

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

LOCAL 2717-B, AFSCME, AFL-CIO

and

JACKSON COUNTY

Case 110
No. 52558
MA-9020

Appearances:

Mr. Daniel R. Pfeifer, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO,
appearing on behalf of the Union.

Mr. James Michael DeGracie, Corporation Counsel/Personnel Director, Jackson County,
appearing on behalf of the County.

ARBITRATION AWARD

The Union and the County named above jointly requested the Wisconsin Employment Relations Commission to appoint the undersigned arbitrator to hear the grievance of Peggy Bush Wyss regarding vacation selection. A hearing was held in Black River Falls, Wisconsin, on October 2, 1995, at which time the parties presented their evidence and arguments. The parties agreed that an expedited award was appropriate and the record was closed on October 2, 1995.

ISSUE:

The issue to be determined is:

Did the County violate the collective bargaining agreement by its denial of the Grievant's request for vacation time in December of 1995? If so, what is the appropriate remedy?

BACKGROUND:

The Grievant, Peggy Bush Wyss, is complaining about being denied her choice of vacation time. The Grievant was at work on December 22, 1994, but went on vacation on December 23, 1994 and returned on January 3, 1995, at 8:00 a.m. Rose Olson signed a posting for vacation on December 22, 1994, for the dates of December 26 through 29, 1995. The Grievant, a Clerk III, has more seniority than Olson, a Typist III, but they both work in the Human Services Department and back each other up when one is absent.

When the Grievant returned in January of 1995, she realized by January 4th or 5th that Olson had signed up for vacation that the Grievant wanted. The Grievant has taken vacation time at Christmas for the last four years. Article 9, Section 2 of the parties' labor contract provides for a method by which a more senior employee may bump a less senior employee in vacation preferences:

The number of employees on vacation at any time shall be determined by the Director. Choice of vacation time shall be requested in writing as far in advance as possible. Employees must give a minimum of three (3) days notice for vacation time of less than five (5) days duration. One week notice must be given for vacations lasting five (5) or more days. Each employee shall post his/her vacation request on the union bulletin board and within three (3) days thereof an employee of greater seniority within the respective seniority unit may claim part or all of the vacation time requested, and the less senior employee may have to select a different vacation period if simultaneous vacation periods cannot be granted by the Director. Exceptions to the time limits may be granted upon approval and in the sole discretion of the Director or his/her designee.

Article 6 defines seniority, and Section 2 of that Article makes two separate divisions for purposes of seniority rights -- professional employees, and clerical and para-professional employees. Both the Grievant and Olson are in the clerical and para-professional group.

The parties also stipulated at hearing that the three days for a senior employee to bump the less senior employee starts running the day after the actual posting. Giving the Grievant the benefit of the doubt that she did not know of the posting on December 22, 1994, the three days would have started running on January 3, 1995, when the Grievant returned to work from vacation and knew or should have known of the posting. The time for the Grievant to bump would have been up at the end of the day on January 5, 1995. The Grievant thought the three days would have been up in December, and by the time she saw the posting, she considered it too late to exercise her bumping rights. Then she decided to go ahead and try it anyway.

The Grievant is aware of the bumping procedure. In fact, she bumped Olson from her choice of a summer vacation previously in 1994. Olson was forced to pick another time when the Grievant wanted the same time off in the last week of July of 1994. The Grievant made the bump within three days.

On January 6, 1996, the Grievant asked for December 26 through 29, 1995, off for vacation. Her supervisor, Todd Bowen, denied the request with a note that Olson was already off. The Grievant asked Bowen if he was allowing just two people to be off when three had been gone

in 1994, and Bowen replied that it was possible that someone less senior could also be gone because that person does not back up either the Grievant or Olson.

The so-called backup system is to replace employees and perform duties that have to be done when some employees are on vacation. There are certain matters that can wait until the employee with the responsibility returns, but other matters need to be done during longer vacation periods. The Grievant's job is to prepare bills and invoices for the entire department. She pays all bills and performs other duties, such as the casual employee payroll and recording secretary for the human services board. Olson does all the typing for the unit. The Grievant trained Olson to do her job.

The support and overhead clerical staff unit also has four Typist II's -- Christine Bruley, Lori Domenosky, Beth Amborn, and Laura Hruza. Bruley, Amborn and Hruza back each other up. The Grievant and Olson back each other up. Everyone fills in when Domenosky, the receptionist, is gone. Amborn is the transportation coordinator and mental health billing clerk, and Hruza is the secretary and protective payee for developmentally disabled clients. The Grievant believes that Hruza's position is closer to her own in the types of duties performed, and that Olson and Domenosky's positions are the farthest from hers in terms of the type of work done. The Grievant thinks that Hruza could be assigned to be the backup person when both she and Olson are gone, but she agrees that it is a management function to assign work and set up the backup system. In the economic support unit, the least senior employees back up the most senior employees.

