

**American Arbitration Association
Voluntary Labor Arbitration**

In the Matter of the Arbitration Between:

**THE INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA**

Employer,

- and -

**THE NEWSPAPER GUILD/COMMUNICATIONS
WORKERS OF AMERICA, LOCAL 34022**

Union.

AAA No.: 54 300 00491 09

Issue: Transfer & Reassignment

Grievant: John Hammond

Arbitrator: Michael P. Long

BACKGROUND

An arbitration tribunal was convened according to the Voluntary Labor Arbitration Rules of the American Arbitration Association pursuant to a collective bargaining agreement between The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America ("Employer") and The Newspaper Guild / Communications Workers of America, Local 34022 ("Union"). A hearing was held on August 4, 2009 in a hearing room at the offices of the American Arbitration Association in Southfield, Michigan. The Grievance in this case concerns the allegation that the Employer transferred and/or reassigned the Grievant, John Hammond, a bargaining unit employee represented by the Union, because of his age in violation of the age discrimination prohibition contained in the collective bargaining agreement.

At the arbitration hearing, the parties had the opportunity to articulate their positions and offer argument, as well as the opportunity to present sworn testimony, cross-examine witnesses, and submit exhibits into evidence. Appearing on behalf of the Union is Mark H. Cousens, Attorney at Law. Appearing on behalf of the Employer is Carlos F. Bermudez, Associate General Counsel, UAW. The collective bargaining agreement, which governs the relationship of the parties and is effective on its face from April 16, 2008 to March 16, 2012, was entered into the arbitration hearing record by stipulation of the parties as in full force and effect for purposes of this dispute, and as the applicable and controlling document for purposes of this dispute, granting jurisdiction to the arbitrator and governing for all matters within the scope of the collective bargaining agreement concerning this dispute, whether they be procedural or substantive.

The hearing record contains sixteen exhibits and the sworn testimony of two witnesses. At the close of the evidentiary portion of the hearing, the parties determined to close by way of written summations to be submitted to the Case Manager of the American Arbitration Association for simultaneous exchange. On or about September 21, 2009, the written summations were received by the Case Manager, exchanged between the parties, and forwarded to the arbitrator. The matter is now ready for decision.

The arbitrator reviewed the collective bargaining agreement submitted into evidence, paying special attention to the provisions relevant to this dispute, including those specifically referenced by the parties, including Article XVII – Miscellaneous, Section 6:

Non-Discrimination:

The UAW will continue its policy of non-discrimination among employees in regard to race, color, creed, national origin, sex, age, political beliefs, union activities, handicap status, marital status or sexual orientation.

The arbitrator also paid special notice to **Article IX, Section 3** of the Agreement, which sets forth the authority of the arbitrator:

... the Union will ask the American Arbitration Association to submit a list of five (5) qualified arbitrators. The UAW and the Guild will each have the right to strike two (2) names from the list and the remaining name must be accepted as the arbitrator by both parties. Fees and reasonable expenses shall be shared equally between the UAW and the Newspaper Guild, except that no party shall be obligated to pay any part of the cost of a stenographic transcript without the express consent of both. The arbitrator shall have no power to add to or subtract from or modify any of the terms of this Agreement nor to change any wage structure or jurisdictional boundaries.

ISSUE

The issue before the Arbitrator is: Did the Employer act in violation of the collective bargaining agreement when it reassigned the Grievant and from one office to another and added duties to his workload? If so, what is the appropriate remedy?

DISCUSSION

The Union alleges that the Employer violated the collective bargaining agreement prohibition of age discrimination when it transferred the Grievant, John Hammond, an International Representative, from his position as producer of electronic media to what was, for the Grievant, a less desirable assignment in the Public Relations Department. The Union argues that after nearly 20 years of highly creative work, the Grievant was given work which was outside his expertise and which provided him fewer opportunities for creative expression, and that the reassignment was imposed in retaliation because of Grievant's refusal to agree to retire when he reached his 65th birthday.

