BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
SAWYER COUNTY PROFESSIONAL EMPLOYEES LOCAL 1213-D, AFSCME, AFL-CIO	Case 102 No. 48787 MA-7705
and	
SAWYER COUNTY	

Appearances:
Mr. James Mattson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.
Ms. Kathryn Prenn, Attorney at Law, appearing on behalf of the County.

ARBITRATION AWARD

The above-captioned parties, hereinafter the Union and the County 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 the instant grievance. A hearing, which was not transcribed, was held on August 17 and December 21, 1993, at Hayward, Wisconsin. Afterwards, the parties filed briefs and reply briefs which were received by April 14, 1994. Based on the entire record, the undersigned issues the following Award.

ISSUES

At the commencement of the hearing, each side gave its version of the issue(s) involved here. The Union frames the issues as:

> Do bargaining unit employees have all contractual rights including wages and bumping rights which guarantee the employee the unhindered return to their original position when they accept a special grant position?
>
> Likewise, did the Employer violate these rights when the Employer refused to guarantee the employees the right to return to their original positions with no loss of wages or other contractual rights?
>
> And if so, the Employer to reoffer the special grant position to the two employees who applied for the special grant position and award the position based upon seniority and qualifications. The Employer to follow the procedure in the future.

The County frames the issue as:

> Did the County violate Article 25, B of the parties' collective bargaining agreement? If so, what is the appropriate remedy?

Since there was no stipulation on the issue(s) to be decided, the parties asked that the undersigned frame it in the Award. From a review of the record and the briefs, the undersigned has framed the issues as follows:

1. Do bargaining unit employes who move into special grant positions pursuant to Article 25, B of the collective bargaining agreement get to keep their current salary, fringe benefits and contractual rights while in the special grant position?

2. Do bargaining unit employes who move into special grant positions pursuant to Article 25, B of the collective bargaining agreement get to bump back into their old position when the special grant period ends?

PERTINENT CONTRACT PROVISIONS

The parties' 1991-92 collective bargaining agreement contained the following pertinent provisions:

ARTICLE 8 - SENIORITY

. . .

Section 2 - Layoff: Whenever it becomes necessary to lay off employees, in whole or in part, the Employer shall select the classification in which the layoff shall occur, and employees shall be laid off in inverse order of their seniority, provided the remaining employees are capable of performing the available work. An employee selected for a layoff may bump a less senior employee if the laid off employee can demonstrate that she/he is able and qualified to perform the work. Disputes regarding ability to perform shall be subject to the grievance procedure. The County will provide a two (2) week notice of layoff.

. . .

ARTICLE 9 - JOB POSTINGS, TRANSFERS AND PROMOTIONS

Section 1 - Seniority: When the County chooses to make a promotion, fill a vacancy or create a new job, the policy of seniority shall prevail provided, however, that the senior employee considered for the job is able and qualified to perform the work.

. . .

ARTICLE 25 - LIMITED TERM/SPECIAL GRANT/ BONA FIDE WORK EXPERIENCE EMPLOYEES

. . .

B) SPECIAL GRANT EMPLOYEES: Persons employed by the County under state or federal grant programs shall be exempt from coverage by the terms and conditions of this collective bargaining agreement for the duration of the person's employment under the grant program. The County agrees to comply with the negotiated posting procedure when hiring special grant employees. Wage rates for special grant positions shall be consistent with equivalent positions in the bargaining unit. If a bargaining unit employee is hired for a special grant position, that employee shall continue to receive all benefits provided under the collective bargaining agreement.

If the County decides to continue the position following expiration of the grant or program, the County and the Union shall negotiate the wages, hours and conditions of employment for the position.

A special grant employee who continues employment with the County as a permanent employee in the same position as which he/she was employed on a special grant basis, without interruption in service, shall have his/her seniority date established as his/her original date of hire and shall not serve a probationary period if his/her continuous employment in the position exceeds the probationary period provided in this collective bargaining agreement. If the employee's term of continuous employment is less than the contractual probationary period, the employee shall serve the remainder of the probationary period.

. . .

BACKGROUND

The origin of this matter involves a grievance filed in December, 1987. In that grievance the Union challenged the County's decision to exclude certain employes from the professional employes' bargaining unit. The Union sought to include four employes in the bargaining unit whom the County had excluded.

