

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**DOOR COUNTY COURTHOUSE EMPLOYEES,
LOCAL 1658, AFSCME, AFL-CIO**

and

DOOR COUNTY

Case 103
No. 54678
MA-9753

Appearances:

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

Godfrey & Kahn, S.C., by **Mr. Dennis Rader** and **Mr. John Haase**, appearing on behalf of the County.

ARBITRATION AWARD

The Union and the County were parties to a collective bargaining agreement which provided for final and binding arbitration of grievances. Pursuant to a request for arbitration, the Wisconsin Employment Relations Commission appointed the undersigned to decide a grievance. A hearing, which was transcribed, was held on April 24, 1997, in Sturgeon Bay, Wisconsin. At the hearing, the parties waived the contract provision (Article IV, B and C) which provides that a decision will be rendered by a three-member arbitration board. 1/ After the hearing, the parties filed briefs and the County filed a reply brief, whereupon the record was closed on July 23, 1997. Based on the entire record, the undersigned issues the following Award.

ISSUE

The parties stipulated to the following issue: 2/

Did the Employer violate the collective bargaining agreement when it filled the deputy clerk V position in the County Clerk's office in 1996? If so, what is the appropriate remedy?

PERTINENT CONTRACT PROVISIONS

The parties 1995-96 collective bargaining agreement contained the following pertinent provisions:

ARTICLE 6 - SENIORITY

- A. **Definition:** It shall be the policy to recognize the seniority principle. Seniority time shall consist of the total calendar time elapsed since the date of the original employment with the Employer to a position in the bargaining unit, provided, however, that no time prior to discharge for just cause or quit shall be included, and provided that seniority shall not be diminished by temporary layoffs or leaves of absence or contingencies beyond the control of the parties to this Agreement.

No seniority credit will accrue while an employee is on leave of absence including time spent in any elected position within or without county government. This provision does not apply to medical leave, maternity leave, or disability leave. Incumbent employees in the bargaining unit, following settlement of the original contract, shall have full seniority credit for their previous courthouse and associated departments service so long as said service was uninterrupted by a termination of employment for whatever reason.

Fringe benefit accumulation shall be in accordance with the length of continuous County employment.

...

- D. **Job Posting:** Definition of a vacancy shall include job openings created either by an employee leaving the position or a newly created position.

Notice of vacancies shall be posted within five (5) working days after the vacancy occurs in each department for a minimum of three (3) working days. The notice of posting shall include the following minimum information: wage rate, hours of work, department, position title, job description and qualifications. Any employee desiring to fill any such posted vacancy shall make application in writing at the Human Resources Office. After the conclusion of the posting period, the application shall be opened at the Human Resources Office in the presence of a representative of the Union and a representative of the Executive and Personnel Committee, or its designee, at a time to be mutually agreed upon.

Whenever any vacancy occurs, it shall be given to the senior qualified employee within seven (7) work days after the completion of the posting period.

BACKGROUND

In late 1994, the person holding the deputy clerk V position, Corrine Mueller, announced her intention to retire after 30 years in the position. Upon learning that Mueller was going to retire, Mueller's supervisor, Administrative Coordinator Nancy Bemann, decided to review the job description for that position (i.e. the deputy clerk V). The deputy clerk V is responsible for doing the County's payroll for its 300 employees. After doing so, Bemann determined that the existing deputy clerk V job description, which had not been changed for 30 years, did not conform with the existing job requirements of the position. Bemann therefore made several changes to the deputy clerk V job description. Two of the changes which Bemann made to the deputy V job description were to add the following: 1) that the deputy clerk V position required "knowledge of County practices and procedures, particularly in the areas of payroll and general ledger accounting"; and 2) an "associate's degree in accounting or a minimum of three to five years of progressively responsible experience in a payroll or accounting position". When Bemann revised the deputy V job description, she knew that the County planned to convert to a computer-operated payroll system to handle its payroll.

