

IN THE MATTER OF ARBITRATION BETWEEN

BLANDIN PAPER COMPANY
(Employer)

and

TEAMSTERS UNION, LOCAL NO. 346
(Union)

DECISION
Contract Interpretation
and Application
FMCS Case No. 240314-04408

ARBITRATOR: Mr. Frank E. Kapsch, Jr.

HEARING: The hearing took place on September 17, 2024 in the Offices of the Employer in Grand Rapids MN.

POST HEARING BRIEFS: Both Parties filed timely post-hearing briefs on December 9, 2024.

THE HEARING RECORD: The hearing Record was recorded and transcribed by Certified Court Reporter, Nathan D. Engen.

APPEARANCES

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JURISDICTION

The Parties stipulated that this Arbitrator has been properly selected and appointed in accordance with the provisions of *Section 21* of the applicable labor agreement and thereby possesses the responsibilities, duties, and authorities set forth therein to hear and determine this dispute.

STATEMENT OF THE ISSUE

The Parties were unable to stipulate to a cogent wording of the Issue in the hearing. As a result, I have carefully reviewed their respective, proposed wordings and have formulated the Issue as follows:

Did the Employer violate the provisions of the CBA, as set forth on page 29, Temporary Vacancies - 12 Hour Shift Schedule, on January 18, 2024; when it reassigned the Grievant to a temporary vacancy position in the Winder Department? If so, what shall be the remedy?

THE EMPLOYER

The Blandin Paper Company (Employer) is located in Grand Rapids MN and has been operating a paper production mill at that location since about 1901. The facility produces high quality, lightweight coated paper for magazines and catalogues and is one of the largest producers of that product in North America. Relatedly, Blandin Forestry manages some 190,000 acres of forest land to insure a ready supply of wood pulp for the mill. The Employer's hourly-paid production and maintenance employees are represented, for purposes of collective bargaining, by Teamsters Union, Local No. 346 (Union). That bargaining relationship has existed since about 2003, as reflected in a long succession of collective bargaining agreements (CBAs).

THE UNION

Teamsters Union, Local No. 346 (Union) is a labor organization with principal offices in Duluth MN. Local 346 represents various collective bargaining units located throughout Northern Minnesota. These units include office staff, UPS, police officers, beverage, dairy, construction, fuel delivery drivers and other classifications. At the Blandin paper mill, it represents a bargaining unit of approximately 170 production and maintenance employees. The applicable CBA covering these employees was effective July 1, 2023 and is scheduled to expire on June 30, 2026.

SUMMARY AND CHRONOLOGY OF BACKGROUND FACTS AND EVENTS

There is little or no controversy or dispute between the Parties as to the basic, relevant facts in this arbitration situation.

The Parties are in full agreement that the focus of the Issue involves the interpretation and application of the following contract provision:

Page 29. Temporary Vacancies - 12 Hour Shift Schedule

The following procedure will apply in the filling of temporary vacancies for employees working the twelve (12) hour shift schedule. The volunteer overtime list(s) will be used first when possible. The junior qualified employee contacted has the responsibility to fill the vacancy unless another volunteer can be found. For any employee to be considered they must be verified to work the job in question, based upon the verification system. No employee will be considered to work back-to-back 12 hour shifts.

The policy to fill vacancies is as follows:

Step 1. Whenever possible, the crews should be moved up to fill the temporary vacancy. If the crew cannot move up so that the bottom entry level position can be filled by the labor pool, then Step 2 below will be utilized.

Step 2. The senior employee posted on that particular job who is on their second (2nd) or third (3rd) scheduled day off will be called. If Step 2 fails, use Step 3.

Step 3. Employees on that line who are on their second (2nd) or third scheduled day off will be called in their order by their department seniority. If Step 3 fails, use Step 4.

Step 4. The senior employee posted on that particular job who is on their first (1st) scheduled day off will be called. If Step 4 fails, use Step 5.

Step 5. Employees on the line who are on their first (1st) scheduled day off will be called in order of their department seniority. If Step 5 fails, use Step 6. The senior employee posted on that particular job who is on their fourth (4th) scheduled day off will be called. If Step 6 fails, use Step 7.

Step 7. Employees on the line who are on their fourth (4th) scheduled day off will be called in order of their department seniority. If Step 7 fails, use Step 8.