After the grievance was filed, Council 40 Staff Representative Jim Ellingson met with Attorney Kathryn Prenn and the County's Personnel Committee. They decided to try to voluntarily resolve the grievance.

Their ensuing settlement discussions occurred off and on for the next six months. These discussions involved two elements: (1) whether additional positions would be included in the bargaining unit and if so, how many; and (2) whether temporary and special grant employes would have bargaining unit status and if so, what the language would say. It appears from the record that Ellingson's focus was on the first element (i.e. including additional positions in the bargaining unit). Local Union President Chuck Block disagreed with this strategy and goal. Block wanted special grant positions while Ellingson disagreed with the concept. As a result of this particular disagreement and other unrelated matters, Block and Ellingson became alienated. Block viewed himself as calling the shots in this matter--not Ellingson. Block further testified at the hearing that while Ellingson communicated with Prenn regarding this matter, he was not authorized to do so.

The record indicates that Block then engaged in one-on-one discussions with Community Services Director Pete Sanders concerning special grant positions. Block viewed Sanders, not Prenn, as the County's agent in this matter. Block testified that during these "negotiations," he and Sanders settled the grievance and "worked out the language" without the involvement of Ellingson or Prenn. Block further testified that during this process, Sanders agreed that an internal applicant who moved into a special grant position would move back (i.e. bump) into their old job when the special grant period was over. At the hearing, Block offered no notes or other documentation to substantiate his "negotiations" with Sanders.

Sanders acknowledged having informal discussions with Block regarding special grant positions in 1988. According to Sanders, they had these discussions because one of the employes in Sanders' department at the time was a special grant employe and because both men favored keeping special grant positions. Sanders testified that during the course of these discussions, he and Block discussed posting rights for existing employes, namely allowing bargaining unit employes to bid for special grant positions. According to Sanders that was the extent of their discussions along these lines. He testified they never discussed what would happen if a bargaining unit employe moved into a special grant position and later wanted to move back to their old job because the special grant period ended, and specifically never discussed giving employes bumping rights to their old job under these circumstances. He further testified he and Block never drafted any actual language, and specifically did not draft any of the language that was ultimately agreed upon

by the parties. According to Sanders, that was done by Prenn and the County's Personnel Committee and Ellingson. Sanders testified he never met with the County's Personnel Committee regarding this matter and therefore was not involved in their actions. Finally, with regard to the language that was incorporated into Article 25, B, Sanders testified he does not recall telling Block that the reference therein to "benefits" meant "all contractual rights."

While Block and Sanders were engaging in the discussions noted above, Prenn and Ellingson exchanged letters among themselves in an effort to resolve the December, 1987 grievance. These letters made no reference to the discussions ongoing between Block and Sanders. On January 25, 1988, Prenn proposed contract language for temporary, provisional and special grant employes. On April 4, 1988, Ellingson wrote Prenn that her proposed language was unacceptable. He made a counter-proposal on contract language for limited term and pilot program employes, and also proposed including three employes in the bargaining unit. On April 22, 1988, Prenn wrote Ellingson a letter which contained a new counter-offer on language covering temporary, provisional and special grant employes. Ellingson responded by moving the grievance to arbitration. On June 23, 1988, Ellingson met with Prenn and the County's Personnel Committee. Insofar as the record shows, neither Block nor Sanders attended same. At that meeting, the December, 1987 grievance was settled. The settlement terms were as follows: First, two of the disputed positions were added to the bargaining unit, while the other two disputed positions were terminated at the expiration of the grants for those positions. Second, the parties agreed to language covering the hiring procedure and conditions of employment for limited term, special grant and bona fide work experience employes. When working out this language, there were no discussions regarding bumping rights for current employes who move into special grant positions and who later wanted to move back when the special grant period ended. As part of the agreement the parties decided to write up separate letters of agreement memorializing the settlement terms. The first letter would add two of the disputed positions to the bargaining unit while the second letter would contain the actual language covering limited term, special grant and bona fide work experience employes.

