

BEFORE THE ARBITRATOR

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 In the Matter of the Arbitration :  
 of a Dispute Between :  
 : Case 173  
 OSHKOSH PUBLIC EMPLOYEES : No. 47163  
 LOCAL 796-A, AFSCME, AFL-CIO : MA-7189  
 :  
 and :  
 :  
 CITY OF OSHKOSH (LIBRARY) :  
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Appearances:

Mr. Gregory N. Spring, Staff Representative, on behalf of the Union.  
Mr. John W. Pence, City Attorney, on behalf of the City.

ARBITRATION AWARD

The above-entitled parties, herein the Union and City, are privy to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held on May 13, 1992, in Oshkosh, Wisconsin. The hearing was not transcribed and the parties thereafter filed briefs which were received by June 24, 1992.

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

ISSUE

Since the parties were unable to jointly agree upon the issue, I have framed it as follows:

Did the City violate the contract when it transferred grievant Victoria Schettl from Circulation Services to Youth Services and, if so, what is the appropriate remedy?

DISCUSSION

Grievant Schettl, a half-time Library Assistant I, was transferred on September 16, 1991, from the Circulation Services Department to the Youth Services Department where she had previously worked. Management transferred her because it believed that she works better with children than with adults, a conclusion based upon certain prior instances of where library patrons complained about her work. Schettl admits that Victoria O'Rourke, the head of the Circulation Department, spoke to her on about three occasions about these problems and that O'Rourke told her there was "no smile on my face". Prior to her transfer, O'Rourke on August 29, 1991, prepared a "Change of Status and Leave of Absence" report which she gave to Schettl and which stated in pertinent part:

"It is in the best interest of Oshkosh Public Library to transfer Victoria Schettl from 20 hours LA I in Collection Management to 20 hours LA I in Youth Services.

Her continued success is dependent upon her improvement of interpersonal skills, especially with demanding adult patrons. The work in YSD will allow more variety in her duties and provide off desk work that better suit her skills and teacher training." (Emphasis in original.)

In addition, O'Rourke testified here that she was fearful that if Schettl remained in Circulation Services, "she would have gone down the road to formal discipline."

Schettl's transfer did not result in any change of pay or fringe benefits, and it did not reduce her hours. However, it affected how her hours are scheduled because they now change from week-to-week, as opposed to the prior situation at Collection Services of where her hours were fixed for months at a time and which enabled her to plan her time better.

In an attempt to retain her job in Circulation Services which was then posted, Schettl on September 4, 1991, bid for it, but was turned down in favor of Melinda Nigl who has less seniority. In bidding for said posting, Schettl acknowledged, "I am competent with the computer and my communication skills can continue to improve."

Schettl filed the instant grievance on September 4, 1991, asking that she be allowed to remain in Circulation Services.

In support thereof, the Union basically maintains that the contractual sixty (60) day probationary period is meaningless if the City can unilaterally transfer Schettl without warning her that she could be transferred if she did not improve her work; that by failing to warn Schettl about her work in Circulation Services, the City has "circumvented the just cause standard for discipline. . ." and thereby prevented Schettl from "redeeming" herself; and that the transfer policy "must be viewed in conjunction with the contractual posting procedure and the disciplinary procedure".

The City, in turn, contends that it clearly has the right to make such transfers under Article VIII of the contract; that her transfer was effectuated because it "would improve the operation of the Library"; and that it was not a form of discipline.

The record on this latter point establishes that Schettl was transferred because management felt that she was not properly working out in Circulation Services and because it was fearful that she would have to be disciplined if she remained there. Thus, O'Rourke admitted at the hearing, "I viewed this [i.e. the transfer] as a corrective measure."

This clearly smacks of discipline even if it was not intended to be, and even if O'Rourke honestly believed that the transfer was in Schettl's own best interests. As such, it violated the contractual just cause standard because Schettl was never warned ahead of time that she could be transferred if she did not improve her work in Circulation Services.

In addition, her transfer undermined the contractual job posting requirement in Article VIII since Schettl successfully completed her probationary period after she posted for the Circulation Services position. For if there were any problems with Schettl's work at that time, they should have been addressed in Schettl's probationary period, so that management could have told her that she was unqualified for the position. Alternatively, it could have sought an extension of her probationary period so that she would have more time to improve before a final decision was made to give her that position. However, once she passed her probationary period, the City subsequently could not remove her from that position unless it at least warned her that she could be transferred unless she improved her work, which is something that it did not do.

In this connection, it is true, as the City points out, that Article

VIII, Section 5, of the contract expressly gives management the right to

"make transfers within the Library System which in its opinion would expedite and improve the operation of the library. The Union reserves the right to file a grievance on any transfer that is made for arbitrary and capricious reasons."

In addition, Article XXVIII, entitled "Management Rights", states:

"The Union recognizes that, subject to the express provisions of the agreement, the supervision, management, and control of the Library's business, operation and facilities are exclusively the function of Library Management."

However, Union President JoAnn Brewer testified without contradiction that Schettl's situation marked the first time in her twenty (20) years service with the Library that any employe has been transferred in this fashion and that all prior transfers occurred only when a job was eliminated or when an employe went from part-time to full-time status. Hence, there is no history showing that the City is entitled to make the kind of transfers found under the unique facts of this case.

Given the foregoing, I therefore find that the City did act in an arbitrary and capricious fashion when it transferred Schettl from Circulation Services to Youth Services and that, as a result, it must immediately return her to Circulation Services. Since Schettl did not incur any reduction in pay because of her transfer, she is not entitled to any back pay.

In light of the above, it is my

AWARD

That the City violated the contract when it transferred grievant Victoria Schettl from Circulation Services to Youth Services; it therefore shall immediately return her to her former position.

Dated at Madison, Wisconsin this 9th day of October, 1992.

By Amedeo Greco /s/  
Amedeo Greco, Arbitrator