

FEDERAL MEDIATION AND CONCILIATION SERVICE

ARBITRATION AWARD

_____)	
IN THE MATTER OF ARBITRATION)	
)	
Between)	
)	FMCS# 09-52396
GILLELAND CHEVROLET/ CADILLAC)	
)	
and)	
)	John Remington,
)	Arbitrator
INTERNATIONAL ASSOCIATION OF)	
MACHINISTS, DISTRICT LODGE #165)	
_____)	

THE PROCEEDINGS

The above captioned parties, having been unable to resolve a dispute over the interpretation of their collective bargaining agreement, selected the undersigned Arbitrator John Remington, pursuant to the provisions of their collective bargaining agreement and under the rules and procedures of the Federal Mediation and Conciliation Service, to hear and decide the matter in a final and binding determination. Accordingly, a hearing was held on February 17, 2009 in Sartell, Minnesota at which time the parties were represented and were fully heard. Oral testimony and documentary evidence were presented; no stenographic transcription of the proceedings was taken; and the parties requested the opportunity to file post hearing briefs, which they did subsequently file.

The following appearances were entered:

For the Company:

Matt Gordon	General Manager
George Reinl	Service Manager

For the Union:

James Kiser	Business Representative
Jeremy Shegrud	Steward

THE ISSUE

DID THE COMPANY VIOLATE THE PARTIES' COLLECTIVE BARGAINING AGREEMENT WHEN IT DEMOTED GRIEVANTS DOUG CHRISTENSEN, JAMES VANDERHEYDEN, AND RICHARD NIEKEN FROM THE JOURNEYMAN CLASSIFICATION TO THE UTILITY MECHANIC CLASSIFICATION AND, IF SO, WHAT SHALL THE REMEDY BE?

PERTINENT CONTRACT PROVISIONS

Article 2. Management Rights

2.01 The UNION recognizes the EMPLOYER'S right to make all decisions and exercise all judgment regarding the management of the business. The method of determining what the contractual rights of the UNION shall be is by reference to the provisions of this Agreement only. If there is a term herein that covers a subject, the Union has a right as defined in that term herein. If there is no term in this Agreement covering the subject, it's (the) management right of the Employer and the UNION recognizes the EMPLOYER'S right to exercise sole and exclusive judgment unilaterally with respect to that subject. The enumeration of certain management prerogatives hereinafter shall be for the purposes of illustration and not

for purposes of limitation and shall not be deemed to exclude other rights of management or prerogatives of management not herein enumerated.

The management of the business and the direction of the working force, including the employees in the bargaining unit, including, but not restricted to: the right to hire, retire, transfer, promote, discipline or discharge for just cause, relieve employees due to lack of work and/or other legitimate reasons, establish and maintain minimum production quotas, maintain discipline, maintain efficiency, establish rules and regulations, establish discipline procedures, establish safety rules and regulations, establish safety practices, establish schedules and work report activity reporting requirements, establish work opportunities, determine number of employees to be employed, determine number of employees to be permitted in the “shop” at any time and, determine days and hours of business are considered as the exclusive rights of the EMPLOYER. The Employer shall be deemed the exclusive judge of and have final authority in all matters pertaining to: the location of all facilities or the relocation of, additions to and/or remodeling of same, the location of the place of work for employees, the methods, means and processes of repairing and servicing vehicles and storage of vehicles to be repaired or serviced, and changes of existing methods or facilities, and, the control and regulations of all vehicles, equipment, facilities and other property of the Employer.

Article 17. Employee’s Classifications and Wages

17.01 Classifications shall be designated as:

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B. Journeyman Mechanic

Usual requirements: four years automobile or truck mechanic apprenticeship or four years all around experience at the automobile or truck mechanic trade. Complete diagnosis of any mechanical, electrical or other breakdown, or failure of an(y) transmissions, differentials, clutches, brakes, electrical systems, fuel systems and any other automobile or truck related equipment overhaul, adjustment or repair, use of all tools of the trade including precision instruments, welding equipment, shop machines

and power tools, requires little supervision and is able to instruct others in the trade.

In order to maintain a “Journeyman Mechanic” classification, the technician will be personally responsible for keeping up with current technology, new tools, and diagnosis and repair procedures. All journeymen must be ASE and one CCT certified or in the process of being ASE certified.

C. Utility Mechanic

Diagnose the general run of mechanical and electrical failure or other breakdown and make repairs, recondition used equipment and prepare new equipment for delivery, make adjustments to and install accessories and allied equipment, require assistance, instruction and supervision in some phases of repair.

