

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration :

of a Dispute Between :

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LOCAL 990, AFSCME, AFL-CIO : Case 127

: No. 47635

and : MA-7340

:

KENOSHA COUNTY :

:

Appearances:

Mr. John P. Maglio, Staff Representative, AFSCME, AFL-CIO,
appearing on behalf of the Union.
Mr. Mark L. Olson, Davis & Kuelthau, S.C., Attorneys at Law,
appearing on behalf of the County.

ARBITRATION AWARD

The Union and the County named above jointly requested that the Wisconsin Employment Relations Commission appoint the undersigned to resolve a grievance regarding part-time positions in the Treasurer's Office. A hearing was held on January 19, 1993, in Kenosha, Wisconsin, and the parties were given full opportunity to present their evidence and arguments. The parties completed filing briefs by June 23, 1993.

ISSUE:

The Arbitrator frames the issue as follows:

Did the County violate the collective bargaining agreement when it eliminated two full-time (40 hour) positions of Account Clerks in the Treasurer's Office and subsequently created two part-time positions, one an Account Clerk and one a Clerk-Typist II, in the same office in 1992? If so, what is the appropriate remedy?

CONTRACT LANGUAGE:

ARTICLE XIX - PART-TIME EMPLOYEE BENEFITS

Section 19.1. Part-Time Employee Defined. A part-time employee is defined as one who is regularly scheduled to a lesser number of hours than a full-time employee as provided for in the work schedule of Article IV.

ARTICLE XXI - GENERAL PROVISIONS

Section 21.2 Maintenance of Forty (40) Hour Workweek. The County shall make every reasonable effort to operate its projects so as to maintain a forty (40) hour week.

BACKGROUND:

This grievance concerns the County's elimination of two full-time positions in the Treasurer's office and its subsequent creation of two part-time jobs in the same office. At the recommendation of Treasurer Ronald Frederick, the County laid off two Account Clerks in the Treasurer's office. Before the layoff at the end of 1991, there were three Account Clerks and two Accountants in the Treasurer's office. There were no Clerk-Typists in the Treasurer's office at that time.

Donna Ludwig has worked for the County since 1984. In 1988, she posted into an Account Clerk's position in the Treasurer's office. Her position was eliminated on December 31, 1991, and she was recalled to a position of Account Clerk in Circuit Court on January 2, 1992. Karen Paura, with less seniority than Ludwig, was the other Account Clerk who was laid off at the same time. Paura was recalled to another vacant position of Account Clerk in the Clerk of Court's office. Neither Ludwig nor Paura lost any wages or benefits.

While working in the Treasurer's office, Ludwig made bank deposits, received payments, balanced books, balanced checking accounts on three different payrolls, ran various reports, entered payments on the computer, listed tax deeded properties, etc.

When Frederick came into the Treasurer's office in 1987, there was no automation expect for one terminal and one printer used for check writing. Delinquent tax parcels (about 3,000 each year) were kept manually. The office got more new technology, new computers. By 1991, when Frederick decided he did not need as much help, everyone in the office had a computer terminal. A new automated banking system also was put in place.

Director of Labor Relations and Personnel Brooke Koons was advised by Frederick that there were too many employees in the Treasurer's office. At the time of the layoff of Ludwig and Paura, the County was unsure of its real needs for Account Clerks in that office. Koons noted that the number of interruptions in the office -- with people coming to the counter and phones ringing -- indicated that there was a need for a Clerk-Typist in the Treasurer's office.

Frederick told Koons that he wanted certain duties done which indicated a position with lesser skills than an Account Clerk.

Frederick listed those duties as typing letters and reports, sorting mail, filing, compiling data, preparing tax search, processing mail, answering phones, greeting customers at the counter, and operating the copy machine, typewriter, computer terminal and NCR terminal.