Step 8. U-1's, utilizing mill seniority, on their second (2nd) or third (3rd), first (1st), or fourth 4th scheduled days off will be called using the above process.

This language has essentially remained unchanged over the course of many past CBAs.

The Employer's paper mill is essentially a 24/7 operation and the production process is similar to the production of many other types of products and equipment, such as food products, appliances, vehicles, etc. Raw materials are brought in to start the process and that material undergoes various steps to convert it into the finished product. In this instance, the raw material is wood pulp from the forests of Northern Minnesota that are managed by Blandin Forestry. In the mill, the raw pulp undergoes multiple steps and processes until it ultimately emerges as rolls of finished paper ready to ship to customers.

The paper production process - simplified - starts by taking the incoming wood chips and cooking them to break down the fibers, to begin their journey to become paper. The fibers are bleached to white and are formed into sheets and dried out from the cooking process. Subsequently, the sheets are further processed, coatings are added and eventually the fully processed paper is placed on rolls and readied for shipment to customers.

The Employer depends upon the efforts of about 170 production and maintenance employees to insure that the paper production system runs smoothly and efficiently. These employees are organized into four "Shifts" or work crews. The Shifts are designated as Shift A, B, C and D.

The members of each Shift work 12-hour shifts; two day shifts, two night shifts and then four (4) days off. Within a given 24-hour day, two (2) Shifts/crews will be working, each working a 12-hour shift, starting at about 6 AM or 6 PM, depending upon whether they are on the day or night shift schedule.

Within each Shift crew, employees are assigned to work in various departments, depending upon their skills and experience. Typical departments include Machine department, Super department, Coater department, Wood and Mechanical Fiber department, etc.

To ensure that employees are knowledgeable and capable in their jobs, the Employer maintains an extensive training program and system for verifying that each employee properly trained and experienced in his or her job assignment. Most of the training is on-the-job and through mentorship while working directly with experienced employees. Careful records are maintained as to all training experiences for each employee and an appropriate training authority must "sign off" upon satisfactory completion of all required training tasks and skills. Some qualifications require passing formal tests. Once an employee completes all the required training tasks and skills and has been signed off, s/he is now verified in the system as qualified to perform the full duties of the job classification for which they trained.

Newly hired employees with no prior experience in paper mill operations are designated as Utility Workers, "U-1s" or labor pool employees. They start out being assigned to back up, fill-in and train with more experienced "Helper" employees in the various departments to gain the necessary skills to become verified and fully qualified in the Helper classifications. The more and varied verified job qualifications that an employee has; the more opportunities s/he has in bidding for higher paying positions. The system also benefits the Employer by having employees cross-trained to step-in and perform tasks in other classifications; when circumstances warrant.

A verified job qualification is valid for one year and can be renewed. An employee can also choose to drop an existing qualification after one year.

Given the above frame of reference, let us now turn to the events of January 18, 2024. The Shift B crew employees commenced work at about 6 AM. About two hours prior to the start of that Shift, one of the Winder Helpers in the Winder Department called in sick. Fortunately, that employee's absence did not have an immediate effect on the staffing of the Winder Department, because one of the winding machines was out of operation due to a hydraulic leak.

However, by about 9 AM, maintenance employees had repaired the leak and the errant winding machine was back in full operation. Accordingly, the department now required a full team, but was short one Winder Helper. Richard Davidson, the Shift B supervisor, reviewed his crew staffing situation and decided to pull Austin Rasley, who was then working in the Machine Department as a 4th Hand Helper off that job and assign him to fill the Winder Helper position. Davidson was aware that Mr. Rasley was verified and qualified to fill the Winder Helper position. To fill Rasley's position, as a 4th Hand Helper in the Machine Department, Davidson placed one of the available U-1s, who was qualified to work as a Machine Helper, but not as a Winder Helper, in that job.

The Record indicates that Austin Rasley commenced employment with the Employer in October, 2022 and started as a Utility Worker or a "U-1". He subsequently trained into several different entry-level jobs in various departments. In the summer of 2023 he successfully bid

into his first permanent posted position as a Coater Helper. In November, 2023 he took a new posted position as a 4th Hand in the Machine Department on Shift B. He also held a verified qualification as a Winder Helper at that time.

