

BEFORE THE ARBITRATOR

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 In the Matter of the Arbitration :
 of a Dispute Between :
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 FEDERATION OF NURSES AND HEALTH : Case 3
 PROFESSIONALS, LOCAL 5001, AFT, : No. 50833
 AFL-CIO : A-5210
 :
 and :
 :
 UNITED REGIONAL MEDICAL SERVICES :
 :

Appearances:

Ms. Carol Beckerleg, Field Representative, Federation of Nurses and Health Professionals, appearing on behalf of the Union.
Mr. Robert Mulcahy, Attorney at Law, appearing on behalf of the Employer.

ARBITRATION AWARD

The above-captioned parties, hereinafter the Union and United 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. A hearing was held on July 21, 1994, in Milwaukee, Wisconsin. The hearing was not transcribed. The parties filed briefs and the Employer filed a reply brief, whereupon the record was closed September 6, 1994. Based on the entire record, the undersigned issues the following Award.

ISSUES

The Union frames the issue as:

Did the Employer violate Section 2.33 of the contract when it refused to post the position of Quality Control Coordinator?

If so, what shall the remedy be?

The Employer frames the issue as:

Did the Employer violate the contract under Article 2.33 Transfer Policy by assigning the duties of Quality Control Coordinator without posting for the position?

If so, what is the remedy?

Since there was no stipulation on the issue(s) to be decided, the undersigned has framed them as follows:

1. Did the Employer violate Sec. 2.33 of the labor agreement by not posting the quality control coordinator duties? If so, what is the appropriate remedy?

2. Did the Employer violate the labor agreement when it assigned the quality control coordinator duties to Fitzgibbon, a Medical Technologist I? If so, what is the appropriate remedy?

PERTINENT CONTRACT PROVISIONS

The parties' 1993 collective bargaining agreement contained the following pertinent provisions:

1.05 MANAGEMENT RIGHTS

The employer retains and reserves the sole right to manage its affairs in accordance with all applicable laws. Included in this responsibility, but not limited thereto, is the right to determine the number, structure and location of departments and divisions, the kinds and number of services to be performed; the right to determine the number of positions and the classifications thereof to perform such service; the right to direct the work force; the right to establish qualifications for hire, to test and to hire, promote and retain employes; the right to transfer and assign employes, subject to existing practices and the terms of this Agreement; the right, subject to the terms of this Agreement related thereto, to suspend, discharge, demote or take other disciplinary action and the right to release employes from duties because of lack of work or lack of funds; the right to maintain efficiency of operations by determining the method, the means, and the personnel by which such operations are conducted and to take whatever actions are reasonable and necessary to carry out the duties of the various departments and divisions.

In addition to the foregoing, the employer reserves the right to make reasonable rules and regulations relating to personnel policy procedures and practices and matters relating to working conditions, giving due regard to the obligations imposed by this Agreement. However, the employer reserves total discretion with respect to the function or mission of the various departments and divisions, the budget, organization, or the technology of performing the work. These rights shall not be abridged or modified except as specifically provided for by the terms of this Agreement, nor shall they be exercised for the purpose of frustrating or modifying the terms of this Agreement. But these rights shall not be used for the purpose of discriminating against any employe or for the purpose of discrediting or weakening the Federation.

. . .

2.33 TRANSFER POLICY

(1) Transfer Priorities. For purposes of this section, transfer shall mean the filling out of vacancies by the relocation of an employe from one position to another within the same classification.

(2) Employes having been selected for transfer within classification, shall have a three (3) month trial period to determine ability to perform on the job and desirability to remain on the job. If within three (3) months an employe does not successfully complete the trial period or desires to return to the employe's former position, the employe shall be permitted to return to the former position from which the employe transferred in the event such position remains vacant.

If such position has been filled, the employe shall return to any vacant position in the employe's classification in the section from which the employe transferred. If no such vacancy exists, the employe may remain in the current position and may request a transfer to any other section within the department or will be transferred back to the first vacancy in the employe's classification in the section from which the transfer occurred.

(3) Involuntary Transfers:

(a) For the purpose of this section, an involuntary transfer shall mean the relocation of an employe from a section which has been closed or reduced in staff, necessitating the transfer of such employe to another section.

