

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**JACKSON COUNTY COURTHOUSE  
EMPLOYEES, LOCAL 2717, AFSCME, AFL-CIO**

and

**JACKSON COUNTY (COURTHOUSE)**

Case 118  
No. 55329  
MA-9986

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Appearances:

**Mr. Daniel R. Pfeifer**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, on behalf of Local 2717, AFSCME, AFL-CIO.

Weld, Riley, Prenn & Ricci, S.C., Attorneys at Law, by **Ms. Kathryn J. Prenn**, on behalf of Jackson County.

**ARBITRATION AWARD**

Jackson County Courthouse Employees, Local 2717, AFSCME, AFL-CIO, hereinafter the Union, requested that the Wisconsin Employment Relations Commission appoint a staff arbitrator to hear and decide the instant dispute between the Union and Jackson County, hereinafter the County, in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. The County subsequently concurred in the request and the undersigned, David E. Shaw, of the Commission's staff, was designated to arbitrate in the dispute. A hearing was held before the undersigned on October 15, 1997, in Black River Falls, Wisconsin. There was no stenographic transcript made of the hearing and the parties submitted post-hearing briefs in the matter by December 15, 1997. Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following Award.

**ISSUES**

The parties stipulated there were no procedural issues, but were unable to agree on a statement of the substantive issues and agreed the Arbitrator will frame the issue to be decided.

The Union offers the following statement of the issues:

Page 2  
MA-9986

Did the County violate the collective bargaining agreement by filling the vacated position in the Veterans Service Office as an Administrative Assistant I, rather than an Administrative Assistant II? If so, what is the appropriate remedy?

The County would state the issues as being:

Did the County violate the collective bargaining agreement when it posted a Grade 3 Administrative Assistant I position in the Veterans Service Office? If so, what is the appropriate remedy?

The undersigned concludes that the following statement sets forth the issues to be decided:

Did the County violate the Collective Bargaining Agreement by posting and filling the vacancy in the Veterans' Service Office as an Administrative Assistant I position?

If so, what is the appropriate remedy?

### **CONTRACT PROVISIONS**

The following provisions of the parties' 1995-1996 Agreement are cited:

#### **ARTICLE 3 - MANAGEMENT RIGHTS**

**SECTION 1.** The County possesses the sole right to operate County government and all management rights repose in it, but such rights must be exercised consistently with the provisions of this contract. These rights, which are normally exercised by the Employer, include, but are not limited to, the following:

- A. To direct all operations of County government.
- B. To establish reasonable work rules and reasonable schedules of work.
- C. To hire, promote, transfer, schedule and assign employees in positions within the County.
- D. To suspend, demote, discharge and take other disciplinary action against employees for just cause.

E. To relieve employees of their duties because of lack of work or for other legitimate reasons.

F. To maintain efficiency of County government operations entrusted to it.

G. To introduce new or improved methods or facilities.

H. To change existing methods or facilities.

I. To determine the kinds and amounts of services to be performed as pertains to County operations and the number of positions and kinds of classifications to perform such services.

J. To contract out for goods and services, except that such actions shall not result in the lay-off of employees in the bargaining unit.

K. To determine the methods, means and personnel by which such operations are to be conducted.

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#### **ARTICLE 5 - GRIEVANCE PROCEDURE**

**SECTION 1.** A grievance is defined as any difference or dispute regarding the interpretation, application or enforcement of the terms of this agreement. The grievance procedure shall not be used to change existing wage schedules, hours of work, conditions and fringe benefits.

...

**SECTION 3.** Any grievance shall be considered settled at the completion of any step in the procedure, if all parties concerned are mutually satisfied. Dissatisfaction is implied in recourse from one step to the next.

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**ARTICLE 8 - JOB POSTING**

**SECTION 1.** When it becomes necessary to fill vacancies or new positions within the bargaining unit, the Employer will post such vacancies or new positions for five (5) working days, during which time interested employees may apply by signing the posting. Job postings shall state the job to be filled, qualifications for the job and the rate of pay. Posted positions shall be awarded as promptly as possible following a posting to be (sic) qualified applicant. Seniority and qualifications will be considered. When the qualifications of two or more bargaining unit employees are relatively equal, seniority shall be the determining factor. Regular employee applicants within the bargaining unit shall be considered first in filling vacancies for new positions. . .

