

IN THE MATTER OF ARBITRATION BETWEEN

**United Food and Commercial Workers
Union, Local #789**

And

Cub Foods, Inc.

**Opinion and Award
FMCS Case No. 090515-56789-3**

ARBITRATOR

Joseph L. Daly

APPEARANCES

On behalf of UFCW, Local 789

Roger A. Jensen, Esq.

Jensen, Bell, Converse & Erickson

St. Paul, Minnesota

On behalf of Cub Foods, Inc.

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Minneapolis, Minnesota

JURISDICTION

In accordance with the Industrial Retail Grocery and Meat Contract effective 3/9/08-3/5/11 between UFCW, Local 789 and various retail grocery and meat stores; and under the jurisdiction of the United States Federal Conciliation and Mediation Service, Washington, D.C., the above grievance arbitration was submitted to Joseph L. Daly on August 31, 2009, in St. Paul, Minnesota. Post-hearing briefs were filed by the parties on October 16, 2009. The decision was rendered by the arbitrator on November 20, 2009.

ISSUE AT IMPASSE

The Union states the issue as: whether or not the Store Manager's actions violated paragraph 1.5A. and section 6.13 of the collective bargaining agreement and, if so, what is the remedy? [Post-hearing brief of Union at 3].

Cub Foods states the issue as: whether the Employer violated the contract as alleged in the grievance, and, if so, what is the remedy? [Post-hearing brief of Cub Foods at 3].

APPLICABLE CONTRACTUAL PROVISIONS

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UNITED FOOD AND COMMERCIAL WORKERS UNION LOCAL 789

Industry Retail Grocery and Meat Agreement

3/09/08 through 3/05/11

(MEAT) [In red type] (GROCERY) [In green type]

ARTICLE 1

UNION SECURITY [In black type]

SECTION 1.1: RECOGNITION:

A. The Union is recognized as the exclusive bargaining representative of the unit consisting of full-time and part-time employees in the grocery and produce departments, and Head Meat Cutters, Journeyman Meat Cutters, Journeyman Counter Salesmen, Apprentices, Meat Wrappers, Other Than Journeyman Employees, Sausage Makers and Poultry Workers in all present and future stores of the Employer in the St. Paul metropolitan area and vicinity, excluding supervisory employees as defined in SECTION 2(11) of the Labor Management Relations Act of 1947 as amended. The Employer will be allowed to have up to two (2) employees per store, including Store Managers, outside the bargaining unit who may perform bargaining unit work.

SECTION 1.5: JURISDICTION: [In Red type]

A. All work performed in the meat department will be done by members of the bargaining unit except as provided below. For the purpose of this Agreement, the meat department is defined as the area occupied by the meat storage rooms, the meat production rooms (any area in the meat department not accessible to the customer) and the service and/or 3 self-service display cases where fresh, smoked, cooked and frozen meats, poultry, fish or sea foods are offered for retail sale. Any work presently performed by retail employees in the stores covered by this Agreement must be done by members of the bargaining unit only and if transferred or done by the Employer elsewhere within the area of jurisdiction of this Agreement, the Agreement shall cover such work to the extent of recognition but wages and other conditions shall be negotiated.

I. Universal employees and retail specialist employees will be allowed to perform all functions in the store, including the meat department, with the exception of those jobs specifically designated as Journeymen and Apprentice meat cutters. Universal employees and retail specialist employees may not perform work in the processing areas of the meat department, including wrapping or the service case, before 1pm Monday through Friday. Part-time grocery employees may work in the meat department including waiting on the trade and filling all cases; however, they may not work in the processing areas of the meat department except for cleaning. These part-time employees may not work waiting on trade before 1pm Monday through Friday. (These duties for Universal employees, retail specialists

and part-time grocery employees are in addition to the duties outlined in paragraph B). Meat employees: Journeymen, Apprentices, Wrappers and Other Than Journeymen, hired on or before March 9, 2008 will not lose hours or be removed from their historical schedule of hours because of the utilization of other employees in the meat department.

ARTICLE 4

SENIORITY [in black type]

SECTION 4.1: DEFINITION: [in red type]

- A. Seniority shall be separate between Journeymen, Apprentices, Wrappers and Other Than Journeyman.
- B.
 - 1) Seniority is defined as length of employee's service with the Employer within the bargaining unit, and shall apply as to layoffs and rehire throughout the operations of the Company covered by this Agreement. The Employee's seniority date is defined as the day the employee starts active employment for the Employer. In the event two (2) or more employees commence work on the same day, their seniority ranking will be determined by lot.
 - 2) Head Meat Cutters selected from Journeymen covered by this Agreement shall be promoted and/or retained in that position irrespective of seniority as Journeyman, provided that any newly selected Head Meat Cutters will acquire this seniority protection after one (1) year of employment (including time as Journeyman Meat Cutter and as Head Meat Cutter) with the Employer. Only Journeymen shall be promoted to the classification of Head Meat Cutter. Head Meat Cutters shall accumulate seniority as Journeymen.

