

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

DUNN COUNTY JOINT COUNCIL OF UNIONS,
LOCAL 727B, AFSCME, AFL-CIO

and

DUNN COUNTY

Case 97
No. 54988
MA-9854

Appearances:

Mr. Steve Day, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO,
appearing on behalf of the Union.

Mr. Scott L. Cox, Dunn County Corporation Counsel, appearing on behalf of the County.

ARBITRATION AWARD

Dunn County Joint Council of Unions, Local 727B, AFSCME, AFL-CIO, hereinafter referred to as the Union, and Dunn County, hereinafter referred to as the County, are parties to a collective bargaining agreement which provides for the final and binding arbitration of disputes arising thereunder. The Union made a request, with the concurrence of the County, that the Wisconsin Employment Relations Commission designate a member of its staff to act as an arbitrator to hear and decide a grievance over the meaning and application of the terms of the contract. The undersigned was so designated. Hearing was held in Menomonie, Wisconsin on July 2, 1997. The hearing was transcribed and the parties filed post-hearing briefs which were exchanged on August 27, 1997.

Background

The County created a new position of Court Security Officer whose duties had previously been subcontracted. The Union and County entered into a side agreement dated November 22, 1996 over the wages, hours and working conditions of this newly created position. 1/ The County posted the position on November 26, 1996. 2/ On the job posting just above the signature line for those signing-up for the job is the sentence: "(If personnel file is incomplete, please check box.)"

1/ Jt. Ex. 10.

2/ Jt. Ex. 5.

3/ There is a square box after the signature line. 4/ At the bottom of the posting is the sentence:

3/ Id.

4/ Id.

Your signing of this document will automatically act as a release of your personnel file to the supervisor of the department where the vacancy exists. 5/

The grievant is employed as a 911 telecommunicator with the County having been hired sometime in the fall of 1995. 6/ The grievant signed the posting but did not check the box that his personnel file was incomplete. Three other employees also posted for the position. The position description for the Court Security Officer position listed the minimum training and experience required which was an Associate Degree in Criminal Justice or 60 college credits and 400 hours state certified law enforcement training. 7/ The Sheriff reviewed the personnel files of the four employees who signed the posting. 8/ The Sheriff did not contact the grievant for any additional information and after reviewing the grievant's personnel file concluded that he did not meet the minimum requirements. 9/ None of the other signers met the minimum requirements and the Sheriff hired the former subcontracted individual to fill the position. When the grievant learned that he had not been selected, he filed the instant grievance. The grievant believed that his personnel file showed that he met all the qualifications required and if anyone had questions they would contact him. On March 17, 1997, the grievant supplemented his personnel file with additional information which showed that he met the minimum qualifications. 10/ Prior to March 17, 1997 the grievant had submitted no other information and never spoke to management about this information. 11/ The grievant's pre-March 17, 1997 personnel file

5/ Id.

6/ Tr. 14.

7/ Jt. Ex. 6, Stipulation -- TR. 12.

8/ TR. 36-38.

9/ TR. 43.

10/ Ex. 8, TR. 21.

11/ TR. 21-22.

showed that the grievant did not have an Associate Degree and there was no record that he had completed 60 college credits. 12/ The County denied the grievance and it was appealed to the instant arbitration.

Issues

The Union states the issue as follows:

Did the County violate the collective bargaining agreement when it failed to award the posted Court Security Officer position to the grievant?

If so, what is the appropriate remedy?

The County agrees with the issue stated by the Union but states a second issue:

Whether the grievance is arbitrable because of the constitutional powers of the Sheriff to fill the Court Security Officer because the position involves the attendance on the court?

The undersigned adopts the issue as stated by the Union. The second issue as stated by the County is outside the terms of the contract and the jurisdiction of the Arbitrator. Only a court can rule on that issue.

Pertinent Contractual Provisions

Section 1. Procedure. All new or vacated positions shall be posted on each main bulletin board in all departments for four (4) work days stating the job that is to be filled, the date the job is to be filled, qualifications, and the rate of pay. For the purpose of this section, work days are to be defined as Monday through Friday.

Employees who are on sick leave or vacation shall be considered as applicants for all new or vacated positions.

Interested employees shall sign their names to this notice.

