
IN THE MATTER OF ARBITRATION

OPINION AND AWARD

BETWEEN:

UNITED PARCEL SERVICE

**FMCS Case No. 191127-01869
(Personal Vehicle Drivers)**

and

TEAMSTERS LOCAL 710

Gil Vernon, Arbitrator

APPEARANCES:

On Behalf of the Union: John R. Bielski, Attorney-Willig, Williams & Davidson

On behalf of the Company: John A. Klages, Attorney-Quarles & Brady LLP

I. ISSUES

The Parties could not agree how to frame the issues before the Arbitrator.

The Union framed the issues as follows:

1. Did United Parcel Service (“UPS”) violate the collective bargaining agreement when in the fall of 2017 it unilaterally implemented a new operation using personal vehicle drivers (“PVDs”) to perform endpoint package delivery within the jurisdiction of Teamsters Local 710 (“Local 710” or “Union”) without notifying the Union ahead of time about multiple details of this new position or negotiating rates, assignment of work, and other terms and conditions of employment? If so, what should the remedy be?

2. Did UPS violate the National Labor Relations Act by failing to bargain over mandatory subjects of bargaining?

The Employer framed the issues as follows:

1. Did UPS violate the collective bargaining agreement (CBA) when it hired drivers to use their personal vehicles to deliver packages during the 2017 Peak season?
2. Whether UPS violated the National Labor Relations Act through its use of drivers delivering packages using their personal vehicles during the 2017 Peak season?

II. BACKGROUND AND FACTS

The Employer, United Parcel Service (“UPS”), is the iconic national package delivery service. Local 710 “is the sole and exclusive representative for the purposes of collective bargaining” of approximately 7,000 bargaining unit employees employed by UPS who work in approximately forty-five (45) different facilities, known as centers, in Illinois, (except for metropolitan Chicago), Indiana, and Davenport, Iowa. As stated in the “Jurisdiction” preamble of the Collective Bargaining Agreement (“CBA”) the Union’s jurisdiction includes employees who perform as parcel service package drivers, feeder drivers, automotive mechanics, building maintenance mechanics, preloaders, sorters, loaders/unloaders, washers, porters, clerks, customer service clerks, express air drivers, and special air drivers.

The issues presented by the grievance before the Arbitrator concern decisions by the Company made during the 2017 peak season to enhance its

package delivery force. Peak season at UPS is that period of time covering the third week of October until the second week of January. During this time, the volume of packages delivered by UPS employees increases by around 40% to 50%. There are a number of methods utilized by UPS to meet the demands of peak season about which there is no dispute. For example:

(1) The Company allows part-time employees at facilities to sign up as full-time package car drivers.

(2) They also allow additional staff, including fulltime temporary or seasonal employees who either work inside a UPS facility (also known as a UPS center) sorting and loading packages onto or off UPS vehicles or driving UPS-owned or leased/rented vehicles delivering and picking up packages. These employees are guaranteed 8 hours pay once checked in and overtime beyond 8 hours. The pay rate is set forth in the CBA at 60% of the normal package car driver rate. Union dues and initiation fees are also paid.

3. They also hire additional part-time employees to work as loaders and sorters inside its facilities and hire helpers who assist package car drivers in making their deliveries. Existing part-timers are permitted to sign up to serve as helpers so long as the shifts they fill to do so do not conflict with their current job schedule.