(b) When it becomes necessary because of the circumstances in paragraph (3) (a) above that an

employee be transferred from a section, the least senior qualified employee in the affected classification shall be transferred first.

(c) An employee transferred by the employer from one section shall return to a position in the same classification in the employee's original section, when a vacancy occurs, if such a request is made.

(d) When two or more employees are transferred, the most senior employee shall return to the employee's section first, if such a request is made.

(e) The employer agrees to notify the Office of the Federation prior to the opening or closing of any section.

(4) Position Posting

(a) Notices of all positions within established bargaining unit classification which are to be filled shall be posted in one location in the Laboratories, as mutually determined by the Federation and the employer seven (7) days prior to filling. Postings shall include section and shift. Employees wishing to be considered for appointment to such vacancies shall make their requests in writing during the posting period to the employer. Copies of posted vacancies shall be sent to the Federation at time of posting.

(b) For purposes of this section, a transfer shall mean the filling of vacancies by the relocation of an employee from one position to another within the same classification.

(c) Employees shall not be selected for posted vacancies in their classification more than once per 12-month period except for vacancies within the employees own section which only result in shift changes.

(d) Any employee having been selected for a posted vacancy may not be retained in their current position for a period in excess of twenty (20) working days.

(e) Posted vacancies shall be filled by the most senior qualified employee within the same classification in the section before it is filled by the most senior qualified employee from another section.

(f) Whenever an employe is denied a request for a posted vacancy whether that employe is the only requestor or the most senior of several requestors, the reason for denial shall be made known in writing to such requestor by the supervisor who rejected the request.

(g) Employes shall not normally be entitled to file a request for a transfer until they have completed their probationary period. However, when the employer deems it to be mutually advantageous, employes may be permitted to transfer prior to the completion of their probationary period but will be required to serve their full probationary period in the position to which they have transferred.

(5) Nothing in the above sections shall preclude administration transfers with mutual consent of the union and management and said administrative transfer shall have priority over transfer request.

FACTS

United Regional Medical Services provides laboratory and radiology services to Doyne Hospital and Froedtert Memorial Lutheran Hospital in Milwaukee. United employs 265 laboratory employes (including 118 Medical Technologist I's) and 179 radiology employes. When the instant grievance arose, laboratory employes were assigned to one of fourteen specialty sections: Blood Bank, Chemistry, Coagulation, Communications, Cytology, Diagnostic Immunology, Hematology, High Volume Lab 2nd Shift, High Volume Lab 3rd Shift, Microbiology, Serology, Special Chemistry, Toxicology and Virology. Subsequent to the grievance, the Chemistry and Special Chemistry sections were combined. The laboratory employes in each of these sections perform various tests within that specialty. These tests are performed in separate test stations by the Medical Technologist I's who are trained to perform all of the laboratory tests on patient specimens performed in that section. The Medical Technologist I's rotate through each test station within the section by working at a station for one week and then moving on to the next station the following week. This is referred to as bench work. Bench work is the reason this Employer exists and is a very high priority job. Bench work is considered routine and tedious by those who perform it.

All the Medical Technologist I's do bench work and it is their main work duty. It is not their only work duty though. Several Medical Technologist I's have been assigned training, teaching, safety and inventory duties. These duties have included the following: training new employes, being training leaders, teaching medical technology students, teaching new employes bench procedures, coordinating the teaching activity, database coordination, being Laboratory Information System (LIS) training leaders, bringing a new computer system on line, preparing special reagents for procedures performed in the laboratory, preparing quality control data, preparing proficiency testing, preparing new evaluation procedures, preparing for on-site inspection and accreditation, performing safety checks, updating the safety manual and preparing the weekly inventory order. A few of the assignments just identified, namely instructing students and new employes and preparing reagents, are specifically listed in the Medical Technologist I job description. The remaining assignments just identified are not specifically listed in the Medical Technologist I job description. In assigning those duties, the Employer's position has been that they fall under the rubric of the