The appointment shall be made on the basis of seniority and qualifications. The most senior employee who meets the minimum

12/ Jt. Ex. 7.

qualifications as established in the job descriptions shall receive the position. The qualifications listed in the job description shall be relevant to the duties performed. The County shall have the right to administer various skill tests to determine whether or not employees meet the minimum qualifications set out in the job description. The tests shall be relevant to the duties performed and fairly administered. The job description shall include the minimum passing score. Applicants from within the bargaining unit shall have priority over applicants from other County bargaining units.

Employees not qualified for a new position shall not be selected for the trial period in the new position. Upon request, employees shall be notified in writing for the reasons for disqualification.

Qualifications shall be commensurate with the position to be filled.

Union's Position

The Union refers to the parties' stipulation that the grievant had the minimum qualifications for the job so the only issue is whether the Sheriff had knowledge of the grievant's qualifications at the time of the posting. It contends that a review of Joint Exhibit 7 establishes that the Sheriff had such knowledge. The Union points out that the first page of Joint Exhibit 7 is the grievant's resume which indicates that he attended Chippewa Valley Vocational Technical School for basic recruit training and received his certification in April, 1989. It notes that the document indicates he took course work in Police Science ending in December, 1987. It observes that the document lists the positions held as correctional officer in Buffalo County, Police Officer in Nelson, Wisconsin, Security Officer with two different firms and a Sergeant of Security with another. On page three, the Union refers to the grievant's education in Police Science from June, 1986 to December, 1987 but indicating he did not have a degree and also listing a police officer and investigator as personal references. The Union asserts that page 4 is self-explanatory.

The Union questions whether the Sheriff even reviewed the personnel files of the employees who posted for the position. It suggests that the Sheriff knew who he wanted and was going to rely on his constitutional powers to select that person to fill the position. It argues that had the Sheriff reviewed the personnel file, he would have known or had reason to believe that the grievant had the combination of education and experience to meet the minimum qualifications for the job.

As far as the unchecked box is concerned, the Union claims that as a relatively new employee, the grievant believed his file was up to date. It observes that no one asked him for any verification, no one told him the importance of that box and nothing in the agreement or policy

advises employees of the box checking procedure. It states that the grievant added to his

file later but the grievant had no obligation to do so because he had been hired as a telecommunicator and the County must have verified it at that time. It insists that verification of information is a basic management obligation.

The Union claims that the grievant was qualified and the Sheriff disqualified him because he wants to flaunt his alleged constitutional powers. It asserts that this is unfortunate because the County knows the Sheriff violated the contract and have chosen the easy way out in face of a politically powerful Sheriff.

In conclusion, the Union maintains that the grievant had the minimum qualifications for the position and had he reviewed the file, the Sheriff knew or should have known that the grievant possessed those qualifications at the time of the posting. It asks that the grievance be sustained and the grievant be awarded the position and made whole to the date of the posting.

County's Position

The County contends that although the grievant had the necessary qualifications for the position, he failed to make that fact known by properly documenting his personnel file and was reasonably disqualified from the position. It claims that he was put on notice that his personnel file was to be complete by the box and notation on the posting. The County argues that it had no actual knowledge as to the extent of the grievant's education or reliable verification of the number of state certified law enforcement hours. The County submits that when an employee posts for a position, he has the duty to make sure his personnel file is complete. It points out the posting puts employees on notice and if they check the box, the County will contact them for any additional information. It notes the grievant never checked the box indicating his personnel file was incomplete. It submits that the grievant failed to provide the Sheriff with the information that would have awarded him the position. It observes that the grievant's personnel file does not include any information regarding the number of credits, no transcript from Chippewa Valley Technical College and no documentation that he had 320 hours of certified training. It asserts that the grievant's position that his personnel file as it existed in December, 1996 showed that he had the minimum qualifications is not reasonable. It insists that the grievant's March 17, 1997 updating his file is an acknowledgement that his file was incomplete at the time the hiring decision was made. The County states that this illustrates that the Sheriff was justified in disqualifying the grievant as the County lacked the necessary information to determine the grievant's qualifications for the new position.

The County asserts that a provision of the contract which interferes with the Sheriff's attendance upon the Court is illegal and void and in this case, the Court Security Officer performs the constitutionally protected duty of the Sheriff, so any award in favor of the Union is illegal and

void. The County reserves the right for court review as it relates to the constitutional powers of the Sheriff.

