BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute between

EAU CLAIRE AREA SCHOOL DISTRICT

and

LOCAL 4018, EAU CLAIRE SCHOOLS CLASSIFIED STAFF

Case 67
No. 61788
MA-12063

Appearances:

Weld Riley Prenn and Ricci, S.C., by **Attorney Stephen L. Weld,** 3624 Oakwood Hills Parkway, PO Box 1030, Eau Claire, Wisconsin 54712-1030, appearing on behalf of the Eau Claire Area School District.

Ms. Patricia Underwood, Representative, Wisconsin Federation of Teachers, 811 9th Street West, Altoona, Wisconsin 54720, appearing on behalf of the Wisconsin Federation of Teachers, Local 4018, Eau Claire Schools Classified Staff, WFT, AFT, AFL-CIO Union.

ARBITRATION AWARD

The Eau Claire Area School District (hereinafter District) and Local 4018, Eau Claire Schools Classified Staff Union (hereinafter Union) are parties to a collective bargaining agreement that was in effect at all times relevant to this proceeding which agreement covered all regular educational assistants, clerical and data processing employees. A request to initiate grievance arbitration was filed with the Wisconsin Employment Relations Commission on November 11, 2002. Chairperson Steven R. Sorenson was appointed to act as Arbitrator on November 14, 2002. A hearing took place on December 9, 2002, at 9:00 a.m. in the School District Offices of the Eau Claire Area School District in Eau Claire, Wisconsin. A tape recording was made of the hearing. The parties were given an opportunity to file post hearing briefs. Post hearing briefs were received by the Arbitrator on January 27, 2003. The record was closed on January 27, 2003 after the receipt of the briefs.

ISSUE

Union

Did the employer violate Section 6.08 of the Collective Bargaining Agreement, by not allowing the grievant, Ms. Patricia Rufledt, to transfer to the General Services Clerk-Payroll position? If so, what is the appropriate remedy?

District

Did the Eau Claire Area School District violate Section 6.08 of the 2000-2002 Collective Bargaining Agreement, when it denied Patricia Rufledt's request to fill the position of General Services Clerk-Payroll?

Arbitrator

Did the Eau Claire Area School District violate Article VI, Section 6.08 of the 2000-2002 Collective Bargaining Agreement, when it denied Ms. Patricia Rufledt's transfer request to the position of General Services Clerk-Payroll?

RELEVANT CONTRACT LANGUAGE

Article IV - Board of Education Functions

The Board retains all rights of possession, care, control and management that it has by law, and retains the right to exercise these functions during the term of the collective bargaining agreement except to the precise extent such functions and rights are explicitly, clearly and unequivocally restricted by the express terms of this Agreement. These rights include, but are not limited by enumeration to, the following rights:

1. To direct all operations of the school system.

. . .

3. To hire, promote, transfer, schedule and assign employees in positions with the school system.

. . .

6. To maintain efficiency of school system operations.

. . .

9. To select employees, establish quality standards and evaluate employee performance.

. . .

11. To determine the methods, means and personnel by which school system operations are to be conducted.

Article VI - Employment Security

. . .

Section 6.08 - Transfer

A qualified employee will be granted a transfer before a new employee is hired, except for positions in Group B. Every qualified employee has the right to a personal interview before a transfer is made, unless automatic transfer applies. Employees not granted transfer may request reasons for denial within five (5) days of receipt of the denial of transfer. In the case of school district same-hires, with all variables being equal, coin toss(es) will decide who is granted the transfer. For the purpose of transfer, consideration is given separately by grouping in the following categories:

Group A: Food Services Bookkeeper
Payroll and Benefit Clerk
Accounts Payable Clerk
Business Office Clerk
General Services Clerk-Payroll
Payroll/Accounts Payable Clerk

Group B: Microcomputer and Electronic Technician
Instructional Services Executive Secretary
Instructional Media Secretary
Curriculum & Instruction Secretary

1. An employee will be transferred, if a request is made, within, but not between, each of the following groups:

   Group D, E, F, G, H, I, J, K, L, M, N, O and P

The decision as to which employee is transferred, if more than one applies, will be made on the basis of seniority.