As part of its effort to address peak demand for package delivery, the Company employed another method in 2017 that is at the heart of this dispute. In short, the Company without bargaining with the Union informed Union Officials it intended to hire employees from the general public to deliver packages using the new employees' personal vehicles. One example of the notice to Union Officials came

from Mr. Randy Ervin and went to Mr. Del Schaeffer on August 27, 2017. It appears below:



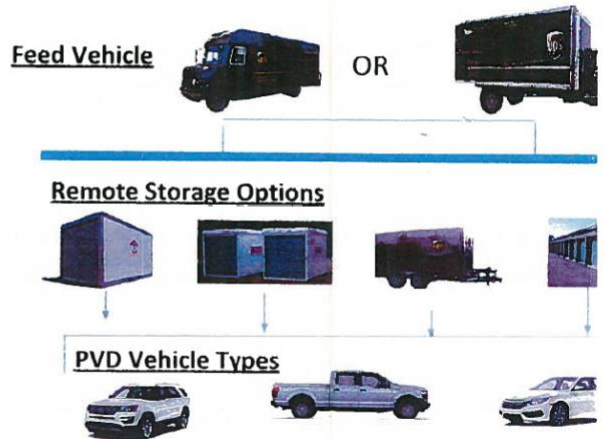
The attached slide is an explanation of what a Personal Vehicle Driver is. PVD's are currently being planned for all areas in the Central States District. The slide explains a lot but I am sure each of you will have some questions. There have been some discussions from some of you asking if this was going to happen. It is my understanding the company is still looking at the possibility of implementing these for this upcoming peak season. I wanted to make sure each of you were aware of the discussions in case your members started asking you questions. As I travel through the next couple weeks and have Local Level hearings we will discuss this in each of your centers. Thanks. Randy

The attachment mentioned in the email appears below (cut-off section in original exhibit):

Full-time Seasonal Personal Vehicle Driver Definition of a Personal Vehicle Driver

Personal Vehicle Driver-*noun*; a driving position that utilizes a seasonal employees pers vehicle to make deliveries in low density Rural / Super Rural areas. Acronym-PVD

- PVD start and finish at a designated meet point within their delivery area
- **PVDs are fed by:**
 - Adjacent route (Extended)
 - Designated feed vehicle (Close)
- **Meet point:**
 - Fixed is highly recommend
 - Mobile may be used in a limited capacity dependent on scenario
- **Storage Options:**
 - Mobile Storage Unit
 - TP 60
 - Storage Unit
 - Route Package Car (Mobile)
- **Stop Recording Procedures:**
 - Personal cell phone (BYOD)
 - UPS supplied cell phone
 - Manifest Data provided
 - Live delivery status updates



Mr. Schaefer responded as follows later in that day:

dschaefer@teamsters710.org <dschaefer@teamsters710.org>
To: [REDACTED]

Tue, Aug 22, 2017 at 4:44 PM

We've been approached by OVD and the ILL districts on these PVD's already. I believe this needs to be an M.O.U. or an L.O.U. before these can be implemented in 710's jurisdiction.

Del Schaefer
Business Agent
Teamsters local 710
9000 W 187th St.
Mokena IL 60448
Wk. (773) 254-3200
[REDACTED]

[Quoted text hidden]

Between August 22 and December 5 the Union discovered the Company was publicly recruiting personal vehicle drivers ("PVDs"). One recruiting method was a flyer posted at a gas station/convenience store (distortion in exhibit).

Holiday Season Employment

October 30 - January 5th

10 am - 6 pm (or when work is completed)
Monday - Friday

\$19.32 /hr

with Mileage Reimbursement

This job will consist of delivering rural residential packages out of your personal vehicle for the 2017 holiday season. The route would be making multiple trips from a trailer domiciled in Harlan. You will have an application to use on your Smartphone that will provide your daily dispatch.

