

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**ONEIDA COUNTY**

and

**ONEIDA COUNTY COURTHOUSE EMPLOYEES  
LOCAL ASSOCIATION NUMBER 158**

Case 160  
No. 62562  
MA-12341

(Three Lakes Zoning Office - Stoltz Grievance)

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**Appearances:**

Oneida County Personnel Department, P.O. Box 400, Rhinelander, WI 54501-0400, by **Mr. Carey Jackson**, Personnel Director, appearing on behalf of the County.

Wisconsin Professional Police Association, LEER Division, 340 Coyier Lane, Madison, WI 53713, by **Mr. Robert West**, Consultant, appearing on behalf of the Union.

**ARBITRATION AWARD**

Pursuant to the provisions of the collective bargaining agreement between the parties, Wisconsin Professional Police Association/LEER Division (hereinafter referred to as the Union) and Oneida County (hereinafter referred to as the Employer or the County) requested that the Wisconsin Employment Relations Commission designate Daniel Nielsen of its staff to serve as arbitrator of a dispute over the designation of Carrie Stoltz to staff the County's satellite zoning office in Three Lakes, Wisconsin. The undersigned was so designated. A hearing was held on October 23, 2003, in Rhinelander, Wisconsin, at which time the parties were afforded full opportunity to present such testimony, exhibits, other evidence and arguments as were relevant. The parties submitted the case on oral arguments at the close of the hearing, with the understanding that the arbitrator would provide an expedited decision on the matter.

**ISSUE**

The parties stipulated that the grievance was properly before the Arbitrator and that the following issue should be determined:

Did the County violate the Courthouse collective bargaining agreement when it directed the Grievant, Carrie Stoltz, to work out of an office in the Town Three Lakes?

The Union represented at hearing that it was not seeking any monetary remedy in this matter and that if a violation was found, the Arbitrator should limit himself to a declaration of rights to prevent future violations of the contract.

**CONTRACT LANGUAGE**

**ARTICLE 6 – SENIORITY – PROMOTIONS – RECLASSIFICATION -  
LAYOFF**

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Section C: Departmental Seniority: The principal of departmental seniority with ability and qualifications shall govern in promoting, demoting, transferring, filling vacancies and new positions. Departmental seniority shall apply in any office having two or more Association members.

Section D: County-wide Seniority: The principal of the County-wide seniority with ability and qualifications shall govern in filling jobs or vacancies and new positions not filled by employees within the department. County-wide seniority shall govern layoffs, recalls after layoffs and vacancies, providing the remaining employees are capable of performing the available work.

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**ARTICLE 7 – VESTED RIGHTS OF MANAGEMENT**

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Section A: The right to employ, to promote, to transfer, to discipline and discharge employees, and to establish work rules is reserved by and vested exclusively in the Oneida County Board through its duly appointed Personnel Committee and duly appointed department heads. (The reasonableness of the exercise of the aforementioned vested rights shall be subject to the grievance procedure.)

. . .

Section D: The County shall have the right to hire and transfer employees on a temporary basis to handle emergencies or excessive workloads in any office or department of the Courthouse.

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### OPINION

The County's Planning and Zoning Department has its main office at the county seat in Rhinelander. For years there has been a satellite office in Minocqua. In 2002, the Department provided service in a second satellite office in Three Lakes. That office was staffed each Thursday during the construction season from May through September. The staffing was done on a rotating basis among the staff members. In 2003, the County Board directed the Department to staff Three Lakes on a full-time basis beginning with the start of the construction season. The Grievant Carrie Stoltz, was directed to staff the office.

The question in this case is whether the County had the right to direct the Grievant to staff the Three Lakes office on a full-time basis during the construction season in 2003, without regard to her seniority. The Grievant did not wish to be moved from the Rhinelander office to Three Lakes and there was at least one less senior employee who had the basic qualifications to staff the office. The Union argues that this was a vacancy and/or a transfer. Vacancies and transfers require consideration of seniority. The County argues that this is clearly an assignment, which may be made in the sole discretion of management.