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EXHIBIT A

CLASSIFICATIONS

<b><u>GRADE</u></b>	<b><u>POSITION TITLES</u></b>
1	Maintenance Worker I
2	Account Clerk I
	Secretary I
	Maintenance Leadworker
3	Account Clerk II
	...
	Administrative Assistant I
	...
4	Administrative Assistant II

...

Exhibit A  
January 1, 1996

Grade	Start	6 mos.	1 year	2 years	3 years	4 years
...						
3						
A	19485	20449	21244	21973	22811	23716
M	1624	1704	1770	1831	1901	1976
H	9.3677	9.8315	10.2134	10.5635	10.9666	11.4016
4						
A	19993	20957	21730	22590	23407	24355
M	1666	1746	1811	1882	1951	2030
H	9.6118	10.0755	10.4468	10.8605	11.2531	11.7092

...

**BACKGROUND**

As part of its responsibilities, the County maintains and operates a Veterans Service Office. For the past seven years, Jerry Parr has been the Veterans Service Officer for the County and up until her retirement on April 30, 1997, Shirley Sahr had held the position of Veterans Program Administrator in that office. At the time of her retirement, Sahr had worked in the County's Veterans Service Office for 31 years. Sahr began as a Typist I in June of 1966 and was reclassified to a Secretary I in 1976. In 1980 the Union became the exclusive collective bargaining representative of the County's Courthouse employes, including Sahr's position. In 1981, Sahr was reclassified to Administrative Assistant I, pay grade 3, and in July of 1991 was reclassified to Administrative Assistant II, pay grade 4. Sahr was the only unit employe in pay grade 4.

After Sahr notified the County of her intent to retire, the County on March 5, 1997, posted the upcoming vacancy as follows:

**JOB POSTING**

Courthouse Union Employees interested in the following position are to sign the posting below before Wednesday, March 12, 1997 at 10:00 a.m.

Administrative Assistant I (Veterans Service Assistant)\*\*

Grade 3

Wage Scale: \$9.3677 - \$11.4016/Hour (1996 RATE)

\*\*NOTE: By job description an employee currently in the position of Veterans Service Assistant may be reclassified into Grade 4, Administrative Assistant II, once sufficient experience and/or training has been acquired to perform the required specialized duties and to independently administer all comprehensive programs, referrals, and operations of the Veterans Service Office.

**SEE ATTACHED JOB DESCRIPTION FOR MORE DETAILS AND QUALIFICATIONS.**

...

The job description attached to the posting was for the position of Veterans Service Assistant, which is classified as an Administrative Assistant I, pay grade 3.

Also on March 5, the Union filed the instant class action grievance asserting that the vacancy should be posted as an Administrative Assistant II, pay grade 4.

The County ultimately filled the vacancy, selecting the most senior applicant on the March 5th posting, Kenlynn Fetting.

The parties were unable to resolve their dispute and proceeded to arbitrate the grievance before the undersigned.

**POSITIONS OF THE PARTIES**

**Union**

The Union takes the position that the vacancy in the Veterans Service Office was improperly posted as an Administrative Assistant I, rather than as an Administrative Assistant II position. It first asserts that the uncontradicted testimony of the Union's president was that the

Jackson County Personnel Committee had taken the position in the past that job classifications were to be based on the position, not the person. In this case, the Committee has not followed its own guidelines. The existing position in the Veterans Service Office was an Administrative Assistant II position. The Veteran's Service Officer, Parr, is the supervisor of the Veterans Service Office and he testified that he assumed the position would be filled at a pay grade 4 because the duties had not changed. Parr testified that the current employe in the position, Fetting, was performing all of the duties performed by Sahr, plus additional duties because of the implementation of computer online correspondence with the State Veterans Office. Although Parr testified that when Fetting first came into the office, she could not perform all of the duties that Sahr had because she was not familiar with the forms, office protocol, etc., he also testified that when he first started in the office, as a professional, he also was not familiar with these procedures and was trained by Sahr. Parr testified that Fetting was doing a very good job, and had already completed some claims and done mortgages within two weeks of taking the position. Further, Fetting had been in the office for only three weeks when Parr took three days off and left her in charge of the office. Finally, Parr testified that Fetting was expected to perform all of the duties cited in the Administrative Assistant II job description.

