

IN THE MATTER OF ARBITRATION	}	OPINION AND AWARD
	}	
between	}	
	}	
INTERNATIONAL BROTHERHOOD	}	
	}	
OF ELECTRICAL WORKERS	}	BMS CASE No. 09-RA-1128
	}	
LOCAL 949 (the "UNION")	}	
	}	
and	}	
	}	
PEOPLE'S COOPERATIVE	}	NEUTRAL ARBITRATOR
	}	
POWER SERVICES OF	}	EUGENE C. JENSEN
	}	
ROCHESTER, MINNESOTA	}	
	}	
(the "EMPLOYER")	}	

Advocates

For the Union

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For the Employer

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Witnesses

For the Union:

Rick Bartz, IBEW Business Representative
Keith Dickman, Purchasing and Materials Management Coordinator
Gary Schurhammer, Warehouse Worker
Nicky Strain, Engineering and Operations Clerk & Steward for Union

For the Employer:

Elaine Garry, President/CEO Peoples Cooperative Services

Hearing Date and Timeline for Briefs

A hearing was held on September 15, 2009, at the Hilton Garden Inn in downtown Rochester, Minnesota. The parties agreed to submit post-hearing briefs simultaneously on October 15, 2009. The Arbitrator received the briefs on October 16, 2009, and the hearing was closed as of that date.

Date of Award

The Arbitrator sent identical copies of this award to the Employer, the Union and the National Labor Relations Board by certified mail on November 14, 2009.

Jurisdiction

In accordance with the Minnesota Public Employment Labor Relations Act (PELRA), the rules of the Minnesota Bureau of Mediation Services (BMS), the National Labor Relations Act (NLRA), the rules of the National Labor Relations Board (NLRB), and the language of the 2006 – 2009 labor agreement between the parties, this matter is properly before the Arbitrator.

Issue

The parties were not in agreement regarding the issue(s) in this matter.

The Union's issue statement:

Did the Cooperative violate the parties' collective bargaining agreement by 1) unilaterally eliminating a classification expressly contained therein; and 2) transferring duties heretofore performed by bargaining unit members to a supervisor outside of the unit?

The Employer's issue statement:

Did the employer violate the labor contract when, with the promotion of Keith Dickman to Purchasing and Materials Management Coordinator, approximately 10 percent of Dickman's job having to do with the Purchasing function was transferred from the bargaining unit to be performed by Mr. Dickman?

The Arbitrator will use the following issue statement in deciding the case before him:

Did the Employer violate the 2006 – 2009 labor agreement when it transferred job duties assigned to Purchasing Agent Keith Dickman, prior to April 13, 2009, to a supervisory position outside of the bargaining unit?

Relevant Contract Language

ARTICLE I. Recognition, Coverage, Duration & Modification

- A. The Cooperative recognizes the Union pursuant to Section 9 (a) of the National Labor relations Act, as amended to date, as the exclusive representative for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment for all employees in the Unit determined by the National Labor Relations Board to be appropriate within the meaning of Section 9 (b) of the Act as amended to date and as set forth by them in Case No. 18-RC-10739 dated January 21, 1976; i.e., all full time and regular part time office clerical employees and engineering department employees employed by the employer at its Rochester, Minnesota facilities; excluding secretary to the CEO, managerial employees, guards and supervisors as defined in the Act, and all employees currently represented by Local Union 949, International Brotherhood of Electrical Workers, AFL-CIO.
- B. This Agreement shall be effective as of June 1, 2006, and shall remain in full force and effect until May 31, 2009. It shall renew from year to year thereafter, unless either party shall notify the other in writing that it desires to modify or terminate this Agreement not less than sixty (60) calendar days prior to the

expiration date of the Agreement. Nothing in this section shall be construed as preventing the parties at any time from amending this Agreement by mutual consent.

It is further agreed that this three year agreement can be reopened at anytime should significant changes occur that affect the Cooperative's financial status or organizational structure.

ARTICLE II. Union & Cooperative Security

- B. The control and supervision of all operations and the direction of all working forces, including the right to hire and to determine the qualifications, job requirements, scheduling, hours of work and the size and character of the working forces are vested exclusively in the Cooperative. Its decision relative to these matters shall be final except as modified by the provisions of this Agreement.

