

**FEDERAL MEDIATION AND CONCILIATION SERVICE  
UNITED STATES GOVERNMENT  
UPPER MIDWEST REGION**

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HONEYWELL INTERNATIONAL, INC.,

EMPLOYER

-and-

ARBITRATOR'S AWARD  
FMCS 090417-55868-3  
Mark Youngren Grievance

TEAMSTERS, LOCAL NO. 1145,

UNION.

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ARBITRATOR:	Rolland C. Toenges
DATE OF GRIEVANCE:	July 25, 1984
DATE OF ARBITRATOR SELECTION:	May 28, 2009
DATE OF HEARING:	July 22, 2010
DATE POST HEARING BRIEFS RECEIVED:	August 30, 2010
DATE OF AWARD:	October 20, 2010

**ADVOCATES**

**FOR THE EMPLOYER:**

Susan Hansen, Attorney  
Frank Madden & Associates

**FOR THE UNION:**

Katrina Joseph, Attorney  
Anderson, Helgen, Davis &  
Nissen, LLC.

**WITNESSES**

Jan Baurr, Sr. Comp. Analyst, Retired  
Chuck Bengtson, Sr. Labor Relations Mgr.  
Ed Merriam, Labor Relations, V.P.

Gary Dahlheimer, Union Member  
Milton Nordmeyer, Secty/Treasure  
Mark Youngren, Grievant

## **ALSO PRESENT**

Stacy Rank, Intern

## **ISSUES**

- 1. Is the Grievance #18502 substantively arbitrable?**
- 2. Did the Employer violate the Collective Bargaining Agreement when it bypassed the Grievant for a Photographer Finisher position in 1984? If so, what is the appropriate remedy?**

## **JURISDICTION**

The matter at issue, regarding bypass of the Grievant for transfer, came on for hearing pursuant to the Collective Bargaining Agreement (CBA)<sup>1</sup> between the Parties and supplemental agreements thereto. The Grievance Procedure in said Agreement provides as follows:

**“Section 1.** A grievance is any controversy between the Company and the Union (or between the Company and an employee covered by this Agreement) as to (1) interpretation of this Agreement, (2) a charge of violation of this Agreement, or (3) a charge of discrimination involving wages, hours or working conditions resulting in undue hardships.”

**“Section 2.** Grievances as defined in Section 1 above shall be settled in the following manner and the steps set forth must be followed in the order listed and within the time limits prescribed.

**Step 3.** Grievances referred to Step 3 shall be discussed between the Business Agent of the Union and the Director of Industrial Relations or their delegated authority. If settlement is not reached within five (5) working days after the grievance has been referred to this Step 3, the grievance may be referred in writing to arbitration (Step 4). The written request for arbitration shall be sent to the Arbitrator with a copy to the other party and shall clearly state the issues involved together with the relief sought. If the grievance is not referred to arbitration (Step 4) within twenty (20) working days after the disposition by the Director of Industrial Relations or his or her delegated

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<sup>1</sup> Inasmuch as the instant grievance dates back to 1984, the relevant CBA was in effect from February 1, 1984 through January 31, 1987 and successive years thereafter, subject to either party giving notice to terminate (Employer Exhibit #1).

authority has been delivered to the Union, the settlement set forth in the disposition shall be final and binding.

**Step 4.** Not less than ten (10) working days shall elapse from the date of written request for arbitration before a grievance, including discharge cases, shall be arbitrated; provided the parties may mutually agree to exceptions to this provision of Step 4.

It is agreed that Arlen Christenson shall act as Arbitrator. The authority of the arbitrator shall be limited solely to the determination of the questions as submitted in step (3), provided that the Arbitrator shall refer back to the parties without decision any matter not a grievance under Section 1 of this Article or which is excluded from arbitration by the terms of Section 3 herein. The Arbitrator shall have no power to add to, or subtract from, or modify any of the terms of this Agreement or any agreement made supplementary hereto.

The Company and the Union shall set the time and place of hearing. Hearing dates will be subject to the approval of the Arbitrator. Whenever possible, hearings will be held a least every 90-days. The Arbitrator shall set methods of procedure and make all necessary rulings. The Arbitrator's decision shall be final and binding upon the Company, the Union and employees within the bargaining unit. The expense and fees of the Arbitrator shall be borne jointly by the Company and the Union.

**Section 3.** It is agreed that the following shall not constitute issues for arbitration: (1) supervision and direction of the working force. (b) schedules of production, methods and processes of manufacturing, (c) the terms of a new agreement."

Under the terms of the current CBA<sup>2</sup>, the Parties selected Rolland C. Toenges as the Arbitrator to hear and render a decision in the interest of resolving the disputed matter. The Arbitration hearing was conducted as provided by the terms and conditions of the CBA and the Federal Mediation and Conciliation Service. The Parties were afforded full opportunity to present evidence, testimony and argument bearing on the matter in dispute. All witnesses were subject to examination, cross-examination and were sworn under oath.

The hearing was held open for twenty-one (21) days following receipt of post hearing briefs pending receipt of any reply briefs. Being none, the hearing was closed on September 21, 2010.

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<sup>2</sup> Where as the CBA in effect at the time of the instant grievance provided for a permanent arbitrator, the current Agreement provides for selection of an Arbitrator from the Federal Mediation and Conciliation Service Roster of Arbitrators.

No request was made for a stenographic record of the hearing.

### **BACKGROUND**

Honeywell International, Inc. (Employer) is a diversified technology and manufacturing corporation; serving customers worldwide with aerospace products and services, control technologies for buildings, homes and industry, automotive products, turbochargers and specialty materials. Based in Morris Township, N.J., the Company is a component of the Standard & Poor's 500 Index.

