

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

ADAMS COUNTY

and

**ADAMS COUNTY PROFESSIONAL EMPLOYEES UNION
LOCAL 1168, AFSCME, AFL-CIO**

Case 104
No. 63860
MA-12732

(M.G. Grievance)

Appearances:

Mark F. Yokom, Davis & Kuelthau, S.C., P.O. Box 1278, 219 Washington Avenue, Oshkosh, Wisconsin 54903-1278, appearing on behalf of Adams County.

William Moberly, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite B, Madison, Wisconsin 53717-1903, appearing on behalf of Adams County Professional Employees Union Local 1168, AFSCME, AFL-CIO.

SUPPLEMENTAL ARBITRATION AWARD

On May 20, 2005, the undersigned arbitrator issued an award concluding that Adams County (the County) had just cause to terminate M. G. from her employment as Emergency Management Coordinator, comprising approximately 27.5 hours per week, but did not have just cause to terminate her from her employment as a clerk typist in Veterans Services, comprising approximately 10 hours per week. As a remedy, the County was directed to reinstate M. G. to the Veterans Services position, retroactively to April 19, 2004, with back pay, seniority, and other lost benefits, if any, accruing to that position. However, since the record reflected uncertainty as to the status of the Veterans Services position prospectively, the award did not specify the County's obligations "henceforward," saying, "The most that can be stated in that regard is that any action the County takes regarding the Grievant's continued employment must be consistent with the contract and the law." Accordingly, jurisdiction was retained to permit the parties to submit any unresolved disputes about how the remedy should be implemented.

On July 18, 2005, the parties informed the undersigned that they were unable to agree upon M. G.'s reinstatement rights pursuant to the award and invoked my retained jurisdiction to resolve the dispute. Thereafter, the parties agreed that no evidentiary hearing was necessary and that neither party was aware of any past practice or bargaining history evidence that would pertain to the matter. On September 12, 2005, both parties filed written arguments in support of their respective positions.

ISSUE

The County has stated the issue as follows: “Does Section 2.06(b) of the labor agreement permit [M. G.] the ability to bump from a part-time to full-time position after discipline?” (County Br. at 6). The Union’s brief does not include a proposed statement of the issue.

I conclude that the issue is best framed thus:

Since, after M. G. was terminated but before the award was issued, the County had eliminated the Veterans Services position, has the County fulfilled its obligations under the May 20, 2005 award by reinstating M. G. to a position as Library Assistant I, comprising approximately 16 hours per week, at the same hourly wage, group, class, and seniority, as the position she had held in Veterans Services, rather than allowing her to bump into a full time position?

CONTRACT LANGUAGE

Article 2 – Probation and Seniority

...

2.06 ...

- (b) The Employer shall have the right to reduce the number of jobs in any classification. Employees whose jobs have been eliminated shall have the right to bump any junior employee in any equal or lower classification, providing they are qualified to do the junior employee’s job. Such junior employees who have lost their position as the result of a bump shall have the right to exercise their seniority in the same manner as if their jobs had been eliminated. Employees who have lost their positions as the result of a bump or a reduction in the number of positions shall have the option to accept the layoff and may decline to exercise their bumping rights, if any. Laid off employees shall have recall rights as provided hereinafter.

POSITIONS OF THE PARTIES

The Union argues that, since M. G.’s position in Veterans Services had been eliminated, since the May 20 award required the County to take action “consistent with the contract and the law,” and since Section 2.06(b) of the contract gives more senior employees whose jobs are eliminated the right to bump less senior employees without regard to the number of hours in either the eliminated position or the targeted position, M. G. was entitled to bump into a full time position after her Veterans Services position was eliminated.

The County argues that the award cannot be construed to permit M. G. to “profit from her misconduct” by regaining a full time position, from which she had been terminated with just cause, at the expense of another County employee who has done no wrong. Moreover, Section 2.06(b) of the agreement does not require such “upward bumping,” because that interpretation would have to be supported by explicit contract language, which is lacking in this case, in order to overcome the collision between such interpretation and the vacancy and promotional posting provisions of the agreement.

DISCUSSION

As indicated at the outset of the remedial discussion in the May 20 award, “The general remedial goal in arbitration is to restore the parties to the situation they would have been in had the violation not occurred. In discharge cases, that translates into a standard remedy of reinstatement with back pay and restoration of other lost benefits.” (Award at 23). This begs the question: what situation would M.G. have been in if the County had terminated her as Emergency Management Coordinator but not as a clerical worker in Veterans Services in April 2004?

In urging the application of Sec. 2.06(b), the Union implicitly assumes that the County would have eliminated the Veterans Services position even if the County had not terminated M. G. from that position and that this position elimination would have triggered M. G.’s bumping rights. This assumption does not bear scrutiny. If the record demonstrated that the Veterans Services position was in line for elimination in the normal course of events, or that the County in April 2004 would have chosen to handle M. G.’s remaining employment in Veterans Services by laying her off from that position once it had terminated her from the Emergency Management position, the Union’s contention would be more compelling. Under those circumstances, it would be necessary to determine whether Sec. 2.06(b) permits a more senior part time employee to bump a less senior full time employee, a proposition that is not without some difficulty.

The record, however, simply does not support the Union’s implicit assumption about how the County would have handled M. G.’s employment situation if, in April 2004, the County had done what I concluded it should have done, i.e., terminate her only from her Emergency Management position. The County may have chosen to continue M. G.’s employment in Veterans Services even though that option is not available retrospectively, rather than lay her off and evoke a controversy about her bumping rights. Under these circumstances, I cannot conclude that the reinstatement provisions in the award necessarily requires the County to treat M. G. as a laid off member of the bargaining unit or necessarily implicates Sec. 2.06(b).

In this case, the County reinstated M. G. to a position with substantially greater hours than those she held in her previous Veterans Services position and substantially equal seniority, wages, and benefits. Having concluded that Sec. 2.06(b) is not implicated in this situation, I also conclude that the County's action was "consistent with the contract" within the meaning of the May 20 award. No further remedial relief is appropriate.

AWARD

Since the County had eliminated the Veterans Services position before receiving the May 20 award reinstating M. G. to that position, the County's action in reinstating M. G. to a bargaining unit position that is comparable in wages, hours, and working conditions to the Veterans Services position comports with the remedial provisions of the May 20 award.

The undersigned's retained jurisdiction in this matter is now relinquished.

Dated at Madison, Wisconsin, this 27th day of October, 2005.

Judith Neumann /s/

Judith Neumann, Arbitrator