The arbitrator's jurisdiction is limited to interpretation and application of the collective bargaining agreement. The jurisdiction applies only to the bargaining unit represented by the Newspaper Guild and to the collective bargaining agreement between the UAW and the Guild under the existing collective bargaining agreement.

Pursuant to this mandate, the arbitrator will make a determination for the most part concerned with Article XVII, Section 6 of the agreement, which indicates that the Employer will continue its policy of non-discrimination among employees in regard to (among a number of other things) age. As the contract guarantees something which is required by law, the arbitrator makes the assumption that the parties intended to reaffirm their commitment to follow the law, and, therefore, will look to the law for guidance.

The Age Discrimination in Employment Act of 1967 (Pub. L. 90-202) (ADEA), as amended, as it appears in volume 29 of the United States Code, beginning at section 621 states in pertinent part as follows:

SEC. 621. *[Section 2]*

(a) The Congress hereby finds and declares that-

- (1) in the face of rising productivity and affluence, older workers find themselves disadvantaged in their efforts to retain employment, and especially to regain employment when displaced from jobs;
- (2) the setting of arbitrary age limits regardless of potential for job performance has become a common practice, and certain otherwise desirable practices may work to the disadvantage of older persons;
- (3) the incidence of unemployment, especially long-term unemployment with resultant deterioration of skill, morale, and employer acceptability is, relative to the younger ages, high among older workers; their numbers are great and growing; and their employment problems grave;
- (4) the existence in industries affecting commerce, of arbitrary discrimination in employment because of age, burdens commerce and the free flow of goods in commerce.

(b) It is therefore the purpose of this chapter to promote employment of older persons based on their ability rather than age; to prohibit arbitrary age discrimination in employment; to help employers and workers find ways of meeting problems arising from the impact of age on employment.

SEC. 623. *[Section 4]*

(a) Employer practices It shall be unlawful for an employer-

- (1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;
- (2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or

otherwise adversely affect his status as an employee, because of such individual's age; or

(3) to reduce the wage rate of any employee in order to comply with this chapter.

(e) Printing or publication of notice or advertisement indicating preference, limitation, etc. It shall be unlawful for an employer, labor organization, or employment agency to print or publish, or cause to be printed or published, any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, indicating any preference, limitation, specification, or discrimination, based on age

In *Meacham v. Knolls Atomic Power Lab.*, 554 U.S. - (June 19, 2008), the U.S. Supreme Court clarified an employer's burden of proof under the ADEA. An employer may avoid liability for an "otherwise prohibited" action if the action was based on "reasonable factors other than age" (RFOA). In *Meacham*, the Supreme Court resolved a conflict among lower courts by deciding that an employer relying on the RFOA defense must not only produce evidence in support of the RFOA defense, but must also ultimately persuade the fact finder that its action was based on reasonable factors other than age.¹

While the elements of proof of a claim of age discrimination in the workplace vary depending on the exact factual circumstances, there are generally two types. The first is direct evidence of the

¹ KAPL, Inc. (Knolls) operates the U.S. Government's Knolls Atomic Power Laboratory. Knolls designed prototype naval nuclear reactors and trained U.S. Navy personnel to run them. After the Cold War ended, the demand for naval nuclear reactors waned, and in 1996, Knolls was ordered to reduce its workforce by a net 143 employees. After a number of employees accepted the company's buyout offer, Knolls was still left with over 30 jobs to cut. When selecting employees for the involuntary reduction in force, Knolls told its managers to score their subordinates on three scales: performance, flexibility and critical skills. The scores were summed, along with points for years of service, and the totals determined who would be laid off.

Of the 31 salaried employees laid off, 30 were at least 40 years of age. Of the 245 employees who were at risk for involuntary layoff and therefore included in the ranking scheme, 179 persons – or 73 percent – were 40 years or older. Twenty-eight of the laid-off employees sued under the ADEA, alleging both disparate treatment (discriminatory intent) and disparate-impact (discriminatory result) age discrimination. The employees alleged that Knolls "designed and implemented its workforce reduction process to eliminate older employees and that, regardless of intent, the process had a discriminatory impact on ADEA-protected employees."