The other people in the clerical and paraprofessional unit include one clerical and one paraprofessional in the aging unit, three clericals in the economic support unit, five economic support specialists, four clericals in public health, one social service aide, and three child support specialists. The Grievant has more seniority than most, except for Bruley and Rosemary Smetana and Pam Saley. In her unit, only Bruley has more seniority than the Grievant.

Bowen inherited the system whereby the Grievant and Olson back each other up. The two had done this for so long that Bowen could not estimate how long it would take to train a new backup person for the Grievant. He estimated that it would take some doing if he and the Director decided to train a new person. The Grievant disputed that, noting that Hruza works on the same computer program and that it would not take a lot of time to train Hruza to do her job.

There have been occasions when three employees have been gone from the unit at the same time, particularly during single day absences as opposed to week-long vacations. For example, Bruley, Wyss and Domenosky were all on vacation on December 26, 1994. Both Bruley and the Grievant have had several vacations at the same time over the Christmas holiday.

DISCUSSION:

The parties expressed several concerns. The Union is concerned that the Department's use of backup employees denies the seniority rights expressed in the labor contract, as evidenced by the fact that Bowen would have let a less senior employee be off over Christmas of 1995 but not the Grievant because of Olson's absence. The Union points out that seniority is to be divided into only two groups as noted in Article 6, not the individual units that the Department is broken into. The County is concerned that management retain the right to assign duties and to keep the Departments operating as needed. The County also notes that the Director has discretion regarding the number of employees on vacation, pursuant to Article 9, and that management may also make some exceptions in its sole discretion.

The Grievant was well aware of the bumping procedure, having used it before, and knew that her time to use it had run. The County appears to give her some benefit on this time frame, appropriately enough, by starting the time to run on January 3, 1995, when the Grievant returned from her vacation. The Union notes that she probably did not see Olson's posting on January 3rd, but the time has to start running from some point that the Grievant should have known of it. Apparently vacation postings is a matter of some importance to the Grievant, and the posting sheet is available in the break room where the Grievant goes every day. If the Grievant did not see it the first day, she still had two days to try to use the bumping procedure, but she did not. Should the Grievant be allowed to wait any amount of time -- suppose she had not noticed Olson's posting until February? The time frame of three days when the Grievant returned from vacation was certainly sufficient for her to bump Olson.

The Union has a legitimate concern that the Department consider seniority between all the clerical and para-professional people, not just the group of six clericals in the Grievant's unit. However, most if not all of these people are not likely to be cross trained. The Grievant could not do the work of the para-professionals, for example, and they could not do her work. It is a legitimate and appropriate management function to assign the work to employees and see that the absence of employees is covered in a manner which will not disrupt its entire operations. On the other hand, management needs to be sensitive to the needs of employees to take their vacations at their preferred times, insofar as possible.

The Union is correct that it is difficult to meet all the goals of seniority and coverage of employees' work when the more senior employees -- Wyss and Olson -- are providing back up for each other. However, it is not within the province of the Arbitrator to direct the Department to assign backup duties to certain employees. The management of the department is charged with that responsibility, as well as the knowledge of who can do what and when.

If the Union had demonstrated that the backup system is being used in a manner which defeats the seniority provisions of the labor contract, that would be a different matter. It appears that seniority and the bumping system is working fairly well. After all, the Grievant had the last four consecutive Christmas vacations and bumped Olson out of a chosen summer vacation as well. If anyone should be complaining about being senior and being denied preferred time off, it should

be Olson. Olson should be here grieving about being forced to back up Wyss, not vice versa. But Olson is not a grievant, and there is little on this record to indicate that the Employer's backup plans defeat the seniority principles in any way other than in this one instance, where the Grievant missed the time to bump anyway. Also, two senior employees -- Bruley and the Grievant -- have often been on vacation over the Christmas holiday. In other words, senior employees are getting preferred times.

The Union argued that a less senior employee might be allowed to go on vacation over Christmas of 1995 while the Grievant is denied such vacation. That has not happened yet, and to address it would be premature and speculative. 1/

For these reasons, I am denying the grievance.

AWARD

The grievance is denied.

Dated at Elkhorn, Wisconsin this 13th day of October, 1995.

By Karen J. Mawhinney /s/
Karen J. Mawhinney, Arbitrator

1/ Although Bowen said he might let someone with less seniority, such as Hruza, go on vacation over the Christmas holiday, that remark was made without having such a case at hand. If that scenario did indeed happen, it would be wise for all to keep in mind the seniority division created by Article 6, Section 2, in conjunction with the seniority rights given in Article 9, Section 2, as well as the Director's right to determine the number of employees on vacation at any time.