

BEFORE THE ARBITRATOR

In the Matter of the Arbitration	:	
of a Dispute Between	:	
KEWAUNEE COUNTY (COURTHOUSE)	:	Case 37
	:	No. 50210
and	:	MA-8185
	:	
KEWAUNEE COUNTY COURTHOUSE EMPLOYEES,	:	
LOCAL 2959, AFSCME, AFL-CIO	:	
	:	

Appearances:

Ms. Elma E. Anderson, Corporation Counsel of Kewaunee County, 613 Dodge Street, Kewaunee, WI 54216, on behalf of the Employer.

Mr. Jerry Uglund, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 370, Manitowoc, WI 54220-0370.

ARBITRATION AWARD

According to the terms of the 1993-95 collective bargaining agreement between Kewaunee County (Courthouse) (hereafter County) and Kewaunee County Courthouse Employees, Local 2959, AFSCME, AFL-CIO (hereafter Union), the parties requested that the Wisconsin Employment Relations Commission designate a member of its staff to act as impartial arbitrator to hear and resolve a dispute between them involving the proper pay rate for employe Carol Wisnicky. The undersigned was designated arbitrator. Hearing was held on February 4, 1994 at Kewaunee, Wisconsin and a stenographic transcript of the proceedings was made and received by March 3, 1994. The parties submitted their post-hearing briefs by April 12, 1994 which were exchanged by the undersigned. The record was then closed.

Issues:

The parties were unable to stipulate to the issues to be determined herein, although they agreed to allow the undersigned to frame the issues based upon the relevant evidence and argument presented. The Union suggested the following issues:

- 1) Did the Employer violate the collective bargaining agreement by failing to compensate Carol Wisnicky at the wage rate of a Class Grade 4?
- 2) If so what is the appropriate remedy?

The County would add the following phrase after "Class Grade 4" in issue 1) above:

starting with the first pay period after its

June 22, 1993 resolution (13-6-93).

Based upon the relevant evidence and argument herein, I find that the Union's issues more appropriately describe the instant dispute and they shall be determined in this Award.

Relevant Contract Provisions

Article 4 - Wages

. . .

F. RECLASSIFICATION

1. If an employee believes that his or her current position should be reclassified, the employee shall make a written request for reclassification, stating the reasons and requested classification. The written request shall be delivered to the employee's department head and a copy sent to the chairman of the personnel committee.

2. Within 10 working days, the department head shall respond to the request, in writing, stating reasons for his or her decision with a copy of the response going to the employee and the chairman of the personnel committee.

3. If the department head recommends in favor of the reclassification, then the matter shall be taken up by the personnel committee of the county board at its next regularly scheduled meeting. If the personnel committee approves the department head's recommendation for reclassification, the reclassification shall go into effect effective with the next regular pay period.

4. If the personnel committee approves the reclassification, but to a different class grade than that requested by the employee, the personnel committee shall notify the employee and the union representative. The union may request a negotiations session to discuss the proper classification for the job.

5. If the department head rejects the employee's request, the employee shall not have any right to appeal that decision to the personnel committee during the term of the contract. If the personnel committee rejects the request

or recommendation, the union shall not be entitled to request negotiations on that reclassification during the term of the contract.

6. The reclassification of positions shall be a proper subject for bargaining at any time during which the contract is open for general negotiations.

7. In the event new classifications are created or reclassifications occur the Board shall notify the Union in writing and negotiations shall commence on the wages, hours and conditions of employment for such positions.

Background:

Evidence was submitted that showed that during bargaining for the 1993-95 labor agreement, the Union sought what it called reclasses -- substantial pay increases -- in Wisnicky's pay rate as well as such increases for three other employees. The County declined to negotiate these, indicating that it did not wish to discuss these items as a part of contract negotiations but that the County would make a good faith effort to look at various positions including Wisnicky's and it would discuss possible increases for these outside of contract negotiations. The Union then dropped its reclass proposals and the contract was thereafter settled.

After the labor agreement became effective, Todd Chaney was hired as Chief Deputy of the County Sheriff's Department in April, 1993. In May, 1993, Chaney recommended to the Law Enforcement Committee and to the Personnel Committee that the Department be reorganized to free law enforcement personnel from clerical duties they were performing due to a lack of clerical support staff. Part of this recommendation involved creating two full-time Administrative Secretary positions, writing a new job description for the positions, 1/ offering the Grievant, Carol Wisnicky, one of these positions, eliminating two part-time secretarial positions currently employed in the Department, eliminating Wisnicky's former full-time Clerk/Typist 2 position and posting the second Administrative Secretary position, according to the Union contract.

