

AMERICAN ARBITRATION ASSOCIATION

Case No. 32 390 00659 10

In the Matter of Arbitration Between

LOCAL 2942, COUNCIL 79,  
AMERICAN FEDERATION OF  
STATE COUNTY & MUNICIPAL  
EMPLOYEES, AFL-CIO,

Grievant,

*Grievances of Roberta Taylor, Karen  
Hatfield & Regina Thomas*<sup>1</sup>

-and-

CITY OF LAUDERHILL,

Respondent.

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**OPINION & FINAL AWARD**

**Introduction**

An evidentiary hearing was conducted in this matter on Thursday, April 21, 2011 at the City of Lauderhill's (hereafter "City") City Hall, 5581 West Oakland Park Boulevard, Lauderhill, Florida. Grievants Roberta Taylor ("Ms. Taylor"), Karen Hatfield ("Ms. Hatfield") and Regina Thomas ("Ms. Thomas") were present for the entire hearing, and were represented by Andrew Weltman, Esquire, counsel for the Local 2942, Council 79, American Federation of State, County & Municipal Employees, AFL-CIO ("AFSCME", "Union" or "Local 2942"), 99 N.W. 183<sup>rd</sup> Street, Suite 224,

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<sup>1</sup> Initially there were six (6) employees who filed grievances, inclusive of Yvonne Allen, Edwidge Bros and Kimberly Robinson. Ms. Allen and Mr. Bros were rehired as part-time employees after they filed their grievances. Ms. Robinson was a named grievant at the time of hearing in this matter (on April 21, 2011); however, the City advised the Arbitrator in its post-hearing brief that Ms. Robinson also was rehired, on a full-time basis. Accordingly the grievances of these three (3) employees became moot.

North Miami, Florida 33169. Respondent, City, was represented by Brett J. Schneider, Esquire and Alison Smith, Esquire, of the law firm of Weiss, Serota, Helfman, Pastoriza, Cole & Boniske, P.L., 200 East Broward Boulevard, Suite 1900, Fort Lauderdale, Florida 33301. Also present for the entire hearing were Ms. Robinson (see footnote 1, supra), Edward Moore, AFSCME's Florida Council Field Staff Representative II, Dalton Comrie, Local 2942's President and Revlon Fennell, the City's Human Resources Director ("Ms. Fennell"). The parties each were afforded the opportunity to call witnesses of their choice, who testified under oath. The parties likewise were afforded the opportunity to introduce documentary exhibits, and many exhibits of both parties were introduced into evidence. Additionally, a transcript of the proceedings was prepared and the original transcript was provided to the Arbitrator by the court reporter along with the exhibits introduced. At the conclusions of the proceedings the parties requested to submit their respective closing statements in a written memorandum, and they have done so. The hearing in this matter was closed by the undersigned on Monday, June 20, 2011, and the Arbitrator has prepared this opinion and final award.

### **Contract Provisions Applicable**

The issues in this case for the most part involve provisions of Article 14 of the Union's and City's Collective Bargaining Agreement ("CBA") October 1, 2008 through September 30, 2011, as follows:

#### **ARTICLE 14 LAY-OFF AND BUMPING**

##### **SECTION 1. ELIGIBILITY**

Lay-off will be in accordance with: (1) Seniority and (2) Qualifications, in a classification.

## SECTION 2. PROCEDURE

When a lay-off takes place, it shall be accomplished by laying off (1) temporary Employees; (2) provisional; (3) probationary; (4) regular part-time Employees; and then regular fulltime Employees, in accordance with the criteria established above.

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## SECTION 4. SENIORITY PROCEDURE

When an Employee is laid off due to a reduction in the workforce, he shall be permitted to exercise his/her seniority right to bump or replace an employee in the same classification grouping with less seniority if they are qualified to do the job. Employees may, if they so desire, bump an Employee in an equal or lower job classification provided the bumping Employee has greater seniority than the Employee he/she bumps and has the ability to perform the job.

## SECTION 5. RECALL

When the work force is increased after lay-off, Employees will be recalled according to seniority and qualifications. Notice of recall shall be sent to the Employee at his/her last known address by registered mail. The Union shall be notified at the same time. If any Employee fails to report for work within fifteen (15) days from the date of mailing of notice recall, he shall be considered to have quit.

Recall rights for an Employee shall expire after a period equal to his/her seniority, but in no case more than one (1) year from the date of lay-off. Written notice of expiration of recall rights shall be sent to the Employee at his/her last known address by registered or certified mail. No new Employee shall be hired until all Employees on lay-off who have agreed to return to work have been recalled in the same classification. Probationary Employees have no recall rights.

