

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

COLUMBIA COUNTY

and

**COLUMBIA COUNTY COURTHOUSE AND HUMAN
SERVICES EMPLOYEES UNION
LOCAL 2698-B, AFSCME, AFL-CIO**

Case 232
No. 63354
MA-12559

Appearances:

David White, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Madison, Wisconsin 53717-1903, appearing on behalf of the Union.

Jonathan T. Swain, Lindner & Marsack, S.C., Attorneys at Law, 411 East Wisconsin Avenue, Milwaukee, Wisconsin 53502, appearing on behalf of the County.

ARBITRATION AWARD

Columbia County, hereinafter referred to as the County, and Columbia County Courthouse and Human Services Employees Union, Local 2698-B, AFSCME, AFL-CIO, hereinafter referred to as the Union, are parties to a collective bargaining agreement that provides for the final and binding arbitration of grievances. Pursuant to a Request for Arbitration the Wisconsin Employment Relations Commission appointed Edmond J. Bielarczyk, Jr., to arbitrate a dispute over the layoff of an employee. Hearing on the matter was held in Portage, Wisconsin on May 6, 2004. A stenographic transcript of the proceedings was prepared and received by the Arbitrator by May 25, 2004. Post hearing written arguments were received by the Arbitrator by August 10, 2004. Full consideration has been given to the evidence, testimony and arguments presented in rendering this Award.

ISSUE

During the course of the hearing the parties were unable to agree upon the framing of the issue and agreed to leave framing of the issue to the Arbitrator. The Arbitrator frames the issue as follows:

“Did the County violate the collective bargaining agreement when it denied the grievant the Switchboard Operator/Receptionist/Postal Clerk position in the Human Services Department?”

“If yes, what is the appropriate remedy?”

PERTINENT CONTRACTUAL PROVISIONS

ARTICLE 7 – SENIORITY RIGHTS

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7.9 Layoff and Recall. In the event the Employer reduces its work force for lack of work or other legitimate economic reasons, the following procedures shall apply:

- A) Limited term employees shall be laid off first, before regular employees are laid off.
- B) The employee with the least seniority shall be laid off first, provided that the remaining employees are qualified to do the remaining work.
- C) In re-employing, employees with the greatest length of service shall be called back first, provided that they are qualified to perform the work required.
- D) Employees laid off under this section shall retain all seniority rights for a period of one (1) year provided that they respond to any request to return to work made during that time, said request to be made at their last known address.

E) The Employer will give reasonable written notice of its intent to layoff employees, but not less than ten (10) working days notice will be given. The employee shall notify the Human Resources Director within ten (10) working days of such notice of his/her intent to exercise his/her right under 7.9(B).

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ARTICLE 15 – MANAGEMENT RIGHTS

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

- A) To direct all operations of the County;
- B) To establish work rules and schedules of work, subject to Section 8.1 of this contract;
- C) To hire, promote, transfer, schedule, and assign employees to positions within the County, subject to Article 7 of this contract;
- D) To suspend, demote, discharge, and take other disciplinary action against employees for cause, and subject to the procedure of Article 5 of this contract;
- E) To relieve employees from their duties because of lack of work or any other legitimate reasons, subject to the procedure of Article 5 of this contract;
- F) To maintain efficiency of county government operations;
- G) To take whatever action is necessary to comply with state or federal law;
- H) To introduce new or terminate existing methods or facilities;
- I) To change existing methods or facilities;

J) To determine the kinds and amounts of services to be performed as pertains to county government operations, and the number and kinds of classifications to perform such services;

K) To contract out for goods or services; (in the event a position is abolished as a result of contracting or subcontracting, the County will hold advance discussions with the Union prior to letting the contract.)

L) To determine the methods, means, and personnel by which county operations are to be conducted;

M) To take whatever action is necessary to carry out the functions of the County in situations of emergency.

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BACKGROUND

The County has employed Christine Otto, hereinafter referred to as the grievant, since 1980. Since approximately 1990 she was employed as the County's Switchboard Operator/Receptionist/Postal Clerk in the County's Clerk's office. On September 26, 2003 the Grievant was informed her position was being eliminated effective October 13, 2003. The Grievant was informed she was able to bump into a position held by a less senior employee. She was given a list of fifty-three (53) positions occupied by less senior employees. The grievant determined to bump into the Switchboard Operator/Receptionist/Postal Clerk position in the County's Human Services Department. She was informed by the County on October 6, 2003 that she could bump into the Human Services Switchboard Operator/Receptionist/Postal Clerk position on October 13, 2003. Prior to that date the County's Human Services Director, Brent Miller, became aware the Human Services Switchboard Operator/Receptionist/Postal Clerk position had a thirty (30) word per minute typing requirement. The Grievant was informed she would be required to pass a typing test. The Grievant attempted two (2) times to pass the typing test but failed both times. The County therefore informed the Grievant on October 16, 2003 that she did not meet the qualifications for the Switchboard Operator/Receptionist/Postal Clerk position in the Human Services Department and would not be allowed to bump into the position. The Grievant was given an additional opportunity to bump one of the other jobs held by a junior employee but the Grievant did not do so. On November 24, 2003 the instant grievance was filed and processed to arbitration in accord with the parties' grievance procedure.

