

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
**SHEBOYGAN COUNTY SUPPORTIVE SERVICES
EMPLOYEES, LOCAL 110, AFSCME, AFL-CIO**

and

SHEBOYGAN COUNTY

Case 336
No. 60125
MA-11258

(Carol Ruge Grievance)

Appearances:

Ms. Helen Isferding, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.

Mr. Michael Collard, Human Resources Director, Sheboygan County, appearing on behalf of the County.

ARBITRATION AWARD

The above-captioned parties, hereinafter the Union and County respectively, were parties to a collective bargaining agreement which provided for final and binding arbitration of grievances. Pursuant to a request for arbitration, the Wisconsin Employment Relations Commission appointed the undersigned to decide a grievance. A hearing, which was not transcribed, was held on April 30, 2003 in Sheboygan, Wisconsin. Afterwards, the parties filed briefs and reply briefs, whereupon the record was closed on June 9, 2003. Based on the entire record, the undersigned issues the following Award.

ISSUES

The parties were unable to agree on the issue(s) to be decided in this case. The Union frames the issue as follows:

Did the Employer violate the contract when it failed to recognize Carol Ruge as a permanent employee? If so, what is the appropriate remedy?

The County frames the issue as follows:

Did Sheboygan County violate the collective bargaining agreement when it did not give Carol Ruge the newly-created regular position of Land Description Technician I?

As the County sees it, the following three issues are subsumed into their wording of the issue:

1. Was Carol Ruge a regular employee, and thus a member of the bargaining unit, prior to January, 2000?
2. If so, should the County have awarded her the Land Description Technician I position even though she did not submit a response to the posting for that position?
3. If so, was this grievance timely filed under the contract provision that requires grievances in discharge cases to be filed within five working days?

Since the parties were unable to agree on the issue(s) to be decided, the undersigned has framed them. Based on a review of the record, the opening statements at hearings and the briefs, the undersigned has framed the issues as follows:

1. Was the grievance timely filed?
2. During the course of her employment with the County, was Carol Ruge transformed from a temporary employee to a regular employee?
3. Did the County violate the collective bargaining agreement when it did not award Carol Ruge the regular position of Land Description Technician I in February, 2000? If so, what is the appropriate remedy?

PERTINENT CONTRACT PROVISIONS

The parties' 2000-2002 collective bargaining agreement contained the following pertinent provisions:

ARTICLE I

RECOGNITION

The Employer recognizes the Union as the exclusive bargaining agent for all regular full-time and part-time personnel employed by Sheboygan County in the Court House, Sheriff's Department and in auxiliary departments and buildings (but specifically excluding therefrom all elected public officials, supervisors, professional employees of the Health and Human Services Department, all sworn law enforcement officers of the Sheriff's Department with powers of arrest, supervisory employees of the Sheriff's Department, all nurses, and all confidential employees, with regard to negotiations with the Employer on questions of wages, hours and conditions of employment).

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ARTICLE 3

MANAGEMENT RIGHTS RESERVED

Unless otherwise herein provided, the Management of the work and the direction of the working forces, including the right to hire, promote, transfer, demote or suspend, or otherwise discharge for proper cause, and the right to relieve employees from duty because of lack of work or other legitimate reason, is vested exclusively in the Employer.

By way of further enumeration and not as a limitation because of such enumeration, the Employer shall have the explicit right to determine the specific hours of employment and the length of the work week and to make such changes in the various details of the employment in the various employees as it, from time to time, deems necessary for the effective and efficient operation of County business.

...

ARTICLE 8

WORK WEEK

The work week shall consist of five (5) consecutive work days, Monday through Friday in a pre-established work schedule. The work day shall be seven and one-half (7-1/2) hours per day, except for the Maintenance Worker I, Maintenance Worker II, Electrician, Soil Conservation Technician, Conservation Specialist I, Conservation Specialist II, CAD/GIS Specialist, Systems Analyst, Programmer Analyst, Programmer II, Programmer I, Control Clerk II, Control Clerk I, Computer Operator II, Computer Operator I, Printers Assistant, Code Administrator, and employees of the Child Support Office and Clerk of Courts Department, whose work day shall be eight (8) hours.

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ARTICLE 11

WAGES, PAY PLAN AND SHIFT DIFFERENTIAL

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II. PAY PLAN

A. REGULATIONS OF THE PAY PLAN

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9. Temporary Employees: It is understood and agreed that temporary, seasonal, casual, part-time or extra help of any kind shall not be used to reduce, replace or displace regular full-time employment.

