

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

DANE COUNTY, WISCONSIN MUNICIPAL
EMPLOYEES, LOCAL 60, AFSCME, AFL-CIO

and

MONONA GROVE SCHOOL DISTRICT

Case 74
No. 54783
MA-9790

Appearances:

Mr. Jack Bernfeld, Staff Representative, on behalf of the Union.

Mr. Barry Forbes, Staff Counsel, Wisconsin Association of School Boards, on behalf of the District.

ARBITRATION AWARD

The above-entitled parties, herein "Union" and "District", are privy to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in Cottage Grove, Wisconsin, on February 11, 1997. The hearing was not transcribed and both parties filed briefs which were received by June 11, 1997. Based upon the entire record and arguments of the parties, I issue the following Award.

ISSUE

The parties have agreed to the following issue:

Did the District violate Article VI, Section 6.04, of the contract when it failed to award a bus driver position to grievant Robert J. Strasburg and, if so, what is the appropriate remedy?

BACKGROUND

The District maintains two schools - one in Monona, Wisconsin, and the other in Cottage Grove, Wisconsin. The District operates its own busses to service these schools and the student population which is spread out over a large geographic area. In order to aid in that effort, the District for a number of years has assigned part-time bus driver duties to its full-time custodial employes. Hence, all of its custodians have had some bus driving experience on particular routes.

Beginning with the 1996-1997 school year, however, the District used bus drivers who only drove busses and who therefore no longer have custodial duties.

The District on May 7, 1996 1/ posted for the newly-created school year only position of Director of Transportation, whose duties included serving as a substitute bus driver on any of the District's 27 regular bus routes. That posting stated:

. . .

The following Bus Driver position exists in the Monona Grove School District. Please contact Gus Knitt, Director of Business Services at 221-7660 with any questions you may have about this position. Persons interested in applying for this position must do so in writing to Gus Knitt, Director of Business Services by 4:00 p.m. on Tuesday, May 14, 1996.

BUS DRIVER--FULL TIME (SCHOOL YEAR ONLY)

Range: II

Reports To: Director of Transportation

Basic Function: Under departmental supervision performs routine duties of bus site coordinating, bus driving and coordination of bus routing.

Hours: 7:00 a.m. - 4:00 p.m.

Days Worked: 190 days (same as teacher contract)

Examples of Duties:

1. Assist in the coordinating of bus routes for the district
2. Perform bus driving duties as assigned.
3. Coordinate the bus drivers schedules and bus safety checks.
4. Assists repair technicians on assigned repair of buses.
5. Keep records and inventories required for the transportation department.
6. Perform other related duties as assigned or

1/ Unless otherwise stated, all dates hereinafter refer to 1996.

necessary.

Position Specification:

1. Extensive knowledge of transportation equipment, solutions to related problems, proper methods and procedures.
2. Ability to read and follow directions and extensive knowledge of district streets.
3. Skill in coordinating work and quality of bus drivers on site.
4. Ability to help establish safe and efficient bus routes.
5. Ability to deal with students, staff and parents on a daily basis.
6. Good mechanical aptitude.
7. Valid commercial drivers license and excellent driving record.
8. Knowledge of operational hazards and safety practices required.

This position was to commence at the beginning of the 1996-1997 school year.

About 5 employes bid for that position, including custodian Strasburg who works on the night shift at the District's elementary school. Strasburg for about half a year had previously driven a small van to pick up and deliver handicapped students. He did not, however, drive a regular yellow school bus. He testified here that he bid for the newly-created Director of Transportation position because he wants to work days.

The District on May 23 selected Gerald Rodefled for the position, thereby bypassing Strasburg who has more seniority. Rodefled at that time was working as a custodian for about 30 hours a week and as a regular part-time bus driver for about 22.5 hours a week. In addition, Rodefled is a resident of Cottage Grove and hence is very familiar with its streets.

At the time the District passed him over, Strasburg did not have a commercial driver's license ("CDL"). He obtained a CDL permit after he passed the written part of that test on May 10 and he subsequently passed the behind-the-wheel test on June 14 after he provided his own behind-the-wheel training which he obtained from another school district.

Strasburg testified that he spoke to Director of Business Services Gus Knitt on May 8; that he then asked Knitt whether a CDL was needed "in hand"; and that Knitt replied that it was not. Strasburg also testified that when he was subsequently orally interviewed for the job, he told Knitt and Transportation Supervisor Mark Scullion that he had a commercial driver's permit and that he

was scheduled to take the behind-the-wheel test on June 14. No one then told Strasburg that he was unqualified for the position because he did not have a CDL.

