

BEFORE THE ARBITRATOR

 In the Matter of the Arbitration :
 of a Dispute Between :
 :
 PORTAGE COUNTY COURTHOUSE, HEALTH :
 CARE CENTER, DEPARTMENT OF COMMUNITY : Case 78
 HUMAN SERVICES : No. 43815
 : MA-6079
 and :
 :
 LIBRARY SYSTEM EMPLOYEES, LOCAL 348, :
 AFSCME, AFL-CIO :
 :

Appearances:

Mr. Guido Cecchini, Staff Representative, on behalf of the Union.
Mr. Philip H. Deger, Personnel Director, on behalf of the County.

ARBITRATION AWARD

The above-entitled parties, herein the Union and the County, are privy to a collective bargaining agreement providing for final and binding arbitration before a Wisconsin Employment Relations Commission staff arbitrator. Pursuant thereto, I heard this matter on November 12, 1990 in Stevens Point, Wisconsin. The hearing was not transcribed and both parties filed briefs, with the County filing a reply brief which was received by March 18, 1991.

Based upon the entire record, I issue the following Award.

ISSUE:

The parties have stipulated to the following issue:

Did the County violate the contract by not awarding the position of a Financial Services Specialist II (herein FSS II), to grievant Janice Musch, and if, so, what is the appropriate remedy?

DISCUSSION:

Musch, who started her employment in 1988 and who was then a Typist II in the Child Support Section, bid for one of the two posted FSS positions in September, 1989. The FSS job announcement under "Description of Duties" provided that:

"Employee is responsible for intake, assessment of barriers to employment, developing and monitoring comprehensive treatment plans and intensive care management of AFDC recipients involving in-project opportunity. Employee will also be responsible for implementing and conducting group education sessions for project opportunity clients as well as developing and monitoring program activity sites."

For qualifications, the job announcement continued:

- "Two or more years applicable experience;
- Ability to develop goal-oriented comprehensive treatment plans;
- Experience in a setting that requires deliberative counseling, planning and monitoring

- of treatment;
- Ability to preplan intake duties (objective as well as subjective) and analyze information received;
- Knowledge of other programs and services provided by other private, local, county, state and federal agencies;
- Ability to accurately set priorities and complete work independently;
- Knowledge of area labor market and job-seeking skills;
- Ability to operate a computer terminal;
- Ability to speak before large groups of people"

The County at that time passed over Musch on the ground that she did not meet the minimum qualifications for the job and, instead, selected bargaining unit employees Jane Kellerman and Gary Magee, both of whom had greater seniority than Musch. Kellerman filled that position for about a month before voluntarily moving back to her prior job. The FSS position therefore became vacant again and the County reconsidered the original applicants for the position, including Musch who was subsequently turned down in favor of someone else. Musch then filed the instant grievance on December 20, 1989, claiming that the County violated Articles 7 and 3 of the contract when it refused to award her the job.

In support of the grievance, the Union primarily argues that the County failed to prove that Musch failed to meet the minimum qualifications of the job and that it violated the contract when it failed to give her a trial period for the FSS position under Article 7,B of the contract. Going on, it argues that the successful candidates for the job did not fully meet all of the qualifications listed and that they were not even interviewed for their positions; that it is "revealing" that while the County provided the interview notes for the grievant, it failed to produce the ones for the candidates selected; that the County admitted that the minimum qualifications listed were desirable, but not absolutely essential; that Musch's past evaluations show that she is fully qualified to receive at least a trial period; and that the County's decision not to award her the position was based upon anti-union considerations as evidenced by the statement of David Pagel, Musch's immediate supervisor, that "No union is going to tell me who I have to hire." As a remedy, the Union wants Musch to receive a trial period and to be awarded back pay.

The County, in turn, maintains that Musch did not meet the minimum qualifications for the job because she did not have two years of applicable experience and that she thus was not entitled to a trial period under the contract. It also points out that Mohr was interviewed for the position and that Magee was not because he "already worked in the Financial Services Section and his supervisors were well aware of his background." Furthermore, it states that Musch's favorable prior evaluation as a Typist II has little bearing here because Musch's clerical duties are unrelated to the FSS position and that there is no merit to the Union's charge of anti-union discrimination which, it says, was "conspicuously silent until the arbitration hearing". It also claims that the Union's requested remedy is "flawed" because it improperly seeks back pay to September, 1989, when in fact Musch did not file the instant grievance until several months later.

The resolution of this issue must first start with Article 7 of the contract, entitled "Job Posting", which provides, inter alia, in Section "A":

All employees who are interested in the position

shall sign the posting in the space provided. However, the employee applying for the position with the most seniority within the affected department who can qualify shall be given the position. In the event the position is not filled, or no one applies within the department, the employee applying from within the bargaining unit with the most seniority who can qualify shall be given the position. The County will post the name of the applicant receiving the position within ten (10) days of the date of the selection of the applicant. The County shall notify the Union in writing when it deletes a position from the table of organization. The Union shall be provided with a listing of union applicants which includes classification, department and seniority date, along with the name of the applicant receiving the position, a copy of the posting(s). This shall be provided within ten (10) days of the selection of the applicant. The County shall be allowed to fill the position on a temporary basis during the posting process when it deems it necessary.