On December 12, 1991, the County posted a Clerk-Typist II position for the Treasurer's office for 20 hours a week minimum. The posting includes the following information:

NATURE OF WORK: This is responsible clerical work in which the employee must exercise judgment in the application of office procedures. Work in this class differs from that of a Clerk-Typist I in that it allows limited independence of action and requires a correspondingly higher degree of accuracy. May perform some or all of the following duties: Type letters, memos, reports, forms, charts, and other materials from rough draft of clear copy. Sort, index, and file correspondence, reports, cards, file folders, etc. alphabetically, numerically, or according to other pre-determined classifications. Compile data and prepare a variety of statistical reports and records. Coordinate and pay bills as instructed; prepare, submit, and file invoices and payment vouchers. Serve as receptionist, handling phone calls and greeting visitors. Compose letters from general instructions. Process mail. Operate copy machine, typewriter, word processor, computer terminal, and other office machines as required. Perform other duties as required or assigned.

QUALIFICATIONS: Associate Degree in Secretarial Science, Informational Processing, or related field, with 2-4 years general office experience; or any combination of education, training, and experience which provides the required knowledge, skills, and abilities. Knowledge of office practices, procedures, terminology, and equipment. Skill in the operation of a typewriter (ability to type 55 wpm net), word processor, and other office machines. Ability to understand and follow oral and written instructions. Ability to schedule, organize, and execute assigned tasks. Ability to communicate over the telephone and in person.

Because there was no Clerk-Typist in the Treasurer's office

when Ludwig worked there, she and the other Account Clerks performed the duties listed above for a Clerk-Typist II. For example, Ludwig answered phones, waited on customers, used the copy machine, typed and filed correspondence, served as receptionist, etc.

The Treasurer's office is busier than usual from mid July to mid August because an installment of taxes is due at that time from all villages and townships. Ludwig worked overtime during that period of time. When the County posted a position for a part-time Account Clerk, it called for four hours a day except full-time work for the period of July 20 through August 21.

The County posted the part-time Account Clerk position noted above on March 23, 1992. The posting included the following information:

NATURE OF WORK: Performs a variety of bookkeeping, recordkeeping, and clerical tasks in keeping financial accounts and records. This position is responsible for carrying out established procedures and applying departmental policies and regulations in maintaining fiscal accounts. Duties may include some or all of the following: Code and post a variety of vouchers, receipts, and disbursements to appropriate books, ledgers, and journals, calculating and balancing all figures. Receive monies, write receipts, and make bank deposits. Process payments and file payment cards. Collect taxes and record to appropriate ledgers or cards. Type reports, statements, and other materials. Operate computer terminal, work processor, cash register, check signer, calculator, and other office equipment. Give information regarding department activities or policies in response to telephone or personal inquiries. Perform other duties as required or assigned.

QUALIFICATIONS: Associate Degree in accounting, finance, or related field, with 2-4 years office experience; or any combination of education, training, and experience which provides the required knowledge, skills, and abilities. Knowledge of basic bookkeeping, recordkeeping, and business math. Knowledge of office practices, procedures, terminology, and equipment. Ability to understand and follow oral and written instructions. Ability to accurately maintain up-to-date, detailed financial records. Ability to demonstrate accuracy and reliability in working with figures and large sums of money. Ability to type 35 words per minute net. Ability to

enter alphanumeric data at 7,000 keystrokes per hour. Possession of a valid driver's license and access to an automobile for use in the performance of the job.

The Account Clerk position starting rate on January 1, 1992, was \$10.71 per hour, and after 42 months, the position rate was \$13.39 per hour. The Clerk-Typist II position starting rate was \$10.12 per hour and topped out at \$12.65 per hour after 42 months.