The Union claims there are several violations of the collective bargaining agreement. First, management has acted arbitrarily, capriciously and unreasonably in the exercise of its management rights under Article 3. Second, the County did not post the accurate job, qualifications and rate of pay pursuant to the job posting provisions of Article 8. Finally, the County has assigned the wrong classification and pay grade in violation of the wage schedule.

As asserted previously, the County's Personnel Committee has taken the position that it classifies a position and not a person; however in this case, the duties of the position have not changed, but the County posted a lower classification because the person was not familiar with the office procedures. When the County's Corporation Counsel/Personnel Director, Moeller, was asked on cross-examination if the positions of Administrative Assistant I and II were not based on job duties, then how was the determination to be made, Moeller testified that they were "advancement" positions, i.e. an employe would start as an Administrative Assistant I and then at some point progress to the II position. Moeller testified, however, that if an employe had already achieved the position of Administrative Assistant II in one office, and then posted for another Administrative Assistant II position in a different office, the employe would have to begin as an Administrative Assistant I because he/she was not familiar with the new office. That is inconsistent with it being an "advancement" position. Moeller also testified that there were no criteria established for achieving advancement from an Administrative Assistant I to an Administrative Assistant II, and that an employe would have to apply for reclassification pursuant to County policy. Under County policy, an employe applies for advancement, but since the Personnel Committee bases its reclassifications on the position rather than the person, the employe cannot claim that she is entitled to advancement in light of the additional duties, because the duties were never decreased in the position in the first place. Thus, the County's

actions were clearly arbitrary, capricious and unreasonable. Moeller testified that neither he nor the Personnel Committee assign duties to the position in question, while Parr testified that he does assign the duties and that the duties assigned are the same, or more, than the duties assigned to the previous incumbent. Thus, it is a violation of the Agreement to downgrade the position.

Lastly, the Union asserts that the County's exhibits showing Courthouse employees who were reclassified in the past and the uncompleted education experience forms are irrelevant, and that the exhibit listing Human Service employees who are in a separate bargaining unit and covered by a separate agreement, is also irrelevant.

The Union requests that the grievance be sustained and the County ordered to classify the position as an Administrative Assistant II with a make-whole remedy for Fetting.

### County

The County first asserts that its decision to post an Administrative Assistant I position is within its expressly reserved and inherent management rights, citing Article 3 of the parties' Agreement. In the absence of a contract provision limiting management's rights with regard to filling vacancies, it is management's right to determine whether vacancies exist and whether and when they shall be filled. Elkouri and Elkouri, How Arbitration Works, Fifth Edition, page 723. The County also cites a number of arbitration awards in that same regard. In this case, the County had the express authority to select from at least three options when Sahr retired: (1) not fill the position; (2) post an Administrative Assistant II position; or (3) post a different position. The County chose the third option and posted a Veterans Service Assistant position, classified as an Administrative Assistant I, pay grade 3.

The County next asserts that its decision to post the Veterans Service Assistant position was not arbitrary, capricious or made in bad faith. Management has the sole discretion with respect to the exercise of its management rights, unless its action was arbitrary, capricious or taken in bad faith. Elkouri and Elkouri, at page 660. The Veterans Service Office position is unique in this bargaining unit in that there is a built-in progression. Moeller testified that the job description for the Veterans Service Assistant has existed since approximately 1986. The job description indicates that a person hired for the position may be classified as a Secretary (grade 2) until sufficient knowledge of Veterans programs and services are gained. He further testified that the job description for the Veteran Program Administrator (Grade 4) was developed in 1991 when Sahr was promoted to that position. It is significant that the job description contains a note referencing the opportunity to be reclassified from Veterans Service Assistant to Veterans Program Administrator once "sufficient experience and/or training has been acquired to perform the required specialized duties and to independently administer all comprehensive programs, referrals and operations of the Veterans' Service Office" (emphasis added). Thus



there is a progression from Secretary (Grade 2) to Veterans Service Assistant (Grade 3) to Veterans Program Administrator (Grade 4).

