BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
GREEN BAY AREA SCHOOL DISTRICT	
and	Case 113 No. 41254 MA-5342
GREEN BAY BOARD OF EDUCATION (CLERICAL) EMPLOYEES UNION LOCAL 3055B, AFSCME, AFL-CIO	

Appearances:
Mr. John Dennis McKay, Attorney at Law, 414 East Walnut, Suite 240, P.O. Box 1098, Green Bay, Wisconsin 54305, appearing on behalf of the District.
Mr. James W. Miller, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 2785 Whippoorwill Drive, Green Bay, Wisconsin 54304, appearing on behalf of the Union.

ARBITRATION AWARD

The Green Bay Area School District, hereinafter referred to as the District, or the Employer, and the Green Bay Board of Education (Clerical) Employees Union, Local 3055B, AFSCME, AFL-CIO, hereinafter referred to as the Union, are parties to a collective bargaining agreement which provides for the final and binding arbitration of grievances. The Union, with the concurrence of the Employer requested the Wisconsin Employment Relations Commission, hereinafter the Commission, to designate a member of its staff as Arbitrator to hear and determine the instant dispute. The hearing in the matter was held on January 21, 1989 in Green Bay, Wisconsin. The hearing was not transcribed and the record was closed on April 26, 1989, upon receipt of the parties' post-hearing briefs.

STATEMENT OF THE ISSUE:

The parties were unable to agree upon a statement of the issue.

The Employer frames the issue as follows:

1. Is there an arbitrable grievance?

If there is an arbitrable grievance, the Employer relies upon the Arbitrator to frame an appropriate issue.

The Union frames the issue as follows:

1. Did the Employer violate the collective bargaining agreement when they failed to pay the grievant the higher rate of pay for work performed in a higher rated job?

2. If so, what is the appropriate remedy?

The Arbitrator frames the issue as follows:

1. Is the grievance arbitrable?

2. Does the Employer violate the collective bargaining agreement when it pays the Grievant at the Warehouse Secretary, Level 2, wage rate?

3. If so, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE:

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ARTICLE X

PAY POLICY

> Employees shall be compensated within the pay ranges set forth in the classification and pay plan of the Employer. Attached as an appendix to this agreement are the pay schedules for each classification. Job descriptions shall be established for each classification. This does not interfere with the Employer's right to amend said job descriptions nor the employee's right to bargain the effects of any such changes.

> The Employer shall determine the number of employees to be assigned to any job classification and the job classifications needed to operate the Employer's facilities. The Union shall be notified in advance of any change to be made in the number and kind of classifications.
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> . . .
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> Job Rate: If any employee is required to take a temporary job with a lower rate of pay, the employee shall not be required to take a reduction in pay. Any employee who is required to take a temporary job with a higher rate of pay shall receive the higher rate for all hours worked on such higher-rated job. This provision shall also apply to employees who are required to take on additional duties during periods of working shorthanded.
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> . . .
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> The pay plan attached shall remain in effect without change for the term of the labor agreement.
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> Prior to establishing a new job or materially changing the duties of an existing job, the Employer shall inform the Union.
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> Subsequent to Union notification, the Employer will evaluate the new or materially changed job in comparison with other jobs whose relative worth is comparable and will inform the Union of the new rate and effective date. The Union may immediately enter into negotiations with management concerning such rate. Changes in such rate agreed upon within sixty (60) days, or an extended time mutually agreed to, shall be made retroactive to the effective date of the job changes or new job installation which occasioned the rate adjustment. The establishment of disputed wage rates shall be a subject of arbitration.
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> . . .

BACKGROUND:

Sharon Ducat, hereinafter the Grievant, has been an employe of the District for approximately 12 years. For the past five years, the Grievant has been employed as a Warehouse Secretary, Level 2. The Grievant's job description is attached as Appendix "A".

The Grievant is a member of the clerical bargaining unit. With the exception of the Grievant and supervisory personnel, all other employes working at the warehouse are members of the maintenance department collective bargaining unit. The clerical bargaining unit and the maintenance bargaining unit have separate collective bargaining agreements.

The maintenance department bargaining unit positions at the warehouse are the Warehouse Clerk/Utility I and Storeroom and Warehouse Attendant. The job

description for the Warehouse Clerk/Utility I is attached hereto as Appendix "B". The job description for the Storeroom and Warehouse Attendant is attached hereto as Appendix "C".

