

BEFORE THE ARBITRATOR

In the Matter of the Arbitration :
of a Dispute Between :
LOCAL 986-A, AFSCME, AFL-CIO : Case 228
and : No. 43593
MANITOWOC COUNTY : MA-6011

Appearances:

Mr. Michael J. Wilson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 370, Manitowoc, Wisconsin 54221-0370, appeared on behalf of the Union.
Mr. Mark Hazelbaker, Attorney at Law, Manitowoc County Corporation Counsel, 1010 S. 8th Street, Manitowoc, Wisconsin 54220, appeared on behalf of the County.

ARBITRATION AWARD

On February 5, 1990, Local 986-A, AFSCME, AFL-CIO and Manitowoc County jointly requested the Wisconsin Employment Relations Commission to provide an arbitrator to hear and issue a final and binding award on a pending grievance.

On March 12, 1990, the Commission appointed William C. Houlihan, a member of its staff, to hear and decide the matter. A hearing was conducted on May 22, 1990, in Manitowoc, Wisconsin. Briefs were submitted and exchanged by July 20, 1990.

This case addresses the timing of reclassifications from Social Worker 1 to Social Worker 2.

BACKGROUND AND FACTS

The facts underlying this dispute are straightforward and uncontradicted. The parties entered into a collective bargaining agreement on, or about December 6, 1988. The relevant portions of that agreement are set forth below.

On or about March 7, 1989 the County and the Union determined to clarify the contractual Promotion and Reclassification provisions by negotiating and executing the following:

CLARIFICATION OF COLLECTIVE BARGAINING AGREEMENT BETWEEN MANITOWOC COUNTY AND LOCAL 986, HUMAN SERVICES EMPLOYEES, AFSCME, AFL-CIO

This agreement is made by and between Manitowoc County, Wisconsin and Local 986-A, AFSCME, AFL-CIO, Human Services Employees, for the purpose of clarifying language in their collective bargaining agreement regarding reclassifications of employees.

1. Article 24 shall be amended by the deletion of paragraph 2 e. of that Article and the addition of new subsections B. 3. and 4.:

ARTICLE 24 - PROMOTIONS AND RECLASSIFICATIONS

B. Reclassifications.

3. Employees who meet the eligibility requirements for reclassification shall be considered for reclassifications as of their anniversary dates in their current position (which is not necessarily their department anniversary date).

The department shall perform all necessary evaluations to determine whether an employee has attained the requirements for a reclassification. Evaluations shall be completed not more than 30 days prior to nor more than 30 days after the employee's anniversary date. The department shall notify the employee of its decision on a reclassification within 30 days of the employee's eligibility date. If a reclassification is approved, it shall be effective as of the employee's anniversary date.

If a reclassification is denied, the employee may reapply after six months from the date of the denial.

4. Employees shall progress along the pay grade steps when they have completed the appropriate number of months between the steps (e.g. 18 months between the 24 and 42 month steps). The

employee's length of service shall be calculated using the anniversary date in the position as the starting time.

2. It is agreed that all current Human Services Department employees represented by Local 986 A may apply for reclassification under the terms of the clarification. Specifically, the Employer agrees to reclassification of all Income Maintenance 3 employees except Barbara Buxbaum to Income Maintenance 4, and to reclassification of Hazel Miller to Clerk-Typist 4 at the 60 month step.

Following implementation of the clarified language a number of employees came up for reclassification from Social Worker 1 to Social Worker 2. Employees Weber, Newman, Bradley, and Zimmerman were reclassified in the period from November 23, 1989 to March 14, 1990. Each waited for a two-year period. The grievant, Rodney Zahn, was hired on May 16, 1988 and believed himself entitled to a reclassification on November 16, 1989. When he was not reclassified in November, Zahn, on December 4, 1989 filed a grievance. The parties stipulated that as of November 16, 1989, Zahn was qualified for a reclassification to a Social Worker 2 in all other respects.

ISSUE

The parties stipulated to the following:

Was the grievant entitled to a reclassification to a Social Worker 2 after he completed 18 months in his position?

