

**Nevins #4**

IN THE MATTER OF ARBITRATION BETWEEN:

Employer

AND

Union

**PRELIMINARY STATEMENT**

David C. Nevins, Arbitrator: This proceeding involves a dispute between the Union and the Employer. A hearing was held before the undersigned System Board of Adjustment on November 13, 1996, where the parties participated, presented evidence, and put forth their respective arguments.

The general question to be resolved in this proceeding is the following:

**ISSUE**

Did the Employer violate the collective bargaining agreement when it disqualified the Employee for a Lead Mechanic position in Bid No. 1-93; if so, what should be the remedy?

**BACKGROUND**

In June of 1993, the Employer posted Bid Number 1-93 for a Lead Mechanic position in City 1, State 1, in its building and maintenance department (PDXPV). The bid indicated that bidders with no previous experience in the building and maintenance department would be given an "Exampic," a skills test. The Employee was one of two employees who bid for the position; having a Mechanic classification date of 11/14/60 he was the most senior of the two. At the time,

the Employee was a mechanic in City 1's equipment maintenance department (PDXGQ). The other, junior bidder was a mechanic in City 1's building and maintenance department.

In filling the Leadman vacancy, Person 1, the foreman over both the PDXPV and PDXGQ since 1988, reviewed the Employee's employment file, in particular his service record, which indicated the positions he had held with the Employer, and his training and qualification history.

Essentially the Employee had held two positions with the Employer: until 1984 he had been a line A & P mechanic, working on aircraft, and since then he had been a mechanic in the GQ department, servicing the myriad ground equipment. Nothing in his employment record showed work in the PV department or training in connection with such work. Person 1 interviewed the Employee, and, either through that interview or by other means, was aware that the Employee, as part of his duties in GQ, was occasionally called on to work with equipment assigned for servicing to the PV department, and also owned, refurbished, and maintained private residential units during his off-duty hours.

Thinking that any skills demonstrated by the Employee in connection with the PV department's work were insufficient to qualify him as a Leadman, Foreman Person 1 asked the Employee to take the Exampic. He agreed.

The Exampic evolved from the parties' 1983 contract negotiations. A committee of management and Union representatives was then devised, according to a letter agreement, to consider "the problems which have arisen from the use of...examinations and will recommend solutions, giving due consideration to the consistency and administration of such examinations, as well as the needs of individual stations or work groups." Out of that committee emerged, in 1986 or 1987, the Exampic procedure, which, among other things, identified five basic skill areas (automotive, air conditioning, electrical, general building and maintenance, and welding),

established (through the parties' study and agreement) computerized, standardized test questions for those skill areas, created a random selection of questions to be used each time, set 70% as the passing score for the examinations<sup>1</sup>, and established a six month review period for the Exampic practices. The procedures agreed to also recognize that practical testing could also take place, and that Exampic testing was not required where it is obvious that no need for testing exists, and that employees still could contest by grievance the Employer's job selection decisions. Foreman Person 1 had been using Exampic testing for some time by 1993, generally in cases where mechanics bid from one department into another in which they had no previous experience. The Employee failed the Exampic, achieving a score of 60%. Person 1 then reviewed the test with him and removed those test questions which did not seem to pertain to the City 1 PV department and which Person 1 could not answer. After this removal, the Employee's score improved, but only to 62%. The Employee's Lead Mechanic bid was then rejected by Person 1, and the position was given to the junior bidder from the PV department. When the Leadman vacancy arose, because the then-existing Leadman retired, the PV department was cutting back from five to four employees (including the Leadman). By promoting one of the PV department's mechanics to Lead Mechanic to fill the vacancy, no existing PV employees had to be transferred out. (Had a transfer resulted it would have involved Person 2, whose particular specialty was electrical work.)

A grievance was duly filed protesting the junior mechanic's promotion, and it proceeded through the parties' grievance procedures.

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<sup>1</sup> The parties also agreed, it should be noted, that a 70% passing score was not to be the sole criterion for evaluating someone's ability to perform the job in question.

## **ANALYSIS AND DISCUSSION**

### **I. Contractual Provision and the Parties' Basic Contentions.**

The collective bargaining agreement (the "Agreement") pertaining to our grievance has several pertinent provisions. Article IV, Section A, provides, in part:

A Lead Mechanic shall be a Mechanic who, as a working member of a group, is charged with the responsibility of leading, directing, and approving the work of other employees. Lead Mechanics may be required to sign for their own work and the work of others in their group, provided, however, that such signing shall not relieve any other member of his group from responsibility for the work he performed or from being required to sign appropriate Employer work records. Lead mechanics must hold valid Federal licenses as required for this assignment ... and may be required to give instruction and training to employees of any classification covered by this Agreement except Aircraft Inspectors.

Then, in Article X, Section D-1, it is stated:

In filling jobs under the bidding procedures provided in this Agreement, seniority plus ability to satisfactorily perform the work required for the job in question will be considered.

