 20. Prior to this 2-week period, at least since the beginning of January 1997, there had been four people there, again including Petrie. Following April 3,

and for the rest of April, just three people (not including Petrie) worked in the glass room.

Beginning in May, the Company started having these three people work overtime, and whereas only 2 overtime hours had been worked by the entire glass room work force until then in 1997, the weekly totals thenceforth registered 10 such hours on May 2; 22 overtime hours for the week ending May 9; 26 overtime hours for the week ending May 16; 9 for the week ending May 23; 21.5 for that ending May 30; 30 for that ending June 6; and 16 for the June 8–June 11 period. In addition, temporary transfer hours in the room, nonexistent there in 1997 until May 14, then started to become frequent. They totaled 8 on May 14; 31.2 hours for the week ending May 23; 24 for that ending May 30; 56 for the one ending June 6; and 56 for the June 8–June 11 period.

On June 11, contending that these overtime (OT) and temporary transfer (TT) hours had gone too far and that there should instead have been Company acknowledgment that there was an opening and therefore, under Article 12, Section 9, the need for a recall (of Petrie, as the senior person on layoff), the Union effected a first step meeting. It reduced its grievance to writing on June 18.

The OT and TT hours continued to be conspicuous, however. They added up, for the weeks ending as noted, to the following:

OT	TT	Week Ending
33	2	June 20
23	—	June 27
10	43.3	July 4
24	24	July 11
23	19.5	July 18
13	—	July 25
(vacation shutdown July 27–August 8)		
36	15.3	August 15
14	24	August 22
35	—	August 29
15	69.6	September 5
11	33	September 12
13.5	69.2	September 19
—	34	September 26
—	40	October 3
—	24	October 10

In addition, 3.8 hours of temporary transfer overtime were worked during the week ending September 19.

The Union concedes that a layoff *would* have been justified beginning on the week of October 12. It consequently asks that employee Petrie be made whole for the period from June 11 to this latter date.

RELEVANT CONTRACTUAL LANGUAGE

At least one of the parties has deemed the following to be a relevant provision of the Labor Agreement.

ARTICLE 3

Management Rights

Section 3.2 The Company hereby retains the sole and exclusive control over . . . the direction, instruction and control of employees including, but not limited to, the determination of the number and qualifications of employees to perform work, the determination of quality and quantity standards and the required employee performance in all job classifications to such standards, the

assignment of work or overtime, the right to select, hire, lay off, reclassify, upgrade, downgrade, promote, transfer, discipline, suspend, or retire; the right to determine job content and to create new job classifications; the right to combine and/or eliminate job classifications and to establish new rates of pay therefore; the right to determine the hours of work, the starting and quitting times, the processes, methods and procedures to be employed, and the right to make and enforce rules and to perform all other functions inherent in the administration, management control and/or direction of business except as expressly and specifically limited by the terms of this Agreement.

ARTICLE 12

Seniority

SECTION 12.9 Employees shall be recalled from layoff in seniority order in the job family, or families, from which they were displaced as a result of a reduction in force. As openings occur in the classification from which an employee was removed due to a reduction in force, he or she will be returned to that classification in seniority order. Recalled employees must be physically able to return to work and perform in a satisfactory manner. . . .

SECTION 12.15 Transfers for a period not to exceed thirty (30) working days in a contract year will be known as temporary transfers. This 30 working-day period may be extended by additional 30 working-day periods by using the following mutual-consent formula: 1st 30 working-day extension, by the written consent of the transferee and the Company, subsequent 30 working-day extensions with the written consent of the transferee, the Company, and the Unit Chairman. At the time an employee is notified of a temporary transfer, the employee will be advised whether the transfer is due to lack of work in his or her regular job classification, to accomplish work of a higher priority, or to fill a vacancy which has resulted from another employee being absent due to illness or injury.

Where there is not sufficient work for an employee(s) in their regular job classification or if it is necessary for the Company to accomplish work of a higher priority, the Company may temporarily transfer such employee(s) to other job classifications for a period not to exceed thirty (30) working days, unless extended as above.

An employee temporarily transferred to work of higher priority shall receive his or her current rate plus twenty-five cents (25¢) per hour for each hour worked in the temporary assignment.

Employees temporarily transferred to fill a vacancy which has resulted from another employee being absent due to illness or injury shall receive their current rate of pay plus twenty-five cents (25¢) per hour, if higher.

If transferred due to insufficient work, the affected employee may decline the transfer and elect to go home. If the employee declines the transfer and elects to go home, he or she shall only be paid for time worked.

Time intervals between wage steps shall not be affected by temporary transfers.

Upon transfer of an employee from one classification to another for a period in excess of six (6) hours, the employee's supervisor shall inform the employee's steward, in writing, of the transfer. Upon the return of a temporarily transferred employee, the employee's supervisor shall inform the employee's steward. The steward is to be informed as to whether the temporary transfer is for work of a higher priority or due to lack of work.

ARTICLE 19

Hours of Work and Overtime

SECTION 19.6 The Company will attempt to assign overtime to the employee who has been performing the work during the regularly scheduled work hours, insofar as it is practical and does not interfere with production efficiency. In the event that the overtime is not assigned to such employee, the Company will attempt to assign the overtime equally among the other employees in the classification who are qualified to perform the work.

Production needs determine the amount of overtime required to be worked by individual employees, departments or shifts. While the Company will attempt to fill overtime requirements by assigning overtime to qualified employees who wish to work overtime, if no are volunteers, the least senior person qualified in the classification would be required to work.

If the overtime work is of such a nature to prohibit the placing of certain employees on it because of physical limitations, skill and ability, or because the work must be done by specialized machines, skills or operations, the Company shall use its discretion in assigning such overtime.