- No Moving Violations in past 12 months
- No fault accidents in past 36 months
- Valid driver's license issued in state you live
- Smartphone - to run an application for your daily dispatch
- Must have Reliable transportation, large enough to fit many boxes
- Cargo Van, SUV, or Large Pickup Truck with camper shell
- Vehicle free of logos, bumper stickers, or offensive markings
- Strong work Ethic and work independently
- 6-9 hrs. of work daily (more work in Late November through December)
- Ability to lift up to 70 lbs. (most packages will be under 25lbs.)
- Proof of registered vehicle with state minimum insurance
- Uniform will be provided

Contact Trever Dunica - 260-484-5704

UPS

2727 Independence Drive

Fort Wayne, IN 47359

The emails between Mr. Ervin and Mr. Schaefer inspired a number of conversations between a variety of Union Officials and Management Representatives some of which were described in a December 5, 2017 letter sent by the Union (in the person of Ron Dillion, Business Agent) to the Company protesting the Company's plan. The text of the letter read as follows:

I am writing this letter on behalf of the roughly 6500 teamster members of local 710 that work at United Parcel Service. We as a union are protesting UPS implementation of PVD personal drivers during the peak hiring period of November 27, 2017 through January 20, 2017

The main protest revolves around UPS plan to move forward the PVDs without any formal customary discussions or negotiations with Teamsters local 710. Local 710 is the sole representative all UPS employees in Illinois except metro Chicago Indiana and Davenport, IA. It is our position that UPS is in direct violation of the current Collective Bargaining Agreement that is in effect presently and expires on July 31, 2018. After hearing several rumors throughout the 710 jurisdiction in July of 2017 of the possibility of the use of PVD business agents Ron Dillion, Del Schaefer, Neil McKinney and Simon McNamara at various times questioned Labor Managers Dean Fragale, Mitch Singleton, Chris Opperman, Randy Irvin and Margaret Kucera at Local Level Hearings in the various UPS buildings. It is customary for the Agents and Labor Managers to meet monthly and on occasion weekly in the UPS buildings to settle grievances filed by members . The responses were vague at the time. The Labor Managers told the Agents that they didn't have solid details of how they would be implemented, and they weren't sure that they were even going to use them. At the September 14, 2017 State Panel Hearings at Local 710 in Mokina, Il., all four agents again questioned the Labor Managers in attendance and again we're told that they didn't have all the details but would let us know what they could find out. At the October 12, 2017 State Panel Hearing Del Schaefer and Simon McNamara were informed of the company plans to move forward with PVD's by labor manager Margaret Kucera . This was also witnessed by IBT Trustee Mike Elmury. She also stated that it was coming from higher up in the ladder and that she didn't have authority to stop the plan. The company was going forward despite Del Schafer's request for sit down discussion on the matter. At a local 710 pension plan meeting at Local 710 in Mokina, Il. Agent Del Schaefer approached Division Labor Manager Dan Hoyer and ask why the company was continuing with the implementation of PVD's without discussing the details with the Union. Mr. Hoyer also replied it was coming from higher up in the company and he couldn't change it. Our contract is clear under Article 3 section 6 that “where new types of equipment or operations for which rates of pay or not establishing by this Agreement are put into use after the ratification date of this agreement within operations covered by this agreement rates governing such operations shall be subject to negotiation between the parties.”

On August 26, 2017 I was contacted by Fort Wayne In Steward Dave Bowman. He stated that he came across the posting that was found at a rural gas station asking for people interested in becoming a Holiday Employee at UPS in Fort Wayne. In the description of job duties and pay are exact same requirements for becoming a PVD Employee. This is also a violation of the CBA because the jobs notification was not posted in the building and offered to current seniority part-time employees. I instructed Dave to file a grievance under Article 1 Section 2 "Individual Bargaining. The grievance was heard in the Fort Wayne Center at the local level hearing on November 8, 2017. I was the Business Agent for that building Dean Fragale was Labor Manager representing the company it was ruled that because the company had not implemented at PBD yet that there was no contract violation yet. The Labor manager stated that there possibly could be in the future weeks. Dave decided to withdraw the grievance with the right to refile if the violation appears in future weeks as stated. Currently that is the case and Dave is refileing

Since that grievance a steady stream of grievances are being filed in several UPS buildings in the 710 Jurisdiction. It is the Union's position that company is not bargaining in good faith and has circumvented the current Collective Bargaining Agreement by violating several Articles, past practice, and language agreed to by both parties. The main ones are Article 2 Sect.1 Individual Bargaining, Article 1 Sect. 3 Maintenance of Standards Article 2 Sect. 1 Present and Future Employees, Sect. 3 Check-off, Sect. 6 Agency Shop , Article 3 Sect. 3 Overtime, Sect. 6 New Equipment, Article 13 Subcontracting, Article 25 Part-timers, Article 31 employees not required to buy or lease equipment and Article 46 Air Drivers.