If so, the parties stipulated that the remedy would be retroactive pay to the date of Zahn's 18 month anniversary.

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

ARTICLE 24 - PROMOTIONS AND RECLASSIFICATIONS

A. Promotions. Promotions shall be granted on the basis of the Personnel Regulations of the Manitowoc County Human Services Department.

B. Reclassifications.

1. Reclassifications shall be granted within the following groups:

- a. Upon successful completion of the experience required for each specific position by the Personnel Regulations of the Manitowoc County Human Services Department.
- b. Upon successful completion of the training or education requirements set forth in the Personnel Regulations of the Manitowoc County Human Services Department.
- c. Upon the satisfactory determination of the Director, or in his or her absence, his or her designee, that conditions for reclassification have been met.
- d. In the event the Employer's agent(s) have unjustly or incorrectly evaluated an employee or unjustly refused or failed to approve a reclassification, the employee shall have recourse to the grievance procedure.
- e. Reclassification shall be effective the first of the month following the satisfactory recommendation of the Director or his or her designee.

C. Standards. The standards for promotions and reclassifications shall be as set forth in Appendix C of this Agreement subject to the Employer's right to make further modifications in minimum qualifications of positions. In the event the Employer makes such modifications, the Union may demand negotiations on the impact of the modifications.

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APPENDIX A

. . .

C. Regulations of the Pay Plan. New Hires.
All newly hired employees shall start at Step A of their classification and shall on the six (6) month anniversary of their hire, receive a one (1) pay step increase to Step B. Thereafter, the employee shall receive a one (1) pay step increase on the twelve (12) month, twenty-four (24), forty-two (42) and sixty (60) month anniversary of the classifications.

APPENDIX C - REQUIREMENTS FOR BARGAINING UNIT

The following descriptions contain the minimum qualifications for the social workers, income maintenance worker, social service aide, and clerk/typist positions.

Social Worker 1: Minimum Requirement: A BS/BA degree from an accredited college or university in Human Services related discipline such as, but not limited to Social Work, Psychology or Sociology. The Director or his/her designee shall determine the appropriateness of a degree, should its title be questioned as to human service/job relatedness.

Social Worker 2.

1. At least one and one-half (1-1/2) years employment as a Social Worker 1 in a county human services agency.
2. Successful completion of five (5) agency approved core courses.

Waiver: If a a (sic) worker has had an equivalent course to any one of the core courses and if the worker can produce the curriculum and a transcript designating an "A" for the course, in addition to a written evaluation from their immediate supervisor that they have shown those abilities and skills taught in the core course in their practice, the requirement to take the particular core course may be waived. (The Director or his/her designee shall make the final decision on waivers.) If a worker is to request a waiver, it must be during his/her first eighteen (18) months of employment with this agency.

3. Written recommendation from supervisor(s). If assigned to immediate supervisor less than six (6) months, recommendation from previous supervisor also required.
4. Receipt of a performance appraisal indicating that performance is acceptable.

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POSITIONS OF THE PARTIES

The County contends that the reclassification of a Social Worker 1 should take place on the anniversary date immediately after the employes' fulfillment of two years of employment with the agency. The parties perceived a need to clarify their collective bargaining agreement and did. They had the right to make such amendments. The amendment is clear and the Union should not now be allowed to attempt modifications of that agreement. Similarly, the Arbitrator is bound by the clear provisions of the agreement and lacks jurisdiction to modify unambiguous contract language.

It is the view of the Union that the contract, in Appendix C, unambiguously provides for reclassification to Social Worker 2 following 18-months as a Social Worker 1. Article 24, B. provides for an "automatic reclassification". The parties stipulated that Zahn was otherwise qualified. In the view of the Union the key to this dispute is the meaning of the term "anniversary". The Union points to Appendix A to show that the parties have used the term "anniversary" as a reference to periods other than one year and multiples thereof. Use of the term "anniversary" as a reference to 18-month anniversary makes as much sense as it does as a reference to 24-month anniversary.

