

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**OSHKOSH PUBLIC LIBRARY EMPLOYEES'
LOCAL 796-A, AFSCME, AFL-CIO**

and

OSHKOSH PUBLIC LIBRARY

Case 365

No. 67077

MA-13745

Appearances:

Ms. Mary Scoon, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, W5670 Macky Drive, Appleton, Wisconsin 54915, on behalf of the Union.

Davis & Kuelthau, S.C., by **Mr. William G. Bracken**, Employment Relations Services Coordinator, 218 Washington Avenue, Oshkosh, Wisconsin 54903-1278, on behalf of the Employer.

ARBITRATION AWARD

Oshkosh Public Library Employees' Local 796-A, AFSCME, AFL-CIO (herein the Union) and the Oshkosh Public Library (herein the Employer) are parties to a collective bargaining relationship. At all times pertinent hereto, the contract between the Union and the Employer covering the years 2004-06 had expired and the parties were in negotiations over a successor agreement. On June 27, 2007, the Union filed a request with the Wisconsin Employment Relations Commission (WERC) to initiate grievance arbitration over the placement of bargaining unit member Victoria Schettl on the wage schedule after she bumped into the position of Library Assistant II subsequent to her layoff from the position of Bookmobile Operator. The undersigned was appointed to hear the dispute pursuant to a joint request from the parties and a hearing was conducted on September 13, 2007. The proceedings were transcribed. The parties filed initial briefs by November 4, 2007. The parties did not file reply briefs and on November 20, 2007 the record was closed.

ISSUES

The parties stipulated to the following statement of the issues:

Did the Library violate the 2004-06 contract when the Grievant, Victoria Schettl, was laid off from her Bookmobile Operator position at Step 2 on the pay scale and bumped into and was subsequently placed at Step 2 of the Library Assistant II position?

If so, what is the appropriate remedy?

PERTINENT CONTRACT LANGUAGE

Article VII – Seniority – Layoffs

Section 2. In the event of lack of work or lack of funds, employees within the classifications affected shall be laid off in inverse order to the length of service, provided that the remaining employees can adequately perform the duties so that the Library's service to the public is not adversely affected. The affected employee(s) shall have the right to exercise his/her seniority by bumping onto a lower paying classification for which he/she is qualified. The last employee laid off shall be the first to be called back from such layoff. Permanent full-time and permanent part-time employees shall not be subject to layoff until all temporary and probationary employees within the classification affected are laid off. A permanent employee faced with a layoff shall have the option to exercise his/her seniority by displacing a temporary employee who is filling a position for which the permanent employee is qualified for as determined by the qualifications listed in the applicable class specifications. Salaried employees shall be laid off in the above manner rather than having their hours reduced.

Article VIII – Promotions – Job Posting – Transfer Policy

Section 2. All non-supervisory vacancies not filled through the transfer policy shall be posted on the bulletin board for a period of seven (7) calendar days. Employees interested in such jobs shall sign the posted notices. All applications for such positions must be submitted to the Office of the Director before the end of the posting period. Employees may not sign job postings for jobs within their own classification, unless said posted job is for more or less scheduled hours than the job which the employee is presently performing, or unless the employee has been in his/her current position for at least one (1) year. A copy of each job posting shall be given to the Union. Postings will have salary range attached and an employee moving into a higher classified position shall be paid within the new range at the rate immediately higher than the one he is receiving at the time of promotion. Postings shall list the location and department of the position in addition to the classification.

Article XXIII - Wages

Section 1. Employees shall be compensated within the pay range set forth in the salary schedule attached hereto and in accordance with the rules for administration.

Article XXVIII – Duration

This agreement shall become effective January 1, 2004, and shall remain in full force and effect until and including December 31, 2006, and shall be automatically renewed from year to year unless negotiations are instituted by August 1 of any subsequent effective year.

Article XXX – Management Rights

The Union recognizes that, subject to the express provisions of this agreement, the supervision, management, and control of the Library's business, operation, and facilities are exclusively the function of Library Management.

BACKGROUND

Oshkosh Public Library Employees' Local 796-A, AFSCME, AFL-CIO (herein the Union), represents all regular full-time and regular part-time employees of the Oshkosh Public Library, with the exception of Librarian I, II, III, IV, supervisory, confidential personnel and casual hourly employees. The bargaining unit includes the positions of Bookmobile Operator, Library Assistant II, Library Assistant I, Maintenance Engineer, Custodian I and Page.