phrase: "other duties as assigned" (Item #12, p. 1 of the Medical Technologist I job description). The Union never grieved the assignment of any of the duties identified above as being outside the job description for a Medical Technologist I. Additionally, none of these job assignments were posted, and the Union never grieved the lack of posting for same. The Medical Technologist I's who were assigned these duties did not stop performing bench work. Rather, they continued working on the bench in the normal rotation, including working on weekends and holidays. The labor agreement does not specify a different pay grade or class for performing any of these job duties and/or assignments. As a result, the employees who perform the aforementioned job duties and/or assignments are not paid additional money for doing so. The amount of time spent on the aforementioned assignments is disputed. The Union contends that these extra duties consume a maximum of 10% of the employee's work year. The Employer acknowledges that while some of the foregoing assignments such as safety, inventory and preparing reagents take about 10% of the employee's time, it submits that other assignments take more time. Specifically, it asserts that the teaching function takes 30% of the employee's time, serving as database coordinator took 90% of the employee's time during implementation and 60-70% thereafter, and serving as LIS training leader took 50% of the employee's time during training and 10% thereafter.

The Medical Technologist I job description provides that an "essential function" of the position is to "consistently meet schedule and quality requirements" (Item #10, page 1). Thus, quality of work is an essential part of the job. Additionally, two of the duties listed on the Medical Technologist I Duties Summary sheet are to provide "acceptable work in relation to quality requirements" and "document quality control and workload information." The Medical Technologist I's spend about 20 minutes a day doing this work and entering it into the Employer's LIS computer system.

In September, 1993, Diane Breitenfeld, the Clinical Laboratory Manager for United, decided someone was needed to coordinate quality control activities in the Chemistry section so that the Employer complied with federal regulations. She spoke with her supervisors about the matter and they concurred. As a result, management made the decision to have someone coordinate quality control activities in the Chemistry section. Management also decided this coordinator would be a Medical Technologist I. Management further decided it would not post this work, but would instead unilaterally assign it to someone in the Medical Technologist I classification. Breitenfeld envisioned that this quality control work would take about 50% of a Medical Technologist I's time, while Laboratory Manager Lawrence Weaver thought that it (i.e. the quality control work) would take less time than that.

On September 22, 1993, Breitenfeld handed out the following memorandum to Chemistry employes on the "reassignment of Medical Technologist I job duties":

It has been determined that a QC coordinator is needed for quality control responsibilities and related projects in the chemistry areas.

As a result, we have decided to reassign the job duties of a Medical Technologist I in chemistry.

If interested, please contact me by 3:00 p.m. Wednesday, September 29th. I will be available to answer any questions regarding this reassignment at ext. 6883.

This memorandum was distributed to Chemistry employes after an inservice, and later was given to those Chemistry employes not present at the inservice.

Four Medical Technologist I's expressed interest to Breitenfeld in doing the quality control coordinator work: Greg Johnson, Jean Anderson, Mike Jozwiak and Lillian Fitzgibbon. Johnson worked in the Special Chemistry Department while the other three worked in the Chemistry Department. Breitenfeld told Johnson that the quality control coordinator work was limited to those in the Chemistry Department. (Since Johnson worked in the Special Chemistry Department, this meant he was ineligible for same.) Breitenfeld then spoke to the other three employes about the quality control coordinator work. She told each of them that there would be no additional pay for the work, that they would still be doing bench work, and that they would still be on the same holiday and weekend rotation as other Medical Technologist I's in the section. Afterwards, Anderson told Breitenfeld that she would consider the quality control coordinator assignment if no one else would take it. Jozwiak told Breitenfeld to keep him in mind if no one else was interested in the assignment. Fitzgibbon told Breitenfeld that she was interested in performing the quality control coordinator work. Fitzgibbon had previously coordinated new procedures and tests for the Employer and updated the Employer's quality control manual. She was also the most senior of all these employes.

The Employer selected Fitzgibbon as the quality control coordinator and assigned her those duties in addition to working on the bench. Fitzgibbon commenced performing the quality control coordinator duties in January, 1994. The reason she did not commence performing those duties until then was that the Employer had to honor previously marked vacation, personal days and holidays and Breitenfeld felt she could not take Fitzgibbon off the bench until then because of the workload.

After Fitzgibbon became quality control coordinator, there was no change in her pay or classification. Her work schedule did not change and she continued to work on weekends and holidays. Additionally, she continued to pick her vacation days the same as other Medical Technologist I's. She was taken out of the regular bench rotation though. As a result, she no longer rotates through each station. Now when she works on the bench she fills in wherever needed.

