BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	: Case 104 : No. 49010	
CUSTODIAL-MAINTENANCE EMPLOYEES LOCAL 1750, AFSCME, AFL-CIO	:	MA-7790
and	: Case 105 : MA-7791	No. 49011
SHEBOYGAN AREA SCHOOL DISTRICT	:	

Appearances:

Ms. Helen Isferding, District Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.

Godfrey & Kahn, S.C., Attorneys at Law, by Ms. Angela M. Samsa, appearing on behalf of the District.

ARBITRATION AWARD

Custodial-Maintenance Employees Local 1750, AFSCME, AFL-CIO, hereinafter referred to as the Union, and the Sheboygan Area School District, hereinafter referred to as the District, are parties to a collective bargaining agreement which provides for the final and binding arbitration of disputes arising thereunder. The Union made a request, with the concurrence of the District, that the Wisconsin Employment Relations Commission designate a member of its staff to act as an arbitrator to hear and decide two grievances over the meaning and application of the terms of the agreement. The undersigned was so designated. Hearing was held in Sheboygan, Wisconsin, on May 21, 1993. The hearing was not transcribed. The parties submitted post-hearing briefs which were exchanged on August 6, 1993.

BACKGROUND:

In late November and early December, 1992, the District constructed a number of offices in an area of the Administration Building that formerly consisted of two classrooms. The new offices were to be used for the "Strive" program and the renovation project was known as the "Strive Remodeling Project." The project was performed by District employes consisting of Richard Jelovnik, whose title is carpenter and who is represented by the Carpenters Local Union No. 731, Ron Ross, whose title is Repairman (M-1) and Robert Kaat, whose title is Mechanic (M-2) and both Ross and Kaat are represented by the Union.

The job description for the Carpenter indicates that the basic function is to perform rough and finish carpentry work in accordance with applicable building codes, and the work may include remodeling, new or reconstruction, repair work, cabinet making and installation. 1/

1/ Exhibit 7.

The job description for the Repairman indicates that the basic function is to perform "preventive and corrective maintenance to the buildings, grounds and equipment of the . . . District. May also participate in remodeling or renovation projects and the installation of new equipment." 2/

The job description of the Mechanic indicates that the basic function is to perform "preventive and corrective maintenance, in accordance with applicable building codes, to the buildings, grounds, and mechanical equipment of the . . . District. May also participate in remodeling or renovation projects and the fabrication and installation of special equipment." 3/ Under "Desired Training and Experience" for both the Mechanic and Repairman, the following was preferred; construction and carpentry. 4/

As part of the project, Ross and Kaat cut studs, framed up the stud walls and hung drywall. The Carpenter Jelovnik was present every day of the project except for December 9, 1992, when he was off. Ross and Kaat were paid their regular rate of pay. On December 18, 1992, Ross and Kaat each filed a grievance alleging they were entitled to the wage rate for the Carpenter for the hours worked in the "Strive Remodeling." 5/

The grievances were denied and appealed to the instant arbitration.

ISSUE:

The parties stipulated to the following:

> Did the Employer violate the contract, Article XII, Section 3, Temporary Transfers, when it refused to pay the grievants, Robert Kaat and Ron Ross, the carpenter's rate of pay for hours worked on the Strive remodeling?
>
> If so, what is the appropriate remedy?

PERTINENT CONTRACTUAL PROVISIONS:

ARTICLE XII - WAGE PAYMENTS

. . .

> Section 3 - Temporary Transfers - An employee who is temporarily transferred to a higher paid classification will work for one (1) complete week before receiving the rate of the new classification. Previous experience in a position transferred to shall apply. When five (5) days are accrued, the employee shall be paid at the position rate. When an employee is temporarily transferred to a lower paid job classification, he/she shall remain at the higher rate.

2/ Exhibit 5.

3/ Exhibit 6.

4/ Exhibits 5 and 6.

5/ Exhibits 2 and 3.

