

**IN THE MATTER OF THE GRIEVANCE ARBITRATION BETWEEN**

MINNESTOA TEAMSTERS PUBLIC & LAW ENFORCEMENT  
EMPLOYEES UNION, LOCAL NO. 320

and

**BMS Case No. 07-PA-0845**

UNIVERSITY OF MINNESOTA

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**NAME OF ARBITRATOR:** George Latimer  
Assistant Faith Latimer

**DATE AND PLACE OF HEARING:** August 2, 2007  
Itasca, Minnesota

**BRIEFS RECEIVED:** August 22, 2007

**DATE OF AWARD:** September 17, 2007

**APPEARANCES**

**FOR THE EMPLOYER:** Brent P. Benrud, Associate General Counsel  
University of Minnesota  
Elizabeth Wroblewski, Chief Administrative  
Officer, College of Biological Sciences  
Jon Ross, Assistant Director & Biologist,  
Itasca Biological Center  
Charles Schmidgall, Resident Manager,  
Itasca Biological Center

**FOR THE UNION:** Paula R. Johnson, General Counsel  
Teamster Local 320  
Mike O'Donnell, Business Agent  
Teamsters Local 320  
Louis Brown, Grievant  
Doug Thompson, Grievant

## **INTRODUCTION**

This is a grievance arbitration between Teamsters Local 320 (Union) and the University of Minnesota (Employer). Grievants Doug Thompson and Louis Bown were employed as Maintenance Carpenters at the Employer's Itasca Biological Station until they were laid off in November 2006. The Union filed its grievance November 22, 2006. The grievance was processed through the steps of the contractual grievance procedure and appealed to arbitration. The arbitration hearing was held August 2, 2007 in Itasca Minnesota. Both parties had full opportunity to present evidence and examine witnesses. Post hearing briefs were received August 22, 2007 and the record was closed.

## **STATEMENT OF THE ISSUE**

The parties stipulated to the following statement of the issue:

Did the University violate Articles VI, XI, XXVI, and/or XXXVI or any other articles or laws when it laid off the grievants? If so, what should the remedy be?

## **RELEVANT CONTRACT PROVISIONS**

Collective bargaining agreement between the parties effective July 1, 2005 through June 30, 2007

### Article V Employer Authority

The employer retains the sole right to operate and manage all personnel, facilities, equipment, and operating supplies; to establish functions and programs; to set and amend budgets; to determine the utilization of technology; to establish and modify the organizational structure; to select, direct, and determine the number of personnel; to establish work schedules; and to perform any inherent managerial function not specifically limited by this agreement...

### Article VI Non-Discrimination

6.1 the employer and the union agree that there shall be no discrimination by the employer or the union against employees because of race, color, creed, religion, national origin, sex, sexual orientation, or perceived sexual orientation, age, union affiliation,....

#### Article XI Discipline

11.1 The employer will discipline employees for just cause only.

Disciplinary action will be in the form of:

- a) oral reprimand;
- b) written reprimand;
- c) suspension without pay; or
- d) discharge.

#### Article XXVI Layoff and Recall (entire)

#### Article XXXVI Work Performed by Supervisors

A supervisor's primary function is the direction of employees provided, however, this shall not prohibit a supervisor from performing experimental work, work performed in connection with instructing and training employees, work required because of accidents or absenteeism or emergencies which, under the circumstances then prevailing, it would be unreasonable to assign to an employee, due to the short duration of the work or the unavailability of employees.

### **UNION POSITION**

The Union position is that the Grievants were laid off in retaliation for union activity. Mr. Bown has been the Union steward for many years and in that role has advocated for employees' rights under the contract. Both Grievants were involved in the filing of grievances in September of 2006. Within days of the resolution of these grievances both Grievants received lay-off notices.

The Union argues that the Employer's stated reasons for the lay-offs are pretexts. The University claims in the layoff notices that "We are

discontinuing any maintenance work planned for this winter” (Union Exs 11a & b). This is not true, as the work has been continuing. In addition, supervisors have performed some of this work, which violates Article XXXVI of the contract.