The Supreme Court resolved a split among lower courts by deciding that when an employer raises the RFOA defense in an ADEA case the employer, not the plaintiff, bears the burden of persuading the fact finder that the otherwise prohibited action was based on reasonable factors other than age. The Court also clarified that in ADEA disparate impact cases, the plaintiff is not required to satisfy the so-called "business necessity" test, i.e., that there were alternatives available to the employer for accomplishing its business reasons with less of a disparate impact on older workers. Rather, once the plaintiff proves disparate impact and identifies a specific practice that allegedly caused the statistical disparity, an employer raising the RFOA defense has the burden of proving that it relied on reasonable factors other than age.

The Court acknowledged that "there is no denying that putting employers to the work of persuading fact finders that their choices are reasonable makes it harder and costlier to defend than if employers merely bore the burden of production." The Court noted that the degree of that additional burden and the likelihood of an employer's success raising the defense will turn on how "plainly reasonable" the stated RFOA appears to be.

employer's intent to discriminate based on age. Examples in this case include the written Resolution indicating that it is the Employer's preference that an International Representative retires by age 65 and the employer statements and actions reminding the Grievant of that policy. Where such proof can be shown, the burden of proof shifts from the employee bringing the claim to the employer; that is, the employer must prove that it would have taken the adverse action even without the discriminatory intent. The second type of proof of age discrimination is circumstantial or indirect evidence. Here, an employee must prove that the employee was: subjected to adverse employment action; an employee of the employer at the time of that adverse action; and treated differently than younger workers.

The Employer is governed by a constitution. That constitution is subject to membership action such as resolutions at constitutional conventions. The following is such a resolution:

CONVENTION RESOLUTION ON UAW LEADERSHIP RETIREMENT AGE

The following resolution entitled "Maintaining Vigorous Leadership" was adopted by the 26th Constitutional Convention in June 1980 and sets forth the policy regarding voluntary retirement for staff members, Officers and other International Executive Board members that continues today.

The question of when people should retire has always been a difficult one. Just as the "right" retirement policy varies for individuals, it also varies for organizations and those considerations must be balanced.

For many years we in the UAW have recognized the disadvantages that can result, in an organization like our International Executive Board and staff, if people stay on beyond the period when they can give the extraordinary degree of effort which our membership deserves.

In 1964 we adopted constitutional requirements for our Officers, other Executive Board members and staff that even then were more stringent than applied in most employment. At the 1964 Constitutional Convention, Secretary-Treasurer Emil Mazey said: "We want to make certain that we maintain young and vigorous leadership in our Union, and one way to assure maintaining young and vigorous leadership is to have compulsory retirement provisions in our Constitution" and President Reuther said:

"... I know that one of the problems in the labor movement is that sometimes people don't realize that they grow old, and that they tend to slow up the labor movement when young leadership is needed."

Recent changes in U.S. federal law require changes in the UAW Constitution. However, those constitutional requirements worked well over the past 15 years, not just because they were legal but because they reflected the right policy.

We – the delegates to the 26th UAW Constitutional Convention -- most strongly believe that the original conclusions which led to that policy continue to be correct; that having staff members retire by age 65, and having Officers and other International Executive Board members not be elected after that age, are important safeguards to assure the vigorous leadership to which our membership is entitled.

We are proud of the Officers, Board members and staff who have abided by that policy, even after the new law became effective.

We, the 1980 Convention, reaffirm the soundness of that policy. We call upon each of our International Officers, other International Executive Board members, and International staff members to voluntarily practice that policy in the future.