SECTION 4.2: APPRENTICES:

After 2080 hours of training, Apprentices shall be dovetailed into the Journeyman seniority list with retroactive credit for time worked as an Apprentice for the Employer.

SECTION 4.5: DEFINITION: [In green type]

- A.
 - 1) The employee's date of hire shall be defined as the day the employee starts active employment for the Employer as a new hire or the date the employee starts active employment as a rehire.
 - 2) Seniority shall be defined as length of continuous service within a classification with the Employer covered by this Agreement.
 - 3) In the case of two or more employees starting active employment in a classification on the same day their seniority ranking will be determined by lot.
- B. Seniority will be applied on the basis of the following classifications:
 - 1. Assistant Manager/Head Stock
 - 2. Head Produce Clerk
 - 3. Head Cashier
 - 4. Head Dairy/Frozen Clerk
 - 5. Delicatessen Manager

6. Optional Department Head Positions
7. Senior Retail Specialist/Clerk (includes full-time maintenance)
8. Regular Part-time Employees
9. Senior Retail Specialist/Delicatessen
10. Senior Retail Specialist/Pharmacy Technician
11. Retail Specialist
12. Bagger/Carry-out/part-time Maintenance
13. Prime time part-time Employee
14. Senior Retail Specialist/Bakery (where applicable)
15. Bakery Manager (where applicable)
16. Universal Employee

ARTICLE 6
DEFINITIONS [in black type]

SECTION 6.1: SENIOR RETAIL SPECIALIST: [in green type]

- A. A Senior Retail Specialist employee shall be an employee who normally works thirty-two (32) hours or more per work week, for employees hired or promoted prior to March 9, 2008 these hours are and will remain exclusive of hours worked on Sundays or Holidays (“full-time”). Employees promoted to or hired as Senior Retail Specialists (including Department heads and Full-time maintenance who did not previously have Sunday outside of their work week) after March 8, 2009 will have Sundays included in their work week.

At all times, a minimum of twenty percent (20%) of the Employer’s total bargaining unit work force (as defined in ARTICLE 3) shall consist of Senior Retail Specialist, Full-time maintenance and Universal employees.

SECTION 6.2: UNIVERSAL EMPLOYEE:

- A Universal employee shall have a basic work week of forty (40) hours to be worked in any five (5) days, Sunday through Saturday, inclusive of hours worked on Sundays but exclusive of hours worked on holidays (“full-time”). Universal employees shall not be entitled to receive any premium pay for hours worked on Sundays. These employees shall be scheduled to have two consecutive days off each week, except in those weeks affected by holidays. Universal employees may be scheduled and assigned on an interchangeable basis in grocery, delicatessen, bakery (where applicable), pharmacy (if nationally certified) or the meat department (as outlined in Section 1.5.I). Universal employees shall have seniority on a company wide basis and their seniority will be part of the Senior Retail Specialists classification for purposes of layoff and rehire. Except as expressly written by this Agreement, Universal employees shall be treated as Senior Retail Specialists.

SECTION 6.3: RETAIL SPECIALIST:

A Retail Specialist employee shall be an employee who normally works thirty-two (32) or more hours per work week, Sunday through Saturday, inclusive of hours worked on Sundays but exclusive of hours worked on holidays (“full-time”). Retail Specialist employees shall not be entitled to receive any premium pay for hours worked on Sundays. These employees shall be scheduled to have two consecutive days off each week, except in those weeks affected by holidays. Retail Specialist employees may be scheduled and assigned on an interchangeable basis in either grocery, delicatessen, bakery (where applicable), pharmacy (if nationally certified) or the meat department (as outlined in Section 1.5.I). For purposes of assessing the Employer’s compliance with the 25% full-time requirements of ARTICLE 3 (ratio), Retail Specialist employees shall be counted on the same basis as Senior Retail Specialist, Universal employees and Full-time maintenance employees. Provided that the Employer has met its ratio obligations, there will be no limit to the number of Retail Specialists the Employer is allowed to utilize. Retail Specialist employees shall have seniority among themselves on a company wide basis for purposes of layoff and rehire.