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A similar approach is also indicated in. Article X, Section3:

Seniority plus the ability to satisfactorily perform the work required for the job in question shall govern all employees covered by this Agreement in preference of shifts, in case of lay off, reemployment after lay off, and in all promotions, demotions, or transfers within or between classifications covered by this Agreement.

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In this contractual context, the Union faults the Employer's promotion selection. It claims the Employee manifested sufficient skill in the building and maintenance area so that an Examptic was unnecessary, and then the Employer compounded its error by rejecting the Employee's bid based solely on his test result. The Union say's that the PV Department's Leadman does not need expertise in the department's various work duties; that the position is essentially one of a facilitator, who performs little actual work, assigning that work to the others or to outside

contractors; that by promoting from within the department, the Employer was able to retain a skilled electrical mechanic, though that is no justification for violating the Employee's rights.

The Union tresses that Leadman functions pertain to leadership and assigning others the work, skills that the Employee has amply demonstrated in the GQ department. The Union asks that the Employee's bid be granted.

The Employer, conversely, says it acted properly in rejecting the Employee's Lead Mechanic bid. It disagrees that there is evidence to support the Union's theory. The Employer points to the Agreement and its delineation of a Leadman's role that he must be knowledgeable of the work involved, and that basic ability is as important as an employee's seniority. The Employer says the Employee did not demonstrate sufficient ability to perform as the PV department Leadman. The Employer says the Union has not satisfied its burden in this matter. The grievance should be denied.

## **II. Discussion**

The Agreement makes clear, as do several past arbitration decisions, that while a job bidder's seniority is of great importance to his bid, so too is the necessity for that bidder to be minimally or basically qualified to work in the position bid. The two bidding features go hand-in-hand. And, where the senior job bidder possesses the minimum or basic qualification to perform the job he bids, even though he may not be able to perform each and every function within that job, he is entitled to the bid position (and the opportunity to learn those functions he is presently unskilled in). See, e.g., Grievance No. 37672-SFO (Charles P. Andregg) (Lewis M. Gill,

Chairman, 1965).<sup>2</sup> Our dispute, as do apparently most of these disputes, centers on whether the Employee, the senior bidder, possessed the minimum or necessary ability to work in mid-1993 in the building and maintenance department as Lead Mechanic or, stated somewhat differently, did the Employer err in determining that he did not.

The focal point of our factual dispute pertains to the Employee's work in the equipment maintenance department, where since mid-1984 he serviced the Employer's ground equipment. A catalogue of that equipment shows numerous pieces of equipment, such as tow tractors, deck carts, belt loaders, cargo carts, tractors, pallet trailers, forklifts, and much more. Even though the building and maintenance (PV) department is headquartered in the same area as the ground or automotive equipment (GQ) department, and even though it is supervised by the same foreman, the two departments have been separate since 1985 or so, have no exchange of workers and virtually no cross-over in their work. The building and maintenance department has its own catalogue of equipment it is responsible for. It is also responsible for other items, including lighting systems, heaters, boilers, fans, air compressors, power doors, paint booths, pumps, water heaters, air conditioning, and other equipment located throughout the facilities belonging to the Employer.

The Employee principally points out that on weekends, either a GQ mechanic or a PV mechanic is on duty at City 1 and responsible to address both departments' problems, whether those problems emanate from the GQ or PV department's equipment. In performing such weekend work, and in having at one time come on his duty shift two hours before any PV mechanic, the Employee says he became familiar with and skillful in doing PV service work.

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<sup>2</sup> Once the senior job bidder possesses the "ability to satisfactorily perform the work required for the job in question," and is awarded his job bid, Article XI, Section G, of the Agreement then provides that he "shall hold the job for a reasonable period but not to exceed ninety (90) days on a trial basis in order to demonstrate his ability to perform the work required by the job." While the Union emphasizes this provision, it seemingly comes into play only after a job bid is awarded, not as an integral part of the consideration in establishing entitlement to the bid.

The evidence of the Employee's familiarity with PV work however, is not convincing. Thus, it appears that during the time when he came on duty two hours earlier than PV mechanics that was only for a limited time, back in 1984 or so. For both that effort and whatever weekend work he performed, the evidence is unclear that he performed any significant or meaningful amount of PV work. As Foreman Person 1 puts it (and he has been foreman over both departments since mid-1988), generally when a weekend PV or GQ mechanic is called upon to address a problem involving the other department's equipment, only minor problems are addressed and anything of significance or difficulty is left until the other department's mechanics are on duty. The Employee's rendition of his PV work is not seriously to the contrary. Moreover, the Employee's weekend work seems to have been rather light, as he acknowledges that since 1984 he has not been assigned to perform PV jobs and his overtime hours which may have involved PV work numbered only four for 1991, two for 1992, and five in 1993 (prior to the bid). In sum, there is too little concrete evidence to show that as part of his work in the GQ department the Employee gained any meaningful experience or skill in dealing with the equipment maintained and serviced by the PV department (and, as Foreman Person 1 says, some 70% to 75% of PV work involves responses to breakdowns, not preventive maintenance).