UNION'S POSITION:

The Union contends that Ross and Kaat were doing something different than any small carpenter type jobs occasionally done by their respective classifications. It claims that both had a higher level of carpentry experience than just handyman. It submits that the work of cutting studs, following blue prints, measuring, putting up drywall and doing framing work is work routinely done by carpenters and is more typical of the job description of the carpenter than under the grievants' job descriptions. It insists that the grievants were doing more than just "assisting the carpenter," but they were doing actual carpenter work as the video of the work being done demonstrated. It points out that on December 9, 1990, the grievants worked when the carpenter was not present. It maintains that the District was supplementing the position of the carpenter with additional carpenters, the grievants, and that is why the project was completed in such a timely fashion. The Union contends that Article XII, Section 3, does not limit the rates of pay applicable to the grievants to those covered by the Union's contract. It further alleges that the grievants did not have to perform every duty of the carpenter to qualify for the rate of pay, and all that is required is to perform some and not all to trigger the higher rate of pay. It notes that a carpenter does not do everything or exercise every skill every day. The Union claims that there is no language limiting the paragraph to contractual classifications and to the extent the District is free to assign non-bargaining unit work to bargaining unit members, the District is able to control their work assignments. It states that as the District has assigned these men to a higher class, it must pay them at the higher rate as Kaat put in 76 hours and Ross 104 hours.

The Union claims this case ia almost exactly on point with City of Green Bay (City Hall), (Houlihan, 1/81), affirmed (Brown County Cir. Ct., #81-CV-291, 10/81). The Union asks that the grievance be sustained and the grievants paid properly.

DISTRICT'S POSITION:

The District contends that it did not violate Article XII, Section 3, of the contract by paying the grievants their regular rate of pay for the work performed on the Strive project. It points out that Article XII, Section 3, provides that an employe who is "temporarily" transferred to a higher paid classification gets the higher rate of pay. It maintains that the grievants were never transferred to a higher classification. The District takes the position that the grievants were not transferred by the appropriate District officials and the grievants were assigned regular duties. It insists that the grievants were assigned duties within their own job classifications and assisted the carpenter but did not take on his responsibilities. The District argues

that the grievants performed duties that were a longstanding requirement of their regular job classification. It points out that their job descriptions provide that general carpentry work is part of their required duties and the wage rate was negotiated on the basis of these duties. It refers to each of the grievant's testimony that they each performed carpenter duties in the past, including the Urban Middle School, Longfellow School, Washington School and the Administration Building which involved the same skills as the Strive project. It notes that at no time were the grievants paid the carpenter rate, and they never asked to be paid the rate nor did they file any grievance. The District contends that the references to carpentry work in the job descriptions, the past practice of performing carpentry work, and the lack of objections to such work estops the Union from seeking the higher rate of pay.

The District submits that the grievants' M-1 and M-2 classifications require duties which overlap with the carpenter as well as other trades, including plumbing, heating, painting, etc., for which they are compensated at their regular rate of pay. The District asserts that the grievants did not perform the carpenter's responsibilities which was to oversee the project and insure that state and building codes were met and the blueprint drawings were followed. It notes the carpenter was present all the time except for a planned absence on December 9, 1992, and the carpenter preplanned the grievants' work on that day, so the project could continue without him. The District claims that the hands-on tasks of the carpenter overlapped those of the grievants. The District distinguishes the City of Green Bay cited by the Union on the basis that the facts are different. It points out that the duties the grievants performed are part of their regular job classifications. The duties of the carpenter and the grievants overlap, and this overlap has no affect on wage rates. The District also refers to the longstanding practice of the grievants performing carpentry work at their regular rate of pay.

The District also argues that Article XII, Section 3, only applies to transfers from one classification in the bargaining unit to a classification in the same unit. It maintains that maintenance personnel have never been "transferred" outside the unit, and the Union has never requested that Article XII, Section 3, apply to job classifications outside the unit. It submits that when read as a whole, the contract, along with past practice, establishes that "temporary transfers" only occur within the bargaining unit. The District requests that the grievances be denied in all respects.

