

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**BAYFIELD COUNTY EMPLOYEES LOCAL
UNION 1731, AFSCME, AFL-CIO**

and

BAYFIELD COUNTY

Case 74
No. 57320
MA-10591

Appearances:

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

Weld, Riley, Prenz & Ricci, Attorneys at Law, by **Ms. Kathryn J. Prenz**, appearing on behalf of the County.

ARBITRATION AWARD

Bayfield County Employees, Local Union 1731, AFSCME, AFL-CIO, herein the Union, and Bayfield County, herein the County, jointly requested the Wisconsin Employment Relations Commission to designate the undersigned as an arbitrator to hear and to decide a dispute between the parties. The undersigned was so designated. Hearing was held in Washburn, Wisconsin, on July 22, 1999. There was no stenographic transcript made of the hearing. The parties completed the filing of post-hearing briefs on December 3, 1999.

ISSUES

The parties were not able to stipulate to the issues and agreed that the arbitrator would frame the issues in his award.

The Union stated the issues as follows:

Did the County violate the terms of the collective bargaining agreement and past practice when the County denied the grievant the opportunity to post into the AODA/Mental Health Coordinator I position? If so, the appropriate remedy is for the County to place the grievant into the AODA/Mental Health Coordinator I position.

The County stated the issues as follows:

Does Article 14, Section 1, of the parties' collective bargaining agreement have any application in the situation in which the position being posted is a Coordinator I position and the employee who wishes to post is already a Coordinator I? If so, did the County violate the collective bargaining agreement when it did not award the Coordinator I classification to the grievant? If so, what is the appropriate remedy?

The undersigned believes the following to be an accurate statement of the issues:

Did the County violate the contract when it did not award the AODA/Mental Health Coordinator I position to the grievant? If so, what is the appropriate remedy?

BACKGROUND

On November 20, 1998, the County posted a vacant position for a Mental Health/AODA Coordinator I. The grievant, Joan Tousignant, was the only bidder. At the time of her bid, the grievant was classified as an AODA/Mental Health Case Manager I, which is a Coordinator I classification under the contract. The County's Director of Community Programs denied the bid because it would not result in a promotion for the grievant. The Director also informed the grievant that she was doing a good job and he wanted her to stay where she was. The grievant filed a grievance over the denial and the grievance is the basis for the instant case.

The parties entered the following stipulations. The grievant's seniority date is March 1, 1997. The grievant was qualified for the position of AODA/Mental Health Coordinator I, thus her qualifications are not at issue herein. The grievant is no longer interested in said position, although she was interested in the position when it was posted.

The Union referenced three previous situations in support of its position that the contract and past practice permit lateral transfers through the posting procedure. In 1995, Cathy Ekholm transferred from a Clerk III classification to a classification of Health Secretary through a job posting. Said two classifications were in the same wage range. In July of 1996, Janice Bergst changed from performing as a Developmental Disabilities Coordinator to performing as a Long-Term Care Coordinator after signing a job posting. Both of those positions were in the same classification. In October of 1998, Roberta DeLizio moved from a Social Worker II classification to a Long Term Care Coordinator I through a job posting. Said movement was to a lower labor grade and resulted in a wage reduction for DeLizio.

The parties stipulated that management has the authority to make changes in job assignments/duties within the job classifications at any time as determined necessary by management. The County presented a list of situations in which it has exercised that authority to reassign duties due to staff and/or program changes.

POSITION OF THE UNION

The County has the right to assign and to delegate duties to employees. However, once the County posts a position, then the contractual posting rights of the employees take precedence over the rights of the County. The contractual language is clear and unambiguous in requiring that the most senior bidder be awarded a posted position, provided said employee meets the job requirements.

The grievant bid for the posted position because she wanted a change in her job duties. Although the posted position was in the same classification, i.e., Coordinator I, it had considerably different duties than the work she was doing at that time. The long-standing past practice has been to allow employees to be awarded posted jobs which result in lateral transfers of employees. Lateral transfers are beneficial to both the employee and the County.