There are no set hours or schedule for Fitzgibbon to perform the quality control coordinator work. It varies from day to day and week to week. When bench work is slow and the Employer is above a certain minimum staffing level, Fitzgibbon is pulled off the bench to perform quality control coordinator work. The record indicates that the volume of laboratory work in the Chemistry Department decreased by 6.5% in the first six months of 1994 from the same period in 1993.

The amount of time Fitzgibbon spends performing quality control coordinator work is disputed. The Employer puts the figure at 40% for the first six months of 1994, while the Union believes the figure for that same time period is 50%.

After Fitzgibbon was assigned the quality control coordinator work, Union Representative Barbara St. Martin asked Breitenfeld to provide a list of the quality control duties assigned to Fitzgibbon. Breitenfeld complied with St. Martin's request and prepared such a list. The typed two-page document which Breitenfeld prepared did not exist prior to St. Martin's request and was prepared for the purpose of responding to St. Martin's request for information. This document provided in part:

Quality Assurance Coordinator

PURPOSE: To coordinate, monitor, and report on all quality control functions within the assigned section. . . .

QUALIFICATIONS: Medical Technologist with at least 5 years experience in clinical chemistry

The document goes on to list 22 job duties which the person is responsible for performing. Nowhere on this document does it indicate that it is a formal job description. The record indicates that Fitzgibbon never received a copy of this document. Breitenfeld testified she would not have created this document if St. Martin had not requested same.

On December 15, 1993, Gregory Johnson filed a grievance contending that the quality control coordinator was a new position which should have been posted. This grievance was processed to arbitration.

The record indicates that the Employer posted a new Medical Technologist I position in the Chemistry Department in November, 1993. LeAnn Warren, a Medical Technologist I from the Microbiology Department, transferred into the position and began the job in January, 1994. Breitenfeld testified that the new position which Warren filled was budgeted in mid-1992 as part of the Employer's 1993 budget.

POSITIONS OF THE PARTIES

It is the Union's position that the quality control coordinator is a new part-time position within the Medical Technologist I class, and not simply a work assignment. The premise underlying this contention is that the quality control duties which the quality control coordinator (Fitzgibbon) performs are different from the quality control duties which the Medical Technologist I's normally perform when working on the bench. As a result, the Union views it as a new part-time position. According to the Union, the Employer could take a full-time position and split it 50/50; 50% for quality control and 50% for bench work. The Union concedes that many of the Medical Technologist I's have been assigned other duties (such as inventory, safety and teaching) in addition to their normal bench work. The Union submits that since bench work is routine, employees look forward to getting off the bench and these assignments allow them to do just that. The Union asserts that the quality control work involved here differs in a number of respects from the assignments which the Employer has previously made. To begin with, the Union contends that when previous assignments were made, they consumed a maximum of 10% of an employee's work year. The Union argues that here, though, the amount of time spent is much greater than that. According to the Union, Fitzgibbon spends about 50% of her time doing quality control work. The Union arrived at their 50% figure by computing the hours differently than the Employer. Specifically, the Union excluded paid time off and did not count the month of January until January 30.

The reason the Union delayed counting until then was that this was when Fitzgibbon began performing quality control work in earnest. Next, the Union submits that this particular work experience puts the person who is doing it (Fitzgibbon) in a better position to vie for a promotion to a Medical Technologist II. The Union notes in this regard that Fitzgibbon is becoming proficient in all aspects of quality control while the employees working on the bench gain only basic knowledge of quality control. Next, the Union notes that previous assignments were not offered to employees -- they were just assigned. Here, though, the Employer told all the employees in the section about the assignment via a memo and solicited volunteers. According to the Union, this indicates there was a vacancy. Next, the Union points out that previous assignments did not have a title, a description of the duties, or special education requirements. The Union notes that this job has all three. Finally, the Union points out that Fitzgibbon is no longer part of the regular rotation cycle for bench work. The Union contrasts this with the other Medical Technologist I's who have been assigned extra duties and who continue to be part of the regular rotation cycle for bench work. The Union also relies on the fact that after Fitzgibbon was selected for the assignment, the Employer posted a vacant Medical Technologist I position in Chemistry. The Union urges the arbitrator to make a connection between these two events. In conclusion, the Union asks the arbitrator to find that the quality control coordinator is a position, and as such should have been posted pursuant to Section 2.33. The Union contends that if the Employer does not have to post the job, all the Employer has to do next time is reassign duties (as they did here) and give the job to whomever they want, and keep that person on the bench part of the time.