After Mueller retired, the County did not post the vacant position. The County's decision to not post the vacancy was based on an opinion from the County's Corporation Counsel. Instead of posting the vacancy, the County sought external applicants via a newspaper advertisement. The newspaper advertisement indicated that the deputy clerk V "performs payroll and other accounting duties to include keeping accounts, posting to general ledger, preparing and posting journal entries, preparing vouchers and preparing monthly and quarterly social security and tax reports." The newspaper advertisement further indicated that the qualifications for such position included an "associate's degree in accounting or three to five years progressively responsible payroll and accounting experience."

52 people applied for the position. One of the applicants was Christine Moe, an existing County employe and member of the Courthouse bargaining unit. Another applicant was Pat Kessler. At the time, Kessler was not a County employe. All the applicants then took a written test which covered payroll, accounting and computer knowledge. Kessler scored 125 out of 142 on the test and Moe scored 121 out of 142. Eight of the 52 applicants were subsequently interviewed; Kessler and Moe were among them. Following the interviews, the Employer selected Kessler for the position. Kessler's start date with the County was December 12, 1994.

While the selection process referenced above was ongoing, the Union filed a prohibited practice complaint with the WERC concerning the Employer's failure to post the vacant deputy clerk V position. The complaint was voluntarily settled in July, 1996. The stipulated settlement provided in pertinent part that:

the position of deputy V in the Door County Clerk's department. . .will be posted in accordance with the . . .contract, and that the incumbent deputy V (Kessler) may post for the position as a member of the Courthouse bargaining unit.

FACTS

In August, 1996, the County vacated the deputy clerk V position then held by Kessler and posted the position. This action was taken to comply with the settlement agreement just referenced. A job description for the deputy clerk V position was attached to the posting. The job qualifications contained in this job description were identical to the job qualifications contained in the newspaper advertisement identified above, and a 1994 brochure entitled "Job Description and Benefits Package – Deputy V, Door County Clerk's Office". Four employees subsequently bid on the position. Moe was one of the bidders and Kessler was another. Each of them completed a three-page Job Posting Form which is similar in form and substance to a standard employment application form. The following information concerning Moe's and Kessler's employment and educational background is taken from their 1996 completed forms.

Moe has worked for the County since 1987. Since then, she has held three different positions with the County. She was a clerk typist in the planning department for two years, then a records clerk in the Sheriff's department for 6 years, and at the time of the hearing had been an administrative assistant with the real property listing office for one year. She did not perform any payroll functions in any of these three jobs. In addition to listing these three jobs with the County, her Job Posting Form also contained the following two entries for non-County employment. It indicated she had worked for Nebel Construction as a bookkeeper from February, 1986 to October, 1987, where her duties were "accounts receivable and payable, payroll, (and) bank deposits." The form also indicated she had worked for Town and Country as a bookkeeper from January, 1985 to February, 1986, where her duties were "accounts receivable and payable, payroll, computer entry, (and) bank deposits." With regard to her educational background, Moe indicated on the form that she had a high school degree and completed one year of technical school where she had studied "medical assisting". She also indicated on the form that she had the following additional training: "accounting-payroll; spreadsheet-intro; filing/finding records; teletechniques." She also indicated on the form that she could use AS/400 (computer) software.

As previously noted, Kessler has worked for the County since 1994. Since then, she has held just one position, that being deputy clerk V in the County Clerk's office. Her Job Posting Form listed that work experience as well as the following four entries for non-County employment. It indicated that she had worked for Door County Memorial Hospital as an administrative secretary from September, 1988 to December, 1994 where her duties were to "process payroll, produce checks and reports, complete quarterly 941's and annual W-2's, prepare payroll budgets and make tax deposits." It also indicated she had worked for New Reality as a secretary-receptionist in 1987 and 1988 where her duties were to "maintain client

