

IN THE MATTER OF ARBITRATION BETWEEN

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 292)	
)	
Union,)	ARBITRATION AWARD
)	
and)	
)	GABRICK AND DAHL LAYOFF GRIEVANCE
)	
SPECIAL SCHOOL DISTRICT NO. 1, MINNEAPOLIS,)	
)	
Employer.)	BMS Case No. 10-PA-0237

Arbitrator: Stephen F. Befort

Hearing Date: April 21, 2010

Post-hearing briefs received: May 19, 2010

Date of decision: June 8, 2010

APPEARANCES

For the Union: Paul Iversen

For the Employer: JaPaul Harris

INTRODUCTION

International Brotherhood of Electrical Workers Local 292 (Union) is the exclusive representative of a unit of Electrician, Electronic Technician, Electronic Repair, and Telecommunications employees employed by Special School District No. 1, Minneapolis (School District). The Union brings this grievance claiming that the School District violated the parties' collective bargaining agreement by laying off permanent

employees Dennis Gabrick and Norman Dahl while retaining other temporary employees who also work in the Employer's Electric Shop. The grievance proceeded to an arbitration hearing at which the parties were afforded the opportunity to present evidence through the testimony of witnesses and the introduction of exhibits.

ISSUES

- 1) Did the School District violate the parties' collective bargaining agreement by laying off the grievants?
- 2) If so, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE

ARTICLE III DEFINITIONS

11. Job Class: one or more positions sufficiently similar with respect to duties and responsibilities so that the same descriptive title may be used to designate each position assigned to the class, the same general qualifications are needed for performance of the duties of the class, the same tests may be used to select employees, and the same schedule of pay can be applied with equity to all positions in the class.

ARTICLE XIII TRANSFER, LAYOFF, AND REINSTATEMENT

D. LAYOFF, RE-EMPLOYMENT, REINSTATEMENT, AND RESTORATION

1. **Purpose.** The purpose of this provision is to establish layoff policies and employee rights and privileges upon re-employment. Re-employment may include call back from layoff or reinstatement/restoration to a list of eligible candidates. The affected person may be laid off from a position and continue to work in another position or no longer be working in any position.
2. **Layoffs and Bumping.** Whenever any permanent position is to be abolished or it becomes necessary because of lack of funds, lack of work, or reorganization to reduce the number of employees in the classified service in any department, the department head shall immediately report such pending layoffs to the Human Resources Department. Then, pursuant to the following guidelines, the Human Resources Department will determine the status of those persons affected, will submit such information to the department(s) involved, and the department will make proper notification to the employees involved.

a. **General Order of Layoff**

Except when layoff is for medical or other similar reasons, layoffs shall be made in the following order:

- 1) Persons who have no Civil Service standing.
- 2) Persons who have been appointed to temporary positions.
- 3) Persons appointed to permanent positions.

b. **Layoff Based on Seniority**

The employee first laid off shall be the employee in a department who was the last one certified to the class in which reductions are to be made.

FACTUAL BACKGROUND

The Union represents a unit of Electrician, Electronic Technician, Electronic Repair, and Telecommunications employees employed by the School District. These employees have permanent status under applicable Civil Service rules. The School District also employs temporary employees who are not covered by Civil Service rules and who are not members of the bargaining unit subject to the parties' collective bargaining agreement.

The School District historically hired permanent employees to perform its building trades work. Since the mid-1990s, however, the School District ceased hiring new permanent employees and transitioned to a hiring hall model in which new employees are hired on temporary appointments through the applicable union hiring hall. These temporary appointments are not covered by the parties' collective bargaining agreement.

The grievants in this matter – Norman Dahl and Dennis Gabrick – both have worked for the School District since the late 1970s. Both employees worked in the Electronic Technician job classification and were members of the unit represented by the

Union. Electronic Technicians are not licensed electricians, but are qualified to perform low voltage electrical work. Accordingly, while the grievants cannot perform high voltage wire duties, they are qualified to perform such low voltage work as that involving security cameras, public address systems, fire alarms, and cable television systems.

The School District has been beset with serious financial difficulties in recent years. Grant Lindberg, Manager of Plant Operations, testified that, as a result of budgetary shortfalls, the Facilities Department was instructed to reduce its operating budget for the 2009-10 school year by 4.2 million dollars. The Department concluded that layoffs would be necessary in order to balance the budget. According to Mr. Lindberg, the School District began to identify employees for layoff on the basis of classification seniority. This resulted in the layoff of nine licensed journeyman electricians and two of the three Electronic Technicians employed in the School District's Electric Shop, including Mr. Dahl and Mr. Gabrick. Mary Alfredson, Human Resources Consultant, testified that she confirmed that no temporary employees or permanent employees with less seniority remained in the Electronic Technician classification before authorizing the layoff notices for Dahl and Gabrick. The School District continues to employ temporary employees in the Electrician classification.

On June 1, 2009, the School District notified Dahl and Gabrick of the reduction-in-force by separate letters. Each letter stated that the School District was eliminating their position of "electrician" and that they would remain on the recall list for electricians for 36 months. Ms. Alfredson testified that the letters' designation of "electrician" status was a clerical error that likely resulted due to the fact that the School District sent the same form letter to all laid-off employees working in the Electric Shop.

The Union elicited testimony from Terry Rising, a foreman working in the Electric Shop, to the effect that temporary employees in the Electrician classification currently perform low voltage work that the grievants' are qualified to perform. Mr. Rising also testified that the grievants are good employees with no prior disciplinary record.

On June 22, 2009, the Union filed a grievance challenging the School District's decision to lay off the grievants. The School District denied the grievance, and this matter proceeded to arbitration.