On November 27, 2017, Local 710 filed an unfair labor practice charge with Region 13 of the National Labor Relations Board against UPS based on the Company's unilateral implementation of the PVD Operation. The charge alleged the creation of a new job classification. The charge stated:

On or about October 12, 2017, the above-named Employer refused to bargain with the Union over the creation of a new job classification referred to a Personal Vehicle Driver, in violation of Sections 8(a)(1) and (5) of the Act.

On or about November 17, 2017, the above-named Employer unilaterally implemented a new job classification referred to as Personal Vehicle Driver without bargaining with the Union in good faith impasse, in violation of Sections 8(a)(1) and (5) of the Act.

Throughout this period (August to December) a number of grievances (27) were filed at various locations . Eventually, the grievances were consolidated for arbitration. It was determined the “pilot” arbitration case would also address the unfair labor practice charges as a result of the NLRB deferring those pursuant to *Collyer Insulated Wire*, 192 NLRB 837 (1971) and *United Technologies Corp.*, 268 NLRB 557 (1984).

Additionally, UPS “agreed to waive any time limitations in order to ensure that the Arbitrator addressed the merits of the dispute.” Along with the deferral letter, the Regional Director provided a “Notice to Arbitrator” form, which was transmitted to the Arbitrator to ensure Region 13 received a copy of the award.

In part due to the pandemic, a dispute developed as to whether the hearing could be held remotely or in person. Eventually, the Arbitrator issued an order that the hearing would proceed on a remote basis and that occurred on May 5, August 4 and October 8, 2021. Briefs were received February 4th, 2022.

III. OPINION AND DISCUSSION

One very significant undisputed fact is that the Company agrees PVD's fall within the Union’s scope of jurisdiction and part of the bargaining unit. For example, the Company notes on page 34 (of 131) of its brief, as a factual and

historical matter, that PVD's were "...implemented within local 710's jurisdiction." Further, as evidence that the Company recognized the position is within the scope of the CBA, the Company claims it required initiation fees and dues of PVD drivers, where allowed by law, which also implies coverage under the CBA for those purposes. In this regard and as a side note, there is some surprise and therefore doubt expressed in this record as to whether these payments were complete or ever done because of the Union claims it never received new employee lists. The Company also likens PVDs as identical to seasonal package drivers which are part of the bargaining unit and covered by the CBA. It is hard to say that they are the same jobs without fundamentally acknowledging that both positions, as a broad matter, are under the umbrella of the Collective Bargaining Agreement and in one way or another permitted or prohibited in part or in whole.

The recognition that PVD's are within the scope of the Collective Bargaining Agreement and within the Union's jurisdiction in turn narrows the scope of the complex issues presented by the Parties. For example, being considered part of the bargaining unit means necessarily that the use of PVDs by the Company cannot be considered subcontracting outside the bargaining unit. It also means, at a minimum and necessarily, the Company was obligated to inform the Union of the hiring data required by Article 2 Section 1. The required information was not provided to the Union as required.

Refocusing on the question of whether the Collective Bargaining Agreement prohibits, permits or in some fashion restricts the use of PVDs, it is the opinion of the Arbitrator that as a general matter the CBA prohibits--at least without bargaining the rate of pay among other conditions of employment--the use of PVD drivers under the particular circumstances evidenced in this record. This is true on several counts.

