

IN ARBITRATION

BEFORE

MICHAEL E. de GRASSE, ARBITRATOR

MISSION SUPPORT ALLIANCE, LLC,) FMCS No. 11-52938-6
)
 Employer,)
)
 and) AWARD OF ARBITRATOR
)
HAMTC and CARPENTERS AND MILL-) (Ed Aguilar Grievance)
WRIGHTS Local 2403,)
)
 Union.)

The Employer violated Article XXIV of the collective bargaining agreement when it did not place the grievant, Ed Aguilar, in the LAMP millwright position pursuant to his request for reassignment.

Therefore, the grievance is sustained.

The Employer shall place the grievant in the millwright position that he requested as soon as practicable.

In accordance with the parties' agreement, the arbitrator shall retain jurisdiction of this case for a period of 45 days following this award to resolve any controversy concerning its interpretation or implementation.

Dated this 15TH day of December, 2011.



Michael E. de Grasse
Arbitrator

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BEFORE

MICHAEL E. de GRASSE, ARBITRATOR

MISSION SUPPORT ALLIANCE, LLC,) FMCS No. 11-52938-6
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 Employer,))
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 and) OPINION OF ARBITRATOR
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HAMTC and CARPENTERS AND MILL-) (Ed Aguilar Grievance)
WRIGHTS Local 2403,))
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 Union.)

The arbitrator was selected by the parties in accordance with the terms of their collective bargaining agreement and the procedures of the Federal Mediation and Conciliation Service.

A hearing was held in Richland, Washington on October 5, 2011. The Employer was represented by Thomas W. McLane of Randall Danskin, Spokane. The Union was represented by Michael R. McCarthy of Reid, Pedersen, McCarthy & Ballew, Seattle.

Witnesses testified under oath or affirmation and exhibits were received. Witnesses were not sequestered. A verbatim transcript of the hearing was prepared.

At the outset of the hearing, the parties stipulated that: (1) the grievance is arbitrable; (2) the grievance is properly before this arbitrator; (3) this arbitrator is authorized to resolve the grievance. The parties also agreed that the arbitrator would retain jurisdiction of this case for a period of 45 days following the award

to resolve any controversy concerning its interpretation or implementation.

The hearing concluded on October 5, 2011. In lieu of oral closing, the parties elected to submit posthearing briefs. The briefs were received in accordance with the parties' schedule. On December 6, 2011, this case was deemed submitted for a decision.

An award has been rendered sustaining the grievance. This opinion is not part of that award. Rather, it is merely the arbitrator's rationale.

ISSUES PRESENTED

Although the parties did not stipulate concerning the issues, each framed them in a way that shows no substantive difference.

Thus, the Employer's statement:

1. Did the Employer violate Article XXIV when it did not place Mr. Aguilar in a LAMP millwright position per his April 27, 2010 Request for Reassignment?
2. If so, what is the appropriate remedy?

Thus, the Union's statement:

1. Did MSA violate the collective bargaining agreement when it failed timely to re-assign Ed Aguilar to job opportunity A-20193?
2. If so, what is the appropriate remedy?

PERTINENT CONTRACTUAL PROVISIONS

ARTICLE XXIV
LABOR ASSETS MANAGEMENT PROGRAM (LAMP)

1. The transfer of FH HAMTC represented employees to CH2M HANFORD and WCH, ESHI, PHFI, ATL and from CH2M HANFORD and WCH, ESHI, PHFI, ATL to FH, will occur in accordance with this Article.

. . .

FILLING ASSIGNMENT VACANCIES AND JOB OPENINGS

1. Prior to an open requisition being filled an internal only "Notice of Opening" shall be posted by way of the site-wide intranet. A notice will be sent to the HAMTC business office. This will start a ten (10) day calendar window of opportunity for employees in the effected seniority group to submit a Reassignment Request Form (RRF) to their Company's Labor Assets Coordinator. The most senior employee, submitting a RRF, will then be assigned/transferred to the opening, providing he has been on his present assignment for at least twelve (12) months after being fully trained and qualified, and has at least two (2) years seniority.
 - A. Employees will be selected according to the rules of seniority. Exceptions may occur for reasons such as health and safety of the employees, the progress of the work, certification, security clearances, work restrictions, radiation exposure, training and qualification, and circumstances of individual hardship to the employee.
 - B. An individual who is selected for the open position will be moved to the new work location within thirty (30) calendar days. Exceptions must be approved by the Director of Industrial Relations, FH, who will also provide written justification for the delay to HAMTC.

. . . .

