BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

MONROE COUNTY

and

MONROE COUNTY COURTHOUSE EMPOYEES, LOCAL 138, WISCONSIN COUNCIL 40, AFSCME, AFL-CIO

Case 205
No. 70080
MA-14854

Appearances:

Ken Kittleson, Personnel Director, 14345 County Highway B, Room 3, Sparta, Wisconsin, appeared on behalf of the Employer.

Rob Wayss and **Jack Bernfeld**, Staff Representatives, 2024 Clearwater Drive, Onalaska, Wisconsin, and 8033 Excelsior Drive, Suite "B", Madison, Wisconsin, respectively, appeared on behalf of the Union.

ARBITRATION AWARD

Monroe County Courthouse Employees, Local 138, AFSCME, AFL-CIO, herein referred to as the "Union," and Monroe County, herein referred to as the "Employer," jointly selected the undersigned from a panel of Arbitrators from the staff of the Wisconsin Employment Relations Commission (herein "WERC") to serve as the impartial Arbitrator to hear and decide the dispute specified below. The Arbitrator held a hearing in Sparta, Wisconsin, on November 22, 2010. The parties agreed to file post-hearing briefs, the last of which was received February 7, 2011.

ISSUES

The parties could not agree on the statement of the issues. I state them as follows:

1. Did the Employer violate the terms of the collective bargaining Agreement when it hired Ms. Pfaff at a wage rate above Step C and continued thereafter to pay her at a rate above Step C?

2. If so, what is the appropriate remedy?

FACTS

The facts in this matter are not in dispute. The Employer is a Wisconsin county. The Union represents various employees of the Employer in the courthouse. Circuit Judges are elected judicial officials who have a degree of independent authority over their subordinates known as "Judicial Assistants." That authority includes the authority to select and to have appointed those persons whom a specific judge chooses to be his or her Judicial Assistant. Judicial Assistants in Monroe County are included in the Courthouse bargaining unit and represented by the Union as to those matters which are subject to collective bargaining. The position in dispute is the Judicial Assistant to Hon. David Rice, Circuit Judge.

The parties negotiated the Collective Bargaining Agreement which is subject to this dispute in about the year 2000, well before the incidents leading to the grievance. The disputed provisions were first incorporated into the Agreement covering this unit in the parties' first Agreement. The disputed language was taken from other Agreements between the parties which in turn had been adopted from what is now Sec. 4.27 of the Personnel Policy.

On April 4, 2010, David Rice was elected to fill the position of Circuit Judge in a newly created judicial branch in Monroe County. He had been in private law practice for many years prior to being elected. Beatrice Pfaff had been employed in that private practice since June, 1997. Ms. Pfaff had conditionally agreed to Judge Rice's request prior to his seeking election that if he were to run for election and succeed that she would be his Judicial Assistant.

Judge Rice was scheduled to commence his term on August 1, 2010. Shortly after April 4, 2010, the Employer duly posted the position in dispute for applications by employees already employed by the Employer. E. applied.[1] Judge Rice interviewed her and decided not to select her because of his pre-determined choice to have Ms. Pfaff be his Judicial Assistant.

At about this time, Judge Rice and Ms. Pfaff discussed the pay rate for the position in dispute and Ms. Pfaff indicated that she would not accept the pay rates specified at Steps A through C in the Agreement. Ultimately, she agreed that she would accept the job at no less than the equivalent of Step E.

Judge Rice discussed the matter with Mr. Kittleson who suggested that the Judge appear before the Monroe County Personnel and Bargaining Committee to ask that they make an exception to the Step C limit in the wage schedule under the personnel policy specified below.

[1] I have used the applicant's last name initial because she was the unsuccessful candidate.

No one on behalf of the Employer ever contacted the Union concerning the issue of the pay rate for Ms. Pfaff prior to the meeting discussed in the paragraph below. The Employer never asked the Union for an exception to the hiring rate of Appendix A except as the parties may have discussed a resolution in of the grievance in the grievance procedure.

