

BEFORE THE ARBITRATOR

In the Matter of the Arbitration  
of a Dispute Between

LOCAL 310, AFSCME, AFL-CIO

and

RACINE COUNTY

Case 162  
No. 52839  
MA-9123

Appearances:

Mr. John P. Maglio, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 624, Racine, Wisconsin 53401-0624, appeared on behalf of the Union.

Mr. Victor J. Long, Long & Halsey Associates, Inc., 8338 Corporate Drive, Suite 500, Racine, Wisconsin 53406, appeared on behalf of the County.

SUPPLEMENTARY ARBITRATION AWARD

On July 8, 1996, the undersigned issued a final and binding award in a dispute between these parties wherein I reinstated employe Laura Andreucci and directed the County to make her whole for the loss of wages and/or benefits she suffered as a result of her discharge. The remedy provided for certain offsets, which are not a part of this proceeding. I thereafter retained jurisdiction over the matter for a period of thirty (30) days from the date of the award to resolve disputes with respect to remedy. Such a dispute has arisen, and the parties have extended my jurisdiction in order to resolve a backpay dispute. There was no evidentiary hearing relative to interim earnings and/or backpay. The record for this proceeding consists of the earnings records of the grievant for the period in which she was off work. That record was attached to the Union's brief, which was received on August 30, 1996. The County submitted a post-hearing brief received September 9, 1996 which stipulated the accuracy of the information previously supplied by the Union.

The grievant was off work for most of calendar year 1995, and for the first 7-8 months of 1996. The parties have no dispute as to the 1995 backpay relief. The grievant earned less in 1995 than the County would have paid. The parties subtracted her actual earnings from her projected earnings as a County employe. It apparently made no difference whether the computation period was by the week, or by the year.

A dispute exists over the appropriate backpay for 1996. The grievant shows no earnings for January, 1996. She thereafter reported earnings from a single employer for the months of February through July. With certain exceptions, she thereafter showed earnings from two employers. Altogether, the stipulated documents showed the grievant with no income during the month of January, income from a single employer, which fell below projected County earnings,

for 13 weeks, and income from two employers which exceeded projected County earnings for 11 weeks.

The Union has arranged this data on a chart. That chart is set forth below, with two additional columns that I have added to reflect the decision of this award:

| 1           | 2      | 3            | 4                       | 5          | 6                    | 7                 |
|-------------|--------|--------------|-------------------------|------------|----------------------|-------------------|
| Week Ending | County | Independence | Interim                 | Adjustment | Bi-Weekly Adjustment | County Pay Period |
| *02/02/96*  | \$574  | \$345        | \$0                     | \$0        |                      |                   |
| *02/09/96*  | 574    | 345          | 0                       | 0          |                      |                   |
| *02/16/96*  | 574    | 345          | 0                       | 0          | 0                    | 2/4 - 2/17        |
| *02/23/96*  | 574    | 345          | 0                       | 0          |                      |                   |
| *03/01/96*  | 574    | 336          | 0                       | 0          | 0                    | 2/18 - 3/2        |
| *03/08/96*  | 574    | 336          | 0                       | 0          |                      |                   |
| *03/15/96*  | 574    | 288          | 30                      | 0          | 0                    | 3/3 - 3/16        |
| *03/22/96*  | 574    | 288          | 200                     | 0          |                      |                   |
| *03/29/96*  | 574    | 336          | 387.5                   | 149.5      | 63.50                | 3/17 - 3/30       |
| *04/05/96*  | 573    | 336          | 300                     | 63         |                      |                   |
| *04/12/96*  | 573    | 336          | 487.5                   | 250.5      | 313.50               | 3/31 - 4/13       |
| *04/19/96*  | 574    | 336          | 108.5<br>(96 +<br>12.5) | 0          |                      |                   |
| *04/26/96*  | 574    | 336          | 200                     | 0          | 0                    | 4/14 - 4/27       |
| *05/03/96*  | 574    | 336          | 450                     | 212        |                      |                   |
| *05/10/96*  | 574    | 336          | 631.25                  | 393.25     | 605.25               | 4/28 - 5/11       |
| *05/17/96*  | 577.2  | 336          | 500                     | 258.8      |                      |                   |
| *05/24/96*  | 577.2  | 345          | 0                       | 0          | 26.60                | 5/12 - 5/25       |
| *05/31/96*  | 581    | 345          | 650                     | 414        |                      |                   |
| *06/07/96*  | 581    | 336          | 387.5                   | 142.5      | 556.50               | 5/26 - 6/8        |
| *06/14/96*  | 582    | 336          | 688.75                  | 422.75     |                      |                   |

|               |     |     |        |                 |                 |            |
|---------------|-----|-----|--------|-----------------|-----------------|------------|
| *06/21/96*    | 582 | 336 | 586.25 | 340.25          | 763.00          | 6/9 - 6/22 |
| *06/28/96*    | 581 | 336 | 631.25 | 386.25          |                 |            |
| *07/05/96*    | 581 | 0   | 500    | 0               | 305.25          | 6/23 - 7/6 |
| *07/12/96*    | 582 | 0   | 387.5  | 0               |                 |            |
| <b>Totals</b> |     |     |        | <b>3,032.80</b> | <b>2,633.30</b> |            |