ARTICLE III. Grievances: Definition & Procedure

- A. A grievance is defined to be any difference between the Cooperative and an employee (or employees) covered by this Agreement concerning compliance with any provision of the Agreement.

ARTICLE IV. Mediation & Arbitration

- E. The Arbitrator shall have no authority to alter, modify, nullify, ignore, add to, subtract from, or change the terms of the agreement. The decision of the Arbitrator shall be binding on the Cooperative, the Union and the employees.

ARTICLE VI. Classifications & Wages: Schedule of Hours

- A. The occupational classifications and rates of pay are listed in SCHEDULE "A". These rates shall prevail for the duration of the Agreement. Nothing herein contained shall prevent the Cooperative from changing operating and production methods, hours of work as necessary or adopting new methods or creating new occupational classifications on new or changed

methods. The rates of pay for new classifications shall be negotiated with the Union.

ARBITRATOR'S NOTE: Schedule A. of the Agreement includes the Purchasing classification.

Background

The Employer is a 17,000 member owned electric power utility serving the rural areas around Rochester, Minnesota. The Union (IBEW) represents both the "outside" workers (maintenance and construction) and the "inside" workers (engineering, accounting, purchasing and various clerical positions). Each group has its own collective bargaining agreement with the employer. The Employer has a total of fifty-five employees: twenty-seven are in the "outside" bargaining unit; thirteen are in the "inside" bargaining unit; the remaining employees are not represented by the Union.

The position in question at this hearing was previously included in the "inside" bargaining unit, and was titled Purchasing Agent (prior to April 13, 2009). The Employer added some managerial and supervisory duties at that time and reclassified the position and its incumbent. The new classification was named Purchasing and Materials Management Coordinator (PMMC).

The Union filed a grievance after receiving a copy of an April 7, 2009, memo to "All Staff," in which the Employer spelled out its intentions regarding the position at bar. The grievance was processed through the steps of the grievance process,

including mediation with the Bureau of Mediation Services (BMS), and it is now at the arbitration stage.

In addition to the grievance, the Union also filed an unfair labor practices (ULP) charge with the National Labor Relations Board (NLRB) on April 17, 2009. The NLRB decided to defer further proceedings on the charge to the grievance/arbitration process. In the deferral letter, the NLRB states: "It appears likely that the issues described in the charge will be resolved by your use of the grievance/arbitration procedure."

The Arbitrator made it clear to the parties that it was not his intention to rule on the merits of the ULP. If a decision in this matter coincidentally resolves, or minimizes that issue, so be it. And, if it does not, so be it. In either case the NLRB retains jurisdiction over the ULP.

It is the Arbitrator's task to determine if a contract violation occurred; and if so, what is the appropriate remedy?

The Union's Position

The Purchasing classification has been in the bargaining unit for over thirty years, and Richard Dickman occupied the position from 1987 through April 13, 2009. The Employer notified Rick Bartz, Union Business Representative, on March 20,

2009, that it intended to reclassify Dickman and his position to a new supervisory classification: Purchasing and Materials Management Coordinator (PMMC). Bartz objected to this proposal by the Employer. Subsequently, the Employer implemented its proposal, and it is the subject matter of this arbitration.

The Union asserts that the majority of duties assigned to Dickman prior to his transfer continue to be assigned to him in his new classification. In addition, the Union claims that Dickman does not perform many of the supervisory/managerial duties that are indicated in his new position description.

In essence, the Union argues that the recognition clause of the labor agreement was violated when the Employer transferred bargaining unit work to a non-represented supervisory position:

The facts of this case are particularly egregious because the Employer's action resulted in the functional elimination of a wage classification. This is a clear diminishment of the bargaining unit – the Employer's transfer of this work to non-unit personnel resulted in a loss of a position in the bargaining unit, and the Employer conceded in its correspondence that no new employees would be hired as a result of the change. Arbitral authority is clear in stating that the Employer cannot reduce the bargaining unit or reclassify bargaining unit positions by simply reassigning that work to persons outside the unit. (p. 27, Union's Post-Hearing Brief)

The Union provided examples of arbitral precedent to support its position in this matter.

