

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**TAYLOR COUNTY COURTHOUSE
AND HUMAN SERVICES DEPARTMENT EMPLOYEES
LOCAL 3679, AFSCME, AFL-CIO**

and

TAYLOR COUNTY

Case 74
No. 56247
MA-10217

(Grievance of Sue Cullen and Edwina Rudolph)

Appearances:

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

Mr. Charles Rude, Personnel Director, on behalf of the County.

ARBITRATION AWARD

The above-captioned parties, herein "Union" and "County", are signatories to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in Medford, Wisconsin, on July 16, 1998. The hearing was not transcribed and both parties filed briefs that were received by September 28, 1998. Based upon the entire record and arguments of the parties, I issue the following Award.

ISSUE

Since the parties did not jointly frame the issue, I have framed it as follows:

Did the County violate the contract when it failed to award the Computer Operator/PC Specialist position to either Sue Cullen or Edwina Rudolph and, if so, what is the appropriate remedy?

DISCUSSION

The County on March 13, 1997, (unless otherwise stated, all dates hereinafter refer to 1997), posted the following job posting (Joint Exhibit 3), for the newly-created Computer Operator/PC Specialist Information Services position, herein "Computer Operator":

...

COMPUTER OPERATOR/PC SPECIALIST INFORMATION SERVICES

Grade 9 – Non-Professional Contract

This position will be under the supervision of the Information Services Director. Duties will include operating the AS/400 computer system and performing daily and monthly backups; "troubleshooting" and assisting with solving computer hardware with PC software problems; maintaining the inventories of equipment with supplies; training users in word processing fundamentals, clerical work, and other duties which may be assigned.

A high school diploma or GED equivalent and a minimum of one year of AS/400 operations experience is required. An Associate Degree in the computer field with an AS/400 and PC background will also be considered. Ability to "troubleshoot" computer equipment and software, as well as, excellent communications skills both orally and in writing is also required.

...

Two County employees bid for said position: grievant Cullen, who is classified as a Secretary I in the County's Health Department, and grievant Rudolph, a Bookkeeper in the County's Commission on Aging. In addition, four outside applicants bid for said position, including Nancy A. Dassow.

Personnel Director Charlie Rude and then-Information Services Director Faye Ryszkiewicz subsequently met with and tested the applicants. The County on March 24 awarded said position to Dassow who received a grade of 64, thereby passing over Cullen who received a grade of 29 and Rudolph who received a grade of 36. By memo dated March 24, Ryszkiewicz informed Cullen:

...

Thank you very much for your interest in the newly created position of Computer Operator/PC Specialist in the Information Services Department.

Upon writing the test for AS/400 and PC knowledge, you have scored 29 out of a possible 75 points. A score of 52 (70%) or better is considered passign. I will keep your cover letter, resume, and test results on file in the event that further consideration may be required.

Once again, thank you for your interest. If you have any questions, please feel free to call me at extension 481.

...

By memo dated March 24, Ryszkiewicz informed Rudolph:

Thank you very much for your interest in the newly created position of Computer Operator/PC Specialist in the Information Services Department.

Upon writing the test for AS/400 and PC knowledge, you have scored 36 out of a possible 75 points. A score of 52 (70%) or better is considered passing. I will keep your letter of application and test results on file in the event that further consideration may be required.

Once again, thank you for your interest. If you have any questions, please feel free to call me at extension 481.

Cullen testified here that the test was “very strange”; that it was followed by a “quite uneasy” interview in part because Personnel Director Rude then asked her what she “least” knew about the position; that County Board Chair Birdman then said that that was an unfair question; and that Rude said the County could not afford to train another person. Cullen added that she is qualified for the position because she already knows how to work on the AS/400 computer system; because she spent about 50 percent of her time working with computers; because she has a computer at home; and because she has taken a 1 credit college course.

On cross-examination, she acknowledged that she does not physically go to the office that houses the AS/400 computer; that she only inputs information into the AS/400; that she only generates reports from her department; and that she does not know how to run payroll on the AS/400.

Bookkeeper Rudolph testified about her duties and said that she enters and retrieves data from the AS/400; that she in a prior job was in charge of a school district's \$3,000,000 payroll; and that the test administered here was for a "much more higher level". She also said that the County had made up its mind as to who to hire at the time of her interview. She added that she did not have any prior experience working with the AS/400 software and that she expected to be trained on how to use it. On cross-examination, she admitted that she does not "per se" work on the AS/400, and that she never complained about the test when she took it.

Personnel Director Rude testified that Dassow received the second highest score on the test; that she was given the job after the top applicant withdrew; and that he used a "numeric 1-10 ranking system when I interview". He said that Dassow had prior experience working on a mainframe computer; that then-Information Services Director Ryszkiewicz, who no longer works for the County, also sat in on the interviews; and that she made the ultimate decision as to who should be hired. He added that the passing score on the test was 70 because the County uses that same score for its other tests and that the County would have reposted the position if none of the applicants scored 70.

Dassow did not testify at the arbitration hearing. Her resume, however, was introduced into the record and it shows that she had the following experience:

...

KRAFT PIZZA CORPORATION (Tombstone Division), Medford, WI

1988-1996

Computer Operator

Operated four IBM AS/400 mid-range, as well as Burroughs A9 Series and B5900 computer systems by means of console, pc and on-line terminals.

- * Modified job flow, system performance, and data communication between four facilities. Identified and resolved problems to ensure effective information flow.
- * Coordinated daily, weekly, monthly, and yearly production schedules, including processing and maintenance of ROBOT automated scheduler.
- * Provided accurate statistics of work processed on a daily basis.
- * Ensured efficient use of impact and laser printers. Printed and distributed application reports and forms, including confidential material.
- * Performed system administration functions including setup of new user accounts and entry of security and program authority for all AS/400 users.