SECTION 6.4: REGULAR PART-TIME:

A regular part-time employee shall be an employee who normally works less than thirty-two (32) hours per work week, exclusive of hours worked on Sundays or Holidays.

SECTION 6.5: BAGGER/CARRY-OUT/PART-TIME MAINTENANCE:

These employees may perform maintenance and cleaning in all areas inside and outside the store; clean and maintain all shelving, equipment and display cases (refrigerated and nonrefrigerated); remove cardboard from the shelf, case or display, and level product; collect and dispose of refuse or trash from all areas inside and outside the store; restock to the shelf or case all product returned, not purchased or otherwise moved by customers; remove product from shelf or case in the event of equipment breakdown or to clean the same and return product to the shelf or case thereafter, provided that this language shall not apply to those full-time employees whose primary duties are the performance of skilled or “hard” maintenance such as electrical repairs, refrigeration work, and provided further that none of these tasks may be performed by such employees in the store’s meat production area (defined as any area in the meat department not accessible to the customer).

SECTION 6.6: PRIME TIME PART-TIME:

A prime time part-time employee shall be an employee who may work no more than twenty (20) hours per week and may be assigned working hours only during the period from 6:00 a.m. on Wednesday through 6:00 a.m. on Monday. Prime time part-time employees may be scheduled and assigned

on an interchangeable basis between grocery and delicatessen operations. Notwithstanding the provisions of SECTION 2.1, the wage rates payable to prime time part-time employees shall be fixed at the level specified in the applicable scale of wages appearing in Appendix "A." For purposes of assessing the Employers compliance with ARTICLE 3 (ratio), prime time part-time employees do not count as part of the Employer's bargaining unit work force. However, prime time part-time employees may not exceed a maximum of fifteen (15) percent of the Employer's total part-time work force company-wide. In the event of any ambiguities or conflicts between the terms of this section and any other provisions of this Agreement, the terms of this section shall control any questions concerning the terms and conditions of employment in the prime time part-time position.

SECTION 6.7: NIGHT STOCKING CREW:

Employees may be assigned to a night stocking crew provided, however, no Senior Retail Specialist employee hired prior to February 23, 1965, may be required to accept such assignment.

SECTION 6.8: CLERK/MEAT STOCKER:

- A. Grocery employee's work includes ordering product that they stock, marking, stocking, displaying and weighing when necessary of all preprocessed, fresh, frozen and smoked, meat, poultry and fish, including receiving of meat products, fresh and frozen, the storage of all of the above mentioned products and the cleaning of cases. These employees shall not be allowed to work in the processing areas of the meat department including wrapping or service case except as outlined in Section 1.5.1.
- B. No grocery employee shall perform this work as long as any meat department employee hired before March 6, 2005, is on layoff or partial layoff without offering this work to the employee who is on layoff who could perform this work at their normal rate of pay.

SECTION 6.8: DEPARTMENT HEAD:

Each Employer shall maintain a minimum of three Department Head positions in each of its stores. Each Employer shall have the option to designate a total of up to eight Department Head positions in each store, provided that the Employer must maintain and fill the basic five Department Head positions (i.e., Assistant Manager/Head, Produce Manager, Head Cashier, Dairy/Frozen Manager, Delicatessen Manager) within the store before it may fill any of the optional three Department Head positions provided for herein. No Employer shall be obligated to create any additional Department Head positions, beyond the minimum of three Department Head positions, by reason of these provisions. Where applicable, Employers with bakery departments covered under this

agreement will be allowed an additional department head position for the Manager of that department.

Each Employer may designate for itself which positions or jobs it will recognize as one of the optional three Department Head positions for itself, recognizing that the positions so designated may vary from Employer to Employer and from store to store within an Employer's operations.

If the Employer chooses to designate an existing leadership position occupied by a bargaining unit employee as one of its optional Department Head positions, the incumbent employee will remain in that position and be promoted to Department Head status. The provisions set forth in SECTION 4.6.B.1(a) and (b) and SECTION 4.6.E with respect to the selection, seniority, demotion and retention of Department Heads shall continue to apply to all Department Head positions, including the three optional Department Head positions provided for herein.

Each Employer shall provide the local Union with two weeks' advanced notice of its intention to designate a position as one of the optional Department Head Positions. Notice to members shall be by store posting. This notice is intended to insure that the parties are aware of the Employer's actions and may identify any employee concerns which may arise. The requirement of notice does not reflect any requirement of local Union approval as a precondition to designating a Department Head position.