2. Transfer within Groups A or C will be granted provided the employee is qualified for the position and is the most senior qualified employee requesting transfer within the transfer group.

3. Transfer(s) between Groups A, C, D, E, F, G, H, I, J, K, L, M, N, O and P or to/from Group B to any other of the preceding groups, may be granted on the basis of qualifications and seniority.

4. A requested transfer within or to a position in Group B may be made at the discretion of the employer.

STATEMENT OF THE CASE

This grievance involves the Eau Claire Area School District ("District") and the Wisconsin Federation of Teachers, Local 4018, WFT, AFT, AFL-CIO ("Union"). Specifically the dispute relates to the Collective Bargaining Agreement covering all the regular educational assistants, clerical and data processing employees. (Jt. Ex. 1) The Union alleges that the District violated the Collective Bargaining Agreement by failing to abide by terms of Section 6.08 of the agreement by refusing Ms. Patricia Rufledt's request to transfer to the General Services Clerk-Payroll position. The District takes the position that it did not violate Section 6.08 of the Collective Bargaining Agreement when they filled the open General Services Clerk-Payroll position with the person temporarily in the position, Ms. Corinne Gjerning.

The General Services Clerk-Payroll position is a 7.5 hour/day position within the finance department, and is classified under the Collective Bargaining Agreement for purposes of transfer as a "Group A" position. The position is under the supervision of the Director of Finance and is responsible in part for administering the District's Section 125 Flexible Spending Program and its Section 403(b) Tax Sheltered Annuity Plan.

There is a unique set of circumstances in this case. The position in question (General Services Clerk-Payroll) had been held by a collective bargaining unit member, Debbie Gilles. In April of 1999 she requested and was granted a leave of absence from that position to fill a non-bargaining unit position - Executive Assistant in the Personnel Department. At that time, Ms. Gjerning was hired to temporarily fill the position of General Services Clerk-Payroll. The position of General Services Clerk-Payroll remained a temporary appointment on a year-to-year basis for the next three years while Ms. Gilles continued in her status as "on leave from the position of General Services Clerk-Payroll." Finally in the spring of 2002 Ms. Gilles vacated the position of General Services Clerk-Payroll and accepted the Personnel Department's Executive Assistant position on a full-time basis. The District then posted the General Services Clerk-Payroll position as available to be filled on a permanent basis. Interested persons were to notify the Personnel Department in writing on or before May 31, 2002.

The applicants for the position included the grievant, Ms. Rufledt, and four others, Mary Lancette, Alice Walker, Sue Pinkert and Ms. Gjerning. The Director of Finance, John Sackett, determined that Ms. Pinkert had not taken a clerical skills test and therefore was ineligible. He also determined that Ms. Walker, Ms. Lancette and the grievant, Ms. Rufledt, were not qualified. He determined Ms. Gjerning, was qualified in that she had filled the position for three plus years, had done a good job and possessed a good working knowledge of all of the programs she would be required to administer.

After the grievant was notified that she had not received the requested transfer, she inquired as to why she was not selected for the position. Ms. Rufledt was advised that she was not selected because she had little or no experience in working with either Section 125 Flex Spending Accounts or Section 403(b) Tax Shelters Annuities. Further, she was informed that it would require extensive training before she would be qualified to assist with the processing of the payroll, and therefore not currently qualified.

At the time of the posting for the position, the grievant, Ms. Rufledt, had a seniority date of October 5, 1989. Of the five applicants for the position, Ms. Lancette was the most senior of all of the applicants. Ms. Gjerning traced her seniority to her appointment as a temporary employee filing the position of General Services Clerk-Payroll since April of 1999.

The Union filed a grievance alleging the District had violated Section 6.08 as of August 1, 2002. The grievance referenced the District's denial of Ms. Rufledt's request to transfer to the General Services Clerk-Payroll position. The Executive Director of Personnel denied the Union grievance on August 2, 2002. He based his decision on:

1) the fact that Ms. Rufledt was currently an employee holding a position in Group B;
2) she was seeking to transfer to a vacancy in Group A;
3) the collective bargaining agreement in section 6.08 (3) states: Transfers between Groups A, C, . . ., or to/from Group B to the other proceeding groups, may be granted on the basis of qualifications and seniority.

