

IN THE MATTER OF ARBITRATION

OPINION & AWARD

-between-

Grievance Arbitration

**INTERNATIONAL BROTHERHOOD of
TEAMSTERS, LOCAL NO. 320**

**Re: Arbitrability, Seniority
and Layoff**

-and-

**Before: Jay C. Fogelberg
Neutral Arbitrator**

**THE CITY of SPRING LAKE PARK
SPRING LAKE PARK, MINNESOTA**

BMS Case No. 10PA0783

Representation-

For the Union: Paula R. Johnston, General Counsel

For the City: Jeffrey Carson, Attorney

Statement of Jurisdiction-

Collective Bargaining Agreement duly executed by the parties provides, in Article 7, for an appeal to binding arbitration of those disputes that remain unresolved after being processed through the initial two steps of the procedure. A formal complaint was submitted by the Union on behalf of the Grievant on September 3, 2009, and eventually appealed to binding arbitration when the parties were unable to resolve the matter to their mutual satisfaction during discussions at the intermittent steps. The undersigned was then mutually selected by the

parties to serve as the neutral arbitrator. A hearing was subsequently convened in Spring Lake Park, on April 20, 2010, at which time the parties were afforded the opportunity to present position statements, testimony and supportive documentation. At the conclusion of the proceedings, each side indicated a preference for submitting written summary statements. They were received on May 5, 2010, and thereafter the hearing was deemed officially closed. Both sides agreed that following constitutes a fair description of the matters to be resolved.

The Issues-

A) Did the Grievant waive his right to grieve this matter when the Local failed to present the complaint to his supervisor at Step 1 of the procedure?

B) Did the elimination of the full-time position within the City's District liquor operation effectively nullify the Union's grievance?

C) If the answer to A and/or B above is negative, did the Employer violate Section 9.5 of the Master agreement and any other applicable provisions, when it laid off the Grievant rather than a less senior employee?

D) If the answer to "C" is affirmative, what shall the appropriate

remedy be?

Preliminary Statement of the Facts-

The adduced evidence indicates that the Grievant, Mark Trandem, was a full-time employee working for the City of Spring Lake Park (hereafter "City," "Employer," or "Administration") as a Stock Receiving Clerk in their liquor operation ("Central Park Liquors," or "CPL") for approximately fourteen years prior to his departure in the fall of last year. As such, he was a member of the bargaining unit comprised of "all off-sale liquor store employees of the City...who are public employees within the meaning of M.S. 179.03..." (Joint Ex. 1, *infra*) represented by the Teamsters Union Local 320 ("Union" or "Local").

In 2008, the City undertook an examination of their liquor operation after it became clear that it was losing money in more recent years (Employer's Ex. 1). For the following eight or nine months the Liquor Commission examined trends and surveyed other municipal liquor operations in the Twin Cities. That review revealed that no other municipal liquor operation employed a full-time receiving/stock clerk, similar to the position held by Mr. Trandem (Employer's Ex. 3). After further analysis, the Central Park Liquor Operations Manager, concluded that

the full-time position was no longer cost effective, and thus recommended to the Commission that it be eliminated (City's Ex. 4). Eventually, the City Council acted on the recommendation and, in August of last year, voted to eliminate the Grievant's position (Administration's Ex. 5).

Mr. Trandem was informed of the Employer's decision in a letter dated September 1, 2009 (City's Ex. 6). At that time he was told that his "...last day of work will be Friday, October 9, 2009" (*id.*). On that same date, the Union's Business Agent, George Cejka, sent a letter to the City's Chief Administrator, Barbara Nelson, along with a formal grievance, notifying her that the Union was submitting the complaint directly to Step 2 of the procedure. The grievance alleged a violation of Article 9, Section 5 of the parties' Labor Agreement (*infra*). Following a meeting between the City and the Local on October 29, 2009, the Employer rejected the complaint and thereafter the matter was appealed to binding arbitration for resolution.

Relevant Contractual Provisions-

Article VII
Employee Rights – Grievance Procedure

* * *

Section 7.4. PROCEDURE

Grievance, as defined in Section 7.1, shall be resolved in conformance with the following procedures:

STEP 1. An employee claiming a violation concerning the interpretation or application of this Agreement shall, within twenty-one (21) calendar days after such alleged violation has occurred, present such grievance to the employee's supervisor as designated by the Employer.....