Local 320 further asserts that the University has violated the discipline article of the contract. That article states that discipline shall be for just cause, and will take the form of oral reprimand, written reprimand, suspension or discharge. The University claims to have had complaints about the Grievants’ workplace behavior. However Grievants’ superiors did not impose any of the contractual forms of discipline. Rather it laid these Grievants off for false reasons.

As evidence of management’s anti-union animus, the Grievants and Business Agent Michael O’Donnell testified about a series of communications and behavior on the part of Itasca Station Director David Biesboer. In spring of 2006 there were at least three management actions occurring which were areas of concern to Mr. Bown. One involved pay rates for certain employees as they moved through the step system, one involved certain duties being performed by supervisors, and one involved split shift scheduling. In his role as Union steward, Mr. Bown raised these issues with his supervisor Charles Schmidgall. In April 2006 Dr. Biesboer wrote a letter to Mr. Bown stating in part:

“It came to my attention via an email from Mr. Schmidgall that you requested a meeting with supervisory staff with a union business agent in attendance on May 1 or May 8. If significant issues arise that warrant a meeting with the business agent and myself, I wish to be informed of those issues in writing. If I find that those issues are serious in nature, then at my discretion, a meeting will be held with your business agent either in my office in St. Paul or in the offices of Human Resources on the main campus of the University of Minnesota. I will not tolerate meetings about vague,

unspecified complaints or groundless accusations as I have dealt with in the past... we have the institutional goals of being good-natured, friendly and cooperative both internally with co-workers and with our clientele. If your personality or demeanor does not allow you to meet these goals, I will point out that other positions within the University or external to it might offer more amenable working conditions than what you find at the Itasca Station.” (Union Exhibit 1)

Mr. Bown testified he felt the last part of this letter was threatening. He believed that the reference to his ‘demeanor’ related to his duties as union steward.

Following this letter Mr. Bown contacted Local 320 Business Agent Michael O’Donnell, who sent a letter in May 2006 to Dr. Biesboer, stating in part

“I would like the opportunity to meet you, as well as Dr. Ross and Mr. Schmidgall. I’ve not been formally introduced and am aware of some tension and ongoing issues that affect not only my members, but also the operation of the park in general. It is apparent from the gist of this letter and other communications I’ve heard in the past, that there is no time like the present to try and rectify these issues. Please respond with some dates and times that will work for you and your colleague and I will make time to travel north and meet with you to get a fuller understanding of the issues.” (Union Ex 2)

Dr. Biesboer responded to this letter in June 2006 (in part):  
“I would agree to an informal but brief meeting with you if you visit the Station (and I am available). This meeting must be preceded by a written document that clearly describes substantial issues in need of discussion....Again, I will only agree to a meeting if the issues warrant discussion...” (Union Ex. 3)

A meeting finally did occur on July 26, 2006, attended by the Grievants, Mr. O’Donnell and other business agents, Dr. Biesboer, and Itasca Station Biologist and Associate Director Jon Ross. They discussed the four issues. Some issues were resolved, others were not. About seven

weeks later, Dr. Biesboer issued a lay off notice to Mr. Bown. The Union believes this lay off was in retaliation for Mr. Bown's involvement in Union complaints and grievances about management actions at the Itasca Station. (test of Michael O'Donnell and Louis Bown, Union Ex 4 & 5) This layoff was grieved, as were the three other outstanding disputes. Mr. O'Donnell also spoke to labor relations staff on the Twin Cities campus about his concerns about Mr. Bown's layoff. It was rescinded Sept 28, 2006, satisfying that grievance. Immediately following the rescission, Dr. Biesboer issued two memos. One was addressed to the two Grievants, stating in part:

"After studying and responding to 4 grievances that the Station received, I have been sensitized to the fact that we must meet the 'letter of the law' in the bargaining agreement." The memo goes on to recite rules concerning break times, hours of work, and that "Meals will not be available in the dining hall unless paid for in advance by union employees and the meal is taken as one of the two 15 minutes breaks as outlined in the bargaining agreement. I expect you to comply fully with these rules as indicated in the bargaining agreement" (U Ex 8a)

Dr. Biesboer's second memo was addressed to all employees and titled 'Changes in the Organizational Structure at Itasca'. It states in part:

"Changes will be occurring in the near term and long term in the way we do business and approach budgetary matters at Itasca. Some of these changes have been dictated by the fact that the Station was notified last week that 4 grievances were being filed on behalf of employees of the Station whom belong to Teamsters Union Local No. 320...Job descriptions and tasks of all types of each employee will examined (sic) very carefully. Tasks may change or be reassigned as needed to both meet our budgetary needs and future plans...The re-organization needed to meet the rules of the bargaining agreement is going to strain an already strained budget....

I am ultimately in charge of the supervision of the Station in all regards. As a policy, I was not a micro-manager of the day-to-day operation of the Station because it was running very smoothly under its previous organizational structure. However, because of being served several

grievances in the past week, I intend to pay more attention to overall Station organization, budgetary efficiency and performance of employees at the Station in the future...” (U Ex 8b)

Mr. Bown felt the above memo was retaliatory in nature, and portrayed Union activity in a negative way to other employees. Mr. O’Donnell testified that University Labor Relations staff repeatedly apologized for Dr. Biesboer’s tone and method of handling labor-management relations. This included a memo written Oct 6, 2006 by Assistant Director of Labor Relations Eric Miller. Mr. Miller stated in reference to Dr. Biesboer’s memos:

“...the content of the memos was not reviewed by any of us prior to them being sent to employees. The memos also convey a negative tone regarding the fact that these four grievances have been filed. It is the University’s position that we have collectively agreed to the grievance process outlined in the contract, and are committed to using that process to resolve any disputes at the Itasca program...” (U Ex 9)

A grievance meeting was held on November 9, 2006. All three remaining grievances were resolved in the Union’s favor. Eight days later, the Grievants were issued layoff notices. (test of O’Donnell, U Exs 10a-d, 11a, 11b)

In June 2007 Mr. Thompson was recalled to a seasonal position as a Building & Grounds Worker. He testified that Dr. Biesboer met with him upon his return to work, where various instructions were laid out by Dr. Biesboer. Dr. Biesboer stated Mr. Thompson must address his supervisors as ‘Mr’ and ‘Dr’ rather than by first name; that he must have no contact with other employees; that if he ever had an equipment breakdown, he should not do other work tasks but must punch out and leave the Station immediately; and that he was not permitted to carry keys home (even though other

Building & Grounds employees do so). Mr. Thompson also testified Dr. Biesboer said that he ‘could not believe how smooth things have been going at the Station without you two Teamsters’, since their layoffs. (test of Mr. Thompson, Union Ex 15)

The Union contends that the series of events outlined above paints a very clear picture of management retaliation for the Grievants’ Union activities. Further, the reasons given by the Employer for the layoffs are not credible. The layoff notices state the Employer is “discontinuing any maintenance work planned for this winter”. However the evidence is clear that maintenance work did occur over the winter, and continues to this day. Assistant Director Jon Ross testified to an extensive list of programs being held at the Itasca station over the course of the year. He stated that nearly all of the Station’s more than 60 buildings are in use. Chief Administrative Officer of the College of Biological Sciences Elizabeth Wroblewski testified that no programs have been discontinued as a result of the Station’s financial difficulties. In fact its programs have grown, and now involve 50 faculty members, serving 1300-1500 people, including University students and the public. Mr. Bown and Mr. Thompson testified that many tasks were being performed at the Station which had previously been done by them, including snow-plowing, garbage removal, clearing trees and brush, turning the water on for cabins, and a series of other maintenance tasks which were contracted out to outside trades people. In addition, in the weeks since Mr. Thompson was recalled to a Building and Grounds Worker position he has also performed Maintenance Carpenter duties for which the Employer has paid him differential wages. (U Exs 17 & 18)

The Union argues since none of the Station’s buildings have been destroyed, and the program demands are equal or greater to what they were

in the past, the Employer's claim that maintenance work is not being done defies common sense and is not believable.

