

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
**LaCROSSE COUNTY PROFESSIONAL EMPLOYEES,
LOCAL 2484, WCCME, AFSCME, AFL-CIO**

and

LaCROSSE COUNTY

Case 162
No. 55125
MA-9906

Appearances:

Mr. Daniel R. Pfeifer, Staff Representative, for the Union.

Mr. William A. Shepherd, Corporation Counsel, for the County.

ARBITRATION AWARD

The above-noted parties asked that the Wisconsin Employment Relations Commission assign this dispute to me for resolution through a final and binding arbitration award. Hearing was held in LaCrosse, Wisconsin on August 12, 1997. No transcript was made of the proceedings. Briefs were filed by September 17, 1997. The parties waived the contractual deadline for issuance of this award.

ISSUE

The parties agreed that the issue to be decided is:

Did the County violate the collective bargaining agreement by failing to award the vacant Community Health Nurse II-Occupational Health position to the grievant, Sue Conard? If so, what is the appropriate remedy?

CONTRACTUAL PROVISIONS

9.02 The job requirements, qualifications, and rate of pay shall be part of the posting and sufficient space for interested parties to sign said posting, or they may, in writing, notify the Department Head of their application. Copies of

said postings and the bidders shall be submitted to the Union.

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- 9.03 To apply for a vacancy, the employee must have the basic qualifications for the job, or required certification, as provided under the County Personnel Administrative Code and Rules, or State Merit System for Social Services Departments, whichever is applicable. The allocation or the number of classifications shall rest with the County, except as may be otherwise provided in this Agreement. If the County accepts delegation of a personnel Administrative System as incorporated in the County Personnel Administrative Code and Rules, any impact shall be bargained with the Union as it might affect wages, hours, or conditions of employment.
- 9.04 In filling a declared vacancy, the employee signing with the greatest seniority in the Department shall be given first consideration except as provided for in 9.03 above. Skill, ability and efficiency shall be taken into consideration when they substantially outweigh consideration of length of service in the Department. In addition, employees who are not working due to disability, vacation or approved leave shall notify the Personnel Department if they wish to be advised of postings, by providing in writing the address to which postings are to be sent. The absent employee(s) must respond within the time set forth on the posting.
- 9.05 Employees filling promotional vacancies shall be on a trial period for six (6) months. An employee who fails to have the ability to handle a classification obtained through job posting during this trial period, shall be returned to his former classification as if there had been no interruption. An employee may not rebid on another position, during the six (6) months trial period.

DISCUSSION

The grievant is currently a Community Health Nurse with the County. She applied for a lateral transfer into the Occupational Health position. The County denied her the position contending that she "... had significant difficulty working in some settings."

The Union argues that the grievant has the "skill, ability and efficiency" to perform the job and thus is entitled to the position under Articles 9.02, 9.03 and 9.04 of the contract. The County agrees that the grievant would be entitled to receive the position if she had the requisite "skill, ability and efficiency" but contends that she does not possess same.

The record establishes that a primary responsibility of the Occupational Health position is the development and implementation of an occupational health program for all County employees. Among other matters, the County contends that the grievant's past job performance with the County establishes that she does not have the organizational skills or abilities to successfully perform this responsibility. The County points to the grievant's work experiences with the Lead Program as proof of its position. The Union asserts that the County's evidence falls short of establishing the grievant's lack of skill and ability in this area.

On balance, I find the evidence regarding the grievant's performance in the Lead Program to be a persuasive basis for concluding she does not possess sufficient organizational skill and ability to get the occupational health program "up and running." Because this responsibility is such a critical part of the position's duties, I conclude the County did not violate the parties' contract when it denied the grievant's request for a lateral transfer. 1/ Having reached this conclusion, I need not resolve the parties' dispute over whether the testimony of Sister Beres and Sheriff Halverson establishes that the grievant also lacks the requisite "trust" and "professionalism" to hold the position.

Given the foregoing, I deny the grievance.

Dated at Madison, Wisconsin, this 12th day of December, 1997.

Peter G. Davis /s/

Peter G. Davis, Arbitrator

ENDNOTES

1/ The Union argues that the grievant is entitled to a trial period in the position to demonstrate that she can perform the work. However, as the Union also notes, Article 9.05 of the contract specifically reserves trial periods for employees filling promotional vacancies. Because this is a dispute over a lateral transfer, there is no specified contractual right to serve a trial period. I further conclude the evidence that the employees have on occasion served trial periods in lateral transfer situations is insufficient to create a binding practice.

The Union goes on to argue that the absence a trial period for lateral transfers establishes an intent that employees are automatically qualified for any lateral transfer. However, I am satisfied that under Article 9.04, the issue of an employee's "skill, ability, and efficiency" remains a legitimate contractual question.