Following the meeting referenced above, Prenn sent two proposed letters of agreement to Ellingson for him to review. On June 29, 1988, Block called Prenn regarding the second proposed letter of agreement (i.e., the one dealing with the limited term, special grant and bona fide work experience employes). Block testified he could not recall any aspect of the phone call. Prenn's unrebutted testimony was that in this phone call, Block asked her to add language to that side letter which 1) required the County to use the posting procedure when filling special grant positions and 2) provided that if a bargaining unit employe moved into a special grant position, they would continue to receive their existing insurance. Prenn agreed to make these requested changes in the second proposed letter of agreement and did so. A revised version of that proposed letter of agreement was mailed to Block that same day. This phone call on June 29, 1988, was the only conversation Prenn ever had with Block concerning this matter. Every other conversation Prenn had concerning this matter was with Ellingson.

Sometime in July or August, 1988, the two proposed letters of agreement were explained to the union membership by Block and Sam Gillispie (who had recently replaced Ellingson as the local's Council 40 representative). They told those in attendance that the language provided that if a bargaining unit employe moved into a special grant position, the employe could keep their fringe benefits and contractual rights in that (special grant) position. Block and Gillispie also told those in attendance that the language provided that when the special grant period ended, the employe in the special grant position would be able to bump back to his/her old position.

In August, 1988, Prenn mailed the two proposed letters of agreement to Gillispie for his signature. He signed them August 12, 1988. Block also signed them on behalf of the Union at some unknown date. Prenn never had any discussion with Gillispie about the meaning of the two letters of agreement.

The two side letters of agreement referenced above were subsequently incorporated verbatim into the parties' 1989-90 collective bargaining agreement as Article 25. This language has not been altered in subsequent negotiations.

After the language was included in the agreement, the Employer hired several special grant employes. Insofar as the record shows, these employes were hired off the street and were not internal applicants. These special grant employes were not considered bargaining unit employes and did not pay union dues. Until the instant grievance arose, a bargaining unit employe had never tried to fill a special grant position.

FACTS

In 1992, a collaborative grant was awarded to the Hayward School District for a school-based social worker. The County agreed to be the fiscal agent and pay the social worker. The County originally posted the position as a Social Worker II, but later re-posted it as a Social Worker I position (a lower rate). Two bargaining unit members, Iras Humpheys and Dave Bauer, posted for the position. Both were interviewed for it. When they were interviewed, both were told by Social Services Director Pat Acheson that if they moved into the special grant position their salary would be reduced from what they were currently paid to a Social Worker I rate and further that they could not bump back into their old job when the special grant period ended. Bauer told Acheson that was not the Union's view. Following the interviews, the County offered the position to Humpheys. Humpheys initially accepted the position but later rejected it because the County would not pay her at her current Social Worker II wage rate. The County then offered the position to Bauer. In a December 18, 1992 letter to Acheson, Bauer indicated he too was turning down the offer due to "the lack of job security coupled with the reduction of salary and the need for obtaining an MSW (Masters of Social Work) within the grant period. . . ." After both bargaining unit applicants rejected the position as offered, the County hired an external applicant. A grievance was filed regarding the special grant position which is the subject of the instant arbitration.

POSITIONS OF THE PARTIES

Union's Position

It is the Union's position that bargaining unit employes who move into special grant positions get to keep their current salary, fringe benefits and contractual rights. It is also the Union's position that bargaining unit employes who move into special grant positions get to move back (i.e. bump) into their old position when the special grant period ends. The Union contends the Employer violated the contract when it told those employes bidding for the school-based social worker grant position otherwise. In support thereof, it first relies on the contract language which provides job security, seniority and bumping rights to bargaining unit employes (Articles 8 and 9). The Union submits that these provisions also apply to employes who move into special grant positions.

Next, the Union contends that the language contained in Article 25, B (which applies to employes moving into special grant positions) is clear and unambiguous where it refers to "all benefits." According to the Union, that phrase covers both fringe benefits and contractual rights (such as seniority, bumping, etc.). The Union therefore reads this phrase as providing that employes who move into special grant positions get to keep their current salary, fringe benefits and all contractual rights.