In addition to the retaliatory nature of these layoffs, Maintenance Carpenter work being performed by supervisors is prohibited by Article XXXVI and constitutes another violation of the contract. Both layoffs should be rescinded and the Grievants made whole.

### **EMPLOYER POSITION**

The Employer position is the Grievants were laid off for legitimate budgetary reasons which had nothing to do with their Union affiliation or activities. Associate Program Director Jon Ross testified that for some time there had not been enough work for two fulltime Maintenance Carpenters. However the Grievants' duties had always been a combination of some skilled trades work, and some duties usually performed by Building and Grounds Workers, such as mowing, shoveling, and disposing of trash. The financial condition of the Itasca Station has been tenuous for a number of years. About five years ago then University President Mark Yudof visited the Station and observed first hand some of its serious needs. There was a funding infusion at that time, including funds to do some new construction. Because management deployed the Grievants for some of this construction labor, there was a need to retain them during that period.

In the summer of 2006, the Station was hit with a 'triple whammy' with respect to finances. First, while they had been expecting an increase in Higher Education Asset Preservation & Rehabilitation (HEAPR) funds, they instead got a decrease. Second, private fund-raising efforts, which had gone well for a student housing initiative, began to peter out. Finally, Station management received a copy of a Facility Condition Assessment,

which the University had contracted for some time earlier. This assessment concluded nearly half of the Stations buildings were in such poor repair that they should be torn down and replaced. Station management concluded that minimal maintenance should be performed on those buildings, until further decisions were made concerning the Station's future plans. (test. of Associate Program Director Jon Ross, Employer Ex G)

The Itasca Station is part of the University's College of Biological Sciences. Chief Administrative Officer Elizabeth Wroblewski testified that the Station has long experienced budget difficulties, and that Director Biesboer inherited this chronic problem situation. For seven years the Station had been 'at the top of the list' as needing significant improvements in the facilities, however there is always fierce competition at the Legislature for funding. She stated the college has been required to take the Itasca Station out of deficit more than once. At the beginning of the 2005-06 fiscal year, the Station's maintenance account was in deficit by \$17,024. This deficit had grown to over \$100,000 by the end of that year. It again ran a deficit in the 2006-07 fiscal year, requiring a transfer of funds by the College. Ms. Wroblewski testified the Station relies on HEAPR funds for facilities upkeep. Although University administration had indicated the Station would receive \$100,000 per year in HEAPR funds for fiscal years 2005-2008, the actual amount it received was much lower. (test of Ms. Wroblewski, Employer brief, Employer Exs C-F)

In the summer of 2006 the Facility Condition Assessment mentioned above was provided to Ms. Wroblewski and Station management. In light of its recommendation to demolish a significant number of buildings, along with the ongoing financial conditions, a decision was made to limit maintenance work for these buildings. Ms. Wroblewski testified that Dr.

Biesboer initiated the idea of laying the Grievants off, and she made that recommendation to the Dean. The layoff decision was ultimately made by the Dean.

Ms. Wroblewski was aware there was some tension between Dr. Biesboer and the Grievants. She acknowledged that memos written by Dr. Biesboer were unfortunate, and that she and her staff had communicated to Dr. Biesboer about addressing issues in respectful ways. The Dean also sent a letter emphasizing this message. (Employer Ex K)

However the disputes between the Grievants and Dr. Biesboer were personality conflicts. Ms. Wroblewski did not believe the problem was anti-union animus, pointing out these tensions did not exist with other Teamster employees.