...

ARTICLE 23

PROBATIONARY PERIOD

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The following definitions shall apply:

a. A regular full-time or regular part-time employee is hereby defined as a person hired to fill a regular position.

b. A temporary employee is one hired for a specified period of time and who will be separated from the payroll at the end of such period.

...

ARTICLE 25

SENIORITY

Sheboygan County shall, during the life of the herein contract, for the employees covered by the same, recognize seniority as herein provided.

A. Accumulation

1. Full-time Employees

Seniority shall be accumulated on a month-to-month basis or major portions thereof for continuous months of service. Absence from work because of illness, layoff, suspensions for less than thirty (30) days or authorized leave shall not interrupt the accumulation of seniority.

2. Part-time Employees

Seniority shall be accumulated on a prorated basis.

B. Vacancy/Job Posting

1. Whenever an approved vacancy is to be filled within the bargaining unit, notice of said vacancy shall be posted for five (5) working days prior to the public posting for the information of all employees on appropriate bulletin boards where bargaining unit employees work.

The vacant position shall be awarded to the most senior qualified applicant in the department where the vacancy exists. The departments for the Health and Human Services Department shall be defined in Exhibit A. If no one within the department

applies for the position, the position shall then be offered to the most senior qualified bargaining unit employee before filling the position with a non-bargaining unit employee. Any employee filling a position under this section shall serve a probationary period of six (6) months, unless waived or lessened by the department head.

...

D. Layoff

For the purpose of layoff, the County recognizes seniority therefore, whenever the County determines it is necessary to decrease the work force and to layoff employees, such layoff shall subject to the following procedures, be in inverse order of the employee "seniority". The order of layoff shall be as follows:

1. Temporary Employee/Position: Temporary employees in the involved department in which the work force is being reduced shall be laid off first.

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ARTICLE 26

GRIEVANCE PROCEDURE

The County shall not be required to process any grievance which is based upon an occurrence more than thirty (30) days prior to the date of it being offered as a complaint, or a complaint which is filed more than thirty (30) days after the Union knew, or should have known of the existence of grounds for such complaint, except that in discharge and suspension cases the time limit shall be five (5) working days. When an employee is suspended or discharged, the employee and the Union shall be notified in writing of such action and reason for same.

BACKGROUND

This dispute involves a limited-term employee (hereinafter LTE), so the following background information about LTEs is pertinent herein. An LTE is a temporary employee. In this decision, the terms "LTE" and "temporary employee" are used interchangeably. Over the

years, the County has employed LTEs in various departments. (The record does not indicate how many). Unlike regular full-time and part-time employees, LTEs do not receive fringe benefits. LTEs are not included in the bargaining unit represented by the Union. (Note: The Union represents a bargaining unit consisting of regular full-time and part-time employees who work in the courthouse and its auxiliary departments and offices). Since LTEs are not in the bargaining unit, the parties' collective bargaining agreement does not apply to them. While there is some language in the collective bargaining agreement dealing with temporary employees, there is no contract language which limits how long LTEs can work or specifies what they are paid. Similarly, the County does not have a written policy regarding its usage of LTEs, so no such policy is involved herein. The County does not notify the Union about the LTEs that it hires. Historically, the County limits LTEs to working six months or less. Thus, the traditional end for LTE employment is six months. Notwithstanding that traditional end point for LTE employment, some LTEs have worked longer than that by having a break in service and then coming back to work. Historically, the break in service was two weeks. This process would occur as follows: the person would work for, say, six months, then have an unpaid break in employment for, say, two weeks, and then return to work for another stint. When this happened, the employee still kept their status as a temporary employee and did not become a regular employee. The record indicates this is what Helen Abstetar, Marilyn Bohrmueller, Kathryn Schleicher, John Holtz and Jamie Simon did. Each of them was an LTE who worked for the County several times; their status as temporary employees never changed and they never became regular employees or received permanent positions with the County. The only way a temporary position can become a permanent position (and an LTE become a regular employee) is if the County Board formally takes action doing that. It cannot happen accidentally or by inaction.

FACTS

The grievant herein, Carol Ruge, formerly worked as an LTE in the County's Real Property Listing Office.