The Company ranks among the nations largest and is divided into different geographic operations areas. The different operation areas function as relatively independent units. One of these is the Minneapolis Operations Area where the instant grievance matter arose. The Company operates in a global market and is under increasingly competitive pressure to maintain its presence in the local area. Due to a wide variety of business factors over the years, the number of employees has shrunk from over 20,000 to approximately 4,000. Approximately 1,200 of the employees are unionized, including the grievant named in the instant grievance matter. The unionized production employees are members of the International Brotherhood of Teamsters, Local NO. 1145 (Union). The Union and Employer have a lengthy collective bargaining relationship.

The genesis of the instant matter arises from an incident in 1984 when the Grievant applied for a transfer to the position of Photographer Finisher, Labor Grade 84. The Grievant's request was denied on the grounds that he was not qualified for the position. The position was filled from outside the Company. A grievance was filed on behalf of the Grievant and the matter was referred to arbitration.<sup>3</sup>

On April 23, 1985, Arbitrator, Arlen Christenson, denied the grievance finding that the Grievant did not meet the qualification requirement of "substantial experience in

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<sup>3</sup> Employer Exhibit #E3.

photography and printing”. Arbitrator Christenson found that the Grievant’s previous experience at National School Studios was not worthy of full credit as what he did there was substantially different from what he would do on the job he sought.<sup>4</sup>

The CBA in effect at the time of the instant grievance contained “Article XX – Layoff, Transfer and Discharge.” The relevant provision relating to “transfer” is as follows:

**“Section 1.** The company shall have the exclusive right, except as otherwise provided in this Agreement, to lay off and transfer employees for lack of work or other legitimate reason and to discharge employees for just cause.

There was also a document in effect at the time of the instant grievance titled “Factory Personnel Policies, Practices and Procedures,” dated November 01, 1983.<sup>5</sup> The subject was “Transfer Across Seniority Lines.” Relevant provisions of this document are as follows:

“PRACTICE:

An employee may fill out a Transfer Across Seniority Lines form after completion of the probationary period.

PROCEDURE:

D. As job openings occur for which the Industrial Staffing Departments would normally hire, a review will be made of the applications for transfer across seniority lines by the Industrial Staffing Department at General Offices.

E. If there is a qualified applicant for transfer, he or she shall be offered the opportunity to transfer. In order to be considered qualified; the applicant must posses the job qualifications and have an acceptable rating as to time and attendance, quantity of work and quality of work. In addition, at the time of the opening, the applicant must continue to have an acceptable rating as to time and attendance, quantity of work, quality of work, have no current demerits and has not transferred across seniority lines within the previous twelve (12) months, except

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<sup>4</sup> Employer Exhibit #2.

<sup>5</sup> Employer Exhibit #6.

that an employee may transfer between seniority groups after completing six months in the group if the requested transfer to a new group would result in assignment to a job classification which is two (2) or more labor grades higher than the employee's current assignment.

G. Where there is more than one (1) applicant for transfer, the Company will normally select the most senior qualified employee. However, there are exceptions to this practice. Examples are the need to meet Affirmative Action Commitments or to resolve a placement problem because of medical limitations. [Emphasis Added]

A Job Description that was in evidence for Photographer Finisher, dated July 2, 1954 outlined the duties, physical requirements and potential hazards, but did not specify the education and experience required.<sup>6</sup>

At the Arbitration hearing, the Employer introduced a detailed accounting of the Grievant's education and experience, arguing that his combination of education and experience was not adequate for the Photographer Finisher position.<sup>7</sup>

At the Arbitration hearing, the Grievant introduced an exhibit arguing that his education and experience was at least as great as the person hired for the Photographer Finisher position.<sup>8</sup>

On August 8, 2005, the International Brotherhood of Teamsters General President issued a notice that it had received credible reports concerning serious breaches of legal duties imposed on the officers of Local 1145. The General President placed Local 1145 into Trusteeship pending an investigation of the <sup>9</sup>allegations. On January 18, 2006, the General President continued the trusteeship based on his findings that;" The Union and the

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<sup>6</sup> Employer Exhibit #7.

<sup>7</sup> Employer Exhibit #3.

<sup>8</sup> Employer Exhibit #4.

<sup>9</sup> Employer Exhibit #5.

Company passed their decisions on to the Arbitrator, who would then write up the agreement as if it had been the arbitrator's own decision.<sup>10</sup>

On March 6, 2006, an agreement was communicated to parties of interest concerning the "Procedure for resolving Grievances Concerning the Honeywell –Local 1145 Arbitration Process." The essence of this agreement was that the Union would make the determination whether a grievance was improperly processed and would inform the Company if it found a grievance meeting this criterion. An effort would then be made to resolve the matter with the assistance of mediation. If mediation efforts were not successful in resolving the matter, it would then be referred to arbitration *de novo*. However, any sworn testimony or exhibits received in the original hearing could be re-introduced as evidence in the latter arbitration proceeding. Upon issuance of the latter Arbitration Award, the original award is to be null and void.<sup>11</sup>

In the original arbitration, the Grievant's "Application For Employment," dated May 15, 1979 was introduced into evidence, which listed the Grievant's education and experience at the time of his initial hire.<sup>12</sup> Also introduced was the Grievant's application for "Transfer Across Seniority Lines," dated January 29, 1982. The Grievant's foreman indicated his time and attendance, quantity of work and quality of work were good.<sup>13</sup>

The Grievant's compensation has not been adversely affected by having been bypassed for the transfer he requested in 1984. Employer Exhibits #11 and #12 show that the Grievant's compensation from 1984 through 2009 has actually been greater that if he would have been accepted for the transfer he requested.<sup>14</sup>

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<sup>10</sup> Employer Exhibit #6.