records, answer phones and mail, type contracts, balance trust accounts, prepare advertising for newspaper, (and) filing.” It also indicated she had worked for Harrah’s Hotel and Casino in Nevada as an income control clerk in 1985 and 1986 where her duties were to “perform audits on bars and restaurants, calculate sales and use taxes, prepare discrepancy reports, (and) process credit cards.” It also indicated that she had worked for Roundy’s Northern Division as a data entry operator/accounts payable clerk from 1971 to 1985 where her duties were to “order entry inventory control, match invoices, determine due dates, determine discounts and prepare vouchers.” With regard to her educational background, Kessler indicated on the form that she had a high school degree and had attended two different technical schools where she studied accounting, DP math, PC’s, and human resources. She also indicated on the form that she had the following additional training: “H and R Block Income Tax Course, Labor and Law Seminar, Preparing for Year-End Seminar, Wisconsin Retirement System Seminar, Ad Hoc Report Training From Health Microdata PC Software, have experience in doing a conversion for payroll/HR software which included position control and applicant tracking.” She also indicated on the form that she could use AS/400 payroll and accounts payable software.

After Administrative Coordinator Bemmann reviewed the completed Job Posting Forms of the four bidders, she selected Kessler for the clerk V position. Bemmann’s stated reason for doing so was that she felt Kessler possessed the necessary qualifications for the position while the other applicants (including Moe) did not. In making her decision, Bemmann did not interview any of the bidders or review any of their personnel files; instead, she simply reviewed the bidders’ Job Posting Forms.

Prior to Kessler being awarded the position, the three unsuccessful bidders were sent identical letters by the County’s Human Resources Director informing them that “the County has determined that you do not possess the qualifications as stated in the position description which was attached to the job posting. You are not being awarded the position.”

Moe subsequently grieved her non-selection for the position. She contends she should have been awarded the position because she was the senior qualified applicant. The record indicates that Moe has more seniority than Kessler.

When the grievance was being processed, Moe informed the County that she had attached a written addendum to her Job Posting Form. Moe indicated this addendum listed information about three additional jobs she had held. This addendum is not contained in the County’s files nor is it attached to Moe’s Job Posting Form which the County possesses. Moe did not make a copy of her application and/or addendum. Bemmann testified that when she reviewed Moe’s application, there was no addendum attached to it which listed additional employers.

The following information is compiled from Union Exhibit 12 which purports to be Moe's recollection of the information listed on the addendum which she claims was attached to her application. Moe worked at Tamayo Clinic from June, 1984 to January, 1985 where her duties were "accounts receivable, daily ledger, bank deposits, pull patient files, (and) collect outstanding invoices." She worked part-time for the Sturgeon Bay Softball Association as secretary/treasurer from April, 1988 to April, 1989, where her duties were "accounts payable, payroll, quarterly taxes, (and) bank deposits." In this job, Moe did the payroll for five employees. She did this payroll work manually without the aid of a computer. Moe testified that she worked a few hours every two weeks performing these duties. She also worked part-time for Morning Glory Restaurant from April, 1989 to November, 1989 where her duties were "accounts receivable and payable, payroll, (and) quarterly tax reports." In this job, Moe did the payroll for about ten employees. She did this payroll work manually without the aid of a computer. Moe testified that she worked five to ten hours per week performing these duties.

Moe's employment records contain conflicting dates for her employment with Nebel Construction and Town and Country. The following shows this. Her initial employment application which is dated 8-26-87 lists her employment with Nebel as being from "8-86 to present." Her 1996 posting application lists her employment with Nebel as being from "2-86 to 10-87." Moe's initial 1987 employment application lists her employment with Town and Country as being from "1/86 to 8/86." Her 1996 posting application lists her employment with Town and Country as being from "1/85 to 2/86."

POSITIONS OF THE PARTIES

Union's Position

The Union contends that the Employer violated the labor agreement when it filled the clerk V position in the County Clerk's office in 1996. According to the Union, the position should have been awarded to Moe rather than to Kessler.

