

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

and

DOUGLAS COUNTY

Case 238
No. 56642
MA-10357

Appearances:

Mr. Thomas E. Verkuilen, Staff - Wisconsin, Communications Workers of America, appearing on behalf of the Union.

Mr. Gordon E. Ellis, Administrative Coordinator, appearing on behalf of the County.

ARBITRATION AWARD

Communications Workers of America, AFL-CIO, hereinafter referred to as the Union, and Douglas 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 agreement. The undersigned was so designated. Hearing was held in Superior, Wisconsin, on August 26, 1998. The hearing was not transcribed and the parties waived briefs and final arguments.

BACKGROUND

The County had a Victim Witness office which was staffed by a Victim Witness Specialist Coordinator, a Victim Witness Specialist, which were non-bargaining unit positions, and a Secretary, a position included in the unit. On August 18, 1997, the Victim Witness Specialist Coordinator resigned effective August 19, 1997. The Victim Witness Specialist, Kathy Senn, then became the Coordinator. The Secretary, Darleen Geyer, had been

performing many of the Coordinator's duties since 1994. Although Geyer complained about performing these duties, nothing changed. Geyer went on a medical leave from August 4, 1997 until September 5, 1997 due to job stress. Upon her return to work, Geyer informed Kathy Senn that she would no longer do specialist work unless properly compensated. There were discussions that the Victim Witness office would be restructured and brought into the District Attorney's office. With the restructuring, Geyer would assume and get paid for Specialist duties. On October 13, 1997, Geyer was given Victim Witness assignments.

The grievant, a legal secretary in the District Attorney's office, was informed of the Victim Witness position but because it was not in the unit, it would be posted as a non-represented position and the grievant could not use unit status to claim the position. In November 1997, the District Attorney told the grievant the position would be in the unit and asked if she would apply and the grievant indicated she would decide after she saw the posting. The District Attorney sent a request to restructure the Victim Witness office to various County Board Committees. In January 1998, the wage rate for the Victim Witness Specialist was suggested to be \$12.92 per hour. On January 15, 1998, the County Board approved the concept to restructure the Victim Witness office within the District Attorney's office.

On or about February 25, 1998, Candace Fitzgerald, Assistant to the Administrator met with Susan Sandvick, President of Local 4646, CWA and informed her that the County would include the non-unit Victim Witness Specialist position in the unit as well as a new part-time Receptionist position if Geyer would remain in the Specialist position and this position would not be posted. On or about March 6, 1998, Sandvick informed Fitzgerald that the Union did not have a problem with this as long as the District Attorney explained to his staff what was going on and members did not have an interest in applying for the position. By a letter dated March 6, 1998, Fitzgerald confirmed the job to Geyer who accepted it on March 10, 1998.

On March 19, 1998, Sandvick sent a letter to Fitzgerald asserting that the situation was not discussed by the District Attorney with his staff and requested that the position be posted. On March 23, 1998, Sandvick notified the District Attorney of a potential grievance on the Victim Witness Specialist position.

On April 2, 1998, the Union filed a grievance over the matter. Thereafter the Union and the County met on a number of occasions in an attempt to resolve the matter. On June 4, 1998, the parties reached a Memorandum of Understanding which required approval by the Personnel Committee. On June 10, 1998, the Personnel Committee rejected the Memorandum of Understanding and the grievance was processed to the instant arbitration.

ISSUE

The Union views the issue as follows:

Did the County violate Article 9, Section 9.02 of the collective bargaining agreement by its failure to post the Victim Witness Specialist position?

If so, what is the appropriate remedy?

The County states the issue thusly:

Did the County violate any provision of the 1996-97 CWA contract when it followed the past practice of placing an existing job and the individual currently performing the duties of a non-represented position into the bargaining unit without posting the position?

If so, what is the appropriate remedy?

The undersigned adopts the Union's statement of the issue.

PERTINENT CONTRACT PROVISIONS

ARTICLE 9

SENIORITY

. . .

9.02 Job Posting

A. In making promotions and filling vacancies of new jobs, the policy of seniority shall prevail, provided, however, that the senior employee considered for the job was able and qualified to perform the work.

B. Whenever any job vacancy or new position occurs, a notice of said vacancy or new position shall be posted in the affected department and on the employees' bulletin board in each building occupied by the employees within the bargaining unit at least five (5) working days. Said notice shall contain the prerequisites for the position which shall be consistent with the job classification and requirements.

UNION'S POSITION

The Union contends that the award of the Victim Witness Specialist position to Geyer was not a reclassification as argued by the County but rather was a promotion. The Union denies that there was any agreement by it to waive the posting requirement pursuant to Sec. 9.02 of the agreement. It asserts that this was a promotion which is an upward movement requiring greater skills and thus it should have been posted as required by the contract.

COUNTY'S POSITION

The County contends that it included a non-represented position in the bargaining unit and the incumbent remained in the position and it was not obligated to post the position. It claims that it followed past practice on how a filled position has been included in the bargaining unit. It submits that it would not have agreed to include the position in the bargaining unit without protecting the incumbent. It concludes that there is no violation of the contract.

DISCUSSION

It is undisputed that prior to January 15, 1998, the position of Victim Witness Specialist was not included in the bargaining unit. The testimony established that Darleen Geyer had been performing duties of this position for some period of time and the written evidence establishes that Geyer had cases assigned to her at least since October 13, 1997. There were discussions between the County and the Union concerning inclusion of the position of Victim Witness Specialist as well as a part-time Receptionist position in the bargaining unit, provided Geyer remained in the position of Victim Witness Specialist and the position would not be posted under the contract. The question is whether the parties reached an agreement on this. If there was an agreement, then the Union waived posting of the position and there would be no violation of the collective bargaining agreement. If no agreement was reached, then the County cannot be held to its offer to include the Victim Witness Specialist position within the bargaining unit. If it remains out, then the County could fill it in accordance with its own procedures and would not be obligated to post it under the contract. In either scenario, no posting would be required.

It would appear that no agreement was reached. It is clear from the testimony of Fitzgerald that the County would not agree to include the position in the unit without a quid pro quo, namely, that the incumbent Geyer would remain in the position and there would be no posting. The Union conditioned its agreement to the County's proposal on the District Attorney letting his staff know what was going on and no other CWA member in the office indicating an interest in the position. Inasmuch as a CWA member indicated an interest, this condition was not met and thus there was no agreement. The Union cannot insist that the County is obligated by its offer to include the position in the unit because the Union never accepted the additional proviso that it would not be posted. The offer was rejected. There

appears no evidence in the record that the County would have agreed to put the position in the unit if it had to post it. Thus, it is concluded that there was no agreement reached by the parties and the position was not agreed by the parties to be accreted to the unit and as it is not in the unit, it need not be posted in accordance with Sec. 9.02 of the contract.

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

AWARD

The County did not violate Article 9, Sec. 9.02 of the collective bargaining agreement by its failure to post the Victim Witness Specialist position; and therefore, the grievance is denied.

Dated at Madison, Wisconsin this 11th day of September, 1998.

Lionel L. Crowley /s/

Lionel L. Crowley, Arbitrator

