

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration	:	
of a Dispute Between	:	
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SOUTH MILWAUKEE CITY EMPLOYEES,	:	Case 76
LOCAL 883, AFSCME, DISTRICT COUNCIL 48	:	No. 48241
	:	MA-7553
and	:	
	:	
CITY OF SOUTH MILWAUKEE	:	
	:	

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Appearances:

Ms. Monica Murphy, Podell, Ugent & Cross, S.C., Attorneys at Law, appearing on behalf of the Union.  
Mr. Joseph Murphy, City Attorney, appearing on behalf of the City.

ARBITRATION AWARD

The above-captioned parties, hereinafter the Union and the City or Employer, respectively, were signatories to a collective bargaining agreement providing for final and binding arbitration of grievances. Pursuant to a request for arbitration, the Wisconsin Employment Relations Commission appointed the undersigned to hear a grievance. No hearing was held in the matter. Instead, the parties stipulated to the relevant facts. Briefs were filed by both parties, and the Employer filed a reply brief, whereupon the record was closed on April 22, 1993. Based on the entire record, the undersigned issues the following Award.

ISSUE

The parties stipulated to the following issue:

Did the City violate the collective bargaining agreement, specifically, Article VI, Section 10(a), when grievant Janet Talaska was denied the position of Library Assistant I when the City failed to recognize her seniority and filled the position with someone with no bargaining unit seniority? If so, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

The parties' 1987-90 collective bargaining agreement contained the following pertinent provisions:

**ARTICLE VI**  
**Seniority**

. . .

**SECTION 10 - Vacancies**

(a) Seniority shall be the determining factor in filling vacancies after qualifications have been established for the job classification. At the request of the appointing authority, Civil Service Commission testing procedures may be required to establish qualifications for the following job classifications:

. . .

(b) (1) When a vacancy occurs in any of the departments listed in Article I, Section 4, Paragraph (c) the job shall be posted simultaneously for two (2) full working days within all departments.

(2) If the job is not filled by a full-time employee within the department where the vacancy has occurred, the job shall be offered to the most senior full-time employee in one of the other departments within the bargaining unit who has signed the job posting.

(3) If the job is not filled by a full-time employee from one of the other departments, then, the job shall be offered to the most senior part-time employee working within the department where the vacancy occurred. If no part-time employee within the department posts for the job, then the job shall be offered to the most senior part-time Public Safety Officer or Building Service Helper provided that the part-time employee is qualified for the position.

(4) Part-time employees hired after October 1, 1987 or signing of the Agreement shall not be covered by the above paragraph (3). All part-time employees hired after the effective date shall be required to apply for a vacant position as everyone from the outside

is required to apply for.

(c) Employees desiring that they may be considered for the vacancy shall make a written request for the job to their foreman within such period. The Union will be given the results of such bidding upon request. The request shall be made in quadruplicate on a form provided by the Municipality. One copy will be retained by the employee, one by the supervisor, one given to the Union Steward, and one given to the appropriate Board, Commission, or governing body. The form provided will be the only one used.

(d) An employee going on vacation, sick leave or excused absence, who wishes to be considered for a particular job which may be posted during his/her absence, may apply therefor in writing to his/her foreman before leaving on such absence.

(e) Employees covered under this Agreement who accept a different position under this Article shall have a thirty (30) working day probationary period. However, when an employee accepts said position, the employee shall have the right to return to his/her previously held position within the thirty (30) working day probationary period.

(f) Employees accepting either temporary or permanent promotion to a supervisory position may, within six (6) months of the date of their promotion, elect to return or to be transferred back by the Municipality as though he/she had been on a leave of absence for the period of his/her promotion. After six (6) months in supervision, such employee shall not accrue additional bargaining unit seniority.

#### FACTS

The parties stipulated to the following facts:

1. Grievant Janet Talaska was hired by the City to the permanent position of part-time Police Clerk I on April 5, 1990 and that is her bargaining unit seniority date. She was hired after having taken the exam for Clerk III (a higher classification) and was

hired off that eligibility list.

2. The grievant applied for the position of Library Assistant I and took the corresponding Civil Service Exam when scheduled.