This contention is based on the premise that Moe was the "senior qualified" bidder. With regard to the bidder's seniority, the Union notes that Moe has more seniority than Kessler. It also notes that Kessler was the least senior of the four bidders. With regard to the bidders' respective qualifications, the Union avers that Moe had the "three to five years progressively responsible payroll and accounting experience" which the Employer had established as a qualification for the position. It makes the following arguments to support this contention. First, the Union calls attention to the fact that Moe's Job Posting Form listed two jobs where she did payroll and bookkeeping tasks, namely her jobs with Nebel Construction and Town and Country. According to the Union, these past two employers alone show that Moe had 33 combined months of payroll experience (i.e. 20 months of payroll experience with Nebel and 13 months of payroll experience with Town and Country). Second, the Union avers that Moe

attached an addendum to her Job Posting Form wherein she listed two more jobs where she did the payroll, namely her jobs with the softball association and Morning Glory Restaurant. The Union submits these two employers gave her an additional 19 combined months payroll experience (i.e. 12 months of payroll experience with the softball association and 7 months payroll experience with Morning Glory Restaurant). The Union contends these four jobs satisfy the experience requirement because, when combined, they total 52 months of payroll experience (i.e. 20 months with Nebel Construction, plus 13 months with Town and Country, plus 12 months with the softball association, plus 7 months with Morning Glory Restaurant equals 52 months.)

Next, the Union makes the following arguments in response to the Employer's contention that Moe's payroll experience is out-of-date. First, it submits that the job posting and job description do not contain a time frame for having the three to five years payroll experience. The Union therefore believes that Moe's payroll experience should still be acceptable even though it occurred eight years ago. Second, the Union avers that payroll work has not changed much since Moe's last payroll experience in 1989. To support this premise, it cites Moe's testimony to that effect. Third, the Union asserts that Moe listed on her Job Posting Form that she had taken an accounting course. The Union notes that this course was taken in 1994, that it was part of an associate degree program, and that Moe got an "A" in the course. In the Union's view, this course establishes that Moe's payroll skills had recently been updated and were not outdated as asserted by the Employer. The Union also contends that the accounting course proves that Moe "has some educational preparation specific to the task."

The Union also argues that when Bemmann decided who to select for the position, she went beyond what was listed on the job description in terms of education and experience. To support this premise, it cites Bemmann's testimony that she also considered the size of the organization that was worked for and whether the person had any AS/400 experience in payroll and accounting. The Union believes this was too specific a criteria. As the Union puts it, "an employer's determination of qualifications should be based on the general skills which can be adapted to the specific task of the position." The Union argues in the alternative that even if the size of the organization and AS/400 experience are relevant criteria, Moe satisfied the specific criteria. It makes the following arguments to support this contention. With regard to the size of the organizations where Moe had done payroll work, the Union cites Moe's testimony that there were 10 to 15 employes at Town and Country, 40 employes plus 10 summer employes at Nebel Construction, five employes at the softball association and 10 employes at Morning Glory Restaurant. The Union submits that when considered together, these numbers establish that Moe had prepared the payroll for "many employes". With regard to the AS/400 experience, the Union acknowledges that all Moe's previous payroll work was done manually. Be that as it may, the Union notes that when Moe took the previously referenced accounting course, a course project involved doing the payroll for a business on a computer. According to the Union, this course project shows that Moe has been trained to do payroll with a computer program (like the AS/400).

Finally, the Union calls attention to the fact that when Bemmann made her decision, she relied, in part, on the fact that Kessler told her in the 1994 interview that she had done payroll on an AS/400. The Union submits that if Bemmann considered things from Kessler's 1994 interview, she should have considered them for all of the 1996 job bidders.

In sum then, the Union asserts that Moe satisfied both the general and the specific qualifications for the job. In the Union's opinion, Moe had the necessary education and experience so she should have been awarded the position and been given a trial period wherein she would have a chance to demonstrate that she could do the job. The Union contends that since that did not happen, the County violated the labor agreement. In order to remedy this alleged contractual breach, the Union asks that the arbitrator award the deputy V position to Moe and make her whole for lost wages.

County's Position

The County contends it did not violate Article 6 (D) of the labor agreement when it filled the deputy V position in the County Clerk's office in 1996. According to the County, it correctly awarded the position to Kessler because she was the only qualified bidder. The County asserts that the reason Moe was not picked for the position was because she was not qualified for it. The County believes that the Union has to show that the County erred in deciding that Moe was not qualified and that it has failed to meet this burden. It makes the following arguments to support this contention.