Another pertinent provision of the CBA is Article 3 of the CBA, "Management Rights":

"The rights of the City, through its management officials, shall include but shall not be limited to the right to ... increase, reduce, change, modify or alter the composition and size of the work force, including the right to relieve Employees from duties because of the lack of work or funds ... and to establish, modify, combine or abolish job pay positions...."<sup>2</sup>

## FACTS

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<sup>2</sup> The City also relies on certain provisions of the CBA in Article 6, relating to the City's challenge that this case is not arbitrable. To the extent applicable, the Arbitrator shall address that issue *infra*.

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On July 15, 2010, Grievants Ms. Taylor, Ms. Hatfield and Ms. Thomas (as well as Ms. Robinson, Ms. Allen and Mr. Bros, see footnote 1, supra) were notified by Assistant City Manager, Desorae Giles-Smith, in a personal meeting with them and their supervisors, that they were being laid off as full-time Support Services Aides. (T. 23-24)<sup>3</sup> Ms. Giles-Smith, at that meeting, delivered a letter signed by City Manager Charles Faranda, Jr. on the same date, affording notice of the lay-off, the reasons for it, and bumping rights established in Article 14 of the CBA. (City Ex. 2) The reason given by City Manager Faranda's letter for the layoffs were the current poor economic state and falling property values. (Id.) The City's Finance Director, Kennie Hobbs, testified plummeting ad valorem assessments of City properties had reduced City ad valorem tax revenues in the current fiscal year by \$3 million. (T. 66) He testified ad valorem taxes are the single largest revenue source for the City. (Id. 65). Mr. Hobbs testified that over the past five (5) years City assessed real estate values went from \$3.6 billion to \$1.7 billion, a 50 percent reduction in property values. As a result of these declining annual tax revenues, the City took steps to save money. (T. 68-69) The work week was reduced to four (4) days. (Id.) Departments were consolidated. (Id.) Reductions in pension benefits were negotiated with employee unions. (Id.) Hours were reduced at public facilities. (Id.) The City has contracted out certain public services it could no longer afford. (Id.)

Layoffs were made not only in the Police Department (where grievants worked as full-time employees) but also the City's Finance Department, Department of Engineering and Environmental

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<sup>3</sup> Support Service Aides work in the City's Police Department, supervised by the Police Chief. (T. 15-16, 23-24). They are seated behind a glass window on the first floor and greet members of the public who enter the Police Department's area. (Id.) They also deal with the City's teletype function, record-keeping and file functions, with warrants, answering questions of the public, telephone operations, doing summons as they come in, and a variety of other matters. (Id.)

Services and Parks and Transportation Departments. (T. 70) The Layoffs included both full-time and part-time employees. (T. 71).

At the July 15, 2010 meeting between Ms. Giles-Smith and grievants, all six (6) of the Support Service Aides being laid off were advised (by Ms. Giles-Smith) that the City would be hiring *part-time* Support Service Aides and grievant might re-apply for a part-time position. (T. 29) Two of the original grievants, Yvonne Allen and Edwidge Bros, applied for the part-time position and were re-hired. (T. 57; footnote 1, *supra*.) The remaining four (4) grievants [now just three (3) *see*, footnote # 1] requested the exercise of bumping rights under Article 14 of the CBA, *supra*. (Union Ex. I). With respect to Grievant Ms. Thomas (who did not testify at hearing) the City advised her that due to her seniority, Ms. Thomas was unable to bump another employee. (City memorandum, pg. 5; Exhibit M). Ms. Hatfield sought to bump into a position as Recreation Leader, but was unable to bump into it because the particular employee was the City Pool Manager, and the City deemed Ms. Hatfield “[un-]qualified to do the job”. (Article 14, Section 4, *supra*; Union Exhibit K & O; T. 26, 33, 121-122) Ms. Hatfield implied in her testimony that she believed she was qualified to bump into the Pool Manager job, adding “No one told me I wasn’t qualified [to be a Pool Manager].” (T. 35). However, she acknowledged that she “never got information or background of what a Pool Manager actually is, what is required, so I had no idea.” (Id.)

Ms. Taylor was qualified to bump, based on her seniority, into job classifications: Police Service Aide, Meter Reader, Accounting Clerk I, II and Maintenance Worker I, II. (Union Exhibit O)<sup>4</sup> Ms. Taylor selected job positions as Accounting Clerk I, Meter Reader and Police Services Aide.

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<sup>4</sup> Like Ms. Hatfield, Ms. Taylor was qualified to bump into a position as Recreation Leader but the position was unavailable because it was filled by an employee acting as Pool Manager, not available for bumping. (Id.)