Victoria Schettl, the Grievant herein, was hired by the Library on May 21, 1984, and in 2006 was working as a half-time Bookmobile Operator. The position of Bookmobile Operator has five scheduled wage steps and, at the end of 2006, Ms. Schettl was at Step 2, which paid a biweekly salary (to a full-time employee) of \$1,321.18. In December 2006, the Library notified the Union and its members of pending layoffs in 2007, which had never before happened. Ms. Schettl was informed that her position was being eliminated and that she had the option of bumping into either a half-time Library Assistant II position or a 3/5 time Library Assistant I position, both of which were lower paying classifications. In early January she returned a Notice of Employment Decision form in which she elected to bump into the Library Assistant II position. She was laid off on January 28, 2007 and, accordingly, bumped into the half-time Library Assistant II position. Upon her assuming her new position, the Employer placed her on Step 2 of an eight step wage scale for a Library Assistant II, which paid a biweekly salary (to a full-time employee) of \$1,196.84. In order to be making the same salary she had as a Bookmobile Operator, Ms. Schettl would have to have been placed at Step 6 as a Library Assistant II.

On February 2, 2007, Ms. Schettl filed a grievance, stating that under the contract she should have been placed at Step 6 of the Library Assistant II pay scale. The Library denied the grievance and the matter proceeded through the contractual process to arbitration. Additional facts will be referenced, as necessary, in the **DISCUSSION** section of this award.

POSITIONS OF THE PARTIES

The Union

The Union notes that the contract is silent as to where to place an employee who bumps into a lower classification on the new wage scale. Employees who post into higher classifications are placed at the lowest step giving them wage rate higher than the one they were at in their former position. Employees who move or are transferred laterally stay at the same rate of pay. In the past, there have been instances where employees moving to lower classifications have had their wage rate red-circled and remain at that rate until the wage rate for that classification catches up with them.

Here, the Grievant was told by her supervisor, Joan Mueller, that she would be placed at Step 6 on the Library Assistant II grid, but later was informed that was not the official position of management. She was also aware that in the past other employees had their wage rate red-circled when moving to a lower classification. The base rate for a Bookmobile Operator is the same as the Step 4 rate for a Library Assistant II and each successive step matches for the two classifications. The reason the Bookmobile Operator rate is higher is the requirement that a Bookmobile Operator have a CDL. Employees in both classifications advance through the steps of the grid annually and the Grievant was placed on Step II of the Library Assistant II grid due to her equivalent experience as a Bookmobile Operator. The Grievant has 24 years of total experience, so it is not inappropriate to place her at Step 6 on the Library Assistant II grid.

There are no provisions in the contract for where to place employees who bump into lower classifications. However, those who post into higher positions are placed on the step closest to, but higher than, their previous rate. It is logical, therefore, that employees moving to lower classifications would also be placed at the rate closest to their former salary. Other employees who bumped into lower classifications while at the top step at their former position took a pay cut, but were placed at the top step of their new position, so no grievances were filed. Here, the Grievant was neither at the top step of her former position, nor placed at the top step of her new position, so it was possible to equalize her wage rate if the Employer had chosen to do so and should have been done.

The Employer

The Employer argues that Article XXIII requires that the Grievant be placed at Step 2 of the Library Assistant II grid. Before she became a Bookmobile Operator, the Grievant was a Library Assistant I and had reached the top step of that classification. At the time of layoff, she

was at Step 2 of the Bookmobile Operator grid. The duties of the Bookmobile Operator and Library Assistant II are similar except for the CDL requirement for a Bookmobile Operator, thus it was appropriate to place her at the same step in the Library Assistant II range. Article XXIII requires that employees be compensated in accordance with the rules of administration, which is the purview of management, thus it was management's prerogative to place her at Step 2.

Arbitral precedent holds that wage rates are assigned to jobs, rather than employees, and that an employee moving into a new job is only entitled to the wage rate for the job based on his or her experience. (citations omitted) There is nothing in the contract here that allows the Grievant to take her wage rate with her into her new job. Thus, bumping into a new position means assuming a new wage rate commensurate with experience in the position.

The contract does not specify how a new wage rate is to be determined upon bumping into a new classification. That, then, is a residual power reserved to management under Article XXX. Thus, management has the right to place an employee on the wage scale subsequent to bumping into lower classification, absent express language limiting that right, which does not exist. Further, since the contract is silent on the issue, there can have been no violation of the contract, since there is no provision that directly bears on this issue. The parties bargained specific language about wage rates in promotion situations and could have done so in addressing layoffs and bumping, but chose not to.

The Employer also asserts that to grant the grievance would disrupt the integrity of the wage schedule and reward the Grievant for experience she does not have. This would lead to an absurd and nonsensical result and would allow the Union to obtain via arbitration what it could not obtain through bargaining. The arbitrator should also not be influenced by previous settlements where employees who were reduced in classification were red-circled at their existing wage rates. Those cases are distinguishable in that they involved involuntary transfers, rather than layoffs and occurred at a time when the Library had more flexibility in positioning its staff than it does at present. Finally, to grant the grievance would negate the reason for the layoff because the layoff was necessitated by a need to save money. Since a Library Assistant at Step 6 makes the same salary as a Bookmobile Operator at Step 2, there would be significantly less savings and the Grievant would receive a windfall for experience she does not have.

