BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	Case 70 No. 54227 MA-9592
GREEN LAKE COUNTY COURTHOUSE EMPLOYEES LOCAL 514C, AFSCME, AFL-CIO	
and	Case 71 No. 54398 MA-9666
GREEN LAKE COUNTY	

Appearances:

Mr. James E. Miller, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.

Mr. John B. Selsing, Corporation Counsel, Green Lake County, appearing on behalf of the County.

ARBITRATION AWARD

Green Lake County Courthouse Employees Local 514C, AFSCME, AFL-CIO, hereinafter referred to as the Union, and Green Lake County, hereinafter referred to as the County, 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 County, 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 Green Lake, Wisconsin, on October 8, 1996. The hearing was transcribed and the parties filed post-hearing briefs and reply briefs, the last of which was received on December 30, 1996.

BACKGROUND:

The basic facts underlying this case are not in dispute. The County has a Human Services Department which in turn has an Economic Support Unit. The Economic Support Unit has four employes with one being the Unit Manager, two Economic Support Specialist I's and one Economic Support Assistant. New employes are hired as an Economic Support Assistant and receive twelve weeks of training. They determine eligibility for AFDC, Medical Assistance, food stamps and other programs. The County has written job descriptions for the Economic Support Assistant and Economic Support Specialist I. The functions are similar but the requirements for a Specialist I include two years' experience as an Assistant. In 1980, the County passed a resolution limiting the number of Specialist positions to two (2).

Grievant Gwenn Jessen was hired as an Economic Support Assistant on January 31, 1994. On April 23, 1996, Jessen filed a grievance asserting that she should be reclassified to a Specialist effective January 31, 1996, as she was performing the same work as a Specialist. On June 13, 1996, the County denied the grievance. A Specialist was promoted to Unit Manager and this created a vacancy which Jessen filled on August 30, 1996. In this proceeding, Jessen seeks the pay differential from January 31, 1996 to August 30, 1996.

Grievance Judith Wheaton posted for an Economic Support Assistant position and was selected for the position on July 7, 1994. On July 15, 1996, Wheaton filed a grievance claiming out-of-classification pay for a Specialist effective July 7, 1996. On August 15, 1996, the County denied the grievance and the matter was appealed to the instant arbitration.

ISSUE:

The parties were unable to agree on a statement of the issue. The Union states the issue as follows:

> Did the Employer violate the Contract when it did not pay Gwenn Jessen at the rate of Economic Support Specialist I from January 31, 1996 until August 30, 1996 and Judith Wheaton at the rate of Economic Support Specialist I from July 7, 1996 to date?
>
> If so, what is the remedy?

The County stated the issue as follows:

> Whether Gwenn Jessen and Judith Wheaton as Income Maintenance Assistants met the established pre-existing written policies and practices of Green Lake County to qualify as Income Maintenance Workers?

The undersigned frames the issue as follows:

> Did the County violate the collective bargaining agreement by its failure to pay Gwenn Jessen and Judith Wheaton at the Economic Support Specialist I rate upon their completion of two (2) years as an Economic Support Assistant?

If so, what remedy is appropriate?

PERTINENT CONTRACTUAL PROVISIONS:

ARTICLE 2
RECOGNITION

. . .

B. The Employer and Green Lake County retain and reserve the sole right to manage its affairs in accordance with all applicable laws, resolutions, ordinances and regulations. Included in this responsibility, but not limited thereto, is the right to determine the number and classification of Employees, the services to be performed by them; the right to manage and direct the work force; the right to establish qualifications for hire and to test and judge such qualifications; the right to hire, promote and retain Employees; the right to transfer and assign Employees; the right to demote, suspend, discharge for cause or take other disciplinary action subject to the terms of this AGREEMENT and the grievance procedure; the right to release Employees from duties because of lack of work or lack of funds; the right to maintain (sic) because of lack of work or lack of funds; the right to maintain efficiency of operations by determining the method, means and personnel by which such operations are conducted, including the right to contract out provided that the exercise of this right shall not result in layoff of permanent Employees (Employees other than part-time, seasonal or probationary) and provided that in the case of the layoff of non-permanent Employees that the Employer shall have the burden of proving that the exercise of such right will result in a more economical operation of the department, and to take whatever actions are reasonable and necessary to carry out the duties and responsibilities of the Employer.

