

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
**DODGE COUNTY HIGHWAY DEPARTMENT EMPLOYEES
LOCAL 1323, AFSCME, AFL-CIO**

and

DODGE COUNTY (HIGHWAY DEPARTMENT)

Case #228
No. 68655
MA-14299

(David Fude – Probationary Period As Stock Clerk)

Appearances:

Lee Gierke, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, Post Office Box 727, Thiensville, WI 53092, appearing on behalf of Local 1323.

Nancy Pirkey, Attorney at Law, Buelow Vetter Buikema Olson and Vliet, LLC., 20855 Watertown Road, Suite 200, Waukesha, WI 53186, appearing on behalf of Dodge County.

ARBITRATION AWARD

Pursuant to the terms of their collective bargaining agreement, Dodge County (hereinafter referred to as either the County or the Employer) and AFSCME Local 1061 (hereinafter referred to as the Union) requested that the Wisconsin Employment Relations Commission designate Daniel Nielsen, a member of its staff, to serve as the arbitrator of a dispute concerning the County's decision to assign a vacant Stock Clerk position to a junior applicant, John Schuster, rather than to the senior applicant, David Fude. The undersigned was so designated. A hearing was held on August 26, 2009 at the County offices in Juneau, Wisconsin. In discussions prior to the hearing, the parties reached a non-precedential settlement agreement fully resolving that grievance. The agreement provided that the Grievant would serve a 90 day probationary period. The agreement further provided that if the Grievant was returned to his former position, and the Union disagreed, the arbitrator would retain jurisdiction over that dispute to determine whether the County's actions were arbitrary or capricious.

The parties invoked the arbitrator's retained jurisdiction, and a hearing was held on March 26, 2010, at which time the parties submitted such exhibits, testimony and other evidence as was relevant to the dispute. A stenographic record was made, and a transcript was received on April 22. The parties submitted briefs and, on June 9, 2010 waived replies, whereupon the record was closed.

Now, having considered the evidence, the arguments of the parties, the contract language, and the record as a whole, the Arbitrator makes the following Arbitration Award.

ISSUES

The parties agreed that the arbitrator should frame the issue in his Award. The issue may be fairly stated as follows:

Was the County's decision to return the Grievant to his former position arbitrary or capricious?

If so, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

...

ARTICLE VII PROBATIONARY PERIOD

...

7.4 Employees who are promoted may also be required to serve a ninety (90) day probationary period in the position to which they are promoted. Employees serving a promotional probationary period shall not be subject to discharge without recourse to the grievance procedure. During such probationary period, either the Employer or the Employee may request that the Employee be returned to his former position.

...

...

ARTICLE XIV SENIORITY RIGHTS

14.1 It shall be the policy of the Employer to recognize seniority.

...

14.4 Seniority shall apply in promotions, transfers, layoffs, and recall from layoff and vacation selection, as hereinafter provided.

14.5 Job Posting. Whenever a vacancy occurs or it is known that a new job will be created, the following shall apply:

. . .

14.52 The full time Employee with the greatest seniority, who can qualify, shall be given the job. In the event that a position is discontinued or in the event that the Employer does not intend to fill the position for some time, the Union shall be notified and provided reason therefore. Should there be a vacancy for a job as foreman, the vacancy will be posted. However, seniority shall not be the determining factor in filling the vacancy.

14.53 When objections are made by the Employer regarding the qualifications of an Employee to fill a position, such objections shall be presented to the Union Committee for consideration. If there is any difference of opinion regarding the qualifications of an Employee, the Union may take the matter up for adjustment under the grievance procedure in Article XV.

14.54 The Highway Commissioner may make temporary appointments to positions until any dispute with respect to those positions is resolved.

. . .

BACKGROUND

Dodge County provides general governmental services to its citizens, including the operation of a Highway Department. The Union is the exclusive bargaining representative for the Highway Department employees, including those classified as Stock Clerks. The two Stock Clerks are responsible for overseeing the operation of the stock room in the Highway Garage, insuring that parts are provided for the repair and maintenance of the County's equipment, including ordering parts that are not on hand, and seeing to the paperwork associated with that. They are also responsible for keeping track of the inventory of the parts room, although that responsibility has evolved over time.