First, Article 3, Section 6 states:

“Where new types of equipment and/or operations, for which rates of pay are not established by this Agreement, are put into use after the ratification date of this Agreement, within operations covered by this Agreement, rates governing such operations shall be subject to negotiations between the parties. This paragraph shall apply to all new types of equipment including office and clerical equipment.”

The full-time exclusive and mandatory use of a personal vehicle is effectively “new equipment” for which a rate of pay has not been established under the Collective Bargaining Agreement. There is no rate established for personal vehicles as a regular type of equipment. This is seen by a perusal of Article 3 Wage Scale which shows rates of pay relate to the size of the vehicle and notably does not list personal vehicles:

1. Rates for full time Employees on payroll August 1, 2013.

A. CLASSIFICATIONS: Full Time

- | | |
|--|-------------------|
| 1. Tractor Trailer Driver – Single | \$33.105 per hour |
| 2. Tractor Trailer Driver – Doubles | \$33.555 per hour |
| 3. Tractor Trailer Driver – Double Forty/Triples | \$33.905 per hour |

4. Parcel Delivery Pick up Drivers	\$32.900 per hour
5. Pre-Loaders/Sorters	\$32.230 per hour
6. All other inside	\$31.180 per hour
7. 25.11 Combinations	Applicable Rate

In addition to being distinguished by size, there are differences in workload and several important conditions of employment some of which impact wages and earnings. The PVD position has unique conditions of employment which have not stood the test of mutual negotiations, for example among others: availability of personal transportation, ownership of a cell phone, insurance considerations, driver licensing and related qualifications.

Related to this provision is Article 1, Section 2 which prohibits individual bargaining. It states:

“Except as may be otherwise provided in this Agreement, the Employer agrees not to enter into or attempt to enter into, any agreement or contract with its employees, either individually or collectively, or to require or attempt to require employees to sign any document, either individually or collectively, which in any way conflicts with the provisions of this Agreement. Any such agreement or document shall be null and void. Any such agreement or document may not be placed in an employee's file or used by the Employer as a basis for discipline or used in connection with any disciplinary proceeding, nor may any such agreement or document nor the contents thereof be divulged to any person or entity.”

The Company’s hiring of employees contingent on individuals meeting certain conditions of employment (not provided for in the CBA) is clearly individual bargaining. Such agreements are prohibited. These

agreements are in conflict with the CBA in several obvious ways. Such a prohibition on individual agreements preserves the fundamental nature of exclusive representation and collective bargaining.

Next, Article 31 reads:

**“EMPLOYEES NOT REQUIRED TO BUY OR LEASE
EQUIPMENT”**

“The Employer shall not require, as a condition of continued employment, that an Employee shall purchase any truck, tractor, trailer, or vehicular equipment or that an Employee purchase or acquire any proprietary or other interest or obligation in the business.”

Clearly, PVDs were required to provide a vehicle meeting the Company’s specifications. While the requirements did not require title or ownership of a vehicle, the practical, rather than hyper technical, effect for purposes of the job and the CBA is the same.

In regard to Article 3 Section 6 and Article 31, the prior use and mileage reimbursement of personal vehicles cannot stand these provisions on their head. This was relatively infrequent and merely incidental. Nor does Article 46.1.h and 1.i. hold any sway here as it relates strictly to air-exception drivers. If anything it suggests that if the use of personal vehicles and mileage reimbursement were widely contemplated by the Parties in negotiating the CBA, there would be no need for Article 46 1.h and 1.i or even Article 31 for that matter.

