

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**NEW BERLIN PUBLIC EMPLOYEES UNION, LOCAL 2676, AFSCME, AFL-CIO**

and

**CITY OF NEW BERLIN**

Case 93  
No. 55825  
MA-10102

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Appearances:

**Mr. Sam Froiland**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.

Davis & Kuelthau, S.C., by **Attorney Roger E. Walsh**, appearing on behalf of the City.

**ARBITRATION AWARD**

New Berlin Public Employees Union, Local 2676, AFSCME, AFL-CIO, hereinafter referred to as the Union, and the City of New Berlin, hereinafter referred to as the City, are parties to a collective bargaining agreement which provides for the final and binding arbitration of disputes arising thereunder. The parties mutually agreed to the undersigned to act as the sole arbitrator to hear and decide a grievance over a reclassification request. Hearing was held in New Berlin, Wisconsin, on January 15, 1998. The hearing was not transcribed and the parties filed briefs and reply briefs, the last of which were exchanged on March 24, 1998.

**BACKGROUND**

The grievant is employed as a Clerk Typist in the City's Planning Department. She began as a part-time employe in 1986, and worked part time as a Clerical Assistant until December, 1992, when she became a full-time Clerk Typist. The Department has one full-time and two part-time Clerk Typists. Prior to 1997, the two part-timers were classified as Clerical Assistants until the positions were reclassified in 1997 on the basis they were performing the same function as the full-time Clerk Typist. On April 15, 1996, the grievant

submitted a reclassification request to her supervisor, Steven Hoes, the Director of Planning and Community Development. In August, 1996, the grievant, at the City's request filled out a position questionnaire. The City did not reclassify the grievant and on August 11, 1997, the grievant filed a grievance seeking a reclassification to Grade 7A. The grievance was denied and appealed to the instant arbitration.

### ISSUE

The parties stipulated to the following:

Did the City violate the collective bargaining agreement when it refused to reclassify the grievant?

If so, what is the appropriate remedy?

### PERTINENT CONTRACTUAL PROVISIONS

#### ARTICLE II - MANAGEMENT RIGHTS

2.01 - Rights Except as hereinafter provided, the management of the work and the direction of the working forces, including the right to hire, promote and to lay off employees, to discipline or discharge employees for just cause (except as provided in Section 5.01), to terminate employment because of lack of work or because a service is being discontinued, to transfer and realign work to different employees (subject to the right of the Union to grieve situations where an employee's work load or work content has been increased or made more difficult, for a determination of whether the prevailing compensation requires modification), to delegate the work to others (so long as such delegation does not result in an employee being laid off or suffering a reduction of hours of work), to adopt different methods of doing the work and install new machines and devices, are vested in the Employer, provided, however, that these rights shall be exercised with due regard for the rights of the employees, and provided further that these rights shall not be used for the purpose of discrimination against any employee, or for the purpose of invalidating any contract provisions.

. . .

2.03 - Employer Action If any action taken by the Employer in the exercise of its rights is determined not to be justified, any employee involved shall be reimbursed for all wages and benefits of which he/she was deprived by reason of the action by the Employer.

. . .

ARTICLE VI - PROMOTIONS, TRANSFERS AND NEW POSITIONS

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6.07 - Rate for New or Changed Positions When a new position is created or the duties or responsibilities of an existing position are changed significantly, the Employer shall prepare a job description and establish the appropriate wage or salary. If the Union disagrees with the wage or salary rate so established, it may make a grievance as to the rate and such grievance shall be handled in accordance with Article IV herein.

...

UNION'S POSITION

The Union points out that the grievant's supervisor, Steven Hoese, testified that the following items in her April 15, 1996 reclassification request were in error:

- Oversees all Planning Office clerical activities and is responsible for the function of clerical personnel.
- Assists in interviewing and hiring clerical staff.
- Oversees project tracking list for the Director of Planning & Community Development.
- Creates and distributes agendas for various boards and commissions.
- Schedules all appointments for Director of Planning & Community Development and all other staff members.
- Keeps track of bills and invoices for the department.
- Routes and files applications for Plan Commission Meetings.

It also notes that the City admitted that there is no procedure in place for notifying the Union regarding changes in job descriptions or duties when they occur. It observes that the grievant was not provided with an updated job description which it contends is very troubling in light of Arbitrator Yaeger's Award in CITY OF NEW BERLIN (1/96) (Ex. 10). It submits that the City provided an updated position description for the grievant's position at the hearing and a comparison of it with the reclassification request calls into question the credibility of Hoese's testimony because the City's own job description provides the following:

- Oversees all Planning Office clerical activities.
- Schedules all appointments for director of planning & community development and other staff members.
- Keeps track of bills and invoices for department.
- Routes and files applications for plan commission meetings.