STEP 2. If appealed, the written grievance shall be presented by the Union and discussed with the Employer designated representative who shall give the Union the Employer's Step 2 answer in writing within ten (10) calendar days after receipt of such Step 2 grievance.

* * *

Article IX
Seniority

* * *

Section 9.5

A reduction of work force will be accomplished on the basis of seniority within the department....

Positions of the Parties-

The **CITY** takes the position in this matter that Mr. Trandem's grievance is procedurally flawed and therefore cannot go forward based upon the merits. Further, they maintain that his layoff was proper and did not result in a violation of the Master Agreement. In support of their claim, the Employer argues that the clear language in Article 7 mandates any grievance submitted be resolved in conformance with the procedure set forth in the same article. In this instance, the Local never presented the complaint at Step 1 initially as is required. Rather they proceeded directly to Step 2 without the Administration's concurrence. The provisions of this section of the Contract do not allow for an employee to skip a step. Further, the Employer asserts that the grievance itself was untimely as it was not submitted to management until October 9, 2009, which was in excess of the twenty-one calendar day limitation identified in Step 1 of the process.

In the alternative, the Administration contends that what occurred in this instance was an elimination of a position (the full-time Stock Receiving Clerk) altogether, which was a separate job and a separate class from the part-time clerks who also worked at Central Park Liquors. This action falls squarely within the City's managerial prerogative as

identified in the Master Agreement, and by state statute as well, as part of their right to determine its organizational structure and number of personnel. In the performance of its normal duties, the Administration, after carefully considering its options and in an effort to control costs, properly determined that the position held by Mr. Trandem be eliminated. For all these reasons then, they ask that the grievance be denied in its entirety.

Conversely, the **UNION** takes the position that the complaint of Mr. Trandem was properly submitted to the Administration and therefore arbitrable. Further, they assert that the decision to layoff the Grievant from his job within the liquor operation violated Section 9.5 of the Labor Agreement. In support, the Local urges that the grievance was begun at Step 2 rather than Step 1 as everyone involved was aware of the fact that this employee's immediate supervisor (Ms. Swanson) did not have the authority to rule on it as the action was sanctioned by the City Council itself. Further, they maintain that the action giving rise to the grievance occurred on October 9th when Mr. Trandem was actually laid off. Once the event took place, the Local submitted their complaint on the same date.

Substantively, the Union argues the Employer violated Section 9.5 of

the parties' Contract as its clear intent requires that seniority be followed whenever the number of employees in the bargaining unit are reduced. Here, that is precisely what occurred as Mr. Trandem was the second most senior member of the bargaining unit within the department. They urge that he could perform all the duties of the part-time employees who were not laid off, and at the very least should have bumped the least senior one in order to maintain his employment with the City. The Union concedes that the Employer has the right to eliminate positions as part of their normal managerial function. However, they argue that what occurred in this instance is governed by the Agreement, as the relevant language in the Contract does not speak to job positions but rather mandates any reduction in the work force be accomplished on the basis of seniority within the department. For all these reasons then they ask that the grievance be sustained and that Mr. Trandem be returned to work and made whole.

Analysis of the Evidence-

Initially, the procedural objections raised by the City need to be considered for if, as they contend, the Union's grievance is not arbitrable, then I will be precluded from considering it based upon the merits.

There is no question but that Mr. Trandem's complaint was not filed at Step 1 of the grievance procedure, as the Employer has alleged. Similarly, there is little dispute over the language in Section 7.1 of the parties' labor agreement. It calls for an employee's grievance to be initiated at Step 1 with his or her supervisor. The City posits that the plain meaning of this portion of the Contract makes it mandatory for any grievance to be so initiated or otherwise it is automatically forfeited under the waiver provision found in Section 7.6.

At first glance, one might conclude the Administration's argument should prevail finding the grievance both substantially and procedurally flawed due to the fact that the Union initiated it at the second step rather than the first. However, a closer examination of the facts indicates otherwise. The adduced evidence demonstrates that Ms. Swanson (the Grievant's immediate supervisor at the time) was not empowered to act upon his complaint. At the hearing, she acknowledged that while she made the recommendation and voted to eliminate the full time position in the CPL, she did not have the authority to subsequently reverse the decision. Her admission was not challenged on the record. I would agree with the Local that blind adherence to the letter of Section 7.1 would have been an exercise in futility under the circumstances unique

to this case, and essentially a waste of time.