With respect to the four people reclassified ahead of Zahn, the Union argues that the record is silent as to whether or not they were otherwise qualified as of their 18-month anniversary. The Union contends that there was no binding practice in that there was a lack of mutuality, that Zahn was the first case the Union was aware of, and that four people within a four-month period is insufficient to rise to the level of a practice. If found to constitute a practice it cannot be applied to counter an express contractual provision.

DISCUSSION

It appears that Appendix C was new to the 1989-90 collective bargaining agreement. My review of the predecessor agreement (Jt. Exhibit #4) reveals no similar Appendix or parallel provision. Article 24 and Appendix C governed the parties relationship for a period of approximately two months. The parties perceived a need to clarify the process. However, the record is silent as to what prompted the clarification. The clarification, among other things does appear to change the effective date of reclassification from "first of the month following . . . ", to "anniversary date".

The County argues that the parties had a right to clarify their agreement. I agree. The County further argues that neither the Union nor this Arbitrator has the authority to re-write the terms of this agreement. I also agree with this premise.

The Union contends that the key to this case lies in what the parties intended by use of the term "anniversary". The Union is right. I believe the common or normal use of the term "anniversary" is as an annual reference to the date upon which the employe began employment or in a position. This use of the term is implicit in all arguments made by the County. The initial application of the clarified agreement to four employes, each of whom had to wait two years supports this construction.

Two factors argue against such application. The first, as pointed out by the Union, is that the parties have used anniversary date to refer to both six-month and 42-month periods. Significantly, this reference is found in Wage Rate schedules which outline the scheduled wage adjustments of bargaining unit employes, including Social Workers. Under the terms of this contract an employe is entitled to a step on his/her "6 month anniversary of their hire" date.

The second factor at play is the timing, detail, and structure of Appendix C. Appendix C is a lengthy (3 1/2 pages), detailed schedule which outlines timetables and other qualifications for placement and progression. Many of the positions outlined have minimum experience and/or employment requirements. For the Social Worker 2 it is 18-months. Minimum experience/employment requirements for other unit positions are Social Worker 3 (4 years), Social Worker 4 (3 years), Social Service Aide 2 (3 years), Social Service Aide 3 (3 years), Clerk/Typist 3 (1 year), Clerk/Typist 4 (3 years), Administrative Assistant 1 (varies between 3, 2, or 5 years depending upon background), Income Maintenance Worker 2 (1 year), Income Maintenance Worker 3 (3 years), Income Maintenance Worker 4 (3 years), and Verification Specialist (2 years). For all but the Social Worker 2 these experience requirements are in whole year increments which are easily compatible with the common use of the term anniversary.

Appendix C was a relatively new addition to the contract. The 1 1/2 year minimum employment requirement is specific. The purpose of the clarification agreement was ostensibly to clarify the application of Article 24 and Appendix C. The timing of the evaluation and timing/retroactivity of the adjustment are specified. What the County argues here is that the clarification agreement, by use of the term "anniversary date" has amended the 1 1/2 year employment provision of Appendix C. If that was the intent of the parties it was not obviously expressed.

Having clarified the application of the Appendix the parties saw fit to leave the 1 1/2 year threshold intact. Under the Employer's construction of all applicable provisions the 1 1/2 year reference not only has no meaning, but is consciously misleading. More likely the use of the term anniversary date is to the specified thresholds as in Appendix A, as argued by the Union. It is alternatively possible that the term was simply used to apply to a detailed clause where, with a single exception, it was perfectly compatible and in fact clarifying. I believe that one of these two is a more plausible explanation than is the suggestion that Appendix C was substantively amended, but deliberately left erroneously intact.

The four prior applications support the County interpretation. However, there is no indication the Union was on notice, nor did they extend over a long enough period of time to constitute an interpretive practice.

AWARD

The grievance is sustained.

REMEDY

The parties stipulated that the wage differential was 20 cents/hour for the period November 16, 1989 and was 21 cents/hour for the period January 1, 1990 - May 16, 1990. Mr. Zahn's reclassification should be made effective as of November 16, 1989 and he should be paid lost wages.

Dated at Madison, Wisconsin this 19th day of December, 1990.

By _____
William C. Houlihan, Arbitrator