Mr. Kittleson and Judge Rice appeared before the Monroe County Personnel and Bargaining Committee on June 10, 2010 and requested that the Committee approve hiring Ms. Pfaff at Step E. Ms. Pfaff was not present at the meeting. The Union was not given a specific notice of the issue to be discussed at the meeting and it was not present. The Committee approved a starting salary for Ms. Pfaff at Step E of the salary schedule which is greater than the alleged maximum hiring rate of Step C specified in Appendix A of the Agreement.

The Employer never posted the position for external candidates or advertised for any other candidates for this position. There are two other Judicial Assistants, both have progressed through the salary schedule and are now paid at steps higher than E. None was hired at a step above Step C of the wage schedule.

On June 24, 2010, the Union filed a grievance protesting that hiring Ms. Pfaff at a salary above Step C was a violation of the Collective Bargaining Agreement and asked that the Employer cease and desist from violating the Collective Bargaining Agreement. The grievance was processed through all of the steps of the grievance procedure without resolution. It was then properly appealed to arbitration.

Ms. Pfaff started employment as Judge Rice's Judicial Assistant on August 1, 2010, after the grievance had been processed through all of the steps of the grievance procedure. She has been paid at Step E of the wage schedule at all relevant times.

RELEVANT AGREEMENT PROVISIONS

. . .

Article 4 – MANAGEMENT RIGHTS

Section 1. The County possesses the sole right to operate County government and all management rights repose in it, subject only to the provisions of this Agreement and applicable law. These rights include, but are not limited to the following:

A. To direct all operations of the County;

B. To establish reasonable work rules and schedules of work;

C. To hire, train, promote, transfer, schedule and assign employees to positions within the County;

D. To suspend, demote, discharge and take other disciplinary action against employees for just cause;

E. To relieve employees from their duties because of lack of work or any other legitimate reason;

F. To maintain efficiency of county government operations;

G. To take whatever action is necessary to comply with state or federal law;

H. To introduce new or improved methods or facilities;

I. To change existing methods or facilities;

J. To determine the kind and amount of services to be performed as pertains to county government operations; and the number and kinds of classifications to perform such services. In case of the creation of a new position or classification, or a change in the content of an existing position or classification, the parties shall negotiate wages for the position or classification;

K. To contract out for goods and services, provided that such contracting out for goods and services shall not result in layoffs of present employees;

L. To determine the methods, means and personnel by which County operations are to be conducted.

The County's exercise of the foregoing functions shall be limited only by the express provisions of this Agreement. If the County exceeds this limitation, the matter shall be processed under the grievance procedure.

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ARTICLE – 7 GRIEVANCE AND ARBITRATION PROCEDURE

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Section 5. Steps in the Procedure:

. . .

Step 2:

. . . . The Arbitrator shall have no right to amend, nullify, modify, ignore, or add to the provisions of the Agreement. His/her authority shall be limited to the extent that he/she should only consider and decide the particular issue or issues presented to him/her in writing by the employer or the Union, and his/her interpretation of the meaning or application the language of the Agreement.

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ARTICLE 22 – COMPENSATION

Wage rates for the employees in the bargaining unit are attached as Schedules A and B.

. . .

ARTICLE 24 – WAIVER OF BARGAINING AND VALIDITY

. . .

Section 2, Should any provision of this Agreement be subsequently declared by the proper legislative or judicial authority to be unlawful or unenforceable, said provision shall be immediately renegotiated; all other provisions shall remain in full force and effect for the duration of this Agreement.

SCHEDULE "A"
Courthouse Union
Effective January 1, 2010

Grade	A	B	C	D	E	F
				. . .		
4	13.64	14.22	14.82	15.41	16.02	16.63

. . . .

(Language below follows wage schedule)

Schedule A includes a one and one half percent increase effective January 1, 2010. Employees progress to the next step following 2080 hours of work and a satisfactory performance evaluation. Employees may be hired up to step C with approval of the Personnel and Bargaining Committee if qualifications and experience warrant a higher rate.