The following facts pertain to Ruge's hiring as an LTE. In May of 1998, there was a backlog of work to perform in the County's Real Property Listing Office because of increased real estate transfers in the County. To help alleviate that backlog, the County decided to create and fill a LTE position. The County listed the position with the State of Wisconsin's Job Service. That listing indicated in the "Job Title" section that the County was looking for a "temporary clerical." In the section entitled "Duration/Hours Per Week", the listing indicated that it was a "temporary job, 25 hours per week". In the section entitled "Job Description", the listing indicated thus:

THE SHEBOYGAN COUNTY HIGHWAY DEPARTMENT HAS AN OPENING FOR A TEMPORARY CLERICAL POSITION IN IT'S REAL PROPERTY LISTING OFFICE. WORK WILL INCLUDE BASIC CLERICAL AND RECEPTIONIST DUTIES.

WILL WORK A MINIMUM OF 25 HOURS PER WEEK. HOURS ARE VARIABLE. JOB WILL LAST ABOUT 3 MONTHS.

Carol Ruge applied for the position. In applying for the position, she indicated on her application that she was applying for the above-referenced "temporary clerical" position. Ruge was subsequently interviewed for the position by Ed Harvey, who was then the real property lister and supervisor in the department. During the interview, Harvey told Ruge that if she was hired for the position, it would be a three month temporary position because he (Harvey) only had funding for that period (i.e. three months). Harvey offered Ruge the position and she accepted it. Ruge knew when she accepted the position that it was a temporary position. The position paid \$10.50 an hour with no fringe benefits.

The following facts pertain to Ruge's employment history. Ruge started working in the Real Property Listing Office on June 9, 1998. She performed general clerical duties including answering the phones and responding to inquiries from the public, data entry, proofreading and filing. When Ruge worked in the Real Property Listing Office, it was part of the County's Highway Department and was headed by Ed Harvey. Harvey was Ruge's supervisor. The original three month period that Ruge was told she would work came and went, and she continued to work in the department. In November, 1998, Harvey told Ruge that since she was an LTE, she had to take two weeks off without pay. That is what happened. Ruge's last day of work was November 20, 1998. Two weeks later, on December 7, 1998, Ruge resumed employment as an LTE in the same department (i.e. the Real Property Listing Office). When she returned to work, Harvey told her that he (Harvey) only had money in his budget to pay her through December 31, 1998. That is what happened. On December 31, 1998, Ruge's employment as an LTE ended.

Several months later, in March or April, 1999, Harvey called Ruge and told her that he had money in his budget to hire her back again as an LTE for five months. Ruge indicated she was interested in returning, whereupon Harvey told Ruge to apply for the position at the Job Service office. The listing indicated in the "Job Title" section that the County was looking for an "LTE General Clerical". In the section entitled "Duration/Hours of Work Per Week" the listing indicated that it was a "temporary job, 20 hours per week." In the section entitled "Hours", the listing indicated the position was "temporary, part-time for five months." In the section entitled "Job Description", the listing indicated thus:

GENERAL CLERICAL DUTIES IN THE SHEBOYGAN COUNTY
HIGHWAY DEPARTMENT FOR IN-PERSON AND TELEPHONE CUSTOMER
SERVICE, DATA ENTRY, PROOFREADING AND FILING.

Ruge was subsequently offered the LTE position which she accepted. She started working again for the County in the Real Property Listing Office on April 12, 1999. She sat at the same desk as she had sat at before and had the same employee number. She performed the same work duties as she had performed before. In early September, 1999, after Ruge had worked there about five months, Harvey told her that she had to have a two-week unpaid break in service to continue as an LTE. That is what happened. Ruge's last day of work was September 17, 1999. Two weeks later on October 4, 1999, Ruge resumed employment again as an LTE in the Real Property Listing Office. While she worked in the same office as before (i.e. the Real Property Listing Office), and did the same work as before, she was affected by the following two changes. First, an organizational change occurred in the office about that time. The change was that the office was transferred from the Highway Department to the Planning Department. One effect of this organizational change was that Ruge had a new supervisor. Her new supervisor was Mark Leider, who headed the Planning Department. Second, Ruge received a pay increase. Up until then, she had been paid \$10.50 per hour. Her new pay rate was \$11.25 per hour. Neither of these pay rates can be found in the wage tables in the parties' collective bargaining agreement. Ruge worked until March 3, 2000, at which point her employment as an LTE with the County ended.

