BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

OPEIU LOCAL 9

and

WISCONSIN STATE AFL-CIO

Case 2
No. 71671
A-6522

Appearances:

Martin C. Kuhn, for the Union.

Matthew R. Robbins, for the Employer.

ARBITRATION AWARD

Pursuant to the joint request of the parties, I was assigned to serve as arbitrator regarding a bargaining unit work grievance. Hearing was held in West Allis, Wisconsin on December 18, 2012 and March 7, 2013. The proceedings were not recorded or transcribed. The parties filed written argument-the last of which was received June 3, 2013.

ISSUE

The parties were unable to agree upon a statement of the issue but did agree that I had the authority to frame the issue after considering their respective positions. Having done so, I conclude the issue to be resolved by this Award is:

> Did the Employer violate the contract by the manner in which certain work was performed and, if so, what remedy is appropriate?

DISCUSSION

The Union points to a variety of contract provisions in support of its position. However, it is beyond dispute that if there are specific contract provisions that express the parties' intent as to the matter in dispute, those specific provisions govern the outcome. Here, there are two such provisions.

ARTICLE II-RECOGNITION-UNION SECURITY

. . .

Section 4. Both parties recognize that due to changes in technology and increased automation, there may be some overlapping of duties of what might traditionally have been considered Local 9 work and work that is done by other employee of the Employer. It is not the intent of the Employer to permit such technologically-driven overlapping of duties to result in the layoff of Local 9 personnel or the abolition of a Local 9 position.

Section 5. The Employer will not contract out any work currently being performed by OPEIU Local 9 bargaining unit personnel nor any new work normally considered to be OPEIU Local 9 bargaining unit work, when such actions would result in the layoff of OPEIU Local 9 bargaining unit members. Prior to any layoff of any bargaining unit members, the Employer agrees that all work currently or normally considered bargaining unit work that may have been contracted out will be returned to the bargaining unit if such return could prevent the layoff of a Local 9 employee or the abolition of a Local 9 position.

As is apparent from the above-quoted contract provisions, Section 4 acknowledges technological advances in how work is performed and, in that context, allows the Employer to assign traditional Local 9 work to non-Local 9 employees provided such assignments do not produce a layoff or abolition of a Local 9 position. Section 5 allows the Employer to subcontract Local 9 work provided that such action does not result in the layoff of a Local 9 employee or the abolition of a Local 9 position. In combination, these two contract provisions allow the Employer to have Local 9 work performed by other employees or by non-employees as long as a layoff or loss of a Local 9 position does not result. Thus, assuming for the sake of argument that the disputed work assignments are all Local 9 work, the threshold question is whether such assignments produced a layoff or loss of a position. I conclude they did not and thus the Employer did not thereby violate the contract.

It is undisputed that no one has been laid off. Thus, the focus of my analysis turns to the question of whether there has been a loss of a position.

In November 2011, there were three Local 9 employees-two of whom performed the vast majority of the type of work in dispute. One of those two employees retired that month and was not replaced. No grievance was filed. Beginning in March 2012, Local 9 began to raise issues with the Employer as to work being performed by other employees of the Employer. Those issues ripened into the instant grievance being filed in May 2012.

Assuming again for the sake of argument that the disputed work is Local 9 work, the provisions of Article II Sections 4 and 5 would be violated if the amount of work in question constituted 37 hours of work a week. Such a level of work would constitute the loss of a position and the Employer would be obligated to fill the November 2011 vacancy with a Local 9 employee. However, it is apparent that the amount of disputed work is far far less than that. Therefore, the Employer's actions did not violate the contract and the grievance is dismissed.

Dated at Madison, Wisconsin this 1st day of November, 2013.

/s/ Peter G. Davis
Peter G. Davis
Arbitrator
PGD:ckl