

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
BUSINESS AGENTS' ASSOCIATION
and
TEAMSTERS GENERAL UNION LOCAL NO. 662
Case 1
No. 63009
A-6093
(Karen Haase Layoff)

Appearances:

Mr. Daniel Alexander, S10000 County Road Z, Mondovi, Wisconsin 54755, appearing on behalf of the Business Agents Association.

Mr. Scott Soldon, joined on the brief by **Mr. Timothy Hall**, Previant, Goldberg, Uelman, Gratz, Miller & Brueggeman, S.C., 1555 North RiverCenter Drive, Suite 202, Milwaukee, Wisconsin 53212, appearing on behalf of Teamsters Local Union No. 662.

SUPPLEMENTAL ARBITRATION AWARD

In a January 18, 2005 Award, the undersigned arbitrator directed the parties, Business Agents Association (hereinafter referred to as the Association) and Teamsters Local Union No. 662 (hereinafter referred to as either the Local or the Employer), to engage in a unit clarification proceeding before the National Labor Relations Board to determine whether the position currently occupied by Mary Habeck was excluded from the bargaining unit. If the position was not confidential, the Award found that the Employer violated the collective bargaining agreement by laying off employee Karen Haase and replacing her with Habeck. If the position was determined to be confidential, as alleged by the Employer, then there was not a contract violation.

On August 3, 2005, the Employer provided the Arbitrator with a copy of the Regional Director's determination in Case 18-UC-405, wherein the Director, acting with authority to decide the matter for the Board, determined that the position occupied by Habeck was properly excluded from the bargaining unit as confidential.

The Association replied on August 11, asserting that the lapse of nearly two years between the layoff and the unit clarification unfairly allowed the Employer to create a misleading paper trail, causing the Board to wrongly conclude that Habeck's position is confidential. That conclusion, the Association submits, is contrary to the great weight of the record evidence before the arbitrator, and the arbitrator should make an independent judgment based on that record. Even if the arbitrator were to decide to defer to the NLRB, he should, at a minimum, revisit the record to determine when the position became confidential. The Grievant had seniority rights to the position at least to that point, and is entitled to a remedy.

The Award in this case was phrased in the alternative, depending upon the outcome of the unit clarification proceeding:

1. If the Local's transfer of duties to a new unilaterally-created confidential secretarial position outside the bargaining unit created a position occupied by a confidential employee within the meaning of the National Labor Relations Act, as amended, then the Local did not thereby violate the Agreement.
2. If the Local's transfer of duties to a new unilaterally-created confidential secretarial position outside the bargaining unit did not create a position occupied by a confidential employee within the meaning of the National Labor Relations Act, as amended, then the Local did thereby violate the Agreement.

As noted in the initial Award, the question of confidential status is for the National Labor Relations Board, not the arbitrator. For that reason, the parties were directed to proceed before the Board. They have done so, and the Board has ruled. Whether the arbitrator agrees with the Board's decision is irrelevant, both as a matter of law and by the specific terms of the Award. The arbitrator therefore declines the Association's invitation to make a separate judgment on the question of confidential status.

The Association's argument that the arbitrator should determine the point at which the position became confidential and should award a remedy for the Grievant's losses prior to that time is ingenious, but it assumes a fact that is not established on the record. The duties that the Board relied on for its determination are largely the same duties as were described by Reardon in his testimony at the arbitration hearing. This suggests that the Board would have concluded that the position was confidential from its inception.

By the terms of the original Award, there is no contract violation. On the basis of the foregoing and the record as a whole, I have made the following

SUPPLEMENTAL AWARD

The Local's transfer of duties to a new unilaterally-created confidential secretarial position outside the bargaining unit created a position occupied by a confidential employee within the meaning of the National Labor Relations Act, as amended. The Local did not thereby violate the Agreement and the grievance is denied.

Dated at Racine, Wisconsin, this 16th day of August, 2005.

Daniel J. Nielsen /s/

Daniel J. Nielsen, Arbitrator