

Rec: 10-22-10

VOLUNTARY LABOR ARBITRATION

In the Matter of the Arbitration
Between:

LOCAL [REDACTED] AFSCME COUNCIL 25,
AFL-CIO,

Union,

Log No: A22276-[REDACTED]-10

-and-

COUNTY OF [REDACTED]

Employer.

Gr: Contract Interpretation
Union Policy/Displacement

APPEARANCES

On Behalf of the Union:

William L. Harper
Staff Specialist
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On Behalf of the Employer:

[REDACTED], Esq.
Labor Relations Analyst
[REDACTED] Bldg.
[REDACTED]
[REDACTED] MI [REDACTED]

Arbitrator:

JOHN A. LYONS

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OPINION AND AWARD

There are four grievances involved in this decision. They form what the Union refers to as a policy issue regarding the application of the displacement language contained in Article 19 of the collective bargaining agreement.

There was a notice of displacement sent on July 16, 2009 to be effective July 27 for [REDACTED] [REDACTED], environmentalist, which changed his position number from [REDACTED] to [REDACTED]. He remained as an environmentalist and was assigned to the Health Department. He suffered no lost wages as a result of the notice sent. He filed a grievance identified as U.P. No. 07-29-2009.

On September 11, 2009 [REDACTED] [REDACTED], typist, received a similar notice and was transferred from position [REDACTED] to [REDACTED]. She remained in the Health Department and suffered no loss of wages. She filed grievance number U.P. #09-21-2009. Notice of displacement was likewise sent to [REDACTED] [REDACTED] on September 11 to be effective September 28, 2009. She was transferred as a typist from position number [REDACTED] to

██████████, and remained in the Health Department and suffered no loss of wages. The Union filed grievance number U.P. #09-21-2009 on Ms. ██████████ behalf.

██████████, typist, was sent a notice of displacement on August 28 to be effective September 7, 2009 changing her position number from ██████████ to ██████████. She remained in the Health Department and suffered no loss of wages. She filed grievance number U.P. #09-10-2009.

At the time of hearing there had been another grievance on ██████████ ██████████ behalf. That has been resolved as well as the issue involved in this case according to the evidence that was submitted. In addition Grievant ██████████ ██████████ bid for, and accepted another position entirely after filing her grievance. She suffered no loss of wages and it appears that the issue presented in this case is resolved as to Ms. ██████████, and Mr. ██████████.

The remaining grievants ██████████ ██████████ and ██████████ ██████████, according to the testimony both exercised their seniority after receipt of the notice of displacement. They bumped junior employees in the same classification within the Health Department. All of the grievants were employed in the Health Department at the time of the filing of the grievances contained in Joint Ex. 2.

The thrust of the Union's claim is that all of the grievants had more seniority than some employees who remained in their positions, and that the contract is "seniority based," and before they were sent notices of displacement other more junior employees should have been affected before the grievants.

Three exhibits were admitted at hearing which was conducted on September 15, 2010:

- J-1 Collective Bargaining Agreement
- J-2 Grievance Chain (19 pages)
- J-3 Emails 9/21 and 9/22/09

In addition to the exhibits that were submitted [REDACTED] [REDACTED], Chief of Administration Personnel/Human Resources testified. This case was largely submitted on facts contained in the documents and arguments made by the advocates at hearing. The Union has the burden of going forward and establishing a violation of the collective bargaining agreement upon its claim that the grievant had more seniority than employees who remained in their positions after the notice of displacement.

ISSUE

WHETHER THE COLLECTIVE BARGAINING AGREEMENT WAS VIOLATED?

DISCUSSION

As noted, the Union claimed Article 19 - Layoffs, Displacement and Recall, was violated when notices of displacement were sent to the individual grievants because junior employees remained on the job in their similar classifications. Specifically, the Union claims violation of Section 19.05 which provides, "If the Employer must eliminate positions for lack of work or lack of funds, employees will be laid off or displaced based upon their seniority order, from lesser to greater seniority, in the following manner. . . ." That language supports the thrust of the Union position, but on the other hand, the Employer urges that under the Management Rights provisions contained in Article 8, Section 8.01 the Employer has the right among other things to "select the manner in which employees shall be reduced in classifications in the interest of layoff". Nevertheless the language of Article 19 is very specific in terms of layoff and recall and certainly indicates on its face, that seniority should be the "guiding light".