In addition to the foregoing, the Employer and Green Lake County reserve the right to make reasonable rules and regulations relating to personnel policy procedures and practices and matters relating to working conditions giving due regard to the obligations imposed by the AGREEMENT. The Employer shall give reasonable notice of new rules and regulations or changes therein as promulgated by it to the Employees. Any disagreement over the meaning or application

of such rules and regulations may be the subject of a grievance. However, the employer, Green Lake County, reserves total discretion with respect to the function or mission of the

County, its budget, organization and the technology of performing the work. These rights shall not be abridged or modified except as specifically provided for by the terms of this AGREEMENT.

. . .

ARTICLE 5

SENIORITY RIGHTS

A. It shall be the policy of the Employer to recognize seniority in filling vacancies, transfers, demotions, making promotions and in layoffs or rehiring, provided; however, that the application of seniority shall not materially affect the efficient operation of Green Lake County.

. . .

E. Whenever a vacancy occurs or a new job is created, it shall be posted on all bulletin boards for a period of five (5) working days, stating wages, whether regular, full time or part-time and prerequisites for such position. The Union is to be given a copy of the signed posting, indicating the successful applicant. Each Employee interested in applying for the job shall endorse his name upon such notice in the space provided. An Employee interested in posting for a job shall obtain a copy of the notice from the County Clerk. He will place his name and present seniority number on the notice and file it in a posting box. The successful applicant may not post for another job for six (6) months and must take the job if qualified after completing the trial period.

The Employee with the greatest seniority who can qualify shall be given the job. In the event no regular Employee can qualify, the employer shall have the right to fill the job from outside the work force at its discretion. The Employer shall have the right to temporarily fill a job that is posted. However, such temporary filling of the job shall continue only for a reasonable time after the end of the five (5) days posting or the settlement of a grievance if one should arise. In the event that the Employer decided not to fill a vacancy, the Union shall be notified in writing. If at a subsequent time the Employer decided to fill the vacancy, it shall follow the

posting procedure.

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APPENDIX C

LOCAL 514c, AFSCME, AFL-CIO
EFFECTIVE JANUARY 1, 1997
(1995 RATES PLUS 3%)

JOB TITLE	START	6 MOS	2 YRS	6 YRS	12 YRS
. . .					
Income Maintenance Assistant	9.2467	9.6824	10.1386	10.5948	11.0716
. . .					
Income Maintenance Worker I	10.2876	10.7723	11.2799	11.7875	12.3180
. . .					
Income Maintenance Worker II	11.2397	11.7693	12.3238	12.8784	13.4579
. . .					

UNION'S POSITION:

The Union contends that the case involves out-of-classification pay in that both of the grievants have performed the work of an Economic Support Specialist I while paid at the rate of an Economic Support Assistant. It submits that the County's principal argument is that advancement to a higher classification occurs only when there is a vacancy or "slot." It points out that each job title has a different level of compensation which reflects that these are different jobs; however, the various titles of Economic Support Workers do the same job duties and receive cases through a round robin case distribution system without regard to the nature or difficulty of each case. It argues that the County has attempted to minimize this fact by implying that many County employes perform part of the tasks of other job titles without receiving additional pay. It insists that in this case the positions are doing the same job and once an employe is trained, the employe does the same work as a I or a II and the County has not argued against this fact but tried to imply that a I handles more difficult cases, an implication which is not supported by the evidence. It notes that the only requirement for a I position is to be an Assistant for two years. It submits that the grievants met this requirement and are seeking out-of-classification pay only when the two-year period was completed. It points out that grievant Wheaton is expected to perform the exact same duties as everyone else yet she cannot move up unless someone is promoted or quits. It suggests that as all the employes do the same work, the County's insistence that there can only be two (2) Specialist I's makes no sense.

