

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

AFSCME LOCAL 332A

and

LINCOLN COUNTY

Case 204

No. 59359

MA-11264

(Laurie Kriewald – Victim/Witness Coordinator Grievance)

Appearances:

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

Mr. John Mulder, Administrative Coordinator, Lincoln County, appearing on behalf of the County.

ARBITRATION AWARD

AFSCME Local 332A, herein the Union, requested that the Wisconsin Employment Relations Commission appoint a staff arbitrator to hear and decide a dispute between the parties. The County concurred in the request and the undersigned, Steve Morrison, was designated as the arbitrator. Hearing was held in Merrill, Wisconsin, on February 6, 2001. There was no stenographic transcript made of the hearing. The parties submitted post-hearing briefs on April 16, 2001.

ISSUES

The parties stipulated that there were no procedural issues and were also able to stipulate to the following issues:

Did the County violate the collective bargaining agreement when it did not award the position of Victim/Witness Coordinator to Laurie Kriewald and did it further violate the collective bargaining agreement by increasing the qualifications for this position? If so, what is the proper remedy?

BACKGROUND

The position of Victim/Witness Coordinator has existed in Lincoln County for a number of years. It was initially a part-time position working with the Crime Victim/Witness Support Program. A high school education and no experience were required. Over the years, changes in State law and reclassifications of the position by the Lincoln County Board of Supervisors expanded the responsibilities of the position. Today, the Victim/Witness Coordinator is a full time position and directs Lincoln County's Victim/Witness Assistance Program assuring the delivery of statutorily guaranteed services to victims and witnesses of crimes. The position serves as the District Attorney's advisor relating to victim/witness matters, prepares victims and other witnesses for court appearances, acts as a liaison with prosecutors, law enforcement, court personnel, community agencies and other units of government and generally assists victims and witnesses of crimes, and their families, physically and emotionally through rehabilitation. Additionally, the position coordinates the public relations activities of the District Attorney's office and participates in the formation of legislative recommendations and lobbying for crime victims.

On September 13, 2000, the County posted the Victim/Witness Coordinator position to fill what had become a vacancy, which posting stated in pertinent part:

JOB DUTIES:

Full time position in the District Attorney's Office. Under the general direction of the District Attorney, will organize, administer, and operate the Lincoln County Victim/Witness Assistance Program [sic], providing for the needs of and protecting the rights of victims and witnesses of crime. Will serve as the District Attorney's advisor on victim/witness matters. Will assist victims in preparation for court appearances. Will determine emotional and rehabilitative needs of victims and their families. Will assist victims in applying for appropriate financial assistance. Will act as liaison with prosecutors, other units of government, law enforcement personnel, court personnel, and community agencies. Will coordinate public relations activities of the District Attorney's Office including public speaking, media presentations, and the design and drafting of brochures. Will participate in forming legislative recommendations and lobbying for crime victims.

QUALIFICATIONS:

Bachelor's Degree in Criminal Justice, Sociology, Psychology, or a related field, with three to five years criminal justice experience, or any combination of education, training and experience which provides equivalent knowledge, skills, and abilities. Must have ability to communicate effectively with crime victims and witnesses, attorneys, District Attorney support staff, social workers, probation and parole officers, legislators, law enforcement personnel, court personnel, community agencies, the general public, and others verbally and in writing.

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Laurie Kriewald, the Grievant, was the only internal employee to apply for the position. She was granted an interview on September 18th with the County's Administrative Coordinator, John Mulder. Kriewald had been employed by the County as the Deputy Clerk of Courts for the three and one-half years preceding her interview. She has an Associate Degree in Business Marketing and some limited experience within the criminal justice system resulting from her position as Deputy Clerk of Courts. Following her interview, the County determined that she did not meet the general qualifications for the position and it placed an outside ad. In the interim, and pending the new hire of a qualified Victim/Witness Coordinator, the County hired an LTE to perform some of the more routine functions of the position while the District Attorney took over the functions requiring legal and criminal justice experience.

RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 1 - RECOGNITION

The Employer recognizes the Union as the exclusive bargaining representative for the purpose of conferring and negotiating with the Employer and its authorized representatives on questions of wages, hours, and conditions of employment for all regular full-time and regular part-time employees in the Lincoln County Courthouse and Safety Building (including Correctional Officers, Cooks, 911 Telecommunicators, and Solid Waste Department employees), Health and Human Services Building (including Commission on Aging employees and Health Department employees), the Merrill Courthouse Annex and the Tomahawk Courthouse Annex, as well as the Program Assistant & Fiscal Clerk in the Highway Department, excluding elected officials, supervisory, managerial, and confidential employees, professional employees and all other employees including those in existing bargaining units (Decision #20687, certified by the WERC).