DISCUSSION

In this case, the Grievant bumped into a lower classification subsequent to a layoff, was placed on the wage scale in that classification in accordance with her experience and grieved because the result was a reduction in her salary. The parties agree that the contract is silent on where an employee is to be placed on the salary grid in such a circumstance. The Union asserts that logic, fairness and, to some extent, past practice dictate that the Grievant should have been placed on the grid at the point that would have kept her salary the same. The Employer argues that the placement was proper and within management's authority under general principles of contract interpretation.

I note at the outset that Article XXX of the contract sets forth management's rights and gives the Employer general supervisory control over all operations of the Library, subject only to express limitations contained in the contract. Generally, this means that management may exercise its reserved powers as it wills, so long as its actions are not arbitrary, capricious, discriminatory, or unreasonable.

A similar situation arose in CITY OF SUPERIOR, Case 141, 53703, MA-9437 (Jones, 9/5/96). In that case, the City had laid off three Mechanics in its Street Department, who then bumped into Laborer positions, which were a lower classification. The employees were thereafter placed on the Laborer wage grid at a lower rate of pay than they had been paid as Mechanics. In the absence of contract language specifying the wage to be paid to laid off employees bumping into a lower classification, the Union argued that the employees should have retained their former wage rates. Arbitrator Jones found that the appropriate wage rate for the employees was determined by reference to the wage appendix to the contract, which specified the appropriate wage for Laborers and held that the City had not violated the contract by paying the employees, now classified as Laborers, at that rate. Here, Article XXIII specifies that employees will be compensated according to the salary schedule appended to the contract in accordance with the rules for administration. The parties agree that within the classifications set forth in the schedules, step movement generally occurs annually on an employee's anniversary. Thus, the Ms. Schettl was placed at the level of a Library Assistant II with two years' experience. Since the record shows that she was previously paid at Step 2 as a Bookmobile Operator, and that, other than the need for a CDL, a Bookmobile Operator's duties are consistent with those of a Library Assistant II, absent some overriding consideration that would seem to have been the appropriate rate at which to have placed her.

Since the parties agree that there is no contract language limiting management's powers in this area, the inquiry then becomes whether there is some other limitation on management's authority, or whether management exercised its powers in an impermissible way. The Union argues that as a matter of symmetry it would make sense to keep an employee bumping into a lower classification as close as possible to his or her same rate, since employees given promotions are placed the lowest step which provides them a raise from their former position. There are two problems with this rationale. First, promotions are, by definition, advancements to a higher standing based on superior experience, training, or performance and, logically, should carry at least the same wage as the previous position, if not more. A reduction to a lower classification, whatever the cause, does not have the same inherent expectation of pecuniary reward, or even maintenance of status quo. Further, as the Employer points out, here the parties specifically bargained language to provide for step placement in the event of promotion, but did not do so for layoff and bumping situations, leading to the inference that they did not intend the same rule to apply. I do not find, therefore, that the promotion and transfer language supports the Union's position.

I am likewise not persuaded that there is past practice supporting the Union's position. In 2003, the Library was faced with a similar need to reduce staff in order to meet budget constraints. At that time it split a position and transferred two employees, Pamela Gumz and

Sandra Schulz to new positions in lower classifications. The employees grieved the transfers, preferring to be laid off and then exercise their bumping rights. In resolving the grievances, the Union agreed to withdraw the grievances and agree to the transfers in return for the grievants being red-circled at their existing rates of pay until such time as the wage grids for their positions caught up with them. Those situations were transfers which were made to avoid the need for layoffs and the settlements of their grievances were in exchange for their agreements to accept the transfers. That is a different situation from a layoff, which was within the Employer's purview, and an employee grieving the economic consequences of that action. Thus, there is no recognized practice between the parties of retaining the wage rate of an employee who is laid off and subsequently bumps into a lower classification.

For the reasons set forth above, therefore, and based on the record as a whole, I hereby issue the following

AWARD

The Library did not violate the 2004-06 contract when the Grievant, Victoria Schettl, was laid off from her Bookmobile Operator position at Step 2 on the pay scale and bumped into and was subsequently placed at Step 2 of the Library Assistant II position. The grievance is denied.

Dated at Fond du Lac, Wisconsin, this 12th day of March, 2008.

John R. Emery /s/

John R. Emery, Arbitrator

