

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
**GREEN LAKE COUNTY COURTHOUSE EMPLOYEES,
LOCAL 514-C, AFSCME, AFL-CIO**

and

GREEN LAKE COUNTY

Case 93
No. 69225
MA-14534

(Zibung and DeCramer Grievances)

Appearances:

Mr. David A. Dorn, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 306 Doty Street, Fond du Lac Wisconsin 54935, on behalf of the Union.

Attorney John B. Selsing, Green Lake County Corporation Counsel, 120 East Huron Street, Berlin, Wisconsin 54923, on behalf of the County.

ARBITRATION AWARD

Green Lake County Courthouse Employees, Local 514-C, AFSCME, AFL-CIO (herein the Union) and Green Lake County (herein the County) have been parties to a collective bargaining relationship for many years. At all times pertinent hereto, the Union and the County were parties to a collective bargaining agreement dated December 13, 2007 and covering the period January 1, 2007 to December 31, 2009, which provides for binding arbitration of certain disputes between the parties. On October 5, 2009, the Union filed a request with the Wisconsin Employment Relations Commission (WERC) to initiate grievance arbitration over the layoffs of Cory Zibung and Carole DeCramer (herein the Grievants). The undersigned was appointed to hear the dispute and a hearing was conducted on January 19, 2010. The proceedings were not transcribed. Briefing was completed by February 25, 2010, whereupon the record was closed.

ISSUES

The parties did not stipulate to a statement of the issue.

The Union would frame the issues, as follows:

Did the County violate the Collective Bargaining Agreement when it laid off the Administrative Assistant and a Code Enforcement Officer in the Zoning Department?

The County would frame the issues, as follows:

Whether Green Lake County violated the Labor Agreement between Green Lake County and Courthouse Employees as a whole by the layoff of Cory Zibung and Carole DeCramer of the Land Use and Zoning Department?

The Arbitrator frames the issues, as follows:

Did the County violate the Collective Bargaining Agreement when it laid off or reduced two full-time Land Use and Zoning Department employees without first laying off part-time Health and Human Services Department employees?

If so, what is the appropriate remedy?

PERTINENT CONTRACT LANGUAGE

ARTICLE 2 - RECOGNITION

A. The Employer recognizes the Union as the exclusive bargaining representative for all regular full-time, regular full-time part-time and regular part-time Employees of Green Lake County excluding elected officials, supervisory and confidential Employees, professional Employees such as nurses, social workers, instructors, teachers and therapists, law enforcement Employees and the organized Highway Department Employees.

B. The Employer and Green lake County retain and reserve the sole right to manage its affairs in accordance with all applicable laws, resolutions, ordinances and regulations. Included in this responsibility, but not limited thereto, is the right to determine the number and classification of Employees, the services to be performed by them; the right to manage and direct the work force; the right to establish qualifications for hire and to test and judge such qualifications; the right to hire, promote and retain Employees; the right to transfer and assign Employees; the right to demote, suspend, discharge for cause or take other disciplinary action subject to the terms of this AGREEMENT and the grievance procedure; the right to release Employees from duties because of lack of work or funds; the right to maintain because of lack of work or funds; the right to maintain efficiency of operations by

determining the method, means and personnel by which such operations are conducted, including the right to contract out provided that the exercise of this right shall not result in layoff of permanent Employees (Employees other than part-time, seasonal, or probationary) and provided that in the case of the layoff of non-permanent Employees, that the Employer shall have the burden of proving that the exercise of this right will result in a more economical operation of the department, and to take whatever actions are reasonable and necessary to carry out the duties and responsibilities of the Employer.

In addition to the foregoing, the Employer and Green Lake County reserve the right to make reasonable rules and regulations relating to personnel policy procedures and practices and matters relating to working conditions giving due regard to the obligations imposed by this AGREEMENT. The Employer shall give reasonable notice of new rules and regulations or changes therein as promulgated by it to the Employees. Any disagreement over the meaning or applications of such rules and regulations may be the subject of a grievance. However, the Employer and Green Lake County reserve total discretion with respect to the function or mission of the County, its budget, organization and the technology of performing the work. These rights shall not be abridged or modified except as specifically provided for by the terms of this AGREEMENT.

C. THE Employees, Management and the Elected Officials shall show respect to each other, fellow employees and the general public.

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ARTICLE 5 – SENIORITY RIGHTS

A. It shall be the policy of the Employer to recognize seniority in filling vacancies, transfers, demotions, making promotions and in laying of or rehiring; provided, however, that the application of seniority shall not materially affect the efficient operation of Green Lake County.

