

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

CITY OF KAUKAUNA (UTILITY COMMISSION)

and

LOCAL 2150, INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS

Case 51
No. 42311
MA-5653

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by Marianne Goldstein Robbins, for the Union.

Bruce K. Patterson, Employment Relations Consultant, for the City.

ARBITRATION AWARD

Local 2150, International Brotherhood of Electrical Workers, herein the Union, and the City of Kaukauna (Utility Commission), herein the City, requested the Wisconsin Employment Relations Commission to designate Douglas V. Knudson as an arbitrator to hear and resolve a dispute. The undersigned was so designated. The parties waived the contractual arbitration board and agreed that the undersigned would be the sole arbitrator. Hearing was held in Kaukauna, Wisconsin on August 28, 1989. A transcript of the hearing was received on September 12, 1989. The parties completed the filing of post-hearing briefs on November 6, 1989.

ISSUE

The parties stipulated to the following issue:

Did the City violate the parties' collective bargaining agreement when it refused to award the position of system operator to the senior applicant, grievant Carl Vanden Heuvel, and instead selected junior applicant Greg Diedrich? If so, what is the appropriate remedy?

BACKGROUND

On January 11, 1989, 1/ the City was informed that one of the system operators was planning to retire in February of 1990. The City posted a position of relief system operator for bids. The Union objected to said posting because the vacancy would be for a system operator. The City removed the posting for a relief system operator and posted a system operator position for bids.

In a letter, dated January 24, the City informed the Union of the posting for the position of system operator. Enclosed with the letter was a job description for the system operator position dated January 17. The City had no discussion or consultation with the Union about said job description prior to January 24. The previous job description for the position of system operator was adopted on April 24, 1980.

Both job descriptions contained generally similar descriptions of the duties of the system operator, although the 1989 description was more detailed and extensive. Those duties included preparing load estimates, monitoring and controlling the system load and the generating of power, purchasing electrical power, dealing with scheduled and unscheduled interruptions of both electrical and water systems, and maintaining logs and reports. However, the two job descriptions differed in the section on experience and training. The 1980 description contained the following section:

Desirable Experience and Training

Considerable experience, including experience in a supervisory capacity in the operation and maintenance of an electric & water utility with background and knowledge in various forms of generating capacity. Graduation from a standard high school or trade school with special emphasis in science and mathematics or any equivalent combination of experience and training on a higher level.

The 1989 description contained the following section:

NECESSARY EXPERIENCE AND TRAINING

Must have completed an acceptable training period for a System Operator.

Must have been trained to synchronize generating units.

Must have experience in the use of computerized control equipment involving electrical and water system.

1/ Unless otherwise specified, all other dates herein refer to 1989.

Must have experience in the operation of water distribution system.

Must be a high school graduate or possess an equivalent combination of training and skills.

Must be able to direct other employees to successfully meet the objectives of system operations.

Several employees bid on the position of system operator. Three of the bidders were employed in the Operating Department in which the position was located. Those employees, their dates of hire by the City, and their job title at the time of the posting were: Carl Vanden Heuvel, Power Plant Maintenance Man, 9-10-68; Ken Arps, Assistant Power Plant Maintenance Man, 10-20-69; and Greg Diedrich, Relief System Operator, 2-22-71.

The City selected Diedrich to fill the position of system operator. Then the City posted a position of relief system operator and selected Vanden Heuvel to fill that position.

Vanden Heuvel has been receiving full-time, on-the-job training as a system operator and is making very satisfactory progress in the training program. It is anticipated that by February of 1990 he will be fully trained to perform all of the functions of a system operator and thereafter he will spend between 60 and 70 percent of his time as a system operator. Many of the shifts worked by the relief system operator are at times, e.g., evenings and summer, when storm related problems occur. The relief operator does not have a regular shift. During his training period, Vanden Heuvel receives a lower wage rate than the rate received by system operators and power plant maintenance employees.

RELEVANT CONTRACTUAL PROVISIONS

ARTICLE I

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Sec. 5 The rights, in accordance with the provisions of this Agreement to employ, promote, demote, discipline, and discharge employees, and the management of the property are reserved by and shall be vested exclusively in the Utility management. It is agreed, however, that promotions shall be based on seniority, ability and qualifications: Ability and qualifications being sufficient, seniority shall prevail.

Sec. 6 When a vacancy occurs within the classifications covered by this Agreement, such vacancy shall be posted by bulletin for written bids at places accessible to all employees for a period of at least

three (3) days. Such notices shall also be sent to the Secretary of the Union. Employees of the Utility shall in this way be acquainted with and be given an opportunity to apply for the position; and, of the employees applying for the position the one who has the longest service in the occupational group* shall be given preference for the position, providing his ability and qualifications are sufficient. Utility employees will be given an opportunity to fill vacancies or new positions and the order in which any job shall be filled in this unit will be as follows:

1. First consideration shall be given to the most senior employee in the occupational group and continue through the group until an applicant with sufficient ability and qualifications is selected. In the case where no qualified applicant is selected the following procedure shall be followed.
2. Applicants from the unit in order of their seniority.
3. New employees hired from outside of the unit.

Employees will be given a fair and reasonable opportunity to demonstrate their qualifications and ability to fill such vacancies or positions before new or outside help is hired. For the convenience of the Utility Commission, temporary assignments may be made until bids are received and permanent assignments are made. An employee shall not be required to exercise his seniority in connection with any such promotion or vacancy and shall not sacrifice any future rights to bid on promotions or vacancies through failure to do so.

*Definition of occupational group is understood to mean a group of occupations which as a whole represent the total number of occupations necessary to perform a complete given work function. Example would be, occupational group "overhead" which would include Line General Foreman, Lead Lineman, Journeyman Lineman, Apprentice Lineman, Line Department Utilityman.

