

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration      :
of a Dispute Between                 :
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THE VILLAGE OF ASHWAUBENON           : Case 34
                                       : No. 48252
      and                             : MA-7554
                                       :
VILLAGE OF ASHWAUBENON CLERICAL     :
AND DISPATCHER EMPLOYEES' UNION,    :
LOCAL 1672A, AFSCME                 :
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Appearances:

Mr. James E. Miller, Staff Representative, Wisconsin Council 40, AFSCME,
Mr. Robert Nichols, Village Attorney, Village of Ashwaubenon, Ashwaubenon
 Village Hall, P.O. Box 28140, Green Bay, Wisconsin 54304-2839,

AFL-CI
 appear

ARBITRATION AWARD

The Village of Ashwaubenon (hereafter "the Village"), and the Village of Ashwaubenon Clerical and Dispatcher Employees' Union, Local 1672A, AFSCME (hereafter "the Union"), are parties to a collective bargaining agreement which provides for final and binding arbitration of grievances arising thereunder. The Union made a request, in which the Village concurred, that the Wisconsin Employment Relations Commission appoint a member of its staff to hear and decide a grievance concerning job postings. The Commission appointed Stuart Levitan to serve as the impartial arbitrator. Hearing in the matter was held on January 6, 1992, in Ashwaubenon, Wisconsin. The hearing was not transcribed. At the close of the hearing, the parties waived their rights to file written argument, and agreed to a bench decision by the Arbitrator.

ISSUE

The parties stipulated to the following statement of the issue:

Whether or not the Village violated the collective bargaining agreement by not awarding the position of Accounting Clerk to Jane Welsing and providing her with a 15-day familiarization period.

If so, what is the remedy?

RELEVANT CONTRACTUAL LANGUAGE

ARTICLE II

MANAGEMENT RIGHTS

A. The Union recognizes the rights of the employer to operate and manage the affairs of the Village, in accordance with its responsibilities of the law. The Village shall have all powers, rights, authority, duties and responsibilities conferred upon it and invested in it by the laws and the Constitution of the State of Wisconsin.

B. The Village possesses the sole right to operate the Village and all management rights repose in it. These rights include, but are not limited to the following:

1. To direct all operations of the Village;
2. To establish, revise and delete reasonable work rules and schedules of work;
3. To create, combine, modify and eliminate positions within the Village;
4. To hire, promote, transfer, schedule and assign employees in positions within the Village;
5. To suspend, demote, discharge and take other disciplinary action against employees in accordance with this agreement;
6. To relieve employees from their duties in accordance with this agreement;
7. To maintain efficiency of Village operations;
8. To take whatever action is necessary to comply with State or Federal law;
9. To introduce new or improved methods or facilities;
10. To change existing methods or facilities;
11. To determine the kinds and amounts of services to be performed as pertains to Village operations; and to the number and kind of classifications to perform such services;
12. To contract out for goods and services so long as no current employee is laid off as the result of such contracting out;

13. To determine the methods, means and personnel by which Village operations are to be conducted; and
14. To take whatever action is necessary to carry out the functions of the Village in situations of emergency;
15. The determination of safety, health and property production measures.

C. The exercise of the foregoing powers, rights, authority, duties and responsibilities by the Village, the adoption of policies, rules, regulations and practices and furtherance thereof; and the use of judgment and discretion in connection therewith shall be limited only by the specific and express terms of this Agreement.

. . . .

ARTICLE XXII

JOB POSTINGS

A vacancy shall be defined as a job opening not previously existing in the Table of Organization or a job opening created by the termination, promotion or transfer of existing personnel when the job continues to exist in the Table of Organization.

When new jobs are created or vacancies occur, such jobs shall be posted immediately and a job outline shall be included. For positions other than dispatcher, posting shall contain the following information: business location, hours of work, rate of pay. Only those employees meeting the qualifications shall be considered for the vacancy. Said posting shall be posted on bulletin boards at least seven (7) workdays before the vacancy is filled. Only employees meeting the minimum qualifications for said job shall be considered. If an employee is not working when a vacancy occurs, the Employer shall mail the posting to the employee's last known address.

. . . .

The most senior qualified employee shall be given the opportunity to familiarize his/herself with that job.

Said vacancy shall be filled within five (5) workdays after the applicant is notified. The Employer shall notify the Union when the position is filled and who received the position. Said employee shall demonstrate his/her ability to perform the job posted within fifteen (15) workdays starting with the date of notification and if deemed qualified by the Employer shall be permanently assigned the job.