On or about September 9, 1988, a grievance was filed alleging that the Grievant "has been doing duties of a higher level pay," in violation of Article X and any other pertinent sections of the contract. In remedy of this violation, the Grievant requested that she be made whole for any losses of wages/fringes. The grievance was denied at all steps and, thereafter, submitted to arbitration.

POSITIONS OF THE PARTIES:

Union:

The Grievant alleges that she has been doing the work of a higher classification. The higher classification is covered under another collective bargaining agreement. The Employer has not denied the grievance on the basis of the fact that the Grievant is not performing the work alleged, but rather, rejects the grievance only on the basis that the work is covered by another collective bargaining agreement.

In an award dated January 19, 1981, WERC Arbitrator William C. Houlihan, responded to a similar argument in a case involving the City of Green Bay. In concluding that he had the authority to direct the City to pay the Grievant at the supervisor's rate of pay, Arbitrator Houlihan noted that the collective bargaining agreement made reference only to "higher classification" and that there was no language specifically limiting the paragraph to contractual classification. Arbitrator Houlihan further stated that "this Arbitrator believes that Paragraph 6 was intended by the parties to provide unit employees assigned to higher rated work, the higher pay which normally accompanies such work. This purpose is served only by reading Paragraph 6 to be applicable to any classification to which the City might assign a unit employee." Arbitrator Houlihan's rationale is clearly applicable herein.

The Grievant has testified that she works from three to four hours per day doing the work of the higher classification. The Grievant has testified that she does not assist someone else, but actually performs the work herself. Dorak, the Grievant's supervisor, stated that he did not question, nor did he disagree with the testimony of the Grievant, that she probably did do the work of the higher classification by herself for three to four hours per day. The Grievant's job duties call for assisting, not actually doing the work alone. The Employer's argument, that as long as someone is in the warehouse, somewhere, doing something, then the Grievant is assisting that person is outrageous.

The Union respectfully requests the Arbitrator to find in favor of the Grievant. The Grievant should be made whole for any loss of wages and/or fringe benefits from the date of the grievance, which is September 9, 1988.

EMPLOYER:

The Grievant, a clerical unit employe, apparently wants to be paid for something that she is not, namely, a maintenance employe. The Grievant does the job that she was hired to do. She does it under the job description of the position that she was hired to fill and she is paid at the hourly rate which has been negotiated for that position. While there appear to be some similarities between the three jobs that exist in the warehouse, there are substantial differences. The Grievant does not do the job of the other two people and those other two people do not do the Grievant's job. The three jobs are different; the Unions that represent the parties that hold those jobs are different; and the pay scales are different because they were bargained to be different.

If there is an overlapping of responsibility or duties, then it might be appropriate to file for unit clarification, rather than to grieve the matter. The overlap in duties is so obviously insignificant that it should be ignored in light of the diverse nature of the respective positions and their placement

in their respective units. In summary, the District does not consider the grievance to be arbitrable. If the Arbitrator is persuaded that the grievance is arbitrable, then the grievance is without merit and should be denied.

DISCUSSION:

Arbitrability

Article XVIII, Grievance Procedure, does not define a grievance. Absent a definition to the contrary, the undersigned is persuaded that it is appropriate to accept as a grievance, any dispute concerning the application of or interpretation of the collective bargaining agreement. In the present case, the Grievant is claiming that she "has been doing duties of a higher level of pay" in violation of Article X of the parties' collective bargaining agreement. Inasmuch as the Grievant's claim does involve a dispute concerning the application of or interpretation of the parties' agreement, the arbitrator considers the Grievant's claim to be substantively arbitrable. 1/

Merits

According to the unrebutted testimony of Employer Representative Kampschroer, the job descriptions in the clerical bargaining unit have been negotiated between the Union and the Employer. When there has been a dispute concerning a job description, the dispute has been submitted to an umpire. The Grievant's current job description, which dates from November, 1985 has never been challenged by the Union.