<sup>11</sup> Employer Exhibit #7.

<sup>12</sup> Employer Exhibit #9.

<sup>13</sup> Employer Exhibit #10.

<sup>14</sup> Employer Exhibits #11 and #12.

The disputed matter having failed to be settled during the mediation stage of the resolution process now comes before the instant arbitration proceeding for resolution, which shall be final and binding on the Parties and the Grievant.

### **EXHIBITS**

#### **UNION EXHIBITS:**

1. Collective Bargaining Agreement dated 2/1/1984 to 1/31/1987.
2. Procedure for Resolving Grievances Concerning the Honeywell Local 1145 Arbitration process.
3. Posting Regarding Review of Arbitration Award Decisions Occurring Before October 24, 2005, dated August 2007.
4. Grievance No. 18502, filed July 25, 1984.
5. Transfer Across Seniority Lines Policy, dated September 21, 1978.
6. Transfer Across Seniority Lines Policy, dated November 1, 1983.
7. Photographer-Finisher Job Description.
8. Grievant's Personal History, dated May 16, 1979.
9. Grievant's Transcripts from Staples Area Vocational Technical Institute.
10. Acknowledgement of Grievant's interview for position in Photographic Services, dated 12/4/1998.

#### **EMPLOYER EXHIBITS:**

- E1. Teamsters Joint Council 32 Disciplinary Hearing, 2/21/2008.
- E2. Arbitration Award, RE: Youngren Transfer, dated April 23, 1985.
- E3. Employer arbitration exhibit, RE: Grievant's qualifications, dated March 20, 1985.
- E4. Union's Post Hearing Brief, dated March 20, 1985
- E5. Notice of Trusteeship by Teamsters, dated August 8, 2005.
- E6. Notice of Findings by Teamsters, dated January 18, 2006.
- E7. Agreement by Honeywell and IBT as to the process for handling claims of tainted arbitrations.
- E8. Grievance protesting being bypassed for transfer, dated 8/1/1984.

- E9. Grievant's application for employment, dated 5/15/1979.
- E10. Grievant's application for Transfer Across Seniority Lines, 1/29/82.
- E11. Earnings record comparison, 12/2001 through 2/2009.
- E12. Earnings record comparison, 2/1984 through 2/1989.
- E13. Grievant's statement of previous experience, dated 5/21/1979.
- E14. Berglund's application for employment and employment record and related documents, dated 6/22/84 and 7/5/84.
- E15. Letter from Grievant expressing interest in the black and white printing job opening with summary of his education and experience attached, undated.
- E16. Certificate of completion of course in Photography for Visual Communications, dated 9/3/1981.
- E17. Letter, Company to Union, that in accordance with the Holte/Sweet Agreement, the Photographer position is being eliminated, dated 2/6/2009.

### **POSTIONS OF THE PARTIES**

#### **THE UNION SUPPORTS ITS POSITION WITH THE FOLLOWING:**

- The Grievant was fully qualified for the Photographer Finisher position.
- If a four-year experience requirement existed, it was not communicated to the Grievant prior to the 1985 Arbitration.
- Although the issue of by passing of the Grievant in favor of an applicant from outside the Company was arbitrated in 1985, belief that certain grievance cases during that period had been compromised warrants that the 1984 grievance be re-arbitrated at this time on its merits.

- The “Procedure For Resolving Grievances Concerning The Honeywell-Local 1145 Arbitration Process” negotiated in 2007 gives the Union the power and authority to determine “whether a grievance should be pursued under the Procedure.”
  - The plain language of the Procedure agreed upon between the Employer and Union does not require the Union to prove that the previous Arbitration Award was the result of collusion.
  - The Procedure agreed upon between the Employer and Union has the same basis to be honored as the CBA itself and is supported by ample precedent.
  - The Procedure agreed upon between the Employer and Union is a side agreement, subject to the wide body of law surrounding contracts.
  - The language of the Procedure agreed upon between the Employer and Union is clear and unambiguous, therefore the Arbitrator has no power to interpret.
  - The only conditions placed upon the Union’s decision to re-open a grievance were:
    - a. The grievance must not have been class or bargaining unit-wide grievances,
    - b. The grievance must have been previously heard and decided by an arbitrator, and
    - c. The arbitration award must have been issued before October 24, 2005.
- . If the Employer wanted to require the Union to prove collusion before a grievance could be reopened, it could have negotiated it into the other limitations described in the “Scope of he Procedure” section.
- The Employer’s verbal claim that it would never have agreed to allow the Union to reopen grievances regardless of collusion is irrelevant. Meanings intended, even if expressed orally, are irrelevant under clear and unambiguous contract language.
  - The instant grievance meets the conditions under which the Union can require that it be re-arbitrated.
  - The grievance falls within the “Scope of the Procedure.”
  - The grievance was reopened pursuant to the Procedure and the parties engaged in settlement discussions and mediation as required by the Agreement.