The Employer's Position

The Employer saw the need to create a position that would assume responsibility for purchasing, materials management, and maintenance (building and grounds). Keith Dickman was chosen for the new position because of his skills, knowledge and abilities. The Employer argues that Dickman's previous job as a Purchasing Agent had significantly evolved over time, and that Dickman's "purchasing related work took [only] about 10 percent of his time both before and after his promotion . . ." (p. 4, Employer's Post-Hearing Brief)

In addition, it argues that there is no language in the agreement which prohibits the transfer of bargaining unit work to non-bargaining unit supervisors. The Employer offered the actual language of the labor agreement to support its claim:

The control and supervision of all operations and the direction of all working forces, including the right to hire and determine the qualifications, job requirements, scheduling, hours of work and the size and character of the working forces are vested exclusively in the Cooperative. Its decision relative to these matters shall be final except as modified by the provisions of this Agreement. (Article II, Section B, Labor Agreement)

In essence, the Employer argues: 1) it has the right to determine the staffing needs of the Cooperative; 2) the Purchasing Agent classification was no longer necessary due to a significant reduction in actual Purchasing Agent duties; and 3) the labor agreement does not bar it from assigning bargaining unit work to supervisory staff. The Employer offered examples of arbitral precedent to

support its argument, specifically relating to standards for the transfer of bargaining unit work to non-bargaining unit employees.

Discussion

The Arbitrator thoroughly read and analyzed all of the evidence, both testimony and documents, presented at the arbitration hearing, and he carefully reviewed post-hearing briefs and their accompanying supportive materials before reaching his decision in this matter.

As is true in many of the cases the Arbitrator hears, I find that both parties acted in good faith in this matter. The Employer's actions were prompted by appropriate managerial concerns: several stakeholders were unhappy with the efficiency, accuracy, and orderliness of the warehouse and materials management functions; previously, the management structure provided the affected employees supervision on an organizational chart, but not in actuality; and, despite no change in position description, the duties assigned to Keith Dickman had evolved over time, adding many new responsibilities and subtracting many others.

The Union, on the other hand, also acted in an appropriate manner: it was concerned about the integrity of the bargaining unit; a position it represented for over thirty years suddenly disappeared, along with its bargaining unit duties; the

incumbent of that position, a long-term member, was no longer a member; and employees who had worked alongside the incumbent for many years found themselves subordinate to him, he became their new boss.

Although both sides in this matter offered me weighty arbitral precedent, it is noteworthy that arbitrators, while hearing very similar cases, have ruled quite disparately. Some have been rather strict constructionists: if the agreement doesn't have language prohibiting the transfer of union work to non-union positions, then the employer has the right(s) to do so via a generalized and/or typical management rights clause (Article II, Section B in the instant case). Other arbitrators make an assumption that the union enjoys a proprietary right to the assigned work through the recognition clause and/or listings of represented positions or classifications (Article I, Section A, and Schedule "A" in the instant case).

It is therefore incumbent upon the arbitrator to first interpret the language of the labor agreement -- give the language meaning -- before applying the facts of the case.

Contract interpretation is a primary function of the arbitration process. It is nearly impossible to write a labor agreement that would cover all the contingencies that might occur during its life.

Most persons experienced in collective bargaining recognize the collective agreement as a comprehensive, but necessarily flexible, instrument which governs the relations between the parties. The very fact that almost all such agreements provide for the arbitration of grievances concerning agreement interpretation suggests that the parties recognize the impossibility of foreseeing and providing for all questions which may arise during the life of the agreement. (Elkouri & Elkouri, 3rd edition, p. 297).

Ambiguity in language may be over a relatively simple issue, such as the different interpretations of the word "day". For example, is the word day interpreted as a calendar day or a work day? In this case, however, the ambiguity is much more complex. Do the recognition clause and Schedule "A", and/or the management's rights clause extend unspecified rights to either party in determining this matter?

The Arbitrator is of the opinion that one must look at the agreement as a whole when attempting to predict the parties' possible intentions regarding specific nuances that might surface.