Should such employee not qualify or should he/she desire to return to his/her former job, she/he shall be reassigned to his/her former job without loss of seniority. In such event, the person next in line of seniority who has bid on the job and is qualified shall be given the opportunity to familiarize his/herself with that job. This procedure shall continue until the vacancy is filled.

Qualifications Dispute: Differences of opinion as to qualifications shall be resolved through the grievance procedure.

Employee Familiarization: The employer shall provide and insure proper familiarization of new employees and to those changing positions. Such familiarization shall be directed by supervisors.

BACKGROUND

Jane Welsing, the incumbent Utility/Purchase Order Clerk, began her employment with the Village on February 8, 1988. Her duties primarily involve data entry for the water department, with some analytical work (such as journal entries), some accounting (reconciling cash accounts), and some customer relations. New and revised duties have been added at various points during her tenure. Welsing has an Associate Degree in Data Processing from an area technical college, and has taken accounting course work.

Joyce Esser, the incumbent Accounting Clerk, began her employment with the Village on February 15, 1988, as a dispatcher. In July, 1990, the Village posted a permanent part-time position of Accounting Clerk, with a schedule of either 22.5 or 25 hours per week, with occasional 40-hour weeks as vacation/sick leave replacement. On the original posting, the job paid \$6.00 to start, going to \$6.50 after six months and \$7.00 after one year; benefits were pro-rated as set forth in the collective bargaining agreement's treatment of permanent part-time employees. Esser applied for, and received, the position. On October 19, 1990, the Village re-posted the position, at a starting rate of 80% of \$9.10, the contractual wage for Administrative Clerk Typist classification. The benefits remained pro-rated. The posting stated that "this pick will be done by seniority, whether full or part time." Esser applied for, and received, the position. Esser was told that the job would at some point be made full. Esser was subsequently given the authority to work additional hours, but the allocation of her benefits remained calculated on the published part-time schedule.

In adopting its 1992 budget, the Village authorized funds to increase the Accounting Clerk position from .67 to full-time, with such increase awaiting the results of an outside study. On February 20, 1992, the Village received from its outside consultant a study on work-flow and other personnel matters. Among other recommendations, the consultant advised that "the Village should immediately fill the .33 Finance Department position authorized in the 1992 budget, making the current .67 position full time."

On July 31, 1992, the Village published a job posting which stated that, "The position of Accounting Clerk has been made full-time." The increase in hours did not affect the hourly pay rate. The increase in hours did, however, affect the benefits, in that benefits which had previously been pro-rated (such as the employer's contribution to the health insurance premium) now became fully funded. The stated qualifications were "a high school diploma with accounting course work and a minimum of 1-4 years work experience are

required." Both Esser and Welsing satisfy those qualifications.

By letter dated August 7, 1992, with a corresponding copy to her Union Steward, Welsing notified Finance Director William Diamond of her interest in the position. Esser also applied for the position.

By letter of August 18, 1992, Diamond notified Village President Ted Pamperin of his decision, as follows:

RE: JOB POSTING - ACCOUNTING CLERK POSITION

I have awarded the position of accounting clerk to Joyce Esser as of August 31, 1992.

There were two (2) applicants for the position. They were Jane Welsing, hire date February 8, 1988 and Joyce Esser, hire date February 15, 1988. I considered their seniority to be equivalent.

Both the accounting and utility clerk positions pay the same hourly wage, \$9.56/hour.

Ms. Esser has been performing the duties of the accounting clerk since August of 1990, a period of two (2) years. Based on the nature of the work and the frequency, or lack thereof, that some of the tasks are performed, I feel it takes at least one (1) year to be exposed to all the facets of the accounting clerk position. I feel that it takes two (2) years to be considered trained at the position.

Ms. Welsing has been performing the duties of the utility clerk since she was hired. As in the case of the accounting clerk, I feel it takes at least one (1) year to become exposed to all the facets of the utility clerk position. Similarly, it takes one (1) year, if not two (2), to be considered trained at that position.

If Ms. Welsing was awarded the accounting clerk position she would need to be trained by Ms. Esser. Similarly, Ms. Esser would have to be trained by Ms. Welsing for the utility clerk position if that situation would arise.

Ms. Esser has the appropriate qualifications for the position under the contract. She has demonstrated the desirable knowledge and abilities.

By letter of August 23, 1992, Welsing grieved, as follows:

RE: Accounting Clerk Position

Dear Bill:

This letter is in reference to my filing a grievance about not being hired as the full-time accounting clerk. According to the 1991 Clerical/Dispatcher contract, Article XXII, employees meeting the minimum qualifications for said job shall be considered and the most senior qualified employee

shall be given the opportunity to familiarize his/herself with that job. My associate degree in data processing has a strong emphasis on accounting and I was the applicant with the most seniority applying for this position. I feel fully qualified to perform all the duties involved and initially when I was hired by the Village, I was led to believe I would become more involved in the accounting aspects of the Finance Department.