- The Agreement provides that “. . . if settlement/mediation efforts are unsuccessful, the original grievance shall be resolved in a *de novo* arbitration hearing as if the original arbitration has never occurred.”
- That the Joint Teamsters Council declined to impose internal discipline upon Union members, for their pre-trusteeship conduct does not preclude reopening the grievance at issue, as this was not a condition set forth in the Agreement.
- The Joint Council decided that, “while the integrity of the grievance procedure was seriously compromised, the evidence was insufficient to establish that any of the Charged Parties violated . . . the International Constitution as charged.”
- To the extent that the Joint Council decision is entitled to any weight or deference in the instant proceeding, it is only so far as to show that the internal charges filed against Union Officials were dismissed, not that there was no collusion.
- The Company is bound by its concession that collusion between the Company and Union actually occurred. Argument that such admission is limited to the Ayala and Clemmer administrations is not conclusive, as the current Company Officials did not talk to the Arbitrator or Company Officials who were involved in the original 1985 grievance arbitration.
- Although it is recognized that the Employer may require job applicants to fulfill prior experience and formal education requirements, they must be enforced fairly and not in an arbitrary, capricious or unreasonable manner or based on mistake of fact.
- The Job Description at issue specified no experience or education requirements and the Grievant was not told of the four-year experience requirement until the 1985 arbitration hearing.
- The Grievant’s experience and education history on record was based on his application for a manufacturing assembly position and not for a photography position.

- Further, the three months of experience given Grievant was incorrect. The Grievant was not given credit for the nine months he worked at the Donaldson Companies, where a portion of his job required him to maintain their photo print process.
- By obtaining information only from the Grievant's job application, rather than from the Grievant directly, the Employer failed to give him the proper experience credit.
- The Grievant was fully qualified for the Photographer Finisher position in 1984, and he should be made whole for any losses suffered as a result to the Employer's mistake.
- Based on the above, the grievance should be sustained and the Grievant made whole for any losses suffered as a result of the Employer's failure to select him for the Photographer Finisher position in 1984.

THE EMPLOYER SUPPORTS ITS POSITION WITH THE FOLLOWING:

- The Grievant's request to transfer to the Photographic Finisher position was subject to his being qualified, which he was not.
- The evidence shows that the Company's evaluation of the Grievant's job qualifications was proper and there has been no contract violation.
- The issues and arguments raised by the Grievant in the present matter have been previously arbitrated to conclusion.
- The Arbitrator, in the previous arbitration, noted that the job in question called for substantial experience in photography and printing and that the Company's evaluation of the Grievant was not improper.
- The Arbitrator, in the previous arbitration, found that the individual selected had far more relevant experience and education than the Grievant was evaluated to have.

- The Grievant again requested transfer to the Photographer Finisher position in 1989 and 1998, was not selected and did not file a grievance.
- In 2001, the Grievant was advanced to a Group Leader position, a high level position in the bargaining unit.
- Although an independent law firm found collusion during an investigation in Award B-79, where draft copies were being faxed back and forth between the Union and Company, no collusion was found with respect to the Grievant's arbitration, C-227.
- Teamsters Joint Council 32 conducted a hearing concerning the alleged collusion. The Joint Council dismissed the charges brought against Local 1145 Officers finding no evidence that any member was harmed in any way.
- In mediation to resolve the instant matter, the Union declined to discuss allegations of collusion and provided no evidence of collusion.
- The Union simply cannot have it both ways. The Union cannot attempt to re-arbitrate grievances on the claim of collusion when its findings were that no member had been harmed in any way.
- Although the Grievant contends the previous arbitration was unfair, there is absolutely no evidence of any collusion relating to the Award at issue, C-227.
- The charges of collusion involved Local 1145 Officers, Ayala and Clemmer, who served in that capacity during the late 1990's and into the early 2000's.
- The instant grievance at issue, which was arbitrated in 1985, is the only one the Union has pursued that was processed prior to the leadership of Officers Ayala and Clemmer.
- The Grievant never filed charges against Local 1145 Officers relating to alleged manipulation of the grievance process or collusion involving his 1985 arbitration.
- Union Secretary Treasure, Milt Nordmeyer never filed charges on behalf of The Grievant alleging manipulation or collusion of the Grievant's 1985 arbitration.
- If the Grievant or Nordmeyer had question about the process for filing charges, they could have consulted with Michael Vincent, the Union Steward who filed charges of collusion in 2007.
- In the procedure negotiated between the Union and Employer to revisit potentially tainted by collusive practices, the Employer did not agree and would not have

agreed to reopen all individual or multiple employee claims involving arbitration awards issued before October 2, 2005.

- The Union Joint Council, in finding that no member was harmed in any way, thereby made the determination that no grievances were within the scope of the March 2006 negotiated procedure.
- Union Secretary Treasure, Nordmeyer's suggestion that Joint Council 32 findings are not binding on Local 1145, as it is totally independent and separate, fails to account for the fact that all of the members involved were Local 1145 members and Local 1145 was under trusteeship at the time.
- Dahlheimer's testified that determinations by the Joint Council carry a substantial amount of weight and its findings were not a sham. Dahlheimer also testified that the Joint Council 32 findings are a done deal, with *res judicata* effect.
- The Employer agrees with the Joint Council 32 findings, that there was no collusion and no member of the bargaining unit was harmed in any way.
- The Grievant's previous arbitration Award C-277 should be recognized as final and binding and like wise be given *res judicata* effect.
- The Union cannot have it both ways. The Employer should have the right to rely on the findings and representations of Joint Council 32, as determinative of the claims regarding collusion in the grievance procedure.
- The Union bears the burden of proving a violation of the CBA and has failed to meet this burden.
- A simple review of the facts leads to the conclusion that there has been no violation of the CBA.
- Neither the Grievant nor the Union has cited any provisions of the CBA which they contend was violated
- The Grievant's qualifications for the Photographic Finisher position were properly evaluated based on the information he provided and he did not meet the four-year experience requirement.
- If the Grievant had education and experience that he was not able to list on the employment application, he had the opportunity to do so on an extra sheet of paper.