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RELEVANT PERSONNEL POLICIES

PERSONNEL POLICY MANUAL

4.01 ADOPTION. (1) This chapter contains the provisions of a comprehensive Personnel Policy Manual designed to promote consistent personnel management throughout the County. The Manual has been developed for use by and with suggestions from committee, department heads, and supervisors to eliminate the problem of personal decision making in the area of standard County policy. In order to prevent these policies from becoming obsolete, a constant input from all departments and County Board Supervisors is encouraged.

. . .

(3) The policies set forth in the Manual cover all employees of the County, except as noted otherwise. These policies may be superseded by union contract.

. . .

4.27 RULES FOR ADMINISTRATION OF THE COMPENSATION PLAN. (1) AUTHORIZED SALARY GRADES SHALL BE INTERPRETED AND APPLIED AS FOLLOWS. (a) Initial Employment. The hire rate or Step A shall be the entrance rate payable to any employee upon appointment to a position. If recruitment difficulties exist, or if a potential employee possesses unusual qualifications directly related to the requirements of the position, the Personnel and Bargaining Committee may authorize appointment at Step B or C in the grade. If hiring difficulties still exist after the initial recruitment due to hiring salary range (A-C), an appeal may be made to the Personnel and Bargaining Committee for further consideration which may include approval of a hire rate above step C or the approval of increased benefit levels on a case-by-case basis <10/00> A new employee, shall receive a salary adjustment after 12 months and thereafter at 12 month intervals, no matter the actual hire step, providing the rules for probationary period and performance evaluations have been met.

POSITIONS OF THE PARTIES

Union

The Employer violated the clear and unambiguous provisions Article 22 and Schedule A of the Collective Bargaining Agreement which limits the right of the Employer to hire only up to Step C when it hired Ms. Pfaff at a rate above Step C. The Employer's argument that it should be allowed to follow its personnel policies to grant a "special exception" is without merit. Those policies are superseded by the Collective Bargaining Agreement. The bargaining history also supports this interpretation. The retired AFSCME representative who negotiated the subject Agreements testified that the issue of pay for Judicial Assistants was addressed in the parties' initial Agreement and its following Agreement. In each case, the Employer argued against increasing the pay grade for Judicial Assistants. If there had been any exception made in the past it was solely the product of a bilateral Agreement between the parties. There is no history of exceptions to the wage schedules. The evidence establishes that there were very few, if any exceptions, in the period 1976-2003. There is no evidence that there were any recruitment difficulties because there was, in fact, no real recruitment effort in this matter.

The Court has well-established inherent judicial authority to appoint Judicial Assistants. However, that power does not extend to determining their pay. The Employer has failed to establish that qualified candidates could not be found. The parties agree that the internal candidate was qualified for the position. The Employer did not advertise or otherwise solicit for other potential candidates.

The Union notes that it filed this grievance and made its position known before Ms. Pfaff was hired. The Employer chose to proceed anyway. The Union requests that the Employer be directed to adhere to the contract language and pay the appropriate wage rate to Ms. Pfaff.

Employer

It was desirable to hire Ms. Pfaff because Judge Rice is entitled to choose his assistant. As he testified, he concluded that he needed someone who to work with him who knew how he worked. The caseload is particularly heavy for Monroe County. In any event, he was a new judge and assigned to a new judicial branch which was physically distant from the rest of the other courtrooms. The pay which was established for Ms. Pfaff was less than she was making in her former employment.

The Personnel Committee concluded that Judge Rice's request to hire Ms. Pfaff at $16.02 was appropriate. All parties involved in the decision, Judge Rice, the Personnel Director and the Committee, were aware of the provisions of the Agreement, but concluded that an exception was warranted by the extenuating circumstances.

