

substantially insulated itself from the ramifications of its wrongful actions by its unilateral shutdown of the Grievance Procedure. Such actions are not consistent with the past dealings of the parties, are not supported by the provisions of the Grievance Procedure set forth in Article 21 of the Collective Bargaining Agreement, are not consistent with the express undertakings in Article 28 of the Collective Bargaining Agreement, and are completely inconsistent with both the contractual and legal obligations flowing from the Collective Bargaining Agreement and the National Labor Relations Act.

The Union concluded:

By its unilateral actions in this case, the Company has sounded the death knell for the heritage of the "responsible relationship which began in the 1960's." The relationship, upon which the parties express their desire to build while looking to the future, has been savaged by the Company, totally eliminating any trust on the part of the Union and on the part of the Company's own employees. Unless remedied, these unilateral actions on the part of the Company will leave the Union with little to do, other than to finalize the funeral arrangements and provide for an appropriate burial. Union Brief, p. 21.

Analysis and Discussion

This matter of arbitration involves the contract interpretation and application, legal issues, burden of proof, Management rights, Union and employee rights, and labor relations and arbitral principles. While the issues at arbitration may appear to be simple at first glance, they are actually complicated and interrelated and founded on an undercurrent of principles. The parties have agreed to, as a sign of good faith, Article 28 - the Responsible Relationship Clause; they have recognized "mutual respect and responsibility" obligations; they have recognized a "responsibility to deal reasonably and in good faith"; and they have agreed to "insure continually improving relations between the Company and Union" and "the intent of both organizations to

deal with one another at all levels in a sincere, honest, and businesslike manner. . . .(which) should insure a better feeling for the needs of the employees.” If the Company’s actions has the intent or has the effect of embarrassing and/or intimidating employees, the Company’s action is inconsistent with the Article 28 pledge. As well, if employees have the intent of “flooding” the Grievance machinery, such actions would also be inconsistent with the principles agreed to in Article 28.

Both parties cited incidents where performance results had been posted in the past, some of which were stopped when the Union challenged the posting. In other cases, the Company claimed that results had been posted without the Unions challenge. The evidence is not supportive of a past practice; therefore, previous incidents of posting of performance results are not determinative in this case.

First, the burden of proof must be addressed. The burden of proof in a contract interpretation and application case rests with the party claiming a violation. In this matter, both parties are claiming violations. The Union has the burden of proof on the issue of whether the Company violated the Agreement when it posted results of key work activities by employee names and by refusing to meet on grievances at the second step of the grievance procedure. The burden of proof rests with the Company on issues of whether the Union violated the Agreement by filing numerous Grievances on posting of results in key work activities by employee names and when it insisted on full-scale grievance meetings filed over the posting of results by key work activities.

Now turning to the other issues, there are two basis conclusions:

1. Management has the right to post results in key work activities by employee names.
2. Employees have the right to file grievances over the subjects of rates of pay, wages, hours of employment, or other conditions of employees which are included in the terms of the Agreement.

The Union argued that the Company is obligated to bargain over mandatory subjects of collective bargaining which are included in Section 9(a) of the National Labor Relations Act which refers to rates of pay, wages, hours of employment, or other conditions of employment.

The Union argued that the Company's posting of results unilaterally and without any attempt to bargain was a per se violation of Section 8(a)(5) of the National Labor Relation Act which refers to an unfair labor practice for an employer

(5) to refuse to bargain collectively with the representative of his employees, subject to the provisions of Section 9(a).

Management argued that it had the right to post results in key work activities by employee names, that these results are not performance appraisals, and that the posting of results have led to improvement in employee performance. While knowledge of results has been proven to be relevant motivating factors to improve employee performance, the Company has not only made the results known to employees but to other employees. In other words, the Company must believe that peer pressure, overt or implied, also yield higher performance levels. The question that will remain is whether such action has lasting effect, whether the posting of results yielded higher performance because it was a change in reporting results, or whether such yields

in higher performance will be maintained or "fade out" over time. Posting of employee performance is not new; perhaps, it was chosen to cause employees to recognize a "new" competitive environment. Management must believe that posting of results by name motivates through knowledge of results and peer pressure; this is a Management decision, certainly not an Arbitrator's. Arbitrator's authority stems solely from the Agreement and Management is not prohibited from posting results by employee name in the current Agreement.