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POSITION OF THE UNION

The City violated the contract by awarding the position of system operator to Diedrich, who has less seniority than Vanden Heuvel. The contract contains a sufficient ability seniority clause. Such a clause provides the strictest preference for seniority of all types of modified seniority clauses. A comparison of applicants is not appropriate under a sufficient ability clause. The senior applicant must be selected, provided he has sufficient ability. Vanden Heuvel has sufficient ability and qualifications. During his 21 years of employment with the City, he has gained relevant knowledge and experience which will reduce his training period for the relief operator position from 4 or 5 years to 9 months. Once he is trained, he will perform all the duties of a system operator under possibly more arduous conditions than the other system operators on regular shifts.

The new job description was not formulated in accordance with the procedures established by the parties' letter of intent dated April 16, 1985. The job description remained unchanged after the 1985-86 review. Neither did the Union have an opportunity for input in the new descriptions.

There is no evidence of any change in the job of the system operator since the installation of the SCADA system was completed in 1984. Additionally, the primary change in experience in the job descriptions results in a requirement that the successful applicant already has performed the job of system operator. Consequently, only Diedrich could meet that requirement.

The reason for posting the position a year in advance of the retirement was to provide an adequate training period for the replacement. However, the City rated the applicants on their current abilities, rather than their ability to learn. In February of 1990, both Vanden Heuvel and Diedrich will be performing as system operators, but Diedrich, the junior employe, will have the preferred work schedule.

POSITION OF THE CITY

Faced with a need to fill the demanding position of system operator, the City developed an orderly procedure, consistent with the provisions of Article I, to meet that need. Each applicant was ranked on the basis of the job requirements consistent with the sufficient ability language of Article I, Section 6.

The City did meet the contractual requirement to give first consideration to the senior applicant, while analyzing the ability and qualifications of the applicants. Further, Vanden Heuvel's job title and testimony, relative to his lack of job knowledge, support the City's selection of Diedrich.

The City approached the need to fill a significant position in a systematic manner. It analyzed the tasks of the position, updated the job description, posted the position, reviewed the applicant's skills, knowledge and abilities as they related to the job description, and selected an existing employe with significant (18 years) experience in the occupational group.

The City requests a dismissal of the grievance.

DISCUSSION

The Union accurately argues that the contractual seniority clause contains a sufficient ability standard, and, that such a clause requires the City to select the applicant with the longest service in the occupational group in which the vacancy is located, if that applicant's ability and qualifications are sufficient to perform the job. If the senior employe has sufficient ability and qualifications to do the job, the City can not select a junior employe who is more qualified. Therefore, the issue to be resolved herein is whether Vanden Heuvel, as the senior applicant, had ability and qualifications sufficient to perform the duties of a system operator, rather than the issue of whether the junior applicant, Diedrich, who had been the relief system operator, was more qualified. It should be noted that there is no dispute over the fact that Diedrich had sufficient ability and qualifications to perform the job of system operator.

Vanden Heuvel is currently receiving on the job training as a system operator with the expectation that by February of 1990 he will be capable of fully functioning as the relief system operator. The record provides no basis to conclude that Vanden Heuvel would have been capable of performing as a system operator without such training. Neither does the Union make such a claim. Rather, the Union argues that, based on Vanden Heuvel's work history with the City, he had sufficient ability to be trained to perform as a system operator by the time the position of system operator becomes vacant in February of 1990, so that he then will be capable of fully functioning in the same job as Diedrich now holds. Since there was no immediate need for a fully trained system operator, the Union believes Vanden Heuvel possessed the required sufficient ability and qualifications for the position of system operator.

There is a major difference between a trial period and a training period. The purpose of a training period is to provide an employe with the ability to perform the job, whereas the purpose of a trial period is to give an employe an opportunity to demonstrate possession of the ability to do the job. A trial period is not a training period.

In the instant matter, it is clear, and Vanden Heuvel admits, that he would not have qualified for the position of system operator during a trial period without extensive training. The contract does not provide for a training period. Although the City may have provided training periods to senior employes in previous job postings, that fact does not require the City to train the senior bidder for all subsequent vacancies. The imposition of such a requirement by the arbitrator would be unreasonable, when the contract does not contain such a requirement. While the City may have had enough lead time in the instant situation to provide the necessary training for Vanden Heuvel, there is no certainty that adequate lead time would be available for all future

vacancies. Neither does the lead time justify the requirement of a training period when such is not provided for by the contract.

The undersigned concludes that the City did not violate the contract when it filled the vacancy for a system operator with a junior employe with sufficient ability and qualifications to perform the job, rather than with a senior employe without sufficient ability and qualifications to perform the job, even though the senior employe was capable of being trained to perform the job.

There is no claim that any of the bidders for the position of relief system operator possessed sufficient ability and qualifications to perform said job without training. Thus, the City's decision to train the senior bidder for said position is not inconsistent with the City's refusal to train the senior bidder for the position of system operator.

Vanden Heuvel indeed may be working under less desirable circumstances as a relief system operator than he would have had as a system operator. However, Diedrich endured the same circumstances while working as a relief operator.

In reaching a decision in this matter the undersigned has not found it necessary to reach a conclusion about whether the revised job description for the position of system operator is valid.

Based on the foregoing and the record as a whole, the undersigned enters the following

AWARD

That the City did not violate the parties' collective bargaining agreement when it refused to award the position of system operator to the senior applicant, grievant Carl Vanden Heuvel, and instead selected junior applicant Greg Diedrich; and, that the grievance is denied and dismissed.

Dated at Madison, Wisconsin this 3rd day of January, 1990.

By Douglas V. Knudson /s/
Douglas V. Knudson, Arbitrator