When supervisor Davidson approached Rasley on the morning of January 18th, 2024, he asked Rasley if he would move over the Winder Department as a Helper? Rasley responded, "No". Davidson then advised Rasley that it was now an order and Rasley reluctantly agreed to go over and fill the missing Winder Helper position, but under protest.

Mr. Rasley worked in the Winder Helper position for the remainder of that day's work shift, about 9 hours. The Winder Helper position is a higher pay grade than his 4th Hand Machine Helper classification and the Parties agree that he was properly paid for the pay difference. Rasley subsequently returned to his 4th Hand Machine Helper position on his next work shift schedule.

THE GRIEVANCE

As indicated above, Mr. Rasley advised supervisor Davidson on January 18, 2024 that he was protesting - grieving the order to leave his posted position as a 4th Hand Machine Helper to work in the Winder Department as a Winder Helper. Mr. Rasley subsequently put his grievance into written form on that same date.

Name of Employee: *Austin Rasley*

Department: *6 Line Paper Machine*

Date Grievance Filed: *1/18/24*

Job title: *4th Hand Helper*

Date incident occurred: *1/18/24*

Name of Supervisor: *Richard Davidson*

Date first talked to supervisor: *1/18/24*

Step 1 Statement of Grievance: *Moved me from my posted job. Moved me to the Winders and had a junior person work my job. Pg. 29 Temporary Vacancy*

What Adjustment is expected: *Leave me in my posted department. Remove my Winder qualification.*

The Employer, through Lori Gill, Manager of Human Resources, formally acknowledged receipt of the Grievance on about January 26, 2024 and responded on January 29 stating; *"There was no contract violation found. The request to have the Winder qualification removed is denied."*

The Parties met on March 6, 2024 to discuss the Grievance at Step 2. The Employer again denied the Grievance, noting that;

"On January 18th, 2024, the crew was staffed with enough qualified employees to fill the necessary positions. Employees were reassigned as needed to meet the shift's staffing requirements. Employees were paid at their posted rate or higher. We found no contract violation. The request to remove Austin's Winder qualifications has been

denied. However, these qualifications are set to expire in June of 2024 and will not be reconfirmed unless requested by Austin."

Following the Employer's denial of the Grievance at Step 2 of the contractual Grievance Procedure, the Union timely moved the matter to Step 3 - Arbitration.

Ergo, here we are in arbitration.

SUMMARIES OF THE PARTIES' MAJOR POSITIONS AND ARGUMENTS

THE UNION:

The Union alleges that on January 18, 2024, the employer clearly violated the contract language as set forth on *page 29, Temporary Vacancies* of the applicable labor agreement.

When the Shift B Winder Helper employee called in sick, just before the start of the shift, that created a Temporary Vacancy. That vacancy then triggered the process as set forth in the *Page 29* process to fill that vacancy. However, the Employer, through supervisor Richard Davidson, chose not to follow that contractually required procedure.

Instead, supervisor Richard Davidson decided to involuntarily pull Austin Rasly off his posted job as a 4th Hand Machine Helper and assign him to the vacant Winder Helper job position. Concurrently, Davidson placed one of the Shift's available U-1 employees in Rasly's 4th Hand Machine Helper position. As a result, Davidson totally ignored the contractual procedure for filling Temporary Vacancies.

By failing to follow the contractual procedure, the Employer deprived other employees of the opportunity to be called in to work overtime in the vacant position.

I. *A Temporary Vacancy Procedure, Page 29*, applies whenever a position in the line of progression is temporarily unoccupied. That procedure requires employees to "move up" within the department to fill the vacancy; not "move over" from other departments.

A. Unlike the Employer, the Union is focused solely on the language of page 29 of the CBA. That procedure covers the entire topic of how a temporarily unoccupied production position must be filled.

In resolving this dispute, the Arbitrator should follow closely the language and wording of *Page 29* of the CBA, give words and phrases within the Procedure their plain and ordinary meaning and consistent with those phrases as are used elsewhere in the CBA. The Procedure should be interpreted in such a manner that the rights of employees to "move up" in their department or be called in to work the overtime opportunities caused by the temporary vacancies are respected per the language of the CBA.

