BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
GREEN BAY CITY HALL EMPLOYEES UNION LOCAL 1672-A, AFSCME, AFL-CIO	
and	Case 191 No. 42643 MA-5757
CITY OF GREEN BAY	

Appearances:
Mr. Mark A. Warpinski, Assistant City Attorney, Room 300, City Hall, 100 North Jefferson Street, Green Bay, Wisconsin, appearing on behalf of the City.
Mr. James W. Miller, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 2785 Whippoorwill Drive, Green Bay, Wisconsin, appearing on behalf of the Union.

ARBITRATION AWARD

The City of Green Bay City Hall Employees Union, Local 1672-A, AFSCME, AFL-CIO, hereinafter referred to as the Union, and the City of Green Bay, hereinafter referred to as the City or Employer, 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. Hearing on the matter was held on November 28, 1989 in Green Bay, Wisconsin. A stenographic transcript of the proceedings was prepared and received on December 26, 1989. The record was closed on February 13, 1990, upon receipt of 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:

> Did the City violate the collective bargaining agreement when it assigned the Grievants job duties which had previously been performed by the City Clerk-Steno III and failed to pay the Grievants the Clerk-Steno III rate of pay?

The Union frames the issue as follows:

> Did the Employer violate the collective bargaining agreement when it failed to pay the Grievants the higher rate of pay while performing work normally performed by employees working in the higher classification?
>
> If so, what is the appropriate remedy?

The Arbitrator adopts the Employer's statement of the issue.

RELEVANT CONTRACT LANGUAGE:

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ARTICLE XI

WORK SCHEDULE - OVERTIME PAY - CALL-IN PAY

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6. Employes who perform work of a higher classification shall be paid at the higher classification rate of pay for all hours worked in the higher classification.

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ARTICLE XXIV

GRIEVANCE PROCEDURE

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Step 4. The party desiring arbitration shall notify within fifteen (15) working days, the other party of

> its desire to arbitrate and request the Wisconsin Employment Relations Commission to appoint an Arbitrator.
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> It is understood that the Arbitrator shall not have the authority to change, alter or modify any of the terms or provisions of this agreement. The decision of the Arbitrator shall be final and binding on both parties. The expense of the Arbitrator shall be divided equally between the parties.

. . .

BACKGROUND:

Grievant Sue Petty is a Clerk-Typist III who normally performs clerical work including typing and photocopying. In addition, she is specifically assigned the monthly Uniform Crime Reports, burglar alarm and false alarm billings, and juvenile reports. Grievant Petty also responds to public requests for copies of the reports she maintains. When Grievant Petty was hired, approximately two years earlier, she was informed that she would be asked to back up a Clerk-Steno III, whose normal work duties include adult reports and responding to telephone requests for copies of these reports.

The Clerk-Steno III involvement with adult reports involves preparing index and return copies, entering the reports in a log and entering information from the reports onto the computer. Grievant Petty's involvement with juvenile reports involves preparing index and return copies, entering the reports in a log and entering information from the reports onto the computer. The computer entry work of each classification involved the same computer processes, although there was a difference in the content of information processed.

In May, 1989, Grievant Petty assumed the Clerk-Steno III adult report duties and telephone request duties while the Clerk-Steno III was on vacation. Grievant Petty performed these duties in addition to her normal duties.

Grievant Kay Behrendt is a Clerk-Typist II, whose normal work duties involve responding to public requests for copies of accident and incident reports, recording daily cash receipts, preparing weekly deposits, and maintaining files for all accident reports and photo negatives. Additionally, Grievant Behrendt enters information from traffic citations involving accidents onto the computer, photocopies the citations, and prepares the citations for court.

In May, 1989, Grievant Behrendt was assigned some of the duties of a Clerk-Steno III while the Clerk-Steno III was on vacation and on special assignment, i.e., entering information from traffic citations which do not involve accidents onto the computer. 1/ In entering the non-accident citation information, Grievant Behrendt used the same computer processes which she used for entering the accident traffic citation information. At the time that Grievant Behrendt was assigned the Clerk-Steno III duties, she was advised that these duties had priority over Grievant Behrendt's normal work duties.