In 2008, the County had two Stock Clerks in the stockroom, Rick Lemanski and Tom Prust. The two split some of the paperwork duties between themselves, with Prust handling invoices and purchase orders, and Lemanski doing daily entries. This work was done using a fairly cumbersome computer software package designed for the County by JD Edwards. The work of physically inventorying the contents of the stockroom at that time was primarily done by other employees on light duty.

Lemanski decided to retire as of the end of 2008, and in anticipation of the vacancy his position was posted. Among the applicants were the Grievant, David Fude, and John Schuster. Schuster had less seniority than the Grievant. The Highway Commissioner selected Schuster, and a grievance was filed on the Grievant's behalf. It was not resolved in the lower

stages of the grievance procedure and was referred to arbitration. An arbitration hearing was scheduled for August 26, 2009 at the County Courthouse in Juneau. In mediation prior to the hearing, the parties reached a settlement agreement, calling for the Grievant to be given a 90 day probationary period to demonstrate his capacity to perform the job:

GRIEVANCE SETTLEMENT AGREEMENT

. . .

THIS GRIEVANCE SETTLEMENT AGREEMENT (hereinafter "Agreement") is entered into by and between DODGE COUNTY (hereinafter "the County"), DODGE COUNTY HIGHWAY DEPARTMENT EMPLOYEES, LOCAL 1323, AFSCME, AFL-CIO (hereinafter "the Union") and DAVID FUDE (hereinafter "the Grievant") and represents a full and complete settlement of the pending grievance arbitration involving the filling of a vacancy in the Stock Clerk II position in the Highway Department in December, 2008.

1. On December 18, 2008, the Union filed a grievance on behalf of a bargaining unit member, David Fude, alleging that the County should have promoted him to the position of Stock Clerk II based on his seniority. The grievance proceeded through the various steps of the grievance procedure until it was scheduled for a hearing on August 26, 2009 before Arbitrator Daniel Nielsen. The grievance was settled in lieu of proceeding with the arbitration hearing.

2. The County agrees to place the Grievant in the position of Stock Clerk II effective September 8, 2009; the Grievant will serve a ninety (90) calendar day probationary period in that position in accordance with Section 7.4 of the collective bargaining agreement.

3. Both the County and the Union agree to act in good faith in allowing the Grievant to perform the job duties of the Stock Clerk II. The County agrees to give the Grievant a fair opportunity to prove his ability to perform the job duties of his new position. The Union agrees that its members will not unreasonably assist the Grievant in performing the job duties of his new position.

4. As permitted under Section 7.4 of the collective bargaining agreement, either the Grievant or the County may decide that the Grievant should return to his former position. The 90-day probationary period is not guaranteed, the County or the Grievant may decide that the Grievant should return to his former position at any time during the 90-day probationary period.

Should the County decide to return the Grievant to his former position during the probationary period, this decision can be grieved but is subject to an arbitrary and capricious standard of review.

5. Arbitrator Nielsen agrees to retain jurisdiction of this case in the event a new grievance is filed over the County's decision to return the Grievant to his former position during the probationary period.

6. Should either the Grievant or the County decide that the Grievant will return to his former position, the vacancy in the Stock Clerk II position will not be subject to job posting. Instead, the job shall be awarded to John Schuster, the employee who was awarded the job posting which resulted in the grievance at issue herein.

7. The Union and the Grievant agree to withdraw, with prejudice, the grievance they filed on December 18, 2008.

8. This Agreement shall have no precedential value between the parties and may not be used or referenced by either party in connection with any subsequent grievance or contract interpretation issue related to job posting procedures or filling vacancies.

9. This Agreement sets forth the entire agreement between the parties. It shall not be modified except by mutual agreement in writing signed by all the parties hereto.

. . .

The Grievant assumed the Stock Clerk position on September 8th. He was given monthly performance reviews in early October and early November. At the end of the 90 day probationary period in early December, County Highway Superintendent Brian Field sent him a letter, advising him that he was being returned to his former position:

December 4, 2009

Mr. David Fude
147 W. Oak Grove Street
Juneau, WI 53039

Re: Probation as Stock Clerk II

Dear Dave,

Based on our final review of your probationary progress in your current probationary position as a Stock Clerk II, we have determined that the following duties, responsibilities, and qualifications of the job description have not been met:

1. Review invoices daily for accuracy and completeness. Verify receipt and pricing on all invoiced items. Obtain Supervisor signature on invoices. Enter invoices to purchasing software. Forward receipt registers and invoices to Account Clerk II.
2. Enter all issues daily in to inventory software. Forward inventory journals and issues to Account Clerk II.
3. Count and record physical inventory as requested by Office Manager.
4. Moderate level of knowledge in clerical, inventory, and computer software operations and procedures.
5. Knowledge of stockroom parts and supply products.