Although the grievant no longer wants the posted position, the issue raised by her grievance is important to all of the bargaining unit employees. If the County's position is upheld, then the contractual right of the employees will be limited.

POSITION OF THE COUNTY

The contract language is clear. The contractual posting procedure is intended to allow employees to post from one classification to another classification, not to permit employees to insist on the assignment of certain job duties within a classification. Section 1 of Article 14 is entitled "promotions". The grievant was classified as a Coordinator I when she bid on the Coordinator I position. Thus, she was seeking different duties within the same classification, which does not constitute a promotion, or even a lateral transfer, to a different classification.

Further, the past practice supports the County's position. Of the three examples presented by the Union, two were situations where the employee moved from one classification to a different classification, which were appropriate moves. In the third situation, the employee did not know whether she was assigned the desired duties because of her job bid, or, because management exercised its authority to assign her the new duties due to a better fit. Even if management had decided to honor the employee's bid in that situation, one example fails to establish the existence of an unequivocal, clearly enunciated and readily ascertainable practice.

The parties agree that management has the right to assign and to change duties. The County presented numerous examples, dating back to 1980, where it had exercised its right to assign different duties to employees. While the County has allowed employees to make lateral transfers between job classifications within the same pay grade, it has not allowed employees to select work within the same job classification through the job posting procedure. The contract strikes a balance between the employee's right to move to a different job classification and the County's right to assign duties to employees within the same job classification. The grievance should be denied.

RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 5 - UNION MANAGEMENT RELATIONS

Section 1 - Vested Rights of Management. The right to employ, to promote, to transfer, discipline and discharge employees and the management of the property and equipment of the Employer are reserved by and shall be vested exclusively in the Bayfield County Board of Supervisors. The County Board and its committees shall have the right to determine the number of employees and job classifications in each department covered by this Agreement. The County Board and its Committees, shall have the sole right to contract for any work it chooses and direct the employees to perform such work wherever located in its jurisdiction. The County shall have the exclusive right to make changes in the details of employment of the various employees from time to time as it deems necessary for the efficient operation of the departments and the union and members agree to cooperate with the board and/or its representatives in all respects to promote the efficient operation of the County departments covered by this Agreement.

. . .

ARTICLE 14 - PROMOTIONS, JOB POSTING, WORK ASSIGNMENTS, LAYOFFS & RECALL, RECLASSIFICATIONS, SALARY STEP PLACEMENT AND DEMOTIONS

Section 1. Promotions:

- A. Seniority shall be the guide in filling all vacancies or new positions, provided however, that the senior employee is qualified and able to perform the work.
- B. It shall be the policy of the County to promote on-the-job training in each of the various departments, according to seniority rights, to assure the departments of qualified employees or promotional opportunities.

- C. In the event a vacancy or new position occurs, a notice of said vacancy or new position shall be posted prior to filling said vacancy or new position. The posted notice shall be dated and contain the prerequisites for the job and the prerequisites shall be consistent with the requirements of the job classification. All interested bargaining unit employees may sign the posted notice. A copy of the posted notice shall be mailed to the president of the Local. At the end of seven (7) working days, the notice shall be removed, and the Employer shall give notice to the posting employee(s) within three (3) working days.

In the event of a vacancy, the County shall be allowed to simultaneously post both internally and to advertise outside to fill the vacant or new position.

Employees shall be considered in the following order:

- 1. Regular full-time and part-time employees within the bargaining unit, in order of seniority, who are qualified for the position as outlined in Article 13 – Seniority, Section A. 1-3.
 - 2. Other applicants for the position.
- D. An employee upon being promoted, shall serve a trial period of forty-five (45) work days. Should the employee not qualify, or should the employee so desire, she/he shall be reassigned to their former position without loss of seniority. Upon mutual agreement between the parties, said trial period may be extended an additional month, if warranted.
 - E. An employee who is promoted shall be placed at the salary step for the new position which does not result in a loss of pay.

CLASSIFICATIONS

...

...