I have numbered the columns, and added columns numbered 6 and 7. Column 1 reflects 1 week intervals. Column 2 is projected County earnings displayed on a weekly basis. Column 3 is interim earnings from Independence projected on a weekly basis. Column 4 represents actual Interim earnings for the interim period. Column 5 represents the differential between actual interim earnings and projected County earnings. Where the column reflects a "0" balance, interim earnings were below projected County earnings. Where the column indicates a dollar amount, that amount reflects the amount by which interim earnings exceeded projected earnings for the identified week. Column 7 identifies County bi-weekly payroll periods indicated by Union attachment 2. Column 6 was calculated in the same fashion as was Column 5, using a two-week payroll period basis instead of 1 week. Where a "0" appears, interim earnings in the two-week period fell below projected County earnings. Where interim earnings exceeded projected County earnings, the difference is reflected.

The parties indicate that the County pays on a bi-weekly basis as does Independence. Their pay period cycles overlap. Interim pays weekly. The stipulation of the parties does not include the number of hours the grievant worked on either or both jobs, nor does it reflect the number of hours per week or what hours of the day (shift) the grievant worked.

POSITIONS OF THE PARTIES

It is the Union's view that backpay should be considered on a weekly basis. The Union contends that in weeks where the grievant earned more money than she would have earned with the County, that money is not available to use as an offset for other weeks. The Union cites arbitral authority which recognizes "the extra effort" of an employe who worked more than she would have worked had she not been discharged. The Union claims that the Employer's proposal would penalize the grievant for her extra effort.

It is the view of the County that all outside earnings should be subtracted from what the grievant would have received had she been employed by the County. The County contends that the use of a one-week computation period is arbitrary. The County contends that the Union uses it simply because one of her two employers pays weekly. The County notes that two weeks would be just as valid and further notes that the County payroll is on a bi-weekly basis. The County goes

on to speculate that there may have been weeks when the grievant could have worked more and earned more, but declined. For instance, in the month of January, 1996, the grievant showed no income. The County contends that the absence of income in January constitutes two-thirds of the parties' dispute. All of the County's concerns are essentially overcome by using the aggregate earnings as the basis for backpay.

## DISCUSSION

As noted, this record was submitted on stipulations. There is no evidence as to what work was, and what was not available to the grievant. There is no evidence with respect to how many hours she worked, what days of the week she worked, what hours of the day she worked, what shifts, etc. There is absolutely no basis in this submission to conclude that she did less than make a good faith effort to mitigate her damages. The fact that she had two jobs for a protracted period of time is consistent with this conclusion. I do not know why she didn't work in the month of January, and it is impossible for me to speculate.

The County claims a one-week marking period is arbitrary. The County's claim is true. However, it is no more arbitrary than would be the use of aggregate earnings. Such an approach ignores all of the factors noted above. There is an element of arbitrariness in determining a computational period in the absence of a factual record. Without a factual record which suggests a more appropriate period, I believe that the bi-weekly County payroll period is, on its face, the most appropriate. It is the period in which the County operates administratively. County pay is the basis upon which backpay is ordered. From the grievant's perspective, the bi-weekly pay period reflects her budget cycle while she was a County employee.

The real dispute in this proceeding is whether the County is able to treat monies earned by the grievants securing a second job in late March and working two jobs through July as an offset to the absence of income in January, and relatively reduced income in February and most of March. In the absence of facts that demonstrate the grievant was willingly underemployed in the early period, or was working no more hours than she would have with the County in the latter period, I do not regard that as appropriate.

The parties stipulated that Andreucci was owed \$16,541.90 for 1995. The County contends that its backpay liability for 1996 is \$4580, using a totality of earnings basis. The Union, using a weekly computation period, believes the County owes Andreucci \$7,613.20. The Union figure is the Column 5 adjustment in addition to the relief acknowledged by the County. The effect of using a bi-weekly, rather than a weekly period is to reduce the \$3,032.80 to \$2,633.60.

AWARD

I have added two columns to the Union-created exhibit, which reflects the payroll period as the appropriate measuring period for purposes of backpay. The effect of doing so is to award the grievant \$7214.00 (\$4580.40 + \$2633.60). The Employer is directed to pay the grievant \$7214.00.

Dated at Madison, Wisconsin, this 25th day of October, 1996.

By William C. Houlihan /s/  
William C. Houlihan, Arbitrator