The Union argues that the parties' bargaining history supports this position. In this regard, it cites the testimony of former local Union President Block. According to the Union, Block conducted the actual "nuts and bolts" negotiations with the County through Sanders wherein the December, 1987 grievance was settled and the special grant positions "hammered out." The Union asserts that since Block was the architect of Article 25, B, he is best situated to tell what it meant. The Union contends that the parties' intent, as evidenced by Block's testimony, was that bargaining unit employes who move into special grant positions get to keep their current salary, fringe benefits and contractual rights. The Union believes Block's testimony also establishes that the parties' intent was that bargaining unit employes who move into special grant positions would be able to move back (i.e. bump) into their old position when the special grant period ends. The Union argues that were it otherwise, and employes not able to bump back to their old position when the special grant period ends, it would not have agreed to the language in question. The Union submits that its priority in negotiating the contract language was maintaining job security for employes who move into special grant positions, and it believes that priority is reflected in the contract language found in Article 25, B.

The Union therefore contends the Employer violated the contract when it told the employes who bid on the special grant position they could not keep their existing salary and contractual rights when they moved into that job, and further that they could not bump back into their old job when the special grant period ended. In order to remedy this alleged contractual breach, the Union asks the Arbitrator to sustain the grievance and order the Employer to first

re-offer the special grant position to the two employes who applied for it, and then to award it to one of them based on seniority and qualifications. As part of this remedy, the Union also asks the Arbitrator to order that when the special grant period ends, the incumbent be allowed to return to their former position with no loss of wages or other contractual rights. Finally, the Union asks the Arbitrator to direct the County to honor the terms of the contract and follow this procedure in the future.

Employer's Position

It is the Employer's position that bargaining unit employes who move into special grant positions get to keep their fringe benefits, but do not keep their (former) contractual rights or old salary. Additionally, it is the Employer's position that bargaining unit employes who move into special grant positions do not get to bump back into their old position when the special grant period ends.

The Employer contends that Article 25, B supports their proposed interpretation. According to the Employer, that provision is clear and unambiguous where it refers to "all benefits." The Employer believes the phrase "all benefits" refers to, and is synonymous with, contractual benefits such as insurance, leaves, holidays, vacations, etc. In its view, the phrase "all benefits" does not include contractual rights such as bumping. It also asserts that there are no express provisions in the contract supporting the Union's "replacement employe" theory. It therefore asks the Arbitrator to find in their favor based on the plain language of Article 25, B.

However, if the Arbitrator finds the language in Article 25, B to be ambiguous, the Employer urges the Arbitrator to refer to the parties' bargaining history to determine the parties' intent. The Employer believes that when reference is made to the parties' bargaining history, that history supports the Employer's position--not the Union's position. To support this premise, it cites the testimony of County negotiators Acheson, Mayberry and Prenn who all testified that when the special grant language was negotiated in 1988, there was no discussion between the parties that the first sentence of Article 25, B did not apply to bargaining unit employes who moved into special grant positions, or that bumping rights applied in the event a bargaining unit employe was awarded a special grant position. The Employer dismisses the testimony of former local Union President Block as inconsistent at best and incredible at worst. The Employer also asserts that Block's testimony concerning his "negotiations" with Sanders was completely refuted by Sanders' testimony.

Finally, the Employer submits that what this grievance comes down to is that the Union wishes it had obtained different language than was negotiated in 1988. It asserts that what the Union is attempting to do here is get in arbitration that which it failed to obtain in bargaining, namely its "replacement employe" theory. It also contends that the remedy sought by the Union is beyond the Arbitrator's authority. It therefore requests that the grievance be denied.

DISCUSSION

This grievance arose in the following context. During the course of filling a school-based social worker special grant position the Employer interviewed two internal candidates who bid for the position. One of them was Dave Bauer who was President of the local Union. During Bauer's interview he and Department Head Acheson had a short colloquy about what contractual protections were applicable to the special grant position. Specifically, Acheson contended that if Bauer moved into the special grant position, he would have to take a pay cut from his current Social Worker III salary to the posted Social Worker I salary. Bauer disagreed. Acheson also contended that if Bauer moved into the special grant position, he would not be able to bump back into his old job when the special grant period ended. Again Bauer disagreed. This grievance followed.

