

**THE PUBLIC REVIEW BOARD
INTERNATIONAL UNION, UAW**

APPEAL OF:

TERRY B. MORGAN,
Appellant,

-vs-

CASE NO. 1462

UAW LOCAL UNION 832
(Erie, Pennsylvania)
REGION 9
(THE UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA),
Appellee.

DECISION

(Issued January 13, 2005)

PANEL SITTING: Prof. Theodore J. St. Antoine, Chairperson,
Prof. Benjamin Aaron, Prof. Janice R.
Bellace, Prof. James E. Jones, Jr.,
Prof. Maria L. Ontiveros, and Prof. Paul C.
Weiler.

APPEARANCES: Terry B. Morgan, Robert D. Strain, Albert R.
Rodgers, and Larry T. Carter on behalf of
appellant; Michael A. Dunlap and Larry J.
Adams on behalf of Local 832, UAW; and
Eunice Stokes-Wilson and Joseph J.
Orlando, Jr. on behalf of the International
Union, UAW.

We consider whether the decision of the Local 832 Bargaining Committee to withdraw Terry Morgan's grievance protesting Management's refusal to allow him to bump into the Packer/Stocker classification lacked a rational basis.

FACTS

Terry Morgan works at the Steris Corporation¹ in Erie, Pennsylvania with a seniority date of September 17, 1990. Morgan held the Utility position in the Shipping

¹ Formerly, American Sterilizer Company, "Amsco."

Department in May 2002, when the Company announced a layoff that required him to bump into another position. Article 14, §H, 4, of the contract between Steris and UAW Local 832 allows employees whose jobs have been eliminated to claim a directly related job based on seniority, training and experience.² Morgan elected to bump into the Packer/Stocker position in the Shipping Department. According to Morgan, Human Resources Manager John Hardin initially approved the move. Hardin subsequently told Morgan that he would have to make a different bump because Local Union President Joe Kempisty had taken the position that Morgan was not qualified for the Packer/Stocker position. Morgan reported that he did make another bump under protest.³

On June 7, 2002, Morgan filed a grievance protesting Management's refusal to allow him to bump into the Packer/Stocker position.⁴ In support of his grievance, Morgan asserted that the Utility position encompasses the duties of the Packer/Stocker so that an employee in the Utility position should be allowed to bump into the Packer/Stocker position. The grievance was denied by Management on June 19, 2002, and withdrawn by the Local 832 Bargaining Committee on June 25.

President Kempisty advised Morgan of the Bargaining Committee's decision on June 25, 2002, and Morgan appealed that decision to the membership at a meeting on September 8, 2002. The minutes of the September 8 membership meeting reflect that a motion to take the grievance to arbitration was voted down by a count of 35 in favor and 45 not in favor.⁵ Morgan appealed the membership's decision to the International Executive Board (IEB).

In his appeal to the IEB, Morgan wrote that he went to the office of the Human Resources Manager accompanied by his Union Steward, Larry T. Carter, to make the necessary bump on May 8, 2002. Morgan reported that he advised Manager John Hardin that he wished to move to the Packer/Stocker position in the Shipping Department. According to Morgan, Hardin checked his records to verify his time in the Shipping Department and then asked him to confirm this decision before the second shift on the following day. Morgan stated that he did confirm his choice the next

² Article 14 §H, 4, provides, in pertinent part, as follows:

“An Associate who has been eliminated or bumped from regular job, may claim a semi skilled/skilled job consistent with seniority, training, and experience directly related (directly related means the skills and knowledge as required of the job in question) to the job in question. Associate experience shall be determined by the information that can be verified and is contained in personnel records which are located in the Associate Relations Department. Associate will be given up to ten (10) work days to prove Associate has the ability required of the job and if in the judgment of the Company the Associate demonstrates lack of ability before completion of the ten (10) days will be removed from the job. ...”

³ Record, p. 17.

⁴ Record, p. 13.

⁵ Record, p. 15.

morning, but in the afternoon Hardin told him that he would have to make a different bump. Morgan wrote:

“...Hardin said that Joe Kempisty told him I wasn’t qualified for the Stocker/Packer. Hardin said I had to make another bump, which I did under protest. Hardin said I could talk with Joe Kempisty and the Union committee and if I could convince them to change their minds on my qualifications then he would listen and possibly change his mind (again) or my other option was to file a grievance.”⁶

Morgan submitted a statement signed by Union Steward Larry Carter corroborating this account.⁷

Morgan reported that when he raised the issue of his right to bump into the Packer/Stocker position with the Local Union Bargaining Committee he was told by Committeeperson Rick Kraus that an arbitrator had ruled against the Local on this issue, but that he could file a grievance if he wanted to. Morgan reported that he attempted to obtain a copy of the arbitration decision referred to by Committeeperson Kraus, but that he could not find any decisions dealing with the right of an employee in the Utility Shipping position to bump into the Packer/Stocker position. He wrote that he contacted two former presidents of the Local and that they both supported his right to bump into the Packer/Stocker position under the applicable contract language.