- * Managed voice mail (VMX) for 1300 person office, sales, and traffic personnel.
- * Modified documentation on IBM PC using Word, Excel, Access and related Windows applications.
- * Advised sales force by troubleshooting route related phone calls, after hours and on weekends.
- * Scheduled hardware/software repair and maintenance for tape drives, printers, and AS/400 processors.
- * Configured PC set-ups by installing required software and hardware.

Cullen and Rudolph on June 20 filed the instant grievance.

After the grievance was filed, Dassow attended three computer training sessions to hone her skills.

POSITIONS OF THE PARTIES

The Union argues that the contract requires the County “to promote the employe with the longest continuous service, provided they are at least minimally qualified to perform the job”, and that it thus is immaterial whether a junior or outside applicant is more qualified. The Union further contends that the County has not met its burden of proving that the grievants are unqualified for the posted position; that the County should have granted them a trial period to prove themselves; and that the test administered was unfair.

The County maintains that it properly passed over the grievants because neither one “had any actual experience operating the AS/400, which was a prerequisite for qualifying for the position” and that, furthermore, it “had the right to, and did, expect that the person selected would be trained a [sic] AS/400 operator, able to begin producing immediately.”

DISCUSSION

This case turns on Article 9 of the contract, entitled “Job Posting”, which states in pertinent part:

Article 9 -- Job Posting

. . .

Section 4: Selection. The employee applicant possessing the most seniority who can qualify shall be granted the position. (Emphasis added).

Section 5: Trial Period. If, within the first sixty (60) calendar days of filling a job vacancy, a selected employee fails to make satisfactory progress for the position, he/she shall be returned to his/her former position and selection shall be made among the remaining qualified applicants for the position, if any, according to the criteria set forth in Section 4, above. (Emphasis added). Any employee may also voluntarily return to his/her former position during the trial period at his/her discretion. Employees serving a trial period shall receive a written evaluation of their progress after thirty (30) calendar days.

. . .

The term “can qualify” found in Section 4 above is somewhat ambiguous because it can mean either that: (1), senior applicants must be awarded posted positions on the assumption that they “can qualify” for said position; or (2), senior applicants must be awarded posted positions only if they have already demonstrated that they are qualified. These are fundamentally different interpretations which produce different results.

The provision for a trial period in Section 5 does not answer which of these interpretations must be adopted because it can be argued that such a trial period: (1), kicks in for unqualified applicants so that they can become qualified within thirty (30) days; or (2), only kicks in for qualified applicants who have met all of the posting requirements and who need thirty (30) days to fine-tune their demonstrated qualifications for the job.

Section 5 reveals which of these interpretations is proper because it provides in pertinent part that if the selected employee “fails to make satisfactory progress for the position, he/she shall be returned to his/her former position and selection shall be made among the remaining qualified applicants. . . (Emphasis added). The key word here is “qualified” because it means that individuals selected for any such job vacancies must be qualified at the time of the selection process. That being so, it therefore is necessary to determine whether grievants Cullen and Rudolph were qualified for the Computer Operator position when they bid for it.

As to that, it is undisputed that both of them failed to get a passing grade on the County’s test. Moreover, Rudolph herself admitted here that said test was geared to a “much more higher level” than she anticipated, thereby indicating that the Computer Operator position was over her head. While the Union attacks the fairness of the test, I am satisfied that it was reasonably related to the job qualifications in issue and that it was administered properly.

In addition, neither Cullen nor Rudolph ever had any direct hands-on experience with an AS/400 computer system, which was one of the major qualifications listed in the job posting. Instead, the record shows only that the two of them have had some experience in accessing said AS/400 computer system from their own individual word processors. That, though, does not mean that they are qualified to work full-time in the separate room that houses said computer system and to run all of the programs that are generated by the AS/400. Indeed, Cullen herself acknowledged that she does not know how to run payroll on the AS/400, which is one of the primary responsibilities of that job.

The grievants' experience stands in sharp contrast to Dassow's prior experience at Kraft Pizza Corporation which reveals that she operated AS/400 computers and that she had extensive experience in performing various functions on it. That is why she was fully qualified to perform the Computer Operator position. It therefore is immaterial that she subsequently took several computer training courses to hone her skills, as said courses did not serve as a trial period, but rather, only as the kind of ongoing training that is regularly offered to employees who are already qualified for their jobs.

I thus find that neither Cullen nor Rudolph is qualified for the AS/400 Computer Operator position and that they therefore are not entitled to a trial period to prove that they can perform all of its responsibilities. as it is well-established that:

“If the senior employee is obviously unfit or unqualified, as in a situation where the job in question requires a high degree of skill that can be acquired only after a long period of training and there is no evidence that the senior employee has these skills or related skills, then management is not required to give a trial period and may give preference to the junior employee or new hire who already possesses such skills. The same holds true if there is a contract provision for a trial period.” (Footnote citations omitted)

How Arbitration Works, Elkouri and Elkouri, p. 857 (BNA, 1997).

The Union's reliance on various arbitration cases therefore is misplaced since none of those cases involved grievants who failed to meet the listed qualifications of a job posting.

In light of the above, it is my

AWARD

That the County did not violate the contract when it failed to award the Computer Operator/PC Specialist position to either Sue Cullen or Edwina Rudolph; their grievance is therefore denied.

Dated at Madison, Wisconsin, this 14th day of October, 1998.

Amedeo Greco /s/

Amedeo Greco, Arbitrator