It is said that the "primary rule in construing a written instrument is to determine, not alone from a single word or phrase, but from the instrument as a whole, the true intent of the parties and to interpret the meaning of a questioned word or part with regard to the connection in which it is used, the subject matter and its relation to all other parts or provisions." (Elkouri & Elkouri, Third Edition, pp. 307-08)

If the Employer is correct in their interpretation of the labor agreement: "[t]here is no contract provision prohibiting the transfer of bargaining unit work out of the bargaining unit, nor is there a provision for preventing a supervisor from

performing bargaining unit work” (p. 7, Employer’s Post-Hearing Brief), could that interpretation significantly impact other clauses of the labor agreement? It is obvious to the Arbitrator that the answer would be “yes.” If bargaining unit work can be assigned outside of the bargaining unit, then several fundamental protections and benefits of the labor agreement would also be unavailable to non-bargaining unit employees performing those duties: wage levels, just cause, seniority, hours of work, and the list could go on. In addition, positions might lose bargaining unit status for less than legitimate reasons. Taking this interpretation to the extreme, the Employer could essentially eliminate the bargaining unit. The Arbitrator is not suggesting the Employer would contemplate doing this, even if they had such a right. However, I am suggesting that the Employer’s interpretation could lead to serious unintended consequences. It is, therefore, reasonable to interpret the recognition clause to mean that the Union enjoys some rights to the work normally assigned to its members.

As such, I give significant credence to the position that the Union does have a right to represent those employees who are continuously performing bargaining unit work. And, using this reasoning, the Arbitrator will analyze two factors:

1. The quantity of duties that Keith Dickman performed prior to April 13, 2009, that were consistent with the Purchasing Agent classification and/or other typical bargaining unit work.

2. The quantity of Purchasing Agent and/or typical bargaining unit duties that were transferred into Dickman's new position as Purchasing and Materials Management Coordinator (PMMC).

There is little doubt that Dickman's new position inherited many of the duties he performed prior to April 13th. And, it is also clear that the Employer assigned additional management and supervisory responsibilities at the time of his promotion.

It is the Employer's contention that Dickman's Purchasing Agent classification had evolved over time into more of an administrative and/or managerial position. And, that at the time of his promotion, his Purchasing Agent duties had diminished to the point of being only incidental to the position. The Union, on the other hand, asserts that Dickman was -- and still is a Purchasing Agent; and, in addition, he continues to perform non-purchasing agent duties, including safety responsibilities. Dickman testified that, although some of his assigned duties (those in his Purchasing Agent position description) had been reassigned to his co-workers or were simply not necessary due to technological advances, he continues to perform most of his previous duties.

I agree with the Employer's contention that Dickman's position evolved over time. And, it is noteworthy that his position description did not keep up with those changes. An examination of both position descriptions is appropriate:

Purchasing Agent Position Description:

Status: Non-exempt

Position Function: To maintain a proper materials and supplies inventory to assure scheduled construction and maintenance work and emergency work may be handled without delay.

Reporting Relationship:

Reports to: CFO

Responsible for: None

Responsibilities, Accountabilities and Authorities: Within the limits approved by board policies, operating guides and procedures, approved work plans and budgets and specific delegation from the supervisor of this position, the person in this position assumes responsibility and has commensurate authority for the following activities recognizing the continuing responsibility of this position for developing and maintaining a favorable cooperative image consistent with the cooperative's goals:

1. Process requisitions and purchase orders for all departments of the Cooperative to achieve an accurate accounting system for the Cooperative.
2. Assure that supplies received are accurate; handle material returns, material shipping problems, and backorder and resale items; and document all material transactions to ensure accurate records of material/inventory purchased and used by the Cooperative.

3. Maintain an adequate inventory of materials in stock under the direction of the CFO and other department managers and maintain the records of these transactions to accomplish work plan and budget goals.
4. Complete paperwork and computer entries to document receipts and distribution of material by verifying invoices to properly account for all transactions including transformers.
5. Assist with the delivery/receiving process of all material with the use of the forklift to ensure a safe, healthy and efficient workplace and/or work site.
6. Responsible for the physical inventory of all material, equipment and supplies of the Cooperative which includes counting and processing to achieve an accurate accounting system for the Cooperative.
7. Delivers material to the field when requested to ensure a safe, healthy and efficient workplace and/or work site.
8. Measure gas tanks at assigned times and record measurements in the computer accounting system to achieve an accurate accounting system for the Cooperative.
9. Responsible for maintaining continuous inventory control to ensure an adequate supply for the construction and maintenance program of the Cooperative.
10. Responsible for determining material necessary for the construction and maintenance program of the Cooperative