3. The grievant passed the Civil Service exam with a score of 90.

4. The vacant position was filled by Mary Jean McCARRIER who had no bargaining unit seniority. Ms. McCARRIER had worked as a temporary library employee for the City. She scored 92 on the Civil Service Exam. She began her temporary service in December, 1990. She worked part-time until July, 1991, at which time she began working full-time. She worked as a temporary until being offered the position in controversy here in September, 1992. At that point she became a permanent employee and a member of the Local 883 Bargaining Unit.

5. The grievant attempted to post for the Library Assistant I position through internal posting procedures. She was not allowed to do so. She grieved that denial and took the grievance to arbitration but withdrew her grievance at that stage. That grievance packet is attached as Exhibit 7.

6. Article VI, Section 10(b)(4) of the applicable contract was added to the 1987-1990 contract at the request of the City of South Milwaukee because of a perception held by the City that the only way a non-employee of the City was able to get a full-time position in the City was to take a lower skilled entry level part-time position and then wait for an opening to transfer up.

7. The Public Safety Officers and the Building Service Helpers were accreted into the 1985-86 Collective Bargaining Agreement between the parties. Those positions existed since about 1982 or 1983.

8. The positions listed in Section 10(a) of the collective bargaining agreement are not entry-level positions.

9. The collective bargaining agreement applicable to the instant grievance is the one covering July 1, 1987 through June 30, 1990, although on its face it had expired, the parties continued to operate under it until the new contract was signed on December 3, 1992.

10. Mr. Mark Bundalo and Mr. Robert Gagnon, building service workers, had filed a grievance on April 29, 1991, alleging that they had been unreasonably denied the right to bid on a vacant position which was posted in the Water Department. That grievance was pursued through all levels up to but not including arbitration and was then dropped. Union contends this fact is not relevant.

#### ADDITIONAL FACTS

In addition to the stipulated facts noted above, the parties stipulated to the following joint exhibits: (1) the parties' 1987-90 collective bargaining agreement; (2) a packet of documents relating to the processing of the instant grievance; (3) the eligibility list for the Library Assistant I position; (4) a seniority list dated December 3, 1992; and (5) the parties' agreement dated December 10, 1986 regarding accretions of Public Safety Officers and Building Services Helpers to the bargaining unit.

Attached to the joint exhibits were the following Employer exhibits: (6) a copy of Article VI, Section 10 from the parties' 1984-87 collective bargaining agreement; (7) a previous grievance filed by Janet Talaska; and (8) a packet of documents relating to the processing of a grievance filed by Robert Gagnon and Mark Bundalo in May, 1991.

The instant grievance was filed September 24, 1992. It alleged that the City violated the labor agreement when it denied Janet Talaska "the position of Library Assistant I, despite her qualifications and seniority."

#### POSITIONS OF THE PARTIES

The Union's position is that the City violated the labor agreement when it failed to give the grievant the Library Assistant I position. The Union characterizes this as a simple and straightforward case involving seniority. As background, it notes that both the grievant and another person applied for the Library Assistant I position. Both then took, and passed, the civil service exam. The Union believes that once the applicants established their qualifications via the exam, Article VI, 10(a)

requires that seniority be the determining factor in filling vacancies. The Union argues that when the City gave the position to a person with no seniority, it disregarded the grievant's seniority rights since she (the grievant) had more seniority than the person who was given the position. According to the Union, the City's reliance on Article VI, 10(b)4 is misplaced because, in the Union's view, that section is irrelevant to this case. However, if the arbitrator finds that that section does apply here, the Union contends that any ambiguity in that section should be construed against the City since it drafted the language. The Union argues that while it did agree in this new language to give up internal posting for part-time employes, it did not waive or abandon the seniority rights of the part-time employes. The Union submits that if the City wanted part-time employes to give up their seniority rights, it should have drafted clear language to that effect. In order to remedy this contractual breach, the Union requests that the grievance be upheld and the grievant awarded the position of Library Assistant I.

