

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**OCONTO COUNTY**

and

**OCONTO COUNTY COURTHOUSE EMPLOYEES  
LOCAL 778-A, AFSCME, AFL-CIO**

Case 176  
No. 69494  
MA-14627

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**Appearances:**

**Dennis O'Brien**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 5590 Lassig Road, Rhinelander, Wisconsin 54501, for the Union.

**John J. Prentice**, Simandl & Prentice, S.C., Attorneys at Law, 20975 Swenson Drive, Suite 250, Waukesha, Wisconsin 53186, for the County.

**ARBITRATION AWARD**

Oconto County and Oconto County Courthouse Employees Local 778-A, AFSCME, AFL-CIO selected me to resolve a layoff/bumping issue. Hearing was held in Oconto, Wisconsin on March 12, 2010. No transcript was made of the proceedings. The parties filed written argument-the last of which was received April 20, 2010.

**ISSUE**

The parties were unable to agree on a statement of the issue to be resolved by this award but gave me the authority to frame the issue after considering their respective views. Having done so, I frame the issue as follows:

If she is laid off, does the grievant have the right under Article IV, Section 3 of the parties' contract to bump less senior employees outside of her group/department whose work she can perform?

**DISCUSSION**

The contract provision in question states:

Section 3. For purposes of layoff, there shall be four (4) groups as follows:

- A. Human Services
- B. Paralegals, D.A., Corp. Counsel, Child Support, Circuit Court, Clerk of Courts.
- C. Parks, maintenance, land, zoning, tax listing
- D. Miscellaneous – all other offices

When the workforce is reduced, layoff shall be by seniority, taking the employees covered by this Agreement and laying off first the employees with the least seniority in the department, provided the senior remaining employees in the department are able to perform the work. The person laid off in the department shall be able to bump the less senior persons in the unit whose job s/he can perform. A full-time employee who is bumped in a department shall not be required to take part-time work in that department, but has the right to bump into the unit. Part-time employees shall not use bumping as a means to obtain a full-time job. The last person laid off shall be the first person rehired and so on, in order of seniority.

Prior to any layoff of regular full-time employees, all temporary and LTE employees will be laid off first.

The County contends that this contract language only allows for “bumping” with the laid off employee’s “group” or “department.” The Union asserts that although the layoff/bumping sequence is initiated within one of the four “groups” or “departments”, contractual bumping rights are bargaining unit wide. I conclude the Union is correct.

When interpreting a contract, it is presumed that the parties intend to have the words in a contract given their usual/common meaning. When interpreting a contract, it is also presumed that when the parties use different words, they intend that those different words have different meanings. The usual meaning of “unit” is entire bargaining unit. The usual meaning of “group” or “department” is a portion of the bargaining unit. The County’s interpretation of the contract language requires that I find “unit” to mean the same thing as “group” or “department.” and thus violates both of these presumptions of contractual interpretation. The Union’s interpretation of the contract honors both of these presumptions.

In reaching my conclusion, I comfortably rely on the contract language itself and find no reason to consider the conflicting evidence of the more than 20 year old bargaining history presented by each side. While the County correctly notes that the parties may have been less than careful when drafting the new contract language because they used the words “group” and “department” despite likely intending them to have the same meaning, I do not share the

County's view that this potential point of ambiguity in one part of Section 3 warrants a conclusion that the meaning of "unit" is also ambiguous.

The County notes that the contract language that preceded the current language provided for unit-wide bumping and asks why would the County have been interested in agreeing to the current language if unit-wide bumping is still present. However, the Union correctly points out that the use of "groups" or "departments" for the purposes of initiating a layoff can be less disruptive than what would have occurred under the prior contract language. The Union also notes how unlikely it is that it would have given up unit-wide bumping without receiving a substantial comparable benefit in return. The County does not assert (and there is no evidence in the record) that any quid pro quo was given for the very substantial concession the Union would have made under the County's interpretation of the current contract language.

The County asserts the contractual sentence "A full-time employee who is bumped in a department shall not be required to take part-time work in that department, but has the right to bump into the unit." makes no sense in the context of the Union's interpretation of the disputed contract language. I first note that the use of the words "department" and "unit" in this sentence provides further evidence that the parties intended these words to have different meanings and thus is consistent with the Union's view of the disputed contract language. Secondly, the Union correctly points out that this language can viewed as a free-standing clarification/example of how the contract language will be implemented. Thus, while this specific sentence may not have been necessary within the context of the otherwise more general language of Section 3, it is not inconsistent with the Union's overall interpretation of the contract language.

### **AWARD**

Given all of the foregoing, it is my award that if the grievant is laid off, she has the right under Article IV, Section 3 of the parties' contract to bump less senior employees outside of her group/department whose work she can perform.

Dated at Madison, Wisconsin, this 7th day of June, 2010.

Peter G. Davis /s/

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Peter G. Davis, Arbitrator

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