The Union argues first that this was a new position and thus a vacancy was created that had to be posted. This is an ingenious argument, but there are a number of problems with it, the most serious of which is that that theory was never articulated at any point prior to the arbitration hearing. While parties have the right to modify their arguments somewhat at the arbitration step, there is not generally a right to transform the case into a completely new and different grievance than was processed to arbitration. I find that I do not have jurisdiction over a grievance claiming that Three Lakes was a vacancy that should have been posted, because such a grievance has never been filed. 1/

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*1/ It bears noting that, if this was a vacant new position, entirely different issues would have been raised by this transaction. Since the County was proceeding on the basis of a stable headcount, there would have been a layoff on the basis of county-wide seniority to account for the position that would have been eliminated in the Rhinelander office. If no one in the Department wanted the vacancy in Three Lakes, it would have been opened to bid by the other qualified members of the bargaining unit based on county-wide seniority. Given the technical skills required, it is likely it would not have been filled internally and would have been opened to outside applicants. Then, when the construction*

*period ended, the process would have been reversed with the Three Lakes position being eliminated, and a “new” position being created in Rhinelander. None of those issues can fairly be read into the grievance as filed.*

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Turning to the central issues presented by the grievance, contrary to the arguments of the parties I do not find that the contract is clear or unambiguous as to the distinction between an assignment and a transfer. Typically an assignment is considered to be a direction to perform a set of work tasks within the employee’s job description and employing unit. This could encompass completely different tasks than had previously been performed, so long as they are fairly within the job description. A transfer would normally be a move to a different job title or department. In most multi-site operations, a geographical move would also be considered a transfer, even though the job duties and employing unit do not change. Thus it also has the characteristics of an assignment. Broadly speaking, this transaction has more characteristics of a transfer than it does of an assignment. Those, however, are generalizations — the scope of the terms varies from contract to contract, and it is not fair to say that either has an absolutely clear meaning.

The County argues that this is a job assignment because that is the most efficient result, and the preamble to the collective bargaining agreement cites efficiency as one of the reasons for making the contract, and because there is a past practice of making geographic assignments without any consideration of seniority. As to the first of these arguments, I find this unpersuasive. The “Agreement” section of the contract describes the general aims for entering into bargaining and for negotiating a contract. It does not describe the substance of the agreements reached in that process or dictate that contract interpretations be made based on how well they satisfy the goal of efficiency. The County’s second line of argument is more persuasive.

The County points to four practices that it claims show an understanding that geographic moves are not transfers — the use of Minocqua employees to cover absences in Rhinelander and vice versa, the assignment of Zoning personnel to Three Lakes in 2002, the geographic assignment other Departments’ staff to off-site locations, and the staffing of the Minocqua office. The first two of these are easily distinguishable. Both represent intermittent assignments of very short duration, with no intention of any lasting change in the location of the affected employee’s job. In neither case can it be said that a distinct separate position or assignment existed. Moreover, the contract explicitly allows transfers to cover temporary workload problems in other offices.

The fact that maintenance employees are assigned to various facilities under this same contract is more persuasive. The evidence is that employees may be moved from site to site for long periods, up to several years, and that no posting, bidding or other consideration of seniority has been employed in making those moves. The Union argues in response that there

is no evidence that anyone objected to these moves, and thus there may not have been an occasion for a grievance. That is possible, but it is not generally the case that a series of assignments without posting could have been made with no protest to the process if the Union believed that these moves should be made by seniority.

The most persuasive evidence in this case and the factor that leads me to conclude that the direction to the Grievant to work in the Three Lakes office was an assignment rather than a transfer is the fact that the assignment of personnel to the other satellite office in Minocqua has never been treated as a transfer. Positions in Minocqua are filled by assignment, with no posting or bidding. That is precisely the same situation that is at issue here. If the Three Lakes position requires posting, it follows that positions in Minocqua should have been posted and bid as transfers, and that has never been done.

On the basis of the foregoing, and the record as a whole, the undersigned makes the following

**AWARD**

The County did not violate the collective bargaining agreement when it directed the Grievant, Carrie Stoltz, to staff the Three Lakes office. The grievance is denied.

Dated at Racine, Wisconsin, this 30<sup>th</sup> day of October, 2003.

Daniel Nielsen /s/

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Daniel Nielsen, Arbitrator