It further states that the City admitted that while the grievant is not solely responsible, she does “create and distribute agendas for various boards and commissions.” The Union states that the grievant had a role in interviewing and hiring one of the part-time Clerk Typists in the Department in April, 1996. It concludes that the grievant’s April 15, 1996 position description is, for the most part, accurate. It argues that a review of the grievant’s new position description demonstrates that she performs work that requires a higher level of responsibility and are tasks of an administrative rather than of a clerical nature. It observes that as the part-time Clerk Typists are in the same pay range, it does not make sense that the grievant with a higher level of responsibility would continue in this same range. Further, none of the other Clerk Typists employed by the City, according to the Union, have the same combination of higher level job requirements as the grievant. The Union asserts that based on a review of other positions with similar responsibilities, the grievant should be reclassified to Range 7A. The Union submits that although the facts are different, Arbitrator Yaeger’s rationale points to a very similar scenario to the instant grievance. The Union alleges that it has presented clear and compelling evidence of significant changes in the grievant’s duties and responsibilities and she should be reclassified to Range 7A effective as of the date of her request for reclassification and she should be made whole.

#### CITY’S POSITION

The City contends that the Union is proposing a revision in the terms of the collective bargaining agreement by requesting that the wage rate for the grievant’s position be increased four pay ranges. It argues that the Union must substantiate this revision by clear and convincing evidence. The City takes the position that the current job functions of the Clerk Typist position held by the grievant have not changed since at least 1980, so the contract provisions relied on by the Union are inapplicable. It points out that the contract requires a significant change in the duties or responsibilities of the position before a grievance may be filed over the appropriateness of the wage rate for the position. The City also claims that these changes must take place after negotiations of the current contract have been completed because if changes occurred before, then the proper place to take up the appropriate wage rate is at the bargaining table, citing DODGE COUNTY, CASE 194, No. 52423, MA-8963

(BUFFETT). The City maintains that there was no significant change in job duties or responsibilities of the grievant's position since at least 1980, except a one-time function of assisting the Director in interviewing and hiring clerical staff. It insists that the Union has not met its burden of proof.

The City contends that the Clerk Typist position held by the grievant is properly placed in Pay Range 5. It observes that the City has five other Clerk Typist positions besides those in the Planning Department and the testimony indicated that these employees perform basically the same type of tasks as the grievant. It submits that as all Clerk Typist positions, including the grievant's, are essentially the same and they are paid the same, there is no justification for the Union's request for a four Pay Range increase for the grievant. The City disputes the Union's claim that the grievant's position has the same job duties and responsibilities as the Secretary in the Department of Public Works (DPW). It submits that the Secretary in DPW has considerable oversight responsibility over the clerical functions in DPW and its five divisions and has direct supervisory responsibility for the full-time Clerk Typist in the Engineering Division and over part-time floater positions in the Department. It notes that she assigns them work, determines when temporary employees were needed and would participate in the interview process and give her input into who should be hired. It points out that she has disciplined a floater and terminated a temporary floater, she has input in changes to office policies and sets the agenda for meetings of the Department clerical staff. Additionally, the City states that she has input into the budget for office supplies, deals directly with vendors, as well as accounting for expenditures and remaining within the budget. It concludes that the Secretary of DPW has different and more responsible duties than the grievant and the Union failed to prove a basis to reclass the grievant to the same Pay Range 7A.

The City requests that the grievance be denied and the proceedings be dismissed.

### UNION'S REPLY

The Union contends that the City's argument that reclassification grievances cannot be pursued for positions which experienced changes before the existing agreement must fail. It asserts that such a requirement would limit Section 6.07 in a fashion never intended by the parties, would preclude the ability to remedy changes in duties that occurred over time and does not account for the instances where the Union is not informed nor become aware of individuals taking on additional responsibilities. It submits that where the City does not update job descriptions, it would have individual waive rights on behalf of the Union.

The Union argues that the City seeks to completely disregard its contractual obligations to prepare a new job description for the grievant and that failure to act cannot be brushed aside. It submits that the City has had very clear notice of the duties to update the job description and it must be determined if the City failed to meet its responsibilities under the agreement.

The Union claims that it has demonstrated that the grievant is performing work which requires more skills and responsibilities than Range 5 as the position now is less clerical and more administrative. It insists the evidence establishes that her position is most similar to the Secretary of DPW in Range 7A and it requests the grievant be reclassified retroactive to February, 1996, and be made whole for the City's failure to reclassify her.

### CITY'S REPLY

The City contends that Arbitrator Yaeger's Award does not support the Union. It asserts that the Union's claim that Yaeger's Award requires the City to provide the Union with an updated job description is an incorrect reading of it. It submits that Yaeger's comments relate to the rejection of the City's procedural arguments that the grievance was untimely or barred on the theory of laches. The City points out that it is not making these same arguments here; rather, it is simply asserting that the condition precedent for a grievance under Section 6.07, i.e. significant change in job duties since the current agreement was agreed to, has not occurred but the job duties have stayed the same since at least 1980. The City avers that nothing in the Yaeger Award changes the standard in Section 6.07 that there be duties or responsibilities that changed significantly before the City is required to prepare the job description.