The former Union Representative, Daniel Pfiefer, testified that the language of the wage appendix was taken directly from the personnel policy which the county applied in this circumstance, Sec. 4.27(a). The language has been used in non-union circumstances in the past. The intent of the policy provisions is to provide flexibility when candidates are unusually well qualified. The other Judicial Assistants were brought in at higher rates. The Judicial Assistant in Branch 1 was brought in at Step F because she was already at that rate in a different job. The other had been a Judicial Assistant before the Union represented the employees in this unit. Therefore, hiring the Judicial Assistant at Step E was warranted.

Even if the Arbitrator finds a violation, he has the sole responsibility for the remedy. It should include a provision that Ms. Pfaff's pay not be reduced. She has indicated that she would quit if her pay were reduced. Additionally, a remedy reducing her pay would cause the Union problems because it may be in violation of its duty of fair representation. Additionally, the Attorney General's office has expressed an interest in continuing this case to protect the appointing authority of judges. The Union's request that Ms. Pfaff's wage rate be reduced retroactively would violate both the Wisconsin's wage claim law, Ch. 109, Stats, and the Fair Labor Standards Act. This may also create liability on the Employer's part to Ms. Pfaff's potential claim under a theory of promissory estoppel.

The requested remedy will most assuredly interfere with and violate the constitutional prerogative of Judge Rice compromising and impairing the efficiency of the administration of justice in Monroe County (see testimony of Judge David Rice).

Circuit judges have a constitutional prerogative in selecting Judicial Assistants. *See* IN RE JANITOR OF THE SUPREME COURT, 35 Wis. 410, 419 (1874) (holding that circuit courts hold all inherent powers that are essential to the expedition and proper conducting of judicial business"); IN RE COURT ROOM AND OFFICERS OF FIFTH BRANCH OF CIRCUIT COURT, MILWAUKEE CTY., 148 Wis. 109, 121, 134 N.W. 490 (1912) (holding that a circuit court may exercise its "inherent power" wherever necessary to "protect itself against any action that would unreasonably curtail it powers or materially impair its efficiency"), and Wisconsin Constitution, Article VII, Section 2; *see also* BARLAND V. EAU CLAIRE COUNTY, 216 Wis.2D 560, 575 N.W.2D 691 (1998) (holding that "courts have inherent constitutional authority to perform their administrative responsibilities").

The BARLAND Court held that circuit courts have "inherent constitutional authority to perform their administrative responsibilities," noting that "judicial assistants have traditionally been subject to the judiciary's exclusive authority once appointed," but decided the case on the specific issue of whether "circuit court judges can prevent the removal of their judicial assistants." *See* BARLAND, 216 Wis.2D at 694, n. 2, 583, 589.

While the Union does not directly assert any challenge to Judge Rice's constitutional prerogative, their unprecedented and unfair application of this provision of the contract is directly intended to punish Judge Rice for failing to pick one of its members.

As the undisputed record reveals, if the Arbitrator awards the remedy sought by the Union, this innocent third party union member will be forced, for financial exigencies, to resign from her position. If that were to happen the resignation would be harmful to the innocent third party.

It would, however, also be harmful to the smooth and efficient operation of Branch III of the Circuit Court of Monroe County. *See* BARLAND, 216 Wis.2D at 581 (holding that upon the removal of an "already trained and qualified court employee, the court is forced not only to lose the efficiencies developed by the incumbent employee, but to spend valuable judicial time training and orienting the replacement employee" and additionally because the "training time spent by the court on the replacement staff member could be given to other pressing judicial responsibilities"). As recognized by the BARLAND court, that damage would be partially intangible, as well. *Id.* (acknowledging that a "positive, productive working relationship between a judicial assistant and circuit court judge is not established overnight").

The damage – to Ms. Pfaff, Judge Rice, and Branch III of the Circuit Court of Monroe County – would result whether Ms. Pfaff is removed as a result of legislation that usurps the court's inherent authority to prevent her removal or an arbitration award that effectively forces her removal.

Such a consequence is illegal and unconstitutional. There are other adequate remedies available to the Arbitrator.