My analysis begins by noting that while this grievance arose out of the County's posting of a position, and while it appears from reading the Union's requested remedy that this is a posting dispute, it really is not. Instead, it involves the topic addressed in the colloquy at Bauer's interview, namely what contractual protections are applicable to internal applicants who fill special grant positions. The Union contends that employes who move into special grant positions have the same rights as bargaining unit employes. It therefore submits these employes are entitled to keep their existing salary, fringe benefits and all contractual rights while they are in the special grant position. The Employer disagrees. In its view, employes who move into special grant positions get to keep their fringe benefits, but nothing more.

In deciding this matter, the undersigned will focus first on the applicable contract language. If the language does not resolve the matter, attention will be given to evidence external to the agreement, namely the parties' bargaining history.

Both sides agree that the contract language applicable here is the first paragraph of Article 25, B. That paragraph provides as follows:

> Persons employed by the County under state or federal grant programs shall be exempt from coverage by the terms and conditions of this collective bargaining agreement for the duration of the person's employment under the grant program. The County agrees to comply with the negotiated posting procedure when hiring special grant employees. Wage rates for special grant positions shall be consistent with equivalent positions in the bargaining unit. If a bargaining unit employee is hired for a special grant position, that employee shall continue to receive all benefits provided under the collective bargaining agreement.

Before giving an overview of this paragraph, it is noted at the outset that the labor agreement provides various rights and benefits to employes who are covered by it. The first sentence cited above withdraws a certain category of employes (namely "persons employed by the County under state or federal grant programs") from coverage under the collective bargaining agreement. In other words, "persons" employed under grant programs are excluded from coverage of the collective bargaining agreement. The word "persons" is not qualified in that sentence as just those individuals hired from the outside for the position. That being so, the undersigned reads the word "persons" to be all inclusive and include both individuals hired from the outside and individuals from inside the bargaining unit who move into special grant positions. Although special grant employes are excluded from coverage of the collective bargaining agreement, the next sentence of the paragraph requires that the County use the negotiated posting procedure when hiring special grant employes. This means that existing bargaining unit employes have the first opportunity to apply for special grant positions. The third sentence of the paragraph mandates that special grant positions be paid consistent with equivalent positions in the bargaining unit. This means that persons in special grant positions will not be paid more or less than those in bargaining unit positions. Finally, the last sentence of the paragraph provides that if a bargaining unit employe fills a special grant position, "that employee shall continue to receive all benefits provided under the collective bargaining agreement."

Applying this language to what happened here, there is no question that the Employer complied with the contractual obligations contained in the second and third sentences of the paragraph. Specifically, it posted the school-based social worker special grant position so that internal applicants had an opportunity to bid on the position. Additionally, it paid the posted position at a wage rate consistent with equivalent positions in the bargaining unit, namely Social Worker I.

What is disputed here is whether the Employer complied with the contractual obligations found in the first and fourth sentences of the paragraph. These sentences are reviewed further below.

As previously noted, the first sentence excludes "persons" employed under grant programs from coverage under the collective bargaining agreement. Excluding someone from coverage of the labor agreement means they are ineligible for whatever rights are afforded to those covered by the agreement. The labor agreement involved here grants employes certain contractual rights, some of which are the job security, seniority and bumping rights contained in Articles 8 and 9. However, this first sentence specifically withdraws those contractual rights from a certain class of employe, namely those persons employed under grant programs.

That said, the question arose at the hearing of who is excluded from coverage under the collective bargaining agreement when an internal applicant moves into a special grant position and is subsequently replaced. Is it the internal applicant or is it the person subsequently hired as the internal applicant's replacement? According to the Union, the person excluded from coverage of the collective bargaining agreement under these circumstances is the

internal applicant's replacement (i.e., the replacement employe). I disagree. In my view the Union's proposed interpretation is contrary to the explicit language contained in the first sentence where it provides that the "person" who is "exempt from the coverage by the terms and conditions of this collective bargaining agreement" is the "person employed by the County under the state or federal grant programs." I read this sentence to mean that it is the special grant employe that is excluded; not the special grant employes' replacement. Said another way, the employe excluded under Article 25, B is the special grant employe; not the replacement employe.