Going on, Section "B" of Article 7 adds:

B) Trial Period: An employee, upon being promoted to a new position, shall serve a trial period of thirty (30) working days in the classification. An employee who does not satisfactorily complete the trial period at the end of thirty (30) working days shall be returned to his/her former position and his/her former rate of pay with no loss in benefits. In the event the County determines an employee is not qualified to fill a position before the end of the thirty (30) working days, the County reserves the right to return the employee to his/her former position and his/her former rate of pay. Such decision is subject to the grievance procedure. The employee shall be allowed to return to his/her former position and former rate of pay within the said trial period upon request.

It is understood that the Employer has the right to set reasonable qualifications and post same. Employees who do not meet qualifications need not be given a trial period. When an employee is awarded a job through the posting procedure, the department heads involved will arrive at a mutually agreeable date for the employee to assume their new duties. If such agreement cannot be reached, the employee will begin their new duties ten (10) working days after the end of the posting period. (Emphasis added).

The underlined phrase, "Employees who do not meet qualifications need not be given a trial period" is dispositive of this matter because it clearly provides, contrary to the Union's contention, that employees are not automatically entitled to the kind of trial period sought for Musch. For in order to receive such a trial period, job applicants must first meet the qualifications for a posted job because this language also states, "The Employer has the right to set reasonable qualifications and post same."

Musch has failed to do that here since she lacks either two years

applicable experience or any demonstrated ability to develop goal-oriented treatment plans or experience in a setting that requires deliberate planning, and monitoring of treatment.

Musch's experience as a typist is instead limited to helping counsel a few co-workers when she was a union president in her prior employment, knowing how to refer clients to other agencies, occasionally filling in for her supervisor, helping new employes, and handling allotment checks. Notably absent in her background, however, is any indication that she has had the kind of in-depth counseling experience required for the FS II job.

Indeed, if the Union's position were to be accepted, that in effect would mean that the County is contractually required to offer a trial period any time a person bids for a posted job, irrespective of that person's qualifications. That would be an unfair burden for the County to bear since Musch, for example, has bid for 21 other vacancies during her two years' employment even though she was clearly unqualified to perform some of them. In such circumstances, the County is not required to in effect provide extensive on the job training for employes who lack the requisite skills to perform all of the tasks of a given job.

For, as Arbitrator Marlin M. Volz has correctly noted in Reynolds Metals Co., 66 LA 1276 (1976):

The purpose of a trial period is to determine whether an employee who possesses the basic qualifications can satisfactorily do a job which she does not regularly perform. It is assumed that she will not have to be trained in all aspects of the job; for a trial period is not a training period, but simply an opportunity to demonstrate ability to do the job. A trial period, in effect, is a lengthened familiarization or orientation period in which the employee is acquainted with the nature and techniques of the job. It presupposes that the employee will be given instruction and assistance and that she will not simply be turned loose to "sink or swim". But, it also assumes that she brings with her to the trial period by virtue of prior experience or education considerable knowledge, background and skill for performing the duties of the new position. She still needs instruction in the peculiar requirements, procedures, equipment, and techniques of the job; but an intensive on-the-job training program, such as would be appropriate for a novice, is not contemplated.

In the face of Musch's lack of qualifications, the Union argues that the two other successful applicants for the position did not fully meet all the qualifications and that the County did not even interview them.

Some of the qualifications were indeed waived for these applicants. Nevertheless, the record shows that each had about eight or nine years applicable experience in the department, hence giving them the broad background needed for the FS II job, which is something that Musch lacks. In addition, one was a caseworker for about nine years and the other was coordinator and counselor.

The Union also argues that the County discriminated against Musch because of her Union activities as reflected by the statement of Supervisor Pagel that "No union is going to tell me who I have to hire." Since Pagel did not deny

that he made this remark, I find that he in fact said this to Musch at a February, 1990 grievance meeting. The statement, however, followed Musch's non-selection, thereby showing that it did not reflect Pagel's earlier decision to by-pass Musch. Moreover, the statement is not necessarily reflective of union animus, as it may have only reflected Pagel's determination to do what he believed was proper under Article 7 of the contract, rather than to agree with the Union's contention that Musch should have gotten the job. That is why this statement has little bearing on resolving the issue presented, and why it hardly rises to the level of union animus.

Little to no weight must similarly be given to the manner in which the County conducted its interview process. For the record shows, contrary to the Union's claim, that successful applicant Mohr was interviewed for the position and that while the County admittedly did not interview Magee, it did not have to do so since it was already very familiar with his work by virtue of the fact that he had worked in the Financial Services Section for some time. Hence, there is no basis for finding that the County's interview process was flawed.

In light of the above, it is my

AWARD

That the County did not violate the contract when it did not award the position of a FS II to grievant Janice Musch; the grievance is therefore denied and dismissed.

Dated at Madison, Wisconsin this 7th day of August, 1991.

By Amedeo Greco /s/
Amedeo Greco, Arbitrator