In those cases in which the Employer designates one or more optional Department Head positions as provided herein, then the maximum number of management trainees as specified in SECTION 4.6.C of the labor agreement shall be reduced from five (5) by one position for each optional Department Head position designated by the Employer.

SECTION 6.9: PHARMACY TECHNICIAN:

The Pharmacy Technician classification shall consist of employees working in the Employer's pharmacy departments who have obtained or are actively in training for national certification as a pharmacy technician. The Employer agrees to reimburse each pharmacy technician for any registration fee required to be paid as a condition of obtaining or maintaining certification as a Pharmacy Technician.

The Employer agrees to provide for national certification of employees within the Pharmacy Technician classification on the following basis:

- A. Upon successful completion of the certification examination, the employee's application/examination fee and the cost of necessary

training materials will be reimbursed by the Employer. Only one examination fee will be reimbursed per person.

- B. Employees who have obtained certification will be entitled to receive an hourly "certification premium" of \$.75 per hour for so long as the employee remains certified.
- C. Fees required to obtain recertification will be reimbursed by the Employer if recertification is obtained.
- D. Fees paid by the employee for attending required continuing education courses for renewal of certification will be reimbursed to the employee if recertification is obtained.
- E. The Employer reserves the right to approve in advance and potentially limit the numbers of those employees who obtain certification at its expense, together with accompanying premium pay.

SECTION 6.10: HEAD MEAT CUTTER: [In red type]

The Head Meat Cutter shall be a qualified Journeyman Meat Cutter. He/she shall perform all of the duties of a Journeyman in the meat department. Because of the greater working skill and experience that the Head Meat Cutter must possess, he/she shall, in the performance of his/her work, direct the movement and operations of the other employees in the meat department.

SECTION 6.11: JOURNEYMAN:

A Journeyman is a skilled meat cutter who has either served his/her apprenticeship in accordance with the period of time as set forth in this Agreement or who has qualified as a skilled meat cutter. His/her duties shall consist of receiving, handling, cutting, selling, processing, wrapping and displaying of meat, poultry, sausage, seafood or fish; fresh, frozen, chilled or smoked, as further described in SECTION 6.13.

SECTION 6.12: APPRENTICE:

An Apprentice is a person learning all the details in developing manual skill for performing, after a stated training period, the duties of a Journeyman Meat Cutter. In the course of his/her duties, he/she shall be under the supervision of a Journeyman or Head Meat Cutter.

SECTION 6.13: PRODUCTION CUTTING:

Only Journeyman and Apprentice Meat Cutters may perform production work commencing with the initial reduction of primal, sub-primal and / or supplemental cuts of all fresh or frozen meat department products including fish and seafood, (whether by use of saw, grinder, cuber, tenderizer, slicer, knife or other tools of the trade), through and including the boning, scraping and trimming of these products to reduce to retail cuts and the initial daily grind. Journeymen and Apprentices may also perform any other work in the Meat Department, and shall perform such work when assigned.

SECTION 6.14: WRAPPER:

A Wrapper is a person employed in a market engaged in the type of work activities described in SECTION 6.16. A Wrapper hired after May 1, 1986 shall be paid the Other Than Journeyman rate and may be used at any time during the day or evening provided he/she is scheduled a minimum of eight (8) hours each day.

SECTION 6.15: OTHER THAN JOURNEYMAN:

The Other Than Journeyman employee shall be an employee whose duties shall be the same as the duties of a Wrapper. The Employer shall not employ any Other Than Journeyman employees while the Employer has any Journeyman, Apprentices or Wrappers who are involuntarily laid off or working reduced hours.

SECTION 6.16: WRAPPER/OTHER THAN JOURNEYMAN/UNIVERSAL EMPLOYEES/RETAIL SPECIALIST EMPLOYEES WORK ACTIVITIES:

These employees are permitted to perform any work in the Meat Department except for those job duties expressly reserved for Journeymen and Apprentices, as described in SECTION 6.13.

In addition, Wrappers, Other Than Journeymen, Universal Employees and Retail Specialist Employees may wait upon trade, and use the knife or slicers when necessary to finish a product already supplied by the Journeymen or Apprentices as in the sale to an individual customer. These employees' duties may also include portion cutting of fish fillets for traying purposes and fabricating and processing of all value added or specialty items. Wrappers and Other Than Journeymen ONLY may, after the initial daily grind, provide supplemental grind.