- The Grievant bears the responsibility for providing accurate and complete information regarding his prior education and experience. This premise was upheld by Arbitrator Bellman (B-62), who ruled that the responsibility for providing accurate and complete educational records lies with employee, not the Company.
- The applicant selected for the Photographic Finisher position was substantially better qualified than the Grievant. The Grievant has not contended otherwise.
- During the Grievant's interview for the Photographic Finisher position, he had the opportunity to provide full information regarding his education and experience. The Grievant was told of the job duties, was asked about his qualifications and could have asked questions himself.
- That the 1954 job description for the Photographer Finisher position did not make reference to the requirement of four-years experience does not constitute a CBA violation. There is nothing in the CBA or Transfer Across Seniority Lines Policy that states the experience requirement must be incorporated into the job description.
- The Grievant did not dispute the qualification requirement in his grievance or claim that he did not have opportunity to fully present his qualifications.
- While the Grievant contends he first learned of the four-year experience requirement at the 1985 arbitration hearing, he did not present any information that he was not previously aware of this requirement.
- Although the Grievant seeks back pay for the time he would have been in the Photographer Finisher position until its elimination in 2009, the record shows that his base earnings in the positions he has held is greater than what it would have been had he been selected for the Photographer Finisher position.
- Considering that the Grievant can show no loss of earnings and that the Photographer Finisher position no longer exists, the instant matter is without remedy.
- The grievance should be denied. It has been previously arbitrated and no CBA violation was found. That Award should be considered final.
- The Employer made a correct decision in 1984, based on the information that was available to it at that time. The fact that the Grievant did not grieve his non-

selection for the position in 1989 and 1998 underscores the finality that the 1984 arbitration Award deserves.

- The Employer is prejudiced in this situation where it has to defend a selection process that occurred 26 years ago. Individuals involved are deceased records this old have not been maintained.
- The Union seems to have forgotten the longstanding and oft repeated arbitration maxim. As Arbitrator Christenson stated in C-204, “When a matter reaches the arbitration stage circumstances often have changed. It is necessary to keep in mind that the issue is the validity of the decision at the time it was made.”
- The qualifications of employees are critical to the success of Honeywell. An Award, which requires the Company to treat the Grievant differently than other employees and abandon its job qualification requirements, would impede the ability of the Company to remain competitive and maintain its facilities in Minneapolis.
- For all the foregoing reasons, the grievance should be denied in its entirety.

### **DISCUSSION ON ARBITRABILITY**

The threshold issue in the instant matter is whether the Grievant’s 1985 Arbitration Award is subject to being re-arbitrated in the instant proceeding.

The Union contends that it is subject to being re-arbitrated under the terms of the “Procedure For Resolving Grievances Concerning The Honeywell Local 1145 Arbitration Process” (Procedure).<sup>15</sup> A grievance eligible for reconsideration, as set forth in “The Scope of the Procedure,” is summarized as follows:

- Individual and multiple employee claims, excluding prior class grievances brought on behalf of all or a portion of the bargaining unit.
- A grievance actually decided by an arbitrator, except a grievance that was settled or withdrawn by the Union prior to arbitration.

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<sup>15</sup> Union Exhibit #2.

- A grievance, regardless of the date of the original arbitration, provided that the award was issued before October 24, 2005. [Emphasis Added]

The Arbitrator finds the 1985 arbitration at issue is eligible for consideration based on the above criteria. In accordance with the terms of the “Settlement/Mediation” provision of the “Procedure,” the 1985 Arbitration decision was submitted to mediation, but efforts to resolve the matter through this process were unsuccessful.

When settlement/mediation efforts are unsuccessful, the “Arbitration of the Grievance” provision of the “Procedure” provides that the original grievance shall be resolved in a *de novo* arbitration hearing, as if the original arbitration had never occurred.

The “Arbitration of the Grievance” provision of the “Procedure” further specifies such details as:

- How the arbitrator is to be selected.
- Standard for burden of proof.
- Time line for issuance of the Arbitrator’s award.
- The Arbitrator’s decision shall be final and binding.
- A written arbitration decision is to be provided.
- The terms of the CBA in effect as of the time of the original arbitration are to apply.
- Limits on the authority of the Arbitrator.
- The fee and expenses of the arbitrator and other expenses associated with the arbitration are to be split equally between the Company and Union.
- Upon issuance of the Arbitrator’s decision in the instant proceeding, the original arbitration shall be null and void.

The Employer contends that the 1984 grievance is not subject to being re-arbitrated, citing the following reasons for its position:

- There is no evidence of collusion in the 1985 C-227 Arbitration proceeding.

- Teamsters Joint Council 32 conducted a hearing on alleged collusion and found no evidence that any Union member was harmed in any way.
- In mediation efforts to resolve the matter, the Union declined to discuss allegations of collusion and provided no evidence of collusion.
- The Union cannot have it both ways – on the one hand finding that no member was harmed in any way and on the other hand claiming the matter is subject to being re-arbitrated because of collusion.
- The charges of collusion involved two Union Officials during the late 1990's and early 2000's, which was many years later than the 1985 Arbitration decision at issue.
- The 1985 Arbitration decision at issue is the only one the Union has pursued that was processed prior to the leadership of the Union Officers charged in the collusion matter.
- The Grievant never filed charges alleging manipulation of the grievance process or collusion.
- The Union never filed charges on behalf of the Grievant alleging collusion in his 1985 Arbitration.
- The Employer did not agree and would not have agreed to reopen all individual or multiple employee claims involving arbitration awards issued before October 2, 2005.

While the Employer's arguments appear to have a logical basis and the Union may appear to be expanding the scope of what the Employer believed it had agreed upon, the language of the "Procedure", as noted above, does not preclude the Union from bringing the 1985 Arbitration decision to the instant proceeding for re-arbitration. As the Union argues, the language of the "Procedure" is clear and unambiguous. There is no requirement in the "Procedure" that the Union must prove collusion to bring the disputed matter before the instant proceeding.