The Union essentially acknowledged at the hearing that there is no express language which supports its proposed interpretation that the replacement employe is excluded. Instead, the Union relies on the point that it was Block's and Gillispie's view that the special grant employes' replacement was the one excluded and this is how they explained it to bargaining unit members in 1988 after the language was agreed upon. However, just because Block and Gillispie believed that is what the language meant does not make it so. Obviously, there has to be a contractual basis for such a conclusion to be valid. Here, there is no contractual basis for such a conclusion. That being so, the undersigned finds no contractual basis for the interpretation Block and Gillispie gave bargaining unit members in 1988 when they explained the newly agreed-upon language.

Attention is now turned to the other disputed language, namely the fourth sentence of the first paragraph of Article 25, B. As previously noted, that sentence provides that if a bargaining unit employe fills a special grant position, "that employee shall continue to receive all benefits provided under the collective bargaining agreement." At issue is what the word "benefits" means in the context of this sentence.

This obviously depends on what definition is applied to the term. The Employer contends that it refers to contractual benefits such as insurance and paid time off such as leaves, holidays and vacations. The Union agrees that the foregoing items are "benefits," but it submits that additional items are also covered, to wit: the employe's current salary and contractual rights. It is thus apparent that the Employer reads the term "benefits" as applying to what is commonly referred to as fringe benefits, while the Union reads the term much broader than does the Employer.

Despite their disagreement over what the term "benefits" means, both sides assert that the term is clear and unambiguous. Each side argues that the term "benefits" means what they say it means. Certainly the term "benefits" can be read, as the Employer asserts, to cover insurance and paid time off such as leaves, holidays and vacations (i.e., traditional fringe benefits). On the other hand, the term "benefits" can also be read, as the Union asserts, to cover not only those fringes identified by the Employer (i.e., insurance and paid time off) but also the employe's current salary and various contractual rights such as job security, seniority and bumping rights. Given the foregoing, it is possible to read the term "benefits" as synonymous with fringe benefits, while it is also possible to read it broader and more encompassing than just fringe benefits. Since either interpretation is plausible, it is concluded that the term "benefits" is not clear and unambiguous on its face.

Inasmuch as an ambiguity exists concerning what is meant by the term "benefits" in Article 25, B, attention is now turned to the other evidence relied upon by the parties, namely bargaining history. Bargaining history is a form of evidence commonly used by arbitrators to interpret ambiguous contract language.

As just noted, bargaining history can be a useful guide in interpreting the meaning of ambiguous contract language. In this case, each side relied

extensively on bargaining history to support their interpretation of the language in question. However in doing so, each side relied on a different "bargaining history." The Union relied on the one-on-one discussions local Union President Block had with Department Head Sanders, while the Employer relied on the negotiations Prenn and the Employer's Personnel Committee had with Ellingson. Each side dismisses the other's version of the bargaining history as not being controlling.

Attention is focused first on the one-on-one discussions Block had with Sanders. The record indicates that in 1988, Block and Sanders had discussions concerning special grant positions and how they would be utilized. That said, what they agreed upon is disputed. Block testified that during these "negotiations," Sanders agreed that an internal applicant who moved into a special grant position could bump back into their old job when the special grant period was over. Sanders expressly denied agreeing to same. Sanders also testified he and Block never drafted any actual contract language, and specifically did not draft the language that was ultimately agreed upon by the parties. According to Sanders the actual language was drafted by Prenn and Ellingson; not he and Block. Sanders also testified that with regard to the language that was ultimately agreed upon, he did not recall telling Block that "benefits" meant "all contractual rights."

The Union's version of the bargaining history would certainly have been bolstered if Block's testimony about his discussions and agreements with Sanders had been unrebutted. However, the fact of the matter is that it was rebutted. Specifically, Sanders refuted Block's testimony on all significant points. Given Sanders' rebuttal, Block's version of the bargaining history cannot be considered controlling, especially when Block offered no notes or documentation to support his version of what happened.

