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**State of Wisconsin  
Wisconsin Employment Relations Commission**

May 6, 1997

Mr. James Mattson  
Staff Representative  
Wisconsin Council 40,  
AFSCME, AFL-CIO  
1701 East Seventh Street  
Superior, WI 54880

Ms. Kathryn J. Prenn  
Weld, Riley, Prenn & Ricci, S.C.  
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Re: Bayfield County (Zoning Department)  
AFSCME, AFL-CIO Local 1731  
Case 71 No. 54746 MA-9775  
(Amy Sharp Grievance)

Dear Mr. Mattson and Ms. Prenn:

This letter is written to confirm a "bench arbitration decision and Award with some supporting rationale" rendered by the undersigned in the above-entitled matter pursuant to an agreement by the parties at hearing on April 3, 1997, at the Bayfield County Courthouse, Washburn, Wisconsin.

Pursuant to a joint request by Bayfield County Employees, Local Union #1731, AFSCME, AFL-CIO, herein Union, and Bayfield County, herein County, I was appointed Arbitrator by the Wisconsin Employment Relations Commission on February 24, 1997, according to the procedure contained in the grievance-arbitration provisions of the parties' collective bargaining agreement, to hear and decide a dispute as specified below.

As noted above, hearing in the matter was held on April 3, 1997. The hearing was not transcribed, and the parties made oral argument at the close of hearing.

Mr. James Mattson  
Ms. Kathryn P. Prenn  
Page 2  
May 6, 1997

At issue was whether the County violated Article 14 of the parties' collective bargaining agreement when it failed to promote the grievant, Amy Sharp, into the Zoning Department secretary position. The Union argued that the County violated said agreement and past practice when it did not allow the grievant to post into the aforesaid position and to prove that she could function in the job within the 45 day trial period allowed by the agreement. The County took the opposite position.

Following the close of the record, I made the following principal relevant findings:

1. The County posted a Zoning Secretary (Grade 3) position. However, the County established qualifications for the position which were "more than a simple secretary position." Instead, the position was like an "Office Manager." The disputed position, in the opinion of the Arbitrator, is more appropriately classified at a higher grade.
2. The County established ten (10) qualifications for the position including "two or more years of administrative secretary experience," and "accounting skills and office budget management background crucial."
3. The grievant, Amy Sharp, did not possess the above two qualifications even though she was the senior employee applying for the position. These two qualifications were critical to the County's efforts "to upgrade the position," and were an integral part of the job's qualifications.
4. Article 14, Section 1, A, provides that the senior employee who meets the qualifications shall be assigned to the position. Based on same, and finding no. 3, the Arbitrator finds that the County did not violate said contract provision by its actions herein.
5. Such a conclusion is consistent with Union Exhibit No. 2 which indicates that senior, qualified employees have posted into vacant bargaining unit positions over the years.
6. Contrary to the Union's assertion, the grievant was not entitled, pursuant to Article 14, Section 1, D, to serve a forty-five (45) day trial period to prove her qualifications for the disputed position. As pointed out by Arbitrator Douglas V. Knudson in City of Kaukauna (Utility Commission), Case 51, No. 42311, MA-5653 (1990) at page 4:

There is a major difference between a trial period  
and a training period. The purpose of a training period is to

Mr. James Mattson  
Ms. Kathryn P. Prenn  
Page 3  
May 6, 1997

provide an employee with the ability to perform the job, whereas the purpose of a trial period is to give an employee an opportunity to demonstrate possession of the ability to do the job. A trial period is not a training period. (Emphasis added)

7. The grievant's failure to qualify for the aforesaid posting does not reflect adversely on her excellent work record.

Based on the record evidence, the parties' arguments, and the above findings, I issued a "bench" decision and found that the answer to the issue as framed by the undersigned was NO, the County did not violate Article 14 when it failed to promote the grievant, Amy Sharp into the Zoning Department secretary position. I therefore denied the grievance and dismissed the matter.

By terms of this letter I am confirming same and closing the file on the above case.

Very truly yours,

Dennis P. McGilligan /s/

Dennis P. McGilligan  
Arbitrator

DPM/mb  
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