

BEFORE THE ARBITRATOR

- - - - -
In the Matter of the Arbitration :
of a Dispute Between :
ANTIGO CITY EMPLOYEES UNION, :
LOCAL 1192, AFSCME, AFL-CIO : Case 52
and : No. 41824
CITY OF ANTIGO (STREET DEPARTMENT) : MA-5475
- - - - -

Appearances:

Mr. Steve Hartmann, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 7041 Indian Lake Road, P.O. Box 676, Rhinelander, Wisconsin 54501, appearing on behalf of the Union.
Mulcahy & Wherry, S.C., Attorneys at Law, P.O. Box 1004, Wausau, Wisconsin 54401-1004, by Mr. Ronald J. Rutlin, appearing on behalf of the City.

ARBITRATION AWARD

The above-captioned parties, herein the Union and the City, are signatories to a collective bargaining agreement providing for final and binding arbitration. Pursuant to the parties' request for the appointment of an arbitrator, the Wisconsin Employment Relations Commission appointed Jane B. Buffett, a member of its staff, to hear and decide a dispute regarding the interpretation and application of the agreement. Hearing was held in Antigo, Wisconsin on April 21, 1989. The hearing was transcribed, and the transcript was received June 2, 1989. The parties filed briefs, the last of which was received July 10, 1989.

ISSUE

The parties stipulated to the following issue:

Did the City violate the collective bargaining agreement when the Grievant was not selected to fill the position of meter reader and general laborer in the Water Department in December, 1988?

The parties further stipulated that if a contract violation is found, the appropriate remedy would be the award of the position to the Grievant and the award should be back-dated to the day when the successful bidder was awarded the position.

BACKGROUND

The City operates a Water Department in which water meters must be read four times a year. Each quarterly reading requires two meter readers to work for two or three weeks. Meter reading, totaling eight to twelve weeks a year, is probably the largest single task of the meter reader position. After both former meter readers retired in January, 1987, the City only hired one employe for meter reading. To complete the meter reading, an employe from the Streets Department was temporarily assigned to the Water Department. According to longstanding practice, the least senior employe in the Streets Department would receive this temporary assignment. For the five quarters preceding the posting involved in this case, employe Tom Falk read meters on a temporary assignment.

In early winter, 1988, the City posted the notice of a job opening in its Water Department. By December 9, the signing deadline, three employes had applied for the position: Grievant Kleo Landowski, (a four-and-a-half year employe), Tom Falk, (a one-and-a-half year employe) and Walter Woiten. (Woiten

subsequently withdrew his request.) On December 14, the City awarded the position to Falk, having determined he was more qualified than the Grievant, primarily because of his familiarity with meter reading. The Union challenged the City's selection through the grievance procedure and that challenge is the subject of this award.

RELEVANT COLLECTIVE BARGAINING AGREEMENT PROVISIONS

. . .

ARTICLE 8 - JOB POSTING

A) Posting Procedures:

. . .

Selection of the applicant to fill the vacated or new position shall be based on seniority and qualifications to handle the work. Qualifications being equal, seniority shall prevail.

. . .

POSITIONS OF THE PARTIES

The Union

The Union argues that the contract language refers to "qualifications to handle the work", not experience to handle the work. It discredits Public Works Director Peter Kachel's testimony that it takes two weeks to learn how to read meters, pointing to Kachel's admission that he had no personal knowledge of how long it took to learn how to read the meters, and it emphasizes the testimony of three other witnesses that it takes 15 minutes to learn. The Union argues Kachel's decision to award the position to Falk over the Grievant was arbitrary and capricious since Kachel had not considered the Grievant's ability to use a back hoe. Finally, the Union alleges the City's interpretation would allow it to determine who gets transfers and promotions by assigning positions on a temporary basis prior to a posting to allow the preferred candidate to acquire the relevant experience.

The City

The City insists its determination that Falk was more qualified than the Grievant cannot be disturbed by the arbitrator unless it is arbitrary, capricious or discriminatory, and it argues the burden of such proof is on the Union. It argues Falk's prior experience and the opinion of the supervisor are legitimate bases for the City's determination, and it is clear that Falk was far better qualified than the Grievant since he had worked in the Water Department more than five times as much as the Grievant had in 1987 and 1988 and it argues Falk was considered to have better work habits than the Grievant. As to the Union's allegation that the City's actions subverted the posting procedure, the City notes that the Grievant never requested a temporary transfer to the Water Department and that he himself testified that he did not believe the City had transferred Falk to the Water Department in order to subvert the contract's seniority provision. In its last argument, the City asserts Article 8, Section B which provides for a trial period, does not require the City to give all bidders a trial period.