Therefore, you have not satisfactorily completed your probation, and thereby you will return to your former position as a Skill Level II County Patrolman reporting to the Juneau shop effective December 5, 2009.

/s/ Brian Field
Highway Commissioner

Under the terms of the Settlement Agreement, the Stock Clerk position was awarded to John Schuster. The instant grievance was then filed, challenging the decision to return the Grievant to his Patrolman position.

Additional facts, as necessary, are set forth below.

ARGUMENTS OF THE PARTIES¹

The Position of the County

The County takes the position that the decision to return the Grievant to his former position was reasonable under all of the circumstances. Given that the standard the parties agreed to use in this proceeding is whether the County was “arbitrary or capricious” in its decision making, in order to prevail, the County must only show that its decision was not based on a notion or a whim. The evidence goes beyond that, and shows that the County employed a fair and objective process to evaluate the Grievant’s performance. Specifically:

- The County established criteria for measuring his performance at the outset – number of parts ordered, number of parts returned as inaccurately ordered, number of computer data entry errors, etc. - and briefed him on those criteria.

¹ For purposes of narrative clarity I have ordered the arguments with the County’s explanation of its reasons preceding the Union’s criticism of those reasons.

- The County also reviewed the first 90 days in the job for John Schuster, the former incumbent, to establish a baseline to measure from.
- The County determined what resources would be available to the Grievant, and provided him with the same internal assistance that had been available to the past three incumbents.
- The County employed the same standardized evaluation form for the Grievant as it had for the two prior Stock Clerks.
- The County evaluated the Grievant at 30 days intervals to assess his progress and identify areas of needed improvement. The Highway Commissioner collected objective data in preparation for those meetings and shared the data with the Grievant.

The process used to evaluate the Grievant was a model of fairness, and no reasonable observer could conclude that it was in any way arbitrary or capricious.

Just as the process used to evaluate the Grievant was fair and reasonable, the decision not to permanently award him the Stock Clerk job was objectively correct. The Grievant did his best, and the County acknowledges his efforts. However, he did not meet the expectations for the job. The Highway Commissioner identified five areas in which the Grievant fell short:

- The Grievant did not review invoices daily for accuracy, did not enter invoices into the purchasing software, and did not forward receipt registers and invoices to the Account Clerk II.
- The Grievant did not enter all issues into the inventory software and forward inventory journals and issues to the Account Clerk II on a timely basis.
- The Grievant did not count and record physical inventory as requested by the Office Manager.
- The Grievant did not gain a moderate level of knowledge in clerical, inventory and computer software operations and procedures.
- The Grievant did not gain knowledge of stockroom parts and supply products.

These are not minor or picky criticisms. In early October, the Grievant and the other Clerk – Tom Prust – were reminded that he had to be cross-trained to do purchase orders. In early November, the Grievant was directed to learn how to do purchase orders, and was told to focus on one supplier – Napa Auto Parts in Beaver Dam. He was given this directive at his 60 day review, when he had one month left in his probationary period. In the following month, he did one purchase order for this vendor, while Prust did five for this vendor. He did a total of 11 that month, while Prust did 51. He was directly told to focus on this work, and how to focus on this work, and he did not. He cannot blame Prust for this – if Prust was not cooperating in his training, it was up to him to bring this to management’s attention.

The Grievant also had difficulty in learning and using the JD Edwards system for parts inventory. Across his 90 day probationary period, he made 24 computer errors – 6 the first month, 16 the second month, and 2 the third month. While he slowed down and improved his accuracy in the third month, he continued to make errors, and his slowness at the parts window created concerns among the mechanics.

Conducting a physical inventory of parts was another area in which the Grievant could not perform up to standards. Daily inventory sheets were issued by the Office Manager, and completing these inventories was a shared duty of the two Clerks. This obligation was satisfied only half the time. As with the purchase orders, he cannot demonstrate his competence by blaming Prust. He had some personal obligation to perform this duty.

