

**ARBITRATION
IN THE MATTER OF**

United Parcel Service Company,]	
]	
Employer,]	Grievance re: Discontinued Award and Gift Benefits
]	
<i>and</i>]	
]	
International Brotherhood of Teamsters, Local No. 2727,]	Grievance No. 2009-742
]	
Union.]	
]	

**BEFORE THE SYSTEM BOARD OF ADJUSTMENT
PATRICK HARDIN, NEUTRAL CHAIRMAN**

WARREN NEVILLE, MEMBER – UPS
TOM BAGGETT, MEMBER – UPS
BOB COMBINE, MEMBER – LOCAL 2727
AL GOMEZ, MEMBER – LOCAL 2727

APPEARANCES

For the Employer: David L. Hoskins
 Attorney

For the Union: William R. Wilder
 Attorney

PROCEEDINGS

This matter came on for hearing before the System Board of Adjustment on April 28, 2010, at Louisville, Kentucky, pursuant to the Agreement between the parties and the provisions of the Railway Labor Act. The parties appeared as shown above and were afforded full opportunity to summon and examine witnesses and to present evidence and argument. A court reporter was in attendance. The transcript prepared by the reporter, together with the exhibits admitted into evidence, constitutes the record of the proceeding. At the conclusion of the

hearing, the parties agreed to waive closing argument and file post-hearing briefs. The Board took the matter under consideration on June 28, 2010, upon receiving the briefs of the parties.

ISSUE SUBMITTED

The parties agree, at least tacitly, that the issue submitted for resolution by the Board is: Did the Company violate Article 1, Section 3.d., of the Agreement between the Parties by discontinuing its annual safety and length of service award programs and its annual distribution of holiday season turkeys? If so, what is the proper remedy?

RELEVANT CONTRACT PROVISIONS

ARTICLE 1

SCOPE, PURPOSE AND STATUS OF AGREEMENT

* * *

Section 3 – Status of Agreement

* * *

d. It is understood that all perquisites and benefits currently afforded employees such as tuition reimbursement, matching donations to charitable organizations, etc., shall continue through the duration of this Agreement

FACTS

The Employer, United Parcel Service Company (the Company), is the air transport services arm of parent United Parcel Service, Inc., which provides freight and package transportation services and logistical services world-wide. International Brotherhood of Teamsters, Local 2727, (the Union) represents aircraft maintenance craft employees and allied employees of the Company.

For many years parent UPS, Inc., gave each employee, including those represented by unions, a frozen turkey as a holiday gift. When the (new) Company began air operations in the late 1980s, the practice was extended to all of the Company's employees, including those represented by Local 2727. During the 1990s, the gifts of the frozen turkeys was discontinued in favor of distribution of gift certificates redeemable for a frozen turkey. The new Company also

adopted from the parent the practices of (a) distributing annual award gifts to employees based on their safety record for the year and (b) distributing length-of-service award gifts to employees at five-year intervals commencing upon an employee's completion of 20 years of service.

In 2009, responding to the economic recession, both the Company and its parent UPS, Inc., announced that they would discontinue the holiday turkey gifts, the annual safety award gifts and the length-of-service award gifts. The Union's Executive Board filed this grievance on July 17, 2009, to contest the Company's discontinuance of those awards or gifts. The grievance claimed violations of Article 1, Section 3.d. (above), a provision added to the Agreement at the Union's behest during the most recent round of negotiations. The parties were unable to compose their differences in the grievance process and placed the dispute before the System Board for resolution as provided by the Agreement and applicable law.

POSITION OF LOCAL 2727

The language of Article 1, Section 3.d., is short and plain. It obligates the Company to continue for the duration of the Agreement "all perquisites and benefits currently afforded employees" The phrase "all perquisites and benefits" is all-encompassing and easily includes noncash compensation to employees in the form of holiday turkeys and of articles of value accompanying length-of-service awards and safety awards. The Company's argument that the phrase is limited by the itemization of two forms of cash compensation – tuition refunds and charitable gift-matching – is contrary to the language of Section 3.d., which explicitly makes those items illustrative only, by the use of the words "such as . . . etc., . . ." The Board should sustain the grievance and direct the Company to reinstate the discontinued "perquisites and benefits" and to make whole the employees adversely affected by the suspension of those benefits.

POSITION OF THE COMPANY

The Union, which has the burden of proof, has correctly characterized the discontinued practices as "gifts, prizes or awards." Section 3.d. does not expressly address "gifts, prizes or awards" and the question of interpretation raised by that omission is whether, as the Union

insists, the phrase “perquisites and benefits” as used in the section must be read to include those items. That question of interpretation must be resolved in the light of the fact that “perquisites and benefits” is immediately modified by the words “such as tuition reimbursement, matching donations . . . etc., . . .” The parties’ identification of two specific “perquisites and benefits” strongly suggests the limitation intended: other programs that employees may opt into, such as the employee assistance program. That reading of the language should be preferred because the Union drafted and proposed the language and any ambiguity should be resolved against the drafter. The Board should deny the grievance.

ANALYSIS AND CONCLUSIONS

1. The language of Article 1, Section 3.d., of the Agreement is in three parts. First is the base description clause that describes the terms or conditions of employment that must be continued. The base description clause is framed in boldly inclusive terms: “*all* perquisites and benefits currently afforded employees . . .” (Emphasis added.) Second is the modifying “such as” clause: “such as tuition reimbursement, matching donations to charitable organizations, etc.,” Third is the command clause: “shall continue through the duration of this Agreement.” The dispute in this proceeding concerns the interaction of the base description clause and the modifying “such as” clause.