The Union does not ask, as part of the requested remedy, that the grievant be awarded the quality control coordinator job.

It is the Employer's position that it did not violate the contract by assigning duties relating to quality control to a Medical Technologist I. The Employer acknowledges at the outset that when it decides to fill a full-time position within the laboratory where there is a vacancy, it must post the position pursuant to Sec. 2.33 of the contract. It notes in this regard that it has posted full-time vacant positions in the past and bargaining unit employees have posted into those positions. The Employer contends that here, though, no new position was created when it assigned quality control duties to a Medical Technologist I. In its view, the assignment of the quality control job duties to a Medical Technologist I does not constitute the creation of a vacant position. The Employer reasons that since no position was created, there was nothing which had to be posted under the terms of the parties' agreement. It argues that the Union is mistaken in its contention to the contrary. The Employer contends that the contract language which relates to postings (namely, Section 2.33) requires the posting of positions -- not the posting of job duties or assignments. The Employer asserts that there is no language in the contract relative to the assignment of job duties or specific assignments. To further support its contention that no new position was created, the Employer points out that a set procedure exists for establishing a new position, and that procedure was not followed here. According to the Employer, this shows that no new position was established here. Next, the Employer calls the arbitrator's attention to the fact that the assignment of the quality control coordinator job duties do not equate to a full-time position. Specifically, it contends that the quality control coordinator job duties consume approximately 40% of the Medical Technologist I's time. The Employer cites Employer Exhibit 5 to support the proposition that during the period of January 2 through July 16, 1994, Fitzgibbon spent 40% of her total work hours performing quality control duties, with the rest of her time (60%) being spent working on the bench. The Employer also contends that the quality control duties do not constitute a part-time position either. In support thereof, it asserts that the hours which are spent performing quality control coordinator work are irregular, indefinite and entirely dependent on the amount of available time in the laboratory schedule. In the Employer's view, this grievance boils down to management's right to assign work. The Employer relies on those provisions in the Management Rights clause wherein management has reserved unto itself the right to assign work and to determine "the method, the means and the personnel by which such operations are conducted." The Employer submits that it unilaterally makes work assignments to Medical Technologist I's on a daily basis covering a wide range of activities. Specifically, it notes that the following tasks have previously been assigned to the Medical Technologist I's: safety, inventory, CAP, teaching and LIS training leaders. The Employer asserts that all these previous assignments fell within the scope of the Medical Technologist I job description, so quality control coordinator duties should as well. The Employer also contends that the percentage of time which the employees' spend on these job assignments compares favorably to the time that Fitzgibbon spends performing quality control duties (namely, 40%). The Employer therefore requests that the grievance be denied.

DISCUSSION

My analysis begins with a review of the following factual context. The Employer decided to have one person coordinate and monitor all quality control activities in their Chemistry Department. Prior to this, a single person was not responsible for this work. The Employer decided that a Medical Technologist I would do this work and it designated this person as the quality control coordinator. The Employer further decided it would not post this work, but instead would unilaterally decide who would do it. It solicited volunteers from the Chemistry Department and then selected one of those volunteers, namely Fitzgibbon, to perform that work in addition to her bench work.

The threshold issue is whether the quality control coordinator work is a position or an assignment. If it is a position, as the Union contends, then it had to be posted pursuant to Sec. 2.33. On the other hand, if it is a work assignment, as the Employer contends, then it need not be posted.

Attention is focused first on the applicable contract language. That language is Sec. 2.33 since both sides cite that section in their framing of the issue. (1) of Sec. 2.33 addresses the filling of "vacancies by the relocation of an employe from one position to another within the same classification." The balance of that section references "positions" within one of the "sections" in the laboratory. The Employer acknowledges that this language obligates it to post vacant positions for which employes may compete.

That said, it is well established that in the absence of a contract provision limiting management's right to fill vacancies, it is management's right to determine when and whether a vacancy exists. If the Employer determines that a vacancy exists, then the posting procedures found in Sec. 2.33 come into play. However, unless management determines that a vacancy exists, no contractual right which is contingent on the existence of a vacancy may be exercised.