B. Contrary to the Employer's assertions, Management Rights and its inherent gap filling does not apply here because the *Temporary Vacancy* procedure specifically addresses the Issue presented by this dispute.

The Union acknowledges that the Employer has the "management right" not to fill an open job position and run a department with less than a full complement of employees, that is not what happened here. However, the Employer cannot assert "Management Rights" to override or supersede existing language in the CBA clearly addressing the issue.

C. When a posted production position in a line of progression is temporarily unoccupied, it is "vacant".

If an employee misses work, whether due to a scheduled vacation, illness, a floating person holiday, etc., that absence creates a "temporary vacancy". That "vacancy" triggers the procedure set forth on *Page 29* of the CBA. However, the Employer argues that if a regular employee's job position is unoccupied, but it "moves over" an employee from another department - who is qualified to fill the vacant position - there is no "vacancy".

The Employer's position is erroneous for two (2) reasons; 1) it ignores the common dictionary definition of the word "vacancy" and 2) the Employer is conflating and confusing how it fills a vacancy with the question of whether a vacancy even exists.

The fact that the regular Winder Helper on the B Shift called in sick and said he wouldn't be reporting for work, clearly resulted in a "vacancy" being created in his job position. The Employer argues there was really no "vacancy", because there were sufficient qualified employees available on the shift to cover all the required job positions, including the Winder Helper position. Contrary to the Employer, the Union contends that when the B Shift commenced work on the morning of January 18th, there was indeed a "vacancy" or unoccupied Winder Helper job position.

D. Whenever there is a vacancy, Step 1 requires that the Employer look at whether available U-1 Utility Workers on the shift can be "moved up" to fill the vacancy. This Step cannot be avoided by "moving over" employees from other departments.

On January 18th the Employer acknowledges that there were U-1 employees available on the Shift, but none were qualified to move up to fill the Winder Helper job. At that point, the CBA required the shift supervisor to proceed to Step 2, and the subsequent Steps, if necessary, of the Temporary Vacancy procedure to fill the vacant Winder Helper job.

Instead, the supervisor approached Mr. Rasly, who was working in his regular, posted job position as a 4th Hand Machine Helper in the Machine Department and involuntarily re-assigned him to the vacant Winder Helper position in a different department. That action by supervisor Davidson violated the contractual requirement on page 29 of the CBA! With no U-1s qualified or available to directly fill the Winder Helper job position, the Employer was obligated and required to proceed to *Step 2* of the *Temporary Vacancy* procedure.

E. Step 1 of the Temporary Vacancy Procedure clearly requires that employees be "moved up" to fill the vacancy within their department; not "moved over" from another department.

The Employer argues that it has the ability to both "move up" and move employees around to fill job positions and tasks. That argument is clearly without merit, as the language of *Step 1* is clear, "move up" within the department, not "move around".

F. The use of the word "crew" in Step 1 does not support the Employer's claim that it may "move over" employees from one department to another.

The Employer contends that the employees being "moved up" in Step 1 work as part of "crews" and that a "crew" includes all the departments. Therefore, it can "move up" employees from one department to another because all departments fall under the broad umbrella of crews. This argument is false for two (2) reasons; First, the obvious reason the word "crew" is used instead of "departments" is because the U-1 employees on a Shift are not assigned to any specific department. Therefore, when *Step 1* refers to "crew" and U-1s, any reference to "department" would make the procedure unworkable. Secondly, the use of the phrase "moved up" in *Step 1* means to move up the job progression ladder to the next higher level rated job to fill a temporary vacancy. Therefore, employees in the "crew" who are not in the same department and progression ladder as the vacancy cannot "move up" but only "move over" to fill a the vacancy and that clearly violates *Step 1* of the CBA. *Step 1's* use of the word "crew" means that only members of the crew, who are serving in posted jobs in the same department, can fill the vacancy.

G. The failure of the shift supervisor to call and offer the vacancy in the Winder Helper vacancy to the employees listed in Step 2 through 8 of the Temporary Vacancy Procedure violated the contractual rights of those employees.

