

**BEFORE ARBITRATOR ROSS RUNKEL**

In the Matter of the Arbitration )  
 ) Seniority Grievance  
 ) Grievance No. 10-2015  
 )  
 between )  
 )  
 )  
 WESTROCK, NEWBERG OREGON )  
 MILL, ) ARBITRATOR'S OPINION  
 ) AND AWARD  
 )  
 and )  
 )  
 )  
 ASSOCIATION OF WESTERN PULP )  
 AND PAPER WORKERS, LOCAL 60. )  
 )  
 ) March 30, 2016

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HEARING: January 25, 2016  
Portland, Oregon

HEARING CLOSED: March 4, 2016

REPRESENTING THE COMPANY: Steve Hess  
Corporate Labor Relations Manager  
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## **INTRODUCTION**

This matter came before me as arbitrator selected by the Parties to resolve a dispute arising under their Labor Agreement. A hearing was held on January 25, 2016 in Portland, Oregon. Each Party presented witnesses, testimony, and arguments. The record was closed when the Parties submitted post-hearing briefs on March 4, 2016.

## **OPINION AND AWARD**

### **1. ISSUE**

The Parties stipulated to the following issue:

Did the employer violate the CBA when senior employees were not allowed to exercise their seniority to remain working after the start of an indefinite layoff? If so, what is the appropriate remedy?

### **2. LABOR AGREEMENT**

#### **Section 1. General Purpose of the Agreement**

The general purpose of this Agreement is, in the mutual interest of the employer and the employee, to provide for the operation of the plant hereinabove mentioned under the methods which will further, to the fullest extent possible, the safety, welfare and health of the employees, economy of operation, quality and quantity of output, cleanliness of plant and protection of property. It is recognized by this agreement to be the duty of the Company and the employees to cooperate for the advancement of said conditions.

#### **Section 24. Seniority**

- A. This section shall determine the extent of application of an employee's length of service in those situations in which seniority is a factor, namely, promotions, demotions, transfers, bidding, layoffs and re-calls.
- B. Whenever used in this section, the following definitions and guidelines shall apply:
  - 1. Job Seniority is the length of continuous service in a given job classification.
  - 2. Progression Ladder Seniority is the length of continuous service in a particular progression ladder of the mill.
  - 3. Mill Seniority is the length of continuous service in the mill from the most recent date of hire.

4. Job Opening means an opening which Management decides must be filled.
5. Progression Ladder means a series of reasonably related jobs in the mill.
6. Mill means the entire manufacturing facility in which the employees are covered by this Agreement.
7. Labor Pool or Yard Crew means the pool of yard base rate jobs plus any other jobs which may be designated for the purpose of permitting qualified senior employees, who would otherwise be laid off from work, to exercise their seniority, to displace the most junior man in the pool, and from which employees, if they desire, may bid on job openings on the bottom rung of progression ladders.
8. Promotion means the movement of an employee from any rung on a progression ladder to a higher rung on the same ladder or the movement of an employee from any job to a job opening not on a ladder which pays a higher straight time hourly rate.
9. Demotion means the movement of an employee from a higher rung on a progression ladder to a lower rung on that same ladder, and also means the movement from the bottom rung of a ladder, or from any job not on a ladder to the labor pool.
10. Layoff means the movement of an employee from any job to unemployed status.
11. Recall means the return to work of an employee who has been unemployed but who has not lost seniority.
12. Qualified means the ability of an employee to satisfactorily discharge the duties and responsibilities of the job involved based on his qualifications and his past performance. When considering an employee's past performance in conjunction with his other qualifications, all records of past disciplinary action which have been removed in accordance with Section 11 will be excluded from consideration.
13. Transfer means the movement of an employee from any job to a job opening which is not a promotion or demotion.
14. Bidding means a procedure for moving from a job in one department to a job opening in another department, to the starting job opening in a progression ladder, or to a job opening not on a progression ladder.

\* \* \*

#### E. Bidding

10. Senior applicants for permanent job openings on the bottom rung of a progression ladder or for any non-progression ladder opening shall be given a trial period not to exceed sixty (60) calendar days within which to establish qualifications. The trial period may be terminated by the Company prior to the end of the sixty (60) day period if the employee's performance demonstrates that any further trial service will be of no practical use. Decisions made by the Company under this paragraph shall be subject to the grievance procedure.