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17.02 The following classifications and rate of pay shall apply:

	5/1/08	5/1/09	5/1/10
<u>Service Department</u>	3%	3%	3%
Heavy Duty Truck Mech.	\$23.24	23.93	24.65
Journeyman Mechanic	\$22.40	23.07	23.77
Craftsman ¹	\$20.54	21.16	21.79
Utility Mechanic	\$18.68	19.24	19.82
Junior Utility Mechanic	\$16.27	16.75	17.26
Mechanic’s Helper	\$13.85	14.27	14.69

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BACKGROUND

Gilleland Chevrolet, hereinafter referred to as the “COMPANY,” is engaged in the sales and service of General Motors vehicles in the St. Cloud, MN area. Company employees working in the service department including, mechanics, craftsmen, bodymen, painters, metalmen, porters, lubemen, service runners, delivery drivers, counter person,

¹ The Craftsman classification was created in the negotiations leading up to the current labor agreement. It was designed to be an intermediate step between Journeyman and Utility Mechanic. The parties have not negotiated a job description and no employees are assigned in this classification.

receiving clerk and parts runner, but excluding office clerical employees, salesmen, professional employees, guards and supervisors as defined in the National Labor Relations Act, as amended, are represented by the International Association of Machinists and Aerospace Workers and its District 165, hereinafter referred to as the “UNION.”

There is little dispute over the facts of this matter. Doug Christensen, James Vanderheyden and Richard Nieken are all long term employees of the Company; they have worked at various times as Utility and Journeyman Mechanics.² On November 3, 2008 they were demoted from the Journeyman classification to the Utility Mechanic classification due to an alleged lack of Journeyman work in the shop. Grievant Christensen was restored to the Journeyman classification in January of 2009. On November 3 and 4, 2008 Union Steward Jeremy Shegrud filed three identical grievances with the Company protesting the demotion of the three Grievants. On December 9, 2008 Company General Manager Matt Gordon responded in writing, as follows:

The Company’s response to the three grievances filed November 3rd and 4th, the Company looked at a lay off of three journeymen due to a lack of high skilled work coming in the door; instead the Company chose to demote (three Journeymen). The result of the Company’s decision is that the employees still have a job instead of being laid off.

The grievances state that journeyman work is available and the Company agrees that some is available but not enough to keep the three as journeymen. The Company and Union came to an agreement to pay the demoted techs journeyman pay if they were required to perform journeyman work.

² Christensen is a fifteen (15) year employee with twelve (12) years’ classification as a Journeyman. Vanderheyden is a twelve (12) year employee with eight (8) plus years’ classification as a Journeyman. Nieken is a twelve (12) year employee with seven (7) years’ classification as a Journeyman.

While it appeared for a time that the above settlement proposal by the Company had resolved the grievance, the Union contends that the Company stopped assigning Journeyman work to the Grievants and instead assigned that work to other Utility Mechanics. The grievance was therefore advanced by the Union and processed through the contractually required steps, ultimately to arbitration. The parties agree that the matter is properly before the Arbitrator for final and binding determination.

CONTENTIONS OF THE PARTIES

The Company takes the position that it has the right to demote the three Grievants for lack of suitable work. Since the contract is silent with regard to demotion, it is the Company's contention that its decision in this regard is not subject to challenge. The Company further takes the position that its analysis of the work mix revealed that its demand for high skilled and warranty work has declined, while the demand for lower skilled work increased comparatively. The Company maintains that it needs to retain a minimum of 66% of its sales dollars to remain competitive. In this connection it notes that in 2008 it was only able to retain 63% of these sales dollars.

At the time of the demotion the Company maintains that its eight journeymen composed 36% of the technical staff while only 20% of the work available was high skilled or journeyman work. The Company argues that the approach it selected was more beneficial to the unionized workforce because no one was laid off. Had it elected to layoff, the three Journeymen would either have been unemployed or would have bumped three Utility Mechanics. In either event the workforce would have been reduced by three employees. Finally, the Company takes the position that the newly created Craftsman

classification is not relevant since it was not part of the grievance and was merely created as a “step in the progression period.”

The Union takes the position that there is currently sufficient Journeyman work available to support at least nine Journeyman mechanics. The Union disagrees with the work mix estimates offered by the Company and instead maintains that there is at least 20-25% more Journeyman work available than claimed by the Company. In this connection the Union argues that work traditionally performed by Journeymen has been instead assigned to Utility Mechanics. Accordingly, the Union requests that Grievants Vanderheyden and Nieken be restored to the Journeyman classification and that all three Grievants receive back pay for the periods of their demotion to the Utility Mechanic position.