Management determined here that there was no vacancy in the Medical Technologist I class, and the Union does not contend otherwise. Instead, the Union takes a slightly different approach. It contends that the quality control coordinator work in question was a new "position" which should have been posted. However, simply calling this work a "position" does not make it one. As just noted, the Employer determines whether a vacancy exists. The same is true of positions. Thus, the Employer also determines whether a position exists. Here, the Employer decided that the quality control coordinator work in question did not constitute either a full-time or part-time position. The undersigned agrees since the hours in which this (quality control) work are done are irregular, indefinite and entirely dependent on the amount of available time in the laboratory schedule. It is therefore held that the quality control coordinator work involved here is not a "position." As a result, it did not qualify for a posting under the terms of the parties' agreement.

Having found that the quality control coordinator work in question is not a "position," the question remains what it is. It is held that it is an assignment of duties. What the Employer did was assign certain job duties, namely quality control coordinator duties, to a Medical Technologist I. The contract does not address the assignment of job duties, nor are they covered by the posting provision. As a result, the management rights clause controls and allows the Employer to make assignments to Medical Technologist I's which are within the scope of their job description.

The Medical Technologist I job description provides that one function of the classification is to "consistently meet . . . quality requirements" (when doing bench work). Similarly, one of the performance standards listed on the Medical Technologist I duties summary sheet is "quality control." Thus, the phrase "quality control" is specifically listed on the Medical Technologist I duties summary sheet. The Medical Technologist I's working on the bench spend about 20 minutes a day doing quality control work. The quality control work which they perform involves a basic knowledge of quality control. The quality control work done by the quality control coordinator involves a more advanced knowledge of quality control. That being so, the quality control work which the quality control coordinator performs is simply more detailed and involves more aspects of quality control than the quality control work done by those employes working on the bench. Given the foregoing, it is held that the quality control coordinator duties are within the scope of the existing Medical Technologist I job description.

The Union submits that by assigning the quality control coordinator work to Fitzgibbon, this put her in a better position to vie for a promotion later to Medical Technologist II. I agree. By being the quality control coordinator, Fitzgibbon is becoming more proficient in quality control work than those Medical Technologist I's who are working solely on the bench. This same principle applies to any non-bench work assignment which a Medical Technologist I receives. Generally speaking, the more job skills and experience an employe has, the greater their likelihood of promotion.

The assignment of the quality control coordinator work to a Medical Technologist I is also buttressed by the fact that the Employer has previously assigned other duties to the Medical Technologist I's in addition to their normal bench work. These assignments have covered a variety of areas including safety, inventory, CAP, teaching and LIS training. It is noteworthy that none of these job assignments have been posted by the Employer and the Union never grieved any of them.

The Union contends that the quality control coordinator assignment differs in a number of respects from the assignments which the Employer has previously made. These contentions are addressed below.

To begin with, the Union contends that previous assignments consumed a maximum of 10% of an employe's work year and that the instant work assignment consumes much more time than that (i.e. more than 10%). The undersigned disagrees with the former but agrees with the latter. Certainly some of the assignments previously made, such as safety, inventory and preparing reagents,

take about 10% of the employe's time. However, contrary to the Union's assertion, not all previous assignments take just 10%. For example, the record indicates that the teaching function takes 30% of the employe's time, serving as database coordinator took 90% of the employe's time during implementation and 60-70% thereafter, and serving as LIS training leader took 50% of the time during training and 10% thereafter. The amount of time which Fitzgibbon spends performing quality control work is disputed, with the Employer putting the figure at 40% and the Union putting the figure at 50%. For purposes of the discussion herein, it does not matter whether the Employer's or the Union's figure is used. Either way, the time spent on the quality control coordinator assignment is higher than almost all of the other assignments performed by the Medical Technologist I's. However, it is not the highest percentage of time since the Medical Technologist I assigned to be the database coordinator spends an even higher percentage of time on that assignment, namely 60-70%.

Next, the Union notes that while Fitzgibbon still works on the bench, she is no longer part of the regular rotation cycle for bench work. Insofar as the record shows, all other Medical Technologist I's who have been given extra assignments are still part of the regular rotation cycle for bench work. This fact differentiates the quality control coordinator assignment from other previous assignments made to the Medical Technologist I's.