While the Arbitrator finds that the Union has a right, under the terms of the “Procedure,” to bring the 1985 Arbitration decision before the instant proceeding for re-arbitration, the facts surrounding the matter of collusion are somewhat unsettling.

The Employer retained an outside law firm to investigate the allegation of collusion between the Union Representatives, Employer representatives and the arbitrator(s). This investigation revealed evidence of collusion and at least one case where a draft of an arbitration award had been passed back and forth between the Union, the Employer representatives and the Arbitrator, before the final award was presented. Based on the results of the investigation, the Employer discharged its representatives that were found to be involved in the collusion and employed new representatives with a charge to clean up the process.

The Employer also discharged two Union Representatives that were named in the collusion charges. The discharge was based on the Union Representatives having given untruthful statements to the investigators. These discharges were arbitrated with one being upheld by an arbitrator and the other overturned, because the Union Representative was on a leave of absence and not an active employee of Honeywell at the time of the incident.

After the Employer and Union entered into the aforementioned “Procedure,” the Union identified some 15 grievances that it determined had been subject to collusion. Ten of these were resolved in mediation at a settlement cost to the Employer of \$28,000. Three were withdrawn by the Union, leaving two to be re-arbitrated, one of which is at issue in the instant proceeding.

The Union conducted an independent investigation of the alleged collusion via a hearing conducted by Teamsters Joint Council 32. The Union did not rely on the Employer’s investigative results, stating the following reasons:

- It was created and paid for by the Employer.

- The entire report was hearsay and the Charged Parties had no opportunity to cross-examine the witness or the author of the report.
- A Union employee claimed she had requested a copy of the report and it was not made available.

At the Joint Council 32 hearing, the Union Trustee testified that, for many years, the grievance procedure between Honeywell and Local 1145 was compromised by previous and current Officers of Local 1145. The Parties met with the arbitrator before the arbitration hearing without the presence of the grievant, resulting in a number of grievances being settled in these meetings. The Parties would also meet with the arbitrator after the arbitration hearing, unbeknownst to the grievant, and make an agreement that would be incorporated into the arbitrator's award.

The Union Trustee testified that there was evidence of a case where the arbitrator actually wrote a decision, denying the grievance. At the post-hearing *ex parte* meeting with the arbitrator, the Union representative informed the arbitrator the Union was supposed to win this one. As a result, the arbitrator wrote a new decision sustaining the grievance.

The Union Trustee further testified that these pre and post-arbitration meetings, outside the presence of the grievant began in the 1980's. When new Union Officers were brought in, including the Charged Parties, they were advised of the system and they adopted and used the so-called 3.5 and 4.5 steps in the grievance procedure. The Trustee testified, that in his opinion, the absence of a true adversary system in the grievance procedure meant that there wasn't a real contract between Honeywell and the Union.

One of the charged Union Officials acknowledged the *ex parte* meetings described by the Union Trustee, but testified he did not feel the grievant was prejudiced because he would make sure the grievant consented to the settlement before it was adopted. The Union Official testified that such meetings were actually helpful in settling difficult cases.

Another charged Union Official also acknowledged the *ex parte* meetings described by the Union Trustee. He testified that at such meetings both Parties would make arguments to the Arbitrator, but no additional evidence would be presented. The Union Official denied any “horse trading” and said he was always an advocate for the Union.

Two additional Union Officials testified and their testimony essentially echoed that of the Union Officials referenced above.

The Findings of Joint Council 32 was that the charges against the Charged Parties had not been sustained by a preponderance of the reliable evidence, as required by the Union Constitution. The Joint Council found that:

- No evidence was presented that any member of Local 1145 lost a grievance through use of the pre and post-arbitration meetings with management representatives and the arbitrator.
- No member testified, nor was any evidence presented, that any member was harmed in any way.
- In fact, no grievances were introduced into evidence and the only reference to a specific grievance indicated that at the so-called 4.5 step of the grievance procedure, the arbitrator changed his mind because of the argument of the business agent and ruled in favor of the grievant.
- While there was substantial evidence presented that the grievance procedure, as implemented was seriously flawed, and had been for many years, there was no evidence introduced that indicated to the panel that the Charged Parties in any way willfully harmed members, or that any members were in fact harmed.
- While the integrity of the grievance procedure was seriously compromised, the evidence was insufficient to establish that any of the Charged Parties violated Article XIX, Section (b)(2) and (5) of the International Constitution as charged. Accordingly, the charges are dismissed.

Based on the above findings of the Union's investigation, where it found no evidence that any grievant had been harmed in any way, it is understandable that the Employer challenges the assertion that the Grievant's 1985 arbitration Award was compromised by collusion. It is also questionable why the Union has sought a settlement of some 15 previous grievance arbitration cases, , when it found that no grievant had been harmed in any way by the alleged collusion.

Although the Arbitrator finds a lack of evidence in the record that the Grievant's 1985 Arbitration Award was comprised by collusion, it is not within the Arbitrators authority to make a finding inconsistent with the clear and unambiguous language of the "Procedure" negotiated between the Employer and Union.<sup>16</sup> This "Procedure" provides that:

"The arbitrator shall apply the terms of the collective bargaining agreement as it existed at the time of the original award. The Arbitrator shall have no power to add to, or subtract from, or modify any of the terms of that agreement."

The CBA Agreement in effect at the time of the 1985 Arbitration, in Article XVI, Grievances, Section 2, Step 4:<sup>17</sup>

"The Arbitrator shall have no power to add to or subtract from or modify any of the terms of this Agreement or any Agreement made supplementary hereto."