POSITION OF THE UNION

In the eyes of the Union, the applicable language of the Labor Agreement could not be clearer. Article 12, Section 9 specifically commands that as openings

occur in a classification from which an employee has been removed due to a reduction in force, the latter "will be returned to that classification in seniority order." Given the preponderance of glass room hours, the Union contends, a fair and reasonable person would have to conclude that an opening had indeed occurred. Therefore, the senior glass room worker Petrie, who as a skilled glass room employee could have satisfactorily performed even the bell jar or anode bomber work assigned the glass room in the spring and summer months of 1997, as well as any other work handled there in this period, should have been returned to this opening.

The Union stresses also the fact that Glass Department supervisor Steven T. Battle by his own admission stated during the period of large OT and TT work that he "sure could use an extra person," that is, the laid-off Petrie.

And, argues the Union, in several situations since 1995, people were recalled to recognized openings for very short intervals (in the 1995 case of Scott Fuchs, for just 11 days, and in the three 1996 cases of Mike Carey, Candy Conover, and Pat Pease, for less than 4 weeks each) and then laid off again (Union Exhibit #5). The fact that Petrie's opening did not exist for very long is, says the Union, therefore irrelevant. When openings occur, recalls must be made—period.

Finally, the Union asserts that in circumstances similar to those of the instant dispute, Assembler A Nancy Lamb was recalled in 1996 to her previously held job classification short of arbitration following the Union's lodging of a grievance claiming Company violation of Article 12, Section 9 (Union Exhibits #6 and #7).

For these reasons, the Union—which contends that it showed considerable patience and reasonableness in letting the Company's alleged OT and TT abuse "go on for about 6 weeks" before filing its grievance and argues that after the filing "the abuse not only continued but actually escalated"—asks the arbitrator to find that the Company has violated Article 12, Section 9 and to make Mr. Petrie whole for all monies lost in the June 11–early October period.

POSITION OF THE COMPANY

The Company, by way of contrast, asserts that it has acted reasonably, appropriately, and in complete accordance with the Labor Agreement. It has and has always had, it says, the unilateral right to decide when an opening exists under the tenets of Article 3, Section 2, and no

other portion of the Agreement in any way qualifies this right. The Union did attempt to limit temporary transfers in both the 1994 and 1997 negotiations (Company Exhibits #2 and #3), but it was unsuccessful in doing so, the Company points out. Nor, declares the Company, were overtime curbs negotiated in these years, despite a clear desire of the Union to get these in at least 1994 (Company Exhibit #1).

Indeed, the Company argues, the instant grievance cites two other employees, Matt Roarke and Scott Fuchs, who in fact are no longer directly germane to this case because both were recalled when *it* (the Company) decided that an opening had occurred. No such determination was, of course, made by it in the case of Mr. Petrie.

In addition, says the Company, the increased workload starting in May and ending in October was geared primarily to giving the assemblers some emergency temporary work in an area (the glass room) which had ample facilities and space for this (anode bomber) work and where the Company's additional desire to give the (few remaining) glass room people some work could be logically accommodated: The work was not traditional glass room work, in the Company's eyes, and it would never have been assigned there if the Union's grievance here could have been anticipated.

Nor do the hours, avers the Company, in any way demonstrate a full-time position or opening: The averages disguise some very vital week-to-week workload fluctuations. In fact, contends the Company, of the 33-34 weeks following Petrie's layoff that are relevant here, in only 7 of these weeks were there 160 or more hours of glass room work performed (therefore allowing four and not three employees a full work week) (Company Exhibit #4). (Mr. Petrie worked, the Company points out, some part of 5 of these weeks as a temporary transferee and could even have worked more except that he elected to take some vacation time.) And because at no time were there even three consecutive such weeks, to accommodate the Union the Company would "regularly" have had to recall and then lay off Petrie, a practice that certainly was anything but normal for it, it avers: Despite the several short interval recalls cited in Union Exhibit #5, argues the Company, these are only a small fraction of the total recalls since 1995 and many others have been of much longer duration.

The Company, possessing the sole right to decide when an opening exists, decided that one did not exist in the instant situation, it says, because the new glass room workload was only temporary in nature. It asks the arbitrator to find that what it did was right and reasonable under the circumstances.

Case 12 Alleged Insubordination

THE ISSUE

Did the Company violate the Labor Agreement in issuing a partial-day suspension to the grievant, David Whitney, for his actions on Saturday, September 24, 2000?

BACKGROUND

At approximately 8:20 A.M. on Saturday, September 24, 2000, Production Supervisor Lester M. Coogan heard a voice announce over the plant intercom system, in response to a page, "We have to get the shit out of the rack first." He thought that the voice belonged to the grievant, Off Loader David Whitney.

Coogan then, according to his own testimony at the hearing, approached Whitney about halfway up the Finished Product Looper aisle because no other employees were present in that area and he did not want to speak to the grievant in front of Whitney's coworkers. He asked Whitney if he had in fact used the foul language and was informed by Whitney that he

had. Coogan thereupon told the grievant that such language was not to be used over the intercom. Whitney, also according to Coogan, asked the supervisor why not and started walking away from the latter toward the hot end, some 50 to 75 feet from where Coogan had first approached Whitney, where seven or eight of the grievant's coworkers were gathered. Coogan, responding to Whitney's question, tried to explain, as he walked along with the grievant, the reasoning for considering the language unacceptable (i.e., the potential objection to it by some customers, visitors, and other employees).

The two men then reached the area of coworker congregation and in front of these fellow employees Whitney wiped his eyes and twice (in Coogan's testimony) said to Coogan, "You're breaking my heart, Lester." In Coogan's expressed opinion, both times all of the employees could hear what the grievant said. Coogan thereupon told Whitney to clock out. Whitney immediately said, "Thank you," and then left the plant.