There is also too little to show that the Employee's outside residential management and remodeling gave him sufficient skills to oversee the PV equipment.<sup>3</sup> The exact nature and extent of the Employee's outside residential management work is unclear. There is no effort to compare actual work experiences involving that work with work requirements found in the PV

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<sup>3</sup> Back in 1993, when the Lead Mechanic bid was in issue, the PV department had five employees (the GQ department had seven or so) and was responsible for maintaining and servicing the Employer's kitchen facilities, which in latter 1993 were sold to another Employer. While that kitchens' sale eventually decreased the responsibilities of the PV department, in mid-1993 it was unclear that the PV department would no longer be responsible for the kitchen equipment. What is strategic to our case is what work existed in the PV department in mid-1993, when the Lead Mechanic job was open, not what now exists.

department. Outwardly, it would appear that the kind of equipment found in airport offices, ramps, and facilities would be far more involved and sophisticated to work on than equipment found in the typical home.

Apart from its references to the Employee's building and maintenance skills, the Union also focuses on the idea that a Lead Mechanic (as in the PV department) does not have to be particularly skilled in the actual work requirements and functions, does not really use such skills, and essentially is a daily manager and work distributor (to others). In other words, the Union says the Employee did not have to possess any particular mechanical skills pertaining to the PV department's actual work.

Several problems, however, exist in connection with the Union's characterization of the Leadman's job. For one thing, the Agreement, as previously quoted, defines a Lead Mechanic as having the responsibility of "leading, directing, and approving" the work of others and as subject to being required "to give instruction and training to employees." These functions, as mutually and contractually recognized, clearly connote a Leadman as needing a certain, at least basic or general, level of familiarity and ability with the individual work functions he oversees. For another thing, although aspects of our evidence show that the PV department's Leadman is largely involved with distributing work assignments and responsibilities to others, even Person 3, who works in the PV department, concedes that the Leadman also performs work (e.g., the current Leadman engages in carpentry and sign-painting duties). Foreman Person 1 says that the Leadman is a working member of the PV crew, necessarily assisting and directing the work in such a small work unit. Finally, that the PV department is as small as it is, having only four members, it outwardly seems unlikely that one of those four, the Leadman, is exclusively engaged in assigning work and associated duties and is not also required, with some regularity,



to perform or assist others in actual service and repair work. In short, it cannot be concluded that a basic familiarity or ability with PV department work skills was unimportant to the Lead Mechanic position.

Since Foreman Person 1 was not mistaken that some basic familiarity with or ability to perform PV department work duties was important to the Lead Mechanic job opening and since he failed to discover that familiarity or ability in the Employee's employment history and outside training and knowledge, it is difficult to find fault with his use of the Exampic to see whether the Employee could demonstrate such familiarity or ability through a test. The Exampic, after all, was a testing device mutually established by the Employer and the Union to test mechanical abilities in such distinct work areas as building and maintenance, and these parties not only devised the test questions but agreed that a passing score would be 70. In view of these features, one is naturally inclined to believe that Exampic, in the correct setting, is a fair, useful, and meaningful way of determining whether an employee possesses the ability to satisfactorily perform the job in question. Since nothing else pertaining to the Employee convincingly showed he possessed that ability, the Exampic was yet another way for him to demonstrate it. Despite the Employee's significant history of work and his obvious skills and abilities in the aircraft line maintenance area and the equipment maintenance area, he did not pass the PV department Exampic. There appears to have been no unfairness or infirmity in the testing process. That the Employee did not pass the test must be seen as further corroboration that he did not then possess the minimum ability to serve as Lead Mechanic in the PV department. Foreman Person 1 did not, as the Union tries to characterize it, rely solely on the Exampic to reach that kind of conclusion, but used the Exampic in conjunction with his review of the Employee's work history and training, which similarly indicated to Person 1 that the Employee was not familiar with PV

department work and was not then minimally able to serve as PV Leadman. Person 1 did not err in his use of the Exampic testing or its results.

As Arbitrator Gill said in the Andregg Case we must guard against the natural temptation of supervisors to promote the "best qualified job applicant", as opposed to the most senior, yet able, applicant. While Foreman Person 1's promotion decision in our case allowed the PV department to retain a skilled PV mechanic by denying the Employee his bid, our evidence, when all is said, still fails to show that the Employee was minimally qualified and able to serve as PV leadman, and, thus, in sum, the Employer did not violate the Agreement in rejecting his Lead Mechanic bid.

#### **AWARD**

The grievance is denied, The Employer did not violate the Agreement in rejecting the Employee's 1993 Lead Mechanic job bid.