

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

DODGE COUNTY TECHNICAL AND SUPPORT
EMPLOYEES LOCAL 1323-G,
AFSCME, AFL-CIO

and

DODGE COUNTY

Case 194
No. 52423
MA-8963

Appearances:

Mr. Sam Froiland, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO,
P.O. Box 944, Waukesha, Wisconsin 53187-0944, for the Union.
Davis & Kuelthau, S.C., 111 East Kilbourn Avenue, Suite 1400, Milwaukee, Wisconsin
53202-6613, by Mr. Roger E. Walsh, for the County.

ARBITRATION AWARD

Dodge County Technical and Support Employees, Local 1323-G, AFSCME, AFL-CIO (the Union), and Dodge County (the County), are signatories to a collective bargaining agreement providing for final and binding arbitration. Pursuant to the parties' request for the appointment of an arbitrator, the Wisconsin Employment Relations Commission, on April 28, 1995, appointed Jane B. Buffett, a member of its staff, to hear and decide a dispute regarding the interpretation and application of the agreement. Hearing was held in Juneau, Wisconsin on June 27 and July 17, 1995. A transcript was taken, the last volume of which was received August 9, 1995. The parties filed briefs, and reply briefs, the last of which was received October 3, 1995.

ISSUE

The parties were unable to stipulate to a statement of the issue. The arbitrator frames the issue as follows:

Did the County violate the collective bargaining agreement when it failed to reclassify the positions of Economic Support Specialist I, Economic Support Specialist II and Economic Support Specialist Lead Worker to pay grades 9, 11 and 13, respectively? If so, what is the appropriate remedy?

BACKGROUND

During negotiations for the 1994-96 collective bargaining agreement, the parties were unable to reach agreement regarding the Union's proposal that the Economic Support Specialist I and Economic Support Specialist II and the Lead Worker-Economic Support (herein, the three positions are referred to as "Economic Support Specialists"). 1/ The Union had proposed that the position be reclassified by being raised two paygrades to paygrade 9, 11 and 13, respectively. The parties agreed that the reclassification request would be submitted to the County after October 1, 1994. On January 12, 1995 the County responded by denying the request. The Union grieved the denial and that grievance is the subject of this award.

RELEVANT COLLECTIVE BARGAINING AGREEMENT PROVISIONS

- 16.5 If an Employee and/or the Union has an objection to the classification of a position, the classification may be appealed to the Personnel and Labor Negotiations Committee after review by the Committee of Jurisdiction by proceeding directly to Step II of the grievance procedure if the matter cannot be resolved informally by contacting the Personnel Director.

POSITIONS OF THE PARTIES

The Union

The Union argues that a position should be reclassified because there is a significant change in responsibilities. The disputed positions also now includes increased training in the form of a 100 hour state-run training program. According to the Union, the positions have expanded so that they are no longer merely sources of information and referral. The modified positions are now similar in many respects to positions of case workers. The employees now have new responsibilities for pre-screening clients, referring them to other agencies, preparation of applications for other entitlement, home visits, investigation of possible fraud, testimony in court and recoupments and interaction with other professionals. The Union points to the revised job description which it asserts reflect jobs that are more responsible and complex than the former positions. It notes the Economic Support Specialist's responsibility for fraud investigation and notes that even pursuant to the reclassification, the Economic Support Specialist would earn considerably less than the Welfare Fraud Investigator. The Union emphasizes that the changes in

1/ The record shows that all three positions perform basically the same duties. The Economic Support Specialists I & II are differentiated by the length of their tenure, and, as the title implies, the Lead Worker-Economic Support performs the same duties but also acts as a lead worker.

the position go far beyond merely the changes involved in the CARES program clerical changes involved in using the computer program. The major change involves new responsibilities in case management.

