

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**OSHKOSH CITY EMPLOYEE UNION
LOCAL 796, AFSCME, AFL-CIO**

and

CITY OF OSHKOSH

Case 290
No. 56490
MA-10306

Appearances:

Mr. Richard C. Badger, Staff Representative, on behalf of the Union.

Mr. Norbert Svatos, Director of Administrative Services, on behalf of the City.

ARBITRATION AWARD

The above-captioned parties, herein "Union" and "City", are privy to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in Oshkosh, Wisconsin, on March 23, 1998. The hearing was not transcribed. Pursuant to the parties' request, I there issued a "bench decision", which this Award augments.

Barbara Ziegenhagen for several years has served as the City's only full-time Court Liaison Clerk, during which time she worked from 7:00 a.m. – 3:00 p.m. In January, 1998, the City reassigned her to a 3:00 a.m. – 12:00 p.m. shift, Monday-Friday, during which time she works as a Dispatcher and performs her other clerical duties. In her new shift, Ziegenhagen works at the Dispatcher's desk from 3:00 a.m. to 7:00 a.m., Monday through Friday. From 7:00 a.m. to 12:00 p.m. she works on her other clerical duties. This change, fully supported by Ziegenhagen, allows her to much easier access a computer between 3:00 a.m. and 7:00 a.m. and thus greatly facilitates the performance of her clerical duties.

As I related at the hearing, the City has the inherent right to create new positions which in essence is what it did here. The contract also allows the City to change an

employees' shift with proper notice. As a result, the City did not violate the contract when it reconfigured Ziegenhagen's job so that she now performs the combined duties of a Dispatcher and a Court Liaison Clerk.

But, since this constitutes a new job, it should have been posted under Article XVII of the contract so that all other bargaining unit personnel could have bid for it. The Union rightfully points out in this connection that it has an institutional interest in protecting the integrity of the contract lest the City otherwise creates new jobs and awards them without proper posting. That is why the Union has the right to bargain over the wage rate to be paid for said position.

The record further reveals, however, that no other bargaining unit members are fully qualified for the new position. As a result, Ziegenhagen is the only bargaining unit member who is qualified for said position. She therefore should not be dislodged from this position solely because the City erred in not posting it.

In reaching this decision, I want to point out that this Award is non-precedential and that nothing herein should be relied upon by either party in any other dispute.

Dated at the City of Madison, Wisconsin this 9th day of June, 1998.

Amedeo Greco /s/

Amedeo Greco, Arbitrator