The Union also calls the arbitrator's attention to the method used by the Employer to select an individual to be the quality control coordinator. Specifically, the Union notes that the Employer sent out a memo soliciting volunteers for this particular assignment. Insofar as the record shows, this was the first time the Employer solicited volunteers for an assignment. Previously, the Employer just picked someone (for the assignment). There is no question that the Employer made this assignment differently than it made previous assignments since here it solicited volunteers. That said, it is emphasized again that the Employer has the managerial right to make the assignment in question. It could make that assignment to a Medical Technologist I however it wanted. The fact that it chose to solicit volunteers before it exercised that managerial right does not change this.

Next, the Union submits that previous assignments did not have 1) a title, 2) a written description of duties, or 3) special education requirements, while the instant assignment had all three. Each of these points is addressed below. With regard to the first point, the record indicates there are some other assignments that have titles, namely database coordinator, LIS training leader and section safety director. That being the case, the fact that the assignment involved here has a title (i.e. quality control coordinator) does not differentiate it from previous assignments made by the Employer. With regard to the second point, the record does not contain written job duties for any other job assignment. It is inferred from this that no other assignment, other than the instant one, has a written description of the duties. Consequently, this fact also differentiates the quality control coordinator assignment from other previous assignments. That said, the document which lists the duties for the quality control coordinator is not a formal job description. It was prepared for the Union at the Union's request. Had the Union not requested same, it would not have been prepared. With regard

to the third point, the record does not show that any other assignment has special education requirements. It is inferred from this that no other assignment, other than the instant one, has a special education requirement. This fact also differentiates the quality control coordinator assignment from other previous assignments.

The foregoing shows that there are certainly aspects about the quality control coordinator assignment that differentiate it factually from previous assignments. Those aspects are as follows: the time spent on the quality control coordinator assignment is higher than almost all of the other assignments, the quality control coordinator is no longer part of the regular rotation cycle for bench work, the Employer solicited volunteers for this particular assignment, the Employer created a written description of the duties involved for this assignment (albeit at the Union's request), and the Employer set a special education requirement for this assignment. That said, the question here is whether these points make this particular assignment contractually indefensible. I find they do not. Even when all of the foregoing points are considered, the Employer could still assign the quality control coordinator duties to Fitzgibbon because they were within the scope of her Medical Technologist I job description.

Finally, the Union contends that the Employer created a new Medical Technologist I position in the Chemistry Department because Fitzgibbon was spending so much time off the bench doing quality control coordinator work. To support this contention, the Union notes that the Employer posted a new Medical Technologist I position about the same time as Fitzgibbon was assigned to be the quality control coordinator. The Union asks the arbitrator to make a connection between these two events. The undersigned declines to do so. Other than the timing just noted, nothing in the record supports a conclusion that these two acts are connected. Instead, the record evidence points to the timing being happenstance. Breitenfeld's uncontradicted testimony was that the new Medical Technologist I position which was posted in November, 1993, and filled by LeAnn Warren was budgeted in mid-1992 as part of the Employer's 1993 budget. This means that the Employer approved this new position and put it in their 1993 budget over a year before it assigned Fitzgibbon to be the quality control coordinator. Given this time spread between the two events, the undersigned declines to make a connection between them.

In conclusion then, it is held that the Employer did not have to post the quality control coordinator duties because it is an assignment, not a position. It is also held that the Employer could assign the quality control coordinator duties to Fitzgibbon, a Medical Technologist I, since those duties are within the scope of her job description. In so finding, it is emphasized that this ruling is partially predicated on the facts involved. This ruling does not stand for the proposition that the Employer can always bypass the posting procedure by simply reassigning duties to existing staff.

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

AWARD

1. That the Employer did not violate Sec. 2.33 of the labor agreement by not posting the quality control coordinator duties.

2. That the Employer did not violate the labor agreement when it assigned the quality control coordinator duties to Fitzgibbon, a Medical Technologist I. Therefore, the grievance is denied.

Dated at Madison, Wisconsin, this 5th day of December, 1994.

By Raleigh Jones /s/
Raleigh Jones, Arbitrator