

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

LOCAL 67, AFSCME, AFL-CIO

and

CITY OF RACINE

Case 567

No. 57691

MA-10722

Appearances:

Mr. John Maglio, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 624, Racine, Wisconsin 53401-0624, on behalf of Local 67, AFSCME, AFL-CIO.

Mr. Guadalupe G. Villarreal, Deputy City Attorney, City of Racine, Racine City Hall, 730 Washington Avenue, Racine, Wisconsin 53403, on behalf of the City of Racine.

ARBITRATION AWARD

Local 67, AFSCME, AFL-CIO, hereinafter the Union, requested that the Wisconsin Employment Relations Commission appoint a staff arbitrator to hear and decide the instant dispute between the Union and the City of Racine, hereinafter the City, in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. The City subsequently concurred in the request and the undersigned, David E. Shaw, of the Commission's staff, was designated to arbitrate in the dispute. The parties attempted to resolve their dispute, but were unsuccessful and proceeded to hearing on the grievance before the undersigned on October 19, 1999 in Racine, Wisconsin. There was no stenographic transcript made of the hearing and the parties presented oral arguments in lieu of post-hearing briefs.

The undersigned rendered an oral award at hearing at the mutual request of the parties with the understanding a written award would follow. Therefore, based upon the evidence and the arguments of the parties, the undersigned makes and issues the following Award.

ISSUE

The parties stipulated to the following statement of the issue:

Does Article XII, Sec. D., require that a vacant Street Sweeper position in the Street Maintenance Division be filled in the order of departmental seniority from the Solid Waste Division or does a more senior employee outside of the Solid Waste Division have posting rights to the vacant position?

CONTRACT PROVISIONS

The following provisions of the parties' Agreement are cited:

ARTICLE XII

Job Postings

A. Posting Procedure. Any job vacancy which occurs due to retirement, quit, death, new position or for whatever reason in the bargaining unit shall be posted.

The posting shall set forth the job title, duties and qualifications desired, rate of pay, work location or assignment and shift. Sufficient space shall be provided for employees to sign (apply) for said job opening.

All job openings within the province of the bargaining unit shall be posted for five (5) working days in overlapping consecutive weeks. The successful bidder or the Union shall be notified within five (5) work days after the close of the posting.

The City agrees to move the successful bidder to his new position as quickly as possible but in no event later than thirty (30) calendar days after notification of his selection.

B. Posting Departments. For the purpose of defining departments as divisions for job postings, the following will be classed as departments or divisions:

- Traffic
- DPW – Street Maintenance
- DPW – Solid Waste Division
- DPW – Bridge Division

DPW – Equipment Maintenance Division
DPW – Building Complex Division
Parks – Zoo – Recreation – Community Services
Forestry Division
Cemetery
Memorial Hall
Wustum Museum
Police Department Garage – Animal Control

C. Preference. Preference will be given first to the employees in the department and second to regular bargaining unit employees in other departments for posted jobs before a seasonal or temporary employee is considered. Screening of a man on the basis of seniority and ability to perform the duties of the job still applies.

D. Posting into Street Maintenance. All vacancies or openings in the DPW Street Maintenance Division shall be filled in the order of departmental seniority from the Solid Waste Division as mutually agreed between the City and Local 67, unless the Solid Waste Division employee waives his right to move into the DPW Street Maintenance Division.

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BACKGROUND

The parties stipulated to the following facts:

- 1) The position in question in this grievance is a Streetsweeper position posted in March of 1999.
- 2) The Streetsweeper position is in the Street Maintenance Division of the Department of Public Works.
- 3) The Streetsweeper position was awarded to Al Cociotti, who has a seniority date of April 19, 1994. All of his seniority is in the Department of Public Works.
- 4) Chuck Dennis also posted for the Streetsweeper position. Dennis has a seniority date of April 24, 1978. All of his seniority is in the Department of Public Works.
- 5) Cociotti is in the Solid Waste Division. Dennis is in the Equipment Maintenance Division.