Dr. Ross also testified that the strained relationship between Dr. Biesboer and the Grievants goes back some years, and did not originate with recent union grievances. Dr. Ross described negative behavior on the job from Mr. Bown and Mr. Thompson. This included bad-mouthing Station management, being disrespectful toward their supervisor, and being uncooperative about requests. With respect to Mr. Bown these complaints were recorded in a letter dated April 7 2006. (Emp. Ex M) Dr. Ross wished to work things out with the Grievants without using formal discipline. In any event, any problems that existed were not based on the Grievants' union affiliation. He also asserted there is an excellent relationship between management and other Teamster employees.

Station Resident Manager Charles Schmidgall testified concerning certain work performed by supervisory employees and by outside contractors, in the time since Grievants' layoffs. The Employer acknowledged that some work has been performed by supervisory

employees, and that the remedy for any possible contract violation found in that regard should be limited to the small number of hours indicated by Mr. Schmidgall's testimony and invoice documentation (Union Ex 18, Emp Ex N, Employer brief and argument). All other parts of the grievance should be denied.

### **ANALYSIS OF ARBITRATOR**

The primary argument in this case is whether the Employer took action against the Grievants because of their Union affiliation or activity. The Union's position on this question does not rely on a single event or action, but rather on a series of actions.

The record shows the following:

Grievant Bown was a long time Union steward. Both Grievants were involved in the processing of Union grievances in 2006.

In the spring of 2006 Mr. Bown raised complaints with his immediate supervisor concerning alleged contract violations. In response, Dr. Biesboer sent him a letter essentially refusing to meet with Union representatives about these issues:

"If I find that those issues are serious in nature, then at my discretion, a meeting will be held...I will not tolerate meetings about vague unspecified complaints..."

This letter closes with the statement:

"...I will point out that other positions within the University or external to it might offer more amenable working conditions than what you find at the Itasca Station" (U Ex 1)

Not surprisingly, Mr. Bown viewed this statement as a threat. The Arbitrator believes any reasonable person would understand Dr. Biesboer's statement as such.

In May 2006 a Business Agent employed by Teamsters Local 320 wrote to Dr. Biesboer requesting a meeting in an effort to resolve disputes between management and Union employees at the Station. Dr. Biesboer responded a month later with a letter again expressing strong reluctance to meet with representatives of the Union. (U Exs 2 & 3)

A meeting finally did occur in July 2006. No clear resolution of the issues came out of this meeting. Several weeks later, the University issued a layoff notice to Mr. Bown. The stated reason was "due to a reduction in funds and a need for major new construction at the Itasca Biological Station, we will be operating under a new business model that will substantially reduce the maintenance needs at the station" (U Ex 4) The Union grieved this notice, arguing the layoff was retaliatory. The layoff notice was rescinded immediately after it was grieved. Although Ms. Wroblewski testified that the University ultimately decided to lay off both Grievants, there was no clear explanation by the Employer as to why the September layoff was given and then rescinded.

Following the rescission of this notice, Dr. Biesboer issued a memo to Station employees outlining changes to occur in the workplace, which he described as:

"dictated by the fact that the Station was notified last week that 4 grievances were filed on behalf of employees...belong to Teamsters Union Local 320". He stated the "immediate consequences of the grievance applications" would include all job descriptions and tasks being examined, and initiating the use of time clocks. The memo also stated:

“The re-organization needed to meet the rules of the bargaining agreement is going to strain an already strained budget” and “because of being served several grievances...I intend to pay more attention to overall Station organization, budgetary efficiency and performance of employees at the Station in the future” (U Ex 8b)

On November 9 the University Human Resources staff met with the Union on the outstanding grievances. All were resolved in favor of the Union. Eight days later, the Grievants received the layoff notices at issue in this Arbitration.

The Arbitrator chooses to restate the details above because the particular language used by Dr. Biesboer, taken together with the timing of these events are important factors in the Arbitrator’s conclusion.

Absent evidence of a violation of some part of the contract, there is no burden on the Employer to meet a standard of legitimacy for its layoff decision. In this case however, there is evidence of anti-union discrimination, which would violate the contract. Therefore the Arbitrator examines the evidence submitted by both parties regarding whether the stated reasons for layoff were a pretext or not.

