BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between BROWN COUNTY DEPARTMENT OF SOCIAL SERVICES PARAPROFESSIONAL EMPLOYEES and BROWN COUNTY (DEPARTMENT OF SOCIAL SERVICES)	Grievance of Beverly Weyenberg Dated 8-18-90 Case 443 No. 44718 MA-6396

Appearances:

Ms. Lise Lotte Gammeltoft, Zuidmulder, Appel & Gammeltoft, 345 South Adam Street, Green Bay, Wisconsin, appearing on behalf of the Union.

Mr. John Jacques, Assistant Corporation Counsel, Northern Building, PO Box 1600, Green Bay, WI 54305, appearing on behalf of the County.

ARBITRATION AWARD

The Wisconsin Employment Relations Commission designated the undersigned Arbitrator to hear and determine a dispute concerning the above-noted grievance arising under the parties' collective bargaining agreement (herein Agreement).

The parties presented their evidence and arguments to the Arbitrator at a hearing held at the offices of the Brown County Department of Social Services in Green Bay, Wisconsin on January 22, 1991. The parties presented their closing arguments on the record. The hearing was transcribed. The Arbitrator received a copy of the transcript on February 5, 1991, marking the close of the record.

ISSUES

At the hearing, the parties agreed that the issues for determination by the Arbitrator are as follows:

1. Did the Employer violate Article 23 of the parties' 1989-1990 collective bargaining agreement by the nature of the posting and related testing referred to in the grievance?

2. If so, what shall the remedy be?

PERTINENT PORTIONS OF THE AGREEMENT

ARTICLE 23. JOB POSTING

All new jobs and vacancies shall be posted on the bulletin board immediately. Said bulletin shall remain posted at least four working days, but not more than five (5) work days before operation begins. Said posting shall indicate the date that the new job or vacancy will become effective and will specifically list qualifications the Employer is seeking in the posted job and if testing will be required of the applicant. Employees desiring such posted job shall sign posted notice. Employees older in seniority shall have preference on all jobs, provided that the employee meets the qualifications required for the job. When seniority is not recognized, tile senior employee affected may file a grievance with the Association officials who will then meet with the Employer to review the case. Temporary jobs of ninety (90) days or more, excluding temporary jobs resulting from pregnancy, shall be posted on a temporary basis not later than five (5) work days after vacancy occurs and such employee who receives such temporary job shall work on such jobs until the regular employee holding such job comes back to work and then the employee who was on temporary job shall be reinstated back to the job he formerly held. If the temporary job is at a classification higher than the employee's regular job, the temporary employee will be paid at the higher wage rate for the length of the opening.

Employees shall be informed of management's decision within ten (10) work days of the posting expiration date in the absence of a testing requirement. All bid jobs shall be filled and the applicable rate shall apply immediately. However, the applicable rate will be paid retroactively after the trial period. Employees who receive a posted job shall be considered on trial for a period of twenty (20) work days. In the event an employee does not desire to retain the job in a ten (10) work day period, he/she shall have the right of returning to his/her former job within ten (1 0) work days after so notifying his/her supervisor. If during the trial period the employer determines that the employee is not qualified for the job, the employee shall have the right to return to his/her former job.

The employer is to provide a designated union representative a signed copy of each job posting within five (5) work days of the

date that the posting is taken down. [emphasis added]

FACTUAL BACKGROUND

The subject grievance asserts the following:

> REASON FOR GRIEVANCE: (State in Detail) Employee feels employer is in violation of Article 23, Job Posting. The job posting stated that interested applicants would be required to take a typing test and pass a 50 words per minute test. The posting did not specify the typing test would be administered on a personal computer rather than a standard electric typewriter. Employee feels the wording of the posting in reference to a typing test was misleading and, therefore, unfair to anyone taking the test who did not have a personal computer or data entry background.
>
> SPECIFIC ADJUSTMENT REQUESTED: Employee wishes to have an opportunity to take another typing test on a standard typewriter.

The job posting referred to in the grievance was for a Social Services Aide 11 position and was dated August 20, 1990. A copy of that posting is attached as an Appendix to this Award. It included among the Duties and Responsibilities of the position:

> -Perform other miscellaneous duties as assigned by the supervisor, including but not limited to: filing of Intake case records, xeroxing case materials, data entry of biographical/statistical/content information from case records onto a child welfare computer data base (being developed at this time), and brief "emergency" typing.

In addition, it called for:

> -Familiarity with office machines, including transcription equipment, typewriters, computer terminals, etc.
>
> -Ability to record client interview data clearly and accurately on Intake Unit forms (and on a computer terminal beginning approximately 1991) using proper grammar, punctuation, spelling, and sentence structure. [and]
>
> . . .

> **-Ability to type a minimum of 50 words per minute with acceptable accuracy off cassette tapes using standard transcription equipment and off paper copy or case records.
>
> **NOTE: Applicant will be required to take a typing test and pass 50 words per minute test - with 3 allowable errors. Applicants will be notified a minimum of 24 hours prior to testing as to time and location.