The job description requires that the Stock Clerk gain a moderate knowledge of the Clerical, Inventory and Computer software operations and procedures. The Grievant came to the job with very little familiarity with computers, and struggled with this throughout. Given his poor productivity in purchase errors, and high error rate on inventory, it is evident that he did not achieve the level of moderate knowledge by the end of probation.

Finally, the Grievant never achieved a working knowledge of the parts and products in the supply room. While no one can be expected to know all of the 6,000 parts in the stockroom, the Grievant required a degree of help from the mechanics that went beyond what might reasonably be expected. His need to constantly check with the mechanics was noted by the Shop Superintendent, the Assistant Commissioner, and the Commissioner.

While the Union may disagree with the decision, an arbitrary or capricious decision is one which lacks a rational basis or results from an unconsidered, willful and irrational choice. The Commissioner's decision here was anything but that. He consulted with other managers, supervisors and staff. He considered objective evidence of the Grievant's performance. He made his decision on the basis of a reasoned and fair process. Despite his sincere effort and desire to do the job, the Grievant simply failed to meet the standard of performance required of him.

The County recognizes that the other employees, including the mechanics, signed a petition in favor of the Grievant, and attesting that they thought he did a good job. While this is commendable, it is also irrelevant. It is up to management to assess performance, and they did so. They did so in a reasonable, good faith effort to accurately assess the Grievant, and they judged that he did not successfully complete his probationary period. Again, the Union may disagree, but the decision was fairly arrived at. Under an arbitrary and capricious standard, there is no basis for second guessing the Highway Commissioner's conclusion.

The Position of the Union

While an arbitrary and capricious standard of review sets an extremely low threshold, the Union asserts that the County acted in evident bad faith in this matter. This is directly contrary to the Settlement Agreement which led to this probationary period and which controls this arbitration. Both parties pledged to act in good faith: “Both the County and the Union agree to act in good faith in allowing the Grievant to perform the job duties of the Stock Clerk II. The County agrees to give the Grievant a fair opportunity to prove his ability to perform the job duties of his new position...” The County pre-determined that John Schuster was the better candidate, and set the standard for the Grievant at whether he measured up to Schuster’s performance. That is not what collective bargaining agreement provides and it is not what the settlement agreement called for. Whether the Grievant was better or worse than Schuster is beside the point – the question was supposed to be whether he could do the Stock Clerk job. Yet the County’s standard throughout was not whether the Grievant was qualified – it was whether he could measure up to their preferred candidate. In that sense, the entire exercise was merely a reprise of the decision on the original posting grievance. John Haase, the Shop Superintendent admitted as much, stating that he believed Schuster was superior to the Grievant because he had a background in the trucking industry. Again, their backgrounds were not supposed to be the issue. Highway Commissioner Brian Field gave a more polished explanation for his bias, but it showed through nonetheless. He held the Grievant responsible for completing the daily inventory, while ignoring the fact that it is a shared duty with the other Stock Clerk. He evaluated the Grievant on purchase orders, when no other Stock Clerk was ever evaluated on that basis.

The bias in this process is evident when one examines the alleged defects in the Grievant’s performance. He supposedly had difficulty with:

Review invoices daily for accuracy and completeness. Verify receipt and pricing on all invoiced items. Obtain Supervisor signature on invoices. Enter invoices to purchasing software. Forward receipt registers and invoices to Account Clerk II.

and with:

Enter all issues daily in to inventory software. Forward inventory journals and issues to Account Clerk II.

Yet the testimony of John Haase was that the Grievant initially had troubles with these, and then corrected them. Both of these items encompass his computer accuracy, and he went from 16 computer entry errors in his second month to 2 errors in the third. He was never told of a problem with data entry errors until the end of the second month, and he thereafter improved dramatically. That is evidence that the probationary period was accomplishing precisely what it was intended to accomplish – to identify weak spots and improve on them. If at the end of that time he was working at 2 errors per month, it cannot be the case that he did not meet expectations, unless those expectations are perfection rather than competence.