ARTICLE 16

SHELF STOCKING [In black type]

The Employer shall be allowed to utilize suppliers, vendors and salesmen to stock products that they represent, stocking of these products will be held at the minimum consistent with a good operation. Further, the Employer shall be allowed to utilize retail merchandisers, i.e., perishable specialists in perishable departments, grocery specialists in grocery departments, etc., for the purpose of doing resets. All other products will be stocked by members of Local 789, only, except that the two non-bargaining unit employees as outlined in Section 1.1 (store manager and one other designated non-bargaining unit store employee, but no other supervisors) may stock products.

FINDINGS OF FACT

1. A letter dated July 8, 2008, Shirley Muelken, Union Representative for UFCW Local 789, informed Cub Foods:

Cheryl Johnson, Associate Relations Manager
Cub Foods
421 S. 3rd St.
Stillwater, MN 55082

Re: Store Director cutting meat

Dear Cheryl:

I am filing a grievance contesting that Rich Hamilton (Store Director at Cottage Grove) cut meat in violation of the Collective Bargaining Agreement.

The remedy would be to \$200.00 to the UFCW Local 789 food shelf. But more important than the fine is to have Rich Hamilton cease and desist from cutting meat.

In the event you disagree with the Union's position, we stand ready to file for arbitration.

Please advise me on how to proceed.

Regards,

Shirley Muelken
Union Representative
UFCW Local 789 [Joint exhibit #2]

2. During the week of June 15, 2008, the Cub Foods Cottage Grove, MN, store was advertising a front page "Buy-one-get-one-free" special on roasts. On Thursday, June 19, 2008, three journeyman meat cutters worked in the morning through early afternoon. Among other duties, the journeyman cut and prepared roasts for the advertised special. About 7:20 p.m. that evening, Richard Hamilton, the Cottage Grove Store Manager, performed his routine walk around the store and noticed the shelf was almost empty of the roasts. Knowing the roasts were drawing customers, and seeking to meet the expected customer demands, Mr. Hamilton asked Mr. Aaron Halberg, the "other-than-journeyman" and the only meat department employee on duty at that

time, to assist him in cutting additional roasts for immediate placement on the sale shelf. Mr. Halberg demonstrated how to cut the roasts, and Mr. Hamilton proceeded to spend about 40 minutes cutting enough to stock the shelf through the morning, when the meat cutters would return. By letter dated July 8, 2008 [see Finding of Fact #1 above] the Union filed a grievance regarding Mr. Hamilton's cutting meat.

3. The bargaining unit presently covered by the contract is the result of the merging of two distinct bargaining units into one. The current contract reflects that merger. In 1980 and before, meat department employees working in retail grocery stores constituted a separate bargaining unit. They were represented by United Food and Commercial Workers Union Local 114 and were governed by their own contract. Grocery and produce employees working in the same stores constituted a different bargaining unit represented by Retail Store Employees Union Local 789 and were governed by a separate contract. Consistent with these bargaining unit distinctions, the meat contracts Jurisdiction clause provided that work performed in the meat department had to be performed by Local 114 members, not Local 789 members.

In 1983, the two Unions were combined into a single labor organization, denominated United Food and Commercial Workers Union Local 789. Even after that merger, there continued to be two distinct labor agreements, one governing meat department employees and another governing grocery and produce employees in the same store. Consistent with that division, the meat contracts Jurisdiction clause provided that work performed in the meat department had to be performed by meat department employees, not by generally lower paid grocery/produce employees.

The meat contract Jurisdiction clause was amended in 1992 to include an exception to the exclusion of grocery-side labor from working in the meat department, permitting "combination clerk/meat stocker" employees (who were covered by the grocery/produce contract) to perform certain meat department work. The 1992 meat contract expressly provided for limitations on the work that could be performed by employees in this "stocker" position. The 1995 meat contract provided additional exceptions to the Jurisdiction clause, permitting grocery-side bargaining unit employees to perform marking, stocking, and other functions in the meat department under specific circumstances. In order to account for these expanded grocery employee exceptions, the phrase "except as provided below" was then added to the Jurisdiction clause.

In 2002, the separate labor agreements governing meat employees and grocery/produce employees were combined into a single contract. The Recognition clauses from the previous meat contracts and grocery/produce contracts were merged into one by combining the meat unit description and the grocery/produce unit description into a single sentence. Contract provisions applicable only to meat department employees were printed in red text; provisions applicable only to grocery/produce employees were printed in green text; provisions applicable to all bargaining unit employees were printed in black text. The meat contract's Jurisdiction clause became section 1.5A of the combined agreement. Because it applied only to meat employees, it was printed in red.

