Buchheit #1

IN THE MATTER OF ARBITRATION BETWEEN:

EMPLOYER

and

UNION

This case arose when the Employer posted a bid for a job titled "Sheet metal Mechanic" and then awarded the bid to Person 1, an employee junior to the Employee. The Union contends that the Employer's actions violated the Collective Bargaining Agreement. The Employer argues that it did not violate the Contract, and further asserts that the grievance is not arbitrable, because the Union did not make a timely demand for arbitration.

CONTRACT PROVISIONS

> Article 2 - Management Rights
> A. ...hire, promote, demote, transfer, furlough and recall...to determine qualifications for initial employment; to determine uniform qualifications for continued employment or other promotions...
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> ** *
>
> Any of the rights the Employer had prior to the signing of this Agreement are retained by the Employer except those specifically modified by this Agreement.
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> Article 3 - Classification of Work
> Throughout this Agreement, the word Classification shall mean the job titles: Maintenance Controller, Lead A&P Mechanic, Lead Avionics Technician, Inspector, A&P Mechanic/Avionics Technician, Lead Ground Equipment Mechanic, Ground Equipment Mechanic, Lead Building and Grounds Mechanic, Building and Grounds Mechanic, Lead Fueler/Utilityperson, Fueler/Utilityperson, Mechanics Helper, and Custodian...
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> ** *
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> II. In general terms, classification content includes, but is not limited to, the following:
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> ** *
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> B. A&P Mechanic. The work of a Mechanic shall consist of any and all work generally recognized as, but not limited to, a Mechanic's work on or about an aircraft and its components parts performed at line stations, major stations and shops. Mechanics may be required to inspect and test aircraft systems or component parts used in their work and

sign for the work performed. They must be capable of performing their work satisfactorily to Employer standards and hold valid licenses as required by the Employer and government regulations, and they may be required to instruct less experienced employees.

Article 10 - Seniority

A. 2 ...The work classifications to be recognized for seniority purposes shall be as defined in Article 3.

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B. Classification seniority shall govern all employees covered by this agreement in preference of shifts, furloughs, re-employment after furloughs, demotions, transfers, in bidding for vacancies of new jobs, and promotions, provided that in each case the employee meets the qualifications for the job...

Article 11 - Filling of Vacancies

A. When a vacancy occurs, notice of such vacancy will be posted on the bulletin boards at all locations for a period of five (5) calendar days. The notice will specify the classification, shift and base.

B. In the filling of posted jobs, the bid awards shall be made in the following priorities:

1. Most senior employee in the job classification at the location of the vacancy meeting the minimum qualifications for the position.
2. Most senior employee in the job classification on the system meeting the minimum qualifications for the position.
3. Most senior employee on the system meeting the minimum qualifications for the position.

Article 16 - Grievance and Arbitration Procedure

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C. Grievance Procedure. A grievance is defined as a dispute between the parties arising under the express terms of this Agreement. The following procedure shall be used by the Employer and any employee who has completed his new-hire probationary period:

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3. If the decision in Step 2 is not satisfactory to the Union, the General Chairman or his designee may appeal the decision to the Vice President-Maintenance of the Employer or his designee within fifteen (15) days after receipt of the written decision rendered in Step 2 above. This appeal will be by submission of the written grievance. The Vice President-Maintenance or his designee will render his decision in writing within fifteen (15) days after final discussion with the General Chairman or his designee.
4. If the decision of the Vice President-Maintenance or his designee is not satisfactory to the Union, the grievance and decision thereon may be referred to arbitration within thirty (30) days after the receipt of the written decision of the Vice President-Maintenance or his designee.

The Union represents Mechanics and related employees as defined in Article 3 of the parties' Collective Bargaining Agreement. That Agreement is the first Contract negotiated between the parties.

The Employee is classified as an A&P Mechanic. He is a licensed airframe and power plant mechanic, having obtained his airframe license.