The Grievant began work with the Employer in 1991 after a long career in electronic media as a producer. He was employed to develop a television studio and associated facilities to permit the Employer to create and broadcast a wide variety of video programming. The Grievant completed the studio in 1993 in an area on the first floor of the Employer's headquarters. The Grievant indicated that he was proud of what he had built, as the facility was first class and was able to produce high quality product. Once built, the studio and facilities were used for a significant number of important broadcasts and recordings such as press conferences and statements by the Employer's officers, recorded messages that were made available to affiliates and to the public media.

By early 2009, the Grievant's job had evolved as video technology evolved. He was responsible for all of the video production at conventions; he recorded messages from officers to be broadcast at major gatherings; he engaged in very creative work in union organizing. Interviews and recorded statements were edited into production quality video which was made available to the Employer's organizers. The Grievant's production on the life of Walter Reuther aired on Detroit Public Television, and received an "Emmy" from the Michigan affiliate of the Academy of Television Arts and Sciences. Further, the Grievant did some writing and other work related to Employer's *Solidarity* magazine and the Employer's effort to establish an internet presence.

Gary Mason is the Executive Administrative Assistant ("Assistant") to the Employer's President. He is responsible for all personnel employed by the Employer. The Assistant keeps a list of employees in his office which includes the date on which that employee will turn 65. He testified that the "Administration Caucus" requires participants to honor the retirement by age 65 rule. The Administration Caucus is the "political party" which designates candidates for elected office, and which governs political issues within the Employer organization. Members of the Caucus are expected to follow the rules. One of the obligations is retiring at age 65.

The Employer emphasizes that at the end of August 2008, the Public Relations Department included approximately eight International Representatives, including the Grievant. At that time, one International Representative retired, leaving the Public Relations Department with one vacancy. That representative's job responsibilities consisted primarily of coordinating regional inserts for the Employer's membership publication. The assignment was to make sure each of the

Employer's Regions had an insert in the magazine with articles and materials prepared specifically for recipients within that particular Region. The Executive Administrative Assistant ordered the job opening to be posted internally shortly after the retirement created the vacancy.

Initially, no one bid on the internal job posting. The next step contractually in such a situation was to determine whether or not the job would be posted externally. The Employer did not post externally. The job was not filled by an external candidate for two reasons. First, the leadership believed it could eventually be filled internally, which was preferable because of the increasingly difficult financial situation in which the Employer found itself. Second, the widely publicized crisis in the U.S. auto industry had struck. This crisis called for a great deal of attention and resources, as a GM and/or Chrysler bankruptcy would have far reaching adverse impact on a large portion of the Employer's membership. Regardless of some initial promise, the effort to fill the Public Relations vacancy from within was not successful.

The Assistant in checking his list of names and birth dates was aware that there may be additional personnel issues in the Public Relations Department, in view of the Employer's longstanding practice of appointed representatives voluntarily retiring by the time they reach age 65 and elected International leaders not running for the term following their 65th birthday. The norm derives from the Convention Resolution cited at page 6 of this decision. Nonetheless, the Assistant, noting the language of the first and last sentences of the Resolution, insists that staff retirement at or before age 65 is entirely voluntary, and that, in fact, some International Representatives had not retired at or before reaching age 65.

The Grievant turned 65 on February 28, 2009 (his birthday is actually on Leap Day, the 29th). A few weeks before, on January 15, the Assistant told the Grievant that he (the Assistant) was aware that the Grievant's birthday was approaching and asked about the Grievant's plans. The Employer states that given the typical retirement behavior of International Representatives, the question of the Grievant's retirement intentions was reasonably raised. The Grievant responded that he intended to remain at work until the completion of the June, 2010 Employer's convention. This, according to the Employer, made the Grievant the most likely next International Representative to leave the Public Relations Department.

Staff appointments, the Assistant explained at the arbitration hearing, are political appointments. The President must approve hiring of International Representatives (the official designation of the position that the Grievant held). And that means that a part of an applicant's promise is to retire at the appointed time. The Assistant acknowledged that the Employer cannot force anyone to retire. However, he stated that the Grievant was a member of the Caucus and that he (the Assistant) was "disappointed" that the Grievant would not retire when he turned 65.