In support of the Employer’s position Ms. Wroblewski and Dr. Ross very credibly described the financial shortages facing the Itasca Station, and indeed the competition among various University programs for an inadequate amount of funds. This on-going budget struggle is a fact.

The evidence of why these on-going financial conditions would have led to the layoff decision is less clear. Ms. Wroblewski testified the Facility Condition Assessment provided to Station management in summer 2006 was an important factor in the layoff decision. In particular the Assessment evaluated 24 of the buildings as being unworthy of repair, and recommended they be torn down. The Employer’s stated reasoning is that based on this

new information in summer 2006, Station management decided to halt all unnecessary maintenance on those designated buildings, which therefore meant much less demand for maintenance carpenter labor.

Several facts weaken the Employer's argument regarding the Facility Condition Assessment. One is that the Assessment's summary page states the following: "The Lake Itasca Biological Station and Laboratories is a scientific research facility composed of over fifty...buildings...Under the direction of the University of Minnesota, 47 of these buildings were evaluated, based on a classification system provided by the University that included 24 buildings to be demolished and replaced...

EXTERIOR           Twenty-four of the 47 structures evaluated at this site are deteriorated, and the university plans to replace them." (Emp Ex G Section 1.1.1, emphasis added) These statements indicate that a plan or proposal to demolish the 24 buildings did not originate with this Assessment, but rather came from the University at some earlier date. This is not consistent with management's assertions that the recommendation to demolish was new. Second, the Assessment lists numerous remodeling and upgrading projects including accessibility upgrades, exterior upgrades, and other improvements on at least 13 buildings, and general remodeling of at least seven buildings (sections 1.1.2, 1.1.4, 2.1.2). Further, testimony from Ms. Wroblewski and Dr. Ross established that virtually none of the Station's facilities have been closed. Nor has programming been reduced. They also testified that decisions about possible demolition or other options have not yet been made.

Therefore it is hard for the Arbitrator to link the Assessment with the layoffs, and is persuaded by the Union argument that under the present circumstances, the Employer's assertion that it needs little or no maintenance carpentry is not credible.

In the face of these facts is the compelling record of the writings of Dr. Biesboer, who did not testify or attend this hearing. These writings plainly reveal several insights. First, in his words, Dr. Biesboer was “ultimately in charge of the supervision of the Station in all regards”. Secondly, his refusal to recognize Teamsters Local 320’s role as the exclusive representative of most of the Station’s employees. Thirdly, his direct hostility toward the dispute resolution process bargained by the parties. Fourthly, his direct linkage of the Union’s contractual use of the grievance process to possible adverse outcomes for other employees; and finally, a direct threat to Mr. Bown’s job status in connection with his actions as Union steward.

The record contains good faith efforts on the part of other individuals in University management to mitigate Dr. Biesboer’s tone and conflict resolution methods. (test. of Ms. Wroblewski, Emp Exs J & K, U Ex 9) However as the undisputed Director of the Itasca Station, there is no doubt of Dr. Biesboer’s authority in that role, nor that he was acting on behalf of the Employer.

The record also contains unrefuted allegations of misconduct on the part of Mr. Bown and Mr. Thompson. The admonition contained in Employer Exhibit M appears to lay the groundwork for corrective disciplinary action. However the Employer chose not to pursue disciplinary action. It chose instead to lay the Grievants off. This action immediately followed the processing of grievances legitimately pursued by the Grievants and their Union.

The evidence is compelling that notwithstanding financial and other concerns, the Employer’s action was motivated by the Grievants’ union affiliation and activity, in violation of Article VI.

**AWARD**

The Grievance is sustained. The notices of layoff issued on November 17, 2006 will be rescinded. The Grievants will be returned to their previous positions and made whole for all lost wages and benefits, minus any interim earnings.

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George Latimer, Arbitrator

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September 17, 2007  
Date