

BEFORE THE ARBITRATOR

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 In the Matter of the Arbitration :
 of a Dispute Between :
 :
 ROCK COUNTY :
 :
 and : Case 242
 : No. 42747
 : MA-5794
 ROCK COUNTY EMPLOYEES, LOCAL 2489, :
 AFSCME, AFL-CIO :
 :

Appearances:

Thomas E. Larson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, for the Union.
Stephen D. Meyer, Deputy Corporation Counsel, Rock County, for the County.

ARBITRATION AWARD

Rock County, herein the County, and Rock County Employees, Local 2489, AFSCME, AFL-CIO, herein the Union, requested the Wisconsin Employment Relations Commission to designate a member of its staff as arbitrator to hear and decide a dispute. The undersigned was so designated. Hearing was held in Janesville, Wisconsin on November 7, 1989, at which time the parties agreed that the arbitrator first would decide the issue of whether the grievance was arbitrable and, if the grievance was found to be arbitrable, then the arbitrator would schedule a hearing on the merits of the grievance. The parties completed the filing of post-hearing briefs on December 5, 1989. In a decision issued on February 13, 1990, the arbitrator found that the grievance was arbitrable. A hearing on the merits of the grievance was held in Janesville, Wisconsin on May 2, 1990. No transcript of the hearing was taken. The parties completed the filing of post-hearing briefs on June 6, 1990.

ISSUE:

The parties stipulated to the following issue:

Should Child Support Reimbursement Specialists be reclassified to Paralegals or, in the alternative, should Child Support Reimbursement Specialists be reallocated from pay range 4 to a higher pay range which would accurately reflect position responsibilities and labor market conditions?

RELEVANT CONTRACTUAL PROVISIONS:

ARTICLE IX - GRIEVANCE PROCEDURE

. . .

9.06 Limit on Arbitrators. The Arbitrator shall have jurisdiction and authority to interpret the provisions of the Agreement and shall not amend, delete or modify any of the provisions or terms of this Agreement.

. . .

14.05 Each employee covered by this Agreement shall be classified by a job title as listed in the Wage Appendix under "Classification" and when any such employee is temporarily required to perform the work of a higher classified job title for more than twenty working days, he/she shall receive the rate of pay for such job title as provided in the Wage Appendix.

. . .

14.10 The Employer shall provide the Union notice of all reclassifications including date of reclassification.

. . .

BACKGROUND:

The classification of Child Support Reimbursement Specialist, herein Specialist, was created in 1983. At that time the Specialist primarily did the preparation work for initial court appearances, subject to the approval of an attorney or investigator, and tax intercept duties. The necessary paperwork was performed by a Legal Stenographer, which position was in the same salary

range as the Specialist.

In 1986 the position of Legal Stenographer was eliminated and was replaced by a second Specialist. At that time the Specialists were given: the authority to decide the legal action, if any, to be initiated in a case; assumed from the investigators some duties concerning the locating of absent parents; and, began performing the post-court appearance work, such as document preparation and correspondence, previously performed by the Legal Stenographer.

At an unspecified time in 1989 new regulations from the Federal and State governments required Specialists to monitor each case on a regular basis and to document those activities. The parties agree that those new regulations increased the workload of the Specialists, however, they disagree as to the magnitude of the increase.

In the fall of 1989 the County added two File Clerk and two Clerk-Typist positions to perform some of the less specialized duties of the Specialists.

Currently there are eight Specialists employed by the County.

As one of its proposals for the negotiations for a successor to the 1988-89 contract, the Union seeks to reclassify/reallocate the Specialists to the same level as an entry level Deputy.

POSITION OF THE UNION:

The duties of the Specialists have changed considerably over the years. In 1986 the Specialists were given the authority to initiate cases and began performing locates, which Special Investigators previously had performed. The Specialists have assumed additional duties from the Special Investigators, including work search documentation, pre-trial notices, and solicitation of information from custodial parents.

Shortly after the conclusion of the contract negotiations in 1988, significant changes occurred in the job duties of the Specialists. New Federal and State regulations required each case to be handled more often, in addition to a larger case load.

The Specialists exercise much greater discretion and need greater legal knowledge than do Legal Stenographers. The duties of the Specialists are more comparable to the duties of the Special Investigators.

The County refused to reevaluate the classification of Specialist, but rather, referred the matter to contract negotiations, even though the County's personnel policy requires evaluations of positions on a regular basis. In this case the County has an obligation to reevaluate the position due to the significant changes in the workload.

The Union seeks the establishment of a Paralegal classification at a salary comparable to the pay rate of Specialists in other comparable counties. The County should be required to reevaluate the Specialist position and in good faith determine the appropriate pay level for the position. The grievants should be paid the higher wage rate retroactive to the filing of the grievance. The arbitrator should retain jurisdiction of the matter.

POSITION OF THE COUNTY:

The County contends that, although the workload of the Specialists has increased during the 1988-89 contract, the nature of their duties has remained the same. New Federal and State mandates increased the workload by requiring more frequent monitoring of each case and documentation of those efforts, but did not alter the job.

The County has added File Clerk and Clerk-Typist II positions to assume some of the less specialized duties of the Specialists. Some automation has been introduced. The County is attempting to deal with the increased workload to avoid paying overtime rates, however, overtime has been, and continues to be available.

While the workload has increased, without a change in the character of the work the increase has not been so extraordinary as to render the contract meaningless and necessitate a mid-term wage adjustment by the arbitrator. Further, the contract prohibits the arbitrator from modifying the contract by mandating a mid-term wage adjustment. The Union seeks to overcome such a prohibition through a remedy of good faith bargaining with a retroactive wage adjustment. There is no contractual basis for such a remedy.