The City supports all its arguments with many quotations from arbitration awards involving parties other than this Employer and this Union.

DISCUSSION

Since the collective bargaining agreement clearly entitles the senior employe, the Grievant, to the position of meter reader if his qualifications are equal to those of Tom Falk, successful bidder, the undersigned must determine whether the City had a reasonable basis upon which to conclude that the Grievant and Falk were not equally qualified and that Falk had superior qualifications to those of the Grievant. If such a reasonable basis exists, the City's award of the position to Falk would have to be sustained.

Public Works Director Peter Kachel's January 4, 1989 letter to the Grievant responding to this grievance cited the successful bidder's previous experience in the Water Department. In pertinent part, that letter stated:

Dear Kleo;

I have reviewed your grievance involving the Water Department laborer job posting. The Union Contract Article 8, Section A states that if job qualifications are the same, then seniority shall

prevail. Tom Falk has spent a considerable amount of time working in the Water Department including reading meters (5 quarters), shop maintenance and water meter maintenance. He also has been involved with lime unloading, plant cleaning and the cleaning of the filter beds. Based on what he has done at the Water Department in the past is what my decision is based on. Seniority was not considered because of Falk's qualifications.

Therefore, I do not feel that I violated Article 8, Section A of the Union Contract.

Signed,

Peter A. Kachel /s/

Peter A. Kachel, P.E.
Director of Public Works

At the hearing, Kachel testified that the most important of these experiences was the meter reading, since the City would not have to train Falk. The City's reliance on Falk's experience when it reached the determination that he is more qualified than Grievant is, however, misplaced. Falk's greater experience than the Grievant's did not make Falk more qualified than the Grievant, for experience and qualifications are not the same thing. Experience is the active participation in events, as in this case, the work of the Water Department, whereas qualifications are those abilities and characteristics that suit a person to a certain task. In this situation there is no showing that experience endows the employe with any more fitness to perform the task than any other employe would possess after the brief training period.

The conclusion that experience does not add to an employe's fitness to perform the tasks involved in the meter reading position is supported by the brevity of the training period. Vernon Berger, lead worker in the Water Department, testified that when an employe reads meters for the first time, he first accompanies an experienced reader whom he watches during the morning. In the afternoon, the new employe reads and records the readings while the experienced reader watches him. After that, the new reader works by himself. City Director of Public Works Peter Kachel testified that it takes the entire reading period, referred to variously as two, three or four weeks long, to learn the job. The testimony of these two witnesses is not in conflict, however, because Berger, was referring to the length of time when the new reader must be accompanied by the experienced reader, whereas Kachel was referring to the length of time it takes to read, at least once, every meter on the reader's route. I conclude that while familiarity with the meter locations, gained by reading every meter, is useful, the training time is most appropriately defined as the time the new reader must be taught the procedures by another reader, the time before the new reader can work on his own. The training time is, therefore, one day. Given the simplicity of training for this job, the fact that Falk was previously trained through his earlier experience is not a sufficient basis for finding that Falk was more qualified than the Grievant.

In defending its decision, the City also pointed to the length of time Falk had spent in other tasks in the Water Department, but it did not contend that the Grievant, who had been employed by the City as a laborer for four-and-a-half years and who had even performed some of the Water Department tasks, would be incapable of performing the other Water Department tasks. 1/

Since the City has not demonstrated the existence of any reasonable basis for its determination that Falk was more qualified than the Grievant, it violated the collective bargaining agreement when it failed to award the position to the most senior bidder, the Grievant.

In light of the record and the above discussion, this arbitrator issues the following

AWARD

1. The City violated the collective bargaining agreement when the Grievant was not selected to fill the position of meter reader and general laborer in the Water Department in December, 1988.

2. The City shall award the position of meter reader and general laborer in the Water Department to the Grievant, and the position award shall be back-dated to the date when employe Falk had been awarded the position.

Dated at Madison, Wisconsin this 5th day of September, 1989.

By _____
Jane B. Buffett, Arbitrator

1/ At the hearing Kachel testified that Falk had slightly better work habits and was, therefore, better able to work independently, but he also testified that his conclusion that Falk was more qualified had not been based on that factor. Consequently, it is not appropriate for the undersigned to consider work habits.