A key requirement for the attainment of the grade 4 position is the demonstrated ability to perform all duties independent of direct supervision. Absent hiring someone from the outside who previously worked in a similar position, it is illogical to believe a person could walk into the position and perform the level of responsibilities required of the Veterans Program Administrator position. Moeller testified that the Union president had admitted to him that the Union knew only Sahr was qualified for the Veterans Program Administrator position. While it was apparent that Parr was trying to help make the case for promotion of an employe in his department, it was also apparent that his testimony was not credible. Although he wanted to give the impression the new employe was functioning at the grade 4 level, his own admissions undercut his testimony on that point. Parr conceded that he had asked Sahr questions and that Sahr had trained him, while in this case, Parr is the trainer of Sahr's replacement. It is clearly unrealistic to believe that Fetting was able to perform the duties of the grade 4 position. Fetting does not possess the qualifications or have the training and experience of a grade 4 position, not the least of which are "extensive direct experience with Veterans programs and claim development sufficient for unsupervised performance; sufficient experience and mortgage lending procedures for independent performance of required duties. . ." There is no way that Fetting could administer the programs and services which occur in the Veteran's Service Office on a recurring basis without assistance and direct supervision.

Even if Fetting could instantly perform all of those duties, the County was still not obligated to post the position at grade 4. Moeller testified regarding the County's rationale for posting it at the grade 3 level. The Personnel Committee reviewed the job descriptions for the grade 3 and grade 4 positions and decided not to change anything in them, however, the Committee also realized that no internal candidate could meet the requirement of a grade 4 position. Because the Committee wanted to fill the vacancy from within, the Committee decided to post it as a grade 3 position. While posting it as a grade 2 position was discussed, the Committee ruled that out because they wanted to maintain good relations with the Union. Further, posting it at grade 2 would have meant a demotion for at least two of the employes who posted for the position. Since Sahr had only been the only grade 4 employe in the unit, the grade 3 position would be a lateral move or a promotion for the employes posting for the position. The County cites an arbitration award as holding that a job classification may be reduced, depleted, or remain inactive through attrition so long as it is done for legitimate reasons and in accord with management's authority under its management's rights clause. AKRON GENERAL MEDICAL CENTER, 94 LA 1183 (1990, Dworkin). There is no evidence of ulterior motive on the County's part in its decision to post this position at grade 3, and the decision was not arbitrary, capricious or made in bad faith.

Lastly, the County asserts that there has been no violation of any provisions of the parties' Agreement. Section 1 of Article 5 of the Agreement defines a grievance as "any difference or dispute regarding the interpretation, application or enforcement of the terms of this Agreement." The written grievance does not cite any provision which has allegedly been violated. Instead, the Union seeks to compel the County to post a Grade 4 position. Step 3 of the parties' grievance procedure provides that "the Award of the Arbitrator shall not modify, add to or delete from the express terms of the contract." The remedy sought by the Union would require the Arbitrator to delete provisions from the management rights provision and add a provision requiring that all vacancies be filled and prescribing the job classifications or positions to be posted. Both actions are beyond the scope of the Arbitrator's authority. The Union has no contractual right to have a vacancy filled at all, much less the right to demand that it be filled as a grade 4 position. Although this bargaining unit has not experienced many job postings due to low turnover, the County's Human Services Department has experienced more turnover, and on several occasions the County has posted positions in lower classifications when filling vacancies. While those employees are in a different bargaining unit, the County believes that a fundamental management right is consistent between the two groups. If the Union and Parr believe that Fetting is performing at the level required of a grade 4 Veteran Program Administrator position, and meets the criteria set forth in the job description for that position, they can seek to have her reclassified pursuant to the County's reclassification policy, just as Sahr obtained that classification. The County requests that the grievance be dismissed in its entirety.

### **DISCUSSION**

Article 3 - Management Rights, of the parties' Agreement provides, in relevant part:

#### **ARTICLE 3 - MANAGEMENT RIGHTS**

**SECTION 1.** The County possesses the sole right to operate County government and all management rights repose in it, but such rights must be exercised consistently with the provisions of this contract. These rights, which are normally exercised by the Employer, include, but are not limited to, the following:

A. To direct all operations of County government.

...