During the four separate periods that Ruge worked for the County, she normally worked between six and eight hours per day. She worked a different work schedule than her co-workers did. The co-workers who she worked with were regular employees and thus were bargaining unit employees. Ruge never paid union dues during any of the four periods that she worked for the County. She kept the same County personnel number throughout her four separate employment periods.

In late 1999, the County decided to create a new position in the Real Property Listing Office. At the time, there were four full-time land description jobs in the department, so the County created a fifth full-time job. The new position was for a Land Description Technician I, which is the lowest-paying position in the department. That position was posted on January 10, 2000. The position paid less per hour than what Ruge was then making. Planning Director Mark Leider knew that Ruge was interested in the job, so he spoke to her about it. When they talked about the job, Ruge asked Leider if her pay and benefits would be based on her hire date as a temporary employee. Leider responded that he did not know the answer. Leider then asked Ruge if she was going to apply for the job, and she replied in the negative (i.e. that she was not going to apply) because she did not want to start over as a new employee, but rather wanted to be treated as an employee with two years seniority. Neither Ruge nor anyone else from the Real Property Listing Office applied for the posted position.

Since no one from the Real Property Listing Office applied for the posted position, the County posted the vacancy unit-wide. Darcy Vollrath was the only applicant. She was tested for the position and passed the test. The County awarded her the position.

Ruge filed a grievance on March 20, 2000 which contended that she should have been given the position just referenced. The grievance was appealed to arbitration in July, 2001. An arbitration hearing on the grievance was subsequently scheduled for October, 2001, but the hearing was cancelled at the parties' request. Thereafter, settlement discussions ensued which were ultimately unsuccessful. In June, 2002, the Union notified the arbitrator that it wished to schedule the matter for hearing. A hearing was eventually scheduled for April 30, 2003.

At the hearing, Ruge testified that she was told repeatedly that she would get a full-time position in the department, and that was the reason she kept coming back to work there as an LTE. She also testified that if there had been no future to the job, she would not have kept coming back. She testified that she hoped she would eventually get a regular position with the County, and since she did not, she felt betrayed, hurt and used by the County. Finally, she testified that the reason she told Leider she would not apply for the posted position was because she had not received answers to all of her questions about seniority and wages.

Managers Ed Harvey and Mark Leider testified they never told Ruge that she was a permanent employee or that she was going to become a permanent employee.

POSITIONS OF THE PARTIES

Union

The Union's position is that the grievance should be sustained. It makes the following arguments to support that contention.

The Union begins with the following preliminary comments about the County's use of temporary employees. It acknowledges at the outset that the County can use temporary employees. However, as the Union sees it, what the County is now doing is creating an alternate/shadow work force composed of temporary employees that are not covered by the collective bargaining agreement. It notes that these temporary employees are paid less than bargaining unit employees and get no fringe benefits. The Union avers that these temporary employees do not replace anybody, or do special projects, but instead simply do the daily work that is also performed by bargaining unit employees. According to the Union, these LTEs essentially work an unlimited amount of time. The Union believes the County's use of temporary employees is an injustice, and it asks the arbitrator to remedy same.

Having made those comments about the County's use, in general, of temporary employees, the Union next calls attention to the fact that the parties have had prior arbitrations dealing with temporary employees. Specifically, the Union cites arbitration awards issued by WERC arbitrators Schiavoni, Davis and Hoornstra. According to the Union, their arbitration awards are applicable here and support the Union's position.

That said, the Union turns its focus to the grievant's treatment. The Union characterizes the County's treatment of the grievant as a great injustice. In its view, the County strung her along as an employee for a 2½ year period, all the while promising her a regular job. Then, when a permanent job did come along in her department, the County would not even let her post for it, and instead terminated her. It is the Union's position that the County should have given her the job. It elaborates on this point as follows.

First, while the County asserts that Ruge was a temporary employee, the Union disputes that assertion. As the Union sees it, Ruge was not a temporary employee in January, 2000 when the County would not let her post for the newly-created position. To support the notion that Ruge was not a temporary employee, the Union asserts that there was nothing temporary about the work she performed in the Real Property Listing Office in the 2½ year period she worked there. As the Union sees it, she performed the same job duties daily. The Union disputes the assertion that she just did backlog filing. The Union submits that a temporary employee is someone who lacks an expectation of continued employment. According to the Union, Ruge could not have been a temporary employee because she had an expectation of continued employment; each time she left, she knew when she was returning to work. With regard to the County's reliance on the five temporary employees who worked multiple time periods yet remained temporary employees, the Union argues that the County did not provide enough information about those instances to make a nexus to this case. For example, the Union opines that those five employees could have been project employees.