The County notes at the outset that while the posting provision (Article 6, D) indicates that qualifications are to be considered along with seniority when filling job vacancies, the contract does not indicate how determinations of qualifications are to be made. That being so, the County contends it has full authority to establish job qualifications for a position and to determine which applicants meet said qualifications. With regard to the deputy V job qualifications, the County submits that the qualifications which it set in the 1996 job posting and job description are identical to the job qualifications which it established and used in 1994. The County contends that if the Union is arguing that the 1996 job description is different from the 1994 job description, then that assertion is just plain wrong. According to the County, the 1994 revisions to the deputy V job description concerning education and experience were made to reflect the actual requirements of the job, the size of the County's payroll (almost 300 employes) and the County's likely conversion to a computerized payroll system. The County believes that the minimum education or experience qualifications which it established for the deputy V position were reasonably related to the actual duties and responsibilities of that position, so the arbitrator should not reject those job requirements.

Second, the County argues that Moe was not qualified for the deputy V position. To support this contention, the County avers that Moe did not have an associate degree in accounting or a minimum of three to five years of payroll and accounting experience, did not have progressively responsible payroll experience, did not have work experience operating a computerized payroll system, and did not have payroll conversion experience. With regard to Moe's payroll and accounting experience, the Union notes for purposes of background that her Job Posting Form lists just two jobs where she performed work on accounts receivable and payroll, namely her job as a bookkeeper for Nebel Construction and her job as a bookkeeper for Town and Country. The County further notes that according to that form, she spent 20 months with the former and 13 months with the latter. The County submits that this combined 33 months does not meet the minimal work experience requirement (i.e. three years). In addition, the County contends that Moe's work experience with these two employers was not in a "progressively responsible" payroll and accounting position. The County also notes that neither of these positions involved a computerized payroll (which is what the County had implemented) and that both of these companies had relatively small payrolls of 10 to 30 employees in comparison to the County's payroll of 300 employees. The County argues that Moe's payroll and accounting work for the softball association and Morning Glory Restaurant should not be considered by the arbitrator because this information was not presented to the Employer until after the position was filled. However, in the event this work experience is considered, the Employer makes the following points: it involved small companies with few employees, involved a manual payroll system, and just a small amount of time was spent per week performing payroll duties, so it does not equal full-time experience. The County concludes from the foregoing that Moe's work experience for the softball association and the restaurant does not involve "progressively responsible" payroll and accounting work either. In response to the Union's contention that it did not consider Moe's qualifications for the job, the County contends that it did, and the Union's contention to the contrary is unfounded. The County asserts that after it considered Moe's qualifications, it concluded that Moe had less than three years of payroll/accounting experience, that her payroll/accounting work was performed for employers who were much smaller than the County, and that her payroll/accounting experience was dated in that it occurred eight years ago.

Third, the County contends that Moe's lack of qualifications for the position are further demonstrated by her inaccurate, inconsistent and contradictory claims regarding her previous payroll/accounting experience. According to the County, all of Moe's claims regarding her payroll/accounting experience are questionable and unreliable because she overstated the amount of experience she has had in that regard. With regard to her experience at Town and Country, the Employer notes that while Moe's Job Posting Form said she had 13 months of payroll experience, Company owner Bockhop testified that Moe performed payroll duties for just three months. The County also cites Bockhop's testimony that his company employed seven employees during that time frame, not 10 to 15 employees as Moe testified. Citing Bockhop's testimony, the Employer asserts that Moe's claim of 13 months of experience with Town and Country is false and should not be counted. The Employer also contends that Moe's job applications have

inconsistencies about her payroll/accounting experience. It notes in this regard that there is a seven-month difference in her starting date at Nebel Construction on her 1987 County job application and her 1996 Job Posting Form. The Employer believes this difference should be deducted from Moe's claimed payroll/accounting experience. The Employer also notes that while Moe's 1987 County job application lists seven months of employment with Town and Country, her 1996 Job Posting Form lists 13 months of employment with that employer. According to the County, these inconsistencies were no accident, but rather part of a blatant and fraudulent attempt to inflate her payroll experience with those two employers by 12 months.