The Employer acknowledged that while there were U-1 Utility employees working and available on the B Shift on January 18th, none were qualified to serve in the Winder Helper classification. That simple fact meant that the shift supervisor was unable to "move up" a U-1 employee to fill the Winder Helper vacancy. Therefore, the supervisor was required to proceed to the subsequent Steps of the *Temporary Vacancy Procedure*, *Steps 2-8*, and offer the vacancy opportunity to those other eligible employees. For

those employees, exercising their contractual right and opting for the vacancy opportunity meant earning overtime.

H. The Employer failed to provide a past practice contrary to the language of the language of Page 29 of the CBA, regarding the filling of Temporary Vacancies.

In the hearing, the Employer claimed that what occurred on January 18 was not unusual; that it has "always" transferred employees from other departments to fill temporary vacancies occurring on shifts. However, as the Record shows, the Employer was unable to actually show sufficient evidence to confirm that assertion.

As the Parties acknowledge, the post-strike Agreement as negotiated by the Parties in August, 2023, did give the Employer broad discretion to recall and schedule returning employees. However, that Agreement was only in effect until November 1, 2023, at which time the Employer was required to return to the scheduling practices set forth in the CBA. During the "Agreement" period, supervisors did exercise the option to depart from the prior practice of only reassigning employees to other jobs, within their respective departments.

As the Record evidence shows, the Employer, however, continued to assert that broad scheduling authority, after it expired on November 1, 2023.

Although the Employer pointed to various situations where employees did work in job positions outside their posted departments after November 1, 2023; the evidence presented was unclear and equivocal as to whether these sporadic reassignments were voluntary or "forced". As a result, those situations are hardly sufficient to support the Employer's contention that it has "always" done that.

Accordingly, the Employer's argument regarding a past practice is without merit.

Conclusion:

Based upon the foregoing and the Record as a whole, the Union has clearly met its burden of proof to establish that the Employer has violated the provisions of the *Page 29 Temporary Vacancy* procedure as set forth in the applicable labor agreement, as alleged.

As a remedy, the Union respectfully requests that this Arbitrator sustain the Grievance. Although the Parties agree that there is no monetary remedy involved, it is important that this violation not continue to occur in the future. Therefore, the Union requests that this Arbitrator order the Employer to train its Shift Supervisors to fill temporary vacancies in the production department in accordance with the procedure set forth on *Page 29* of the CBA and without transferring employees from other departments to the vacant position, prior to completion of all eight (8) Steps of the *Temporary Vacancy* Procedure.

THE EMPLOYER:

The Union has not established, by a preponderance of the evidence, the applicability and violation of the *Temporary Vacancy* provision as set forth on *Page 29* of the applicable CBA.

The core question or Issue in this dispute is, given the staffing and circumstances caused by the call-in absence of the Winder Helper on Shift B on the morning of January 18, 2024; was the Employer required to invoke and follow the *Page 29 Temporary Vacancy* procedure of the CBA? It is the Employer's position that the clear-cut answer to that Issue - question is a definite "NO".

I. No Vacancy existed to trigger the Temporary Vacancy Provision.

The contract language clearly states that; "*The following procedure will apply in the filling of temporary vacancies for employees working the 12-hour shift schedule...Whenever possible, the crews should be moved up so that the bottom entry level position can be filled by the labor pool [U-1s]*". In other words the Union must show both that 1) a temporary vacancy existed to trigger the procedure and 2) the Employer failed and refused to follow the Temporary Vacancy procedure as required by the CBA. The Union's failure to meet either of these two (2) requirements must result in the denial of the Grievance.

The Record evidence and testimony is quite clear that on the morning of January 18, 2024, Shift B had sufficient employees at work at 6 AM to fill all required production jobs and tasks. This was true in spite of the fact that a scheduled Winder Helper employee had previously called-in sick. Moreover, a review of the Shift B crew members indicated that there sufficient qualified employees on-site, on the crew, to fill all required production positions for the shift. Accordingly, there was no vacancy at all.

As the contract language states, the *Temporary Vacancy* procedure only applies "...in the filling of temporary vacancies." As indicated above, in this instance, no "vacancy" existed and the *Temporary Vacancy* procedure was not applicable.