Mr. Kling opined that the grievant would, as a result of transferring out of Group B to Group A, have to be judged not only on seniority, but also on the basis of qualifications. It was Mr. Kling's position that Ms. Rufledt was not qualified for the position of General Services Clerk-Payroll and therefore properly denied the transfer even though she may have more seniority than the successful candidate.

The grievance was advanced to the Board of Education for their review. Following a hearing the Board of Education also denied the grievance. The Board concluded that Section 6.08 was ambiguous. The Board also made a finding that Ms. Gjerning was not a "new employee" in that she had served in this position for more than three years. The Board found that Ms. Gjerning's tenure in the position as a temporary employee was done with Union concurrence and knowledge. The Board also concluded that the phrase "new employee" was not meant to preclude members of other bargaining units or non-represented employees from competing with bargaining unit members for bargaining unit vacancies. The Board adopted the position that new employee meant someone not currently employed by the District. Therefore it was their opinion that the hiring of Ms. Gjerning was not the hiring of a new employee. Finally the Board concluded that Ms. Gjerning was the most qualified candidate for the position.

POSITIONS OF THE PARTIES

Union

The Union argues that the language found in Article IV, Section 6.08 may be cumbersome, but it is clear. The Union contends that Ms. Rufledt has been a union member since October 10, 1989, was a member at the time of the posting and her application. The position in the collective bargaining group she held was the Curriculum and Instruction Secretary. The Union points out that her position as Curriculum and Instruction Secretary is a "Group B" position. The Union points to Jt. Ex. 16 to demonstrate that the current position of Curriculum and Instruction Secretary includes a high level of performance expectations. Beyond specific requirements listed in her job description, the Union points to Ms. Rufledt's testimony that she was one of four district employees who had been selected previously to participate in a pilot program. This program was one in which school personnel from outside of the payroll department would be trained to enter timecards into the District's payroll system for substitute teachers, and prepare a detailed report of timecard information and forward the same to the Payroll Department. Ms. Rufledt further testified that she had taught six week courses of Excel to staff and community through the District's Technology Staff Development Department. She indicated that she had prepared her own curriculum for these courses. She testified that she had knowledge of Section 125 Accounts, as well as knowledge of Section 403(b) TSA Accounts through previous education and employment experiences.

The Union, through Ms. Rufledt's testimony, challenged the validity of the letter that had been given to Ms. Rufledt by Mr. Kling in response to Ms. Rufledt's request for the reasons why she had not been offered the transfer. In challenging the contents of that letter, Ms. Rufledt indicated that she did not believe the statement that she had little or no experience with regard to the Section 125 or the Section 403(b) TSA's was accurate. She said that during her interview she did indicate that she had knowledge of these tax sections.

The Union points to the job posting language which refers to the position qualifications as **desired** skills, not **required** skills. Also, the Union challenged the statement by Mr. Kling in the responsive letter (JT. Ex. 10) that Ms. Rufledt would need extensive training before she had enough background to carry out the responsibilities of the payroll department. The Union's challenge was based upon the experience that Ms. Rufledt had with the "pilot program" which demonstrated her willingness to learn to operate computers.

The Union Also argues that the word "may" as used in Section 6.08 subparagraph 3 should not be taken out of the context of the entire contract and the context of the relationship between the Union and the District which has been built over many years. of collective bargaining. Further the Union calls attention to the first sentence of Section 6.08 wherein the phrase, "a qualified employee will be granted a transfer before a new employee is hired", would mean that any employee who is able to meet the posted qualifications of the job should be hired before a new employee is hired.

An employee for the purposes of this agreement according to the Union is an individual who is a member of the Wisconsin Federation of Teachers, Local 4018. The term employee does not reach outside of the four corners of the contract to encompass other individuals who may be employed by the District but who are not part of the group that are represented by Local 4018.

