BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between LOCAL 1947, AFSCME, AFL-CIO and MONROE COUNTY (ROLLING HILLS)	Case 125 No. 53650 MA-9413

Appearances:

Mr. Daniel R. Pfeifer, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.

Mr. Kenneth Kittleson, Personnel Director, Monroe County, 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 arbitrator to resolve the grievance of Amy Owens Kiernan regarding her wage progression. A hearing was held in Sparta, Wisconsin on July 1, 1996, at which time the parties were given the opportunity to present their evidence and arguments. The parties filed briefs by February 24, 1997.

ISSUE:

The issue is:

> Did the County violate the collective bargaining agreement by not granting 59 days credit to the Grievant for her dietary wage progression while she was on the qualifying period for a nursing assistant position? If so, what is the appropriate remedy?

BACKGROUND:

The parties stipulated to certain facts. Amy Owens Kiernan is the Grievant and an employee at the County's nursing and health care facility, Rolling Hills. She was working in the kitchen as a dietary aide. She posted for and was awarded a position as certified nursing assistant (CNA). Pursuant to Article 12, Section 3 of the collective bargaining agreement, she had 60 calendar days to qualify for the position, and during that trial period, she received the kitchen rate of pay.

There is a difference in the record over what Kiernan was actually paid during the 59 day trial period. The Arbitrator's record reflects that Kiernan was being paid the dietary aide rate of pay. However, the County's brief states on page 8 that she was paid the grade 3 CNA hire rate of $6.99 per hour, plus a 15 cent per hour shift differential for working the evening shift. The parties stipulated that she was receiving the 18 month step as a dietary aide, or $6.71 per hour. If this was an error at the hearing, the parties can easily straighten this matter out by looking at the payroll records.

The Grievant chose to return to her kitchen position on the 59th day of the trial period. The question arose then whether or not the 59 days counted toward the wage progression or steps in the schedule. The Administrator of Rolling Hills, Gene Schwarze, told the Union when responding to Kiernan's grievance that advancement within any classification is based upon time/hours worked in that classification, while time worked in any classification counts toward fringe benefit accumulation.

THE PARTIES' POSITIONS:

The Union disputes the County's interpretation of the wage schedule, specifically that steps within any department or classification are milestones achieved by hours worked within the respective classification. The Union points to the language that says: "Wage increases for regular part-time employees are implemented upon completion of an equivalent number of hours worked for a full-time employee for each designated step. (6 mo = 1040 hours), (18 mo = 3120 hours), (30 mo = 5200 hours), (42 mo = 7280 hours), 54 mo = 9360 hours)." The language says nothing about having to work those hours within a classification. If the parties had intended for the steps to apply as the County proposes, the language should have been written to reflect that intent.

The Union also points out that the language of Article 12, Section 3, states: "The successful applicant, if moving into a higher pay rate, shall be paid the higher rate retroactive to his/her first day in said position after the sixty (60) days qualification time." Since the Grievant chose to return to her previous position in dietary after 59 days, she never received the nursing assistant rate of pay. In fact, she got her dietary rate of pay for all of the 59 days she worked as a nursing assistant. If the County's position prevailed, the Grievant would be financially penalized for exercising her contractually guaranteed job posting rights. The Union notes that another arbitrator found that a contractual wage schedule with a unified wage progression schedule which pegs step increase to the amount of time employees work does not require that all of that time must be worked in a particular department.

The County's position is that salary step progressions within any department or classification are milestones achieved by hours worked within the respective department or classification, and therefore, time spent in a failed qualification attempt is not credited toward the employee's former department or classification for salary progression purposes, although the time

is credited for seniority and benefit purposes in accordance with Article 11 and Article 22. The County points out that Article 12, job posting, allows for advancement on a "shared risk" basis. The risk for the employer is the loss of productivity and the cost of training during an unsuccessful qualifying period. The risk for the employee is the possibility of perceived failure, the return to a lower-paying position, and the loss of time credit during an unsuccessful qualifying period.

The County submits that the Union is trying to expand the principle in Article 22 – that benefits run with time based on the anniversary date of the original date of hire – to include salary when it argues that the Grievant's 59 days counts toward salary progression. But anniversary dates are benchmarks for seniority and benefits only, while salary progression is dependent upon the hours worked within the classification. Had the Grievant been successful in her bid for a CNA position, her next step increase would have been one year after her first day as a CNA. The County argues that the Union's position would have long-term financial implications for the institution because employees who change classifications would progress through the steps at a much faster rate, and it would alter the risk of Article 12 by removing all financial risk from the employee and placing all the risk upon the employer's shoulders.

DISCUSSION:

The wage schedule has grades, positions, a hiring rate, a six-month step, an 18-month step, a 30-month step, a 42-month step, and a 54-month step. Each of the steps after the hire rate has an asterisk next to it, which references the following notation on the bottom of the wage schedule:

> Wage increases for regular part-time employees are implemented upon completion of an equivalent number of hours worked for a full-time employee for each designated step. (6 mo = 1040 hours), (18 mo = 3120 hours), (30 mo = 5200 hours), (42 mo = 7280 hours), 54 mo = 9360 hours).

Probationary employees, according to Article 13, Section 1, have to put in 1040 hours before becoming regular employees. Article 12, Section 3 states:

> The successful applicant shall be allowed sixty (60) calendar days to qualify for the position. Interim appointments may be made by the Administrator until such time as a regular appointment is made. The successful applicant, if moving into a higher pay rate, shall be paid the higher rate retroactive to his/her first day in said position after the sixty (60) days qualification time.

Article 24, Section 8 states:

> An employee who works on a higher rated job shall receive the going rate

of pay of the higher rated job during the period of time so assigned to the higher rate job.

Nothing in the contract refers to time worked in a classification in order to attain a step. If the parties wanted such a limitation on the wage progression, they could have bargained for it just as they did for part-time employees, forcing them to put in 1040 hours rather than six months to become regular employees. Otherwise, the contract should be read as it states -- the time is the calendar time as an employee. The plain meaning of the wage schedule should prevail, in the absence of language that would show that the parties meant something other than the regular counting of time. The Employer must count all the time an employee has with the County, not just time in one classification or another, unless and until the parties bargain language that would allow it to do just that. The current language envisions no such delineation of time in class for achieving steps. It contemplates time only. End of story.

AWARD

The grievance is sustained.

The County is ordered to make the Grievant, Amy Owens Kiernan, whole by placing her on the salary schedule in accordance with her time with the County as an employee and by paying to her back pay for lost wages, if any, for the 59 days that the County did not count as her time in the dietary department for purposes of moving ahead on the wage schedule. 1/

Dated at Elkhorn, Wisconsin this 11th day of March, 1997.

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

1/ The County has contended that the Grievant was overpaid as an error during the 59 day probationary period, and this 59 day overpayment has not been recovered and would nullify the Union's make whole request. As previously indicated, this is a simple matter that can be cleared up by a review of the payroll records.