Strasburg said that after he was turned down for the position, Scullion on May 29 offered him several part-time bus routes and charters so that he could work days per his request. Scullion testified here: "It could have been a 40 hour a week job." Strasburg turned down that offer because it involved split shifts.

Scullion testified that Strasburg was turned down for the Director of Transportation position because he did not know all of the streets for the bus routes and because, in his words, "Anybody could have learned, but I didn't have time to teach him." Scullion explained that such knowledge is needed for routing to determine how many kids are at a stop; how many stops there are; and how long each stop will be. For his part, Strasburg acknowledged: "I don't have extensive knowledge of District streets", but that "with a map and directions, I can get you there."

The contract at Article VI, Section 6.04, states:

6.04 Open Jobs. In the event there is a vacant position within the bargaining unit, a notice of such vacancy shall be posted on each bulletin board used by employees for a period of five (5) days before the position is filled on a permanent basis. All lateral transfers shall be posted. The posted notice shall list the classification and salary range of the position and a general outline of the qualifications required, the duties to be performed, and school or general work area. Each employee interested in the position shall file a written request for the position with the supervisor. The qualified senior employee shall be given the position. The Employer shall make the initial determination as to the qualifications; however, any employee who has greater seniority and feels aggrieved by the Employer's determination, shall have the right to grieve as provided in Article X.

POSITIONS OF THE PARTIES

The Union asserts that the District violated Article VI, Section 6.04, of the contract because Strasburg was qualified for the job and that he should have been awarded it because he had more seniority than Rodefeld. It thus argues that Strasburg obtained a CDL before the new job was to start; that "whatever limitations Strasburg had regarding. . ." the bus routes, he could have overcome during the intervening summer months before school started for the next year; and that Strasburg has proven his proficiency by driving a school van. The Union therefore requests that Strasburg be offered the position and that he be made whole.

The District, in turn, asserts that Article VI, Section 6.04, is "clear and unambiguous" in providing that an applicant must be "qualified"; that it has the right to set qualifications for the position here; that Strasburg is unqualified for that position; and that the Union's contrary claim is without merit.

DISCUSSION

This case turns on whether Strasburg was qualified for the disputed position. If he was, he gets it; if he is not, he does not.

In this connection, there is no merit to the District's claim that Strasburg was unqualified because he had not yet obtained a CDL on May 23, as I credit Strasburg's testimony that Knitt told him on May 8 that he did not need a CDL "in hand". When that is coupled with the fact that Strasburg ultimately obtained his CDL on June 14 when he took his behind-the-wheel test, it is clear that Strasburg was fully licensed before the new position was to start in August. Hence, the District could not pass over him on this basis.

Much more difficult is the question of whether Strasburg, per the job posting, had "extensive knowledge of District streets." Since this is a reasonable work requirement, the District legitimately could pass over any applicants who did not have such knowledge. On this score, Strasburg - who lives elsewhere - testified here that while he does not possess complete knowledge of the streets in the Cottage Grove area, he could readily obtain such knowledge.

The penultimate question here thus turns on whether the District was required to offer Strasburg the position, even if that meant proving him with some on-the-job training regarding the District's bus routes. If this case only involved a few bus routes which easily could be learned after a short while, the grievance would be sustained because it would not be too much of a burden on the District. Here, though, the position possibly entails serving as a substitute bus driver for up to about 27 different bus routes. Given the District's need to immediately fill those routes on short notice and Scullion's inability to free up time to tutor Strasburg, I find that the District was entitled to turn down Strasburg because his unfamiliarity with the District's streets severely undermined his ability to promptly learn and drive all of the District's bus routes. In addition, the occupant of this position must be able to design and redraw the District's bus routes on short notice - which is something that Strasburg cannot readily do because of his lack of familiarity of District streets. All this is why there is merit to the District's claim in its brief that: "It is unreasonable to expect the employer to wait that long." It thus follows that Strasburg was unqualified for the position and that he was properly passed over.

In light of the above, it is my

AWARD

That the District did not violate Article VI, Section 6.04, of the contract when it failed to award a bus driver position to grievant Robert J. Strasburg; his grievance is therefore denied.

Dated at Madison, Wisconsin, this 25th day of June, 1997.

By Amedeo Greco /s/
Amedeo Greco, Arbitrator