Morgan submitted a statement written by former Local Union President Robert Strain asserting that the Local had never previously challenged the qualifications of an employee in the Utility position to bump into the Packer/Stocker position where the Utility person had sufficient seniority for the bump. Strain stated:

“Since the Job Description Qualifications requested on the Packer description are the same as the Utility Job Shipping except that the Utility Job has more duties defined. The Company permitted the Utility man to bump the Packer as per Contract: Article 14 Seniority, Section H #4 Claiming Job via Bumping, gave the Company the necessary protection. Because if the employee could not prove the ability required of the job, he could be removed from the job! He then would be assigned to a bumpable job, which if not available, said employee could possibly have to bump the lowest senior associate who holds a bumpable job.”⁸

⁶ Record, p. 17.

⁷ Record, p. 26.

⁸ Record, pp. 27-28.

Isaac Keliipio and Nick LaRosa, acting on behalf of the International President, conducted a hearing on Morgan's appeal on February 25, 2003, and prepared a report based on the hearing for the IEB. Hearing officers Keliipio and LaRosa quoted the following experience requirements from the job description for the Packer/Stocker job:

"Must have at least six months shipping room experience or demonstrated knowledge of packaging. Must have completed the training program for Packer/Stocker."⁹

They concluded that appellant had not satisfied this experience requirement, because he had not completed the training course for the Packer/Stoker position.¹⁰ Based on this conclusion, the hearing officers denied Morgan's appeal and the IEB adopted their report as its decision. Morgan appealed to the Public Review Board (PRB) on September 15, 2003.

Following initial consideration of this appeal on February 19, 2004, we requested clarification concerning the past practice at Local Union 832 with respect to a Utility person bumping into the Packer/Stoker position. In addition, we asked whether any employees at Steris Corporation have ever been awarded positions requiring specialized training on the basis of seniority, experience, and the training required for prior related jobs.¹¹

Presidential Administrative Assistant Eunice Stokes-Wilson conducted a hearing on April 1, 2004, at Local 832 for the purpose of preparing a response to these questions. She reported the results of her investigation to us in a letter dated September 9, 2004. Stokes-Wilson wrote that former Local 832 President Strain testified that he negotiated the language in the collective bargaining agreement describing the process of claiming a job via bumping, and that this provision was intended to give employees with sufficient seniority the right to bump into a job requiring special skills. According to Stokes-Wilson, Strain maintained that the contract gives the employee ten days to prove his or her ability to do the job. Stokes-Wilson reported that Morgan relied primarily on the ten-day trial period described in Article 14, §H, 4, of the contract in support of his right to bump from the Utility position to the Packer/Stocker position.¹²

Stokes-Wilson noted that the language referred to requires that the employee attempting to claim a job via bumping must have not only the seniority and experience, but also the training required in the job description. She concluded that jobs requiring special training programs were non-bumpable. In support of this conclusion, Stokes-Wilson pointed out that the contract contains a list of jobs described as bumpable, in

⁹ Record, pp. 10, 42.

¹⁰ Record, p. 43.

¹¹ Record, pp. 95-96.

¹² Record, p. 108.

contrast to jobs which require applicants to have completed a training program.¹³ Stokes-Wilson wrote that Morgan's argument that an employee in a higher rated job should be able to claim a lower rated job on the basis of seniority had been presented to an arbitrator without success. She attached to her report arbitration decisions that were presented during the hearing by Regional representatives and members of the Local 832 Bargaining Committee on the issue of an employee's right to bump into a lower rated job requiring specialized training.¹⁴

We heard the parties in oral argument on November 13, 2004.