POSITIONS OF THE PARTIES

Union:

The parties' agreement provides that "the employee first laid off shall be the employee in a department who was the last one certified to the class in which reductions are to be made." The Union contends that the term "class" in this provision should be interpreted as referring to one's class or status for Civil Service purposes. Under this view, the Union maintains that the School District is obligated to lay off temporary employees without Civil Service status prior to laying off any employees with permanent status under Civil Service rules. The Union alternatively argues that the School District has not eliminated the low voltage work previously performed by the grievants and that Electricians with temporary appointments are now performing such work. The Union asserts that it is improper for the School District to purport to eliminate a permanent job classification resulting in layoffs while the work normally performed by that job classification continues to be performed by other employees. Based on these two theories, the Union asks that the grievants be reinstated with full back pay and no loss of seniority or benefits.

Employer:

The School District maintains that the agreement's provision that layoffs shall first encompass those most recently "certified to the class in which reductions are to be made" refers to job classification rather than Civil Service status. Thus, according to School District witnesses, the School District has long interpreted this provision as requiring that layoffs be made on the basis of seniority within each job classification. Here, the School District claims that it acted in conformance with the agreement since it laid off the two most junior Electronic Technicians and no temporary employees were retained in that particular job classification. Under this interpretation, the fact that the School District retained some temporary employees in other job classifications does not violate the terms of the agreement. Finally, the School District asserts that it did not violate the agreement by laying off the grievants and reassigning low voltage work to other members of the bargaining unit. This reorganization of work is an inherent managerial right and does not result in the transfer of work to those outside the bargaining unit.

DISCUSSION AND OPINION

Layoffs determined by Seniority within "Class"

This is a contract interpretation dispute. The key issue concerns the proper construction of the following language set out in Article XIII of the parties' collective bargaining agreement:

- a. **General Order of Layoff**
Except when layoff is for medical or other similar reasons, layoffs shall be made in the following order:
 - 1) Persons who have no Civil Service standing.
 - 2) Persons who have been appointed to temporary positions.
 - 3) Persons appointed to permanent positions.

b. **Layoff Based on Seniority**

The employee first laid off shall be the employee in a department who was the last one certified to the class in which reductions are to be made.

The parties agree that the clear import of this language is that layoffs are to be made on the basis of an employee's seniority within his or her "class" and that permanent employees are to have priority over temporary employees within the same class.

Where the parties disagree is over the meaning of the term "class." The Union argues that "class" refers to an employee's Civil Service status while the School District contends that class refers to an employee's job classification. Accordingly, the Union claims that the "class" of temporary employees must be laid off prior to senior permanent employees, while the School District claims that lay offs must be based on seniority and Civil Service status within each job classification. More particularly, the Union asserts that the School District must layoff all temporary employees prior to the layoff of any permanent employee within the bargaining unit, while the School District argues that the layoff of a permanent employee is permissible so long as no junior or temporary employees are retained within that particular job classification.

I find the School District's construction to be more appropriate for several reasons. First, the parties' agreement in Article III defines "job class" to denote duties and responsibilities rather than Civil Service status:

11. Job Class: one or more positions sufficiently similar with respect to duties and responsibilities so that the same descriptive title may be used to designate each position assigned to the class, the same general qualifications are needed for performance of the duties of the class, the same tests may be used to select employees, and the same schedule of pay can be applied with equity to all positions in the class.

Second, the agreement provides for a "general order of layoff" that prefers employees

appointed to permanent positions over those with no Civil Service status as well as “layoff based on seniority” within an employee’s “class.” If the term “class” was synonymous with Civil Service status, the “general order of layoff” language would be unnecessary and without independent meaning. Third, Neil Bowerman, the School District’s Executive Director for Human Resources, testified that the phrase “certified to the class” has a longstanding meaning within both the City of Minneapolis and the School District, referring to an employee who, upon passing probation, is certified to a permanent appointment within a particular job classification. Indeed, this is the meaning of “class” that prevails generally in the realm of human resources and labor relations.

Based upon this construction, the School District’s action in laying off Mr. Dahl and Mr. Gabrick does not offend the parties’ collective bargaining agreement. The grievants were the two most junior employees in the Electronic Technician job classification, and the School District retained no temporary employees in that job classification. Moreover, in a layoff regime premised on classification seniority, an employer does not need to first displace temporary employees in a different job classification before laying off the occupants of the Electronic Technician job classification.

The Reassignment of Low Voltage Work

The Union alternatively argues that the School District engaged in an impermissible subterfuge when it purported to abolish the two Electronic Technician job positions. As the Union accurately points out, Electronic Technicians are qualified to perform low voltage electrical work even if they are not licensed to performed high voltage “wire” work. The Union also is accurate in pointing to testimony establishing that the School District continues to have low voltage work performed through assignments made to employees in

the Electrician job class. The Union asserts that the elimination of a job classification is impermissible where the core job duties of that classification continue to exist and are simply reassigned to other employees.

While it is true that arbitrators often find that an employer cannot unilaterally reassign work outside of a bargaining unit, the School District's action in this instance simply reassigned the low voltage work to other unit members. Here, the School District, stressed by budgetary constraints, determined that it could more efficiently handle electrical work by having licensed Electricians perform both wire and low voltage work assignments, as opposed to assigning both Electricians and Electronic Technicians on projects requiring both types of work. This reassignment of job duties is understandable given the School District's financial difficulties and does not constitute a subterfuge for the elimination of the Electronic Technician job positions.

AWARD

The grievance is denied.

Dated: June 8, 2010

Stephen F. Befort
Arbitrator