Although, the Agreement does not prohibit Management from posting results by employee name and the content of the results are not performance appraisals, performance appraisal results are based on performance and these results which are being posted are important inputs to performance appraisals. Therefore, just as performance appraisals may lead to employment decisions, such as discipline, consideration for job change, etc., and may be challenged for accuracy, the results which are being posted may also be challenged for accuracy. As the Union correctly notes, there is no notification posted that an employee has been on leave, jury duty, Union business, FMLAct leave, etc. Mr. Ray explained that approved time off the job are not considered in determining the base for the performance results. However, a review of the results which were posted do not explain how the results are calculated or do not note that employees were on approved leave.

Since the results posted are inputs to employees performance appraisals, these results must be accurate. When and if an employee has reasonable belief that the posted results are not accurate, he/she has a right to file a Grievance. The employee must briefly describe the reason the posted results are not correct in his/her Grievance and the Company is then obligated by the Agreement to consider the employee's Grievance. In other words, the Company cannot refuse to

meet on grievances at step 2 when an employee provides support for an alleged inaccuracy in the posted results. Hopefully, if the posted results are in fact inaccurate, the results can be corrected without the need for continuous meetings.

In response to the last issue, the Union is in violation of Article 28 of the Agreement when and if it insists on full-scale Grievance meetings on each Grievance filed over the posting of results on key work activities by employee names. An employee is entitled to file a Grievance when he/she reasonably believes that there is an error in the posted results and provides support for his/her allegation. Without a good faith and reasonable belief of an error and without support for the allegation, there is not inherent right for a full-scale grievance meeting. The purpose of the Grievance and the meetings are to correct the errors, when and if they exist. Admittedly, when the Company decided on the posting of such a large quantity of results, there are now increased risks of errors and increased potential for more Grievance meetings. Still, the posting of results is a Management decision.

Decision

In a case like the present one, it is important to briefly state the decisions again:

1. The burden of proof in contract interpretation and application cases rests with the alleging party.
2. Management did not violate the Agreement when it posted results in key work activities by employee names. However, Management is directed to provide explanations on the posted results for employee approved leave, such as for Union business, FMLAct leave, personal leave, sick leave, etc. References at the bottom of each posted sheet explaining such absences should be sufficient.

3. Management violated the Agreement when it refuses to meet on grievance at Step 2 when an employee has a reasonably belief that the posted results are not accurate and has provided support that the posted results are not accurate. If found to be incorrect, the corrected results should be posted.

4. The Union, nor any employee, did not violate the Agreement when it filed Grievances on the posting of results in key work activities by employee names. However, there must be a reasonably belief that the results posted were not accurate, and the Union or the Grievant must provide support for the allegation that the posted results are not accurate.

5. The Union violated Article 28 of the Agreement when it insisted on full-scale grievance meetings on each grievance filed over the posting of results on key work activities by employee names (Emphasis added by Arbitrator). However, the Union and/or an employee has the right to file a Grievance or Grievances when there is a reasonable belief that the posted results are not accurate and there is support for the allegation of the inaccuracy(ies).

2-18-98
Date

William H. Holley, Jr.
William H. Holley, Jr.
Arbitrator

**GRIEVANCE NO. B00-ALL-001
ITP SCORECARD GRIEVANCES**

BellSouth and CWA have agreed to resolve the above-referenced grievance with the following language:

The parties agree that the processing of grievances concerning ITP scorecards will be governed by the principles set forth in the Posting of Results arbitration award by Arbitrator Holley, Grievance No. B96-ALL-900. In accordance with such award, the parties will meet on a grievance over a scorecard when the Grievant has a reasonable belief that the scorecard results are inaccurate and has provided support that the scorecard results are not accurate.

Disputes regarding the true intent and meaning of the Holley award will be handled as an Executive Level grievance unless the parties agree otherwise.

[Signature]
For CWA

[Signature]
For BellSouth

10-7-00
Date

10-2-00
Date