The County criticizes the Grievant, who had little experience with computers for failing to master the JD Edwards software. When asked how the software was to use, the Commissioner simply repeated "It's terrible. It's terrible." That "terrible" software is used for purchase orders, and the Grievant was downgraded for supposed defects in his work on purchase orders. In the past, one Clerk did invoices and purchase orders and the other did daily entries. The County changed this practice and decided that they Clerks should be cross-trained. Yet the County left the Grievant to learn through a hands-on training system that required the other Clerk, Tom Prust, to have the time to cross-train him. Prust apparently did not have time to train him until the final months of his probationary period, and he did 13 invoices on 11 purchase orders, with no errors. Interestingly, the County measures his performance on invoices and purchase orders not against John Schuster, who did zero in eight months, nor against the prior Clerk, Rick Lemanski, who did zero in four years, but against Tom Prust, who has been doing this work for sixteen years. Without training and guidance by Prust, it was obviously impossible for the Grievant to meet this standard of performance.

The County also points to alleged shortfalls in the daily inventory of the stockroom. This is a shared responsibility, yet the fault is all levied against the Grievant. Moreover, the fault is not defined. There was vague and conclusory testimony that he was somehow failing to complete the work, but there is no documentation of what was not done and why it was not done. Prior to the Grievant starting in the stockroom, the inventory was done as time permitted. Once he started, it became a fixed daily obligation. Yet none of the other job demands were modified to allow him time to do the work, and only he was held responsible for it. Tom Prust testified that he never received any daily inventory sheets.

Inventory, purchase orders and invoices are supposedly part of the Stock Clerk's job. Yet a review of the record shows that Rick Lemanski did zero inventory, zero invoices, and zero purchase orders in four years while he held the job. In the eight months that he held the job, John Schuster did zero invoices, and zero purchase orders. For his first three or four months, he did zero inventory, and then performed that duty as time permitted. What Lemanski and Schuster did do was daily entries. The Grievant did daily entries, as well as 13 invoices, 11 purchase orders and daily inventory, yet the County somehow judges that he cannot do the Stock Clerk job.

Finally, the County claimed that the Grievant did not have sufficient knowledge of parts. There is absolutely no evidence of the wrong parts being ordered. In his second evaluation the Grievant made a comment about being surprised at the number of parts that are involved in a single truck. This is apparently the basis of management's conclusion. That is simply a preposterous basis on which to make a judgment about the Grievant's ability. There is no evidence of some problem with the Stock Room's functioning. Management claimed that mechanics had to spend too much time explaining what parts they wanted, but no mechanic said that. Superintendent Haase said he saw the Grievant holding up parts to show mechanics, and asking if it was the correct part, and that this happened once or twice. Yet the mechanics who testified said it was common for the mechanic and the Stock Clerk – whomever it was – to discuss exactly what was needed. Otherwise it is often impossible to get the right part. There

are 6,000 parts in the Stock Room, and a wide variety of vehicle makes, years and models in the County's fleet. No one could do this job without checking with the mechanics to insure that the correct part is being provided or ordered.

The evidence relied upon by the County consists of suppositions and unfair comparisons. Their assessment of the Grievant's performance was merely a paper construct, designed to get them to the result they always desired – the selection of John Schuster for the Stock Clerk job. To further illustrate the County's evident bad faith, the Union notes the differences in the training, support and treatment the Grievant received in his three months on the job and the training, support and treatment John Schuster received in his eight months on the job.

Prior to assuming the Stock Room duties full-time, John Schuster spent several weeks with Rick Lemanski being oriented and trained. Further, the office staff came in and provided him with explanations and pointers on the computer system and data entry. When the Grievant reported for work in the Stock Room, he was not so much as greeted by the supervisor. He was not even provided a password to log onto the computer system. He had to hunt one up in the County's IT Department. He admittedly struggled with the computer system initially, but was eventually able to gain a working knowledge of it, and as noted, by the end of his time in the Stock Room he had advanced to the point of making only two errors in his final month.

John Schuster was never asked to do invoices. He was never asked to do purchase orders. He was ultimately asked to do daily inventory of the Stock Room, but only to the extent that time permitted. The Grievant did the same work on daily entries that Schuster did, but he also was expected to do purchase orders, invoices and a fixed amount of daily inventory. This raising of the bar is completely inconsistent with the good faith expected of the County under the settlement agreement. They planned the expectations for the Grievant with an eye to insuring that he failed, so that they could claim they gave him a chance. In fact, the evidence is that the Stock Room functioned smoothly and efficiently for the three months he worked there. There is no evidence of problems, and his co-workers – none of whom were consulted by the Commissioner before he decided the Grievant was doing a substandard job – uniformly testified that he was doing a good job. Their opinions are entitled to at least as much weight as the subjective, and clearly biased, opinions of the managers.