11. Responsible for periodic inventories by reviewing computer printouts for accuracy, then advise supervisor of discrepancies and necessary adjustments to achieve an accurate accounting system for the Cooperative.
12. Determine absolute minimum material requirements of the Cooperative under the direction of department managers to ensure and adequate supply for the construction and maintenance program of the Cooperative.
13. Responsible for adequate first aid and safety supplies on hand and available at all times, which includes tested rubber gloves, hard hats, rubber sleeves, and safety glasses to ensure a safe, healthy and efficient workplace and/or work site.
14. Responsible for staying current on the policies and procedures of the Cooperative, RUS line construction specifications and other issues related to the Cooperative to meet regulatory requirements.
15. Required to attend and participate in safety meetings and attend such specialized seminars as may be directed to ensure a safe, healthy, and efficient workplace and/or work site.
16. Responsible for following all Federal, state and local regulations as well as Cooperative policies, safety rules and any other guidelines established to ensure a safe, healthy and efficient workplace and/or work site.
17. Uses time wisely, appropriately cares for Cooperative resources and works effectively to ensure cooperative resources are maximized.
18. Maintains and expands skills, abilities and knowledge required to perform responsibilities of this position in a fully qualified and satisfactory manner.

19. Maintains the confidentiality of all Cooperative members, employees and vendor information, data and documents handled in the completion of the position responsibilities to meet regulatory requirements and customer and employee expectations.
20. Uses initiative and judgment in making decisions that are in the best interest of the Cooperative and makes suggestions for improvement of operations and efficiencies to insure the best interests of the Cooperative are served.
21. In addition to these responsibilities, may be assigned by the supervisor to perform other duties from time to time.

Purchasing and Materials Management Coordinator Position Description

Status: Exempt

Position Function: To efficiently purchase, maintain and distribute materials needed by the Cooperative and to coordinate this activity with the needs of all departments. To maintain the building, grounds and cooperative-owned property to insure a safe working environment is provided and to maintain full value.

Reporting Relationship:

Reports to: CFO

Responsible for: Warehouse Clerk

Buildings and Ground Maintenance person

The Responsibilities, Accountabilities and Authorities: Within the limits approved by board policies, operating guides and procedure, approved work plans and budgets and specific delegation from the supervisor of this position, the person in this position assumes responsibility and has commensurate authority for the following activities recognizing the continuing responsibility of this position for developing and maintaining a favorable cooperative image consistent with the cooperative's goals:

As a member of the Finance, Billing and Accounting Staff:

1. Communicates and interprets the Cooperative's Mission Statement, Strategic Goals and policies to establish direction and to obtain understanding and commitment by the employees.
2. Develops recommendations regarding departmental organizational structure and staffing policies and practices to accomplish approved program goals through the most effective and efficient utilization of available resources.
3. Maintains effective internal and external relationships to enhance information transfer, productivity and the ability to influence decisions of others
4. Selects and recommends the transfer, promotion, termination or disciplinary action of immediate staff in cooperation with the Director of Finance and Accounting, to accomplish approved program goals and to assure effective and efficient utilization of available resources
5. Administers employee development and compensation programs consistent with applicable policies, procedures and practices to assure the maintenance of a highly competent, motivated and effective work force.

6. Promotes and contributes to maintaining high standards for work place safety, assists in evaluating safety practices, and makes recommendations for improvements to help ensure a safe working environment for employees and the public.

As the Purchasing and Materials Management Coordinator:

1. Maintains an adequate inventory of materials needed for maintenance, construction, service wiring projects and customer purchases, so that these activities can proceed according to schedule in support of the Cooperative's Strategic Goals and documents all transactions involving inventory items and conducts periodic and annual physical inventories to properly account for the use of material items.
2. Maintains a safe and orderly warehouse facility for effective support of the operations department and customers and insures safe working practices are followed in warehouses and storage areas to prevent accidents and keep employees safe.
3. Coordinates shipping and receiving of freight items to support Cooperative operations and to insure proper accounting and billing of shipping charges.
4. Monitors progress and costs in carrying out work plans and budgets and prepares regular reports for the CFO to assure compliance with program goals and budget levels and to serve as the basis for re-planning.
5. Coordinates warehouse activities to insure maximum productive use of both human and physical resources.