Union Reply

In addition to the arguments the Union previously made, it argued that speculation by the Employer about potential litigation cannot determine the award or remedy. It is speculative to assume that Ms. Pfaff will quit her job. The retirement benefit with the Employer is substantially better than the one she had. It is speculative to assume that no qualified candidate could be found to replace Ms. Pfaff even if she would quit. The Employer's argument that the Arbitrator has remedial authority allowing him to ignore the terms of the Agreement is expressly negated by Article 7, Sec. 5, step 2 which prohibits the Arbitrator from modifying the Agreement. The Employer is seeking to have the Arbitrator add language to the Agreement even though it had the opportunity to do so in the past.

This grievance does not infringe on the constitutional prerogatives of Circuit Judge Rice. The determination of the pay rate for a Judicial Assistant is not the prerogative of a Circuit Judge.

Employer Reply

The Employer offered a response from Judge Rice in response to the Union's brief. It was both the Court's and the Employer's position that the sole purpose of the Union's actions

herein are to thwart the Court's ability to choose whomever the Court selects to appoint as a Judicial Assistant.

DISCUSSION

The parties' positions reflect fundamental disagreement as to the role and authority of the Arbitrator to vary the terms of the parties' Collective Bargaining Agreement on the basis of, among others, equity or conflict with law. Article 7, Section 5, Step 2 emphasizes that the fundamental role of the Arbitrator is to enforce the terms of the parties' Agreement as they have written it and to enter remedies only in accordance with that role. In the oft-quoted phrase of the U.S. Supreme Court in STEELWORKERS V. ENTERPRISE WHEEL & CAR CORP., 363 U.S. 593, 46 LRRM 2423, 2425 (1960), Justice Douglas succinctly summarized the role of the Arbitrator:

> When an Arbitrator is commissioned to interpret and apply the collective bargaining Agreement he is to bring his informed judgment to bear in order to reach a fair solution of a problem. This is especially true when it comes to formulating remedies. There the need is for flexibility in meeting a wide variety of situations. The draftsmen may never have thought of what specific remedies should be awarded to meet a particular contingency. Nevertheless, an Arbitrator is confined to the interpretation and application of the collective bargaining Agreement; he does not sit to dispense his own brand of industrial justice. He may of course look to many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining Agreement. When the Arbitrator's words manifest an infidelity to this obligation, the courts have no choice but to refuse enforcement of the award.

This is also the Wisconsin view. In CITY OF MILWAUKEE V. MILWAUKEE POLICE ASSOCIATION, 97 Wis.2D 15, 25, citing the foregoing, the Wisconsin Supreme Court stated:

> The Arbitrator's power to make an award is not unlimited. The power of the Arbitrator is derived from and limited by the terms of the contract. . .

While the Wisconsin courts have occasionally varied from that view, the foregoing has been the law of Wisconsin since the 1960's.[2] This limit on the arbitrator's authority is crucial to a resolution of this matter.

As noted, it is the Arbitrator's role herein to interpret and apply the parties' Agreement as it is written. If language is clear or conveys a distinct idea, the Arbitrator's role is to apply it as it is written. If it is ambiguous, the Arbitrator must decide the appropriate interpretation.

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[2] See, CLARK V. HEIN WARNER, 8 Wis. 2D 264 (1960), effectively overruled by MAHNKE V. WERC, 66 Wis.2D 524 (1975), RACINE COUNTY V. IAM DIST. 10, 310 Wis.2D 508, 531 (2010), Arbitrator failed to apply the law instead of finding that the Agreement as interpreted conflicted with law.

Language is ambiguous if it is fairly susceptible to more than one meaning. In determining the meaning of ambiguous language, Arbitrators look to the practices of the parties, the bargaining history of the parties, and the rules of contract construction commonly applied by the courts and Arbitrators. Arbitrators endeavor to give language its most practical meaning and prefer interpretations which are consistent with law to the extent, and only the extent, that they are consistent with the Collective Bargaining Agreement.

The language of Schedule A does convey a single idea that the Employer is limited to hiring "up to" Step C. However, even if the language were viewed as technically ambiguous because Schedule A does not actually say that the Employer may never hire above Step C, the proper interpretation is that the Employer does not have the discretion to hire above Step C.