The Union also contends that the Union's knowledge of Ms. Gjerning's status as a temporary employee is not determinative of any of these issues. The fact that they acquiesced in her continuing in this special status does not in anyway undermine the Union's position.

In conclusion, the Union submits that Ms. Rufledt was a qualified employee within the meaning of the collective bargaining agreement and that Ms. Gjerning was a new employee and that therefore, Ms. Rufledt, as a qualified employee, was entitled to the transfer before the District would hire a new employee, in this case, Ms. Gjerning.

District

The District argues that Section 6.08 of the Collective Bargaining Agreement has evolved over the years. The District sites the testimony of Union witness Sue Luhm who indicated that this language was proposed in the 1980s and negotiated into the contract at that time. The District further contends that the subsections of 6.08 were negotiated over time as a clarification of the general introductory language of Section 6.08 and that therefore the subsections have to be read together to give clarity and understanding to the intent of the contract language. The District points out that transfers in groups D through P are made solely on the basis of seniority. Transfers within groups A and C are made on seniority with the added criteria of "qualified" and transfers between groups A, and C through P, even from group B, rely both on qualifications and seniority. The District contends these are distinctions of clear importance.

The District contends that whether or not the first sentence of Section 6.08 or subsection 3 applies to the current dispute, transfer rights are still predicated on a determination that the applicant is "qualified" and in this case "qualified for the position of General Services Clerk-Payroll". The District then points out that it has the management right and ability to determine whether or not an applicant is qualified. The District goes on to assert its right to establish minimum qualifications for a position which are not subject to challenge unless shown to be purely arbitrary and capricious. The District points out that it is the Director of Finance, John Sackett, who supervises the position of General Services Clerk-Payroll. This job responsibility and his experience in the position put him in a good position to determine employee qualifications. He has the training and judgment to evaluate the competency, the training and the experience of the applicant needed to carry out the responsibility of the posted position.

The District distinguishes between the grievant's assertion that she has knowledge of Section 125 Accounts and Section 403(b) TSA's, and the Districts need to have a person in that position with a "current working knowledge" sufficient to administer these plans. The District suggests that the grievant herself admitted that she was not qualified by stating that she had no working knowledge of Section 125 plans or Section 403(b) TSA plans; and that the extent of her knowledge regarding these programs was limited to their tax consequences.

The District further goes on to point out that the grievant was not qualified to assist in the processing of payroll without extensive training. This, according to the District, did not meet the qualification criteria of the job position.

The District contends that the grievant would not meet the qualifications of the position because based upon the experiences of the Finance Director, the grievant may not have the skills necessary to relate well to people. The District asserts that she does not possess the ability to effectively resolve conflict. The District specifically referred to Mr. Sackett's interaction with the grievant in the same building and the grievant's decision not to list her current supervisor or other professional staff members as red flags demonstrating a lack of interpersonal skills as listed in the job qualifications for the position.

The District deals with the side issue of whether or not the process used by the District to determine qualifications for the posted position is fair and impartial. The District points out that the employer's judgment in determining employee qualifications ought to be accepted unless shown to be arbitrary, capricious, discriminatory or made in bad faith. The District asserts that the process used, which included the interviewing of the four remaining candidates after Ms. Pinkert was eliminated, was uniform and nondiscriminatory. The same questions were asked of each of the candidates and the interviews were conducted in the same professional manner according to the District. The District contends that there was no evidence that the Finance Director's evaluation of the grievant was flawed and that there was no showing that the process was in anyway arbitrary, capricious, discriminatory or done in bad faith.

The District addressed the issue of whether Ms. Gjerning is a "new employee". It contends that an existing employee who has already filled the position for three years, is not a "new employee". The District contends that if the Union meant for a new employee to refer to nonbargaining unit employees, it could have and should have drafted language to specifically express that intent. Reciting Webster's New Collegiate Dictionary, the District points out that "new" means "never existing before; appearing, thought of, developed, made, produced, etc. for the first time." Given this definition, the District contends that Ms. Gjerning was an existing employee and not a new employee.

