

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

ROCK COUNTY

and

ROCK COUNTY EMPLOYEES, LOCAL 2489,
AFSCME, AFL-CIO

Case 241
No. 42746
MA-5793

Appearances:

Thomas E. Larson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, for
the Union.

Thomas A. Schroeder, 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 scheduled to be held in Janesville, Wisconsin on May 8, 1990. Prior to said date, the parties agreed to submit a Stipulation of Facts and agreed that a hearing was not necessary. The parties completed the filing of briefs on June 26, 1990.

ISSUE

The parties stipulated to the following issue:

Should Social Service Aide II's be reclassified to Social Service Aide III's or, in the alternative, should Social Service Aide II's be reallocated from pay range 9 to pay range 5?

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

On November 18, 1988 the Union filed a class action grievance on behalf of all employees holding the classification of Social Service Aide II (herein SSA2), a total of six (6) employees as of the filing date. The grievance alleged that the SSA2 performs duties equal to those performed by employees in the classification of Income Maintenance Worker, which classification is in pay range 5, and requested that the SSA2 wage rate be increased and the job description be revised to reflect the reallocation of job duties.

The County denied the grievance on the basis that the contract had not been violated and, further, that the matter should be a subject in contract negotiations.

The classifications of SSA1 and SSA2 have been contained in each contract between the parties since at least, and including, the 1979-80 contract. The Union proposed to add an SSA3

classification to the contract in four separate negotiations, i.e., for the 1981, 1982, 1983, and 1984 contracts. As a result of the contract negotiations between the parties, the SSA2 classification was moved from pay range 13 in the 1983 contract to pay range 10, which range carried a higher wage rate, in the 1984 contract. One of the Union's proposals for the 1985 contract was to move the SSA2 from pay range 10 to pay range 7. The County did not agree to said proposal. However, due to a renumbering of the pay ranges, pay range 10 in the 1984 contract became pay range 9 in the 1985 contract. Said renumbering did not result in an increased wage rate for SSA2 or the other three affected classifications.

As a part of the negotiations for the 1986-87 contract, the Union proposed that the SSA2 be placed in pay range 7. One of the Union's proposals for the successor contract to the 1988-89 contract was to move SSA2 from pay range 9 to pay range 5.

In September of 1988 the County issued a revised job description for the SSA2 classification to replace a description which apparently had become effective in 1971. The new description was considerably more detailed in describing the tasks currently being performed by the SSA2's and was prepared based on job audit questionnaires completed by the SSA2's. The accuracy of the new job description does not appear to be in dispute. Rather, the dispute is over whether the duties contained in the new job description justify an increase in the SSA2 wage rate.

There have been changes in the duties and workload of the SSA2 position since 1971, as a result of new and revised programs with which the employees work. The parties disagree over the impact of those changes.

POSITION OF THE UNION

Significant changes have occurred in the SSA2 jobs in the form of additional duties and knowledge required by new and revised programs. The new SSA2 job description more closely approximates the description for an SSA3 than the former SSA2 description and, in addition, is substantially equivalent to the job description of an Income Maintenance Worker.

The County's review of the SSA2 classification was consistent with Section 18.409 of the County's personnel policy. However, the County failed in its obligation to consider, after the review, whether the position should be upgraded and instead asserted, in an arbitrary and capricious manner, that the matter had to be resolved in negotiations.

The County's position fails to recognize that the duties of most positions are not static, but rather are dynamic in nature. While the parties can establish in negotiations, an appropriate wage rate for a position, subsequent changes in the position's duties can necessitate an adjustment in the wage rate. In this case the County significantly modified the job description in such a material manner as to significantly change the job and make a wage adjustment proper.

The Union seeks both a finding that the County violated the contract by failing to consider a reclassification of the SSA2 position, and an order that the County consider the reclassification in good faith. The arbitrator should retain jurisdiction to determine if the County complies in good faith with the order.