The focus now turns to the bargaining history relied upon by the Employer, namely the bargaining sessions between Ellingson and the County and the correspondence between Prenn, Ellingson and Block. A review of that bargaining history reveals the following. First, with regard to the negotiations that occurred between Ellingson and County representatives in 1988, there were no discussions between them that the first sentence of Article 25, B did not apply to bargaining unit employes who moved into special grant positions. If the Union's view was contrary (i.e., that bargaining unit employes who moved into special grant positions were not excluded from coverage of the contract) it should have so advised the Employer. It did not. Second, there were no discussions between Ellingson and County representatives in 1988 that there were bumping rights for bargaining unit employes who moved into special grant positions and later wanted to move back when the special grant period ended. If the Union's view was contrary (i.e., that there were bumping rights for bargaining unit employes who moved into special grant positions and later wanted to move back when the special grant period ended), it should have so advised the Employer. It did not. Finally, with regard to the language that was ultimately incorporated into the contract, Prenn's unrebutted testimony was that Block called her after receiving some proposed language and asked her to include language requiring the County to use the posting procedure when filling special grant positions and language providing that if bargaining unit employes moved into special grant positions, they would continue to receive their existing insurance. Prenn agreed to make these changes and did so. If the Union's view was that bargaining unit employes who moved into special grant positions continued to receive their current salary, all fringe benefits and all contractual rights, it should have so advised the Employer. It did not.

The bargaining history noted above, particularly the phone call between Prenn and Block wherein Prenn agreed to Block's request of allowing employes to

continue receiving their insurance while in special grant positions, supports the Employer's proposed interpretation of "benefits" as just fringe benefits such as insurance. In contrast, there is nothing in this bargaining history that supports the Union's proposed interpretation of "benefits" as covering not only fringe benefits, but also wages and contractual rights.

The Union overlooks the points identified above concerning the 1988 bargaining sessions between Ellingson and the County and the correspondence between Prenn, Ellingson and Block. Instead, it relies on what Block told bargaining unit members the newly agreed-upon language meant, namely that he thought it meant that employes who move into special grant positions kept their current salary, fringe benefits and contractual rights. However, as previously noted, just because Block believed that is what the language said does not make it so. Obviously, there has to be a contractual basis for such a conclusion to be valid. Here, there is no language that explicitly says that. Additionally, as noted above, there is nothing in the applicable bargaining history (namely the 1988 bargaining sessions between Ellingson and the County and the correspondence between Prenn, Ellingson and Block) indicating that is what the parties intended the language to mean. The undersigned therefore finds no basis for the interpretation Block gave to bargaining unit members in 1988 when he explained the newly agreed-upon language.

Since the Employer's proposed interpretation of the term "benefits" is supported by the above-noted bargaining history, the meaning proposed by the Employer will be used. It is therefore held that the term "benefits" in the fourth sentence of the first paragraph of Article 25, B refers to fringe benefits--nothing more.

Applying that meaning here yields the following results. Bargaining unit employes who move into special grant positions get to keep their fringe benefits while in the special grant position. However, they do not get to keep their current salary (assuming they are paid more than the special grant position salary) and they do not keep their (former) contractual rights while in the special grant position. Finally, those bargaining unit employes who move into special grant positions do not get to bump back into their old position when the special grant period ends.

In so finding, the undersigned is well aware that this holding results in a situation where bargaining unit employes who move into special grant positions lose their contractual rights and possibly their current salary. For example, had applicant Bauer accepted the special grant position offered to him, he would have been reduced in salary from a Social Worker III rate to a Social Worker I rate, and would not have had bumping rights back to his old position when the special grant period ended after three years. Thus, as a practical matter, he would have lost his job security by going into the special grant position.

The Union views the foregoing as an injustice and a harsh result. The undersigned does not disagree with this characterization. Be that as it may, this is what the language specifies. Were the undersigned to hold otherwise and find that bargaining unit employes who move into special grant positions were entitled to keep all their contractual rights, this would make the first sentence of Article 25, B 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. That being so, the undersigned has no choice but to enforce the language as written.

In light of the above, it is my

AWARD

1. That bargaining unit employes who move into special grant positions pursuant to Article 25, B of the collective bargaining agreement get to keep their fringe benefits while in the special grant position, but not their current salary and contractual rights.

2. That bargaining unit employes who move into special grant positions pursuant to Article 25, B of the collective bargaining agreement do not get to bump back into their old position when the special grant period ends.

The grievance is therefore denied.

Dated at Madison, Wisconsin, this 29th day of June, 1994.

By Raleigh Jones /s/
Raleigh Jones, Arbitrator

RJ/mb
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