According to our contract Article XIX, Grievance and Arbitration Procedure, under step 1, I am submitting this letter to you as my supervisor. A copy has been sent to the Village President, Ted Pamperin, also as stated under step 1.

Thank you for your attention to this matter, and I look forward to hearing from you.

By letter of September 9, 1992, Pamperin denied the grievance, as follows:

Dear Jane,

First of all, thank you for visiting with me and giving me your reasons for applying for the job as accounting clerk. I now know what your feelings were when you made that decision. This has been a difficult decision to make knowing how you feel about your present position, however, my job is to assure the smooth operation of the Finance Department in the Village of Ashwaubenon.

If we made the decision for you to change jobs with Joyce Esser we would be looking at over a year of training for both of you to obtain the same quality of work that is now being done. That I feel would be an extreme burden on that department over the next year.

Due to the fact that seniority is within seven days of both yourself and Joyce I feel this is a negligible amount of time to base a seniority decision on.

Therefore, I am going to deny your grievance dated August 23, 1992 to Mr. Bill Diamond.

The grievance was subsequently brought to, and denied by, the Village Board.

POSITIONS OF THE PARTIES

The Union asserts and avers that Welsing, having greater seniority than Esser, and meeting the stated qualifications, is contractually entitled to a 15-day training period for the position of Accounting Clerk.

The Village asserts and avers that the job posting provisions do not apply, in that the position, being listed on the Table of Organization, is not a new job and thus not subject to the posting provisions. The Village states that the fact that the job was posted does not establish that the job had to be

posted, nor does it establish that the job was a new job. Further, since the incumbent had already had her hours increased, the change in hours does not establish that this job received a promotion. Finally, the Village asserts that the contractual Management Rights clause authorizes its action.

DISCUSSION

The management rights reposing in the Village are limited "by the specific and express terms" of the collective bargaining agreement, such as the provisions of Article XXII, Job Postings. The Village's authority to hire, promote, transfer, schedule and assign employees is not unfettered, but constrained by the terms of Article XXII.

The District asserts that Article XXII does not apply in this particular instance, however, because the Accounting Clerk position is neither a job "not previously existing in the Table of Organization" nor a job opening "created by termination, promotion or transfer of existing personnel" when the job continues in the Table of Organization.

The introductory language of this article is ambiguous, and subject to interpretation. Particularly, the difference between a part-time job with part-time, pro-rated benefits (e.g., holiday pay, personal leave, vacation, sick leave, and health/dental/life insurance) and a full-time job with full benefits is so profound that the expansion could result in a job "not previously existing" in the Table of Organization.

However, I need not address conclusively the question of the application of Article XXII because the Village has already done so. The Village, after due consideration and deliberation, posted the Accounting Clerk position. The grievant and the Union relied on that posting. The terms of Article XXII thus apply to this situation. 1/

Those terms require that "the most senior qualified employee" shall be given a 15-day period to become familiar with the job, and to demonstrate his/her ability to perform the job.

By measurement against the published position description, as well as by the testimony of the Finance Director, the grievant is qualified for the position of Accounting Clerk. By virtue of her earlier hiring date, the grievant has more seniority than Ms. Esser. The Village may regard their seniority as "equivalent", or the difference as "negligible", but the fact is that someone hired on February 8, 1988 has greater seniority than someone hired on February 15, 1988.

By virtue of training and especially experience, there is no doubt that Ms. Esser is currently more qualified than Ms. Welsing; however, the contract does not provide for comprehensive evaluation. There is also no doubt but that awarding the 15-day trial period to Ms. Welsing will cause inefficiencies, and potential disruption, in the affairs of the Village. However, my jurisdiction is limited to interpreting and applying the terms of the contract, and does not extend to revising or modifying those terms.

1/ To the extent that I made any statements in my bench award which went to the issue of whether the Village did, or did not, have to post the position, such statements are not a part of this Award.

As the most senior qualified employe to have submitted a timely bid, Jane Welsing is entitled to have the opportunity to familiarize herself with the job of Accounting Clerk. Accordingly, on the basis of the record evidence and the oral arguments of the parties, I hereby issue the following

AWARD

The grievance is sustained. The Village shall provide to Jane Welsing a 15-day period in which she shall be given the opportunity to familiarize herself with, and demonstrate her ability to perform, the position of Accounting Clerk.

Dated at Madison, Wisconsin this 15th day of January, 1993.

By Stuart Levitan /s/
Stuart Levitan, Arbitrator