An Account Clerk is expected to have more responsibility than a Clerk-Typist. The Clerk-Typist is expected to have better typing skills, and the job requires the ability to type 55 words per minute, while the Account Clerk is expected to have the ability to type 35 words per minute but enter alphanumeric data at 7,000 keystrokes per hour. The Account Clerk position is more concentrated in the area of data entry, and the coding and the payment of bills. Also, the two positions require different educational backgrounds, with the Account Clerk position requiring education or training in accounting and finance, and the Clerk Typist position requiring education or training in secretarial science.

Koons stated that having Account Clerks do the work of Clerk-Typists is not an efficient use of personnel, because the County does not want employees who need to be accurate and handle a good deal of funds being interrupted with people coming to the counter or answering phones. The job descriptions developed for both positions mirror the job postings to a large extent.

The County deliberately isolated the duties of the Clerk-Typist in the Treasurer's office, and the Clerk-Typist was to concentrate on only the duties of office clerical support such as opening mail, answering phones, typing letters and memos, and to relieve the Account Clerk from dealing with those types of duties.

The Clerk-Typist has not been performing the duties of the Account Clerk. Frederick specifically did not want the Clerk-Typist to work out of that classification, as he wanted to avoid another grievance.

The County wants the Treasurer's office to be open during lunch hours so that the taxpayers have an opportunity to get there. The office also has a significant amount of cash and checks on hand at times. Therefore, the County decided that it preferred to have more than one person in the office over the lunch period. The County scheduled the part-time employees across the lunch period, with the Clerk-Typist working from 10:00 a.m. to 2:00 p.m., and the Account Clerk working from around 12:30 or 1:00 p.m. to the end of the afternoon. The bargaining agreement also states that offices that remain open during the noon hour shall stagger employees' lunch hours, and that hours of work may be changed to meet County requirements.

There are approximately 125 to 135 positions in the bargaining unit, and only seven of them are part-time positions, including the Account Clerk (Miriam Tetzlaff) and the Clerk-Typist II (Teresa Niesen) in the Treasurer's office. Susan Imhoff works 20 hours a week as a Clerk-Typist II in Circuit Court. Nancy Otis works 20 hours a week as an Account Clerk in the Highway Department. Elizabeth Schrandt works 20 hours a week as a Clerk-Typist I in the Social Services Department. Jean Zahn and Linda LaMere both work 20 hours as Economic Support Specialists in Social Services.

THE PARTIES' POSITIONS:

The Union:

The Union states that arbitrators have distinguished between eliminating a job and the duties associated with that job and eliminating a job and reassigning the duties to other classifications. The latter is not a bona fide elimination of a job and the employer should be precluded from making such a transfer. The Union notes that the contract provides that the County shall make every reasonable effort to operate its projects so as to maintain a 40 hour work week.

The Union points out that before the positions of Account Clerks held by Ludwig and Paura were eliminated, both Ludwig and Paura performed several functions while classified as Account Clerks. Before their jobs were eliminated, there was no Clerk-Typist II position in the Treasurer's office, and the duties of the newly created Clerk-Typist II position were performed exclusively by Account Clerks in the office and were part of the Account Clerk function. While in the Treasurer's office as an Account Clerk, Ludwig answered phones, waited on people at the counter, took charge of correspondence, used a copy machine, filed, typed, and operated a computer, as did the other Account Clerks in the Treasurer's office. Ludwig had to pass a typing test to get the Account Clerk job, and the Union wonders why would an Account Clerk need to pass a typing test if clerical functions were not anticipated.

The Union sees the County's rationale for its action as an attempt to save money, and this alone cannot justify its actions. The Union asserts that by creating a part-time Clerk-Typist II job, the County stands to save 20 hours per week at 74 cents per hour, the difference between the rates of pay for an Account Clerk and Clerk-Typist II at the 42 month step. Further, health benefits are pro-rated for part-time employees, and it is possible that part-timers do not opt for health insurance benefits as they would have to pay one-half the premium of \$450 to \$475 per month.