In conclusion the District contends that in processing a transfer requested from a Group B position under Section 6.08 to a Group A position, the District must consider qualifications and seniority of applicants. In this case, the grievant was not the most senior

candidate, Mary Lancett was. The grievant was not the most qualified candidate, and in fact the District contends that the determination was made that she was "not qualified". Therefore in rejecting the application, the District contends that it was within its power, given the fact that the District should be the sole determiner of whether or not an individual is qualified so long as that decision is not predicated on arbitrary, capricious, discriminatory or other bad faith considerations.

DISCUSSION

This is first and foremost a contract interpretation case. The Union alleges that the District violated Article VI, Section 6.08 of the existing Collective Bargaining Agreement regarding the transfer of employees. Therefore the contract language is the obvious place to begin.

The 2000-2002 Collective Bargaining Agreement (Jt. Ex. 1) states in Section 6.08 "a qualified employee will be granted a transfer before a new employee is hired except for positions in Group B." We begin by recognizing the position sought by the grievant was a position in Group A. Therefore the language of this first sentence of Section 6.08 is applicable. This brings us to the issue of whether or not the grievant was a "qualified" employee.

We begin our determination of whether or not the grievant was a qualified employee by turning to the position description of General Services Clerk-Payroll. (Jt. Ex. 7) The position description in part requires that an individual must have desired training and experience. The desired training and experience is defined as, "recent responsible accounting work experience which could include payroll processing; highly skilled in spreadsheet applications, preferably Excel, and experience/training in word processing programs, preferably Word. Working knowledge of Section 125 Flexible Spending Accounts and Section 403(b) TSA's." The Union contends that the grievant does have this desired training and experience. This is despite the fact that there is no specific claim by the grievant that she has any recent responsible accounting work experience. She does indicate a working knowledge and experience with the Excel Microsoft programs and experience in training with word processing. The District on the other hand conceded that the applicant is a skilled clerical individual with good knowledge of Excel and word processing programs, but has not met the desired experience of "recent responsible accounting work experience."

The Union goes on to suggest that she has knowledge of Section 125 Flexible Spending Accounts and Section 403(b) TSAs, but admits that she does not have a great deal of working knowledge about these types of accounts outside of knowledge about the tax ramifications of these accounts. The District on the other hand contends that a working knowledge extends beyond an understanding of the tax ramifications of these types of accounts and more heavily

relies on the administrative and reporting requirements surrounding these accounts. The District offers the testimony of the Financial Director to support this position. The Union offers no evidence of qualifications beyond the testimony of the grievant.

The second position qualification listed on the position description refers to the specific requirements of the position. They are: "ability to relate well to people, effectively communicate and to resolve conflict. Ability to learn procedures and convey them to others. Ability to operate computer, calculator, fax machine and copier." The grievant contends that she does have these abilities. The District does not challenge the grievant's ability to learn procedures or convey them to others or to operate computers and other equipment. But, the District does contend that there is a question as to the grievant's ability to relate well to people. Here again we have basically the testimony of the grievant supporting her position and the testimony of the Finance Director as to his belief that she lacks the skills to meet the specific requirements. The District also points out that the grievant has failed to list any of her supervisors as references which they contend demonstrates her inability to relate well with people, effectively communicating or resolve conflict.

In furthering its position as to qualification of the grievant for the position, the District examines the various position responsibilities as stated in the position description. (Jt. Ex. 7) The District points out that the grievant has no experience in serving as a liaison between the School District and the Section 125 Flexible Spending Account vendor, the grievant has no experience in answering or researching the answers to all Section 125 Flexible Spending. The Union does not rebut this assertion, nor is there any testimony that related to the other specific job qualifiers in the posting job description.

Section 6.08 of Article 4 of the Collective Bargaining Agreement clearly requires the analysis of qualification as stated above. And the case law reserves onto the District as the employer, the right to make this objective determination as to qualification so long as the determination is not arbitrary, capricious, discriminatory or in bad faith. (SEE RUSK COUNTY DEPT. OF SOCIAL SERVICES. CASE 59, NO. 45807, MA-6763 (4/10/92) and VERNON COUNTY, CASE 119, NO. 58776, MA-11055 (12/5/00).