As a practical matter, negotiations over flexibility in hiring are common in collective bargaining and are a very difficult topic. Language of this sort is common in many collective bargaining agreements and, from that perspective, conveys a very clear concept that the Employer may not hire someone at a rate above Step C. The parties' own bargaining history and past contracts demonstrates a similar pattern. The bargaining history of the schedule A indicates that it was incorporated on the basis that it was already in other agreements. Similar language was inserted in 1987 to 1988 Human Services Agreement because the Employer was having difficulty hiring nurses. At that time, the Employer negotiated for the possibility of hiring at the next higher step above the entry step.[3] Other language shows that the Employer expanded on that authority in other agreements to hire up to two steps above hiring. This result would not have occurred if the parties to those Agreements believed that the Employer has the authority to hire above the stated maximum hiring step. That history underlies the provision in dispute.

Similarly, in the initial Agreement in this unit and in the subsequent Agreement, the Union, with backing of the local judiciary sought an adjustment in the pay range for Judicial Assistants.[4] The issue was presented in last-best offer interest arbitration, but in each case, the Arbitrator ruled that the final offer of the Employer was to be preferred. In each case, the Employer took the position that no range adjustment was appropriate. The Employer never proposed any broader authority to hire above Step C.

In this case, the legal maxim that to "express one item is to exclude others" appropriately applies. Here the parties expressed an exception to the hiring rate and used the term "up to" which reasonably implies that the Employer cannot go beyond Step C.

Accordingly, the Employer violated Article 22 and Appendix A when it granted Ms. Pfaff a hiring rate above Step C. The Union requested a remedy directing the reduction of Ms. Pfaff's wage rate retroactive to the date she was hired. The Employer argues that the

[3] Tr. p. 62-68, Union ex. 3
[4] Tr. p. 68-69

Arbitrator use his broad discretion to merely find that the Agreement was violated but make no order with respect to her wage rate.

The Arbitrator has inherent authority to prescribe the remedy for a violation of a collective bargaining Agreement. This authority includes same authority as that of the courts to remedy violations of ordinary contracts.[5] The purpose of a remedy at law is to put the parties back in the same position as much as possible as if the Agreement had not been violated.[6] Some may view the remedy authority more broadly as taking into account the implications of a remedy on the collective bargaining relationship of the parties. Certainly, any remedy must be consistent with the terms that the parties have expressly articulated in the Agreement.

Much of the Employer's argument amounts to reasons for the Arbitrator to grant an exception to the Agreement for Ms. Pfaff. However, the parties' have been unusually explicit in providing in Article 7, Section 5 that:

> The Arbitrator shall have no right to amend, nullify, modify, ignore, or add to the provisions of the Agreement.

This provision is more strongly worded than many other provisions of a similar nature. The parties have, therefore, been clear both that that the power to make exceptions to the Agreement is vested solely in the parties and that the remedy must be strong enough to enforce the terms of the Agreement as the parties created them. This reason alone is sufficient to prevent the Arbitrator from making an exception to the Agreement as the Employer has sought.

The factual situation also provides an independent basis for issuing a remedy which adequately addresses the Employer's violation. The Employer has argued throughout this proceeding that the Union's motivation in pursuing this violation was to punish Ms. Pfaff and Judge Rice for Judge Rice having not selecting the internal candidate for this position.[7] The evidence establishes another factor: that the Employer never asked the Union for an exception. No collective bargaining Agreement can cover all of the potential situations which can arise in a dynamic employment context. At its core, collective bargaining is a process in which an employer and the representative of its employees "meet and confer . . . to resolve questions arising under a collective bargaining Agreement."[8] The problem solving process leads to better relationships, better problem solving and mutual ownership of the results. It is undisputed that the Employer never made a request to the Union that agree to an exception to the wage schedule at any time prior to the unilateral action of the Monroe County Personnel

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[5] See the discussion in St. Antoine, Ed., *The Common Law of the Workplace: The View of the Arbitrators* (BNA, 2d.), pp. 357-9

[6] See, for example, REIMER V. BADGER WHOLESALE CO, INC., 147 Wis.2D 389, 395 (Ct. App., 1988). That case involves a breach of employment contract.