Given the testimony of Employer Representative Kampschroer, the Arbitrator is satisfied that the Union and the Employer have agreed that the responsibilities set forth in the Warehouse Secretary, Level 2, job description are appropriately performed by the employe occupying the Warehouse Secretary, Level 2, job classification. Thus, when an employe in the Warehouse Secretary, Level 2, job classification performs duties within the scope of the Warehouse Secretary, Level 2, job description, the employe is performing work within the Warehouse Secretary, Level 2, classification. Inasmuch as the parties have bargained a wage rate for the Warehouse Secretary, Level 2, job classification, an employe in the Warehouse Secretary, Level 2, job classification who performs work within the scope of the Warehouse Secretary, Level 2, job description is contractually entitled to be paid at the Warehouse Secretary, Level 2, wage rate contained in the clerical collective bargaining agreement. Accordingly, the initial question to be determined herein is whether the work performed by the Grievant is work which falls within the scope of the Grievant's job description, i.e., Warehouse Secretary, Level 2.

At hearing, the Grievant stated that the employes at the Warehouse, including the supervisor, "all do the same thing." 2/ In subsequent questioning, however, the Grievant acknowledged that she is the only employe to operate the computer terminal. The Grievant also acknowledged that she, unlike the other warehouse employes, does not regularly drive the delivery truck or pick up equipment. The Grievant also acknowledged that, unlike the other warehouse employes, she has never picked up anything as big as a computer terminal or a bookcase. It is evident, therefore, that the Grievant and the other warehouse employes do not "all do the same things." 3/

While the Arbitrator is not persuaded that the Grievant is performing all of the duties of the other more, highly paid warehouse employes, the Arbitrator is persuaded that there is an overlap of duties. The Grievant's supervisor, Ryan Dorak, did not dispute the Grievant's claim that she, like the other warehouse employes, receives, stores and issues supplies. 4/ Nor did he dispute the Grievant's claim that she takes inventory in the same manner as the other warehouse employes. According to Dorak, however, the duties performed by the Grievant fall within the scope of the Warehouse Secretary, Level 2, job description. A comparison of the Grievant's testimony concerning her duties with the duties set forth in the Warehouse Secretary, Level 2, job description

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1/ Procedural arbitrability is not at issue.

2/ As one would imagine, the supervisor is not a member of any bargaining unit. The other warehouse employes are in the maintenance bargaining unit and occupy either the Warehouse Clerk/Utility 1 job classification or the Storeroom and Warehouse Attendant job classification.

3/ Such a conclusion is not only supported by the Grievant's testimony, but also, by a comparison of the relevant job descriptions. (Jt. Exhibits 4(a), 4(b), and 4(c).) For example, the two maintenance unit job descriptions, unlike the Grievant's job description, provide for snow plow duty as needed.

4/ Specific duties referred to by the Grievant include opening boxes, taking a cart up and down aisles to pick up stock, marking stock, and setting up stock for delivery.

persuades the arbitrator that Dorak is correct when he asserts that the duties performed by the Grievant fall within the scope of the Warehouse Secretary, Level 2, job description. Contrary to the argument of the Union, the Grievant is not working out of classification when she performs these duties.

As the Union argues, Subsection D, of the Warehouse Secretary, Level 2, job description contains the following

> 5. Assist in the receiving, storing, issuing, and delivering of supplies, materials and equipment;
>
> 6. Assist in taking inventories, computing inventory values, and order replacement stock;

However, the Union and the Grievant misconstrue the word "assist" when they argue that the Grievant does not "assist" when she works alone. As Employer Representative Kampschroer stated at hearing, Subsection D(5) and D(6) means that the Grievant is expected to "assist" in performing the functions identified in the two subsections. It does not mean that the Grievant is to "assist" another employe to perform the function.

In conclusion, the record does not demonstrate that the Grievant is working out of her job classification. To be sure, the Grievant's duties overlap, in some respect, the duties of employes who are paid at a higher rate of pay than the Grievant. However, in performing these overlapping duties, the Grievant is performing work within her job classification. Accordingly, the Employer is not contractually required to pay the Grievant at any wage rate other than the Warehouse Secretary, Level 2, wage rate established in the parties' collective bargaining agreement.

Based upon the above and foregoing and the record as a whole, the undersigned issues the following

AWARD

1. The grievance is arbitrable.

2. The Employer does not violate the collective bargaining agreement when it pays the Grievant at the Warehouse Secretary, Level 2, wage rate.

Dated at Madison, Wisconsin this 28th day of July, 1989.

By _____
Coleen A. Burns, Arbitrator