The Union does not challenge the authority of the District to make the determination as to whether or not the employee is qualified. The Union does not allege that the decision was arbitrary, capricious, discriminatory, or made in bad faith. Rather the Union suggests that the definitive determination of qualification relies on an objective standard rather than a subjective standard. The Union suggests that mere knowledge of Section 125 Benefit Accounts and Section 403(b) TSA's is sufficient to meet the standard of qualified versus nonqualified. The Union suggests that cursory knowledge of payroll record documentation objectively meets the standard of competency outlined in the job description. Finally, the Union suggests that the assertion of the applicant is sufficient to support a finding of qualification. These assertions however, cannot withstand the scrutiny of reality or law.

The reality is that subjective evaluation by the Department Supervisor has been an accepted methodology for determining qualification within the Eau Claire School District for a considerable period of time. The testimony of the Union's own witnesses indicated an acceptance of the application and interview process. By its very nature, the acceptance of this process means that the issue of qualification lies within management discretion. This is of course not without limitation. The determination can not be arbitrary, capricious, discriminatory, or done in bad faith. Here the testimony of Mr. Sackett clearly established that he did not believe that the grievant was qualified because in his opinion the applicant had no working knowledge of Section 125 or Section 403(b) TSA plans especially as to their administration. His evaluation also concluded that she was not sufficiently versed in the payroll processing procedure. Finally, his evaluation indicated that she was not the type of individual who related well to people, effectively communicated or successfully resolved conflict. Much of the grievant's own testimony supported these conclusions. She admitted her limited knowledge of Section 125 plans and Section 403(b) TSAs. She admitted she had only had a limited experience with the payroll process. Her contention was that she had the experience and skills that would allow her to grasp the concepts and applications given time, experience and training. This however was not a precursor of the job.

The final issue deals with the question of new employee. It is the Union's position that Ms. Gjerning would under the terms of the Collective Bargaining Agreement, be classified as a new employee. Therefore as viewed by the Union the grievant had to be hired before her because of the introductory sentence of Section 6.08. The language of that sentence is confusing.

The Union would have us read it to say that a qualified member of the bargaining unit will be granted a transfer before an individual outside of the bargaining unit is hired. The District would have us read the sentence to say a qualified employee of the District will be granted a transfer before a nonemployee of the District is hired. A third interpretation could be that a qualified member of the bargaining unit will be granted a transfer before an individual not currently employed by the District is hired. Neither side offered any evidence of past practice that would help clarify the sentence. Both sides, through their testimony, demonstrated the ambiguity. Therefore a rule of reason must be employed.

In the particular situation we are dealing with, it seems incongruous that one would define Ms. Gjerning as a "new employee." She had been working for the District in the position in question for three plus years. The Union had been very much aware of her existence in that position and had taken no affirmative action to resolve what could easily be foreseen as a potential problem when Ms. Gilles leave of absence was finally terminated. Logical reasoning would therefore suggest that Ms. Gjerning was not a new employee within the intent of the contract.

However, a determination that Ms. Gjerning was not a new employee does not significantly effect the conclusion that the District did not violate Article 4, Section 6.08. Since no individual other than Ms. Gjerning was found to be qualified there is no one to

compare Ms. Gjerning to on the issue of current versus new employee. Only if there had been a finding that the grievant was qualified would we have to go on to determine where she was really a new employee or a current employee. Stated another way since a determination was made that Ms. Rufledt was not a qualified employee, the language of Section 6.08 gives her no preference over Ms. Gjerning, whether Ms. Gjerning was a current employee or a new employee.

Based on the record as a whole, the exhibits that were provided and a review of the applicable law, I issue the following:

AWARD

The Eau Claire Area School District did not violate Article 4, Section 6.08 of the Collective Bargaining Agreement. The grievance is denied.

Dated at Madison, Wisconsin, this 5th day of March, 2003.

Steven R. Sorenson, Arbitrator

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