## H. Layoffs or Terminations

1. In all cases of temporary layoffs extending longer than 48 hours following the day his layoff starts, a qualified senior employee will not be continued on layoff as long as a junior employee is working on a labor pool job. If the layoff extends, or is planned to extend beyond seven (7) calendar days following the day the layoff starts, no senior employee will be continued on layoff as long as a junior employee is working in the mill. Placement of the senior employee will be accomplished by bumping the most junior employee in the mill. If the most junior employee in the mill is on a progression ladder and is above the bottom rung of the ladder. He will be placed on layoff. The men below him on the ladder will be moved up and the senior employee, exercising his seniority will be placed on the bottom rung if he is able to do the job. If he is unable to do the job he will then bump the next most junior person in the mill until he is placed on a job he can perform. A senior employee affected by a layoff will not be compared with employees assigned to the mechanics package unless he is qualified to perform mechanical trade work at the level of the junior employee at the time the layoff occurs. Nothing in the paragraph precludes the right of the employee to elect to layoff if he so desires. However, he shall have the right to make this decision only once in any given layoff period.
2. Layoffs from among employees in the labor pool will be made on the basis of inverse mill seniority.
3. Employees who have been laid off will be recalled for any work that is available, in accordance with their mill seniority in the case of labor pool jobs, and in accordance with their job seniority in the case of filling other jobs to which their job seniority entitles them.
4. Notwithstanding the foregoing provisions of this Section, any employee who due to no fault on his part, is without work and who either (1) is being carried on the payroll in laid-off status, or (2) is on leave of absence, or (3) has been terminated as the case may be, shall have the rights and be subject to the conditions below set forth.
5. (a) Any employee who has been on the payroll of the mill or plant for less than one (1) year of continuous employment, and who is terminated due to no fault on his part, shall incur no loss of credit or length of service for the purpose of any benefit under this Agreement if such employee is rehired in the same mill or plant within six (6) months after date of such termination.  
(b) Any employee who has been on the payroll of the mill or plant for one (1) or more years of continuous employment and who, due to no fault on his part, is without work will not be terminated for a period of at least twelve (12) months after the date of the last layoff. However, should he fail to report for work within two (2) weeks after the date of confirmation of notification, he will thereupon be terminated. Notification will be made by telephone to the last telephone number provided by the employee for this purpose. If unable to contact the telephone number provided by the

employee, notification by certified mail to the last address provided by the employee will be made. A copy of the certified letter notice will be sent to the Local Union.

- (c) In any case where an employee is absent from work because of a physical disability, the employee's rights to any benefit under this Agreement will be maintained for a period of eighteen (18) months unless any competent medical authority advises that such employee is deemed permanently disabled to the point where employment should not be resumed. For the purpose of accumulating seniority only, the employee's employment will be held open for an additional six (6) months unless any competent medical authority advises that such employee is deemed permanently disabled to a point where employment should not be resumed. At the end of twenty-four (24) months of disability, the Management will take no action to terminate the disabled employee without prior consultation with the Union Standing Committee.
- (d) During the layoff or leave of absence period, provided for herein, the employee's right to his job will be maintained; he will receive vacation pay if qualified under Section 29; will receive holiday pay if qualified under Section 28, and will be eligible for such Health and Welfare coverages as are available to him under the plan in effect during his absence.

### **3. SUMMARY OF FACTS**

This case arises because the Company and the Union disagree upon the interpretation and application of their Labor Agreement's seniority provisions as they apply to the indefinite idling of the Newberg plant.

The Union represents production and maintenance employees at the Company's Newberg mill. The Company acquired the mill from SP Fiber Technologies in mid-October 2015, and the Parties agreed to operate under the SPFT-Union 2012-2017 labor agreement.

Shortly after acquiring the mill, the Company announced that it would be idling the mill for an indefinite period. As a result, the Company laid off approximately 130 employees as of November 21. Although the paper machines were shut down, the

Powerhouse continued to operate because part of the shut-down plan was to burn up as much hog fuel as possible. For the work needed in the boilers and hog fuel areas the Company retained the employees who had been working there plus an addition eight senior employees to be trained to do this work.

