

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

MANITOWOC COUNTY HEALTH CARE
CENTER EMPLOYEES, LOCAL 1288, AFSCME,
AFL-CIO

and

MANITOWOC COUNTY

Case 297
No. 52195
MA-8869

Appearances:

Mr. Gerald D. Ugland, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P. O. Box 370, Manitowoc, Wisconsin 54220-0370, for the Union.

Mr. Robert J. Zeman, Corporation Counsel, Manitowoc County, 1010 South Eighth Street, Manitowoc, Wisconsin 54220-5392, for the County.

ARBITRATION AWARD

Manitowoc County Health Care Center Employees, Local 1288, AFSCME, AFL-CIO (the Union) and Manitowoc County (the County), are signatories to a collective bargaining agreement providing for final and binding arbitration. Pursuant to the parties' request for the appointment of an arbitrator, the Wisconsin Employment Relations Commission, on March 2, 1995, appointed Jane B. Buffett, a member of its staff, to hear and decide a dispute regarding the interpretation and application of the agreement. Hearing was held in Manitowoc, Wisconsin on March 15, 1995. A transcript was taken and received on March 31, 1995. The parties filed briefs, the last of which was received May 3, 1995.

ISSUE

The parties stipulated to the following statement of the issue:

Did the Employer violate the collective bargaining agreement when it did not assign Linda Decker light duty?

If so, what is the appropriate remedy?

BACKGROUND

Grievant Linda Decker is a Certified Nursing Assistant in the County's Health Care Center. A Certified Nursing Assistant cares for patients by performing such duties as feeding, bathing and dressing them. Grievant underwent surgery in which her hip was replaced. On September 13, 1995, her doctor released her to go back to work but restricted her to "light duty sit down work only." The County refused to allow her to return to work under such restrictions. A grievance was filed, asserting her right to be assigned light duty to allow her to return to work. That grievance remained unresolved and is the subject of this award.

RELEVANT COLLECTIVE BARGAINING PROVISIONS

ARTICLE 3 - MANAGEMENT RIGHTS RESERVED

Unless otherwise herein provided, management of the work and direction of the working force, including the right to hire, promote, transfer, demote, or suspend, or otherwise discharge for just cause, and the right to relieve employees from duty because of lack of work or other legitimate reason, is vested exclusively in the Employer. If any action taken by the Employer is proven not to be justified, the employee shall receive all wages and benefits due him or her for such period of time involved in the matter.

. . .

Unless otherwise herein provided, the Employer shall have the explicit right to determine the specific hours of employment and the length of work week and to make such changes in the details of employment of the various employees as it, from time to time, deems necessary for the effective operation of the Institution. The Union agrees, at all times, as far as it has within its powers, to preserve and maintain the best care and all humanitarian considerations of the patients of said Institution and otherwise further the public interest of Manitowoc County. The Employer may adopt reasonable work rules except as otherwise provided in this Agreement.

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ARTICLE 17 - WORKER'S COMPENSATION - INJURY LEAVE

Any employee who is injured or suffers from illness caused by his or her work for the County becomes eligible under provisions of the Worker's Compensation Act of the State of Wisconsin. The

Act provides weekly compensation payments based on the salary rate of the employee.

Employees who qualify for Worker's Compensation benefits shall be entitled to receive the benefit check(s) and payment from the County equal to the difference between their normal wages and the amount received through Worker's Compensation. This benefit shall be for thirty (30) work days. If at the expiration of the thirty (30) work day period, the employee remains incapacitated, the County shall continue to pay the employee the difference between their normal wages and the worker's compensation check, however, that amount shall be deducted from unused sick leave, provided said employee has unused sick leave credits.

After sick leave time is exhausted, the employee shall receive only the worker's compensation payments.

No Limited Duty employee shall be assigned to any nursing unit or department in lieu of an unlimited employee unless the nature of the limitation does not affect the ability of the Limited Duty employee to perform the work normally assigned to the position that the Limited Duty employee is to fill. However, the Employer may assign more than one Limited Duty employee to a nursing unit or department if the Limited Duty employees are supplements in addition to the normal staffing. Management retains the right to assign any and all Limited Duty employees to the first shift until their restriction has been resolved. Employees who are assigned to first shift under this provision shall be allowed to work their regular shift whenever there is a conflict between the hours of first shift and time required off for travel and attendance of any accredited educational program in which the employee was enrolled at the time leave started for injury or disability.