ARTICLE 2 - MANAGEMENT RIGHTS

2.01 The County possesses the sole right to operate County Government and all management rights repose in it, subject only to the provisions of this Agreement and applicable law. These rights include, but are not limited to the following:

- A. To direct all operations of the County;
- B. To establish reasonable work rules;
- C. To hire, train, promote, transfer, assign and retain employees;
- D. To suspend, demote, discharge, and take other disciplinary action against employees for just cause;
- E. To lay off employees from their duties because of lack of work or any other legitimate cause;
- F. To maintain efficiency of department operations entrusted to it;
- G. To take whatever actions as necessary to comply with state or federal law;
- H. To introduce new or improved methods or facilities;
- I. To change existing methods or facilities;
- J. To manage and direct the working force, to make assignments of jobs, to determine the size and composition of the work force, and to determine the work to be performed by employees;
- K. To utilize temporary, part-time or seasonal employees when deemed necessary; provided such employees shall not be used for the purpose of eliminating existing positions;
- L. To determine the methods, means and personnel by which operations are to be conducted.

Any unreasonable exercise or application of the above-mentioned management rights which are mandatorily bargainable shall be appealable through the grievance and arbitration procedure; however, the pendency of any grievance or arbitration shall not restrict the right of the County to continue to exercise these management rights until the issue is resolved.

ARTICLE 5 - GRIEVANCE PROCEDURE

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5.02 Arbitration:

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6. Decision of the Arbitrator: The decision of the arbitrator shall be limited to the subject matter of the grievance and shall be restricted solely to the interpretation of the contract in the area where the alleged breach occurred. The arbitrator shall not modify, add to, or delete from the terms of the Agreement.

ARTICLE 11 - JOB POSTING - TRANSFERS AND PROMOTIONS

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11.02 Posting Vacancy: In the event a permanent job vacancy occurs, notice of such vacancy shall be posted for five (5) working days, not counting the first day. During this time, employees may bid for such job by signing the job posting. Employees may sign the job posting at the Administrative Coordinator's office instead of signing the job posting. In addition, employees on leave of absence shall be mailed to, last known address a copy of any job posting, and should any such employee desire to post for the job, they shall do so by certified mail to be postmarked within five (5) days of the day of the mailing of the original posting.

At the end of the posting period, the job shall be awarded to the most senior qualified applicant. If there is any dispute as to qualifications of an employee, the affected employee may take the matter up for adjustment under the grievance procedure.

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11.03 In the event none of the applicants qualify for the position, the Employer must then offer the position to employees on layoff who are qualified, beginning with the most senior employee on layoff. If there are no qualified applicants and no qualified employees on layoff, the Employer may then advertise publicly to fill the position.

11.04 Employees who receive a posted position shall be considered on probation in the new position for a period of ninety (90) days. During that

period should the employee not qualify or should the employee so desire, he/she shall be reassigned to his/her former position without loss of seniority. After successfully completing said probationary period, the employee shall be permanently assigned to the new position. A successful bidder shall not be eligible to bid for a new position until after serving ninety (90) days on his/her job. The County may reduce the probationary period if it is determined that the employee successfully qualifies for the position.

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POSITIONS OF THE PARTIES

The Union

The Union argues that the County may not hire an applicant from outside of the bargaining unit if a bargaining unit member is minimally qualified for the position and posts for it. This is true, says the Union, even if the outsider is more highly qualified than the bargaining unit member. It contends that the burden of proving why the senior bidder was not selected is generally borne by the employer. The Union further argues that the employer has acted unreasonably and has violated certain provisions of the collective bargaining agreement by unilaterally increasing the minimum qualifications for the Victim/Witness Coordinator position to include a Bachelors Degree in certain specific fields along with some level of experience in the criminal justice system. It asserts that by requiring these minimum qualifications, the County has elevated the job to the status of professional, thus, effectively removing it from the bargaining unit and creating what the Union refers to as a “glass ceiling” for the membership since no other members have degrees and would, consequently, be unqualified. It also maintains that this action violates the past practice of the parties and that the Grievant should have been given an opportunity to demonstrate her ability to do the job under the “trial period” provision of the collective bargaining agreement even if her qualifications were “debatable.”