At the hearing Gretchen Halvorsen, the Human Services Department's support services administrator testified that the support services had six (6) positions, two of which were vacant and only one of which would eventually be filled (Tr. p. 105-106). Halvorsen also testified that

thirty percent (30%) of the disputed position's duties required typing capabilities (Tr. p. 40). Halvorsen further testified that it would not be practical to assign the disputed positions typing responsibilities to another employee (Tr. p.104).

The record also demonstrates that the County Clerk's Switchboard Operator/Receptionist/Postal Clerk position did not have a typing requirement stated in the job description. The Grievant was informed in her Employee Appraisal of February 3, 2003 (Employer Exhibit 1) the Grievant needed to improve her keyboarding skills and was given a specific goal to improve her keyboarding skills. The Grievant took no action to improve her keyboarding skills prior to receiving her layoff notice. The record further demonstrates the Human Services Switchboard Operator/Receptionist/Postal Clerk position has a thirty (30) words per minute typing requirement and its incumbent had passed a typing test prior to taking the position.

UNION'S POSITION

The Union contends that the Grievant, a twenty-four (24) year employee, sought to move from a receptionist position in the County Clerk's Office to a receptionist position in the Human Services Office. The Union points out the Grievant received a confirmation from the County appointing her to the Human Services position. The Union argues the failure of the County to properly research the position doesn't alter the fact the Grievant was confirmed in the position. The Union asserts that thereafter the County must have just cause to remove the Grievant from the position.

The Union argues that once the Grievant was given the position the County has to establish just cause to remove her from the position. The Union contends the County has failed to do so when the County denied her the opportunity to fill the position before she could even start it.

The Union also argues that while the Human Services position description requires the performance of duties of operating a computer, such a skill is not measured by a typing test. The Union further argues the position description's essential duties do not involve any significant amount of typing.

The Union also contends many of the duties performed the Human Services Switchboard Operator/Receptionist/Postal Clerk position's incumbent was mainly updating existing documents and the Union asserts the County is overstating that the typing required amounted to thirty percent (30%) of the employee's work time. The Union also points out the creating of forms by the incumbent is not a typing skill. The Union concludes that the typing test does not measure any skill that is relevant to the performance of the essential duties of the Human Services Switchboard Operator/Receptionist/Postal Clerk position. The Union avers that denying the Grievant the position solely because she did not pass the typing test is improper.

The Union also argues that the collective bargaining agreement does not say that the employee exercising a bump has to be the most qualified employee in the world. The Union points out the remaining employees have to be qualified to do the work. The Union asserts that the County has failed to demonstrate that the collective skills of the employees available to do the work in the Human Services Department was such that they would not be qualified to perform the work.

The Union would have the Arbitrator sustain the grievance and direct the County to make the Grievant whole for all losses that the Grievant suffered as a result of the violation of the collective bargaining agreement.

EMPLOYER'S POSITION

The County contends the Grievant did not meet the qualifications for the Switchboard Operator/Receptionist/Postal Clerk position in the Human Services Department and that the remaining employees would not have been qualified to perform the work. In support of its position the County points to the testimony of Halvorsen that it was essential that someone in the position have the skill to type (Tr. p. 64). The County points out the Grievant typed at only fifteen (15) words per minute, less than half of the bare minimum necessary to perform the work. The County argues that simply put the Human Services Department position has a skill requirement that was not required in the County Clerk's Office position.

The County also stresses the Union has the burden to demonstrate that the work can be reassigned or that it was a non-essential function of the job. The County argues that Halvorsen's testimony was consistent with the position description. The County also argues that there is no evidence Article 7.9B requires the County to redistribute work. The County asserts the collective bargaining agreement's Management Rights clause gives the County the right to determine how work is to be performed and to make specific work assignments to various classifications. The County argues the intent of Article 7.9B is to make sure work will get done. The County argues if the Grievant were allowed to bump the work would not get done.

The County also contends the Grievant, despite advanced warning from the County, took no steps to upgrade her typing skills. The County stresses it is important to note the Grievant's agreed upon 2003 appraisal was that she would improve her keyboarding skills. The County argues the Grievant took no steps to improve her keyboarding skills. The County contends that had the Grievant made any effort to improve her skills she could have exceeded the thirty (30) words per minute typing requirement by October 2003. The County also points out the Grievant again failed the typing test when she applied for a different position in March 2004. The County asserts it had no contractual duty to train the Grievant and avers it would be beyond the Arbitrator's authority to infer a training requirement.

The County also argues the Union theory that the County should reassign duties from the Human Services Switchboard Operator/Receptionist/Postal Clerk position is unsupported. The County contends it has no duty to reassign functions. The County stresses Halvorsen's testimony was that there was no one else to perform the work and that it would not be practical to assign the work to other employees in the department. The County contends that in a bumping situation where someone is in a single person classification the job as to be taken as it is and the person wanting to bump needs to meet the requirements of the job, particularly where those requirements reflect a significant part of the work to be performed.