The Grievant was one of several applicants who signed the posting. She was notified more than 24 hours in advance of the time and location of the typing test and she reported to that location as directed. Upon arrival, she found that the test equipment was a personal computer rather than an electric typewriter on which she had been practicing. Grievant testified that she was upset to find that the test was being administered on a type of machine she that she was not used to typing on. She proceeded to take the test, which is automatically timed and immediately graded by the computer itself. It consisted of two five-minute copying tasks involving letters and punctuation, but no numbers and no function key commands. Grievant failed to achieve the required 50 words per minute, scoring 32 net words per minute on the first and 44 net words per minute on the second. Grievant was informed that she had not passed the typing test and would not be awarded the position for that reason. It is undisputed that, as the senior applicant tested, Grievant would have been awarded the position had she passed the test.

After the County awarded the position to an employe who passed the test but who was less senior than Grievant, Grievant filed the subject grievance on September 18, 1990. It is undisputed that the grievance constitutes the first time that Grievant made known to the County her concerns about being tested on a personal computer rather than on an electric typewriter. While at the testing site, Grievant voiced no objection to taking the test on a personal computer rather than on an electric typewriter, and she did not at that time (or at any time prior to filing the grievance) request an opportunity to be tested on an electric typewriter.

The grievance was denied at various pre-arbitral steps and submitted to arbitration as noted above.

POSITION OF THE UNION

The County violated the Art. 23 testing notice requirement because the posting failed to specify that the typing test referred to would be given on a personal computer.

The evidence shows that with only one recent exeception the County had been giving typing tests to Social Services Paraprofessional Unit job candidates exclusively on typewriters. Grievant testified that she was not aware of that recent exception and that she had therefore prepared for the test on an electric typewriter and was not familiar with typing on a personal

computer. Grievant also testified that she would have practiced on a personal computer had she known that would be the test equipment, and that she is confident she would have passed the test had she done so.

Notwithstanding the County's witnesses' attempts to assert otherwise, there are significant differences between typing on a personal computer and typing on an electric typewriter. While individuals familiar with both types of machines may perform equally on either one, it does not follow that an individual such as Grievant who was not familiar with typing on a personal computer would have failed the test had she taken it on an electric typewriter. Grievant's improvement from the first to the second of the tests administered to her on September 4, 1990 shows that with advance notice of the type of test equipment, Grievant could have become familiar enough with typing on a personal computer to pass the test when it was given. Especially so since the position Grievant was working in when she signed the instant posting did not involve use of a typewriter or typing on a personal computer.

The posting should have stated that the test was going to be given on a personal computer and whether the employe could opt to take it on an electric typewriter instead. It would not have been a hardship for the County to provide such information as a regular part of the posting process.

By way of remedy for its failure to give adequate notice to Grievant in this case, the County should be ordered prospectively to indicate on their postings what type of equipment the typing test will be used in the testing. In addition, because Grievant was the most senior applicant, she should should be placed in the Social Services Aide II position that had been the subject of the instant posting based either on her having passed a subsequent County typing test or upon her passing a retest given with appropirate advance notice of the type of equipment on which the retest will be administered.

POSITION OF THE EMPLOYER

The Union has proven no violation of Art. 23. Grievant testified that she might have passed the test had it been given on another type of equipment. The County countered that speculation with expert testimony to the effect that typing is typing regardless of the type of machine involved. Grievant never showed that she met the minimum skill level. There is no reliable evidence that she could have passed the test on September 4 had it been given on an electric typewriter.

The County also showed that it administered a personal computer-based typing test for a Social Services Paraprofessional Unit position in March of 1990, without a grievance being filed in that instance.

The Art. 23 notice requirement requires only notification that a test will be given. The

Agreement does not state that the County must specify the type of equipment on which the test will be administered. The evidence shows that the alphabet and punctuation keys are in the same location and relationships on a personal computer as they are on an electric typewriter, and that the instant test involved only letters and punctuation.

For those reasons, it was not unfair to administer the typing test on a personal computer without specifying that that was the type of equipment that would be used.

There is no record evidence concerning whether Grievant passed a typing test subsequent to the one administered on September 4, 1990. The County would object to consideration of any evidence to that effect because Grievant's skills after September 4, 1990 are irrelevant. Article 23 puts the County under strict time requirements for the processing of job vacancies. The critical question is therefore whether the employe was able to pass the test at the time it is administered, not at some future time. It would not be fair to the individual selected for the position who passed the test when it was given, for the Arbitrator to order the County to allow Grievant to qualify for the job based on her skill levels as of some point in time after the September 4 test date in question.

The County therefore requests that the grievance be denied.

DISCUSSION

Article 23 requires, in pertinent part, that the County's job postings "will specifically list … if testing will be required of the applicant."

The instant posting included a notification that the applicant "will be required to take a typing test and pass 50 words per minute test - with 3 allowable errors. Applicants will be notified a minimum of 24 hours prior to testing as to time and location."