The City's position is that it did not violate the labor agreement when it gave the Library Assistant I position to an applicant other than the grievant. According to the City, the contract section applicable to this grievance is Article VI, 10(b)(4). The City believes that provision overrides the other provisions in Section 10 which grant part-time employes bid/posting rights based on their seniority. In the City's view, (b)(4) excludes all part-time employes hired after October 1, 1987 from the bid/posting rights otherwise available to full-time and part-time employes under Section 10. The City notes that the grievant is a part-time employe who was hired after the aforementioned date. It reasons that given the foregoing, (b)(4) excludes her from the bid/posting rights otherwise available under Section 10 and she was required to apply for the position the same as people from the outside (i.e., pursuant to the City's civil service rules). The City contends that both the bargaining history and the parties' past practice demonstrate that (b)(4) was intended to restrict part-time employes hired after October 1, 1987 to the same (full-time) employment opportunities as exist for someone who is not a City employe. The City argues that if (b)(4) is given its intended effect, it must be recognized to negate any rights a part-time employe hired after October 1, 1987 might otherwise have to a vacant position based on seniority with the City. The City submits that if the arbitrator accepts the Union's argument that the grievant was entitled to assert her seniority after she applied for the position (because no one from the outside has seniority), this would make (b)(4) meaningless. The City notes that it is an accepted rule of contract interpretation that no part of a contract is to be rendered meaningless. It therefore requests that the grievance be denied.

#### DISCUSSION

What happened here is that the City filled a library vacancy, the grievant was not selected for it and she grieved. At issue is whether the City violated the contract by not selecting the grievant to fill that vacancy.

In deciding this contractual dispute, the undersigned will look at the two provisions relied upon by the parties, namely Article VI, Section 10(a) and (b)(4). Hereinafter they will simply be referred to as (a) and (b)(4). The Union contends (a) controls while the City relies on (b)(4). Inasmuch as the parties dispute which section is applicable here, it is apparent that this is the critical question. In the analysis which follows, I will review both contractual provisions and decide which one controls here.

As just noted, the Union relies on (a) to support its case. That section sets forth the following general principle: "Seniority shall be the determining factor in filling vacancies after qualifications have been established for the job classification." By its express terms, this sentence mandates that seniority is the "determining factor in filling vacancies." On its face, this section does not contain any limitations or exceptions. Here, as previously noted, a library vacancy was filled. It is undisputed that in filling that vacancy the City did not rely on the seniority of the applicants, but instead relied on their test scores on a civil service test. It is also undisputed that the grievant had bargaining unit seniority with the City (based on her existing part-time position as a clerk in the police department), while the person who got the library vacancy (McCarrier) had no seniority. If (a) is looked at standing alone, that section precludes the City from making the selection it made here (i.e., McCarrier over the grievant) since the grievant had seniority and McCarrier did not.

Having said that, it is a well-established arbitral principle that the meaning of each contract provision must be determined in relation to the contract as a whole. 1/ This is particularly true where, as here, the provisions to be read as a whole are within the same section (i.e., Section 10 of Article VI). To read the provisions of (a) in isolation from the remainder of Section 10, as the Union proposes to do here, would not be in accordance with accepted principles of contract interpretation. That being so, a review of the totality of Article VI, Section 10 follows.

Section 10 establishes a bid and posting procedure. Paragraph (a) of that section provides that seniority is the determining factor in filling vacancies (through the bid/posting procedure). It requires a civil service test for certain

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1/ Elkouri & Elkouri, How Arbitration Works, Third Edition, p. 308.

specified positions. Where the position is not one of those enumerated, the position is filled by the most senior employe. Paragraphs (b)(1) and (2) specify the posting procedure for filling vacant positions. Paragraph (b)(3) describes the bidding rights of part-time employes, part-time Public Service Officers and Building Service Helpers. Paragraph (b)(4) provides that part-time employes hired after October 1, 1987 are excluded from the aforementioned bid/posting rights. Part-time employes hired after that date cannot use the internal posting procedures; instead, they must apply with applicants from the outside for full-time vacancies. Paragraph (c) sets forth the procedure for making a bid. Paragraph (d) describes the procedure to be used by an employe on leave who wishes to bid for a position. Paragraph (e) specifies the probationary period for transferring employes. Finally, paragraph (f) describes the return rights for employes accepting a supervisory position.