(T. 46) She was advised the position of Accounting Clerk I required passing a test, which she took and did not pass. (Id.) Ms. Taylor declined to bump into a position of Meter Reader because she deemed the starting time of 6 a.m. “while it was dark” too uncomfortable, and also because she has three children, one of whom has special needs, and she must be available to see that he gets on the bus in the morning. (Id. 47, 58). With respect to the position of Police Service Aide there were no available positions and it required attending “some sort of an academy” that would take six (6) months to complete. (Id.; T. 119-120).

### **ARBITRAL JURISDICTION**

The City argues that this Arbitrator should deny jurisdiction because the grievances filed by the laid-off, full-time Support Service Aide employees failed to make a “complete statement of the grievance and the facts upon which it is based.” CBA, Article, Section 3. [“General Provisions], Paragraph D.(1). What is “complete” (as opposed to “incomplete”) is ambiguous because both the nature of the grievance and “the facts upon which it is based” varies from case to case. Arbitrators are extremely liberal with respect to grievances, recognizing that Union members and Union officials are not lawyers, and cannot be expected to prepare grievance forms as artfully as lawyer-prepared pleadings. *See generally*, Elkouri & Elkouri, How Arbitration Works, (5<sup>th</sup> Ed. 1997), pages 328-332.

The major purpose of a written grievance is to establish a record of the grievance. *Ibid.* at 272. Timeliness is always a jurisdictional issue, and the filing of the written grievance is evidence that the time limits established in the CBA for filing a grievance have been met. Arbitration is an equitable proceeding, and the strictures of pleading “causes of action” or valid “affirmative defenses” that one must meet in a court of law simply are inappropriate in an arbitral proceeding. I am satisfied by the exhibits presented by the parties that management (the City) well-understood the

issues presented in this case concerning lay-off and bumping privileges as set forth in Article 14 of the CBA. The Union quoted pertinent provisions of Article 14 in the grievance forms and stated the City “violated the contract (CBA)” with respect to those provisions. The City had ample notice. Moreover, a case the City quotes, *Stone Container Corp.*, 91 LA 1186, 1190 (1988) indicated that a grievant can “bring into issue” matters “...properly addressed in discuss[ion] during the processing of the grievances through the grievance procedures.” I am satisfied by the testimony of all the witnesses in this case that all issues were crystallized during the grievance process, and the City suffered no prejudice, and was well prepared to respond to any issue presented.

## THE MERITS

### A. The Lay-Offs

AFSCME contends that the City violated Article 14 Sections 1 & 2 of the CBA by laying off the full-time Support Service Aides who grieve this case. The Union’s stance is that the word “classification” in Section 1 of Article 14, translates into the requirement that the City first lay off all temporary, provisional, probationary and regular part-time employees who are within the same pay grade as the grievants were. Also, the Union argues that upon laying off the full time Support Services Aides, the City was contractually bound by the CBA to immediately recall them as part-time aides.<sup>5</sup>

The City’s interpretation of the word “classification” in Section 1 of Article 14 means an employee with the same job title. Thus, since there were no temporary, provisional, probationary

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<sup>5</sup> Ms. Hatfield testified that after her lay-off as a full-time Support Service Aide, she was not even interested in being recalled as a part-time employee, T. 27, lines 4-7: “It was part-time [work], it was non-union, and I really did not feel comfortable re-applying for that position since we were just laid off full-time. ... I just did not feel comfortable.”

and regular part-time employees serving as Support Services Aides, only full-time Aides, the City contends it was at liberty to lay-off the grievants under broadly retained Management Rights, quoted *supra*, in Article 3 of the CBA, and the language in Article 14, Sections 1 & 2, read together. The Arbitrator agrees with the City's position. Grievants concede they held the burden of proof that their Union's interpretation of contract language is correct. (T. 5; *see also Miami-Dade County*, 121 LA 1419, 1426 (2005). The City's managers have expansive right "to relieve Employees from duties because of lack of work or funds." Article 14, Section 3 of the CBA. The testimony of Finance Director Hobbs established the financial hardship the City has experienced for the past several years. Governments, at all levels in this country, are experiencing difficulty obtaining funds to meet public need. Mr. Hobbs testified the City anticipates a savings of \$375,000 by laying off *full-time* Support Services Aides and seeking those who would like to hold the same job title, but as *part-time* employees. This Arbitrator cannot interfere with the City's management decisions, made in good faith, and in the absence of actions contrary to clear language of the CBA. I conclude the Union fails to prove by the greater weight of the evidence that the word "classification" in Article 14, Section 1 relates to pay grade, rather than job title, as the City interprets that word's meaning.