I. To determine the kinds and amounts of services to be performed as pertains to County operations and the number of positions and kinds of classifications to perform such services.

...

K. To determine the methods, means and personnel by which such operations are to be conducted.

...

Those rights under Article 3 authorized the County to determine the level of the position when it posted the vacancy in the Veterans Service Office and to post it as an Administrative Assistant I position, so long as it did not do so in an arbitrary or capricious manner, or in bad faith. The Union asserts the duties of the position have remained the same as when Sahr performed them as an Administrative Assistant II and that Fetting is expected by Parr to perform all of the duties listed on the job description for the Administrative Assistant II position, plus the additional duties related to the computer on-line correspondence with the State Veteran's Office, and that therefore the County abused its managements rights in posting the job at the lower level. If the individual is expected to perform all of the duties at the same level of responsibility as they were performed by Sahr, the Union is correct. The evidence in that regard, however, does not support the Union's assertions.

Notwithstanding Parr's testimony regarding Fetting's ability to learn her job quickly, he also testified as to the level at which Sahr had performed such duties. Parr testified that Sahr performed her duties independently due to her experience and led the mortgage lending on her own. It was presumably Sahr's ability to perform those duties independently that justified reclassifying her position to Administrative Assistant II, grade 4. Parr further testified that while he felt he could take three days of vacation after Fetting had been in the position for three weeks, there were some things that she could not handle, and for which she had to wait for him to return, and that such had not been the case with Sahr. There is no evidence that Fetting has primary responsibility for the veteran mortgage and consumer loan programs. While Fetting apparently performs many of the same duties Sahr had performed, given her lack of experience in the office, it is clear that she does not perform them at the same level of responsibility and with the same degree of independence.

The experience with veterans' programs and the ability to perform certain duties independently are the primary distinctions between the job descriptions of the Veteran Program Administrator - Administrative Assistant II position and the Veterans Service Assistant - Administrative Assistant I position:

### VETERAN PROGRAM ADMINISTRATOR

#### GENERAL STATEMENT OF DUTIES:

The Veteran Program Administrator provides primary administration of veteran mortgage and consumer loan programs in the Veterans Service Office. The Administrator performs loan analysis, title abstract development, loan closing, and loan recording duties. These duties are primary, non-supervised, and consultative to the Veterans Service Officer.

The Veteran Program Administrator provides independent (sic) non-supervised fiscal analysis and development of personal financial status now required for all non-service connected requests for VA medical treatment, all applications for emergency grants, VA beneficiary travel reimbursement, and all traditional needs-based programs of the Veterans Administration and related agencies.

...

### VETERAN'S SERVICE ASSISTANT

#### GENERAL STATEMENT OF DUTIES:

Provides administrative and clerical assistance to the Veteran's Service Officer. This is a paraprofessional position assisting the Veteran's Service Office in counseling veterans and their dependents regarding services and benefits and in performing related administrative and clerical procedures. Directed supervision is provided by the Veteran's Service Officer, but the employee is expected to exercise independent judgement and initiative.

It is concluded that the primary duties of the position posted by the County are the duties being performed by Fetting and that she is not performing as an Administrative Assistant II, i.e., as the primary administrator of veteran mortgage and consumer loan programs or otherwise performing duties at a sufficient degree of independence.

The Union also asserts that the County has not adequately explained how one progresses to the Administrative Assistant II level. It appears from the job descriptions that once an individual has attained the necessary experience, skills and familiarity with the various procedures and programs the Veterans Service Office administers to meet those requirements, that individual would be eligible for reclassification to the Administrative Assistant II position.

For the foregoing reasons, it is concluded that the County acted within its rights under Article 3 of the parties' Agreement in posting and filling the vacancy in the Veterans Service Office as an Administrative Assistant I position, pay grade 3, and therefore did not violate the Agreement.

Based upon the above and foregoing, the evidence and the arguments of the parties, the undersigned makes and issues the following

**AWARD**

The grievance is denied.

Dated at Madison, Wisconsin this 11th day of March, 1998.

David E. Shaw /s/  
Arbitrator

David E. Shaw,