As the existence of this grievance shows, it is possible to read the first sentence of (a) as conflicting with (b)(4). As noted above, (a) provides that seniority is the determining factor in filling vacancies under the bid/posting procedure. Since there are no stated exceptions or limitations to this general principle in (a), the inference is that all full-time and part-time employes can use their seniority to fill vacancies under the bid/posting procedure. However, while no limitation is found in (a), one is found in (b)(4) where it excludes part-time employes hired after October 1, 1987 from the internal posting rights otherwise granted employes in that section. Section 10 (b)(4) therefore establishes that the general principle found in (a) is not completely open-ended; it has one exception and that is that part-time employes hired after October 1, 1987 are excluded from the bid/posting rights otherwise available to employes pursuant to Section 10. Given the foregoing, I read (b)(4) to implicitly override (a) to the extent that while (a) grants employes internal bid/posting rights based on their seniority, (b)(4) withdraws that internal posting right from a certain class of part-time employes, namely those hired after October 1, 1987. Application of (b)(4) here means that the grievant, who was hired after October 1, 1987, is not contractually entitled to assert her seniority under (a) to get the library vacancy. Were the undersigned to hold otherwise, and find that the grievant could assert her seniority under (a) to get the library position, this would make (b)(4) meaningless and ineffective. It is an accepted rule of contract construction that interpretations which nullify a contract provision are to be avoided because the presumption is that the parties intended the provision to have some meaning. 2/

While it is not necessary to examine the parties' bargaining history to resolve this contractual dispute, a review of that

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2/ Ibid.



history convinces me that the interpretation reached above regarding (b)(4) is consistent with what the parties mutually understood the provision to mean when it was negotiated. The record shows that paragraph 4 of Article VI, Section 10 is new language which was added to Section b in the 1987-90 labor agreement. Before paragraph 4 was added to (b), there were no exclusions from the posting procedure contained in Section 10. The record further shows that the reason (b)(4) was added to the 1987-90 contract was because of the City's perception that the only way a non-employee could get a full-time position with the City was to first take an entry-level part-time position and then wait until there was a full-time vacancy on which they could bid.

By adding (b)(4) to the contract, the City sought to insure that individuals seeking City employment would be eligible for any vacancy which survived the posting rights of current employees, and non-employees and part-time employees hired after October 1, 1987 would then compete on an equal basis for any full-time vacancy. Insofar as the record shows, if the Union intended that part-time employees hired after October 1, 1987 could still use their seniority to beat out non-employees when competing for full-time vacancies after (b)(4) was added to the contract, it never advised the City of same. Since it did not, it can be said with absolute certainty that the parties did not mutually contemplate that part-time employees hired after October 1, 1987 could rely on (a) to override (b)(4). If this were to happen, it would negate the reason (b)(4) was added to the contract. Thus, under these circumstances, it would be a circumvention of the bargaining process to ignore the parties' intent and allow (a) to override (b)(4). In so finding, the undersigned is simply trying to give effect to the parties' intent as evidenced by their bargaining history.

Since the grievant was not entitled to assert her seniority to assume the library vacancy, she was, in the words of (b)(4), "required to apply for a vacant position as everyone from the outside is required to apply for." This means pursuant to the City's civil service procedure. The grievant, like all the other applicants interested in the library vacancy, took the civil service test and was ranked on the eligibility list solely on the basis of her test score without regard to seniority. The record indicates that the individual who got the library position was ranked higher on the eligibility list than the grievant. This explains why that applicant got the library position rather than the grievant. It is therefore held that the City's actions here did not violate the contract.

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

AWARD

That the City did not violate the collective bargaining

agreement, specifically Article VI, Section 10(a), when grievant Janet Talaska was denied the position of Library Assistant I when the City failed to recognize her seniority and filled the position with someone with no bargaining unit seniority. Therefore, the grievance is denied.

Dated at Madison, Wisconsin this 8th day of July, 1993.

By Raleigh Jones /s/  
Raleigh Jones, Arbitrator