6. Develops material and equipment specifications as requested, secures and awards bids, and negotiates contracts for purchases for the cooperative to obtain quality materials and equipment at the best possible price.
7. Receives sales representatives and maintains good communications and relations with the vendors as it pertains to the inventory, evaluates vendor services and recommends changes as needed to enhance the cooperative's purchasing ability.
8. Develops cooperative procedures and departmental relationships that lead to understanding, confidence in and use of the cooperative's purchasing procedures and keeps those employees who have made a requisition for items informed of the status of the order including quantity, expected delivery date and supplier.
9. Keeps informed of current developments in purchasing and the electric utility industry through literature, vendor contacts and communications with other utilities and conveys this information to the proper department managers to assure that the quality and cost of materials and supplies being purchased provide the greatest benefit.
10. Schedules and supervises the general office and grounds maintenance activities to insure an environment that is clean and pleasing for employees and customers.

As an employee of the Cooperative:

1. Responsible for staying current on the policies and procedures of the Cooperative, RUS line construction specifications and other issues related to the Cooperative to meet regulatory requirements.

2. Required to attend and participate in safety meetings and attend such specialized seminars as may be directed to ensure a safe, healthy, and efficient workplace and/or work site.
3. Responsible for following all Federal, state and local regulations as well as Cooperative policies, safety rules and any other guidelines established to ensure a safe, healthy and efficient workplace and/or work site.
4. Uses time wisely, appropriately cares for Cooperative resources and works effectively to ensure cooperative resources are maximized.
5. Maintains and expands skills, abilities and knowledge required to perform responsibilities of this position in a fully qualified and satisfactory manner.
6. Maintains the confidentiality of all Cooperative members, employees and vendor information, data and documents handled in the completion of the position responsibilities to meet regulatory requirements and customer and employee expectations.
7. Uses initiative and judgment in making decisions that are in the best interest of the Cooperative and makes suggestions for improvement of operations and efficiencies to insure the best interests of the Cooperative are served.
8. In addition to these responsibilities, may be assigned by the supervisor to perform other duties from time to time.

The Arbitrator carefully compared the two position descriptions on a section by section basis:

Position Function:

The purchasing and materials management functions are similar in both position descriptions. The PMMC, however, adds the building and ground maintenance responsibilities. Although both positions report to the CFO, the PMMC has supervisory responsibilities for two employees.

Responsibilities, Accountabilities and Authorities:

The opening paragraph appears to be a “boilerplate” statement and is identical in both position descriptions.

The PA position description then goes on to describe twenty-one responsibilities. The PMMC, on the other hand, separates responsibilities into three separate areas:

1. As a member of the Finance, Billing and Accounting Staff. Items 1 through 5 under this heading are supervisory/managerial and were not part of the PA position description. Item 6 is similar to the PA position description’s assignment of safety duties (items 13 through 16 in the PA position description).

2. As the Purchasing and Materials Management Coordinator. Although certain responsibilities are spelled out more clearly, the duties described in the PMMC position description, specifically items 1, 3, 4, 6, 7, 8, and 9, appear to be consistent with many of the items in the PA position description. Similar to item 6 in the previous section, item 2 is consistent with Dickman's previous duties regarding safety (Items 13 through 16 in the PA position description). Item 5 in the PMMC position description, "[c]oordinates warehouse activities . . .", might describe a person in either a lead worker or a supervisory capacity. And, item 10 in the PMMC position description is clearly a supervisory function.

3. As an employee of the Cooperative. Items 1 through 8 in the PMMC position description are identical to items 14 through 21 in the PA's.

In addition, Dickman testified that he continued to perform various duties that were listed in the PA position description, but not listed in the PMMC position description. They included: delivery of goods when others are not available, measuring gas tank levels and determining material necessary for construction and maintenance crews from staking sheets.

The Arbitrator also looked at the Position Specifications for both classifications:

ARBITRATOR'S NOTE: *The "Essential Job Functions" section is not included in the Position Specifications below: the sixty-nine factors were the same in both documents.*

Position Specification

Purchasing Agent

EDUCATION: High School diploma or equivalent. One year post high school in the accounting field.

EXPERIENCE: Minimum three years experience working in a sales/marketing/warehouse environment. Being familiar with electric cooperative construction material units and equipment is preferred.

KNOWLEDGE: Must possess computer knowledge, be familiar with and have good organizational skills, excellent written and verbal communication skills, and the ability to interact effectively with employees, members and the public as well as the ability to participate in a team environment. Possess and maintain a license to operate Cooperative vehicles. Continually keep informed of changing technology to properly perform the objectives of this position. Meet to the satisfaction of the Cooperative any job related written, verbal or physical tests as may be required by the Cooperative.