The Union distinguishes the County's argument that other assistants were not automatically moved to Specialist I's when they reached the two years of employment on the grounds that these are not similar as they involved only short delays due to budgetary concerns,

not a lack of "slots." It takes the position that if the County prevails in this case, employes performing the same work will be denied equal pay simply because of the way the County distributes jobs within the department.

The Union believes that the issue is whether there is any significant difference between the Assistant and a Specialist I that justifies different pay. It notes that the core requirements of the job are the same, the duties performed are the same and the assignment of cases indicates that each is expected to perform whatever work comes her way. The Union submits that it is patently unfair to the grievants to require them to perform the same work as a Specialist I and not be able to advance to a I until a "slot" opens. The Union seeks to have the employes receive the rate of pay for the work that they are doing.

COUNTY'S POSITION:

The County contends that it has the authority to maintain a certain number of employes as Income Maintenance Assistants as well as establishing the maximum number of Income Maintenance Specialists. The County refers to Article 2 B. of the contract as reserving to it the right to determine the number and classification of employes. It maintains that it has exercised this right to establish two (2) Assistants and two (2) Specialist I's in the department. It also points out that it has established written guidelines establishing qualifications for advancement and the maximum number of employes within each classification which have been consistently followed.

It notes that Appendices A, B and C in the contract provide a five step pay schedule in each position and it is possible to remain an IM Assistant for twelve (12) years. It claims that there has been no negotiations on this schedule nor a request to change the number of employes within a classification. It asserts that the contract establishes the County's authority to set the number of employes within a classification and an employe may remain within the classification beyond the minimum two (2) years.

The County asserts that the evidence establishes that it has followed its practice over the last 16 years. It submits that all vacancies have been posted in accordance with the contractual provisions. It maintains that prior employes had to wait beyond the two-year minimum period before there was an opening to post into. The County claims that limiting the number of employes in a classification is not unique to this unit but has been applied in the Law Enforcement and Highway Departments. It argues that all employes have a certain overlap in job duties with another classification but that does not mean they assume the position. It observes that any change should be obtained in negotiations. The County insists that a grievance and arbitration is not the appropriate method to resolve this dispute but rather it should be resolved in negotiations. It points out that the practice has been in effect for a significant number of years and several contracts have been negotiated during this period with no change in practice.

The County concludes that the grievance should be denied as the County has the contractual right to limit the number of employes in a classification and the contract was followed. It further contends that the County has consistently followed its own written practices and procedures and other employes had to wait longer than two years for advancement and this issue has never been brought up before the instant grievances. It asks that the grievances be denied.

UNION'S REPLY:

The Union asserts that the County has failed to address its principal arguments which are individuals in a lower class performing the fundamental core duties of a higher paid classification and the policy that would leave an employe in an entry-level classification indefinitely. The Union states that the evidence establishes that there is no substantial difference between the job duties assigned the Economic Support Assistant and the Economic Support Specialist. The Union's main argument is that the County cannot indefinitely assign duties of a higher classification to a classification receiving less money and the grievants should be compensated at the higher wage level.

With respect to the County's past practice arguments, the Union reiterates that the past delays had to do with budgetary questions and employes moved to the higher classification in a short time, so the cases are dissimilar. It points out that Jessen had to wait seven months while Wheaton has no prospect of moving up, yet she is expected to do the same work. The Union alleges that the County's arguments fail to address the similarities between the two classes and it concludes that the only difference is the time required to be an Assistant. It submits that this is a case of first impression and while it admits that there is no automatic movement from one class to another, the Union claims that where the grievants are required to perform the duties of the higher class, they should be paid the difference in pay as this is equitable.

The Union contends that the County's raising of the seniority issue has no point because the grievants have no dispute about seniority and how it was applied.