Chaney stated that his plan to restructure the Department included assigning increased transcription duties regarding

1/ In May, 1993, Chaney asked Grievant Wisnicky for the description of her Clerk/Typist 2 job to use as a basis for drafting the job description for the Administrative Secretary positions.

sensitive matters, such as internal investigations to Wisnicky as Administrative Secretary and creating a separate central records bureau which had not existed before and reorganizing the Departmental data base. Chaney stated that the second Administrative Secretary had to be hired before the reorganization of the data base, the reassignment of clerical duties and the creation of the records bureau could be accomplished.

Both the County Law Enforcement Committee and the Personnel Committee agreed with Chaney's recommendations. Chaney never recommended that Wisnicky be reclassified in her Clerk/Typist 2 position. A County Board resolution was necessary and was drafted to accomplish Chaney's goals, to be voted on by the full County Board. The "Resolution Creating Administrative Secretary positions" read in substance as follows:

WHEREAS the Sheriff and Chief Deputy of the Kewaunee County Sheriff's Department wish to improve the efficiency and effectiveness of the Department by adopting a central record keeping system and a new reporting format for investigations; and

WHEREAS these improvements will require two administrative secretaries to perform the duties listed in the attached job description; and

WHEREAS the addition of these two administrative secretary positions will replace three current clerical positions for a savings to the county in personnel costs; and

WHEREAS the addition of two administrative secretaries will free sworn officers, who are paid at a higher wage rate, from various clerical and office task, again for a savings to the county in personnel costs, and increasing the amount of police patrol time for the community;

NOW THEREFORE BE IT RESOLVED, that the one full-time and two part-time positions of clerk typist in the Kewaunee County Sheriff's Department are deleted from the department structure and replaced by two (2) administrative secretary positions. The duties and qualifications for these positions shall be as set out in the attached job description.

BE IT FURTHER RESOLVED, that these positions shall be classified in Grade 4 in the Collective Bargaining agreement between Kewaunee County and Local 2959 AFSCME, AFL-CIO. There shall be an entry level administrative secretary position in Class 3. Any person hired as an administrative secretary, who has not yet completed his or her probation, shall be in Class 3. Any person transferred to the position of administrative secretary, who has not yet completed his or her trial period, shall be in Class 3. Upon successful completion of probation or trial period, that person shall be promoted to Class 4.

On or about June 17, 1993, Union President Robert Mattice had a conversation initiated by Corporation Counsel Elma Anderson in which Anderson showed Mattice a draft of the Resolution (quoted above), and asked him to get back to her within 24 hours if the document's contents were objectionable to the Union. Mattice had no problems with the draft. On June 22, 1993, the County Board adopted the resolution numbered 13-6-93.

Thereafter, the second Administrative Secretary position was posted but it was not filled until December 1, 1993 due to the filing and processing of a grievance regarding the candidate initially selected by the County for the second Administrative Secretary job.

On June 23rd, Chaney spoke to Wisnicky regarding her placement into one of the newly created Administrative Secretary jobs. Chaney and Wisnicky's versions of the conversation are conflicting. Wisnicky stated that Chaney showed her a copy of the Resolution 13-6-93 and stated that one position would be a Class Grade 4 and that she (Wisnicky) would fit into that position. Wisnicky stated that she did not recall Chaney telling her at this time that her pay increase to a Class Grade 4 would only be effective after the second Administrative Secretary was hired. 2/ In contrast, Chaney stated that he never told Wisnicky that she would receive Class Grade 4 pay immediately. Rather, he stated that he specifically told Wisnicky that the Class change would occur when the second Administrative Secretary was hired.

Also, from June 23, 1993 through June 30, 1993, the County posted the following "Notice" pursuant to the labor agreement:

One (1) Full-time Administrative Secretary (Class 4) will be hired to fill the newly created position in the Sheriff's

2/ Wisnicky stated that she was familiar with the posting process and that she had once successfully posted into a job while working for the County.

Department in the Safety Building.