POSITION OF THE COUNTY

The old SSA2 job description was out of date. In recognition of that fact, the County requested the incumbent SSA2 employees to complete job audit questionnaires reflecting their current duties and responsibilities. The County then revised the SSA2 job description to reflect those current duties and responsibilities.

The functions and workload of an SSA2 have changed since 1971. However, the SSA salaries have also changed since 1971. Further, there is no requirement that compensation be adjusted merely because a job description is altered to more accurately reflect reality.

A comparison of the SSA2 job description to a job description for either the SSA3 or the Income Maintenance Worker is irrelevant, since there is no SSA3 classification in the contract and this is not a working out of class grievance. Further, there is no comparable worth provision in the contract.

The County's personnel policy does not apply to this situation, but rather, only to non-represented employees.

There is no record in this case establishing a material increase in the workload during the 1988-89 contract.

The Arbitrator has no authority to grant the relief sought by the Union, since either a reclassification or a reallocation would amend and/or modify the contract.

The issue of reclassification and/or higher compensation for the SSA2 position has been a consistent union proposal in contract negotiations. The parties have consistently signed contracts containing wage rates for all classifications, including the SSA2. The issue properly remains in contract negotiations.

The County requests a dismissal of the grievance.

DISCUSSION

The stipulated issue poses two alternative possible actions as a remedy. The first action would reclassify the SSA2's as SSA3's. There is no classification of SSA3 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 SSA2's to a higher pay range, i.e., 5, from the current contractual pay range for that classification, i.e., 9. Such an action faces the same problem as does the first action since the movement of the SSA2 classification 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. While the Union argues that the SSA2 job is substantially equivalent to the job of Income Maintenance Worker, the grievance does not allege that the SSA2's are performing the work of an Income Maintenance Worker. Thus, Section 14.05 does not apply to the instant case.

There is no contractual language to support the Union's request for the Arbitrator to order the County to reevaluate the wage rate of the SSA2 classification.

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 Sections 18.104 and 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 for each classification. Consequently, Sections 18.104 and 18.409 do 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. Since Sections 18.104 and 18.409 do not apply to this matter, the

undersigned has no authority to order the County to consider whether the SSA2 position should be given a higher wage rate.

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 SSA2's should be reclassified or reallocated, the record would not support either of those actions.

There is no dispute that the nature and extent of the duties performed by the SSA2's changed during the period of time from when the 1971 job description was implemented until the implementation of the revised job description in September of 1988. Some of those changes may have occurred during the time period of the 1988-89 contract. However, the record fails to establish that the actual duties of the SSA2 position changed or expanded during the 1988-89 contract in such a substantial or significant manner so as to fundamentally change the nature and duties of the position. The changes in duties which occurred prior to the start of the 1988-89 contract must be presumed to have been considered by the parties during their negotiations resulting in either the 1988-89 contract or preceding contracts when the parties reached agreement on salary schedules which listed the classifications, including SSA2, covered by those contracts.

The bargaining history between the parties reveals that specific proposals relating to the SSA2 classification have been a subject in each contract negotiation, with the possible exception of the negotiations resulting in the 1988-89 contract, in the form either of the creation of an SSA3 classification or of a reallocation of the SSA2 classification to a higher pay range, at least since the negotiations which culminated in the 1981 contract. Thus, the parties have had numerous opportunities to consider the changes in the duties of the SSA2 classification. The fact that the parties agreed to alter the placement of the SSA2 classification in only one of those earlier contracts, i.e., 1984, does not make those changes, which occurred prior to the 1988-89 contract, relevant to this grievance.

The fact that in 1988 the County issued a revised job description for the SSA2 classification, which incorporated the cumulative changes in duties since 1971, does not establish that the changes had occurred since the conclusion of negotiations for the 1988-89 contract.

Based on the foregoing, the undersigned enters the following

AWARD

That the Social Service Aide II's should not be either reclassified to Social Service Aide III's or reallocated from pay range 9 to pay range 5; and that the grievance is denied and dismissed.

Dated in Madison, Wisconsin this 17th day of September, 1990.

By Douglas V. Knudson /s/
Douglas V. Knudson, Arbitrator