In conclusion, the County insists that it acted reasonably in disqualifying the grievant because the grievant failed to provide it with information that would have qualified him for the position. It seeks denial of the grievance but if the grievance is granted, it seeks a limitation on the back pay and benefits.

Discussion

The parties stipulated that the grievant had the minimum qualifications for the Court Security Officer position. 13/ The only issue presented is whether the County had knowledge that the grievant had the minimum qualifications for the position at the time it filled the position. The new position was posted and required an Associate degree in Criminal Justice or sixty college credits, four hundred hours state certified law enforcement training, prior law enforcement experience, or any combination of education and experience that provided equivalent knowledge, skills, and abilities. 14/

The grievant signed the posting which states right above his signature, "(If personnel file is incomplete, please check box. 15/ A box immediately follows the grievant's signature and the box is blank. 16/ The grievant had the obligation to demonstrate that he met the minimum qualifications for the job. Reading the job posting as a whole, it is apparent that the County is going to check a signer's personnel file to determine whether the signer meets the minimum qualifications. The document is self explanatory that no one had to instruct the grievant how to sign the posting or to check the box if his personnel file was not complete. The grievant testified that he didn't check the box because he believed that his personnel file showed that he met all the qualifications. 17/ A review of the grievant's personnel file demonstrates that he did not have an Associate degree in Criminal Justice. 18/ The grievant's personnel file did not show how many college credits he had accumulated. 19/ Additionally, the application states on page 3 that verification of education or training is required and indicates that the applicant is to have the

13/ Tr. 12.

14/ Jt. Ex. 6.

15/ Jt. Ex. 5.

16/ Id.

17/ Tr. 18.

18/ Jt. Ex. 7, p. 3.

19/ Jt. Ex. 7, p. 3.

registrar forward a transcript directly to the County. 20/ This was not done until March 17, 1997. The application states that the grievant has 320 hours basic recruit training. 21/ The Union has argued that the Sheriff should have known the grievant had the combination of experience and education necessary to meet the minimum qualifications as he worked as a police officer and a correctional officer. A review of the personnel file indicates that the grievant worked part-time as a police officer in the Village of Nelson when an officer was on medical leave. 22/ The dates of this employment indicate that he started in August, 1986, which is the same date he started Chippewa Valley Technical College. It would appear that there were no prior requirements of education or basic training for this part-time position. It also appears that the grievant was employed as a cook, full-time from May, 1988 to January, 1990, then was hired as a Corrections/Communications Officer for Buffalo County where he worked for at least five and one-half years. 23/ The grievant's resume indicates he desired a career in telecommunications with a large department. 24/ The personnel file simply falls short in demonstrating the grievant was minimally qualified. The evidence fails to establish that based on the grievant's personnel file as it existed at the time of the posting that the Sheriff knew or should have known that the grievant met the minimum qualifications for the Court Security Officer position.

In addition, after the grievant became aware he was not selected, he never contacted the Sheriff or anyone else in management to tell them he was in fact qualified. 25/ The grievant did not supplement his file until some two and one-half months after the position was filled. The

20/ Id.

21/ Jt. Ex. 7, p. 1.

22/ Jt. Ex. 7, p. 4.

23/ Jt. Ex. 7, p. 4.

24/ Id. at p. 1.

25/ Tr. 22.

grievant was extremely lax in demonstrating that he was qualified and the reluctance to make these facts known promptly is unexplained in the record. The grievant had the obligation to show that he had the qualifications for the position he posted for, yet the record establishes that he did not do so until long after the decision was made.

The undersigned concludes that the evidence failed to show that the Sheriff knew or should have known that the grievant met the minimum qualifications at the time he made the selection for the Court Security Officer position and there is no proof that the Sheriff or County acted in bad faith or in an arbitrary or capricious manner in determining that the grievant lacked the necessary qualifications for the position.

As noted at the hearing, the undersigned has no authority to decide the constitutional prerogatives of the Sheriff and cannot do so.

Based on the above and foregoing, the record as a whole and the arguments of the parties, the undersigned issues the following

AWARD

The County did not violate the collective bargaining when it failed to award the posted Court Security Officer position to the grievant, and therefore, the grievance is denied.

Dated at Madison, Wisconsin this 16th day of September, 1997.

By Lionel L. Crowley /s/
Lionel L. Crowley, Arbitrator