Finally, the County submits that in contrast to Moe's lack of qualifications, Kessler had the qualifications for the position. To support this premise, it cites her payroll/accounting duties for Door County Memorial Hospital. According to the County, her payroll experience with that employer was "progressively responsible", involved a payroll size comparable to the number employed by Door County, included a payroll conversion to a computerized system, and involved the same computer payroll program the County planned to use.

The County therefore requests that the grievance be denied.

DISCUSSION

At issue is whether the County violated the contract when it filled the deputy V position in 1996. The position was awarded to Kessler, the prior incumbent. The Union contends Moe should have been awarded the position rather than Kessler. The County disputes this assertion. According to the County, Moe was not qualified to fill the position while Kessler was.

In deciding this posting dispute, attention is focused initially on the applicable contract language. The parties agree that the contract language applicable here is Article 6 (D). That section specifies the procedure to be used in filling vacancies (i.e. it establishes a job posting procedure). Specifically, it provides in pertinent part: "Whenever any vacancy occurs, it shall be given to the senior qualified employee. . ." This provision makes qualifications a factor to be considered along with seniority in filling vacancies. The section goes on to provide for a trial period for the employee selected to fill the vacancy. However, this trial period is not automatic for everyone who applies or even the senior applicant. Instead, the trial period only comes into play after someone has been found qualified for the job. The word "qualified" is not defined in the agreement. In the absence of a contractual definition of "qualified", the standards to be used in determining qualifications have been left to the County.

The standards which the Employer set for the deputy V job were contained in that position's revised job description. While that job description listed numerous job qualifications, the parties have focused their attention on just two of them. The undersigned will do likewise. The two criteria which the parties emphasized were: 1) "knowledge of accounting practices and procedures, particularly in the areas of payroll and general ledger accounting" and 3) "associate

degree in accounting or minimum of three to five years of progressively responsible experience in a payroll and accounting position.” These two criteria, particularly the latter, set the educational and experience standards for the job. The Employer argues these standards were job related and the Union does not expressly argue otherwise. I find that the educational and experience standards referenced above were job-related. Suffice it to say that such standards are routinely used in determining qualifications.

The Employer decided that Kessler possessed these qualifications and that Moe did not. The question here is whether management’s decision concerning same was unreasonable under the facts, arbitrary or capricious.

I begin my discussion of same by reviewing the following pertinent background. When the Employer posted the deputy V vacancy, it invited those who were interested to “make application in writing.” Kessler and Moe were two of the bidders who did so. Both completed a Job Posting Form wherein they listed, among other things, their education, training, and work experience. After they submitted their completed forms, Bemmann reviewed them. Bemmann testified that she made her decision concerning which bidder was qualified based on what was written on their form. That being the case, it follows that the contents of those forms are of great significance here. The contents of each will now be reviewed in detail.

Attention is focused first on Moe’s application. With regard to her educational background, Moe indicated that she had completed one year of education past high school at a vocational-technical school where she had studied “medical assisting”. In another section of the form which asked the applicant to describe any training not already identified, Moe wrote in pertinent part: “accounting-payroll.” With regard to her employment experience, Moe listed five employers: three were Door County, another was Nebel Construction, and another was Town and Country. Moe claimed payroll experience with the latter two (i.e. her jobs with Nebel Construction and Town and Country) but not the former three (i.e. her jobs with Door County). She indicated on this form that she worked at Nebel Construction from February, 1986 to October, 1987 and at Town and Country from January, 1985 to February, 1986. These five employers were the only ones listed on the form. There is nothing on the form that indicates that additional work experience is continued on another sheet, addendum or appendix.

Attention is now turned to Kessler’s application. With regard to her educational background, Kessler indicated she had studied “accounting, DP math, PC’s and human resources” at two vocational-technical schools. In another section of the form which asked the applicant to describe any training not already identified, Kessler wrote in pertinent part: “have experience in doing a conversion for payroll.” With regard to her employment experience, Kessler listed five employers: Door County, Door County Memorial Hospital, New Reality, Harrah’s Hotel and Casino, and Roundy’s Northern Division. Kessler claimed payroll experience with the former two (i.e. her jobs with Door County and Door County Memorial Hospital) but not the latter three (i.e. her jobs with New Realty, Harrah’s and Roundy’s). She

indicated on this form that she had worked for Door County from December, 1994 to the present, and at Door County Memorial Hospital from September, 1988 to December, 1994.