The Union disagrees with the County's theory of the case. It argues that much more than merely the switch to the CARES program is involved in the reclassification and it disputes the County's contention that the Economic Support Specialist are not investigating potential fraud. The Union asserts the reclassification is warranted by internal equity and comparisons with the surrounding counties are irrelevant. The appropriate comparison is with other level 7, 9 & 11 positions in Dodge county.

In its reply brief, the Union disputes the County's position that this is an interest arbitration matter and should be decided based on comparisons with the wage rates of other counties.

The County

The County asserts that in order to prevail, the Union must show the need for a two pay grade reclassification by clear and convincing evidence. The County asserts this dispute is in fact an interest arbitration instead of a grievance arbitration; that is, it is a proceeding to determine the creation of new contract terms, and therefore interest arbitration principles should be utilized by the arbitrator. It supports its position with evidence of external comparables, the wages paid employees in similar positions in comparable counties. Those comparisons indicate that the Economic Support Specialists are already well-paid.

The County asserts the basic role and responsibilities of the positions have remained unchanged. The County acknowledges that the programs being administered have changed and there is greater use of the computers which the Economic Support Specialists now use directly instead of relying on a data entry clerk, but the same work is performed as in the past and as is performed in the comparable counties.

In its reply brief, the County insists this case should be limited to consideration of the effect of the CARES program on the Economic Support Specialist. It reiterates its position that only the methods, and not the substance, of the position have changed, discounts the significance of the 100 hour training program, disputes the validity of the comparison with the Counselor I - Day Treatment Case Manager and the Welfare Fraud Investigator, and reasserts its position that this position compares favorably with similar positions in comparable counties.

ADDITIONAL FACTS AND DISCUSSION

In general, the responsibility of the Economic Support Specialists is to interview prospective clients to determine eligibility for various programs and to periodically review cases to resolve any problems that might arise. The core responsibilities are the same for all three

positions, since Economic Support Specialist I is the designation of the entry level and employees are automatically reclassified to Economic Support Specialist II after two years of satisfactory performance. As the title implies, the Lead Worker - Economic Support has lead worker responsibilities in addition to the core responsibilities of the position.

Prior to 1980, when the disputed positions were held by employees entitled "Income Maintenance Worker," an applicant for financial assistance completed a paper application which the Income Maintenance Worker would review. In 1980, the use of computers was introduced and the changed procedure required the Economic Support Specialist to review the application, add some coding, and transmit the application to a terminal operator who would enter the data into the computer. In 1992, the procedure changed again and the Economic Support Specialists became responsible for entering the data directly into the computer which used a system entitled CRN-IMP. In May of 1994, the CARES system was inaugurated which used a software program involving approximately 400 computer screens of questions instead of the 40 screens involved in the earlier program. Not all 400 screens are used for every applicant, but the answering of certain questions by "yes" causes another screen to appear with more specific questions.

In assessing the need for a reclassification of this position, the Arbitrator must first consider the County's position that this proceeding is basically an interest arbitration since the issue involves the establishment of a contract provision, that is, the wage rate for the Economic Support Specialist. The County further argues that in an interest arbitration proceeding, the appropriate standard of comparison is the external comparables, that is, the wage rates for similar positions in comparable counties.

Contrary to the County's argument, although external comparables are significant in many interest arbitration disputes, they are not dispositive in all such disputes and they are not dispositive in this one. In this particular case, the relevant question is the relationship is not between the compensation rate of Dodge County Economic Support Specialist of this employer and other employers, but between Economic Support Specialists and other employees in this bargaining unit. The parties' bargaining has resulted in a contract with a wage appendix that demonstrates their agreement upon the appropriate compensation for the various responsibilities involved in the various positions of the bargaining unit. The question in this proceeding is whether those responsibilities have been significantly changed, and if so, whether a reclassification is necessary to preserve the original relationship between the positions in the bargaining unit. In this way, the relationship bargained between the positions is preserved. The fact that positions may have been compensated in Dodge County at a higher or lower rate than comparable positions in other counties is also a result of the parties' bargaining, and the fruit of that bargaining is preserved if the internal relationships, based on responsibilities, between the positions is preserved.