ARGUMENT

A. Terry B. Morgan:

The arbitration decisions submitted by the International Union are not relevant to my appeal, because in this case Management had no objection to my bumping into the Packer/Stocker position. This case would never have come up if President Kempisty had not prevented Manager Hardin from allowing me to bump into the Packer/Stocker position. During the hearing conducted by Administrative Assistant Stokes-Wilson on April 1, Kempisty claimed that Hardin denied having approved the bump, but he did not produce a statement signed by Hardin to that effect. On the other hand, my Union Steward Larry Carter was present when Hardin approved my bump into the Packer/Stocker position, and he testified during the hearing conducted by Stokes-Wilson about what transpired in Hardin's office on May 8, 2002. He also submitted a written statement about what happened.

My personnel record established that I had the qualifications for the Packer/Stocker position. I had completed a fifty-two week training course to qualify for the Utility position. The fifty-two week training course for the Utility position includes the twenty-six week training course required for the Packer/Stocker position. The job description of the Utility Shipping position includes all of the tasks of the Packer/Stocker position. Furthermore, I was doing the Packer/Stocker job about eighty percent of the time that I was functioning as the Utility person.

In her report to the PRB, Stokes-Wilson states that there are no employees at Steris working in positions requiring training who have been awarded the positions based on seniority, experience, and the training required for prior related jobs. This assertion is based on false information provided by former President Kempisty. It is true that the Utility person in the Shipping Department has never before bumped into the Packer/Stocker position, but that is because the Utility position was held by someone with many years of seniority, so the question of bumping never arose. I have provided the names of nine individuals who have worked or are working in jobs with a training

¹³ Record, p. 113.

¹⁴ Record, pp. 99, 117-126, 127-136, 137-143

program, who did not complete the training program. One of these was former President Kempisty who bumped from the Utility position in the Warehouse to the Utility position in Shipping without completing the fifty-two week training program. The founder and past President of Local Union 832, Bob Strain, and the current President, Larry Adams, have testified and provided written statements supporting the position that the Utility person in the Shipping Department should be allowed to bump into the Packer/Stocker position if the need arises.

When I discussed my grievance with the Local Bargaining Committee, Vice President Chris Rupp told me that if I were allowed to win this grievance it would "open up a can of worms." He explained that other members had been told that they were not allowed to bump down in this situation, and they had not requested grievances. I have persisted in pursuing this appeal, because the position taken by former President Kempisty amounts to a cancellation of the bumping rights negotiated on behalf of the membership in our collective bargaining agreement.

Stokes-Wilson argued in her report to the PRB that the Packer/Stocker position is non-bumpable and she presented a list of bumpable jobs from Article 14, §6, of the Agreement. What the contract describes as "bumpable" jobs are those which an employee can claim by seniority alone. These are jobs which do not require any specialized skills. Most of the jobs at Steris Corporation require unique skills and it is rarely possible to hire people from the outside to fill these positions without training. Training programs have been developed by the Company and the Union for these jobs as needed. Because many of the jobs at Steris have training programs associated with them, Paragraph 4 of Article 14, §H, was negotiated to allow employees to claim skilled jobs through bumping in the event of a reduction in force. Without this section, the exercise of a seniority bump would no longer exist at Steris Corporation; employees could only get jobs through training.

The right to claim a skilled or semi-skilled job under Paragraph 4 is dependent on the information contained in the employee's personnel file. If the personnel file shows the requisite seniority, training, and experience for the position, then the employee is given ten days to prove he or she has the ability to do the job. An employee takes a risk by bumping into a skilled position, because if he or she does not qualify, the bumping employee can be forced to accept a bumpable job or may even be discharged.

This is the way the contract is supposed to work. I want to be sure that the Board members fully understand that my pursuit of this grievance is not solely for my own benefit. The monetary loss to me as a result of not bumping into the Packer/Stoker position has only amounted to about \$700. I am not primarily concerned about the specific incident that gave rise to my grievance. The just resolution of this grievance will restore to our members their bumping rights under the contract.

B. International Union, UAW:

Steris Corporation makes sterilized medical equipment which is packed and shipped to hospitals. The packing and shipping of these materials is a skilled job, requiring specialized training. Morgan argues that the Utility position includes all of the tasks of the Packer/Stocker. The Utility position in the Shipping Department does involve a little of everything, but the position does not require the skills of a qualified Packer/Stocker. The job descriptions in the record do not provide an outline of the duties of the Packer/Stocker, but it is a critical position requiring skills beyond those of the Utility position.

The Company's interpretation of the contract in this case protects the investment it has made in developing training programs. Furthermore, an individual who has completed a training program should have the benefit of protection from being bumped. In 1972, Arbitrator Harry J. Dworkin held that a more senior employee who had only completed nine months of a one-year training period could not bump an employee who had completed the training. Dworkin wrote:

"...However, the arbitrator finds that by virtue of the contract language, participants in a job training program are accorded job protection and are subject to limitations as regards their right to displace others. The net effect of the contractual provisions and established recognition among the parties is that a trainee, who is subject to layoff from a trainee group is not qualified, or contractually entitled to bump, or displace a qualified, junior job incumbent."