When Bemmann reviewed the work experience section of Moe's form, she (Bemmann) concluded that Moe was claiming to have 20 months of payroll and accounting experience from her job with Nebel Construction and 13 months of payroll and accounting experience from her job with Town and Country. Adding these two figures together, Bemmann calculated that Moe was claiming to have a total of 33 months of payroll and accounting experience.

A big part of this case involves Moe's contention that she had more payroll and accounting experience than the 33 months just referenced. Specifically, she asserts she had another 19 combined months of relevant experience with her jobs with the softball association and the restaurant. Adding these two figures together (i.e. 33 plus 19) Moe claims a total of 52 months (i.e. four years and four months) of payroll and accounting experience. According to Moe, her jobs with the softball association and the restaurant were listed on an addendum which was attached to her Job Posting Form. Bemmann testified though that when she received Moe's application and reviewed it, there was nothing attached to it as an appendix or addendum.

Since a dispute exists concerning whether an addendum listing other jobs was attached to Moe's application, it was incumbent upon the party asserting the matter (i.e. the Union) to prove the matter asserted. I find that the Union has not done so. In so finding, it is initially noted that Moe's application form does not contain any addendum or appendix listing other jobs. The claimed addendum has never been found and therefore was not offered into evidence. The document which was offered into evidence as Union Exhibit 12 is not a copy of the original addendum but only what purports to be Moe's recollection of what she submitted. Moe did not keep a copy of her application, so the only copy of same in existence is the one in the Employer's possession (which, as previously noted, does not contain any such addendum). Additionally, there is nothing anywhere on the face of Moe's Job Posting Form that indicates that an addendum or an appendix is attached, or that the prior employment section is continued with more listings on another sheet of paper. Given the foregoing, it is held that it has not been established that an addendum listing more jobs was attached to Moe's application.

The Employer ultimately learned of Moe's work experience with the softball association and the restaurant, but this happened at the second step grievance meeting. By that time though, the deputy V position had already been filled. I find that since the information concerning Moe's payroll and accounting work for the softball association and the restaurant was not given to the Employer until after the deputy V position was filled, the Employer did not have to consider it. Simply put, it was not submitted in a timely fashion. This finding has the following consequences. First and foremost, it means that Moe's qualifications will be determined by reviewing just her Job Posting Form. Thus, I will review the very same document and consider the same exact information which Bemmann considered when she decided if Moe was qualified for the position. Second, since I will not be considering the information contained on Union

Exhibit 12 (i.e. Moe's recollection of what she submitted concerning additional jobs), it is unnecessary to address the various arguments made by the Employer concerning those jobs (i.e. that they involved small companies with few employees, that they involved manual payroll systems, that they did not involve progressively responsible work, and that just a small amount of time was spent per week performing payroll duties at those jobs so it does not equal full-time experience). Thus, no additional comments will be made concerning those arguments.

Having so found, the focus turns again to the contents of Moe's Job Posting Form. As previously noted, after Bemmann reviewed same, she (Bemmann) found that Moe did not meet the qualifications set forth in the job description.