The County

The County argues that it had the right to establish minimum qualifications for this position and that the qualifications it established were reasonably related to the duties and responsibilities of the job. It contends that the Grievant failed to meet those minimum qualifications and was not offered the job for that reason.

DISCUSSION

Laurie Kriewald was granted an interview by the Lincoln County Administrative Coordinator for the position of Victim/Witness Coordinator. During this interview, she was given ample opportunity to demonstrate her qualifications for the position. The job posting

stipulated that a bachelor's degree in Criminal Justice, Sociology, Psychology or a related field, along with three to five years experience in the criminal justice system or any combination of education, training and experience providing equivalent knowledge, skills, and abilities, among other things, constituted the qualifications required to be considered a successful applicant. During the interview, the County Administrator learned that Kriewald's post-secondary education consisted of an associate's degree in Business Marketing; that she had no formal training or other experience in any of the academic areas specified; and that her experience in the criminal justice system consisted of three and one-half years as the Deputy Clerk of Courts. The Administrator concluded that she was not qualified and she was not awarded the position. The record supports that decision.

The threshold question is whether the County has the right to establish minimum job requirements. The answer is that it does unless the bargaining agreement contains express language limiting it. The Union argues that given a choice between "two qualified employees," the seniority clause contained in Article 11 works to deny the job to an outsider in favor of the senior employee. This is true, but the two applicants must first both be "qualified." Kriewald was *not* qualified and so the seniority clause in Article 11 was never invoked.

The next question is whether the County's minimum job requirements were reasonable. This is to say that the qualifications must relate sufficiently to the job duties and responsibilities and that they not be arbitrary or capricious. The Union agrees that employers have the unilateral authority to make reasonable increases in the requirements for any given position but argues that the County's requirement for a bachelor's degree in Criminal Justice, Sociology or Psychology was unreasonable. The record does not support the Union's conclusion. The County presented a rational basis for the requirement of a bachelor's degree (or any combination of education, training and experience which provides equivalent knowledge, skills and abilities) and for additional experience in the criminal justice area. The Victim/Witness Coordinator is charged with evaluating the emotional and rehabilitative needs of victims and their families and with protecting the rights of victims and witnesses. The position works closely with the District Attorney as an advocate for the victim and the District Attorney seeks the Coordinator's opinion as such. The District Attorney testified that she needs an individual who does not need on-the-job-training and can work from the outset with her to prepare the case. She testified that she relies on the Victim/Witness Coordinator to give her an objective analysis of the witnesses during trial preparation and that they prepare for trial together. This type of objective approach is valuable to her. The District Attorney testified that this position must know the procedures inherent in the criminal justice system and have the ability to coordinate the public relations functions of the District Attorney's office; that it must have the polished ability to act as liaison with the prosecutor's office, other units of government, law enforcement and community agencies and must participate in the formulation of legislative recommendations and lobbying for crime victims, all of which, the County reasonably determined, would be better accomplished by a person with formal education in one of the areas specified and with hands on experience working within the criminal justice system.

Thus, because the qualifications were reasonable and the Grievant did not possess those qualifications, the County did not violate the terms of the contract when it failed to offer the job to Kriewald.

As for the Union's argument that the actions of the County have elevated the job to the status of professional, the undersigned does not have the authority to decide that issue. The proper venue is with the full Commission and the appropriate proceeding is one for unit clarification. There is no evidence in the record of bad faith on the part of the County or any action on its part to undercut the integrity of the unit.

The Union argues that Kriewald should have been given the opportunity to demonstrate her ability to do the job under the "trial period" provision found in Article 11. That provision states: "Employees who receive a posted position shall be considered on probation in the new position for a period of ninety (90) days." In order to "receive a posted position," one must first meet the qualifications for that position. Kriewald was not qualified at the time of the interview nor could she have become qualified in the 90-day trial period under Article 11. This provision does not apply in the instant situation.

Finally, relative to the Union's assertion that the County's actions violate past practice, there is no evidence of a past practice in this record which would require the County to waive the requirements for this position.

In light of the above, it is my

AWARD

That the County did not violate the collective bargaining agreement when it did not award the position of Victim/Witness Coordinator to Laurie Kriewald and that it did not violate the collective bargaining agreement by increasing the qualifications.

Dated at Wausau, Wisconsin, this 16th day of July, 2001.

Steve Morrison /s/

Steve Morrison, Arbitrator