Anyone interested in a transfer to the Administrative Secretary Position, please submit your written application to Harold Reckelberg for the Personnel Committee by 4:30 PM on June 30, 1993. The Personnel Committee will interview the qualified applicants to fill the position.

This notice is posted according to Article 14 (D)(2) of the Agreement and will be posted June 23, 1993 through June 30, 1993.

Please see attached job description for the essential duties of the position and the required qualifications.

Wisnicky stated that on or about the first pay day after June 22nd, Wisnicky asked Chaney why she had not received Class Grade 4 pay. Chaney checked on it and Wisnicky admitted that Chaney told her that she would get Class 4 pay as soon as the second Administrative secretary was hired which he thought might occur on August 1, 1993. During this period, Wisnicky never received any notice from the County that her Class Grade pay had been changed.

On July 27th, the Personnel Committee met and voted to recommend to the County Board that the Administrative Secretaries Resolution 13-6-93 be amended to provide that the positions would be paid at a Class Grade 3, not Class Grade 4. The evidence showed that this was done following the initial passage

of Resolution 13-6-93 (and newspaper coverage thereof) because several County Board members had expressed concern that one position was to be a Class Grade 4 in the original Resolution. Wisnicky filed the instant grievance on August 2, 1993, alleging a violation of Article 4, Section F of the labor agreement.

On August 17th, therefore, the County Board passed the following "Resolution to amend the Resolution Creating Administrative Secretary positions," numbered 28-8-93:

WHEREAS at the meeting of the Kewaunee County Board of Supervisors on June 22, 1993, the Board did, by Resolution, create two positions for administrative secretaries in the Kewaunee County Sheriff's Department; and

WHEREAS the Personnel, Advisory, and Legislative Committee now feels that modifications to that Resolution should be made.

NOW THEREFORE, BE IT RESOLVED that Resolution number 13-6-93 be amended to provide that the Administrative Secretaries at the Kewaunee County Sheriff's Department shall be classified in Grade 3 in the Collective Bargaining agreement between Kewaunee County and Local 2959 AFSCME, AFL-CIO.

Positions of the Parties:

Union:

The Union asserted that the actions of the County on May 25, 1993 amounted to a reclassification of Carol Wisnicky to a Class Grade 4 pursuant to Article 4, Section F such that Wisnicky should have received Class Grade 4 pay effective with the pay period after the "reclass" was approved by the Personnel Committee on May 25, 1993. The Union noted that the Union had requested a reclass for Wisnicky during bargaining; that Chief Deputy Chaney later recommended that Wisnicky be "reclassified;" that the Union was notified of the "reclass" by Corporation Counsel Anderson on June 17th; and that thereafter, Chaney told Wisnicky she "was a Class Grade 4" which Wisnicky agreed to. The Union asserted that Wisnicky began performing the work of her new job at this time.

The Union contended that whether the actions of the County are described as reclassifying Wisnicky or as restructuring the Department and creating a new position for her to fill, those actions should be covered by Article 4, Section F. The Union noted that Wisnicky's duties changed and increased significantly

beginning on June 22, 1993. The Union urged that in July, 1993, it was unfair for the County to change its mind and make the Administrative Secretary position a Class Grade 3 and that this action amounted to discipline of Wisnicky, which was unsupported by just cause.

County:

The County contended that Wisnicky never made a written reclass request pursuant to Article 4, Section F; that Chief Deputy Chaney proposed and recommended to the County Board that it restructure the Department, not that it reclass Wisnicky; that County Board Personnel Committee member Thayse perceived Chaney's recommendations not as a reclass of Wisnicky but as a proposal to restructure the Department and that the County acted, by resolution, to restructure the Department. The County observed further on this point that the reclass procedure and the procedure for restructuring are distinctly different, substantively and procedurally, and that Chaney's request was never treated as a reclass request.

The County argued, therefore, that Wisnicky was not placed in the Administrative Secretary position until the second such position was filled and that this had been made clear to Wisnicky in her discussions with Chaney. The County noted that the extent of Chaney's restructuring plans also necessarily meant that Wisnicky could not be placed in the Administrative Secretary position until after the second person was hired, as Chaney testified.