B. Seniority shall be based on the actual length of service for which payment has been received by the Employee.

C. There shall be three (3) seniority groups: full-time, full-time part-time Employees and part-time Employees. A full-time Employee is an Employee who works more than 1750 hours per year, a full-time part-time Employee is one who works more than 600 hours per year but less than 1750 hours per year. A Part-time employee is one who works 599 or less hours per year. Part-time Employees shall be given seniority credit for all hours worked (i.e.), 151.61 hours = one months seniority. All part-time Employees shall be laid off prior to

any reduction in full-time Employees, and shall be allowed to use their total seniority for bumping purposes.

D. In reducing employee personnel, the employer shall determine which positions are to be reduced or eliminated. An employee whose position is reduced or eliminated shall have the opportunity to “bump” a less senior employee within the bargaining unit, provided they are qualified to perform the duties of the position into which they are bumping. This Section shall not act to require the County to retain or recall an employee who is unqualified for the available work or whose employment or recall would seriously affect the efficiency of the department.

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BACKGROUND

Green Lake County Courthouse Employees Local 514-C is essentially a wall to wall bargaining unit that covers all regular full-time, regular full-time part-time and regular part-time Green Lake County employees, with the exception of professional, law enforcement and Highway Department employees, and employees who are excluded due to their supervisory, managerial, or confidential status. As such, it includes employees from throughout the various departments providing services to the residents of Green Lake County through the county government. The categories of regular full-time, regular full-time part-time and regular part-time employees are distinguished by the numbers of hours they are scheduled to work per year and, according to Article 5, Section C. of the collective bargaining agreement, if layoffs are instituted all part-time employees are to be laid off prior to any layoffs of full-time employees.

During the summer of 2009 the County determined that, due to weakened economic conditions resulting in reduced revenues, it would need to institute layoffs among bargaining unit employees. Accordingly, on August 6, 2009 notifications were sent to two full-time Land Use and Zoning Department employees, Code Enforcement Officer Cory Zibung and Administrative Assistant Carole DeCramer, the Grievants herein, that they would be laid off effective September 2 due to reduced revenues from applications for zoning permits and licenses. Notice of the pending layoffs was also provided to Union Representative David Dorn. At the same time the County also employed two regular part-time Meal Site Managers within the Department of Health and Human Services, who provided meal services to Green Lake County senior citizens. Neither of these employees were given layoff notices. On September 2 the Zibung and DeCramer layoffs took effect, as scheduled.

On September 2, the Union filed grievances on behalf of Zibung and DeCramer, citing Section 5(C) and asserting that by laying off the two full-time employees while retaining the part-time employees the County had violated the contract. The County denied the grievances on the basis that under its management rights it had the discretion to assign employees and to layoff employees due to lack of work or funds and that it also had the right to circumvent the

seniority provisions of the contract in order to maintain the efficiency of County operations. On September 22, the County Corporation Counsel notified the Union that it would also be laying off the Meal Site Managers. Instead, on October 30, the County acted to increase the hours of work of the Meal Site Managers to change their status to that of full-time part-time employees. Subsequently, DeCramer was recalled, but Zibung remains on lay off status. The grievances were processed through the contractual grievance procedure and ultimately were advanced to arbitration. Additional facts will be referenced, as necessary, in the **DISCUSSION** section of this award.

POSITIONS OF THE PARTIES

The Union

The Union asserts that the County has violated the plain meaning of Section 5(C) of the collective bargaining agreement, which requires all part-time employees to be laid off before any full-time employees may be laid off. The language is clear and unambiguous and the County remained in violation from the time it laid off the Grievants on September 2nd until it increased the hours of the part-time employees on October 20th.

It is well settled that clear and unambiguous language should be strictly enforced. The County tried to characterize DeCramer's lay off as a "reduction in hours," but the contract language states that part-time employees are to be laid off before any "reduction in full-time Employees." Her reduction to part-time status constituted a reduction in full-time Employees and thus was a violation of Section 5(C).

The County also argued that it was permitted to ignore Section 5(C) in consideration of Sections 2, 5(A) and 5(D), which state that recognition of seniority shall not materially affect the efficient operation of Green Lake County and which give the County the right to determine which positions shall be reduced or eliminated. It is, however, a standard rule of contract interpretation that contracts should be construed to give effect to all contract language. Wisconsin courts have held that contracts should be interpreted to avoid rendering any provision meaningless, inexplicable, or mere surplusage. To read the contract here as the County suggests would render the phrase "all part-time Employees shall be laid off prior to any reduction in full-time Employees" in Section 5(C) meaningless. A more reasonable interpretation would be to read the language of Section 5(D) as being limited by the language of Section 5(C).