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POSITIONS OF THE PARTIES

The Union

The Union argues that Grievant was entitled to be assigned light duty even though her physical limitations were not the result of a work-related injury because the County had previously assigned light duty to another employe whose injury was not work related. The Union argues further that there is no contractual basis for distinguishing between employes whose injury is work

related and those whose injury is not. It argues the County cannot show it has a practice of refusing light duty to employees with non-work-related injuries. ARTICLE 17, according to the Union, is not limited to worker's compensation but also includes other injury leave.

The County

The County contends it has no contractual obligation to assign light duty to employees. It notes that although it has had a light-duty policy since September, 1990, which provided for light duty only for work-related injury, the Union's only response was to bargain a provision, set forth in the last paragraph of ARTICLE 17, which limits the burden that might be sustained by other employees when light duty is assigned. It insists that it has never offered light duty for non-work-related injuries. It insists it has the right to establish the physical requirements of its position descriptions.

ADDITIONAL FACTS AND DISCUSSION

Since it is undisputed that Grievant had a valid doctor's certification that she could return to work only with restrictions and the County refused to assign her light duty, the resolution of this dispute depends on a determination of whether the County was contractually bound to assign light duty to Grievant.

The light duty sought by Grievant would involve the temporary creation of a job description that differs from normal assignment by the removal of duties which were determined by Grievant's doctor to be outside proper activities for her current medical condition. Consequently, light duty implicates management's right to assign duties and direct the work force. Since management retains this right to assign and to organize the manner in which the work is to be accomplished, an employee has no inherent guarantee of light duty.

It is possible for a union to bargain for the right to light duty, but the parties' contract does not have such a provision. ARTICLE 17 - WORKER'S COMPENSATION - INJURY LEAVE (set forth above) addresses some aspects of light duty (which it refers to as "limited duty"). That Article provides, in the first three paragraphs, the compensation for employees who have received work-related injuries. In the fourth and last paragraph, the first two sentences prescribe how a limited-duty employee shall be assigned so as to not create a burden on the other employees in the shift. The last two sentences control which shift the employee shall be assigned. The entire paragraph relates to details of the assignment of limited-duty employees when they are assigned. These details, however, come into play after the County has decided to assign light duty to an employee, but the details themselves do not obligate the County to offer light-duty assignments to an employee who asks for it.

The Union asserts that the County is obligated to provide Grievant with light-duty work because it had previously done so for another employee, Karen Kreischer, who had an injury that was not work related. The testimony regarding whether Ms. Kreischer's injury was work related

was conflicting: a Union witness, testifying not from personal knowledge but from hearsay, asserted Ms. Kreischer's injuries had not been work related, but a County administrator, testifying from the County's personnel records, asserted those injuries were work

related. The undersigned finds the County's business records to be the more reliable of the two offers of evidence. Therefore I conclude that the record does not show that the County has offered light duty to employes other than those on Worker's Compensation. 1/

Finally, the undersigned addresses the argument that granting light duty to employes with work-related injuries but not to other employes is discrimination in violation of the contract. The County established its restricted duty program as part of its policy, formulated in September, 1990, to reduce costs of Worker's Compensation. Workers injured in the course of their County employment pose a financial liability for the County which is not present with employes suffering from medical conditions which are not the responsibility of the County. Offering light duty to the first group of employes, but not to the second is therefore a distinction based on a legitimate business consideration and not invidious discrimination. This practice of assigning light duty to employes with work-related injuries, but not to others, does not offend the contract.

In summary, the undersigned concludes that the contract does not obligate the County to offer light duty to an employe, that there is no evidence that it has done so in the past, and that the County is not improperly discriminating by assigning light duty to employes suffering a Worker's Compensation disability but not offering it to other employes.

In light of the record and the above discussion, the Arbitrator issues the following

AWARD

1. The Employer did not violate the collective bargaining agreement when it did not assign Linda Decker light duty.
2. The grievance is denied and dismissed in its entirety.

Dated at Madison, Wisconsin, this 25th day of July, 1995.

By Jane B. Buffett /s/
Jane B. Buffett, Arbitrator

1/ Having reached this finding of fact, I do not reach any conclusion whether such an assignment, if found to have occurred, would create the disputed light-duty obligation for the County.