The Union also notes that Ludwig and Paura put in overtime during certain periods of time, and the new part-time position of

Account Clerk required overtime for that same period of time, which eliminates overtime for the former full-time personnel as well as the part-time Account Clerk. Section 9.1 of the agreement states that all hours worked outside of a regular shift shall be paid at the overtime rate. The County's attempt to eliminate overtime by fluctuating the hours of part-time employees shows that there is no justification for its actions.

The County's attempt to justify its actions on the basis of the need to cover the office during lunch hours is already covered in Section 5.1 of the agreement, which contemplates the need to adjust lunch breaks to provide coverage during lunch hours. Regardless of the number of employees in a department, the County cannot control the number of them present at any one time. Moreover, the fact that the County created the two part-time positions at different times does not exonerate it from its contractual duty to make every reasonable effort to maintain a 40 hour work week.

If the County eliminated the full-time positions and replaced them with one part-time job, the Union would not be able to demand that the County add another 20 hours to the department's schedule. Such a demand would be unreasonable. Conversely, the Union argues, the County cannot split the duties of former full-time positions into two part-time positions, since that is equally unreasonable.

The Union asks that the two part-time employees' hours be combined into one full-time Account Clerk position, and that the position be awarded to Donna Ludwig, the senior Account Clerk affected by the County's actions.

The County:

The County submits that the Union's position ignores contractual language which allows the County to establish part-time positions. The hiring of other part-time employees in other positions within Local 990's bargaining unit has not resulted in any grievance or challenge by the Union. Two of those part-time positions are the same position, the Economic Support Specialist in the Social Services Department. The County believes that the Union has waived the enforcement of the alleged right.

Section 21.2 of the bargaining agreement does not prohibit the County from ever using part-time employees, the County argues. The contract obligates the County to make every reasonable effort to maintain full-time positions but it does not prohibit the County from establishing part-time positions. The County has made a good faith effort to maintain full-time positions, as shown by the fact that there are only seven part-time positions in a unit of 125 to 135 employees.

The County points out that the circumstances and conditions in the Treasurer's office changed and it was no longer necessary to have three full-time Account Clerks in that office while there was a need for a Clerk-Typist position. It was inefficient for Account Clerks to perform the duties of a Clerk-Typist. There is a salary difference between the two positions which demonstrates that the parties negotiated a higher wage for Account Clerks based on their greater responsibility. While the Union has asserted that there is no need for a Clerk-Typist in the Treasurer's office, there is evidence to the contrary.

The County asserts that the Union's allegation -- if carried to the extreme -- would result in the County never being able to employ part-time employees in any place where there had not been a part-time employee in the past. The Union would deny the County the right to hire anyone in a Clerk-Typist position, which is contrary to the contract language. The County also asserts that it employed two part-time employees for security reasons, which is a legitimate concern in the Treasurer's office due to the presence of cash, checks, etc.

The work performed by the two part-time positions is distinct and different from one another. The job postings, the job descriptions, the qualifications, and the testimony of Personnel Director Koons all demonstrate the differences. Even Union witness Donna Ludwig noted the difference in the level of responsibility, expertise, education and training for the two jobs. The Clerk-Typist duties are ministerial clerical duties while the Account Clerk duties are financially oriented and require skill in accounting, finance or a related field. The County has taken care to see that there is no merger of the job duties and responsibilities of the two part-time positions.

The County argues that the remedy sought would result in harsh and absurd results, because the Union would have the Arbitrator determine that all Account Clerks must be maintained as full-time positions, and that no Clerk-Typists be employed so long as any Account Clerk is employed on a part-time basis. Since the Accountants can perform the work of Account Clerks as well as Clerk-Typists, the end result would be that only Accountants could work in the Treasurer's office, under the Union's theory. Moreover, there is no remedy where there was no layoff of the Grievant, who lost no salary or benefits and suffered no harm.