The instant dispute properly belongs in contract negotiations.

DISCUSSION:

The stipulated issue poses two alternative possible actions as a remedy. The first action would reclassify the Specialists to Paralegals. There is no classification of Paralegal in the existing contract. Thus, that classification would have to be added to the contractual salary schedule. Such an addition would directly conflict with the language of Section 9.06 of the contract which specifies that the Arbitrator shall not amend or modify the terms of the contract. Clearly, the creation of a new job classification would constitute an amendment or modification.

The second action would reallocate the Specialists to a higher pay range than the current pay range for that classification. Such an action faces the same problem as does the first action since the movement of the Specialist to a higher pay range also would be an amendment or modification of the existing salary schedule.

Section 14.05 must be interpreted to refer to existing classifications in the salary schedule and has no relevance to the instant case.

There is no evidence to support the Union's contention that Section 14.10 indicates the parties anticipated there would be a need for salary schedule changes during the contract. The more rational interpretation of Section 14.10 is that said provision represents the County's agreement to notify the Union when an employe moves from one existing classification to another already existing classification through the contractual job posting procedure.

Neither is there any contractual language to support the Union's request for the Arbitrator to order the county to reevaluate the classification of Specialist. Section 18.104 of the County's Personnel Policy reads as follows: "This Ordinance applies to employees not covered by collective bargaining agreements and to employees so covered when specific contracts do not apply to the contrary." The Union believes the last phrase is applicable to the instant matter because the contractual language does not conflict with Section 18.409 of the Personnel Policy, which reads as follows:

18.409 Review of Classification Plan.

At least every three years, or as often as may be appropriate, the Personnel Director shall review the Classification Plan to ensure that the plan accurately reflects existing position responsibilities and market conditions. The Personnel Director shall take whatever action is appropriate to amend and update the Classification Plan, subject to the review of the County Board staff Committee and approval of the County Board.

The undersigned does not agree with the Union's interpretation of Section 18.409. As part of their contract, the parties negotiated a Salary Schedule, which lists the job classifications covered by the contract and the applicable wage rates. Consequently, Section 18.409 does not apply to this matter. Rather, the classifications and their respective salaries, as a part of the contract, have been made a part of the collective bargaining process by the parties.

In summary, the undersigned is not persuaded that he has any contractual

authority to grant any of the remedies sought by the Union, i.e., either reclassification, reallocation, or reevaluation.

Even assuming that the undersigned did have the authority to determine whether the Specialists should be reclassified or reallocated, the record would not support either of those actions.

There is no doubt that the nature and extent of the duties performed by the Specialists have changed since the position was created in 1983. However, it appears that the major changes in those areas occurred either prior to or commensurate with the replacement of the Legal Stenographer with another Specialist in January of 1986. Since 1986 the changes in the duties of the Specialists have been primarily in terms of quantity or volume, rather than the addition of new types of duties. It was in 1986 that the Specialists were given the authority to decide the course of action to be taken in a case, assumed some of the locate duties of the Investigators, and began doing the follow-up duties after court appearances. Those changes, which occurred prior to the negotiations for the 1988-89 contract, should have been, and apparently were, an item in those negotiations. The parties reached agreement on the 1988-89 contract, which included agreement on the wage rate for the Specialists based on their then-existing duties. Therefore, those changes are not properly before this arbitrator.

While the volume of duties has grown steadily over the years since 1983, a larger than usual increase in duties occurred sometime in 1989 as a result of new requirements by the Federal and State governments for more frequent monitoring of each case and for documentation of those monitoring activities. The Specialists now must review each case file on a regular basis and document the status of the case. Also, there are additional new forms, including a Federal form for interstate action. The Union views this increase in the workload of the Specialists to be of a sufficiently significant nature so as to warrant both a reevaluation of the position and an increase in the wage rate. While agreeing that the workload of the Specialists has increased, the County believes that its efforts to relieve the Specialists of some routine duties and the availability of overtime pay should result in no change in the placement of the Specialist in the contractual Salary Schedule, unless such a change is agreed to by the parties during negotiations for a successor to the 1988-89 contract.

It is apparent that the County has made efforts to deal with the increasing workload of the Specialists. Since January of 1986, the number of Specialists has increased from two to eight. In 1989 the County began employing two File Clerks and two Clerk-Typists to perform some of the more routine and less specialized duties of the Specialists. Typewriters have been replaced by personal computers.

Any increase in the quantity of the duties which occurred prior to the negotiations for the 1988-89 contract must be assumed to have been considered by the parties during those negotiations. The Specialists testified that the quantity of tasks for each Specialist has increased during the term of the 1988-89 contract, in spite of the County's efforts to avoid such an increase. Even though such an increase has occurred, such is not a sufficient basis in this case to sustain the grievance. There is no evidence to show that the County has attempted to discipline the Specialists in an effort to force them to handle the increase in duties during their normal work hours. In fact, the Specialists have received premium pay for working overtime hours due to the increased duties. If the Union had shown a significant increase in the quantity of the workload with a corresponding expectation by the County for the increased duties to be performed during the normal workweek without any additional employees or the use of overtime, then the Union's case might have been more persuasive. Such is not the situation herein. Therefore, the Union is bound to the wage rate for the Specialists which is contained in the 1988-89 contract.

Based on the foregoing, the undersigned enters the following

AWARD

That the Child Support Reimbursement Specialists should not be either reclassified to Paralegals or reallocated to a higher pay range; and, that the grievance is denied and dismissed.

Dated at Madison, Wisconsin this 20th day of August, 1990.

By _____
Douglas V. Knudson, Arbitrator