Second, the Union argues that overall, Ruge worked long enough for the County to be deemed a regular employee and become a member of the bargaining unit. Building on that premise (i.e. that Ruge came to be a regular employee, as opposed to a temporary employee), the Union characterizes the time she was off work as "layoffs." According to the Union, the various "layoff" periods which Ruge had to endure should not disqualify her from being considered a regular employee. The Union avers that the various "layoff" periods were invented to circumvent the collective bargaining agreement and create a paper trail attempting to show that her employment relationship with the County was severed. The Union maintains that her employment relationship with the County was never totally severed because after each "layoff" (except the last one, of course) she was "recalled" to work.

Third, the Union asserts that if the County had properly recognized Ruge as a regular employee, and allowed her to bid on the vacant position in the Real Property Listing Office,

then Ruge would have gotten the job. The basis for this contention is the Union's interpretation of the contract language to say that if there is a bidder from the department in which the vacancy exists (in this case, the Real Property Listing Office), then the job goes to that person. Here, Ruge would have been the only bidder from that department, so she would have gotten the job.

Finally, building again on the premise that Ruge was a permanent employee, as opposed to a temporary employee, the Union contends there was no "cause" to terminate her employment from the County on March 3, 2000. The Union avers that the County's argument challenging the grievance as untimely is unpersuasive and without merit.

In order to correct the injustice done to Ruge, the Union asks the arbitrator to award the following relief: First, Ruge should be placed in the Land Description Technician I position that was awarded to Vollrath. Second, Ruge should be made whole. As the Union envisions it, a make whole order would include all wage step increases, back pay and fringe benefits going back to Ruge's original date of hire (i.e. June 9, 1998), plus interest. Third, Ruge's probationary period should be based on her original date of hire. Fourth, the County should be ordered to cease and desist "from continuing hiring 'unlimited' limited-term employees in regular positions."

County

The County's position is that the grievance lacks a contractual basis and therefore should be denied. It makes the following arguments to support that contention.

The County asserts at the outset that since the bargaining unit is limited to "regular full-time and part-time personnel employed. . .in the courthouse. . .and its auxiliary departments and buildings. . .", the crucial question herein is whether Ruge was a "regular" employee. It avers she was not. The County begins its discussion on this point by citing Article 23 wherein it defines a regular employee "as a person hired to fill a regular position." It contends that the record evidence overwhelmingly establishes that Ruge was not "hired to fill a regular position", but rather was hired to fill a temporary position. It cites the following record evidence to support that premise. First, that at her job interview, Harvey told Ruge that the position would be temporary. Second, that Ruge indicated on her job application that she was applying for a "temporary position." Third, that the County's job actions sheets show in numerous places that the County considered Ruge a temporary employee, rather than a regular employee. Fourth, that at the hearing, Ruge acknowledged that she knew that she had a temporary job as opposed to a regular or permanent job. Fifth, that at the hearing, both Harvey and Leider testified they never told her that she had a permanent regular job. Sixth, that the hourly pay rates which Ruge was paid are not wage rates found in the wage tables in the collective bargaining agreement. The Union asserts that if Ruge had been a regular

employee and thus part of the bargaining unit, her pay rate would have been determined by the union agreement; instead, her pay was simply set by Harvey and Leider. Seventh, that at least five other county courthouse temporary employees have worked several periods of time yet remained classified as temporary employees and did not get regular positions. In the County's view, the foregoing evidence should conclusively prove that Ruge was never "hired to fill a regular position" (within the meaning of Article 23), but instead filled a temporary position. The County believes that fact is dispositive of the outcome herein. According to the County, the fact that Ruge worked much longer, in total, than was originally anticipated did not change her temporary status to that of a regular employee or a bargaining unit member.

Next, the County argues that even if Ruge were a member of the bargaining unit, she was not entitled to the vacant position because she did not apply for it when it was posted in January, 2000. It notes in this regard that when Leider asked her if she intended to apply for the position, she told him no. It further notes that at the hearing, Ruge contended that she did not submit an application because she had not received definite answers to all of her questions about matters such as seniority and wages. As the County sees it, this is hardly an excuse. It avers that if the arbitrator accepts Ruge's position on this point, this would throw the entire posting procedure into chaos because the County would not only have to determine who is the most senior qualified bargaining unit member from among a group that applied for the position, but also from "those who may have some unanswered questions about the position."