[Emphasis Added]

Based on the above, the Arbitrator finds that the 1985 Arbitration at issue is subject to being re-arbitrated in the instant proceeding.

### **DISCUSSION ON THE MERITS**

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<sup>16</sup> Union Exhibit #2.

<sup>17</sup> Union Exhibit #1.

The record shows that the Grievant completed a "Transfer Across Seniority Lines Form" dated January 29, 1982. The Grievant selected two areas of interest: Group 84, Photo Laboratory and Group 73, Maintenance. The Grievant testified that he called the Photo Lab periodically and it was through one of these calls that he learned of an opening for a Photographer Finisher position.

The record shows the Grievant was afforded an interview in the Group 84, Photo Laboratory for the Photographer Finisher position and an employee in the Photo Lab showed him the job. On cross-examination the Grievant acknowledged that he told the interviewer about his work background at National School Studios and his photography hobby. The Grievant acknowledged that he was not cut off during the interview and had ample opportunity to describe his qualifications.

A Job Description existed for this position, dated July 12, 1954, some 30 years prior to the time the opening was to be filled in 1984.<sup>18</sup> The Job Description identified the duties and responsibilities, physical requirements and working conditions, but did not make reference to education and experience requirements. Although one would expect a job description prepared in the current business environment to include education and experience requirements, it is recognized that the job description at issue was prepared nearly 50 years ago, when practices may have been different.

The Grievant was not selected for the Photographer Finisher opening on the basis that he was not qualified. The record shows that the Employer was seeking a candidate with four years of relevant experience, considerably more than the Grievant possessed. The Employer filled the opening with another applicant that, at the time, was not an employee of Honeywell.

The Grievant filed a grievance stating that he was "unjustly by passed." The remedy sought by the Grievant was that he be placed in the position immediately with back pay to the date

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<sup>18</sup> Union Exhibit #7.

the opening was filled.<sup>19</sup> The Grievance did not specify the particular provision of the CBA that had been allegedly violated. It is noted that the CBA in Article XV – Upgrading, Downgrading and Hiring provides as follows:<sup>20</sup>

“Section 1, b. In the event a job opening occurs in . . . occupations requiring specialized education and background, employees may be hired directly into such openings provided (1) there are no qualified employees in the seniority group in which the opening occurs who possess the . . . specialized education and background required for the job opening, and (2) production schedule requirements do not permit sufficient time to train an employee who would otherwise be upgraded to such openings. It is understood that employee hired directly into such job openings must possess the trade skills or the specialized education and background required for the job opening.” [Emphasis Added]

Although the above CBA provision addresses hiring employees directly into positions requiring specialized education and background, it does not appear to apply to the instant grievance because the Grievant was applying for a transfer across seniority lines.

The applicable authority applying to a transfer across seniority lines is set forth in a policy, titled “Factory Personnel Policies, Practices and Procedures,” Subject: “Transfer Across Seniority Lines.”<sup>21</sup> This document, dated 11/01/1983, in Paragraph E, provides as follows:

“E. If there is a qualified applicant for transfer, he or she shall be offered the opportunity to transfer. In order to be considered qualified; the applicant must possess the job qualifications and have an acceptable rating as to time and attendance, quantity of work and quality of work.. . “

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<sup>19</sup> Employer Exhibit #8.

<sup>20</sup> Union Exhibit #1.

<sup>21</sup> Union Exhibits #6 & #7.

An earlier "Transfer Across Seniority Lines Policy," dated 9/21/1978, was in effect when the Grievant submitted his transfer request on 1/29/1982. This policy differed from the 11/01/1983 policy in that the earlier policy provide that, "If there is a qualified applicant for transfer, he/she may be offered the opportunity to transfer." The latter policy provides, "If there is a qualified applicant for transfer, he or she shall be offered the opportunity to transfer." [Emphasis Added]

The grievance was not resolved through the steps in the CBA Grievance Procedure and the matter was submitted to Arbitration. Arbitrator Arlen Christenson rendered an Arbitration Award in the matter on April 23, 1985.<sup>22</sup>

Arbitrator Christenson denied the grievance finding that the Grievant only had the equivalent of one and one half years of relevant experience (15.2 months, including 12.2 months of schooling). The applicant selected was evaluated as having two and one half years of relevant experience (26.7 months of relevant work experience and 3.3 months of schooling). Neither the Grievant nor the applicant selected had four years of relevant experience.

Arbitrator Christenson noted that the basic dispute involving the Grievant's experience is the credit to be given him for his work at National School Studios, where he worked for some four and one half years. The Grievant was given no credit for his employment at National School Studios. The Employer considered it maintenance work, not involving the kind of skilled photography and printing experience that was needed for the Photographer Finisher position.

Arbitrator Christenson further noted that; "While it is arguable that Youngren should have some credit for his work at National School Studios, it is not disputed that what he did there is substantially different from what he would do on the job he seeks."

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<sup>22</sup> Employer Exhibit #2.

Arbitrator Christenson went on to say, "On the whole, I cannot say that the Company's evaluation of his experience and education was improper or a violation of the collective bargaining agreement. Youngren, however, should continue to be considered for openings as they occur. He should also be informed of what he needs to do to become qualified for the position he seeks."

The "Procedure" for review of a prior arbitration award provides that the terms and conditions of the CBA in effect at the time are to govern. It would seem axiomatic that the standards and practice for filling job openings in existence at the time of the original arbitration should also apply.

The Grievant testified that he did not know of the requirement for four years of experience until the arbitration hearing before Arbitrator Christenson. The Grievant testified that he did not testify at the arbitration hearing, and neither the Union nor the Employer asked about his qualifications.