On January 12, 2016 the Company stopped running the boilers, and began the process of laying up the equipment for long term idling and cleaning up the areas.

Prior to the November 21 layoff the Union and the Company met several times to discuss how the curtailment would be conducted, but no final resolution was reached.

The Union filed a class action grievance (Exhibit 2) on November 23, 2015 alleging a violation of Section 24 of the Labor Agreement for "Scheduling junior employees to work while senior employees are laid off." The Company denied the grievance (Exhibit 3), and the matter proceeded to this arbitration in the manner specified in the Labor Agreement.

Witnesses for the Union were Local 60 Standing Committee Chairman Greg Wilson and Local 60 President Robb Renne. Human Resources Generalist Jimmie Phillips testified for the Company.

#### **4. POSITIONS OF THE PARTIES**

##### **A. Position of the Union.**

When a layoff is planned to extend beyond seven days, Section 24 on Seniority provides that a qualified senior employee will not remain on layoff as long as a junior employee is working on a labor pool job. Over the course of four or five Union-Company meetings the Union requested documentation as to where employees were trained so

the Union could determine where employees could exercise their seniority; the Company said they would look into it but the documentation was never produced. In prior curtailments the Company always provided this information prior to a layoff. This was not good faith bargaining, and injured the Union's right to receive the fruits of the contract.

When the boiler stopped operating on January 12, employees in that department were not laid off but continued to work in the boiler area doing general cleanup which is labor pool work. In prior curtailments, senior employees were able to exercise their mill seniority on general cleanup jobs anywhere in the mill, and this should have been done as to the boiler area. Senior laid off employees should have been recalled to perform this labor pool work.

There are 10-12 employees on layoff who are trained and qualified to perform hole watch duties, and during past curtailments these people were called back in to perform hole watch for confined space entries. Failure to recall these employees violates Section 24, H, 3.

Improper application of the layoff provisions will have an additional impact in the event operations resume at a point that is longer than 12 months from when layoffs first began. Employees who have worked in the boiler department will have recall rights extending several months beyond those who were laid off on November 21. See Section 24, H, 5, (b).

**B. Position of the Company.**

The Labor Agreement does not require the Company to find work for all senior employees in the event of a layoff of more than 7 days. The Company eliminated the

labor pool and then removed less senior employees from lines of progression and moved up senior employees. Nothing requires the Company to keep employees who are not skilled and qualified. Although Section 24 contains language that says "no senior employee will be continued on layoff as long as a junior employee is working in the mill," other language makes it clear that the Company need not retain employees who are unable to do the job or not qualified for a job. The mill needs trained employees, especially in the Power House. The Company was sensitive to the fact that an employee laid off for more than a year loses seniority for recall when it kept eight senior employees who might never meet the qualifications of the job before the final shut down.

Unlike previous curtailments, the current situation is an indefinite shut down, and the mill may or may not restart. The Company attempted to meet and confer over the effects of the shutdown, but did not reach an understanding that satisfied the employees.

The Company is not required to assign employees to hole watch positions because a contractor is performing this work, hole watch is a safety requirement, and hole watch is part of the contract between the Company and the contractor.

Once the boilers went down, the work involved in shutting down the boilers for the long term is not simple and requires operator knowledge to be done correctly and effectively. Therefore, there was no requirement to bring in more senior employees who lacked operator qualifications. Mike Gjesbold does not have enough seniority to be working.



## 5. DISCUSSION

### A. Introduction.

The grievance in this case is directed at several specific issues, all of which involve the interpretation and application of Section 24 on Seniority. The Union has specified the following objections: *First*, some senior laid off employees should have been put to work in the Power and Recovery Department (boilers) after November 21, and the Company's failure to provide the Union with work histories and qualifications made it impossible to apply the language of Section 24, H, 1. *Second*, senior laid off employees should have been trained prior to the layoff. *Third*, there were senior employees on layoff who were qualified to work on the boilers. *Fourth*, after the boilers shut down, general cleanup work should have been done by more senior employees. *Fifth*, senior employees should have been assigned to hole watch.