In an interest arbitration proceeding involving a proposed reclassification, Arbitrator Joseph Kerkman stated this principle as he rejected an argument involving the comparison of wage

rates of positions in the proposed classifications to comparisons with similar positions of other employers. Arbitrator Kerkman stated:

The Arbitrator agrees with the Union that reclassifications, if they are to be awarded, will be determined by the internal comparisons and not external. The external comparisons of wage rates paid in comparable communities are significant and often controlling when considering general wage increase. When considering reclassifications, however, the relationship between work performed in the disputed classifications, compared to work performed in the classification assigned to the range which is proposed, is the most significant. External comparables might be persuasive evidence in support of or against the proposed reclassifications, if the evidence were to show that ranking of a position in a comparable community is the same as or different than the ranking of a position proposed by the parties in the dispute being arbitrated. The evidence presented at this hearing, however, shows only the raw data comparing wage rate for each of the disputed positions in comparable communities, compared to wage rates being paid here. There is nothing in the data to show the relationships of the hierarchy of classifications or ranges in the comparable communities which would then permit a comparison of the same relationships for the instant Employer. Absent that type of showing, the raw data of wage rate to wage rate comparisons are meaningless because it ignores the internal relationships which are paramount in the slotting or ranking of positions. Consequently, the Employer evidence bearing on the external comparisons among comparable communities is unpersuasive. (Emphasis added.) 2/

Since it is the internal relationships that must govern this reclassification decision, the undersigned first turns to consideration of the responsibilities of the Economic Support Specialist to determine whether they have changed.

The County's argument that a change in methodology does not necessarily indicate greater responsibility is well-taken. The progress from paper applications to computers in itself is not an indication that the position now entails more responsibility. The change in methodology may require the learning of new skills, but if those skills are approximately at the same level of difficulty, the change, in this case, the switchover to entering data on the computer, is not in itself a reason for reclassification of the position. Similarly, the change from individual initial

2/ City of Hartford, Dec. No. 26759-A, (Kerkman, 1991).

interviews to group interviews, referred to as "pre-screening," merely represents a change in methods of communicating information to prospective clients.

While some of the changes, related to increased use of a computer is merely a matter of new methods for accomplishing old duties, there is also increased gathering and use of more data than was earlier gathered, as evidenced by the 400 possible computer screens to be used according to the answers supplied by applicants. It is also true that there are now more programs to be administered. Economic Support Specialists must be knowledgeable with a panoply of programs such as the COP waiver and the KIP program, Day Care programs and estate recovery programs which entails dealing with attorneys. There are also more outside agencies to deal with.

The County now emphasizes "diversion," the effort to keep people off welfare by use of other community programs that would help a prospective client during a difficult financial situation through the help of community or voluntary agencies. This diversion effort requires the Economic Support Specialist to know and use more community resources than previously. Economic Support Specialists must also be familiar with the Wisconsin Works program. At the time of the hearing, that program had not been instituted in Dodge County, but Economic Support Specialists were required to have a working knowledge of the program because applicants arriving from Fond Du Lac County, a neighboring county which is covered by the program, must be treated differently from other applicants.

In addition to having to administer and being able to access more programs than earlier, the Economic Support Specialist now takes a greater part in verifying welfare fraud than was previously. Kenneth Peters, who has been the Welfare Fraud Investigator since 1990, expanded the role of Economic Support Specialists since 1992. He has daily contact with the Economic Support Specialists. He regards the initial interviews they conduct as effective in ferreting out potential fraud. He values their presence in joint interviews which allows them to point out discrepancies with information given in the earlier interviews. Finally, he believes the Economic Support Specialist, who is not as threatening as a law enforcement officer, frequently is able to elicit more statements and, sometimes, confessions from the clients. This investigative interviewing is clearly more demanding than merely asking a set list of questions.