**B. Bumping Rights.**

The City points out that its Human Resources Director, Ms. Fennell, conducted an analysis of the grievants bumping rights, "[a]fter the layoff". (City memorandum, p. 13) AFSCME counters such an analysis should have been conducted before the layoff. (Union memorandum, p. 11 & 12). Reading Section 4 of Article 14, bumping comes into play "[w]hen an Employee is laid off due to a reduction in the work force,...." the Arbitrator finds no violation by the City in this regard because the written notices provided to grievants explained their contractual bumping rights under Article

14 of the CBA.

As previously indicated, the City – after the evidentiary hearing of April 21, 2011 in this case – “discovered” grievant Ms. Robinson had bumping rights with respect to another employee and commendably the City was faithful to its contractual responsibility to provide Ms. Robinson full-time employment, mooted her grievance. Two other grievants, Ms. Taylor and Ms. Hatfield still contest denial of bumping rights as to them. Again, Ms. Thomas lacked seniority to exercise bumping rights. (Union Exhibit M).

The Union contends the City’s refusal to bump Ms. Hatfield into the position of Recreation Leader constitutes “a prima facie violation of the contract”. (AFSCME memorandum, p. 8). On July 20, 2010, Ms. Fennell wrote a letter to Ms. Hatfield advising her that she “may be considered if you have the ability to do the job” to bump into the Recreation Leader job position. (Union Exhibit K). Two days prior to that letter, Ms. Hatfield, had notified Ms. Fennell she wished to exercise her bumping rights under Article 14 of the CBA, if she had “the ability to perform the same job requirements.” (Union Exhibit I). Ms. Fennell’s July 20<sup>th</sup> letter explained that Recreation Leader was one of only two positions available for Ms. Hatfield to exercise bumping rights, and consistent with the City’s 2011 budget. The “Recreation Leader” position “normally...considered” for Ms. Hatfield was actually “unavailable” for her to bump into because it was that of a “Pool Manager”, and the City apparently did not believe Ms. Hatfield held qualification to perform. (T. 33-35; 121-122).

In her closing memorandum, Ms. Hatfield asserts there were two (2) other Recreation Leaders on the City’s “General Employees Seniority List” (Union Exhibit B), who held inferior seniority to Ms. Hatfield. They were Omadath Boodoo (date of hire, March 7, 2005) and Christopher Jean-Pierre (date of hire December 5, 2005). Ms. Hatfield’s date of hire was January

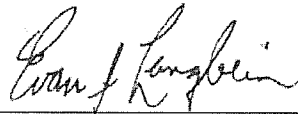
3, 2005. Ms. Hatfield contended the City “offered no ... explanation” why Ms. Hatfield was not permitted to bump these two (2) employees. However, Ms. Hatfield offered no “explanation” why she was qualified to bump either Mr. Boodoo or Mr. Jean-Pierre. She failed to make an evidentiary showing that she was “qualified to do the job” that Mr. Boodoo or Mr. Jean-Pierre performed. It is also conceivable the City’s 2011 budget did not provide continuing employment of the other two named employees from the City’s seniority list. It was Ms. Hatfield’s burden to prove a contract breach by the City, and based on the evidence presented at the hearing, I cannot find a breach of the contract as Ms. Hatfield alleges.

The same is true with respect to Ms. Taylor’s situation. Ms. Taylor concedes she was not qualified to bump into an Accounting Clerk position because she failed to pass a test, a pre-condition to performing the job. She also concedes the position of Meter Reader was undesired by Ms. Taylor due to early morning job hours and concerns for her three (3) children, one of whom is a special needs child. Ms. Taylor argues the City should have allowed her to bump into the Police Service Aide Position. However, both her testimony and that of Ms. Fennell showed there was a condition precedent to obtaining qualification to the job of Police Service Aide, to wit: attendance at an academy the Police Department requires. (T. 47, 119). Ms. Taylor also claimed in her testimony that she was “told ... I would be called back at the time of the academy.” (T. 47). She did not explain why she had not or could not call back seeking such training. In any event, the Arbitrator cannot find a breach of Article 14 of the CBA in light of the broad management rights provisions of Article 3. The greater weight of the evidence shows that the City acted in good faith with respect to the grievants’ exercise of bumping rights.

AWARD

For the reasons stated, the Arbitrator finds the grievances filed in this case were arbitrable. On the merits, the Arbitrator denies the grievances of the remaining three (3) grievants, Ms. Taylor, Ms. Hatfield and Ms. Thomas.

Respectfully submitted,



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Evan J. Langbein, Arbitrator

Dated: JUNE 29, 2011