

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

AFSCME LOCAL 284, AFL-CIO

and

CITY OF EAU CLAIRE

Case 272
No. 66721
MA-13609

(Grievance No. 2006-7; Betty Holmes Grievance)

Appearances:

Mr. Steve Day, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 318 Hampton Court, Altoona, Wisconsin 54720, appeared on behalf of the Union

Mr. Steve Bohrer, Assistant City Attorney, City of Eau Claire, 203 S. Farwell Street, P.O. Box 5148, Eau Claire, Wisconsin 54702, appeared on behalf of the City.

ARBITRATION AWARD

On February 15, 2007 the City of Eau Claire and Local 284, American Federation of State, County, and Municipal Employees, AFL-CIO filed a request with the Wisconsin Employment Relations Commission, requesting that the Commission appoint William C. Houlihan, a member of its staff to hear and decide a matter pending between the parties. A hearing was conducted in Eau Claire, Wisconsin on July 11, 2007. The proceedings were not transcribed.

There are two issues presented in this proceeding. The first is whether or not the grievance was filed timely. The second issue is whether or not the City violated the agreement when it did not award a vacant position to the grievant, Betty Holmes. At the conclusion of the evidentiary hearing the parties stipulated to a bifurcated briefing and decision schedule. Post-hearing briefs, on the timeliness issue, were filed and exchanged by August 29, 2007.

BACKGROUND AND FACTS

At some point in 2006, Rosie O'Donahue, the Stores Clerk, retired. The City determined to fill her vacated position, and on May 17, 2006 the position was posted. In

filling the position, the City determined to administer certain qualifying tests. Among its provisions the posting included the following; "The following tests will be administered: Excel Basic Knowledge, Shipping and Receiving Clerk Skills".

Betty Holmes, the grievant, was the senior bargaining unit employee who signed the posting. Ms. Holmes originally believed the position would be filled without testing. She subsequently became aware of the test requirement, and studied for the test. Phil Johnson, the Superintendent of Parks and Maintenance, supervises the position of Stores Clerk. On or about June 5, Johnson met with each of the applicants for the position and it was his testimony that he advised each of them that 75% was a passing grade on the test. Ms. Holmes testified that Johnson told her what per cent he was looking for and indicated it was possible that he told her she needed 75%. I believe Johnson indicated that 75% was a passing grade and that Holmes understood that to be the case on June 5.

The two tests were administered on June 6, by an outside testing company. At the conclusion of the tests, the grievant asked for her tests and scores. In response, she was given summaries of both tests. The first, Microsoft Excel, indicated that her Score was 14 of a possible 30, and that her Total Score was 46%. The document went on to list the character of each question, and whether her answer was correct or incorrect. Subsequent pages grouped the questions by type and also by difficulty. The second document, Shipping and Receiving Clerk Skills, had the same format. It listed her Score as 21 of a possible 39, with a Total Score listed as 53%.

Ms. Holmes asked the test monitor about the test results and was told that she did well for someone who had never worked with Excel. Ms. Holmes testified that she did not understand whether or not she passed the test, or what the scores meant. She returned to the workplace after the test and talked with a number of co workers about the test and its significance. She showed the test summary documents to co workers, and asked for their input.

At one point, Mary Beth Berry, a clerk in the Park and Forestry Department, happened by one of these conversations, and it is her testimony that she heard Ms. Holmes remark to her co workers, "I did not pass the test". Berry returned to her office where she advised Johnson that Holmes had failed the test. This was the first time Johnson heard that Holmes had not passed the test. Ms. Holmes testified that she believed she said, "I don't know if I passed or not". Matthew Staudenmaier, a participant in the conversation, recalled Ms. Holmes version of the conversation. Trig Dutter, another participant in the conversation, testified on direct examination that he could not recall Betty telling him she had failed. On cross-examination he indicated that he did not know if she said she failed.

No one immediately advised Ms. Holmes that she had failed the exam. She and Dutter attempted to speak to Johnson, but he was either not at work or unavailable. It was June 13 before they could talk with Johnson, and in the course of their conversation he indicated that she had failed the test. An oral grievance was filed on June 13. A written grievance was filed on June 22, 2006.

ISSUE

The parties stipulated the issue to be decided:

Did the grievant or the Union know, or ought to have known, by June 7, 2006, that the Grievant failed the Stores Clerk tests administered to the Grievant on June 6, 2006?

If the City proves yes, then the grievance is determined by the Arbitrator as untimely and is denied.

If the City is unable to prove yes, the grievance is determined by the Arbitrator as timely and the parties may brief the merits.

DISCUSSION

I believe that Johnson advised Holmes that 75% constituted a passing grade on, or about, June 5. He did so before she took the exam on June 6. Once she completed the exams, Ms. Holmes asked for a copy, and was given a summary which indicated her per cent test scores. Her 46% and 53% fall well below the 75% threshold. I have reviewed the documents that she saw, and the scores are clear. There is no ambiguity about them. Each is accompanied with the number of questions asked and the number answered correctly, which would allow for a reader to check the accuracy of the percentages, and further to clarify any ambiguity as to what was being reported. Based on this alone, I believe the grievant should have known that she failed the Stores Clerk tests, when she reviewed the test results on June 6, 2006.

Based upon the testimony as a whole, I believe it is more likely than not that Ms. Berry heard Ms. Holmes indicate that she had failed the test during the June 6 conversation she overheard.

AWARD

The parties have stipulated that if the City could prove that the grievant knew or should have known that she failed the test by June 7 the grievance is to be determined as untimely and denied. The grievance is therefore denied.

Dated at Madison, Wisconsin, this 11th day of October, 2007.

William C. Houlihan /s/

William C. Houlihan, Arbitrator

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