Grade 3: Extension Secretary; County Clerk’s Account Clerk; Forestry Secretary; Document Recorder; Veterans Service Secretary/Juvenile Court Intake Secretary; Zoning Secretary; Clerk III; Typist III; Health Secretary; Victim Witness Coordinator

...

Grade 10: Social Worker I, Coordinator I (D.C.P.)

Grade 11: Social Worker II, Coordinator II (D.C.P.); Court Intake Worker,
Home Health Care Coordinator

...

DISCUSSION

Each party asserts that the clear and unambiguous contract language supports its respective position. The job posting procedure is set forth in Section 1 of Article 14. The Union correctly contends that the language provides employees with the right to bid on a posted position. However, the heading of Section 1 is "Promotions." In addition, several references are made to promotions in the language of Section 1. Such a construction does not support the Union's interpretation of the language that an employee has the right to a posted position if the employee is qualified and is the most senior bidder, even if the employee is already in the same classification as is the posted position. Instead, the language supports the County's interpretation that the posting procedure was designed to give employees an opportunity to be promoted to higher paying job classifications. Nevertheless, the parties have expanded the use of the posting procedure by allowing employees to bid both on job classifications within the same salary range, i.e., a lateral transfer, or, on job classifications in lower salary ranges, i.e., a demotion. But the grievant herein was not seeking a promotion by bidding on a position in a higher salary range. Further, if the grievant had been awarded the position, her classification would not have changed, since she already was classified as a Coordinator I and the posting was for a Coordinator I position. Thus, the grievant was not seeking a lateral transfer between different job classifications within the same salary range. Rather, the grievant was seeking to change her job duties within the same job classification. It is on this point that the parties disagree over the practice. Thus, it is necessary to look at the application of the provision to determine whether there is a practice of allowing employees to bid on posted positions in the same classification as the employee then holds.

The examples, presented by the Union to support its position, fail to establish the existence of a practice of awarding a posted position to an employee who bids on the position when the position is in the same classification as the position then held by the bidder. One situation involved the posting of a clerical position when the position was changed from ½ time to ¾ time and the incumbent employee was the successful bidder. Because of the change in the hours of work in that case, said case is distinguishable from the instant matter and is not a precedent. Of the other examples presented by the Union, only one involved a change of duties without a change in the employee's classification. In that case, Bergst had bid on a posted position and then was assigned the duties covered by the posted position, even though Bergst already held the posted job classification. Bergst's supervisor testified that he concluded Bergst would be a good fit in the posted duties and that he believed he had the authority to assign her to the posted duties because she was already in the posted classification.

It was on that basis the supervisor said he assigned the new duties to Bergst, rather than because she was the senior qualified bidder. Even if it is assumed that Bergst was given the new duties because of her bid, such an isolated example is not sufficient to establish a binding practice. Such is especially true where, on numerous occasions over a period of several years, the County has exercised its authority to change the duties of an employee without changing the employee's classification. The County presented a list of a considerable number of situations in which it had changed the duties of employees without changing the classification of the employees.

The Union argues that adoption of the County's interpretation of the language would place a limitation on the contractual right of the employees to bid on jobs. Further, the Union asserts that the ability of employees to bid on different duties, even in the same classification, may be beneficial to the County as well as to the affected employee. Employees may seek a change in order to remove themselves from conflict situations or to move to a position better suited to their interests. Such moves can improve employee morale. However valid those arguments may be, they are not a basis for extending the bidding procedure to positions in the same classification as the employee already holds. If the Union wants the bidding procedure to allow an employee to bid on a position in the same classification as the employee already holds, then it must bargain a change in the contractual language to allow such bids.

Based on the foregoing, the undersigned enters the following

AWARD

That the County did not violate the contract when it failed to award the AODA/Mental Health Coordinator 1 position to the grievant; and, that the grievance is denied and dismissed.

Dated at Madison, Wisconsin this 11th day of February, 2000.

Douglas V. Knudson /s/

Douglas V. Knudson, Arbitrator