### B. Good faith bargaining.

The Union asserts that the Company did not bargain in good faith prior to the November 21 curtailment, and that this impaired the Union's ability to apply the layoff and termination language in Section 24.

Between mid-October (the time the Company announced the curtailment) and November 21 (the date most employees were laid off), the Company and the Union met four or five times with a view toward seeing how the plant would be idled and which employees would remain at work. Although the Parties reached an agreement at one point, the Union got pushback from its members and withdrew the proposal. The Company then went ahead. The Union now argues that the Company did not engage in good faith bargaining due to the Company's failure to provide the Union with requested

work history and documentation of where employees were qualified to work, and this injured the Union's right to receive the fruits of the collective bargaining agreement.

A proper analysis of whether there has been good faith bargaining requires a record that is more substantial and expansive than what was created in this case. One must ordinarily review the entire bargaining history rather than one isolated portion of that history. The record shows that the Parties did meet with each other four or five times prior to the November 21 layoff. The record does not indicate in any detail what was discussed at those meetings or what information was available. The record indicates that the Parties did come to an agreement on the idea that eight senior employees would be kept on to be in training – four of them in the power house and four of them in hog fuel. However, the Union pulled back on this due to pushback from some members, and the Company went ahead with the proposal.

The Union's claim of lack of good faith bargaining is based on the Company's failure to provide requested information. Mr. Wilson's initial testimony relating to the meetings was as follows:

Q. Did the union ask the company in an effort to keep senior people working to try and train people before the curtailment took place once it was known?

A. Absolutely.

Q. And what was the company's response?

A. You know, basically, they stated that they didn't want to take people off the paper machine, the senior people, and move them out and train them in the departments like in the hog fuel and the power.

\* \* \*

\* \* \* We specifically asked that management at that mill immediately as after October 15th when we had our first meeting after the announcement of that curtailment, we asked them, "What are you doing to

check with the senior people?"

Just like we had told at the previous -- in previous layoffs, "You need to check with those senior people, go down that list and see where they're qualified." And we were never told.

We asked, and they said, "We'll look into it." That was their response.

\* \* \*

Q. Okay. But there were meetings held?

A. Yes.

Q. And you discussed this specific situation in depth. Is that fair?

A. In depth in my -- my definition of "in depth" is not getting -- and I'm not trying to be snotty or anything, but when all we get for an answer is "We'll look into it," I don't know how in depth that is.

Q. Okay. But you were having discussions with the union? You were having dialogue in relation to the shutdown of the taking down the whole mill except the power boiler and the hog fuel area?

A. Yes.

What is noteworthy about these portions of the testimony is that they do not mention any request for documentation or information. The testimony indicates that the Union asked the Company to check with the senior people, and go down the list and see where they are qualified. So the Company's response -- "We'll look into it" -- appears to indicate that the Company would do what was being asked. There was no evidence that the Company did not do so. According to Mr. Phillips, the Company did examine the seniority list and determine who was qualified, and this is how the Company identified the eight employees who were kept on to train as boiler operators and hog fuel tenders as well as about eight to ten who were kept for a short time to do cleanup.

Later in the hearing Mr. Wilson referred to requests for information:

Q. \* \* \* When you met with the company, did they ever provide a list of people and

where they were trained?

A. No.

Q. Did you ask for a list of that?

A. From -- immediately, we were asking, we need to know the people that you were planning on moving over to those departments because we need to go through with this, and we were never provided it until -- only as best of my recollection, I'm not far off, a couple days before the layoff. We continually asked them, and they said, "We're working on it, but we don't have it."

Q. You say you were provided? You were given a list after?

A. No. It was supposed to. It was not even given to the union, and the union never even had a chance to discuss the people they had over there with the company until the curtailment because the curtailment --

Q. So while you met with the company, I think, you know, one of the statements made was by the times -- during all those times you met, there was never any tangible list as far as these are the people affected by the layoff that the company would provide you, and this is where we believe people may or may not be trained for, even though you repeatedly asked for that.