DISCUSSION:

The question is whether the County has made "every reasonable effort to operate its projects so as to maintain a forty (40) hour week," as provided by Section 21.2 of the bargaining agreement. The Union claims that the County has not acted reasonably, because the County's rationale rests on money saved by pro-rating benefits to part-timers and taking away overtime from full-time employees,

and because there has been no real change in the nature of work performed in the Treasurer's office.

While the Union has noted that the elimination of a job and the reassignment of that job's duties to other classifications is not a bona fide elimination of that job, that is not what happened in this case. The County has eliminated the Account Clerks' jobs and established a part-time Clerk-Typist II position and a part-time Account Clerk position. It is true that these two part-time positions perform the same or similar functions as performed in the past by the two full-time Account Clerks, Ludwig and Paura, who were laid off (and immediately recalled to other positions).

The difference is that when the County transferred some of the former Account Clerks' duties to the part-time Clerk-Typist II, it was transferring Clerk-Typist duties to the proper classification of Clerk-Typist. Those clerical duties were not intrinsic to the classification of Account Clerk, but had been done by Account Clerks only because there was no Clerk-Typist in the office. Had there been such a position, most of those clerical duties would not have been done by Account Clerks. True, almost every position finds itself doing some clerical work, out of necessity or convenience. In this case, before the changes occurring at the end of 1991, Account Clerks were doing out-of-class work, but they were being paid their higher rate for lower skilled clerical work. Thus, it was reasonable for the County to determine that it should have a Clerk-Typist doing clerical work and allow Account Clerks to perform at their higher level of skill for higher wages.

The fact that the Treasurer's office was once poorly organized and had Account Clerks doing the work of Clerk-Typists does not mean that the County should be required to continue to keep the office inefficient and have Account Clerks continue to do the work of Clerk-Typists. The needs of an employer may change over time. The only question here is whether the County has made every reasonable effort to maintain full-time positions.

While it is possible that the County could maintain a full-time position instead of two part-time positions in the Treasurer's office, Section 21.2 does not require it to do so in every instance. The contract says that the County must make every reasonable effort. The County has complied with the contract. Section 21.2 has the effect of discouraging the County from turning the work force into a part-time force, but it does not prohibit part-time work which is allowed by Section 19.1.

If the County created two part-time Account Clerk positions or two part-time Clerk Typists, it clearly would have violated Section 21.2. However, it has made every effort to prevent the part-time Clerk-Typist from performing the work of Account Clerks, and there is no evidence on the record that the Clerk-Typist II currently in the Treasurer's office is performing the work

formerly done by Ludwig or Paura when they were performing the duties associated with their positions as Account Clerks. If the Union were to find

such evidence, it would be entitled to make a new claim for one full-time Account Clerk.

The Union would have the Arbitrator order the County to get rid of the Clerk-Typist and make full-time work for an Account Clerk, where there is no record of a need for such a full-time position, and a full-time Account Clerk would end up doing Clerk-Typist duties. The Union does not ask that the position of Clerk-Typist be made full-time, only that the higher classification position be made full-time. If the Accountants were the only employees in the office, and the County eliminated an Accountant and replaced the same with a Clerk-Typist, would the Union likewise argue that the County must restore the Accountant's position and have that higher paid person perform Clerk-Typist duties? The remedy sought is not reasonable in light of the lack of evidence that a full-time Account Clerk is needed in the office.

In sum, the County has not violated the collective bargaining agreement by creating two part-time positions, that of Clerk-Typist II and that of Account Clerk, in the Treasurer's office, despite its elimination of two full-time Account Clerk positions.

It has changed its work load and classifications to meet its current needs, and it has made every reasonable effort to maintain a 40 hour week. The fact that the County has less than 40 hours available for two different classifications does not mean that the County must combine those classifications, even though it had done so in the past through inefficient use of personnel.

AWARD

The grievance is denied.

Dated at Elkhorn, Wisconsin this _____ day of September, 1993.

By Karen J. Mawhinney /s/
Karen J. Mawhinney, Arbitrator