On January 16, 2009, the day after the Assistant spoke to the Grievant about the Grievant's plans regarding retirement, the Employer internally posted the position of International Representative in public relations with audio, visual, and web production skills. It was clear that the Employer did not intend to add another producer; the Employer was exposing the Grievant's job to applicants. The Assistant testified that he determined that it made sense to take the first step in the likely long process of finding an International Representative who could perform audio,

video, and web production. No one applied for the position; it was not filled; and the posting expired on January 30, 2009.

The Assistant testified that he thought it was still possible that the Grievant would reconsider and retire upon reaching 65 as was the political and cultural norm at the UAW. On January 28, the he visited the Grievant in the Grievant's office. He brought with him the 1980 Convention resolution (set forth above at page 6 of this decision) regarding retirement at age 65. The Assistant asked the Grievant if he had been told about the resolution, and that the President had emphasized that all staff persons were expected to leave proximate to their 65th birthday. The Grievant maintained his plans to retire after the 2010 convention in about a year and one-half remained the same. The Assistant testified that this again made it clear that the Grievant was the next likely representative to leave the Public Relations Department, which would leave a production skills gap.

On March 1, the Grievant was called into the office of Roger Kerson, Director of the Public Relations Department. The Director told the Grievant that he (the Grievant) was going to be physically moved from his studio office on the first floor next to the studio to a different office on the third floor of the Employer's headquarters. The Director told the Grievant that he would remain in the Public Relations Department but that his job duties would change. He would no longer be working exclusively on video production. Instead he would be assigned to working on the Employer's magazine and website. He would collect and edit "regional inserts." These are magazine materials that are personalized to geographic regions. In addition, the Grievant was directed to work in the design of the website, a task for which the Grievant admitted that he has neither skill nor training.

On March 2, 2009, the Grievant was moved to a staff office on the third floor of the Employer's headquarters about ½ the size of his former office, but which is located in the actual Public Relations Department to which he has always been assigned. This placed him nearer his co-workers and the director of the department. The Employer states that this literally put him in the exact same work conditions as all of his equals in Public Relations.

The Employer stated that the Grievant's production skills were fairly specialized, while the work previously assigned to the recently retired International Representative was more commonplace in the department. While the Grievant could do many of the non-production tasks of the department, the Grievant was the only International Representative in the department who could perform certain aspects of the production work.

During January 2009, there was little production work. The natural course of the Employer's production work ebbed and flowed. At the time, there were no active political campaigns and there was little or no organizing work requiring video production. This specific decrease in production needs was set against the larger backdrop of a changing Employer. Over the years, as the Employer's membership drastically decreased, much of the production needs shrank as well. New video shows were not being produced and an intern program headed by the Grievant had been discontinued.

The Employer states that it took an ordinary personnel action, during extraordinary times. It moved an International Representative's office and moderately altered his job responsibilities, as it has done hundreds of times to a wide variety of International Representatives. In this case, the Employer merely moved the Grievant from a first floor office at the Employer's headquarters to a third floor office in the same building. The Grievant continued to fulfill many of his same job responsibilities, but was given some additional responsibilities. The move resulted in little actual change. The Grievant was not disciplined, and his status as an International Representative assigned to the Public Relations Department remains after moving upstairs. He continues to make the same salary and benefits, including health care, pension benefits, car allowance, phone allowance, and other fringe benefits. He still reports to the same person, the Director of the Public Relations Department and, he is charged with the same level of material responsibilities. To this day, he keeps one of the only keys to the Employer's video studio. The Grievant was not disciplined, nor was he subjected to any materially adverse action. He was simply more fully integrated with the important work of the Public Relations Department. The Employer acted based on a sensible business rationale. The Employer asserts that, because the Grievant's claim lacks the essential component of adverse action, the grievance should be denied.

