BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

SUPERIOR CITY EMPLOYEES' UNION
LOCAL #244, AFSCME, AFL-CIO

and

CITY OF SUPERIOR

Case 158
No. 55386
MA-10000

Appearances:

Ms. Mary Lou Andresen, Human Resources Director, on behalf of the City.

Mr. James Mattson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, on behalf of the Union.

ARBITRATION AWARD

The above-captioned parties, herein "Union" and "City", are parties to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in Superior, Wisconsin, on November 7, 1997. The hearing was not transcribed and the parties there presented oral arguments in lieu of filing briefs. Pursuant to their request, I there issued a bench decision which this Award augments.

ISSUE

Did the City violate the contract when it awarded the Medium Equipment Operator position to an outside applicant and, if so, what is the appropriate remedy?

DISCUSSION

Much of this case is covered by Arbitrator Peter G. Davis' prior decision in CITY OF SUPERIOR, Case 150, No. 54499, MA-9704, (8/97) which also involved a job posting grievance. He there ruled that: (1), "the interview/testing process . . .was applied fairly to the grievants"; (2), the City under Article 8.01(B) of the contract has the right to "grant the 90-day probationary period only to employees it finds 'qualified'" (emphasis in original); and (3), there was "no binding past practice" supporting the Union's claim that senior employees were automatically entitled to serve a 90-day probationary period to demonstrate their qualifications.

Since Arbitrator Davis' award is *res adjudicata* and therefore binding here, there is no merit to the Union's claims that the testing for the Medium Equipment Operator position in this case was unfair and that senior employes are automatically entitled to demonstrate their ability during a probationary period, as Arbitrator Davis has already ruled against the Union on these very issues.

The Union's entire case, then, turns on its assertion that employes in the past have been allowed to automatically transfer to other City positions without taking a test. The record does, indeed, show that that has happened over the years. However, many of those situations involved transfers to the Laborer classification which is an entry level job and where qualifications were not an issue.

Here, by contrast, skills are needed to operate the heavy equipment in issue. Moreover, even though the City did not always test for qualifications in the past, that does not prevent it from doing so here since the City has the inherent right to test for qualifications under Article 3 of the contract, entitled "Management Rights", which gives it the right to "hire, promote, schedule and assign employes to positions with the City" and Article 8, Section C, which gives it the right to hire outside employes "In the event no City employe is considered qualified by the Employer. . ." Given this language, the City therefore is entitled to test applicants and to award posted positions to outsiders when, as here, it finds that bargaining unit employes are not qualified to operate all of the equipment that a Medium Equipment Operator regularly uses as part of his/her job.

In light of the above, it is my

AWARD

That the City did not violate the contract when it awarded the Medium Equipment Operator position to someone outside the bargaining unit.

Dated at Madison, Wisconsin, this 18th day of November, 1997.

Amedeo Greco /s/
Amedeo Greco, Arbitrator

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