Next, the County argues that it complied with Article 25 when it filled the position in question. It notes in this regard that it posted the vacancy. Since there were no applicants from within the affected department (i.e. the Real Property Listing Office), it then posted the vacancy unit wide. The County notes that it awarded the position to the sole applicant, Darcy Vollrath.

Finally, the County contends that even if Ruge was a bargaining unit member, her grievance was untimely. This argument is premised on the notion that the grievance challenges her termination as an LTE effective March 3, 2000. The County calls the arbitrator's attention to the fact that the grievance was filed on March 20, 2000. According to the County, if the date of the alleged contract violation was March 3, 2000, the grievance challenging same was untimely filed.

The County disputes the Union's contention that two prior arbitration decisions involving the parties are applicable here. In the County's view, those decisions do not support the Union's position in this case.

In sum, the County believes the grievance has no contractual basis. It therefore asks the arbitrator to find in its favor and deny the grievance. The County asserts that if the arbitrator accepts the Union's position in this case and awards the remedy requested (i.e. the

posted position goes to Ruge instead of Vollrath), this would constitute a violation of the collective bargaining agreement.

DISCUSSION

While the County contends that the grievance was untimely filed, it is assumed for the purpose of discussion herein that it was timely filed. The rationale for this finding will become apparent at the end of this discussion. That being so, no other comments will be made regarding timeliness.

My discussion on the merits begins with the initial observation that the Union seeks to have me remedy two separate parts of what can be characterized as the temporary employee picture: one involves the big picture, so to speak, while the other involves just a small part thereof. More specifically, one involves the County's use of LTEs in general and the other involves the treatment of one particular LTE (namely, grievant Ruge).

Attention is focused first on the County's treatment of LTEs in general. The Union avers that the County is using temporary employees as a shadow work force completely separate from the bargaining unit. The Union further avers that these temporary employees do not replace anybody, or do special projects, but instead simply do the daily work that is also performed by bargaining unit employees. That may be. However, even if that is so, the only way an arbitrator can remedy that is if a contract violation is shown to exist. The Union proves that, of course, by showing that the County's use of temporary employees violates provisions in the collective bargaining agreement which prohibit, restrict or limit the County's use of temporary employees.

While some collective bargaining agreements impose numerous restrictions or limitations on the employer's use of LTEs or temporary employees, this particular collective bargaining agreement does not. For example, one restriction sometimes found in collective bargaining agreements is that temporary employees can only work for a certain time period or number of days, and if they work past that point, they become bargaining unit members. This contract does not contain any such limitation. While this collective bargaining agreement does have some language dealing with temporary employees, that language does not limit the County's use of LTEs much. The following analysis of that language shows this.

In the context of this case, just two contract provisions which deal with temporary employees are applicable. The first is Article 23, b. That provision contains a definition of a temporary employee. Specifically, it defines a temporary employee as someone: ". . .hired for a specified period of time and who will be separated from the payroll at the end of such period." In order to comply with this language, all the County has to do is tell the temporary employee when they are hired that they are going to work for a specific time period, and after

that time period is over, their temporary employment with the County is finished. While this language says that the temporary employee “will be separated from the payroll” at the end of that time period, it does not say what happens if that end point comes and goes and the employee is still on the payroll. Once again, it is noted that some contracts specify that if that happens, the penalty imposed upon the employer for letting that deadline pass is that the LTE becomes a bargaining unit employee. This contract does not say that. The second contract provision applicable here is Article 11, II, A, 9. That provision specifies that temporary employees “. . . shall not be used to reduce, replace or displace regular full-time employment.” This provision essentially protects regular employees (i.e. bargaining unit employees) from temporary employees; not the other way around. So long as temporary employees are not used to “reduce, replace or displace” regular employees, the County can use them (i.e. temporary employees) as it wishes.

Having reviewed that contract language, the next step is to apply it to the facts. Before I do that though, I need to decide if Ruge was a temporary employee or a regular employee. If she was a temporary employee, the foregoing language will be applied. On the other hand, if she was not a temporary employee, but instead a regular employee, then different contract language applies.