The Union asserts that the Grievant was taken away from his studio and his creative work. He now does little that resembles video production (although he was asked to record news conferences). He writes the occasional story for the Employer's magazine. But his work is considerably less challenging and less interesting. For someone oriented to television production, the reassignment is dramatically different and, for the Grievant, much less desirable. The facts show that while there was an initial posting to hire someone with the skill of the Grievant, the posting expired, and efforts to re-post for outside applications have not occurred. While there may not be as much video work to be done, there is no showing that anyone but the Grievant does bargaining unit video work for the Employer.

It is plainly and clearly evident that the Employer's policy pressure's International Representatives, which include the Grievant, to retire based on reaching the age of 65 years. The Resolution clearly sets a policy of retirement based on reaching age 65. Even though it was amended to include the word "voluntary" in the statement that it "sets forth the policy regarding voluntary retirement for staff members," it still indicates that the Employer "most strongly believe[s] that the original conclusions which led to that policy continue to be correct; that having staff members retire by age 65, and having Officers and other International Executive Board members not be elected after that age, are important safeguards to assure the vigorous leadership to which our membership is entitled," and goes on to say that "We are proud of the Officers, Board members and staff who have abided by that policy, even after the new law became effective. We, the 1980 Convention, reaffirm the soundness of that policy. We call upon each of our International Officers, other International Executive Board members, and International staff members to voluntarily practice that policy in the future."

The Grievant's supervisor was clear in advising the Grievant that he should retire when he reached 65. He spoke to the Grievant on more than one occasion about it, and even provided the Grievant with a copy of the Resolution. The Grievant was moved to a less desirable office within the headquarters the day after his 65th birthday.

An employer may avoid liability for an “otherwise prohibited” action if the action was based on “reasonable factors other than age” (RFOA). An employer relying on the RFOA defense must not only produce evidence in support of the RFOA defense, but must also ultimately persuade the fact finder that its action was based on reasonable factors other than age.

The Employer argues that it is widely acknowledged that an employer has a broad right to assign duties and tasks. The collective bargaining agreement does not limit the Employer's ability to assign offices or work space to International Representatives. In fact, the CBA grants very broad authority to the UAW to assign work to International Representatives. Article IV, Hours and Overtime, states in relevant part, “work schedules are determined by the work assigned by the director of the department without restrictions.” This broad authority is the only section of the contract discussing work assignments. The Employer states that the Grievant, like all UAW International Representatives in the Public Relations Department, is subject to this contractual authority.

The contract, however, prohibits discrimination based on age. While the Employer may have broad authority to assign duties and tasks, it does not have the right to do so in an effort to discriminate because of age.

The Employer states that there is a fundamental problem with the Grievant’s allegation of age discrimination. All the charges assume that the Employer took an underlying materially adverse action against Grievant, but there was no adverse action here. Grievant was not disciplined or transferred. Consequently, there could not be a violation of any cited contract provisions.

The Union argues that it is apparent that the Grievant was moved for the sole reason of encouraging him to resign. The Employer is committed to enforcing the age 65 retirement Policy. This is no ordinary rule; it is seen as important to the International's goals. The Assistant explained that he saw the rule as a “pledge” that every member of the Administration Caucus was committed to honor. The Grievant was a member of the Caucus. He was, therefore, according to the Assistant, duty bound to respect the Policy. The Assistant testified that he was “disappointed” that the Grievant would even consider disregarding the rule.

The Union asserts that the Employer has a strong motive to make sure that this Policy is followed. The Employer acknowledges that it cannot compel its employees to retire at age 65. But it cannot permit employees to disregard the rule wholesale. The Policy would become meaningless if it was ignored by large numbers of people. Therefore, it is essential to find a way to secure “voluntary” compliance. And that is what happened here. The Employer changed the Grievant's duties for the purpose of making his employment sufficiently unpleasant that he would decide to leave on his own.