In assessing the potential changes in the position, the undersigned has not given any weight to the 100 hours of training which is now required during the Economic Support Specialist's first two years. The parties offered no evidence of the content of the training, and there is no basis for concluding that the training is necessary because of greater responsibility as opposed to merely learning to use a new software to perform the same responsibilities.

Even without the evidence of the new training, based on the proliferation of programs that the Economic Support Specialist must now understand administer and the greater detail required of the data collection, and the expanded role of the Economic Support Specialist in welfare fraud investigation, the undersigned concludes that the Economic Support Specialist now has some

increased responsibilities. The question then remains, does this additional responsibility exceed a merely descriptive change and is it sufficiently weighty to justify the two pay grade adjustment proposed by the Union?

If the increase were granted, the preponderance of the affected employees, who are Economic Support Specialist II, would move from Grade 9 to Grade 11. The parties did not make arguments regarding comparisons with other Grade 11 positions.

To support its position, the Union turns to a comparison of the Economic Support Specialist with the duties of the Counselor I positions. This comparison cannot be definitive since the Counselor I positions are in the professional bargaining unit and therefore not a part of the contract governing this dispute. Nevertheless, a comparison of the two positions does offer some guidance.

The Union argues that the duties of the Economic Support Specialist are no longer primarily providing information and referrals to clients, but are now involved case management. This assertion is not supported by the evidence. Case management, as the term is commonly used, involves professional judgment in choosing among various acceptable strategies to achieve a desired outcome. This process clearly requires more expertise than the matching of needs and programs pursuant to various statutory and regulatory guidelines.

Although the evidence does indicate, as discussed above, that the Economic Support Specialist needs to be in control of more information regarding more programs than earlier, the ability to marshall facts and information is not the same as case management. A review of the position description of the Economic Support Specialist and the Counselor I supports bears out the different duties required of the two positions. The Duties of the Economic Support Specialist II were set forth in the most recent position description as follows:

PRINCIPAL DUTIES AND RESPONSIBILITIES:

1. Pre-screens client to assess sources, types and levels of economic support.
2. Interviews applicants to determine completeness and application accuracy. Includes collecting verification, complete appropriate forms, makes referrals to other agencies/units, prepares for and completes data processing within mandated time-frames, prepares application for social security disability determination, and spousal impoverishments.
3. Maintains accurate caseload which is under scrutiny of federal and state quality assurance. Includes interviewing and reviewing cases for continued eligibility, processes

- monthly report forms and changes within mandated time-frames, and calculated on-going benefits and allocations.
- 4. Conducts home visits.
- 5. Communicates with other professionals, agencies and addresses general public concerns.
- 6. Responsible for resolving discrepancies in caseload. Includes front-end intervention, fraud referrals/investigation/divestment/court preparation/testify in court, federal safe-guarded cross-matches/state wage matches/DILHR matches/social security matches and recoupments.
- 7. Performs related duties as may be required or assigned.

The position description for the Counselor I (Developmental Disabilities) lists the following duties and responsibilities:

PRINCIPAL DUTIES AND RESPONSIBILITIES:

- 1. Develops individual service plan for client based on client needs, assessments, evaluations, and departmental policies/procedures.
- 2. Refers clients for appropriate community resources based on assessment, case plan, and client needs/abilities.
- 3. Ensures ongoing assessment of client's physical, mental, and social needs/abilities and refers for additional services as indicated.
- 4. Maintains client and collateral contacts as required by program mandates.
- 5. Maintains ongoing case record according to department/program policies and procedures.
- 6. Advocates on behalf of clients in all matters.
- 7. Provides consultative service to other agency/department staff as needed regarding client/program issues.
- 8. Meets with supervisor to advise him/her of caseload status and related programs/services.
- 9. Brings problematic/crisis issues to immediate attention of Supervisor.
- 10. Meets with community agencies/organizations to ensure quality of programs/services for clients.
- 11. Facilitates positive working relationship with other agencies/department staff.
- 12. Attends client and other staffings as appropriate.