The language of the Section provides something of a puzzle. It is true, as the Union contends, that the base description clause, if given its apparent meaning, leads to a resolution of the grievance in favor of the Union. Yet it is also true, as the Company contends, that the modifying “such as” clause — *can* be read as an implied restriction on the sweeping inclusiveness of the base description clause if one applies the familiar rule that the expression of one thing excludes other things not expressed. If the modifying “such as” clause is given that reading, the base description would best be rendered as: “perquisites and benefits such as tuition reimbursement, . . . etc., *and all other perquisites and benefits that are like tuition reimbursement, . . . etc.,*” with the italicized words making explicit the limitation that the “such as” clause may be read to imply. The question before the Panel is whether that implied restriction should be imposed upon the base description.

2. The panel concludes that the boldly inclusive terms of the base description – “all perquisites and benefits currently afforded” – accurately describe the intent of the parties to require the continuation of all existing benefits, including non-cash compensation such as holiday turkeys and safety and longevity prizes. The panel rejects the contention of the Company that the implied restriction of the “such as” clause should be read to diminish the reach of the base description. It follows that the grievance must be sustained.

a. First, the implied restriction is in conflict with the language used by the parties. The base description is “all perquisites and benefits” *All* is a powerful word of inclusion. Because of the conjunctive “and” *all* modifies both *perquisites* and *benefits*, so that the sentence must be read as saying “all perquisites and all benefits currently afforded” In addition, in the employment contract setting, *perquisites* and *benefits* are also powerful words of inclusion. In their briefs, both parties quoted the definition of “perquisites” from Black’s Law Dictionary: “Emoluments, privileges, fringe benefits, or other incidental profits or benefits attaching to an office or employment position in addition to regular salary or wages.” The Union added the definition from *The American Heritage College Dictionary*: “1. A payment or profit received in addition to regular wage or salary, esp. a benefit expected as one’s due 2. A tip; a gratuity” Only with some difficulty can an even more encompassing, yet still suitably brief, phrasing of the base description be imagined.

b. Second, while the “such as” clause *can* be read as an implied limitation of the base description, that clause is equally, or even more, susceptible to an alternate reading that imposes no such limitation. In that alternate reading, the two items in the “such as” clause are simply illustrative of the many “perquisites and benefits” swept within the Section by the modifier “all.” That reading is supported by the inclusion of the concluding “etc.,” to indicate that additional, but unspecified, items are included also. This alternate, illustrative, reading subordinates the “such as” clause to the primacy of the base description: “*all perquisites and benefits*” By contrast, the Company’s implied limitation

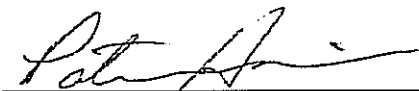
reading treats the section as if the parties had omitted the word “all” from the base description so that it provided: “It is understood that perquisites and benefits currently afforded employees such as tuition reimbursement . . . etc.,” An interpretation that effectively deletes the word “all” from Section 3.d. is not and could not be true to the language of the Agreement or to the intent of the parties as expressed in that language.

3. The Company submitted with its brief citations to several arbitral awards in which an employer’s unilateral termination of a gift or gratuity, including a holiday turkey, *Proform, Inc.*, 67 LA 493 (Render, 1976), have been ruled not to violate a collective agreement, or alternately, not to be a unilateral modification of employment terms about which bargaining with the Union was required. It is enough to say, in the view of the Panel, that those prior awards did not involve the interpretation and application of a “maintenance of benefits” provision like or similar to Article 1, Section 3.d. of the Agreement between the parties.

In the *Proform* Award, for example, the issue was whether the gift of a holiday turkey had become an established past practice under a contract that was not only silent as to that gift practice but also did not impose any generalized duty on the employer to maintain pre-existing terms, conditions or benefits of employment. Relying on the absence from the agreement of any such contractual obligations and on the presence of a sweeping management’s rights clause, as well as evidence showing that the employer had not expensed the holiday turkeys, Arbitrator Render concluded that the holiday turkey was a gift the discontinuance of which did not violate the agreement. In this case, by contrast, there is an expansive “maintenance of benefits” provision – Article 1, Section 3.d. – and that provision, however interpreted and applied, entirely controls the outcome of this proceeding.

AWARD

The grievance is sustained. The Company is directed to reinstate and maintain in effect for the duration of the Agreement the holiday turkey benefit, the annual safety benefit and the length-of-service benefit, and to make whole those employees adversely affected by the discontinuance of those benefits.



Patrick Hardin, Neutral Chair
Knoxville, Tennessee
Date: August 21, 2010

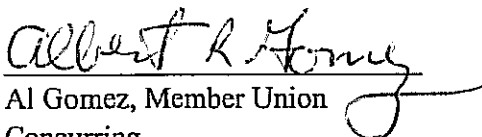


Bob Combine, Member Union
Concurring
Date: 8/25/10

Warren Neville, Member Company

Dissenting

Date: _____



Al Gomez, Member Union
Concurring
Date: 8-25-10

Tom Baggett, Member Company

Dissenting

Date: _____