In January, 1992 the Employer posted the following job:

> **The following position classification is currently open and available for bid**.
>
Department	Job title	Location
Maintenance	Sheet metal Mechanic	Location 1 (night shift)

> **Position Description**:
> Under the general direction of the Director of Maintenance, and the direct supervision of the Maintenance Supervisor, will participate in the scheduled and unscheduled maintenance of aircraft structures. May perform other related duties and projects as assigned.
>
> **Qualifications**:
> Six months or more prior sheet metal maintenance experience with the airline preferred. Ability to read blueprints, diagnose structure damage and implement repairs in a fast paced environment. Demonstrated experience with current airframe and structure repairs. Interested candidates should express their interest in writing to their Supervisor no later than 5 p.m. February 3, 1992.

The Employee and Person 1 submitted timely bids for the job. Person 2, the Employer's Director of Technical Support, interviewed both men. He asked each man a series of questions that pertained to sheet metal work. After considering the experience of both men, and the answers given by each at the interview, Person 2 determined that Person 1 was minimally qualified for the job, while the Employee was not. Accordingly, the bid was awarded to Person 1, the junior employee.

In response, a grievance was filed. Confusion existed as to the appropriate procedure to be followed in processing the grievance. Ultimately, an appeal hearing was held on May 15, 1992.

By letter dated May 26, 1992 the grievance was denied. Thereafter, by fax letter dated June 11, 1992, Person 3, Assistant General Chairman, requested a thirty (30) day extension concerning the grievance. The extension was granted.

On July 23, 1992 a meeting took place between Person 3 and Person 4, the Employer's Vice President of Maintenance and Engineering. According to Person 3, at this meeting he informed Person 4 that Person 5, who then had responsibility for Contract administration on behalf of the Union, would get in touch with the Employer concerning the open grievances, including the one involved in this case, and he left with the understanding that there was an "open ended" extension of time for processing the instant grievance. Person 4, however, testified that no such understanding was reached at this meeting and no extension of the time limits was granted.

A meeting between Person 5 and the Employer officials did take place on or about February 10, 1993. Person 5 raised the subject of the instant grievance. The Employer contended that the grievance was untimely, as no demand for arbitration had been made within the thirty (30) day extension agreed to in June, 1992.

Thereafter, on February 25, the Union did file an arbitration demand concerning this grievance with the National Mediation Board.

POSITION OF THE UNION

The grievance is arbitrable. Initially the Employer misapplied the provisions of the grievance process. Thereafter, consistent with the contractual grievance procedure, it was fully understood that a final decision would not be considered rendered until there was a discussion with Person 5. In a meeting on July 23, 1992 between Person 3 and Person 4, Person 3 obtained an understanding that the dispute would remain indefinitely pending until time was found for a

meeting with Person 5. That meeting ultimately occurred in February, 1993. When the dispute was not then resolved, the Union complied with the grievance process and promptly filed for arbitration.

Turning to the merits of this case, the Employer's reliance on management's rights is misplaced. Article 2 limits the Employer's unilateral right to set qualifications to initial employment, and to determine uniform qualifications for continuous employment or other promotions. The case before the arbitrator is not one of initial employment or continuous employment or other promotions. Rather, this case involves a question of filling a vacancy.

Moreover, the vacancy that existed fell within the A&P Mechanic classification as defined within Article 3 of the Contract. Sheet metal work has been performed by A&P Mechanics both before and since the signing of the Labor Agreement.

The Employer cannot now unilaterally create a new classification that is not among those listed in Article 3, and place the sheet metal work in that classification. It is clear that the list of classifications contained in Article 3 was intended to be all inclusive. Article 3, Paragraph 4 states very clearly that "throughout this Agreement the word classification shall mean job titles." Article 10 (Seniority), Paragraph A 2 states that the work classifications to be recognized for seniority purposes shall be as defined in Article 3. Article 10, Paragraph B further states that classification seniority shall govern various job entitlements, provided that the employee meets the qualifications for the job.

Furthermore, the Employer's right of work assignment is constrained by the classifications provided for in the Contract. Minimum qualifications for classifications are provided. For A&P Mechanic, Article 3, Paragraph B states that "they must be capable of performing their work satisfactorily to Employer standard, and hold valid licenses as required by the Employer".

The Employee met these qualifications for the work at issue. The only valid license required was the airframe license, which the Employee possesses. While the Employer testified it wanted someone with a basic knowledge of sheet metal work, the Union has shown that the Employee, by virtue of having an airframe and power plant license, had a basic knowledge of sheet metal repair. Employer witnesses could not refute this fact with knowledgeable testimony.

Thus, the grievance must be sustained.