A. That is correct.

Q. And that -- and even to the point where it started, you say eventually you saw a list posted, but they still never met with you and gave you a list?

A. That is correct.

\* \* \*

Q. So the -- you knew the names then two days -- two to three days prior? You knew the names of the people that were going to stay working. You knew the people that were still working, and you knew the people that were going to be laid off. Could you not discern who was more senior and if those people should have remained working, or did they take a while -- you had their names. You had the ability to contact them.

A. Yes. But we were still under the -- yes.

This testimony indicates three basic facts. *First* is that the Company's response to the request for information was "We're working on it, but we don't have it." There is no

evidence indicating that this statement was not true. And there is no evidence that the Company held back the information once it did have it. *Second* is that the Company posted a list but did not give it directly to the Union. *Third* is that the posted list provided the names of the employees who would continue working and those who would be laid off, and that the Union could determine who was more senior and if those people should have remained working.

Taking all of this evidence as a whole, it will not support a finding that the Company was not bargaining in good faith. Posting the list without handing it directly to the Union is problematic, but plucking this one factual point out of the total of a five weeks of bargaining that included four or five meetings is not enough to show bad faith.

**C. November 21 layoff.**

As of November 21, 2015 the Company had shut down the paper machines and laid off the vast majority of employees – approximately 130 out of approximately 180. This layoff included all labor pool employees. The Company retained the employees who were working in the Power and Recovery Department and those working with the hog fuel, numbering approximately 30. These employees were kept on because the Company wanted to continue the boilers going so as to use up the remaining hog fuel. In addition to retaining the employees who had regularly worked boilers and hog fuel, the Company retained eight senior employees who were placed in training on the boilers and in hog fuel. The Company's plan was that these eight employees – after being trained – could bump less senior employees in the event that the fuel burning operation continued for an extended period of time. In addition to those eight employees, the Company retained an additional eight to ten employees who were next

in the seniority line to do basic cleanup, shipping rolls, dusting, and cleaning at the warehouses. These eight to ten employees were laid off about the first week of December.

Section 24, H, 1 has one sentence that could appear to provide that no senior employee will be continued on layoff as long as a junior employee is working in the mill, regardless of whether the senior employee is qualified for the job in question: "If the layoff extends, or is planned to extend beyond seven (7) calendar days following the day the layoff starts, no senior employee will be continued on layoff as long as a junior employee is working in the mill." However, the sentences which follow explain how this is applied to progression ladders, and it is clear in each case that the senior employee must be "able to do the job," in "a job he can perform," or "qualified."

One point the Union makes is that prior to the November 21 layoff the Company should have begun training senior employees so they could move into the Power House. But this would have required removing senior employees from the paper machines that were still operating, and would impair the mill's ability to produce paper.

Another point the Union makes is that there are senior employees on layoff who are already qualified to work in the Power House. The Union specifically mentioned Mike Gjesbold as an employee who has had experience as a Power Boiler Operator 3. However, Mr. Gjesbold does not have seniority over the eight employees that the Company kept on for training. No other laid off employee with both seniority and qualifications was identified, and Mr. Wilson testified that there are others who could work as a Boiler Operator 3, but "not without training." "There needs to be -- those people need to be trained, you know, the senior people to -- for those jobs, yes."

There was testimony suggesting that it would be easy to train someone for the Power Boiler Operator 3 position. However, the Labor Agreement does not require the Company to bring someone in from layoff in order to be trained. The Labor Agreement gives employees the right to exercise their seniority as to jobs they are already "able to do," and are already qualified for.

My conclusion is that there has not been a demonstration that senior qualified employees were laid off while less senior employees continued to work.

**D. Power and Recovery after January 12.**

The fuel burning operation stopped on January 12, 2016, and the employees who had been retained to do that work were further retained to shut down the Power and Recovery operation and do cleanup. This included both the employees who regularly worked in those areas and also the eight senior employees who were retained to do training.

Once the fuel burning operation stopped, there were two general types of work that need to be done. The first was getting the equipment laid up for long term idling. From the description of this work, it is obvious that it requires skilled and knowledgeable workers – either mechanics or operators, or both – and is not work that can be assigned to an employee who is not qualified. No qualified laid off employee has been identified. Therefore, the Company has not violated the Labor Agreement by not bringing in senior laid off employees to do this work.