In addition to those stipulated facts, the Union's President, Doug Dresen, and the City's Superintendent of Public Works, Joe Golden, testified as to the background of Article XII, Secs. C and D. The wording of Article XII, Secs. C and D of the Agreement predates both Dresen and Golden. Dresen testified that this grievance was filed because the most senior employe in the Department of Public Works that bid on the position did not get the job. Dresen further testified that as far as he is aware, no one outside of the Street Maintenance Division had ever posted for a Streetsweeper position before this instance.

Golden testified that the Streetsweeper position in question was posted City-wide in the bargaining unit, and that this is not always the case, as it is sometimes only posted in the Department of Public Works. No one in Street Maintenance posted for the vacancy, however, Coccioni, the most senior employe in Solid Waste was awarded the position. According to Golden, that is how it has always been done in his thirty-one years with the City

Golden testified, and Dresen acknowledged as well, that of the forty-one employes in Solid Waste, only twenty-four perform that division's primary duty of picking up garbage on a daily basis. The rest of the Solid Waste employes (usually after they have been there approximately three years), perform Street Maintenance duties on a daily basis and thereby obtain the training necessary for Street Maintenance jobs. Golden testified that after employes have been in Solid Waste for about five years they are able to post into Street Maintenance positions.

Golden further testified that the fact the Streetsweeper position was posted City-wide did not change how the position was filled. The normal progression of preference is still followed and if no one from Street Maintenance or Solid Waste bids on the Streetsweeper position, preference is then by departmental seniority among the remaining divisions of Public Works, and then City-wide in the unit. Golden does not recall such a vacancy ever going beyond Solid Waste.

POSITIONS OF THE PARTIES

Union

The Union notes that Article II, Sec. H, of the Agreement, permits the parties to seek an interpretation of a provision of their Agreement from an arbitrator where there is a dispute, and that is what it seeks in this case.

The Union asserts that Article XII, Sec. C, of the Agreement is clear that preference is to be given to the senior employe in the department in which the vacancy occurs; in this case the Department of Public Works. Article XII, Sec. D, seems to state a different policy if the

vacancy occurs in the Street Maintenance Division. The Union contends that the conflict between Sec. C and Sec. D should be resolved in favor of Sec. C, giving preference to the most senior employe in the department.

City

The City notes that the parties negotiated the language of Article XII, Secs. C and D and arrived at those provisions for reasons they presumably discussed in negotiations.

In this case, the position in question, Streetsweeper, is in the Street Maintenance Division, and Cocciotti was the most senior employe in the Solid Waste Division. While Dennis had more department seniority, he is in the Equipment Maintenance Division. Thus, pursuant to Sec. D, Cocciotti was awarded the position.

The City also asserts that the issue of having to post into Street Maintenance from the Solid Waste Division has been litigated previously. In a 1984 award involving these parties, the arbitrator in that case recognized that while the general rule is that department seniority has preference, Sec. D is an exception to that rule as far as vacancies that occur in the Street Maintenance Division.

DISCUSSION

The wording of Article XII, Sec. C is clear that first preference is to be given to employes in the department where the vacancy exists. This provision is general in its application, i.e., it applies to vacancies in general. However, Sec. D is also clear and specifically applies to, "All vacancies or openings in the DPW Street Maintenance Division" and explicitly states that such vacancy or opening "shall be filled in the order of departmental seniority from the Solid Waste Division," unless the employe from that Division waives his right to move into the Street Maintenance Division. It is noted that Sec. D also states that the preference in this provision is as mutually agreed between the City and the Union.

It is a recognized and accepted rule of contract construction that where there is a conflict between general language and specific language, the specific language governs. In this case, Article XII, Sec. D specifically addresses vacancies in the Street Maintenance Division and creates an exception to the general rule in Sec. C as to such vacancies. The notation that this exception is by the mutual agreement of the parties indicates that the exception in Sec. D was purposely created and that its conflict with the general rule in Sec. C was not inadvertent.

Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following

AWARD

As the Streetsweeper vacancy was in the Street Maintenance Division and was awarded to the most senior employe in the Solid Waste Division, the City acted in accord with Article XII, Sec. D, of the parties' Agreement, which requires that such vacancies first be filled in order of departmental seniority from within the Solid Waste Division.

Dated at Madison, Wisconsin this 25th day of October, 1999.

David E. Shaw /s/

David E. Shaw, Arbitrator

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