The question whether an employee with some of the skills and experience required for a job should be allowed to bump a trained employee pursuant to Article 14, §H, 4, of the agreement was submitted to arbitration again in 1977, and the arbitrator rejected the Union's argument that the contract permitted the bump. Arbitrator John May held that the ten-day trial period became available only after Management concluded that the employee had the requisite experience for the position. Here, Morgan claimed that his training and experience in the Utility position, which was reflected in his personnel record, qualified him for the ten-day trial period, but Management disagreed. The Local could not have persuaded an arbitrator to overrule Management's judgment on this issue.

Morgan argues that the 26-week training program was designed to allow employees seeking to better themselves to compete for the Packer/Stocker position, not to bar employees from moving downwards into positions for which they are qualified by virtue of their experience and training. The contractual provisions on training, however, do not make exceptions for employees in higher rated positions who are seeking to bump downward. Moreover, the existence of an extensive training program for a position strongly implies that general experience in a particular department, even in a highly-rated position such as the Utility Shipping position, is not a substitute for a

program which takes six months to complete. The evidence was undisputed that there is no "past practice" of employees bumping into the Packer/Stocker position without undergoing the training course.

This interpretation of the contract protects the investment both the Company and the Union have made in establishing training programs under the contract. Thus, the decision of the Local not to pursue Morgan's grievance had a rational basis. It was also appropriate for the Bargaining Committee to consider the way the contract had been interpreted in similar circumstances by the former Local Union administration when making the decision whether or not to pursue Morgan's grievance. The newly elected administration may take a different position, but the membership supported the Bargaining Committee's decision on Morgan's grievance when it came before them.

C. Terry Morgan, rebuttal:

There is no basis for the claim that the Utility person is not trained in all of the elements of the Packer/Stocker job. No one has ever disputed that the Utility man fills in for the Packer/Stocker much of the time. My personnel record shows that I have the training required for the Utility position which includes the training for the Packer/Stocker, so the qualifications are in my record.

When I indicated my desire to bump into the Packer/Stocker position, Manager Hardin gave me the job without testing because my records verified my experience for the job according to the applicable provisions of the contract. The statements in the record show that Hardin had already approved me for the Packer/Stocker job when he was inappropriately influenced by former President Kempisty to reverse his position. This should not have happened because Hardin was originally acting according to the contractual agreement and the way it had been administered in Hardin's own experience.

DISCUSSION

Based on the record and the testimony given during the hearing we conducted on this appeal, we have concluded that Morgan had completed the training necessary for the Packer/Stocker position as part of his training for the Utility position. Robert D. Strain, the former President of Local 832, testified that the training for the Packer/Stocker position which the Utility person is required to complete is exactly the same as the twenty-six week training course described in the job description of the Packer/Stocker position. The job description for the Utility position in the Shipping Department clearly requires a fifty-two week training program, and the record shows that Morgan had completed that program. The duties and functions of the Utility person include all of the tasks described in the job description of the Packer/Stocker. The Local Union representatives present at the hearing all agreed that the duties of the Utility person include the duties of the Packer/Stocker, and no one disputed Morgan's assertion that he was filling the position of Packer/Stocker about eighty percent of the time that he was functioning as the Utility person. Therefore, Morgan possessed the

training and experience that should have entitled him to claim the Packer/Stocker position when he was bumped from the Utility position in May 2002, at least for the ten-day trial period described in Article 14 §H,4, of the Collective Bargaining Agreement between Steris Corporation and the UAW.

Article 14 §H,4, describes the procedures by which an employee may claim a semi-skilled or skilled job consistent with his seniority, training and experience. It therefore has no application to the list of bumpable jobs described in Article 14 §H,6, of the contract, which are specifically identified as jobs other than skilled or semi-skilled jobs. A preface to the bumpable job list states:

“An Associate who does not qualify for skilled or semi skilled jobs may use seniority for any of the following bumpable jobs, provided the Associate is physically, mentally, and safely able to perform the job selected.”¹⁵