The County asserted that the Union had failed to prove that Wisnicky was entitled to Class Grade 4 pay prior to August 17, 1993, because the Union failed to show Wisnicky was actually placed in the position before that date. Therefore, the County urged, the Union failed to produce any evidence to show that the County had disciplined Wisnicky by "down-grading" the Administrative position from a Class Grade 4 to a Class Grade 3 on August 17, 1993. The County contended that on August 17th because there were no incumbents of the Administrative Secretary positions, the County could change the Class Grade pay of the positions without violating the labor agreement. The County therefore sought denial and dismissal of the grievance in its entirety.

Discussion:

The initial question for determination in this case is whether or not on June 22, 1993, Wisnicky was reclassified pursuant to Article 4, Section F. The answer to this question must be no. Article 4, Section F contains a specific procedure whereby an employe may make a written request for a reclassification during the term of the labor agreement. The supervisor must then respond

in writing within a certain time period, giving reasons for either recommending or denying the employe's reclass request. If a supervisor recommends in favor of reclassification, the Personnel Committee must review this and if that Committee approves the Supervisor's favorable recommendation, the reclass goes into effect (without further County Board action) as of the next regular pay period after Committee approval.

In the instant case, it is undisputed that Wisnicky never made a written reclass request mid-term of the labor agreement and her supervisor, Chief Deputy Chaney never recommended that the Personnel Committee reclassify Wisnicky. Rather, the evidence showed that Chaney took an entirely different, extra-contractual route and proposed to the Personnel Committee that the County Board reorganize and restructure the Department clerical staff by eliminating two part-time clerical jobs and Wisnicky's full-time Clerk-Typist position and that the County then create two full-time Administrative Secretary positions. In order to do this, it is clear that full County Board approval of the restructuring plan as well as of the elimination of the three existing clerical positions and of the job description for Administrative Secretary was needed. Thus, the procedure used by Chaney, the Personnel Committee and the County Board was required and prescribed by law, not by the labor agreement.

The fact that the Union had requested a "reclass" for Wisnicky and others in previous contract negotiations does not change the basic legal tenor of the County Board's actions of June 22nd. Chaney testified without contradiction that his intent was to restructure the Department, not to reclassify Wisnicky. In addition, the Union's reclass request for Wisnicky was not made pursuant to Article 4, Section F but was apparently based on an equity argument, that Wisnicky's job tasks in her position of Clerk/Typist 2 had increased so that her position should receive a greater increase than other employes. In any event, the record clearly showed that the County resisted any discussions at bargaining regarding reclasses and essentially indicated that the parties should take these up outside of contract negotiations.

That the Union asserted it was convinced that Resolution 13-6-93 amounted to a reclass request, is belied by the clear terms of that document and by the procedure the County followed to adopt the resolution. Nowhere in that document is there any reference to a reclassification for Wisnicky. Furthermore, County Board action would not have been necessary to reclassify Wisnicky if the County had intended to do this. Rather, had the County used Article 4, Section F, that section would have allowed the Personnel Committee to make the final decision on a reclass for Wisnicky without any need for County Board action. Thus, Wisnicky never sought nor was she granted an Article 4, Section F reclassification by the County Board's action of June 22nd.

A separate question arises whether Wisnicky was actually placed in the position of Administrative Secretary after June 22nd so that, in fairness, she should receive the Class Grade 4 pay described in Resolution 13-6-93. On this point I note that the Resolution is silent. However, Chaney stated that pursuant to his plan, both Administrative Secretaries had to be hired before the Departmental restructuring could be completed (including the reorganizing and assignment of new duties).

Although Wisnicky stated that some of her duties changed immediately after the passage of Resolution 13-693, this does not mean that she was then placed in the Administrative Secretary position. I note that Wisnicky admitted that she never received official notice of a Class Grade pay change on or after June 22nd and that on the first payday after June 22nd Wisnicky admitted that Chaney told her that she would not receive Class Grade 4 pay until the second Administrative Secretary was hired. Furthermore, Wisnicky admitted she was aware of the operation of the posting process through personal experience.

In these circumstances, the facts demonstrated that Wisnicky was not actually placed in the position of Administrative Secretary until after the second such position was filled on December 1, 1993. Therefore, based upon the relevant evidence and argument I issue the following

AWARD

The County did not violate the collective bargaining agreement by failing to compensate Carol Wisnicky at the wage rate of a Class Grade 4.

The grievance is, therefore, denied and dismissed in its entirety.

Dated at Madison, Wisconsin this 8th day of June, 1994.

By Sharon A. Gallagher /s/

Sharon A. Gallagher, Arbitrator