The 2008 contract negotiations produced an additional exception add to the meat department Jurisdiction clause: the addition of a "Universal Employee" at Section 1.5I who could, under certain restrictions, perform meat department work. The "universal employee" job classification is a grocery unit position.

4. The basic contentions of the Union are:

A. Specific language takes precedence over general language, that is the restriction on performance of production cutting in section 6.13 prevails over the more general language in paragraph 1.1A.

B. Contract interpretation requires giving effect to all clauses and words, the interpretation the employer has given 1.1A should be rejected because it then leaves the meat department Jurisdiction in paragraph 1.5A and the limitation on the performance of production cutting in section 6.13 with no effect. Parties to a collective bargaining agreement do not write words intended to have no effect nor do they retain them in successive agreements.

C. The employers' meaning and understanding was not communicated during negotiations. Both Employer witnesses, Mr. Craig and Mr. Gerdes, acknowledged that the Union and the journeymen meat cutters have always been extremely protective of their exclusive jurisdiction in the meat department. Both witnesses admitted that in negotiations for the 2008-2010 Collective Bargaining Agreement, none of the Employers' representatives had ever told the Union that paragraph 1.1A was understood

and intended by the employers to permit the store manager plus one other non-bargaining unit employee to perform meat production cutting despite the fact that the restrictions in paragraph 1.5A and section 6.15 remain substantially unchanged. The Union witnesses, Mr. Seaquist and Ms. Christensen, confirmed this.

D. Given this Union's history of protecting the jurisdiction of its meat cutter members, it is unrealistic to believe that the Union would give up a significant part of its exclusive jurisdiction to not one, but two non-bargaining unit employees without a fight, or at the very least, discussing it across the bargaining table. If management has its way in this case, not only will store managers have unfettered authority to take over the work of journeyman meat cutters, but in each meat department in each store a non-bargaining unit employee could be assigned, full-time, to do the work of a journeyman at any rate of pay management chose to pay. Such a decision would destabilize the industry as well as the leadership structure of the Union. The arbitrator should conclude that if management desires the flexibility to have a store manager step on emergency situations, such as was present in this case, it must specifically bargain for it "by an honest and candid disclosure of its intent at the bargaining table, rather than attempting to sneak in a much more expanded seizure of meat cutter jurisdiction by this sleight of hand." [Post-hearing brief of Union at 13].

5. The basic contentions of the Employer are:

A. Section 1.1A is unambiguous-the store manager and one non-bargaining unit employee may perform bargaining unit work, including meat cutting. Section 1.1A unambiguously permits store managers and one additional non-bargaining unit member to perform "bargaining unit work"; as a matter of simple logic, "bargaining work" necessarily includes work performed by the bargaining unit positions listed in the very same section. This is supported by review of the contract as a whole. Section 1.1A is in black text which indicates universal applicability to all employees, while section 1.5A is in red text, which indicates applicability only to meat department employees. Thus any limitations appearing in section 1.5A apply only to meat department employees and distinguish them from grocery-side bargaining unit members. The section 1.1A terms

apply universally, thus permitting the non-bargaining unit employees listed in section 1.1A to perform all bargaining unit work. While the general rule of interpretation is that “specific contract provisions govern over general contract provisions” the Union’s proposed application of the rule is backwards. Section 1.5A provides “generally” that meat department employees but not grocery/produce bargaining employees may perform meat department work. Section 1.1A, however, “specifically” indicates that the store manager and an additional non-bargaining unit employee in particular are authorized to perform bargaining unit work.

B. The bargaining unit history surrounding negotiation, ratification, and drafting of the 2008 contract demonstrates Cub Foods’ interpretation was shared by the parties and is correct. The principle purpose of section 1.1A is to allow increased flexibility for Cub Foods to meet customer needs. As competitors with non-unionized workforces (e.g. Super Target, Sam’s Club, etc.) continue to expand their market share in the Twin Cities area, Cub Foods, which can not compete with these competitors based solely on price, but must compete based on customer service. The ability to ensure that level of customer service was to be achieved by amending section 1.1A to permit a limited number of non-bargaining unit employees, on occasion, to perform bargaining unit work.

C. The Union’s interpretation of the contract is not supported by the facts or contract interpretation principles. Article 16 does not control section 1.1A, as it was revised after ratification. The Union’s interpretation would make the contract unusual and extraordinary. The Union’s interpretation would effectively nullify section 1.1A’s final sentence. The Union’s fears of having journeyman meat cutters replaced are unfounded. This has not occurred. To the contrary, what has occurred is an increase in hours worked by bargaining unit members in the meat department. Moreover, given the higher pay rates of store managers and assistant store managers, Cub Foods has no incentive to replace bargaining unit hours with the section 1.1A non-bargaining unit employees. It would make no economic sense. The Cub Foods interpretation is reasonable and should be supported.