The second type of work being performed after the boilers shut down was general cleanup work. Mr. Renne described the work:

Q. Could you tell us about what kind of process cleaning you're seeing?

A. Well, it's just basic. I mean, they're cleaning up the ground, you know, shovels, hosing up, bobcat, you know, scooping, digging fines up that are stacked up over the –

Q. So fines -- fines being dust or --

A. Dust. Yeah.

Q. -- the stuff that collects?

A. Right.

Q. You guys are in there shoveling it, clearing it away from the supports and that kind of stuff?

A. Right. Washing off the -- washing off the conveyer systems they're using out in the hog fuel area. They use the big water cannon. You know, it's a big device that rolls around, and they can -- it'll shoot out water, you know, 40, 50 feet.

Q. So shoveling, using water, that kind of thing, basic -- now, you know, in your opinion, does any of that require skill?

A. No.

Q. Specific skills?

A. No. That's entry level right off the street.

Show them where the valves are; turn the water on and off.

Mr. Renne's description of the cleanup work was based on his personal observations, and his description was not contradicted or challenged. Mr. Wilson described this as labor pool work.

There is an extensive history in the mill for assigning senior employees from one part of the mill to do general cleanup work in other parts of the mill during a curtailment. Although prior curtailments have not been as extensive as the current one, and have not been for as long as the current one is projected to be, that does not detract from the general principle. Section 24, H, 1 and 3 require that senior employees on layoff be recalled to do general cleanup work of the type described above.



### **E. Hole watch.**

Mr. Renne testified that senior employees who are qualified to perform hole watch duties were not recalled to perform hole watch duties. This testimony was not contradicted or challenged.

The hole watch duties in question relate to situations in which contractors have had to enter confined spaces and the contractors have provided their own hole watch. Mr. Renne was challenged as to his knowledge of the contracts between the contractors and WestRock, and he testified that he had no knowledge of the contents of these contracts. However he testified that the Company is using the same contractor that has been used in the past when employees were assigned to hole watch duties. There was no evidence that the current WestRock-contractor contracts mandate that Company employees cannot perform hole watch duties in the same way they have done in the past.

My conclusion is that hole watch is bargaining unit work even when it is a contractor entering a confined space. Therefore, Section 24, H, 1 and 3 require that senior employees on layoff who are qualified to do hole watch work must be recalled to do hole watch work.

## **6. CONCLUSION**

The evidence will not support a finding that the Company did not bargain in good faith during the period prior to November 21. The Company's failure to train senior employees for Power House work prior to November 21 did not violate the Labor Agreement. The Union did not identify any laid off employee who had both the seniority

and the qualifications to bump a junior employee out of the boiler or hog fuel areas prior to the time the boilers were shut down.

Once the boilers were shut down and the employees there and in the hog fuel area were doing general cleanup work, the Labor Agreement required the Company to assign that work to senior laid off employees who were qualified to do general cleanup work.

The Labor Agreement required the Company to assign hole watch work to senior laid off employees who were qualified to do that work.

## **7. AWARD**

A. The Company violated Section 24 of the Labor Agreement by not recalling qualified laid off senior employees to perform available general cleanup work that was being performed by less senior employees in the boiler and hog fuel areas after January 12. The Company shall identify laid off senior employees who were qualified to perform general cleanup work after the boilers were shut down, identify which employees ought to have been assigned to such work, and provide them with pay and other benefits they would have received if they had been recalled for this work.

B. The Company violated Section 24 of the Labor Agreement by not recalling qualified laid off senior employees to perform available hole watch work. The Company shall identify laid off senior employees who were qualified to perform hole watch work that was being performed by contractors, identify which employees ought to have been assigned to such work, and provide them with pay and other benefits they would have received if they had been recalled for this work.

C. In all other respects, the grievance is denied.

D. In accordance with the stipulation of the Parties, I retain jurisdiction for 60 days to resolve any remedial issues, at the request of either Party.

Dated: March 30, 2016

Respectfully submitted,

*Ross Runkel*

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Ross Runkel