As to the County's argument that the issue should have been brought up in negotiations, the Union maintains that its failure to make a specific proposal does not estop it from grieving the matter of performing duties outside of the classification and these can be addressed through the grievance procedure.

The Union asks for a finding that the County violated the contract by not paying the grievants at the Economic Support Specialist I rate and requests that they be made whole.

DISCUSSION:

The issue presented in this case is whether an Economic Support Assistant should be paid

as an Economic Support Specialist I after two years' experience as an Assistant. Although the Union claims it is not asserting that there is an automatic progression from an Assistant to a Specialist, they are seeking the pay of the Specialist on the basis that an Assistant is doing the same work as a Specialist. First, it should be noted that the parties' collective bargaining agreement contains no provision on an automatic progression from an Assistant to a Specialist. Furthermore, the collective bargaining agreement has no provision on out-of-classification pay or equal pay for equal work. Thus, the Union's reliance on Wilson Jones Co., 51 LA 35 (Daugherty, 1968) is misplaced because in that case the contract contained provisions which provided equal pay for equal work as well as out-of-classification pay and the issue in that case was whether employes were performing the core duties of a higher classification. For the purposes of the instant case, it will be assumed arguendo that the Assistant and Specialist are performing essentially the same duties. Secondly, besides the lack of any contract language to support its arguments, the Union is seeking the higher pay after two years as an Assistant; yet, there is nothing magical about the two years. After twelve weeks, the Assistant is doing the same work as the Specialist. Certainly after six months or one year their duties are essentially the same. The reference to two years apparently is based on a minimum requirement for promotion which infers that there should be an automatic progression rather than equal pay for equal work. The Union's arguments are thus undercut by the two-year requirement. Also, the collective bargaining agreement contains a provision, Appendices A, B and C, which provides for increases at various time periods. These are automatic. The equal pay argument is undercut by the provision that after six months an Assistant gets a raise and after two years gets another raise as well as after six and twelve years. An Assistant after one year and eleven months is performing the same duties as an Assistant after two years and one month; yet, the Assistant with two years or more is paid more for doing the same work. Why is that? It is because that is what the parties agreed to and the language of the contract provides for it. There is an automatic progression through the class range whereby a more experienced Assistant is paid more. There is no provision which provides an automatic progression between classifications.

Thirdly, if the parties intended that an Assistant with two years would go to a Specialist position or at least to the pay rate of a Specialist, why did they include a two year rate for an Assistant. This would be mere surplusage without an effect. Arbitrators usually conclude that parties do not put provisions in their contract, particularly pay rates, that have no meaning or effect. It must be concluded that the Union's equal pay argument is not persuasive.

Fourthly, the parties' collective bargaining agreement has a management rights clause, Article 2 B. which specifically allows the County to determine the number of employes in each classification. The Union's claim that the Assistant should be paid at the Specialist rate but not given the classification is merely a suggested subterfuge to nullify a clearly express provision in the contract. Article 5 also provides for the posting of jobs that are new or vacant. By paying all Assistants after two years at the Specialist rate, there would be no need to post the position because it would de facto already be filled. Given the wage schedule, the express management rights clause and the posting requirements and the absence of any other provision related to automatic progression or out-of-classification pay, the grievances must fail as they do not establish any

violation of the contract.

While it appears that the grievants are not being treated fairly and equity is on their side, the grievants must obtain benefits at the bargaining table, not from arbitration. The undersigned is bound by the terms of the contract and cannot dispense his own brand of justice. Any changes with respect to equal pay for equal work or automatic progression may be negotiated in the next contract.

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

AWARD

The County did not violate the collective bargaining agreement by its failure to pay Gwenn Jessen and Judith Wheaton at the Economic Support Specialist I rate upon their completion of two (2) years as an Economic Support Assistant, and therefore, the grievances are denied in all respects.

Dated at Madison, Wisconsin, this 30th day of January, 1997.

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