The County also contends the Union argument that once the County assigned the job, it can only take the job away for just cause is erroneous. The County acknowledges it prematurely informed the Grievant that she would be able to assume the Human Services Switchboard Operator/Receptionist/Postal Clerk position. When it became clear the position required a typing test and that the incumbent had passed the typing test the County stresses it took action to immediately inform the Grievant of the typing requirement. The County contends it acted with consistency when it required the Grievant to demonstrate her typing skill prior to actually taking the job.

The County would have the Arbitrator deny the grievance.

DISCUSSION

The record demonstrates the County, as the Union has argued, informed the grievant she could bump into the Human Services Switchboard Operator/Receptionist/Postal Clerk position effective October 13, 2003. However, there is nothing in the collective bargaining agreement that bars the County from correcting a mistake and informing the grievant there was a typing requirement for the Human Services Switchboard Operator/Receptionist/Postal Clerk position prior to her actually moving into the position. Had the Grievant occupied the Human Services Switchboard Operator/Receptionist/Postal Clerk position the Union's argument that the County had to have just cause to remove her from the position would have some merit. However, the collective bargaining agreement does not bar the County from correcting an error prior to the grievant actually bumping into the Human Services Switchboard Operator/Receptionist/Postal Clerk position. There is nothing in the collective bargaining agreement that requires the County to waive the requirements of a specific position. Had the County placed the Grievant into the Human Services Switchboard Operator/Receptionist/Postal Clerk position the Union could argue that County waived the position's requirement that the incumbent, at a minimum, must be able to type thirty (30) words per minute. Given there is no requirement that the County must waive a positions requirements the County can correct its decision provided, as in the instant matter, it does so before the Grievant began working in the position. The Arbitrator acknowledges that in order to bump into a position an employee does not have to be more qualified than the position's incumbent. However, the employee does have to meet the positions minimum requirements. Herein the minimum requirements include a requirement

that the Grievant be able, at a minimum, type at least thirty (30) words per minute. Because the Grievant does not possess this capability she is not qualified to bump into the position.

The Union has also argued that a typing test does not adequately measure the skills necessary for determining whether the Grievant could perform the duties of the position. The Union has pointed out that the actual duties involve keyboarding, or working with a keyboard for a personal computer. However, the position description specifically requires a thirty (30) word per minute typing ability. The Arbitrator finds this to be a minimum requirement. Further, the burden is on the Union to demonstrate that a typing test does not adequately measure a person's ability to operate a keyboard. Without evidence to demonstrate that such a test is not an accurate way to determine whether a person can accurately use a keyboard the Arbitrator cannot conclude the County improperly put in place a typing requirement for the position. Further, the incumbent was required to pass the typing test before being placed into the position.

The Union has also argued that the Human Services Switchboard Operator/Receptionist/Postal Clerk position description does not demonstrate that typing is an essential duty performed by the Human Services Switchboard Operator/Receptionist/Postal Clerk. However, the Union presented no evidence to dispute Halvorson's testimony that the incumbent spent about thirty percent (30%) of her time using her typing skills. Thus, while typing is not listed as an essential duty for the position (Jt. Ex. 9) the position description clearly mandates that there is a thirty (30) word per minute typing requirement listed in the Knowledge, Skill and Abilities required for the position. Further, the Union presented no evidence that would refute Halvorsen's testimony that the Human Services Switchboard Operator/Receptionist/Postal Clerk position did not spend that amount of time using typing skills.

The Union has also argued that to give Article 7.9 B meaning, the remaining employees have to be qualified to do the work. In effect, the Union argues that the County must reassign duties of the Human Services Switchboard Operator/Receptionist/Postal Clerk position to other employees. The Arbitrator finds no basis for this in the collective bargaining agreement. The parties have bargained a wage system for positions. Under the Union's argument, this system could be undone if the County were required to redesign positions during the bumping process, in effect, creating new positions. Further, contrary to the Union's argument, it is the Union's burden to demonstrate the reassignment of such duties was something that could be accomplished. The Union presented no evidence to demonstrate that this could occur. As noted above, Halvorsen testified that given her reduced staff the reassignment of the typing duties to another employee was not feasible. There is no evidence in the record to refute Halvorsen's testimony. Thus, the Union has failed to meet its burden. The record therefore demonstrates that had the County permitted the Grievant to bump into the Human Services

Switchboard Operator/Receptionist/Postal Clerk position the remaining employees would not have been qualified to do the work because the Grievant would have been unable to perform all the duties of the position she desired to bump into.

Therefore, based upon the above and foregoing, and the arguments, evidence and testimony presented, the Arbitrator finds the County did not violate the collective bargaining agreement when it denied the Grievant the Services Switchboard Operator/Receptionist/Postal Clerk position in the Human Services Department. The grievance is therefore denied.

AWARD

The County did not violate the collective bargaining agreement when it denied the Grievant the Switchboard Operator/Receptionist/Postal Clerk position in the Human Services Department.

Dated at Madison, Wisconsin, this 21st day of January, 2005.

Edmond J. Bielarczyk, Jr. /s/

Edmond J. Bielarczyk, Jr., Arbitrator