It should also be recognized that Section 5(A), dealing with the application of seniority, does not really apply to this circumstance. While Section 5(C) appears in the Article entitled "Seniority Rights," it does not really deal with seniority, but rather with the different status to be accorded to employees defined as full-time and part-time. While seniority does have relevance within those respective groupings, the determination of how layoffs are instituted between the groups does not involve any application of the seniority principle. The County could not effectively argue that under Section 5(A) considerations of efficiency would allow it

to offer part-time benefits to full-time employees. The County's position is absurd and would have the effect of rendering section 5(C) null and void.

The County points to the importance of the Meal Site Managers and the necessary services they provide, which the Union does not dispute, but this point is irrelevant here. The County never considered eliminating the Meal Site program and, in fact offered evidence that were these employees eliminated other employees would incorporate their work into their schedules. No evidence was offered to the effect that the Meal Site Managers require special education, training, or qualifications. In short, the contract language is clear that the part-time employees should have been laid off before the full-time employees. The County did not do this and thereby violated the contract. The grievances should be sustained.

The County

The County points out that the Union witnesses established that the two Grievants had contractual bumping rights upon layoff that they chose not to exercise. Further, the Union witnesses testified to the importance of the Meal Site Program in the Health and Human Services Department in providing hot meal to senior citizens at the Senior center and also to homebound residents. The Union acknowledged that the loss of the Meal Site Managers would materially affect the efficient operation of the County and that the County does have right under the contract to manage its affairs and to release employees due to lack of work or funds. Further, it acknowledged that the shortage of funds within the Land Use Planning and Zoning Department was established and led to the decision to lay off the employees. Nevertheless, the County had initially agreed to lay off the Meal Site Managers until it discovered that it could retain them by merely adding one hour per year to their schedules.

It is established that the County does have the right to reduce manpower due to a shortage of funds and that this was the sole reason for the layoffs of the Grievants. The affected employees were properly notified and instructed as to their bumping rights, which they elected not to exercise. The Union also acknowledged that the lay off of the Meal Site Managers would not have made up the financial shortfall and that the layoffs of the full-time employees were necessary to make up the difference. The Union further acknowledged that the County does have the right to release employees due to lack of funds and that this was the sole reason for the layoffs of the Grievants.

The County asserts that it did not violate the contract. Section 5(C) must be read in conjunction with Section 5(A), which gives the County the right to act in accordance with the efficient conduct of its operations. The layoffs of the Grievants were due to purely economic reasons, which is also supported by Section 5(B). Finally, the County reiterates that the Grievants here did have bumping rights, of which they were apprised and which they elected not to exercise. The grievances should, therefore, be denied.

DISCUSSION

In this case, the County laid off two full-time bargaining unit members due to a budget shortfall, while at the same time retaining two part-time bargaining unit members who worked in a different department. The parties dispute the interplay between different sections of the contract as they relate to the County's authority to layoff bargaining unit members under these circumstances, and the proper weight to be accorded to each. The Union relies on the language of Section 5(C), which states that all part-time employees must be laid off before any full-time employees are reduced. The County relies on language in Section 2(B), which gives it the right to release employees due to lack of work or funds, Section 5(D), which gives it discretion to determine which positions are to be reduced or eliminated, and Section 5(A), which states that the application of seniority shall not materially affect the County's operations. The Union asserts that Section 5(C) is clear and unambiguous and must be applied according to its terms. The County asserts that Section 5(C) must be read together with the sections to which it refers and that it must be subordinated to the County's management rights to make decisions regarding the workforce in order to maximize the efficiency of operations.

I note at the outset that, as the Union maintains, this is not really a case about seniority. The grievances do not assert that the seniority rights of the parties were violated, but that they were laid off prior to part-time employees, which is a separate issue. As the County notes, Section 5(C) does, indeed, appear in Article 5 – Seniority Rights, and the language of the Section creates seniority groupings among the bargaining unit members based on their status as full-time, full-time part-time, or part-time employees. Thus, within those categories the bargaining unit members have seniority rights vis-à-vis one another. The language to which the Union refers, however, does not base the right of full-time employees to be preferred over part-time employees in lay off situations on seniority, but rather on their status as full-time employees. Thus, the issue is not whether the Grievants had seniority over the Meal Site Managers, but the significance, if any of their respective status as full-time and part-time employees. I find, therefore, that the language of Section 5(A), which subordinates seniority to the efficiency of County operations, does not apply here.