On cross-examination, the Grievant acknowledged that he told the Arbitrator he was qualified and that no one limited him from testifying as to his qualifications. The Grievant acknowledged that he could have explained he had more experience than he was given credit for, but did not. The Grievant also acknowledged that he didn't give as much information on his Employment Application as he could have and could have explained his qualifications during the Photo Lab interview and during the arbitration hearing.

The Grievant acknowledged that during the mediation effort to resolve his grievance, he had the opportunity to explain his qualifications, including his experience, education and hobby. That he did not know of the four-year experience requirement until the 1985 arbitration hearing was not raised in mediation, nor was his failure to mention some of his duties at National School Studios.

The Grievant testified that he did not take photos at National School Studios, but his application does not include some of the duties he did there that are relevant to the Photographic Finisher position.

The Grievant testified that he again applied for the Photographer Finisher position in 1989 and again in 1998, but was told he was not qualified. The Grievant testified that he did not file a grievance in either case. In 1998, the position was given to an employee more senior than the Grievant. In 2009, the Photographer Finisher position was eliminated.

The Grievant testified that in 2001 he was advanced to a Group Leader position. The Grievant acknowledged that his earnings have been greater than would have been the case if he had been accepted for the Photographic Finisher position, but stated that job satisfaction is also an issue. On re-direct, the Grievant testified that he sought the Photographic Finisher position as he wanted a change from assembly, but did not know what the wage comparison would be in future years.

The Grievant testified that in 2005 he asked the Union to reopen his arbitration case of 1985, as he thought the Arbitrator's decision was unfair – "some things were going on and I would lose the case."

The essence of the Grievant's concern, about being bypassed for the Photographic Finisher position in 1984, is whether he was given proper credit for his work experience at National School Studios and what he believes was the Union's failure to sufficiently pursue the matter before Arbitrator Christenson. A review of Arbitrator Christenson's Award, contrary to the Grievant's assessment, indicates that the issue of his experience at National School Studio and its relevance to the Photographer Finisher position was before Christenson and a matter specifically addressed in his decision. The Grievant's concern that he was not being properly represented by the Union is being accommodated in this instant proceeding, where his grievance is being re-arbitrated.

The issue of the Grievant's experience at National School Studios requires a detailed review of the Grievant's stated work experience there and a comparison of the duties and responsibilities of the Photographer Finisher position:

- The Grievant's "Application for Employment," dated 5/15/1979, states: "repair and maintain present equipment. Check out quality of chemicals. Back up chemical mix and make sure security system operates properly."<sup>23</sup>
- The Grievant's "Summary of Past Experience," dated 5/21/1979, states: "Maintenance Repair."<sup>24</sup>
- The Grievant's "Personal History," dated 5/16/1979, states: "Photography Maintenance."<sup>25</sup>

The Job Summary of the Photographer Finisher position is as follows:

"Photographs routine situations, develops and finishes negatives, prints, and transparencies using photographic laboratory material, supplies, and equipment."

A comparison of the Grievant's work at National School Studios and the duties and responsibilities of the Photographer Finisher position shows that, although they both involve working with photography equipment, they are not comparable. The Grievant's work at National School Studios involved maintenance of equipment and supplies. The Photographer Finisher position involves skilled operation of photographic equipment and manipulation of development and printing processes to achieve professional photography results. Although the Grievant's resume' indicates he has pursued photography as a hobby, the record shows that experience gained as a hobby is not accepted as qualifying commercial experience. A comparison of the Grievant's qualifications with those of the person selected, for the Photographer Finisher position shows that the person selected,

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<sup>23</sup> Employer Exhibit #9.

<sup>24</sup> Employer Exhibit #13.

<sup>25</sup> Union Exhibit #8.

although not having the full four years of experience, had roughly twice the relevant experience of the Grievant.

The Arbitrator does not find relevant the Grievant's claim that he did not know of the four-year experience requirement for the Photographer Finisher position until the arbitration hearing. The Grievant having raised this issue implies that, if he had known, he could have expanded his work experience at National School Studios in such a way as to meet the four-year requirement. The record shows that the Grievant knew the duties of the position and had an unrestricted opportunity to explain his experience during his interview. Further, the reason the Grievant was determined not qualified, was not due to the length of his experience at National School Studios, it was that his experience there was not relevant to the experience required for the Photographer Finisher position.

It is generally accepted that it is the prerogative of management to establish the education and experience requirements for jobs, so long as they are applied uniformly and consistently and are not designed to circumvent the CBA. In the instant case, the Arbitrator does not find the experience requirement to have been applied improperly.

### **FINDINGS**

- THE GRIEVANCE IS ARBITRABLE UNDER THE TERMS OF THE AGREEMENT TITLED "PROCEDURE FOR RESOLVING GRIEVANCES CONCERNING THE HONEYWELL – LOCAL 1145 ARBITRATION PROCESS"
- THE EMPLOYER DID NOT VIOLATE THE COLLECTIVE BARGAINING AGREEMENT, AND SUPPLEMENTS THERETO, BY FINDING THE GRIEVANT UNQUALIFIED FOR THE PHOTOGRAPHER FINISHER POSITION IN 1984.

- IN ACCORDANCE WITH THE "PROCEDURE" AGREED UPON BETWEEN THE PARTIES, THE ORIGINAL GRIEVANCE OF 1984 SHALL BE NULL AND VOID.

**AWARD**

THE GIEVANCE IS DENIED

**CONCLUSION**

The Parties are commended on the professional and thorough manner with which they presented their respective cases. It has been a pleasure to be of assistance in resolving this grievance matter.

Issued this 20<sup>th</sup> day of October 2010 at Edina, Minnesota.

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ROLLAND C. TOENGES, ARBITRATOR