DECISION AND RATIONALE

The essence of this contract interpretation disagreement is this: Article 1 section 1.1A now allows the store manager and one other employee who are not meat cutters to do meat-cutting work [Cub Foods position] vs. only journeyman and apprentice meat cutters may perform production work [Union position].

Cub Foods contends that in the 2008 negotiations the parties agreed to add the language “the employer will be allowed to have up to two employees per store, including store managers, outside the bargaining unit who may perform bargaining unit work.” To Cub Foods the language means that the store manager and one other employee may, when the need arises, cut meat and do any other work required in the store. The Union counters that article 6.13 specifically limits the performance of “production cutting” to journeymen and apprentice meat cutters and further defines production cutting to include cutting of meat or seafood by saw, slicer, or knife. Article 6.13 reads:

Only Journeyman and Apprentice Meat Cutters may perform production work commencing with the initial reduction of primal, sub-primal and / or supplemental cuts of all fresh or frozen meat department products including fish and seafood, (whether by use of saw, grinder, cuber, tenderizer, slicer, knife or other tools of the trade), through and including the boning, scraping and trimming of these products to reduce to retail cuts and the initial daily grind. Journeymen and Apprentices may also perform any other work in the Meat Department, and shall perform such work when assigned.

Both Cub Foods and the Union agree that a time honored rule of contract interpretation is that “specific” language takes precedence over “general” language. The rationale is explained by the Restatement (Second) of Contracts §203(comment e) 1981):

People commonly use general language without a clear consciousness of its full scope and without awareness that an exception should be made. Attention and understanding are likely be in a better focus when language is specific or exact, and in the case of conflict the specific or exact term is more likely to express the meaning of the parties with respect to the situation than the general language.

Arbitrator Dworkin in *Airco Carbon* 86 LA 6, 9 (1986) stated “A broadly observed principle of contract interpretation, acknowledged in both courts of law and arbitration, holds that specific language prevails over general language.

The Union contends the general language adopted in the 2008 agreement in section 1.1A has been limited by the specific language in sections 1.5A [“all work performed in the meat department will be done by members of the bargaining unit except as provided below”] and 6.13 [“Only journeyman and apprentice meat cutters may perform production work”] of the collective bargaining agreement. While Cub Foods agrees with the specific taking precedence over the general, Cub Foods contends that section 1.5A “provides generally that meat department employees, but not grocery/produce bargaining unit employees may perform meat department work. Section 1.1A, however, specifically indicates that the store manager and an additional non-bargaining unit employee in particular are authorized to perform bargaining unit work.” Thus Cub Foods contends that 1.5A is the general language and 1.1A is the specific; whereas the Union contends that 1.5A is the specific language and 1.1A is the general language.

The bargaining history of 1.1A in the 2008 agreement shows that neither the Union nor the employer discussed the precise meaning of the new 1.1A language [“The employer will be allowed to have up to two (2) employees per store, including store managers, outside the bargaining unit who may perform bargaining unit work.”]. Testimony from various management representatives was that the sole purpose of the addition of 1.1A language was not to take away meat cutters’ work, but “to allow increased flexibility for Cub Foods to meet customer needs.” [Post-hearing brief of Cub Foods at 14].

The Union witnesses testified that there was no discussion during the negotiations that 1.1A applied to all workers including meat cutting. In fact, argues the Union, the collective bargaining agreement already had two specific limitations on the performance of work in the meat department. Paragraph 1.5A states that all work in the meat department will be done by members of the bargaining unit except as provided below. Paragraph 1.5 B and I then spell out the specific exceptions to the exclusive jurisdiction, but neither contains any reference to bargaining unit work being performed by store managers or non-bargaining unit employees. Second, by virtue of section 6.13 production cutting or production work is limited to journeyman and apprentice meat cutters and may not even be performed by other members of the meat department bargaining unit. [Post-hearing brief of Union at 9]. Thus contends the Union, “the general grant of authorities contained in the amendment to paragraph 1.1A and it permits the store manager and one other non-bargaining unit employee to perform bargaining unit work. However, if this language is a blanket grant of authority to perform any bargaining unit work in

face of all specific limitations and restrictions, why would it be necessary to amend article 16 to permit shelf stocking by the store manager and one other? When article 1.1A was amended in 2008, article 16 was also amended to make clear, contends the Union, that both Article 1.1A and Article 16 applied to shelf stocking, not meat cutting, by the store manager and one other. As far as the Union is concerned 1.1A is referring to article 16, shelf stocking, not meat cutting.