II. The Employer complied with the Temporary Vacancy provision Step 1 requirements even though they did not apply.

As a Union official acknowledged in the hearing, *Step 1* of the *Temporary Vacancy* procedure allows the Employer to move up employees within a "crew", without regard to "departments". This permits a qualified employee, from any department on the Shift, to move up to the open job. A qualified U-1 employee on the same shift can then move up and back-fill that now open position. That scenario is precisely what happened on January 18.

The Union's major argument centers around the fact that Mr. Rasly was reassigned from his 4th Hand Helper position in the Machine Department to the open Winder Helper position in the Winder Department. The Union contends that Rasly's assignment from

the Machine Department to the Winder Department was what it calls a "move over" and points out that *Step 1* specifies that employees can only be "moved up" within their posted job department. Thus, the Employer violated the *Temporary Vacancy Step 1* procedure by reassigning Rasly from his Machine Department position to the Winder Department.

A careful perusal of the language of *Step 1*, fails to find any mention or reference to "departments". It does refer to "crews" and there seems to be tacit agreement that the reference to "crew(s)" means the entire Shift staff. So, according to *Step 1*, employees are to be moved up within their own crew or Shift and that may mean they are moved from one department to another during the course of the Shift.

In other *Steps* of the *Temporary Vacancy* procedure, for instance *Steps 3, 5 and 7* require that employees be called in order of their "department seniority", but definitely not in *Step 1*.

The Union's Argument that *Step 1* prohibits assigning employees from one department to another, within the Shift crew, should be summarily dismissed.

III. Past Practice conclusively demonstrates that the applicable labor agreement permitted the Employer to assign Mr. Rasly to the Winder Helper job position.

The past practice of the Parties conclusively establishes that the Employer was permitted to move Mr. Rasly up to the Winder Helper position on January 18.

It is a well established arbitral principle that for an alleged "past practice" to be binding upon both Parties, it must 1) be unequivocal, 2) clearly enunciated and acted upon and 3) readily ascertainable over a reasonable period of time as a fixed and established practice accepted by both Parties.

During the course of the hearing, the Employer showed that on six (6) prior occasions Mr. Rasly was assigned to another position in another department, while his posted position was back-filled by a U-1 employee. Additionally, the Employer introduced further evidence of five (5) other situations in which other employees were assigned to another department while having their original department position back-filled by a U-1 employee. In total, the Employer presented eleven (11) different instances, in the few months prior to Mr. Rasly's situation on January 18, where he and other employees were assigned to positions in other departments. In none of these instances did neither the employee nor the Union object, file a grievance or otherwise take issue with the process.

IV. There is No available Remedy

Of course, an Arbitrator cannot order or award a Remedy in a case where no contract violation has occurred or been found. An Arbitrator is confined to the interpretation and application of the collective bargaining agreement; s/he does not sit to dispense his or her own brand of industrial justice.

This Grievance is clearly without merit and should be denied.

There is no evidence of any harm to any bargaining unit employee and the Union does not appear to be alleging any. At the hearing the Parties agreed that Mr. Rasly was timely and properly paid for the higher grade job he performed as a Winder Helper on January 18.

The Parties also agreed at the hearing that Mr. Rasly's verified qualification as a Winder Helper had expired in June, 2024 and he chose not to renew it. Accordingly, that remedy, as cited in his original Grievance, is now mute.

Finally, with respect to the Union's request that the Arbitrator order the Employer to cease and desist from temporarily filling job openings with employees from other departments, the Arbitrator has no such authority. To try to do so, the Arbitrator would have to modify the existing language in *Step 1* of the *Temporary Vacancy* procedure to add some wording concerning "*department(s)*". The Arbitrator is specifically prohibited, by the terms of the CBA, from adding to, subtracting from or otherwise modifying the existing language of the agreement.

Conclusion: Based upon the foregoing and the Record as a whole, the Employer respectfully requests that the Arbitrator find that the Union has failed to prove, by a preponderance of the evidence and testimony, that the Employer has violated the provisions of *Page 29 Temporary Vacancies* of the labor agreement as alleged. Accordingly, the Employer further and respectfully urges the Arbitrator to deny the Grievance and dismiss it in its entirety

ANALYSIS, DISCUSSION AND FINDINGS

For labor arbitrators, one of their most important functions and duties is resolving disputes, between parties to a collective bargaining contract, over the meaning, interpretation and application of the contract language. That function is, of course, not limited to the labor-management sphere, but arises wherever two or more parties have negotiated some form of agreement requiring certain actions by each party. Those other types of agreements involve anything from an agreement among roommates to a construction contract for a home or building.