DISCUSSION, OPINION AND AWARD

As a preliminary issue, the Arbitrator is in full agreement with the Company’s contention that it has the right to unilaterally demote employees. However, demotion is normally considered to be a disciplinary matter subject to the just cause provision. (Article 2) Demotion is also used where an employer can demonstrate that an employee is no longer capable of performing certain work or cannot do so safely. Although a demotion may not be for disciplinary reasons as is the case here, the Company still shoulders the burden of proving that it had just or proper cause to demote an employee. There is no assertion that the Company’s action in demoting the Grievants was intended as discipline. Rather, the clear intent of the demotions was to reduce labor costs by reducing the number of Journeymen. Nonetheless, the Company must still justify its

actions and demonstrate that the demotions were not in violation of the collective agreement. The contract does give the Company the right to relieve employees due to lack of work. However, Grievants were not relieved of work (their scheduled hours were not reduced) or laid off. Rather, they were reduced in rank and pay by two classifications within the meaning of Article 17.02. This article clearly states that “the following classifications and rate of pay shall (emphasis added) apply.” In effect, Grievants were reclassified. While Article 2 of the contract gives the Company broad authority to “make all decisions and exercise all judgment regarding the management of the business,” in this instance this authority is limited by the express provisions of Article 17. Although the Company asserts that the classification of “Craftsman” is irrelevant because no employees have yet been assigned to that classification and no job description for that classification has been added to the contract, it cannot be denied that the parties have agreed to create this classification and have added it, along with a specific pay rate, to the language of Article 17.02. The Arbitrator may not ignore this clear and unequivocal provision.

The Company argues that its decision to demote was justified by the loss of Journeyman work “coming in the door,” and there can be little doubt that the crux of this dispute is the inability of the Company and the Union to agree over what constitutes Journeyman as opposed to Utility Mechanic work. In an attempt to narrow and more clearly define this controversy, the Arbitrator instructed the parties to review and analyze the work orders from any single week, identifying what work was assigned to the various classifications of techs. The Union proposed, and the Company agreed, to select work orders originating in the week of December 8-12, 2008 as a trial or sample week.

Unfortunately, the analyses submitted by the respective parties provided little clarity. The Company concluded that there were 785.3 hours of productive work and 50.6 hours of idle time for techs during this trial week. The Union concluded that there were only 718.8 hours worked during this time period and 49.8 hours of idle time when no work was available for everyone employed. The Union then deducted the idle time from the total hours worked to reach a figure of 669 hours actually worked by techs. While it is understandable that there may have been slight differences in the parties' calculations since some work may have begun in an earlier time period and other work begun during the trial period but finished in a later time period may have been included, the inability of the parties to agree on a common definition of the trial week expanded rather than reduced the area of disagreement.

Applying the parties' respective calculations of the number of hours of Journeyman work performed during this trial period yields the following results:

Trial Week Data: December 8-12, 2008

	<u>Company</u>	<u>Union</u>
Total Hours	785.3	718.8 ³
Journeyman Hours	209.7 (26.7%)	368.8 (51.0%)

As is readily apparent, there is a huge discrepancy between the hours attributed to Journeyman work calculated by the Company compared to the number of Journeyman hours calculated by the Union even though both were presumably working off the same work orders. Neither party provided a compelling rationale to support their calculations of Journeyman hours worked although the Union did provide detailed documentation for

³ For comparative purposes I elected to use the straight time hours worked figure of 718.8 provided by the Union rather than the revised figure of 669. As will be seen, this difference does not have a significant impact on the analysis.

its calculations. If the total hours worked provided by the Company is taken, the Union percentage of Journeyman work of 51% drops to 47%. If the Union total hours worked figure is taken, the Company percentage increases slightly to 29%. It would appear that at least part of the difference between the Company and Union numbers resulted from the Union's decision to include the hours worked by the Grievants during the test period as Journeyman hours even though all three Grievants were classified by the Company as Utility Mechanics at that time. The largest part of the discrepancy appears to be the differing opinions of the parties as to what constitutes Journeyman work. The Arbitrator can therefore only conclude that there is a wide disagreement between the parties as to what actually constitutes Journeyman as opposed to Utility Mechanic work. This apparent disparity and the inability of the parties to agree on the number of hours of Journeyman work performed effectively renders the use of the trial period meaningless with respect to the dispute at the heart of the instant grievances. Had the parties attempted to agree on how certain tasks should be rated, or utilized some neutral standard such as that provided in www.Alldata.com, their arguments concerning whether a specific task was Journeyman or Utility work would have been more compelling.

It is readily apparent to the Arbitrator that there are some tasks that both parties would agree are solely within the province of Journeymen, and other tasks that both parties would agree are the work of Utility Mechanics. The difficulty is that there is a substantial "gray" area including possibly 25% or more of the job tasks on which there is no general agreement including tasks which can't even be evaluated until after the work is begun. It is also likely that there are a number of Utility Mechanics who are capable of performing many of the tasks that appear to be Journeyman work, and it is certainly true

that Journeymen regularly perform work that is considered to be below their classification, while Utility mechanics frequently perform some work that is beyond their classification. It is neither within the expertise nor the province of the Arbitrator to even attempt to allocate these tasks to one classification or the other, particularly since the parties have been unable or unwilling to do so. The Arbitrator can only rely on the language of the existing agreement.