13. Serves as contact person to other treatment agencies or organizations as needed.
14. Gathers/provides information required for ongoing program evaluation and planning.
15. Keeps receptionist/supervisor informed as to whereabouts during working hours.
16. Evaluates new client referrals as assigned.
17. Performs related duties as may be required or assigned.

The position description of the Counselor I - Day Treatment Case Manager lists the following duties and responsibilities:

PRINCIPAL DUTIES AND RESPONSIBILITIES:

1. Provides psycho-social assessments, including impressions of mental status and tentative diagnosis using agency formats.
2. Develops comprehensive care plan for clients based on assessment, evaluations and agency guidelines.
3. Refers as necessary to more appropriate treatment agency or provides information.
4. Maintains ongoing assessment of client's physical, mental and social needs and refers for additional services if indicated.
5. Responds to crisis situations, and may counsel persons in crisis at agency or in community.
6. Provides interventions for families or friends of persons receiving/needing treatment.
7. Reviews and, if necessary revises treatment plan per agency guidelines.
8. Refers clients for appropriate services based on comprehensive treatment plan or routine intake.
9. Works in partnership with service providers to coordinate services and to avoid delays or duplications.
10. Evaluates client's progress, referring for additional evaluation or alternate treatment, if indicated.
11. Facilitates for clients receiving treatment, financial aid, or other assistance, requests for information, completing appropriate forms, writing clinical summaries, or assisting record librarian in releasing appropriate records.
12. Advocates on behalf of clients to assure client needs are met appropriately, and in timely fashion through meeting with

- service providers or agency administration to explain client needs and to facilitate service delivery.
13. Suggests need for new programs or services to meet unfilled client needs to administration's attention.
 14. Arranges for client transportation.
 15. Serves as contact person to other treatment agencies or organizations.
 16. Serves on appropriate standing or ad hoc committees, as assigned.
 17. Gathers and provides to administration such information as may be deemed useful for ongoing program evaluation and planning.
 18. Conducts and/or designs groups as agreed upon with team.
 19. Attends Day Treatment staffings.
 20. Acts as co-facilitator with therapist for psychotherapy group.
 21. Provides consultative services to other agency staff as needed.
 22. Performs related duties as may be required or assigned.

The first item on the list of duties of the Developmental Disabilities Counselor offers an example of the differences between the case management practiced by the Counselor I and the matching of clients and programs practiced by the Economic Support Specialist. The Economic Support Specialist's duties do not involve the establishment of individual service plans based on the client's needs and the counselor's assessment of those needs. Although the Union is not asserting that the Economic Support Specialist performs the same work as the Counselor I, which is compensated at a higher rate than the Economic Support Specialist would be even under the proposed upgrade, it is nevertheless asserting that the Economic Support Specialist are involved in case management. The examination of the evidence cannot support that conclusion, and the assertion that the Economic Support Specialist is involved in case management must be rejected as a justification for the proposed two paygrade reclassification.

In summary, although the evidence indicates that the Economic Support Specialist has to handle some additional information, having to know more programs than previously, and now has some additional involvement with the Welfare Fraud Investigator, this slight increase in responsibility does not represent a substantive change in the demands of the position that would justify a two-step upgrade in the compensation for the Economic Support Specialist. The grievance, therefore, must be denied.

ARBITRATION AWARD

1. The County did not violate the collective bargaining agreement when it failed to reclassify the positions of Economic Support Specialist I, Economic Support Specialist II and

Economic Support Specialist Lead Worker to pay grades 9, 11 and 13, respectively.

2. The Grievance is denied and dismissed.

Dated at Madison, Wisconsin this 10th day of May, 1996.

By Jane B. Buffett /s/
Jane B. Buffett, Arbitrator