

BEFORE THE ARBITRATOR

 In the Matter of the Arbitration :
 of a Dispute Between :
 :
 DEPARTMENT OF SOCIAL SERVICES : Case 59
 EMPLOYEES LOCAL #2003, AFSCME, AFL-CIO : No. 45807
 : MA-6763
 and :
 :
 RUSK COUNTY :
 :

Appearances:

Ms. Margaret M. McCloskey, Staff Representative, on behalf of the Union.
Weld, Riley, Prenn & Ricci, S.C., by Mr. James M. Ward, on behalf of the

County

ARBITRATION AWARD

The above-entitled parties, herein the Union and County, are privy to a collective bargaining agreement providing for final and binding arbitration. Hearing was held on December 15, 1991, in Ladysmith, Wisconsin, where it was not transcribed. Briefs were filed by February 5, 1992.

Based upon the entire record, I issue the following Award.

ISSUE:

The parties have agreed upon the following issue:

Did the County violate Article 7.03 of the contract by denying grievant Michael Gardner the position of Parks Supervisor and, if so, what is the appropriate remedy?

DISCUSSION:

Gardner has been employed by the County since 1986, during which time he has had a half-time position in the Animal Shelter and another half-time position as a Conservation Technician in the Land Conservation Department. He has never worked in the Forestry Department.

The County in January, 1991, posted for a newly-created Parks Supervisor position in its Forestry Department which required a college degree. The Union had previously opposed said degree requirement for this position, but the County insisted that it was needed. Gardner, who is not degreed, was the only internal candidate who bid for the position, but he was rejected in favor of Tom Lovlien, a non-County employe who has a college degree and who majored in forestry. Lovlien had no prior forestry experience, as he just graduated from college.

The County owns and operates about 90,000 acres of forest lands which produce about \$200,000 a year in income. The County created the new Parks Supervisor position in part to better manage its forest and to increase its income. About 80 percent of the Parks Supervisor's time is devoted to properly maintaining the County's parks - a task which the County concedes Gardner is qualified to perform. However, the County turned down Gardner because it believes that he is unqualified to perform the remaining 20 percent forestry work. Gardner filed the instant grievance on February 26, 1991, protesting his non-selection for said position.

In support therein, the Union primarily contends that a past practice has arisen whereby the County recognizes equivalent work experience as an

alternative to a degree requirement; that Gardner "wears several hats" and that he therefore possesses such equivalent work experience; that the parties in 1989 negotiated a side letter providing that posting shall "contain the minimum qualifications for posted positions"; and that the County therefore erred in not awarding Gardner the Parks Supervisor position merely because he does not have a college degree. It also asserts that the duties listed in the posting were different from those now being performed and that Gardner therefore cannot be held responsible for skill areas not foreseen in the posting and that any doubts about Gardner's qualifications could be resolved via the 30-day trial period specified in the contract. As a remedy, it requests that Gardner be awarded the position and that he be made whole for all losses suffered as a result of not being awarded that job.

The County, in turn, basically asserts that the grievance should be denied because it enjoys "the express contractual right" to establish minimum job qualifications; because it did not abuse its discretion in establishing a forestry degree as a minimum qualification; because there is no past practice compelling the County to allow the substituting of relevant work experience for its degree requirement; and because Gardner in any event does not have any such relevant work experience.

The resolution of this issue turns upon Section 7.03 of the contract which provides:

Section 7.03. Any employee interested in such promotion may sign the posting. The employee having the greatest seniority, who is qualified for the position shall be given the position. If, after thirty (30) days, the employee's performance is not up to the standard of qualifications required, or if the employee wishes to return, he/she shall return to his/her former job. In this event, the position shall again be posted, following the same procedure above. Present employees shall be given preference before a new employee is hired. When seniority and qualifications are not recognized in job preference, the case shall be subject to the Grievance Procedure.

Also applicable is the August 16, 1989, side letter agreed to by the parties which states:

SIDE LETTER

1. The Union agrees to drop the Payroll Clerk vacancy grievance with prejudice;
2. The County agrees that it will not test internal candidates in order to determine minimum qualifications;
3. The Union agrees that pre-hire testing may be conducted;
4. The parties also agree that in administering Section 7.03, shall contain the minimum qualifications for the vacant position. The County shall set the minimum qualifications with

input from the Union. Management may interview any and all candidates and shall select on the basis of seniority and qualifications.

5. The parties agree that the entire 30 day trial period need not be exhausted before returning the employee to his/her original position.

Normally, an employer has the inherent managerial right to establish minimum job requirements unless there is express contractual language to the contrary. Here, Section 7.03 does not expressly limit that right, as it recognizes that posted jobs will be given to the person with the greatest seniority "who is qualified for the position". This latter phrase indicates that employes must be qualified before they are given a trial period.

The August 11, 1989, side letter limits the County's rights by providing that the County will only post for "minimum qualifications with input from the Union." Such input, in fact, occurred here.

The question then becomes whether the required college degree here is such a "minimum qualification" for the Park Supervisor position.

I conclude that it is because the County has established the need for better management of its forest lands and because a forestry degree guarantees that such a person has some prior knowledge about proper forest management. Thus, the record here shows that Lovlien took college courses in introduction to natural resources, introduction to wildlife resources, introduction to water resources, landscape maintenance, natural resources, introduction to soil resources, recreational use to forest and parks, forest mensuration, land surveying, forest measurements, conservation and watershed inventory, inventory methods, aquatic ecosystem evaluation management techniques, applied landscape, entomology, forest recreation management, environmental law enforcement theory and principle, recreation plan and site design, forest recreation field seminar, and forest management and finance.

This extensive background establishes that Lovlien possessed the requisite knowledge to manage the forest land and that such knowledge - gained with a college degree - was the kind of "minimum qualification" the County is entitled to establish when it decides to post for positions.

Thus, it was not enough that Gardner was qualified to perform the roughly eighty (80) percent of this job which relates to running the parks, as his limited habitat experience still left him without sufficient experience to manage the remaining twenty (20) percent of the job relating to properly managing the County's timber lands.

Given the importance of this latter responsibility and the considerable amount of money involved, the County thus was not required to award the job to Gardner in the hope that he would learn how to perform these responsibilities during any trial period, as a trial period presupposes that one is qualified to perform a job before it is awarded and filled.

Furthermore, and contrary to the Union's claim, there is in fact no past practice which required the County to waive its degree requirement, as any prior instances dealt with situations where a degree was not needed. That is not the case here.

In light of the above, it is my

AWARD

That the County did not violate Article 7.03 of the contract by denying grievant Michael Gardner the position of Parks Supervisor; the grievance therefore is dismissed and denied.

Dated at Madison, Wisconsin this 10th day of April, 1992.

By Amedeo Greco /s/
Amedeo Greco, Arbitrator