The Union says that the change of assignment for the Grievant was intended to encourage him to resign. It is clear that the Grievant viewed the new work as less desirable. And, given his experience, that conclusion is understandable. The work is inconsistent with the Grievant's education, training and experience. He is a video producer and has no training in web site development. Yet, he has been tasked with just that and with the assembly of magazine inserts. The Union states that this work was designed to make the Grievant miserable. This is a violation

of the Employer's obligations as an employer and a party to the Guild collective bargaining agreement.

Here the Employer has demonstrated that due to troubled times in the manufacturing sector of the economy, the resources of the Employer have become strained. This is exacerbated by the reduction in operating capital due to the significant reduction in the number of dues paying members. It has been alleged that the Grievant was not as busy with his video production duties as he had been in the past. The witness who testified to this was not sure of what the Grievant did and the Grievant stated that he was reasonably busy. It is not unreasonable that the Employer assign additional duties within the capabilities of the Grievant to alleviate the void left by the absence of the recently retiring International Representative. But the ultimate reasonability of this rests on an examination of such elements as the workloads of the rest of the staff in the Public Relations Department, and a more thorough examination of the duties being performed by the Grievant.

It was the testimony of the Assistant that he did not know what the Grievant's workload was at the time of his 65th Birthday, and there is no indication of what the workload of the other International Representatives in the Public Relations Department were. There has been no justification shown why what appears to be almost the entire workload of recently retired representative was shifted to the Grievant on the day after his 65th birthday rather than distributed differently divided among department members or assigned to another department member. There has not been shown any immediate need to move the Grievant from the office he had operated successfully out of for over 15 years to a smaller one on the day after his 65th birthday. There has not even been shown any alternative use of that office since the move of the Grievant.

As to the assignment for the Grievant to design web pages, it is not reasonable that the Employer assign duties which the Grievant is not qualified to perform without appropriate training and assistance. While the office move might leave the Grievant in closer proximity to the rest of the Public Relations representatives, there has been no need shown why the Grievant could not have been just as effective in his performance if he were to stay in the office that he had occupied for over 15 years. There was no evidence presented that the Employer needed the first floor office for another important purpose so as to necessitate the move of the Grievant. In addition, the timing of the move – the day after the Grievant's 65th birthday, shouts retaliation for failing to retire.

The question to be answered in this case is whether a reasonable person in Grievant's position feel strongly pressured to resign. The answer is yes. Was age a factor in the bringing of this pressure? The answer is yes. Has the Employer not only produced evidence in support of the RFOA defense, but also ultimately persuaded the arbitrator that its action was based on reasonable factors other than age. The answer is no.

The assignment of additional duties within the skill set of the Grievant such as assisting with the compilation of regional inserts for the magazine are not patently unreasonable; there is, however, insufficient showing that there was justification for the assignment to the Grievant – especially

on the day after his 65th birthday. In addition, it is clear that it was unreasonable to assign the grievant to design web pages without appropriate training is not.

Therefore, it is found that the Employer has violated Article XVII, Section 6 of the collective bargaining agreement. The appropriate remedy is to make the Grievant whole, which essentially means to put the Grievant back into the situation he would have been in if the contract violation had not occurred. The Grievant shall be returned to the first floor office that he occupied prior to his 65th birthday and shall not be assigned to web page design responsibilities without appropriate training in advance. Upon reasonable justification based on a review of the workload of the Grievant in relation to the workloads of the rest of the staff in the Public relations Department, some or all of the work regarding the coordination of regional area inserts may be assigned to the Grievant.

DECISION

For all the above stated reasons, the grievance is granted. It is found that the Employer has violated Article XVII, Section 6 of the collective bargaining agreement. The Grievant shall be returned to the first floor office that he occupied prior to his 65th birthday and shall not be assigned to web page design responsibilities without appropriate training in advance. Upon reasonable justification based on a review of the workload of the Grievant in relation to the workloads of the rest of the staff in the Public relations Department, some or all of the work regarding the coordination of regional area inserts may be assigned to the Grievant. Dated: October 26, 2009