There is no question that Ruge was hired initially to fill a temporary position. Harvey made it crystal clear to Ruge when he hired her in June, 1998 that she was not being hired to fill a regular position. Instead, she was being hired to fill a temporary three-month position. Since she was “hired for a specified period of time”, namely three months, she fits within the contractual definition of a “temporary employee” that is contained in Article 23, b. The same is true of her hiring in April, 1999. Once again, Harvey made it crystal clear to Ruge that she was not being hired to fill a regular position. Instead, Ruge was being hired to fill a temporary five-month position. That being the case, she was still a “temporary employee” in January, 2000 within the meaning of Article 23, b because she was “hired for a specified period of time”, namely five months.

The crux of the Union’s case is that at some point in time during her employment with the County (the Union never specifies when), Ruge was transformed from a temporary employee to a regular employee and thus became a member of the bargaining unit. I could readily accept this contention if it had either a contractual or a factual basis. However, it has neither. The following analysis shows this.

The contractual aspect is addressed first. As previously noted, there is no language in this collective bargaining agreement that says that a temporary employee becomes a regular employee if he/she works past a specified date or works past the time period the employee was originally hired to work. While Ruge did work longer in her first stint with the County than originally told (i.e. three months), this did not transform her from being a temporary employee

to a regular employee. Under the contract language contained in Article 23, a, the only way someone can become a “regular employee” is if they are “hired to fill a regular position.” That never happened here. Specifically, Ruge was never “hired to fill a regular position.” When the County Board approved the creation of a new job in the Real Property Listing Office, that did not change Ruge’s temporary position into a permanent position which she automatically assumed. That’s not the way vacant bargaining unit positions are filled. When new bargaining unit jobs are created, the positions are filled via the procedure specified in Article 25, B. There is nothing in Article 25, B, or elsewhere in the contract for that matter, that gives temporary employees preference in new jobs over bargaining unit employees. In fact, just the opposite is true (namely, that bargaining unit employees have preference in jobs over non-bargaining unit employees). Given the foregoing, it is held that the contention that Ruge was transformed from a temporary employee to a regular employee has no contractual support.

That same contention has no factual basis either. First, the record indicates that the County has had other temporary employees who worked for the County several times, just like Ruge did. Their status remained that of temporary employees and they never became regular employees or received permanent positions with the County. Second, notwithstanding the Union’s assertion to the contrary, I find that the type of work that Ruge performed when she worked in the Real Property Listing Office is of no significance herein. Third, notwithstanding Ruge’s testimony to the contrary, I credit the testimony of Harvey and Leider that they never told Ruge she was a permanent employee or that she was going to become a permanent employee. Given the foregoing, there is no factual basis upon which the undersigned can find that Ruge became a regular employee during the course of her employment with the County.

This finding that Ruge was never transformed from a temporary employee to a regular employee essentially disposes of all the remaining contentions. First, since Ruge never became a regular employee, she was not contractually entitled to bid on the position which was posted in her department in January, 2000. At that point, she was still a temporary employee. Under the posting procedure contained in Article 25, B, the County has to award the position to a bargaining unit member if they apply. That is what happened, so the County was contractually obligated to award the position to the bargaining unit member who applied (Vollrath). The fact that Ruge wanted the position is not controlling. What is controlling is the contractual posting language, and the County complied with it. Second, since Ruge was a temporary employee in January, 2000, the contractual “just cause” and “layoff” provisions did not apply to her. Those provisions only apply to bargaining unit members and she never became a member of the bargaining unit. Third, the County’s actions here did not violate either of the two contract provisions dealing with temporary employees which were reviewed earlier. Specifically, no violation of Article 23, b or Article 11, II, A, 9 has been shown.

Finally, it is noted that the undersigned has reviewed the arbitration decisions cited by the Union. In my view, they are all factually distinguishable from this case. Thus, they are inapplicable here.

In light of the above, it is my

AWARD

1. That the grievance was timely filed;
2. That during the course of her employment with the County, Carol Ruge was not transformed from a temporary employee to a regular employee. Thus, she never became a member of the bargaining unit; and
3. That the County did not violate the collective bargaining agreement when it did not award Carol Ruge the regular position of Land Description Technician I in February, 2000. Therefore, the grievance is denied.

Dated at Madison, Wisconsin, this 7th day of August, 2003.

Raleigh Jones /s/

Raleigh Jones, Arbitrator

REJ/gjc
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