There is no actual evidence to support the County's criticism of the job the Grievant did for three months. The decision to deny him this position was arbitrary, and taken in bad faith. The arbitrator should so conclude, and the grievance should be granted.

DISCUSSION

The Grievant was awarded a probationary period of 90 days to demonstrate his ability to perform the job of Stock Clerk II in the County's Highway Shop. By the terms of the settlement agreement granting the tryout, both parties agreed that a decision to return him to his former position would be subject to an arbitrary and capricious standard of review. The County did decide the return him to his former position, and the question before the arbitrator is whether that decision was arbitrary or capricious.

In order to satisfy an arbitrary and capricious standard, a decision need not be the best decision – it need not even be the correct decision. Broadly speaking, a decision is arbitrary or capricious if a reasonable person, in possession of the facts and acting in good faith, could not have reached that decision. Certain elements of the County’s evaluation of the Grievant are arbitrary, in the context of the collective bargaining agreement. Specifically, I agree with the Union that evaluating the Grievant against a minimum standard of how Schuster performed in his early days on the job is inconsistent with the purpose of the probationary period. The standard for success is whether the Grievant could perform the job, not whether he was better at it than John Schuster. The collective bargaining agreement provides that “The full time Employee with the greatest seniority, *who can qualify*, shall be given the job.” The probationary period is intended to test the competence of the senior employee who qualified. Nowhere does the contract speak of relative abilities among applicants, yet by using Schuster as the minimum against which he was measured, that is effectively the standard the County sought to employ.

I also agree that the County seriously overstated any problems the Grievant may have had with the accuracy of his computer entries and his knowledge of the parts inventory. As the Union correctly notes, the Grievant’s error rate dramatically improved once someone told him he was making data entry errors, and he had only two such errors in the month before he was removed from the Stock Clerk position. That is hardly the mark of someone who is incapable of understanding the computer system or performing accurate data entry. As for his alleged unfamiliarity with parts, the evidence offered by the County consists of the impressions of the managers that he needed more consultation with the mechanics than other Clerks had. This is entirely anecdotal, and is flatly contradicted by the testimony of the mechanics. There is no evidence of any actual mistake that the Grievant made in identifying, providing or procuring parts for the mechanics.

The County made a more substantial case on the subjects of daily inventory, invoices and purchase orders. The Union objects that these duties were redistributed and/or increased from the time that Schuster had the job, and asserts that this was part of an effort by the County to insure that the Grievant failed. However, the County reasonably explained why it wanted both Clerks to be capable of handling invoices and purchase orders, and why it sought a more regular performance of physical inventory. The Grievant conceded that he did not do as he was instructed and focus on learning the purchase order system by working on a single vendor, but he argued that his coworker Prust did not cooperate with him in this effort. I must agree with the County that the Grievant had responsibility to comply with the directive he was given, and that blaming Prust does not absolve him of that responsibility. If Prust was not helping, it was up to the Grievant to either persuade Prust to cooperate or to speak with management to secure Prust’s cooperation. Simply not doing what he was told was not an available option. In the same vein, if Prust was not pulling his weight on the daily inventory duties, it was incumbent on the Grievant to either speak to Prust or speak to management. While he may have been reluctant to do so, it was he and not Prust who was in a probationary period and needed to prove his capabilities.

The Union challenges the overall process by which the County assessed the Grievant, and argues that it was shot through with bad faith and prejudice. Certainly it was flawed and there is a fair inference to be drawn that at least some of the supervisors were rooting against him. However, the question on review is not whether these evaluators acted in good faith. It is whether a reasonable person, who was acting in good faith, could have arrived at the same conclusion. I believe that this is a close case and that the decision was arguable. However, given the defects in the Grievant's progress on purchase orders and invoices, I cannot say that no reasonable person could have decided to return him to his former position, or that bad faith must have been the underlying basis of the decision.

On the basis of the foregoing, and the record as a whole, I have made the following

AWARD

The County's decision to return the Grievant to his former position was not arbitrary or capricious. The grievance is denied.

Dated at Racine, Wisconsin, this 23rd day of November, 2010.

Dan Nielsen /s/

Daniel Nielsen, Arbitrator

DN/dag
7648