BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

LOCAL 2717, AFSCME, AFL-CIO

and

JACKSON COUNTY

Case 112
No. 53963
MA-9501

Appearances:

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

Mr. James Michael DeGracie, Corporation Counsel/Personnel Director, Jackson 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 to resolve a dispute involving wage rates for probationary employees. A hearing was held on June 6, 1996, in Black River Falls, Wisconsin, at which time the parties presented their evidence and arguments. The parties filed briefs by June 16, 1997.

ISSUE:

The parties ask:

> Did the County violate the collective bargaining agreement by the manner in which it granted wage schedule step increases to the Grievants? If so, what is the appropriate remedy?

BACKGROUND:

The Grievants are Nancy Buchard and Judith Sheppard, both part-time employees with the County. Buchard works 32 hours a week in the Forestry and Parks Department and is paid at Grade 2. Sheppard works 20 hours a week in the District Attorney's office and is also paid at Grade 2. The collective bargaining agreement has a starting rate, a six month rate, a one year rate, a two year rate, a three year rate, and a four year rate. When the Grievants completed six months, they were not given the step for six months pay and were told that they have to complete six months of hours, or 1,040 hours, before getting a raise in pay at the six month rate.

The Union had no prior knowledge of how part-time employees were treated in the past for

purposes of wage increases. The County Board created two part-time secretarial positions in the UW-Extension Office in lieu of one full-time position, and Marry Curran and Debra Jahn took those part-time jobs. Curran was a full-time employee for three years, then became part-time, and her wages were held up for the four year step until she got the number of hours equivalent to four years. Jahn started full time and passed the four year step before going part time. Julie Johnson was hired part time for seven months, and at the end of six months, she did not get the step increase. No letter was sent to the Union notifying it about any of these employees.

THE PARTIES' POSITIONS:

The Union:

The Union asserts that the progressions through the wage scheduled should be based on calendar time, not time worked. The parties did not bargain language forcing part-time employees to put in 1,040 hours rather than six months to receive their first step increase, and they knew how to negotiate pro-rata provisions in other sections of the contract, such as Article 7, Section 3 and Article 22. However, there was no pro-rated language negotiated for progressions through the wage schedule.

The Union would dispute the existence of any binding past practice regarding part-time employees, since the Union was never aware of how the County had granted step increases to part-time employees in the past. There were four employees cited by the County to show the existence of a past practice, but the Union was first aware of their circumstances in the processing of this grievance.

The Union asks that the grievants be made whole.

The County:

The County asserts that the bargaining agreement must be viewed in it's entirety, and construction must be avoided that would render portions of the contract meaningless or mere surplusage. Moving part-time employees along the salary scale based on time of actual service is consistent with the contract when it is interpreted as a whole. Article 7 provides that seniority be determined on a pro-rated status in relation to the number of hours worked by full-time employees. All new employees, including regular and part-time, serve a probationary period of six calendar months. Article 22 pro-rates benefits for part-time employees. While the contract does not state that part-time employees move along the salary scale based on pro-ration of time spent on the payroll, this is the only logical conclusion. An individual has his or her seniority based on the time spent on the payroll, pro-rated based on the actual hours worked. Benefits are pro-rated. Thus, it follows that pay is based on the hours worked.

The County points out that the language in Article 7, Section 4 calls for a probationary period of six calendar months, and there is no other place in the contract that this distinction was

inserted. The Union wants to incorporate the two separate issues of probation and movement along the salary scales, while the issue of probation is a separate one from the issue of wages. The six calendar months referred to under the probation section is limited to whether an employee still has a job the next day. Movement along the salary scales is a pro-rated benefit, consistent with other benefits in the four corners of the collective bargaining agreement.

The County submits that its position would avoid an absurd result. Under the Union's position, a full-time employee who has worked 2,080 hours will be compensated at the same rate of pay as a regular part-time employee who has performed 1,040 hours of work. At the end of four years, the full-time employee would have his or her four years of seniority and be at the top of the wage scale, and the part-time employee would also be at the top of the scale but have only two years of seniority, under the Union's interpretation.

Furthermore, the County argues that past part-time employees were treated similarly to the Grievants in this matter. While the County understands that the Arbitrator does not believe that two prior occurrences is sufficient evidence of a past practice, those two previous incidents are the only experience that the parties have because the County does not hire many part-time employees. The Union's position creates an inequity for those employees who were paid based on their time in service, and because of this equity issue, the proper place for this matter is in the collective bargaining arena.

DISCUSSION:

The collective bargaining agreement does not specifically address this situation. Under Article 7, Section 3, it states:

> Regular part-time employees shall have their seniority determined on a prorata status in relation to the number of hours worked by full-time employees.

Article 7, Section 4, then adds this:

> All new employees, including regular part-time employees shall serve a probationary period of six (6) calendars months.

The contract grants vacations, sick leave, funeral leave to regular full-time employees. It grants paid holidays for regular full-time employees, and states that regular part-time employees who share a position are entitled to holiday benefits, pro-rated to the number of hours worked in that position. Article 22 defines part time as a position scheduled for 34 hours or less per week and designated permanent. That article also gives part-time employees two options -- (1) of 12 and 1/2 percent over gross salary in lieu of vacation, sick leave and holidays, and the employee pays the total premium cost if he or she takes the County's insurance plan; or (2) fractional benefits of vacation, sick leave, and holidays, as well as the employee pays the fractional amount of the

insurance premium cost.

The wage appendix lists rates for starting, six months, one year, two year, three year, and four year. There is no definition of what makes a year.

Taking the contract at its face value and plain meaning, employees should be paid the six month rate once they have completed six months of a calendar year. Words should be given their plain meaning, and six months means six months of a calendar year, or one half of a year. It does not mean the equivalent of six months of hours worked or 1,040 hours. If the parties had intended to deviate from the normal meaning of six months for part-timers, they could have stated so somewhere in their contract.

The parties were agreed to granting a six calendar month period of time for probationary status, even for part-timers. They then pro-rated other benefits, such as vacation, sick leave and holidays, and either made part-timers pay more for insurance than full-timers or pay all of it. Thus, the contract shows in these instances, the parties made their intentions known to treat part-time employees in a different manner than full-time employees. However, they made no such intention known on the wage schedule. Therefore, one is left to read the contract to mean that the step increase at six months occurs for whoever has reached six months, and that would also mean six calendar months as noted above.

The past practice is irrelevant here because it is too weak to provide any guidance as either a gap filler or as interpretation of ambiguous language. Two incidents cannot be held to be a consistent past practice, clear and unequivocal, readily ascertainable over a period of time. The County is aware of this, as it noted in its brief. The fact that the County seldom hires part-timers does not strengthen its case and make a binding past practice out of such few incidents.

Therefore, the plain meaning of the wage schedule should prevail, in the absence of language that would show that the parties meant something other than six months being the calendar time of six months.

AWARD

The grievance is sustained.

> The County is ordered to pay to the Grievants the six month step on the wage schedule retroactively to the date at which they completed six calendar months of employment.

Dated at Elkhorn, Wisconsin this 12th day of August, 1997.

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