FACTS AND CONTENTIONS

As noted above, the parties describe the issues using different words, but do not differ substantively. In the

Employer's view, it may treat a LAMP bidder as it would treat a newly hired employee. The Employer accurately observes that the plain language of Article XXIV does not restrict its power in filling a LAMP vacancy to mere determinations of seniority. By failing to comply with the Employer's requests, the Employer concludes that the grievant lost his right to reassignment under Article XXIV.

The Union sees the case as necessitating nothing more than a straightforward application of clear contract language. In the Union's view, nothing in Article XXIV permits the Employer to require a LAMP bidder to answer the inquiries that the Employer propounded to the grievant. Therefore, the Union urges that the grievant be placed in the position that he requested as soon as practicable.

The foregoing statement of facts and contentions appears terse. Yet it is sufficient given the absence of material factual disputes in the case as presented. While each party sets forth its factual position in detail, the crucial question is legal. Resolution of this case turns on whether the Employer may require a LAMP bidder to meet these conditions:

- Favorable drug screen results.
- Meeting the medical requirements for the position.
- Favorable responses to the pre-employment background investigation.
- Other conditions of employment may be required by the U.S. Department of Energy, Safeguards and Security Division.
- Subject to U.S. Export Control statutes and regulations, CSC must be able to ascertain the citizenship

of all employees, including dual citizenship. Accordingly, upon hire, all new employees will be required to present documentation verifying their country (or countries) of citizenship (see CSC Employee Citizenship Verification form).

Thus, the arbitrator must decide how Article XXIV applies to what appears to be an inoffensive exercise of managerial authority.

RATIONALE

The grievance should be sustained based on the clear and unambiguous language of the collective bargaining agreement, Article XXIV:

The most senior employee, submitting a RRF, will then be assigned/transferred to the opening, providing he has been on his present assignment for at least twelve (12) months after being fully trained and qualified, and has at least two (2) years seniority.

- A. Employees will be selected according to the rules of seniority. Exceptions may occur for reasons such as health and safety of the employees, the progress of the work, certification, security clearances, work restrictions, radiation exposure, training and qualification, and circumstances of individual hardship to the employee.

Indeed, the outcome in this case was foreordained when the grievant was advised by his then employer, based on notification from the Employer here:

Congratulations you have been awarded the LAMP Positions [sic] as listed below. The MSA will be sending you employment information which you need to complete and return to them as soon as possible. Thanks. (Union Ex. 6)

The very next day, inexplicably, this award to the grievant became an "offer" that was "contingent" on the conditions set forth above. (Union Ex. 8) While the Employer may have understandable concerns with regard to LAMP transferees, its concerns do not permit the award of a LAMP position to become an "offer" that is "contingent" on conditions that are not grounded in exceptions to Article XXIV's rule of seniority.

The Employer correctly observes that Article XXIV does not make seniority the sole, absolute criterion for filling LAMP positions. The pertinent exception involves safety. Only one matter of several disclosed by the grievant in response to the Employer's requests directly arose from a safety violation. That occurred in 2004, and the Employer concedes that it is stale.

The Employer asserts that its remaining worries about the grievant's work history all involve safety. Specifically, those concerns were prompted by the grievant's disclosure of a disciplinary history of insubordination, tardiness and sexual harassment. Article XXIV's provision that an employer may refuse a senior employee's LAMP bid based on safety concerns does not cover insubordination, tardiness or sexual harassment. The Employer's contention that insubordination, tardiness and sexual harassment may constitute threats to safety is an argued inference. It does not find support in contract language.


While Article XXIV's list of exceptions to seniority as the sole criterion for filling LAMP bids is prefaced by "such as," the terms composing that list, if only exemplary, are specific. The Employer's argument would transform any form of objectionable behavior into a safety matter. Given the discrete, specific and limited list of exceptions set forth in Article XXIV, which includes "safety," the Employer's inference, if accepted, would improperly expand the plain meaning of that term and the scope of the limited list of exceptions.

The Employer may be prudent in perceiving the grievant's disciplinary history as raising red flags. Its inquiries may be reasonable in another setting. But, the grievant is not a new hire. He is a transferee, and his transfer is governed by Article XXIV. Whether the Employer could, generally, inquire of the grievant, or any other similarly situated employee, as it has done of the grievant here, is not the issue presented. This case concerns the scope of Article XXIV, not the entire range of managerial power. Whatever the Employer may demand of employees in contexts other than LAMP bids is beyond the scope of this decision. This case involves Article XXIV of the parties' collective bargaining agreement. Based on the clear language of that article, the Employer may not make the award of a LAMP vacancy contingent on the conditions it imposed on the grievant in this case.

CONCLUSION

On the basis of the evidence and in accordance with the collective bargaining agreement of the parties, the grievance should be sustained. The grievant should be placed in the LAMP millwright position pursuant to his request for reassignment.

Dated this 15th day of December, 2011.


Michael E. de Grasse
Arbitrator