On or about May 23, 1989, Grievant Petty filed a grievance alleging that she was contractually entitled to be paid at the Clerk-Steno III rate for 22-3/4 hours of performing Clerk-Steno III work. At the same time, Grievant Behrendt filed a grievance alleging that she was contractually entitled to be paid at the Clerk-Steno III rate for 44 hours of performing Clerk-Steno III work. The Clerk-Steno III classification is higher than either of the Grievants' classifications. The grievances were denied at all steps and, thereafter, submitted to arbitration.

POSITIONS OF THE PARTIES:

Since 1980 there have been four arbitrations between these parties concerning performance of work. The Union contends that, under Article XI, both Grievants should be paid at the Clerk-Steno III rate for performing work which was normally done by the Clerk-Steno III employes. According to the Union, the first arbitration decision reaffirms that the language in Article XI is clear and unambiguous and makes it clear that employees need perform only some, and not all, functions of a higher classification in order to be entitled to compensation at the higher classification rate. The Employer, declaring that this decision was based upon the Grievant performing core duties peculiar to the higher classification, maintains that since the Clerk-Steno work performed by the Grievants was not materially different than the work they normally performed as Clerk-Typists, they should not be paid at the higher

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1/ At hearing, Behrendt stated that the non-accident traffic citation work involved entering the citations on the computer, making copies of the citations, and preparing them for court. (T. 31) While Behrendt's testimony on this point is ambiguous, it appears that her participation was limited to computer entry work. (T. 41)

Clerk-Steno rate.

In response, the Union declares that the second and third decisions issued in 1987 and 1988, respectively, also support the Grievants' claims. Citing the exclusivity of assigned work discussion set forth in each of these decisions and arguing that, in this dispute, the work done by the Clerk-Typists was work exclusively done by the Clerk-Stenos, the Union asserts that there is no difference between this dispute and those in which the arbitrator concluded that the Grievants were entitled to the higher rate compensation. The Employer, however, maintains that these two decisions are not controlling because they do not address the same factual situation. The Employer asserts that the first decision dealt with the Grievant's ability to return to a posted position rather than with pay for a higher classification, and that the second decision did not involve a dispute in which there was an overlap in work between the higher and lower classification.

As further support for its position, the Employer argues that the fourth decision, also issued in 1988, "captures the essence of the instant controversy" since it addresses the issue of overlapping skills and duties. The Employer argues that the stenographic work required of the Clerk-Stenos is the core difference between the work performed by the Clerk-Typists and the Clerk-Stenos. The Employer contends that the Grievants in this dispute have been asked to perform work which is common to each classification and that, consistent with the arbitrator's finding in the fourth decision, the Grievants are not entitled to be compensated for the work which was performed.

The Union rejects the findings in the fourth decision maintaining that it clearly ignores the prior arbitration decisions and "guts" Article XI. The Union argues that if the rationale in this decision were applied in the instant dispute, shorthand, a skill which is seldom used, would be the only work performed in the higher classification for which the Grievants would be eligible for the higher-rated compensation. The Union maintains that the work performed by the Grievants was specialized and exclusively within the province of the higher-rated classification and that the Grievants were asked to set aside their own work to perform this specialized work.

As further support for this position, the Union states that the Employer, in settling a grievance with another employe, agreed to pay the employe at a higher-rated classification rate because she performed the work which was exclusively within the province of the higher classification. The Employer rejects the Union's argument, however, stating that the Union has ignored the fact that it settled with the employe because her supervisor had represented to

her that she would be paid the higher rate of pay for the work performed and because the employe did, in fact, perform the core duties of the higher classification.

DISCUSSION:

At issue is whether either Grievant is entitled to be compensated at the Clerk-Steno III rate for performing work normally assigned to a Clerk-Steno III. In arguing that each Grievant is entitled to the Clerk-Steno III rate of pay, the Union relies upon Article XI, Subsection 6, which states as follows:

> 6. Employees who perform work of a higher classification shall be paid at the higher classification rate of pay for all hours worked in the higher classification.

In performing the work normally assigned to a Clerk-Steno III, Grievant Petty responded to public requests for copies of crime reports and processed crime reports by preparing index and return copies, entering the reports in a log, and entering information from the reports onto a computer. Since Grievant Petty performs this same set of tasks when she performs her Clerk-Typist III duties, the work in dispute is not "work of a higher classification," but rather, is work which is common to each classification.