According to the arguments, Grievant [REDACTED] [REDACTED] bid for, and accepted a new position since filing her grievance. Mr. [REDACTED] was given a notice of displacement because the funding for his position was eliminated. He was placed in a vacant position

as an environmentalist within the same department using a different position number. He suffered no loss of wages or seniority.

As Ms. ██████ testified the County, not unlike many municipalities within the state, is experiencing declining revenue, and therefore must reduce budgets and limit the number of positions. She explained that named employees (or seniority) are not identified. Rather, the system that is used by the department of management and budgets indicates position numbers that must be reduced. The seniority of an employee to be reduced is not identified. Ms. ██████ gets information and requests from management and budget and then effectuates, if necessary, notices of displacement, layoff or recall depending on circumstances and facts in a given case. In these cases notice of displacement was issued as set forth in the facts.

The grievances could not be resolved by the parties and the cases were appealed to Step 4. That hearing was conducted on November 24, 2009 and a decision was made December 18, 2009 by Chief Labor Relations Analyst ██████ ██████. She found no violation of the collective bargaining agreement and in the discussion portion of her responses to the grievances she states in part:

The Union alleges that Management has failed to comply with Article 19 of the Collective Bargaining Agreement, because four people have been displaced who have more seniority than other employees who remained in their positions. The Union argues that when doing displacements, it always must be the least seniority person in the Department/Division that is displaced first and so on down the seniority list for the particular classification. In these cases, the employees had more seniority than other coworkers who were allowed to stay in their position numbers. ██████ ██████ was not moved or transferred, only his position number changed to match the correct funding source. This was the subject of another grievance which I have already answered.

...

The Department maintains that position numbers are eliminated by Management & Budget without regard to seniority. Once Ms. ██████ gets the position numbers from Management & Budget she processes the displacement notice accordingly. This often means that the individual will

displace the least senior person in the Department, in these cases that would be the Health & Human Services Department, which has multiple locations and divisions. Ms. [REDACTED] indicates that the affected individuals can all bid to return to their original location division by using the process named in Article 19.08.

Section 19.08 states that "within 60 days after the effective date of layoff and/or displacement as described herein, Department or Division management will allow displaced employees within the Department, to bid on their desired shift or job location insofar as their seniority will allow, regardless of the existence of vacancies."

None of the Grievants took advantage of this provision. The grievance was denied in the fourth step and was subsequently appealed to arbitration. As noted Ms. [REDACTED] has bid on and accepted a position after the filing of this grievance, and Mr. [REDACTED] suffered no loss of any kind that the arbitrator can determine - his position number was changed because funding was eliminated under his old number and he remains in his same classification within the same department. I think as to Ms. [REDACTED] and Mr. [REDACTED] the issue is moot, that is, when events occur which render it impossible to fashion a remedy, as it is in Ms. [REDACTED] and Mr. [REDACTED] cases, then the issue is moot and the grievance could not be granted as to these two individuals.

In addition, Ms. [REDACTED] testified and there is no evidence to the contrary, that the two remaining grievants, Ms. [REDACTED] and Ms. [REDACTED] both did in fact exercise the seniority when they were displaced against younger employees. That being the case, it appears that the Employer has complied with the provisions of Section 19.05.

The Union objects to the process of how the notices of displacement were implemented, that is, position numbers were affected without specific consideration of seniority. Ms. [REDACTED] explained how that occurs but the arbitrator has a difficult time understanding why the Department of Management & Budget cannot at the time that it requests actions that result in layoff, displacement or recall provide not only the


position number but the seniority and names of the individuals who would be affected. There is no evidence suggesting that that was an impossibility, and the contract dictates actions under Article 9 be taken with specific consideration of seniority.

AWARD

The grievances for the reasons that I have discussed and stated do not state violations of the collective bargaining agreement. However, the arbitrator suggests that the Employer provide the name and seniority of individuals when their position numbers are going to be eliminated which would be consistent with the requirements of the collective bargaining agreement.

The grievances, as stated, and based on the facts as presented in the case, and the arguments of both parties do not violate the collective bargaining agreement and are therefore denied.

Respectfully submitted,



John A. Lyons, Arbitrator

Dated: October 20, 2010