The arbitration decisions that were produced at the hearing conducted by Stokes-Wilson on April 1, 2003, in support of the position taken by President Kempisty that Morgan was not entitled to claim the Packer/Stocker position, describe situations where the employee attempting to bump into a skilled or semi-skilled position lacked the training or experience for the position, or where such training and experience was not reflected in the employee’s personnel records. The 1972 decision issued by Arbitrator Dworkin concerned an attempt to bump by an employee who had completed only nine months of a one-year training required for the job. The 1994 decision by Arbitrator Ipavec dealt with a situation where the employee’s credentials for the position he sought were not in his personnel records. Significantly, that decision suggests that if the employee’s records had reflected his prior experience in the position, he would have been entitled to the ten-day trial period described in Article 14. Ipavec wrote:

“It is noted that the bumping due to the reduction in force was to take place in August 1993, however, the first letter from the Coast Guard that would indicate the grievant had grinding and polishing experience was dated September 24, 1992, and the second letter which explained in greater detail the grinding and buffing experience which the grievant had received in the Coast Guard was dated November 24, 1993.

The Company readily admitted that had such information been contained in the grievant’s personnel file he would have been allowed to bump into the Utility Grinder Job; and in the next reduction in force the grievant would have such an opportunity. ...”¹⁶

¹⁵ Record, p. 113.

¹⁶ Record, p. 142.

The case closest to Kempisty's position is the decision of Arbitrator John May issued in August 1978 in response to Grievance 1977-74. In that case, the Union argued that a more senior employee who had experience in some of the aspects of a job should be allowed the ten-day trial period described in Article 14. Arbitrator May held that the ten-day trial period was not applicable unless the employee seeking to bump had experience in all aspects of the job. May wrote that he would not substitute his judgment for that of Management's on the question of whether the more senior employee was qualified to bump.¹⁷ May's decision is distinguishable from the situation presented by Morgan's appeal because Morgan had completed the training for the Packer/Stocker position as part of his training for the Utility position and he had experience in all aspects of the Packer/Stocker position because he filled in for the Packer/Stocker while he held the Utility position.

There is no credible evidence in the record to contradict Morgan's testimony that Manager Hardin originally approved him for the Packer/Stocker job and then changed his mind after he discussed the move with the former Local Union President, Joe Kempisty. Local 832 Union Steward Larry Carter submitted a statement confirming Morgan's account of the events of May 8 and 9, 2002. He also testified at the hearing we conducted on November 13, 2004. There is nothing in the record inconsistent with this account. In fact, the report issued by the hearing officers who originally considered Morgan's appeal to the IEB supports it. They reported that Morgan described these events during the hearing they conducted on February 25, 2003, in Kempisty's presence. They do not report that Kempisty challenged this account, but rather that he confirmed that he had opposed the bump because he believed that Morgan had not completed the training program.¹⁸ Significantly, there is no signed statement by either Kempisty or Hardin contradicting Morgan's testimony and that of his Union Steward concerning what took place in May 2002.

Therefore, we are not confronted with the question whether the Union could have persuaded an arbitrator to enforce Morgan's right to bump into the Packer/Stocker position over Management's objection, but whether there was a rational basis for the Local Bargaining Committee's decision to withdraw Morgan's grievance. We find that there was not.

The record supports the conclusion that but for Kempisty's intervention Morgan would have been allowed to bump into the Packer/Stocker position in May 2002. President Kempisty apparently believed that his interpretation was supported by a prior arbitration decision, but no one at Local 832 was able to produce a copy of any arbitration decision relating to the issue prior to the Bargaining Committee's decision to withdraw Morgan's grievance on June 25, 2002. There cannot, therefore, have been any serious consideration of the question whether those decisions actually supported

¹⁷ Record, p. 124.

¹⁸ Record, p. 42.

Kempisty's opinion, and we find that Kempisty's interpretation of the contract is not supported by the decisions that were eventually produced. Furthermore, the contract language does not support President Kempisty's interpretation, and the fact that other union members may have been denied seniority rights negotiated on their behalf based on a misunderstanding of the contract did not give the Bargaining Committee a rational basis for refusing to process Morgan's grievance.

Steris Corporation has not signed a letter agreeing to the reinstatement of grievances, but Stokes-Wilson suggested during the hearing that the Corporation might be persuaded to reopen the grievance in the interest of maintaining a good bargaining relationship with the Union. Accordingly, we direct the International Union to make every effort to reopen Morgan's grievance and obtain a settlement which affirms Morgan's right to claim the Packer/Stocker position pursuant to Article 14, §H, 4, and further to compensate Morgan for the losses he incurred as a result of the former Local Union President's interference with his contractual rights.

It is so ordered.