On first glance section 1.1A seems clear and unambiguous on its face. But when read in conjunction with Articles 1.5A and I, 6.13 and 16 it becomes less clear. “A number of rules with regards to interpretations have been developed by courts over the years.” John Edward Murray, Jr., *Murray on Contracts 3rd Edition* at 421 (The Michie Company 1990). One of these rules is “take into account all the surrounding circumstances prior to and contemporaneous with the making of the contract so as to more precisely identify the sense of the expressions in questions as apparently understood by the parties.” [Id.] In this case, the language was drafted by the management negotiators. While management may have understood that this language applied to grocery, produce and meat, the Union did not. No discussions took place between management and Union negotiators about the application of this specific language to meat cutting. The surrounding circumstances during the negotiation show that while management negotiators may have looked at this language as language applicable storewide, the Union did not.

One of the more helpful guides to interpretation is to discover the apparent purpose of the parties [Id.]. Courts and arbitrators invariably seek the intention of the parties when interpreting a contract. In large measure, they are seeking the purpose of the parties in making the contract. If the principle purpose of the parties is ascertainable, it is given great weight by the courts and arbitrators and further interpretation is guided by that. “Specific terms will usually be held to qualify general terms since the parties are more likely to avert conscientiously to specific rather than general terms and the specific terms, therefore, normally suggest a more precise identification of the parties’ intentions. [Id. at 427, citations omitted]. Cub Foods contends that article 1.1A is the “specific” while section 1.5A is the “general”. [Post-hearing brief of Cub Foods at 13]. The Union contends the opposite. When analyzing the contract as printed, not just the words, but the color must be taken into account. The contract is printed in black, red, and green to indicate to which parties the specific language applies. Article 1.1A is printed in black, applying to everyone; Articles 6.1-6.9 are written in green, applying to the grocery side;

Articles 6.10-6.16 are written in red, applying to the meat side. Article 16 is written in black and specifically addresses “shelf stocking”.

It is clear that article 1.1A is a “general” clause in the contract applying to everyone. Articles 1.5 A and I are specific clauses applying to the meat side of the store. Section 1.5 makes clear that it applies to bargaining unit members in the meat department, but with exceptions. Even universal employees and retail specialist employees are now permitted to work in the meat department “with the *exception* of those jobs specifically designated as journeyman and apprentice meat cutters.” [emphasis added] This means a specific limitation on the general language in 1.1A. Section 6.13 says “only journeyman and apprentice meat cutters may perform production work.” Again this specifically limits the general language in 1.1A. Contrary to the contentions of Cub Foods, this interpretation does not “effectively nullify section 1.1A altogether.” It simply clarifies what the complete meaning of 1.1A is.

While Cub Foods prefers to interpret 1.1A as applying across the store, the subsequent language and printed colors in the specific provisions of Articles 1.5A and I, 6.13 and 16 make clear that one of the principle purposes of the contract is to protect the work of the meat cutters.

Taking into account the surrounding circumstances, i.e. negotiation history; the differing understandings and intentions of the parties related to article 1.1A; the lack of discussion about the precise meaning of 1.1A; the specific versus the general; the printed colors in the contract; and the history of the union protecting the jurisdiction of its meat cutter members, it is unrealistic to interpret the contract to say that the union agreed to give up a significant part of its exclusive jurisdiction to two non-bargaining unit employees. If management’s interpretation were applied, store managers would have unfettered authority to take over the work of journeymen meat cutters, and in each meat department in each store a non-bargaining unit employee could be assigned, fulltime, to do the work of a journeyman. Such a decision would destabilize the industry as well as the leadership structure of the Union.

If management desires the flexibility to have a store manager to step in on emergency situations as was present in this case, it must specifically bargain for it by full disclosure of its intent at the bargaining table.

Based on the above reasoning, it is held that Cub Foods violated the contract. The Union’s grievance is sustained. Based upon the recommendation of the Union, the remedy is that Cub Foods is required “to make a contribution to a local food shelf equal to one hour’s

wages for a senior journeyman meat cutter.” [Post-hearing brief of Union at 13]. Specifically it is held that Cub Foods violated articles 1.5A, 1.5I, 6.11 and 6.13

11/20/2009

Date

Joseph L. Daly
Arbitrator