[7] I have addressed that matter below.

[8] Section 111.70(1)(a), Stats.

and Bargaining Committee meeting granting the exception in issue. Instead, it chose to act unilaterally. In view of the long history in which the Union has sought an improvement of the pay range for Judicial Assistants, it is reasonable to believe that the Union might well have done so again. I note that the local Circuit Judges had supported that effort in the past. It is clear in this proceeding that at least part of the Union's motivation is to enforce its right to be consulted and to make its own decision about making exceptions to this Agreement. Under the strong language of this Agreement, the remedy must protect the Union's authority in this regard. Accordingly, the appropriate remedy is to require that Ms. Pfaff's wage rate be reduced at least prospectively.

The Union requested that the Arbitrator require that Ms. Pfaff's wage rate to be reduced to the contractual rate retroactively to the date Ms. Pfaff was hired and that she "would have to then make the County whole."[9] The Union's brief is ambiguous on this aspect of its requested remedy. The Employer has argued that part of the Union's goal in this matter is to punish Ms. Pfaff for taking the position away from the internal candidate. There is some evidence to support that view. Ms. Pfaff is an innocent party in this matter. The Arbitrator has a degree of discretion as to the whether to retroactively apply the remedy in this matter. The Union has not demonstrated any reason why a retroactive wage reduction would be warranted or would be a more effective remedy for the Employer's violation of the Agreement. Irrespective of the very meritorious arguments concerning Ms. Pfaff's individual rights and expectations under law, the purpose of the grievance procedure itself in this context is to provide a mechanism to allow disputes to be resolved. This is a disagreement between the Employer and the Union. The Union argues that it filed this grievance before Ms. Pfaff was hired and, therefore, she was aware of the potential that her hiring rate violated the Agreement. Implementing a retroactive pay reduction would effectively result in forcing her and all similarly situated employees in the future to make a decision on a disputed matter rather than waiting for a resolution of the matter between the Employer and the Union. Making the remedy herein retroactive would thus tend to interfere with the right of the employees to rely on the parties' resolution their disputes in the grievance procedure. Accordingly, I decline to order a retroactive pay reduction.

The undisputed evidence establishes that Ms. Pfaff came to Monroe County on the assumption that she would be paid at the rate in dispute and otherwise would have stayed in her former position. I conclude that she should be afforded a period of thirty days after the date of the award in this matter to review her choices. Therefore, the reduction in pay will be made effective at the end of thirty days after the date this award is rendered.

Next, it is important to address how this award and remedy relates to the inherent authority of the judiciary. I do not have jurisdiction over the constitutional authority of the judiciary as it relates to this matter and no judgment is expressed or implied as to what that authority might be under the circumstances of this case. If the Employer's view is correct, that authority might conflict with the express terms of the Agreement. Article 24, Sec. 2 tends to

[9] Tr. p. 9

address this issue. It recognizes that there may be circumstances in which the Agreement properly interpreted may conflict with law. It also reserves to the parties the responsibility to deal with that situation. Accordingly, this award does not address how that provision would be applied were the courts to assert their alleged inherent authority. The better view is to enter an order enforcing the terms of the Agreement.[10]

AWARD

The Employer violated Article 22 and Appendix A of the Agreement when it unilaterally granted Ms. Pfaff a wage rate above Step C. The Employer shall reduce Ms. Pfaff's wage rate to the currently applicable wage rate of Step C effective thirty (30) days after the date of this award.

Dated at Madison, Wisconsin, this 25th day of March, 2011.

Stanley H. Michelstetter II /s/
Stanley H. Michelstetter II, Arbitrator

[10] See *Common Law*, *supra*, Sec. 10.5

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