Engrained in the arbitral system is the principle of efficiency and the idea that an employee normally deserves to have his/her grievance heard and resolved based upon its merits. While time constraints are generally a normal ingredient within a negotiated dispute resolution process, such provisions must be considered in light of all the relevant facts. Mr. Trandem had lost his job. To have him present his complaint to Ms. Swanson first would have done nothing, in my judgment, but delay the resolution of the matter, which is contrary to the very intent of most any grievance mechanism.

The unequivocal evidence placed into the record demonstrates that in this particular instance, initiating the grievance at step one would have been a pointless exercise. The "event" here was created by the actions of the City Council, and it was the Council, through their representative Barbara Nelson, who had the authority to rescind the decision if they had agreed with the substance of the Local's complaint – not Ms. Swanson. Clearly, the Union does not possess the unfettered right to file any grievance at whatever step it chooses, and the decision arrived at here should not be interpreted as a blanket condonation of their actions. The facts surrounding this dispute however, are more closely

aligned to a situation involving the discharge of a bargaining unit member. There, the parties have indicated that the aggrieved is to commence the process at step two (Section 10.7).

Finally, in connection with the Administration's procedural objections, I do not find the complaint to be untimely. Again, an application of the undisputed facts to the language in Article 7, favors the Local.

Step 1 states that an employee claiming a violation of the Labor Agreement is to present his/her complaint, ".....within twenty-one (21) calendar days after such alleged violation *has occurred....*" (Exhibit 12; emphasis added). The "event" giving rise to the grievance took place on the effective date of Mr. Trandem's layoff, which was October 9, 2009. The written complaint was submitted to the Employer by the Union's representative on that very same date (Employer's Ex. 11). While the Mr. Trandem was notified of management's intent in early September of that same year, the "occurrence" did not come to pass until he was actually laid off. His grievance therefore, is not subject to the forfeiture language contained in Section 7.6 as it was submitted within the specified time limits.

Accordingly, for the reasons set forth here, I conclude that the

resolution of this complaint must rise or fall based upon its merits.

Once more, there is general agreement with the City's initial argument. A public employer in this state retains the authority over the organizational structure, selection, direction, and number of its personnel, as provided in M.S. §179A.07. This fact is widely regarded and there have been numerous decisions rendered dealing with this very subject. No discourse on the topic is therefore required here. Moreover, the Union acknowledges the principle that the elimination of a position is normally reserved to the employer, *unless* that prerogative is limited by negotiated language contained in the parties' agreement.

As previously observed, the critical provision lying at the center of this dispute is contained in the first sentence of Section 9.5, *supra*. There, the parties have crafted language which conveys a clear and concise message to the reader: that in the event the City chooses to reduce the number of hourly personnel covered by the Labor Agreement, it is to be "...accomplished on the basis of seniority *within the department*" (emphasis added).

I would concur with the Administration that an agreement to reduce the work force by seniority does not, *per se*, prohibit them from eliminating a job class. It does however, require conformance with the

negotiated (plain) language contained in Section 9.5. Clearly, the “department” here is the Central Parks Liquor store. While it is undisputed that there were two different job classifications within CSL, there is no evidence to support a claim that the full-time and part-time positions constituted two separate departments. Indeed, Section 7 in the same article states that the liquor store’s manager, “...shall determine the set schedule of each job *within the department...*” (emphasis added).

In sum, I am persuaded that while Section 9.5 does not erode management’s ability to eliminate a position, it nevertheless does limit their right with respect to the effect of such a purge. The seniority of those working within the “department” must be honored. Mr. Trandem was laid off, and at the time had more seniority than all but one other employee in the department.¹ The decision of the City Council, therefore, resulted in a violation the plain terms of the Contract.

Award-

Based upon the foregoing analysis, I find that the Union’s grievance sustainable. Accordingly, the City is to forthwith reinstate Mr. Trandem,

¹ The Local has accurately observed that the Administration has repeatedly referred to their action as a “layoff” in their opening statement, their proposed statement of the substantive issues, and in their summary written argument as well.

allowing him to exercise his seniority to bump a less-senior (part-time) employee in the department. The Employer will be responsible for all back pay and related benefits dating back to October 10, 2009. Their financial obligations to the Grievant however, are to be offset by any compensation and/or benefits he may have received in the interim.

I will retain jurisdiction in this matter for the sole purpose of resolving any dispute that may arise in connection with the implementation of the remedy awarded here.

Respectfully submitted this 5th day of June, 2010.

Jay C. Fogelberg, Neutral Arbitrator