Regardless of the type of contract or agreement, it is almost a certainty that during the life of the agreement, questions or problems will arise between the parties as to the meaning and/or application of specific provisions. In most cases, the parties will discuss the dispute and will resolve it informally in a mutually, satisfactory manner. If the parties are unable to resolve the matter themselves, they may seek a resolution through the formal legal system or, as in this instance, through arbitration.

The Union is the moving Party in this matter. As such, it bears the burden of proof to establish by a preponderance of the Record testimony and evidence that its interpretation

of the contract language at issue is more rational, logical and reasonable, under the totality of circumstances, than that of the Employer.

As noted previously, the Parties are in agreement with all of the basic and relevant events and actions that took place on January 18, 2024 and which gave rise to the dispute in this situation. To try to quickly review that situation;

On January 18, 2024, the employees of the B Shift crew were scheduled to start work at 6 AM on the mill production line. A couple of hours earlier, Shift Supervisor Richard Davidson became aware that a Winder Helper employee on the Shift had called in as ill and unable to report for duty. When the Shift commenced work, the absence of the Winder Helper employee was not an immediate problem because one of the Winder machines was inoperative and undergoing repairs. Depending upon how long it would take to complete the repairs, Supervisor Davidson knew that a Winder Helper would eventually be needed to staff the machine.

As a seasoned veteran former employee and now a Shift supervisor, Davidson in looking over his current raw manpower on the Shift, quickly concluded that there were nominally more than sufficient number of employees on board to cover all of the necessary job positions on the Shift. This was because the Shift included at least two (2) U-1 Utility employees who could fill-in for or back up certain Helper job positions. However, the Winder Helper job position was a higher level and the U-1s were not qualified to fill-in that position.

So the next consideration or question for Davidson was, who else on the current Shift crew was qualified to fill-in as a Winder Helper? The quick and easy answer was Austin Rasly, who was currently working his posted position as a 4th Hand Machine Helper in the Machine Department.

Davidson was, of course, quite familiar with the provision set forth on *Page 29* of the current labor agreement that specifies how "*Temporary Vacancies*" in the Shift workforce were to be handled.

Based upon his then current Shift staffing situation, he made the decision to pull Mr. Rasly from his posted position in the Machine Department and assign him to move to the Winder Department and fill-in for the missing, sick, Winder Helper. Concurrently, he assigned one of the available and qualified U-1 employees to fill-in for Mr. Rasly in his job position as 4th Hand Machine Helper in the Machine Department.

Davidson's decisions and actions resolved the situation in a very short period of time and when the repairs on the errant Winder Machine were completed at about 9 AM, Mr. Rasly was in place, as well as the reassigned U-1 employee. Full production was resumed and continued for the remainder of the Shift.

The Union alleges that the Employer, through the actions and decisions of supervisor Davidson, violated the contractual requirements as set forth in *Step 1* of the contract provisions set forth on *Page 29 Temporary Vacancies* of the applicable CBA. To reiterate that language;

Step 1. Whenever possible, the crews should be moved up to fill the temporary vacancy. If the crew cannot move up so that the bottom entry level position can be filled by the labor pool [U1s], then Step 2 will be utilized.

In support of its allegation, the Union argues that;

1. Mr. Rasly was improperly assigned to the Winder Helper job position because that position was located in a different department than his home department and that, with respect to *Step 1*, employees can only be re-assigned within their home department.
2. By reassigning Mr. Rasly to a different department, the Employer failed to comply with the *Step 1* requirement that employees be "moved up". The Employer "moved Mr. Rasly over" to a different department, thereby violating the contract procedure.
3. Due to the alleged violations in 1 and 2 above, the Union argues that in order to fully comply with the *Step 1* language, the Employer should have left Mr. Rasly in his posted position in the Machine Department and should have proceeded to *Step 2* of the *Temporary Vacancy* procedure and started calling in employees to fill the Winder Helper job position.