In performing the work normally assigned to the Clerk-Steno III, Grievant Behrendt entered information from non-accident traffic citations onto a computer. In entering this information, Grievant Behrendt used the same computer processes which she used in performing her normal work assignment of entering information from accident traffic citations onto the computer. As with Grievant Petty, Grievant Behrendt's assignment of the Clerk-Steno III duties did not involve "work of a higher classification" but rather, involved work which is common to each classification. 2/

Where, as here, there are duties which overlap classifications, an employe performs work of the higher classification only when the employe is performing the duties which are not common to each classification. Contrary to the argument of the Union, the Employer did not violate Article XI, Subsection 6, when it paid the Grievants at their normal wage rate, rather than at the Clerk-Steno III wage rate. 3/ As discussed more fully below, this conclusion is not inconsistent with the prior arbitration awards relied upon by the parties herein.

As Arbitrator Bielarczyk recognized in his 1989 award, prior arbitrators were not confronted with a factual situation in which the disputed work involved skills and duties which were common to both classifications. In the 1980 decision, the arbitrator found that the Grievant was entitled to the higher classification rate for work performed because the Grievant was ". . . responsible for and did perform some of the functions . . ." of the higher classification. In the present case, it is concluded that the functions performed by each Grievant fell within the scope of their own classifications.

In the 1987 decision, the arbitrator decided the issue of whether the City violated the collective bargaining agreement when it failed to assign an employe returning from a leave of absence to the same position that she had occupied prior to the leave. In deciding that there was a violation, the arbitrator relied upon past practice to interpret Article XIII. Given the lack of identity of issue between the 1987 award and the instant dispute, the 1987 award is not controlling herein. The undersigned notes, however, that just as it is possible for positions within a classification to vary based upon assigned duties, it is possible for duties assigned to employes in various classifications to be similar and to require similar skills and responsibilities.

In the 1988 decision issued by the arbitrator of the 1987 decision, the arbitrator ruled in favor of the Grievants, finding that the Grievants had performed duties exclusively performed by an employe in a higher classification. In the present case, the duties in dispute are not exclusive to the higher classification. While the arbitrator did not find the work in dispute to consist of duties which overlapped classifications, she expressly recognized that ". . . the issue of overlapping may be significant in some

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2/ Assuming arguendo, that Grievant Behrendt's involvement with the non-accident traffic citations involved photocopying the citations and preparing them for court, this would not change the conclusion reached herein. The reason being that these tasks are also tasks which are common to each classification.

3/ As the Employer argues, it is evident that the grievance settlement relied upon by the Union was based, in part, upon the fact that the Grievant's supervisor had represented to the Grievant that she would be paid at the higher rate. Such representations are not present herein. Accordingly, the settlement is not controlling herein.

classification disputes . . . ."

In the 1989 award, the arbitrator recognized that there were duties which were common to the Clerk-Typist II and Clerk-Steno III positions. In that decision, the arbitrator ruled in favor of the City finding that ". . . the stenographic duties and responsibilities of the Clerk-Steno III classification clearly stand out as the primary difference between the two positions," and concluding that the duties performed by the Grievant ". . . clearly fall within the purview of her current job description." In this dispute, the record supports a finding that the duties which the Grievants were asked to perform were the same type of duties which they performed daily under their own job descriptions.

In conclusion, the record does not demonstrate that either Grievant performed "work of a higher classification." While both Grievants performed work normally performed by employes in a higher classification, the work which was performed was the same type of work each Grievant performed as a part of their normal work duties and, thus, falls into the area of overlapping duties. Accordingly, the Employer did not violate the collective bargaining agreement when it assigned the Grievants work performed by employes in a higher classification and failed to pay the Grievants the rate earned by the higher classification.

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

AWARD

1. The City did not violate the collective bargaining agreement when it assigned the Grievants job duties which had previously been performed by a Clerk-Steno III and failed to pay the Grievants the Clerk-Steno III rate of pay.

2. The grievance is denied and dismissed.

Dated at Madison, Wisconsin this 10th day of May, 1990.

By_____
Coleen A. Burns, Arbitrator