POSITION OF THE EMPLOYER

The grievance is not arbitrable. By the Union's own admission, the Union failed to make a timely request for arbitration. The Employer rendered its final third step answer denying this grievance on May 26, 1992. This answer triggered the running of a 30 day period during which the Union was required to request a panel of arbitrators. Within this 30 day period, an extension of time was agreed upon through July 22, 1992. Although the Union claims that on July 23, 1992 the Employer granted the Union "open-ended timing regarding this grievance", that assertion has been specifically denied by Employer representatives. Moreover, the weight of evidence supports these denials. Thus, the subjective beliefs of the Union officials that an open-ended extension of time was granted are not sufficient to counter the clear evidence that no extensions were granted to the Union beyond July 22, 1992. As the Union did not initiate arbitration by that date, the grievance should be denied as untimely.

Should the Arbitrator find the Union's request for arbitration to be timely, the grievance should be denied on its merits. The Union has failed to meet its burden of demonstrating that the Employer does not have the authority to establish the minimum qualifications for positions such

as Sheet metal Mechanic, and that any Mechanic possessing an A&P license meets the minimum qualifications for the position of Sheet metal Mechanic.

More specifically, plain and unambiguous language in the Collective Bargaining Agreement permits the Employer to establish minimum qualifications. Article 11, Section B states that bid awards are to be filled by the most senior employee "meeting the minimum qualifications for the position". There is simply no way to read this Section as the Union claims - that bid awards be filled by the senior mechanic holding an A&P license. While the Union in effect seeks to eliminate the requirement that a successful bidder be minimally qualified, and substitute a system of filling vacancies based strictly on seniority, this argument is wholly inconsistent with the plain language of the Contract, in which the parties agreed that the Employer would award a vacancy to the senior employee meeting minimum qualifications.

That such minimum qualifications are to be set by the Employer is clear from the language of the Contract, which reserves to the Employer in Article 2 the right to determine qualifications. There is simply no language in the Contract which even purports to limit the Employer's right to set minimum qualifications. As the Employer has set the minimum qualifications for maintenance employees such as Sheet metal Mechanics since at least 1982, past practice also demonstrates the Employer's right in this regard. Thus, even if the Agreement were silent regarding the right to set qualifications, that right would still be retained by the Employer.

Bargaining history also supports the Employer's right to establish minimum qualifications. The Employer rejected specific Union proposals that would have restricted its right to set minimum qualifications. The Union proposals, if adopted, would have resulted in bid awards being made to A&P licensed mechanics solely on the basis of seniority and required the Employer to train successful bidders. These are precisely the results the Union seeks to achieve in this grievance.

As the Employer did not accept the Union proposals in negotiations, the Union should not now be allowed to obtain through arbitration what it could not obtain through negotiations.

The minimum qualifications established by the Employer for the position of Sheet metal Mechanic were reasonable. In order to determine which bidders possessed the minimum knowledge and ability to implement sheet metal repairs, the Employer conducted both in-person interviews with the bidders, and a review of the bidders' experience in working with sheet metal. It was fairly established that the Employee was not minimally qualified. While an A&P Mechanic has had some training in airframe repair, such training is too general to qualify an employee safely to perform structurally critical work on aircraft. The successful bidder, by contrast, was fairly determined to have gained through experience the requisite minimum qualifications.

The consequences of this case are significant. If the Employer's right to set minimum qualifications is restricted, both the Employer's ability to ensure the safe operation of its aircraft and its ability to efficiently service such aircraft will be severely compromised. An improper sheet metal repair can cause a delay in the return of the aircraft to service, if the improper repair is detected, or the decompression or structural failure of the component while in flight, if the improper repair is not detected. The fact that much of the work done by a Sheet metal Mechanic cannot be reviewed by subsequent inspection only heightens the Employer's need to have only employees meeting its minimum qualifications in the position. Efficiency of production would also be sacrificed, because unqualified employees bidding into the position would be unavailable to service aircraft while being trained in the minimum skills necessary for a Sheet metal Mechanic.

The grievance should therefore be denied.

OPINION

I agree with the Employer that contractually specified time limits are important. They are as meaningful as any other provision of the Contract, and should be enforced as any other provision of the Contract.