I find that this decision was not unreasonable, arbitrary or capricious. As has previously been noted, the deputy V job description set forth the qualifications for the job. The one qualification which the parties focused on was the one specifying the education or work experience needed for the job (i.e. "an associate degree in accounting or minimum of three to five years of progressively responsible experience in a payroll and accounting position.") The following evidence establishes that Moe did not satisfy either part of this criteria. With regard to her educational background, it is undisputed that Moe did not have an associate degree in accounting. While the Union makes much of the fact that Moe took an accounting course in 1994 that was part of an associate degree program, completing one course is a far cry from completing a degree. Moreover, Moe did not even indicate on her application that she had taken a college level accounting course. Instead, all she listed on the application was "accounting-payroll". There is no way that Bemmann could have known from this limited entry that Moe took a college level accounting course in 1994. Turning to her work experience, I begin by noting that it is disputed exactly when Moe worked at Nebel and Town and Country, and how much of that time was spent doing payroll and accounting (as opposed to other duties), and whether her experience with these two employers involved "progressively responsible" work. For purposes of discussion, I have decided to credit Moe as working for those two companies for the time periods listed in her Job Posting Form, and to credit her as having done payroll and accounting work for that entire period of time, and also to assume that her experience with those two employers involved "progressively responsible" work. In other words, it is assumed that the result most favorable to Moe in these three areas is adopted. However, even assuming all this, it only gives Moe 33 months of "progressively responsible" payroll and accounting experience. 33 months does not meet the work experience requirement set forth in the job description (i.e. a minimum of three to five years of progressively responsible experience in a payroll or accounting position). Thus, based on the information which Moe herself supplied on her Job Posting Form, she did not satisfy either the education or the work experience criteria specified in the job description. That being so, she was not qualified for the job of deputy V.

Having found that Moe did not satisfy either the educational or work experience criteria, it is unnecessary to address the remaining arguments made by the parties concerning Moe's payroll and accounting work with Nebel and Town and Country (i.e. whether the payroll of Nebel and Town and Country was comparable to that of Door County and whether Moe's payroll experience with those two companies was dated). Again, for purposes of discussion, even if it is assumed that the payroll of those two companies was comparable to that of Door County, and that Moe's payroll experience was not dated, this does not change the previous finding that Moe did not satisfy either the education or work experience criteria specified in the job description.

In finding Moe unqualified, it is noted that I did not rely on the Employer arguments that Moe did not have experience operating a computerized payroll system and did not have payroll conversion experience. My reason for doing so is as follows. First, neither is expressly mentioned as a criteria on the job description. If the Employer wanted to rely on these two criteria, it should have listed them on the job description as qualifications. Second, these two arguments are intended to persuade me that Kessler is more qualified than Moe because Kessler has experience operating a computer payroll system and payroll conversion experience while Moe does not. However, the contractual standard applicable here is not which candidate is most qualified; it is whether the senior applicant is qualified. In this case, I have been able to make that decision (i.e. whether Moe is qualified for the deputy V job) without relying on the two Employer arguments just referenced.

The focus now turns to the contents of Kessler's Job Posting Form. As previously noted, after Bemmann reviewed same, she (Bemmann) found that Kessler met the qualifications set forth in the job description.

I find that this decision was not unreasonable, arbitrary or capricious. With regard to Kessler's educational background, it is undisputed that Kessler did not have an associate degree in accounting. Thus, she did not meet the education criteria. However, she did meet the work experience criteria. This is because Kessler had six years of payroll and accounting experience with the Door County Memorial Hospital in addition to the experience she had gained as the incumbent in the deputy V position. Bemmann's conclusion that Kessler's hospital payroll experience qualified as "progressively responsible" is not expressly challenged by the Union and the undersigned has no reason to find otherwise. Given the foregoing, it follows that Kessler met the work experience requirement set forth in the job description (i.e. a minimum of three to five years of progressively responsible experience in a payroll and accounting position). That being so, she was qualified for the job of deputy V.

In conclusion then, it is held that Moe was not qualified for the deputy V position while Kessler was. Since the senior applicant (Moe) was not qualified, the County did not have to give her the position. As a result, the County did not violate the labor agreement by awarding the position to Kessler.

In light of the above, I issue the following

AWARD

That the Employer did not violate the collective bargaining agreement when it filled the deputy clerk V position in the County Clerk's office in 1996. Therefore, the grievance is denied.

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

Raleigh Jones /s/

Raleigh Jones, Arbitrator

1/ Transcript, p. 6.

2/ In their initial brief, the Employer worded the issue differently from that noted here. The verbal exchange memorialized on page 6 of the hearing transcript shows that the parties stipulated to the wording of the issue noted here. Given that stipulation, that issue will be decided herein; not the issue proposed in the Employer's initial brief.

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