Based on the data presented by the parties in their post hearing briefs, the Arbitrator can only conclude that all Journeymen perform some work in the Utility Mechanic classification on a regular basis and that the amount of this work varies substantially across individual Journeymen. It is also true that most Utility Mechanics perform some Journeyman work on a regular basis. With respect to Grievants, less than half of their assignments during the trial week involved Journeyman work although the calculations provided by the Union differ substantially from those presented by the Company. For example, the Union contends that Grievant Christensen performed 26.6% Journeyman work and 10% Utility work during the above trial period while the Company calculated those percentages as 25.5% and 29.4% respectively. The Union contends that Grievant Vanderheyden performed 22.2% Journeyman work and 16.7% Utility work during the trial period while the Company calculated those percentages as 6.4% and 23.7% respectively. The Union contends that Grievant Nieken performed 35.3% Journeyman work and 1.8% Utility work during the trial period while the Company calculated those percentages at 17.7% and 32.5% respectively. Both Company and Union figures appear to be self serving and are unsupported by any external or comparative data. However, even the Union's data reveals that, at least during the trial

period that the parties agreed was an accurate sample of current workload, less than one third of Grievants' work involved Journeyman duties. The Arbitrator must therefore conclude that the Company has shown, at least in general terms, that there is insufficient work to maintain eight full-time Journeymen. Indeed, this data indicates that the current complement of six Journeymen (including Grievant Christensen) is appropriate to the workload.

It cannot be denied, however, that Grievants Vanderheyden and Nieken are fully qualified Journeymen and clearly exceed, in terms of qualifications and experience, the job description for Utility Mechanic found in Article 17.01. It is therefore difficult to understand the Company's decision to demote them to Utility Mechanic and ignore the Craftsman classification. Even though there is no job description for Craftsman, it is readily apparent from the record that Grievants (and perhaps other Utility Mechanics) perform a mixture of Journeyman and Utility Mechanic duties and are fully qualified to perform the Journeyman duties. This work obviously falls between the Journeyman and Utility Mechanic classifications, and "Craftsman" is the only classification that such work could possibly fall into. Based on their qualifications alone, it is evident that the demotion of Grievants to the Utility Mechanic classification cannot be justified in terms of the existing job descriptions in Article 17.01.

The Arbitrator has made a particularly detailed review and analysis of the entire record in this matter, and has thoroughly considered the data provided by the parties in their post hearing briefs. Further, he has determined that certain issues that arose in this matter are immaterial, irrelevant or side issues at the very most and therefore has not afforded them any significant treatment, if at all, for example: whether or not the

Company avoided a layoff; whether or not Craftsman was designed as a promotional classification; whether or not the Company attempted to avoid assigning Journeyman work to Grievants; and so forth.

Having considered the above review and analysis together with the findings and observations hereinabove made, the Arbitrator has determined and so he finds and concludes, that with the specific facts of the subject grievances, and within the meaning of the parties' collective agreement, the evidence is sufficient to determine that the Company was justified in reducing the number of Journeymen in its employ but that it violated the terms of the agreement when it demoted Grievants two classifications. Accordingly, the grievances are denied, in part, and sustained, in part, and an award will issue, as follows:

AWARD

THE COMPANY VIOLATED THE PARTIES'
COLLECTIVE BARGAINING AGREEMENT WHEN IT
DEMOTED GRIEVANTS TO THE UTILITY
MECHANIC CLASSIFICATION.

REMEDY

GRIEVANTS VANDERHEYDEN AND NIEKEN SHALL BE ADVANCED TO THE CRAFTSMAN CLASSIFICATION AND MADE WHOLE FOR ALL LOST WAGES FROM THE DATE OF THEIR DEMOTION. GRIEVANT CHRISTENSEN SHALL RECEIVE BACK PAY BASED ON THE DIFFERENCE BETWEEN THE UTILITY MECHANIC AND CRAFTSMAN PAY RATE FOR THE PERIOD HE WAS ASSIGNED AS A UTILITY MECHANIC.

THE ARBITRATOR RETAINS JURISDICTION OVER THE DETERMINATION OF BACK PAY FOR GRIEVANTS SHOULD THE COMPANY AND UNION BE UNABLE TO AGREE ON THE APPROPRIATE AMOUNTS.

John Remington, Arbitrator

April 8, 2009

St. Paul, Minnesota