The Employer response arguments;

1. There was really no Temporary Vacancy on the B Shift crew on January 18, because there were sufficient, qualified employees available on the Shift to fill the Winder Helper job position.
2. Although the Employer did not regard the Winder Helper situation on January 18, as triggering the contractual *Temporary Vacancy* procedure; it did otherwise deal with the matter in accordance with *Step 1* of that procedure.
3. With respect to the Union's argument that in filling a temporary job position vacancy, the Employer may only reassign employees within their home department; that is untrue. No where in the *Step 1* contract language is there any appearance of the word "department" or any related language to indicate that such a restriction exists with respect to *Step 1* actions. Additionally, there is a clear history of employees being reassigned from one department to temporarily work in another.
4. With respect to the Union's argument that by reassigning Mr. Rasly to the Winder Helper job position on January 18, he was only "moved over, not "moved up" as required by *Step 1*; that is incorrect. The Winder Helper job is a higher job classification than Rasly's 4th Hand Machine Helper posted job classification and has a higher pay rate. Mr. Rasly was paid the higher wage rate for the hours that he worked as a Winder Helper on January 18.

Based upon the foregoing and in consideration of the Record testimony and evidence, I find as follows:

1. There appeared to be some confusion between the Parties with respect to what the word "crew" in *Step 1* means. To hopefully resolve whatever confusion there may be on that question, I find that the use of the word "crew" in *Step 1* of the contract language refers to the scheduled production work "Shift" and has no relation with or relevance to departments. I am aware that some of the subsequent *Steps* in the contractual Temporary Vacancy procedure do make reference to "departments(s)". This Finding does not affect those contract provisions.
2. With respect to whether a "vacancy" actually existed on the morning of January 18, contrary to the Employer's view, I find that, indeed, a "vacancy" in the Winder Helper job position did exist, as soon as the job incumbent called in sick. However, with the Winder machine inoperative for repair at the start of the Shift, I find that it was not yet a critical "vacancy" sufficient to trigger the contractual *Temporary Vacancy* procedure beyond *Step 1*. With the Winder Machine down, the Employer had sufficient time to carefully review its manpower situation and consider the initial options under *Step 1*. Beyond that, I am going to leave it to the Parties to informally discuss the topic of if, when or how a "vacancy" becomes a *Temporary Vacancy* per the CBA. What if the sick Winder Helper took two aspirin and unexpectedly showed up for work at 6 AM?
3. With respect to the Union's argument that *Step 1* restricts the Employer from temporarily reassigning employees from their home department to a different department; I find that argument to be without merit. As the Employer aptly points out, *Step 1* contains no mention or reference to "department(s)". To accept the Union's argument on that point would require a "modification" of the language in *Step 1* and this Arbitrator is clearly prohibited by the terms of the CBA's *Grievance Procedure* from doing so.
4. With respect to the Union's argument that, in reassigning Mr. Rasly to the Winder Helper position from his posted position in the Machine Department, he was not "moved up", but merely "moved over", I find that argument to be without merit. As noted by the Employer, the Winder Helper position was a higher classified job than the 4th Hand Machine Helper and Mr. Rasly received the higher wage rate for the hours worked on January 18 as a Winder Helper.

In viewing the overall events and actions that took place on January 18, I find that the Employer's actions and decisions, under the circumstances, were rational, logical, efficient and in full accordance with the provisions and requirements of the CBA. Additionally, those actions helped minimize disruption among the Shift employees and the production process. However, I am also well aware that I am only looking at a single incident concerning Temporary Vacancies. What if there were no qualified employees on the B Shift to step into the Winder Helper position, but sufficient raw employee numbers to staff the Shift?

CONCLUSION

In view of my Findings, as above, I, therefore, conclude that the Union has failed to meet its burden of proof in this matter to clearly establish, by a preponderance of the Record testimony and evidence, that the Employer has violated the provisions of the applicable labor agreement, as alleged.

DECISION

Having concluded that the Employer has not violated the language, terms or provisions of the applicable labor agreement, the Grievance of January 18, 2024 is hereby denied and is dismissed in its entirety.

Dated at Minneapolis, Minnesota, this 12th Day of January, 2025.

/s/ Frank E. Kapsch, Jr.
Arbitrator

Note: I shall retain jurisdiction in this matter for a period of Fourteen (14) calendar days from the issuance of this Decision to address any questions or clarifications related thereto.