The County's authority to release employees due to lack of work or funds is found in Section 2(B), which is the management rights clause. This clearly supports the County's proposition that it has discretion to make staffing decisions based upon economic considerations. This discretion is not unfettered, however, for the last sentence of that clause provides that "(t)hese rights shall not be abridged or modified *except as specifically provided for by the terms of this AGREEMENT.*" (emphasis added) Thus, it is necessary to consider whether other language of the contract, and specifically Section 5(C), modifies the County's authority to reduce the workforce.

This inquiry involves an analysis of the proper application of the competing language in Sections 5(C) and 5(D). Section 5(C) states that "(a)ll part-time Employees shall be laid off prior to any reduction in full-time Employees," whereas Section 5(D) states that "(i)n reducing employee personnel, the employer shall determine which positions are to be reduced or

eliminated.” The question then becomes whether the mandate to lay off part-time employees before full-time employees supersedes the County’s right to determine the positions to be reduced, or vice versa. Essentially, it is a question of whether, in reducing the workforce, the County needs to consider the employee over the position. In addressing this question, I acknowledge the standard rules of contract interpretation that contracts should be construed in such a manner as to give effect to all terms, and that an interpretation that would render a provision null and void is generally not to be preferred over one that would not do so.

There is no question that from the County’s perspective, the most efficient utilization of resources would be accomplished by allowing it to create, maintain and staff those positions that it feels best accomplish its mission, and reduce or eliminate those which it feels do not. In such an analysis, whether the incumbent employees were full-time or part-time would be one, but perhaps not the most significant, consideration. This begs the question, however, of if the County can reduce or eliminate positions without considering whether the incumbents are full-time or part-time employees, does the pertinent language of Section 5(C) any longer have meaning? Conversely, if the County must give primary regard to whether employees are full-time or part-time when making lay off decisions, without reference to the positions they hold, what becomes of the County’s right to determine the positions to be reduced or eliminated?

In my view, the proper view of these competing provisions must be determined in light of the County’s primary mission to provide services to its citizens, and its reserved rights to determine what services are to be provided and the best means of accomplishing that goal. Logic would dictate, therefore, that when the County must make a determination of how to reallocate finite resources, it must have the ability to prioritize where the resources are to be allocated, which includes the decision of whether to add or eliminate positions in order to best effectuate its mission. Once it has determined the positions to be the reduced, it must first lay off any part-time employees before laying off any full-time employees within that position, thereby effectuating the language of Section 5(C). Once the part-time employees in the position have been reduced, the County may then reduce full-time employees. Once the layoff process has begun, any laid off employee, part-time or full time, may bump into any position in the bargaining unit for which he or she is qualified, that is held by an employee with less total seniority. To the extent that the County may not lay off full-time employees, while retaining part-time employees in the same positions, therefore, its discretion is not unfettered. Nevertheless, the County retains the right to make the initial determination of which particular positions are to be reduced.

Here, the County was faced with a budget shortfall of \$47,000.00 specifically because of a reduction in the receipt of permit and license fees in the Land Use and Zoning Department. It determined, therefore, to lay off the Grievants because the reduction in license and permit applications resulted in not only less funds, but also less work for the employees. At the same time, it retained the two part-time Meal Site Managers because they worked in the Department of Health and Human Services, the need for their services had not diminished and their program received funding from the state and federal governments. Under the provisions of the contract, as set forth in the foregoing analysis, this was a determination the County had

discretion to make and it did not violate the contract in doing so. Had there been part-time employees in the Land Use and Zoning Department, they would have had to have been reduced before the full-time employees. As it was, however, the only part-time employees were in the Health and Human Services Department and the County was not required to lay them off before it could layoff the Grievants. The Grievants still retained bumping rights and could have bumped into any positions for which they were qualified which were held by less senior employees, but they elected not to do so.

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

AWARD

The County did not violate the Collective Bargaining Agreement when it laid off or reduced two full-time Land Use and Zoning Department employees without first laying off part-time Health and Human Services Department employees. The grievances are denied.

Dated at Fond du Lac, Wisconsin, this 7th day of April, 2010.

John R. Emery /s/

John R. Emery, Arbitrator