I agree with the Union, however, that under the particular facts present in this case the grievance is arbitrable. Notably, this is a new collective bargaining relationship. It is clear that there was confusion and disagreement in the early stages of the processing of this grievance concerning what was required before the Union could file a demand for arbitration. As early as April 7, 1992, the Union took the position that all steps of the grievance procedure, except a formal written response from the Employer, had been complied with and that the Employer's response should be issued so that the Union could promptly file for arbitration. The Employer, however, apparently took the position that an additional meeting was required prior to arbitration. Thereafter, more confusion existed concerning the request made by the Union for an extension of time in filing the demand for arbitration. Both parties agree that one request for a thirty (30) day extension was made by the Union and granted by the Employer. Thereafter, a misunderstanding appears to have occurred between Person 3 and Person 4 concerning whether an additional, open-ended extension had been granted. Both men testified credibly at the arbitration hearing. Both men gave credible explanations for their position. Person 4 testified that he had been told by his superior not to grant further extensions except in writing. Person 3, however, explained that a delay in the processing of the grievance was necessary because Person 5 was involved in negotiations with another airline, and it was uncertain when he would be available.

Given this good faith confusion and misunderstanding, it would not serve the purpose or intent of the contractual time limits to deny the Union and Employee the right to have the dispute resolved

on its merits. It is certainly permissible under the parties' Contract that time limits be extended, and where a party has a reasonable good faith belief that an extension of time has been granted, a dispute should generally be resolved on its merits. That is particularly true in the instant case. The Employer has suffered little or no prejudice by the delay in the demand for arbitration, as there is no continuing financial liability. It is undisputed that even had the Employee been awarded the bid at issue, his pay would not have been increased, and the sustaining of this grievance could therefore not result in a back pay award.

For these reasons, I find the grievance to be arbitrable. The Union is cautioned, however, that the Employer has now expressed an intention only to grant time limit extensions in writing. In the future, therefore, the Union may not be able to establish a reasonable, good faith belief that a time limit extension has been granted unless there exists written confirmation of that extension.

I therefore turn to the merits of this grievance. My analysis need not be extensive to decide properly this case.

Initially, the Employer correctly concluded that sheet metal work lies within the jurisdiction of the bargaining unit, and is subject to posting under the Collective Bargaining Agreement. In Article 1 of the Contract, the Employer recognizes the Union as the authorized representative of Mechanics and related employees. Sheet metal work falls well within this recognition clause. There is no evidence supporting any contention that the work falls outside the bargaining unit and is performed properly by a non-Union employee.

The Employer then erred, however, in posting a position for "Sheet metal Mechanic". Article 11 (Filling of Vacancies), Paragraph A states that "the notice will specify the classification ..." of the posted position. It is undisputed; however, that "Sheet metal Mechanic" is not among the classifications set forth in Article 3 of the Contract. Moreover, the Union persuasively argues

that the Employer does not have the right to create classifications which are not contained within Article 3. It is apparent from a reading of that Article, and the Collective Bargaining Agreement as a whole, that the list of classifications contained therein was meant to be all inclusive. Article 10 (Seniority) states that "...the work classifications to be recognized for seniority purposes shall be as defined in Article 3..." As seniority must be established based upon classifications in Article 3, it follows that only classifications contained within Article 3 are contractually legitimate. The Employer therefore cannot segment work from within a classification and unilaterally create a new, more focused classification. If the Employer desires to create new classifications it must bargain with the Union.

Thus, the "Sheet metal Mechanic" job posting of January, 1992 was invalid, as it was not done consistent with the terms of the Collective Bargaining Agreement. Accordingly, notwithstanding the Employer's forceful arguments, the grievance must be sustained. The remedy, however, cannot be to place the Employee into a position that was invalidly created in the first place. Rather, the proper remedy is that the Employer be required to abolish the job filled pursuant to the invalid bid. If the Employer wishes to create a new posting, it must be done consistent with one of the classifications currently existing within Article 3 of the Collective Bargaining Agreement, most likely that of A&P Mechanic. Should the Employer issue a new posting, the Employee will of course be eligible to place a bid and receive all consideration to which he is contractually entitled by seniority and qualifications.

AWARD

The grievance is sustained. As a remedy, the Employer shall abolish the "Sheet metal Mechanic" position at issue in this case.