The the test administered by the County was unquestionably "a typing test." The Union contends, however, that the notification was less specific than Art. 23 required because it failed to specify that the test would be given on a personal computer.

There, is no evidence that the County has ever specified the equipment on which its typing tests would be given. Thus, there is no showing that prior postings had ever specified an electric typewriter when that was the test equipment utilized, and the County did not specify the type of equipment that was to be used when it used a personal computer for the half-time Clerk 11 posted in the instant bargaining unit on March 12, 1990. The Agreement calls for the results of all postings to be provided to the Union, and there were no intervening DSS Paraprofessional Unit job postings involving typing tests between that in March of 1990 and the instant one in September of that year. While only one employe applied for that Clerk II position, it nonetheless stands as a clear contradiction of Grievant's impression that typing tests for jobs in the DSS Paraprofessional

bargaining unit have always been on an electric typewriter.

The words of the Article 23 notice requirement do not state that the County is required to specify the type of equipment to be used in the testing. It is nonetheless appropriate to interpret that notice requirement in the context of its evident purpose. That purpose is to inform the Union and employes who might be interested in bidding for the position that a test will be required of the applicants for the position. It follows directly from that purpose that the posting must inform the reader of the skill that the County intends to test for. The question in this case thus becomes whether the reader is reasonably informed as to the skill the County intends to test for if the type of equipment on which the typing test is to be taken is not specified.

Whatever else it may or may not show, the evidence presented by the County establishes that individuals familiar with electric typewriters and personal computers type with about equal speed and accuracy on each kind of machine. The evidence also establishes to the Arbitrator's satisfaction that the County has chosen to use computerized testing in order to remove possible human error in the timing and grading of tests so as to improve the fairness and accuracy of the testing process. In these circumstances, the Arbitrator is satisfied that the County was not attempting to prevent qualified applicants from successfully completing the typing test requirement when it chose to administer the test on a personal computer.

The Arbitrator is similarly satisfied that the County was not attempting to mislead Grievant or any other employe regarding the nature of the test it would be administering. The evidence shows that the County had been routinely using computer based typing testing procedures at its Mental Health Center facility for some two years prior to the instant posting, without incident. The personnel officer at that facility testified that the MEC has had typewriters available in case an employe might want to take the test on that kind of equipment, but that none of the 143 employes tested for some 20 positions over the two year period had ever requested to take the test on a typewriter.

Grievant's reliance on the fact that previous typing tests for DSS Paraprofessional Unit positions had been administered on an electric typewriter was not reasonable in the circumstances. The wording of the testing notice did not assure her regarding the type of equipment on which the test would be administered. The duties, knowledge and abilities listed in the instant posting called for familiarity not only with typewriters but also with "computer terminals etc." and for the ability to record data on a computer terminal. Grievant testified that when she checked with incumbents in the work unit involved in the vacancy, she found that none of them had either typewriters or computers at their work locations, providing no basis for her assumption that the test would be given on a typewriter rather than a computer.

Finally, and most importantly, the County had administered a personal computer based test for the previous posting in the instant bargaining unit that involved a typing test. Therefore, had Grievant modestly extended her inquiry to asking management what equipment she would be

tested on--rather than making what turned out to be an unfounded assumption on that subject--she would have been informed that the test would be on a personal computer.

Grievant knew that she was familiar only with an electric typewriter and not with a personal computer. It was more reasonably incumbent on her to determine the type of test equipment involved than it was for the County to specify it in response to the rather general notice-oftesting requirement in Art. 23.

Grievant might also have been in a position to obviate the harm she experienced by requesting the opportunity to take the test on an electric typewriter at the time of the test on September 4, 1990. The County cannot be deemed to have acted unreasonably in proceeding with the test on personal computer equipment in circumstances where Grievant did not make known her unfamiliarity with such equipment.

For all of those reasons, the Arbitrator finds no merit in the contention that the County violated Art. 23 in this case.

By so concluding, the Arbitrator is not to be understood as agreeing with the County that there is no difference between typing on a personal computer and typing on an electric typewriter. The differences in tactile responses and in handling carriage returns and in the presence of additional keys on the personal computer keyboard surrounding the alphabet and punctuation keys all support the notion that an individual unfamiliar with a typing on a personal computer would probably not be able to demonstrate their typing skill as well on a personal computer. While it would therefore probably serve all parties better for the County to give notice of the type of equipment on which typing tests will be administered on future postings, the Agreement does not require it to do so, and the County did not violate the Agreement by failing to do so in this case.

DECISION AND AWARD

For the foregoing reasons and based on the record as a whole it is the DECISION AND AWARD of the undersigned Arbitrator on the ISSUES noted above that:

1. The County did not violate Article 23 of the parties' 1989-90 collective bargaining agreement by the nature of the posting and related testing referred to in the grievance.

2. The grievance is denied.

Dated at Shorewood, Wisconsin this 6th day of May, 1991.

By Marshall L. Gratz, Arbitrator

Marshall L. Gratz, Arbitrator