

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**LINCOLN COUNTY HIGHWAY EMPLOYEES
LOCAL 332, AFSCME, AFL-CIO**

and

LINCOLN COUNTY

Case 161
No. 55352
MA-9991

Appearances:

Mr. Philip Salamone, Representative, on behalf of the Union.

Mr. John Mulder, Administrative Coordinator, on behalf of the County.

ARBITRATION AWARD

The-above captioned parties, herein “Union” and “County”, are parties to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in Merrill, Wisconsin, on September 29, 1997. The hearing was not transcribed. I there issued a bench decision, which this Award augments.

DISCUSSION

This case turns on Article VI, Section A, entitled “Seniority”, which states:

A. Seniority: It shall be the policy of the Employer to recognize seniority in filling vacancies, making promotions and in laying off or rehiring, provided, however, that the application of seniority shall not materially affect the efficient operation of the Lincoln County Highway Department.

The Union asserts that the County under this language was required on March 15, 1997, to call in grievant Hugh Gross for snowplowing duties because he had more seniority than the other employe who was called in and because a “vacancy” therefore existed which dictated that the most senior employe - i.e., Gross - be called in.

The Union's reliance on the word "vacancy", however, is misplaced because it is well understood that that word refers to a permanent vacant position, not a mere overtime opportunity. That is why Article VIII, entitled "Job Posting and Trial Period", spells out in Section A therein that the posting procedure must be followed "whenever a vacancy occurs. . ." Here, it would have been utterly ludicrous to have posted the overtime opportunity for five days before it could be assigned, which is what Article VIII requires. Once that fundamental point is understood, it becomes clear that the contract does not require snowplowing opportunities to be based entirely on seniority.

The record also shows that there is no well-established past practice supporting the Union's position. Instead, the County over the years has relied on a number of factors in determining who should be called in, with seniority being one of those considerations.

Given all this, there is no merit to the Union's claim that Gross should have been called in on March 15, 1997.

Gross also claims that he was never called on March 9, 1997, for a prior snowplowing opportunity. The County, in turn, contends that he was called by telephone but that he never picked up the phone.

Given the apparent confusion over this issue, I find that Gross is not entitled to any backpay, but that he should be assigned the first snowplowing opportunity in this calendar year to make up for the one he missed on March 9, 1997.

In light of the above, it is my

AWARD

That the County did not violate the contract when it failed to call in Hugh Gross for the March 13, 1997 snowplowing opportunity. However, the County shall offer Hugh Gross the first snowplowing opportunity to make up for the one he missed on March 9, 1997. 1/

Dated at Madison, Wisconsin, this 14th day of October, 1997.

Amedeo Greco /s/

Amedeo Greco, Arbitrator

FOOTNOTES

1/ This finding is based upon the facts of this case and does not address what the County is obligated to do relating to snowplowing on state roads.