There were a number of defenses offered by the Company that did not overcome the prima facie case made by the Union. For example, the Company relied on a clause buried in the bowels of the seniority provisions of Article 8 titled "Full Time Seniority." Typically, a broad and expansive expression of management rights would appear as a stand-alone provision. The specific language on which the Company relies is found in Article 8 Section 5 which is titled "Posting New Permanent Jobs or Permanent Vacancies". Section 5 has three enumerated subsections A through C. Further, Subsection C has fourteen further unenumerated subdivisions but only one paragraph mentions employer rights. It is in this context (the discrete subject of posting and filling of vacancies) that the following paragraph is found:

"None of the foregoing provisions shall be understood or interpreted as placing any restrictions whatsoever on the Employer's unrestricted right to eliminate jobs, or to make any changes it wishes in the size, content or scope, direction, coverage, . . . of any jobs or the equipment used thereon."

In context, the unilateral creation and determination of wages, hours and other conditions of employment for personal vehicle drivers is not supported. The Company's actions in this case did not involve the posting of a typical vacancy in a typically recognized position or any sort of permanent vacancy or change or transfer to. Moreover, if this paragraph was to be read as broadly as the employer would like, it would nullify render meaningless several other provisions.

Similarly, the first enumerated subsection of the “Competition” section of Article 13 “Transfer of Company Title or Interest” has no relevance to this dispute. It reads (coupled with the preamble):

The Union recognizes that the Employer is in direct competition with the United States Parcel Post and other firms engaging in the distribution of express letter, parcel express, parcel delivery, and freight, both air and surface. In order to meet competition and thereby protect and, if possible, increase the number of bargaining unit jobs, it is agreed that any provision in this contract to the contrary notwithstanding, the Employer:

1).May use substitute means of transportation (such as airplane, helicopter, ship, or T.O.F.C.) in its operations. Provided, however that no driver in the employ of the Employer as of August 1, 2002 will be laid off as a result of T.O.F.C.

The “such as” categories there have nothing in common with personal vehicles to deliver individual packages to end-point addressees. All the examples in this paragraph are bulk methods of intermediate or origin shipping. This point is made by a side-by-side visual of a Dodge minivan sitting next to a seaworthy ship or a freight airplane or a rail trailer on a flat car (T.O.F.C.).

The Employer also tried to make hay out of the fact the Union proposed changes in the CBA during 2018 negotiations for a successor to the CBA under which the instant grievance(s) were filed which was the 2013-2018 contract. Since the grievances were filed in 2017, any contract bargaining subsequent to that hardly carries much weight.

The Arbitrator, before turning to the NLRB issues, should comment on the Union's past practice arguments regarding the ability of part-time employees to bid on PVD jobs. Given the findings above, any alleged practice concerning seniority as related to seasonal positions does not carry over to the new and unique PVD position. The Union's interest and objectives in this regard need to be addressed in bargaining.

Last, regarding the National Labor Relations Act/ NLRB issues it is clear that the Company's actions were inconsistent with the labor contract and involved mandatory subjects of bargaining. Consequently, the Company, absent a valid defense, violated Section 8 (a) (1) and (5) when it made material, substantial, and significant changes regarding mandatory subjects of bargaining without first providing the Union notice and a meaningful opportunity to bargain about the change to agreement or impasse.

As a remedy, it should be clear the Company cannot repeat the PVD program without bargaining changes to the aforementioned contract provisions. In the event all other conditions of employment are agreed to, except a wage rate, a resolution should be pursued consistent with Article 3.6 paragraph 2 which reads:

In the event agreement cannot be reached within sixty (60) days after the date such equipment is put into use, the matter may be submitted to the Grievance Committee for final disposition. Rates agreed upon or awarded shall be effective as of the date equipment is put to use.

The Company is also ordered to provide the Union with complete information as to its employment of PVDs hired for the 2017 peak season as required by Article 2, Section 1 and provide the Union with information as to the employer's satisfaction of its obligations under Article 2 Section 3 and 6 as well as making the Union whole in the event there wasn't full compliance.

AWARD

The grievance is sustained to the extent indicated in the opinion.

A handwritten signature in black ink, appearing to read "Gil Vernon", is written over a horizontal line. The signature is stylized and cursive.

Gil Vernon, Arbitrator

Dated this 30th day of August 2022