ABILITIES AND SKILLS: The ability to effectively and efficiently use available resources is essential. The ability to effectively communicate with others required. Qualified to perform CPR and First Aid is desirable. The ability to operate a forklift or other equipment needed to use in a warehouse setting is desirable or have ability to be trained to operate. Adhere to safety rules and practices.

Supports teamwork by providing effective participation, cooperation and communication. Provides continuous improvement to employee morale, motivation, productivity and quality of production through teamwork.

Keeps supervisor informed of all matters which must be handled at that level in the department with particular emphasis on safety and service issues.

Position Specification

Purchasing and Materials Management Coordinator

EDUCATION: High School diploma or equivalent. Four-year degree in accounting, management and/or business administration required. Certification in the field of purchasing preferred.

EXPERIENCE: Minimum three years experience in accounting, electrical sales, and/or warehouse management required. Familiarity with electric cooperative construction material units and equipment is preferred.

KNOWLEDGE: Knowledge of purchasing techniques, inventory methods and materials management processes required. Knowledge of the related OSHA safety regulations required. Must possess computer knowledge and skills of Microsoft applications and be able to quickly learn and use specialized purchasing and materials management software. Must have good organizational skills, excellent written and verbal communication skills, and the ability to interact effectively with employees, members and the public as well as the ability to participate in a team environment. Possess and maintain a license to operate Cooperative vehicles. Continually keep informed of changing technology to properly perform the objectives of this position. Meet to the satisfaction of the Cooperative any job related written, verbal or physical tests as may be required by the Cooperative.

ABILITIES AND SKILLS: Must possess excellent negotiation skills. Excellent oral communication skills required. Ability to deal with all sorts of people required. Must be able to handle multiple tasks at the same time. Ability to use a computer for word processing, spreadsheet and data base applications as well as specialized purchasing and inventory management software packages. Must be able to operate a forklift or have the ability to be able to be trained to operate one.

Must have a valid driver's license. Qualified to perform CPR and First Aid is desirable. Must promote and adhere to safety rules and practices.

The two documents vary in the following areas:

- EDUCATION: PMMC requires a four year degree, rather than one year of post-high school in the PA.
- EXPERIENCE: PMMC adds warehouse management to list.
- KNOWLEDGE: PMMC Specifies OSHA safety regulations and Materials Management Software.
- ABILITIES AND SKILLS: PMMC adds excellent negotiation skills, dealing with all sorts of people, multi-tasking, use of a computer for word processing, spreadsheets, data base applications, and specialized purchasing and inventory management software packages.

The Arbitrator does not view these specifications as clearly defining two separate classifications. Most of the additional PMMC specifications appear to be extensions or updates of the PA's specifications. And,

despite the claimed disparities, it is noteworthy that the Employer determined Dickman to be qualified for both.

It is clear that Dickman's job changed over time. Some of his previous duties were shared with coworkers in more of a team approach. Other changes were due to technology. New software and other technological changes influenced those duties. New regulations for materials and safety procedures required more expertise and closer attention. These changes primarily represent an increase in skills and responsibilities rather than a shift toward supervisory and/or managerial duties. If the position description and the position specifications had been updated on a regular basis to accurately reflect the work being performed by Dickman, they would closely mirror the PMMC's. The Arbitrator does not ignore the factors that are clearly managerial or supervisory in the PMMC's position description or specifications: Dickman is now included in management meetings, he has been assigned planning duties, and he does, in fact, supervise two employees. I find, however, these duties to be minimal in comparison to his previous and on-going Purchasing Agent assignments.

Award

The Union has brought forth a legitimate grievance in this matter. I find that the majority of Mr. Dickman's duties as Purchasing & Materials Management Coordinator to be consistent with his previous duties as a Purchasing Agent.

The Employer shall reinstate the Purchasing Agent classification to the bargaining unit as a full-time position and reimburse the Union lost dues. In addition, Keith Dickman shall be given the option to fill the position without any loss of seniority or benefits.

The Arbitrator shall retain jurisdiction in this matter for forty-five days following issuance of his award to ensure that the implementation occurs in an orderly manner.

Respectfully submitted this 14th day of November, 2009

Eugene C. Jensen, Neutral Arbitrator