The City observes that the facts in the Yaeger Award are entirely different from the instant case. According to the City, the grievant in the Yaeger case assumed several of her supervisor's duties when he left the City as well as those of another employe who quit and was not replaced. The grievant's Department Head supported a regrade, an outside consultant included the duties in a new job description and the Union made a proposal in negotiations to upgrade her position which was later withdrawn and the grievance was filed over the City's refusal to upgrade the position.

It submits that in the instant case, the grievant's duties have not changed and no bargaining proposal to upgrade her position has been made in the last five rounds of negotiations, so the Union must have agreed to its placement in Range 5.

The City maintains that there is no provision in the contract which requires that it give the Union a copy of any revised job descriptions. The City lists a number of provisions which require the City to provide documentation to the Union, but none on new job descriptions.

The City claims that inaccuracies in the grievant's April, 1996 list of job duties clearly undermines the Union's contention that an upgrade is justified. It maintains that the grievant is not responsible for the function of clerical personnel and although she distributes work to them, the actual assignments come from someone else. It points out that the others distribute work to the grievant and furthermore, there is not a lot of clerical work distribution activity as specific functions occupy 70 - 80 percent of the part-time employes' work time. It asserts that

all employes schedule the Director's appointments and the Director had input from both clerical employes when a new clerical employe was hired. The City denies that the grievant created a RFP or prepared the Department's Policy Manual as her role was simply to type up documents including letters and reports. The City maintains that the grievant's position is clerical and not administrative and there is no difference between her duties and the part-timers' duties except she works more hours. It observes that the grievant envisions and imagines her position is of higher stature than it is in reality, but the reality is that there is no support for any upgrade.

The City denies the grievance has any merit and if it did, the only remedy would be limited to retroactivity to 30 days prior to the filing of the grievance. The City concludes that the Union failed to prove by clear and convincing evidence that the grievant was entitled to a four range upgrade. It insists there has been no significant change in the grievant's job duties since 1980, and her duties are similar to other Clerk Typist positions in the City. It submits there are significant differences in the job duties of the Secretary of DPW and the grievant's and nothing in the prior Yaeger Award is inconsistent with dismissal of the grievance here.

It requests that the grievance be denied and the case dismissed.

### DISCUSSION

Section 6.07 of the parties' collective bargaining agreement provides, in part, that when the duties or responsibilities of an existing position are changed significantly, the City shall prepare a job description and establish the appropriate wage or salary. The dispute in this case is whether the duties or responsibilities of the grievant's position have changed significantly. The City has argued that the significant change has to occur since the last contract was negotiated. The undersigned is not persuaded that such a requirement is required by the contract. The Union's arguments that an individual employe who assumes greater duties or responsibilities may not make that fact known to the Union and gradual changes in job duties are more persuasive arguments than the City's. It would appear that an employe who clearly is assigned greater duties and responsibilities and is not reclassified through the negotiation process should not be forever precluded from grieving the proper classification for the position.

The ultimate question is whether the duties and responsibilities of the grievant's position have changed significantly. The grievant in the April 15, 1996 request states that the position oversees all Planning Office clerical activities and is responsible for the function of the clerical personnel (Ex. 5). In the Position Questionnaire, the grievant has an organization chart showing she is directly over the Clerical Assistants and indirectly over the Graphics Coordinator (Ex. 6). The agency's organization chart dated June, 1996, shows that the grievant has no responsibility over the Clerical Assistants and the Graphics Technician reports

to the Associate Planner (Ex. 17). The grievant's supervisor testified that the grievant has no supervisory responsibilities over the part-time Clerk Typists. The undersigned finds that the grievant has exaggerated her responsibilities with respect to the other clericals.

The grievant testified that she performed certain duties as needed or only once in the case of assists in interviewing and hiring clerical staff. The grievant pointed to no new duty or responsibility that significantly changed her job duties or responsibilities. She claims that her position is more administrative than clerical but failed to show how it is more administrative. A review of the record shows that the grievant's duties are clerical. The undersigned credits Steve Hoeser's testimony that except for the introduction of electronics, the job performed by the grievant has not changed. A review of the grievant's duties with those of other Clerk Typist positions shows no distinctions such that the grievant's position stands out as different in duties and responsibilities (Exs. 18-21). In short, the evidence fails to establish a significant change in the grievant's duties or responsibilities to trigger the requirements of Section 6.07 of the contract.

It should be noted in the decision by Arbitrator Yaeger in a prior dispute between the parties the evidence established that the Water Utility Clerk's duties had changed, her reclassification was supported by the former Utility Superintendent, an outside consulting firm prepared a new job description for the position and reclassification of this position was taken up in negotiations (Ex. 10). None of these factors are present in the instant case. The evidence simply failed to demonstrate the duties and responsibilities changed significantly. Therefore, the City did not have a contractual obligation to prepare a job description and establish the appropriate wage.

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

### AWARD

The City did not violate the collective bargaining agreement when it refused to reclassify the grievant and the grievance is denied.

Dated at Madison, Wisconsin, this 28<sup>th</sup> day of May, 1998.

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