DISCUSSION

The parties are in disagreement as to whether Article XII, Section 3, applies only to transfers within the bargaining unit or applies to assignments to classifications outside the unit. The undersigned concludes that the transfer to higher paid classifications under Article XII, Section 3, is not limited to bargaining unit classifications. To find otherwise would permit the District to assign bargaining unit employes to perform work normally performed by non-bargaining unit employes or supervisors, and even though the employes performed at the higher paid classification, they would not be paid and would

have no recourse. This would lead to harsh and absurd results so the better interpretation of Article XII, Section 3, is that it applies to non-bargaining unit work, as well as bargaining unit classifications. 6/

The crux of the instant case is whether the grievants performed the work of the higher paid classification, the carpenter, or whether they performed the work covered by their own job classifications. The Union relies almost exclusively on Arbitrator Houlihan's decision in the City of Green Bay; however, the facts of the instant case distinguish it from the City of Green Bay. The grievants' job descriptions expressly provide that their duties may include remodeling or renovation projects. 7/ A desired experience or training for these positions is carpentry. 8/ In most work places there are job functions which are shared between various classifications; that is, the duties overlap and the issue becomes one of determining whether the duties serve to distinguish one class from another or are within the overlap of duties. 9/ The District has cited the standard frequently used to justify the wage rate differential between positions to determine whether pay for work in a higher class is warranted and that is Arbitrator Daugherty's statement in Wilson Jones Co., 51 LA 35 (1968) which states the following:

> (1) In all such cases the critical questions are (a) What are the key or core elements of the jobs involved which distinguish one job from the other(s) and justify the wage rate differentials between (among) them agreed to by the parties, and (b) did the aggrieved employee(s) perform actual work that 'invaded' said core elements? (2) In many such cases there are substantial areas of overlap in the operations specified for two or more jobs. That is, an employee in one job is authorized to do some of the work that another employee in another classification is also permitted to do. But in such case an employee in one job cannot properly be said to have taken over the work in another job until and unless he has been required to perform operations that the parties have agreed are key and relatively exclusive to the latter classification.

Applying this standard to the instant case, the carpentry duties performed by the grievants are overlap functions and not core elements of the carpenter classification. This conclusion is supported by the job descriptions of the employes, as well as the evidence of past projects performed by the grievants, where the assignments were similar. These assignments include the Longfellow, Washington and Urban Middle School projects and the Administration Building in 1989. No claims were made for the higher rate of pay, and no grievances were filed on these projects. Additionally, in Green Bay, supra,

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6/ City of Green Bay, (Houlihan, 1981); City of West Allis, 92 LA 357 (Briggs, 1989).

7/ Exhibits 5 and 6.

8/ Id.

9/ Stockton Unified School District, 89 LA 754 (Gallagher, 1987); City of West Allis, 92 LA 357 (Briggs, 1989).

and West Allis, supra, the person in the higher classification was absent for a significant period of time. Here, the carpenter was present for the work except for one day. Given the history of assignments and the presence of the carpenter, it is concluded that the duties performed by the grievants fell within their own job classifications and therefore, they are not entitled to pay at the carpenter rate. 10/

The basis for the instant grievance is that the grievants felt that the carpenter was not pulling his weight and that they were doing most of the work as it was indicated that they put up ten sheets of drywall to the carpenter's one. This may or may not be true and, even if true, the carpenter may have been busy with other details such as dealing with suppliers or other contractors. This complaint should have been brought to the supervisor's attention to have it resolved instead of grievances being filed which only obliquely addressed this problem. The District, either by better monitoring or better communication of why the work was done in this manner, may have prevented these grievances.

In any event, the duties performed by the grievants did not fall outside their job descriptions and they are not entitled to the higher rate of pay.

Based on the above and foregoing, the record as a whole and the arguments of the parties, the undersigned issues the following

AWARD

The District did not violate Article XII, Section 3, of the contract when it refused to pay the grievants, Ron Ross and Robert Kaat, the carpenter's rate of pay for hours worked on the Strive Remodeling Project, and therefore, the grievances are denied.

Dated at Madison, Wisconsin, this 25th day of August, 1993.

By Lionel L. Crowley /s/
Lionel L. Crowley, Arbitrator

10/ Id.