

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**LINCOLN COUNTY COURTHOUSE
EMPLOYEES, LOCAL 332-A, AFSCME, AFL-CIO**

and

LINCOLN COUNTY

Case 171
No. 55948
MA-10123

Appearances:

Mr. Phil Salamone, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, on behalf of Local 332-A, AFSCME, AFL-CIO.

Mr. John Mulder, Administrative Coordinator, on behalf of Lincoln County.

ARBITRATION AWARD

On December 4, 1997, Lincoln County Courthouse Employees, Local 332-A, 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 Lincoln 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 February 18, 1998 in Merrill, Wisconsin. There was no stenographic transcript made of the hearing and the post-hearing briefing schedule was completed by April 19, 1998. Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following Award.

ISSUES

The parties stipulated that there are no procedural issues and to the following statement of the substantive issue:

Did the Employer violate the Collective Bargaining Agreement by making the reclassification of the Grievant effective July 1, 1998, rather than the first pay period after the October 7, 1997 action of the Personnel Committee? If so, what is the appropriate remedy?

CONTRACT PROVISIONS

The following provisions of the parties' Agreement are cited, in relevant part:

ARTICLE 2 - MANAGEMENT RIGHTS

2.01 The County possesses the sole right to operate County government and all management rights repose in it, subject only to the provisions of this Agreement and applicable law. These rights include, but are not limited to the following:

A. To direct all operations of the County;

...

J. To manage and direct the working force, to make assignments of jobs, to determine the size and composition of the work force, and to determine the work to be performed by employees;

...

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

Any unreasonable exercise or application of the above mentioned management rights, which are mandatorily bargainable shall be appealable through the grievance and arbitration procedure; however, the pendency of any grievance or arbitration shall not restrict the right of the County to continue to exercise these management rights until the issue is resolved.

...

ARTICLE 5 – GRIEVANCE PROCEDURE

...

5.02 Arbitration:

...

6. Decision of the Arbitrator: The decision of the arbitrator shall be limited to the subject matter of the grievance and shall be restricted solely to the interpretation of the contract in the area where the alleged breach occurred. The arbitrator shall not modify, add to, or delete from the terms of the Agreement.

5.03 General Provisions:

2. Adjustments from Grievance Conferences: Any adjustments resulting from the grievance conferences under this provision shall not be inconsistent with the terms of this Agreement.

...

ARTICLE 12 – RECLASSIFICATION

12.01 An employee seeking a reclassification shall present such request in writing to the department head. The department head shall notify the employee in writing of his/her recommendation within ten (10) working days. This recommendation shall be forwarded to the Personnel Committee for consideration at the next regularly scheduled meeting.

A union employee who is reclassified shall be paid at the pay rate in the new pay grade to which the position is reclassified consistent with the employee's length of service with the County.

The effective date of the reclassification shall be the first day of the first pay period following approval.

BACKGROUND

The Grievant has been employed by the County since November of 1992. In January of 1997, the Grievant held the position of Finance Clerk in the County's Finance Office. In April of 1997, the position of Clerical Assistant in the Clerk of Courts Office was posted. Although it was a lower-paying position, the Grievant posted for the Clerical Assistant position. The Grievant testified that she did so because she felt the position had fewer responsibilities and would be less stressful.

The Clerical Assistant position was awarded to the Grievant and she started in the position in May of 1997. At the time, the Clerk of Courts Office had eight positions under the Clerk of Courts, Cindy Kimmons: Deputy Clerk of Court, Accountant/Bookkeeper, Legal Secretary (Criminal Clerk), Small Claims Clerk, Fiscal Clerks (2), and Clerical Assistants (2). Part of the Grievant's duties as a Clerical Assistant was to serve as a backup for the Criminal Clerk. The Grievant testified she felt that the duties and responsibilities were such that a reclassification was merited and on June 23, 1997, requested that her position be reclassified to Legal Secretary. The Clerk of Courts supported a reclassification of the Grievant's position to Fiscal Clerk, but not to Legal Secretary. The Grievant renewed her request to be reclassified to Legal Secretary by a letter in early August of 1997 to the County's Personnel Committee. Her request was denied and a grievance was thereafter filed. The Grievant subsequently revised her request to request reclassification to Fiscal Clerk, which was supported by the Clerk of Courts. The other Clerical Assistant in the Clerk of Courts office, Dawn Dunbar, also requested that she be reclassified to Fiscal Clerk.

At its October 7, 1997 meeting, the Personnel Committee took up the matter of reclassification requests in closed session, including the Grievant's and Dunbar's requests. The Personnel Committee recommended that the requests of the Grievant and Dunbar be granted, but "not to become effective until July 1, 1998, and with the provision that cross-training be completed and verified by the Administrative Coordinator before becoming effective."

On October 21, 1997, the County Board considered and passed Resolution No. 41-97, entitled "APPROVAL OF RECLASSIFICATION OF CERTAIN POSITIONS IN THE COURTHOUSE UNION." In relevant part, Resolution No. 41-97 states:

Current Incumbent:	Dawn Dunbar
Department:	Clerk of Court's Office
Current Position:	Clerical Assistant
New Position:	Fiscal Clerk
Effective Date:	July 1, 1998 – providing that cross-training is completed and verified by the Administrative Coordinator
Annual Fiscal Impact:	\$1,860.00
Current Incumbent:	Laurie Kriewald
Department:	Clerk of Court's Office
Current Position:	Clerical Assistant
New Position:	Fiscal Clerk
Effective Date:	July 1, 1998 – providing that cross-training is completed and verified by the Administrative Coordinator
Annual Fiscal Impact:	\$1,860.00

The Grievant grieved the effective date of her reclassification.

On November 7, 1997, the Grievant asked the County's Administrative Coordinator, John Mulder, for a list of the duties besides the Criminal Clerk's, for which she was to be cross-trained before July 1, 1998. As a result of that conversation, the Grievant sent Mulder the following letter of November 18, 1997:

Mr. Mulder:

This letter is in reference to Resolution #41-97 which was passed at the County Board meeting on October 21, 1997. First, I would like to thank you and the Personnel Committee for recognizing the need and appropriateness of the reclassification.

However, I feel there is a bit of confusion on the subject of cross training. I was under the assumption that I was to cross train in the position of Criminal Clerk. Talking to you on November 7, 1997, lead (sic) me to believe I was to learn several different jobs in the Clerk of Courts office. Among which include, Divorce, Paternity, Family and Receipting for Child Support, in addition to Criminal.

Because of this confusion, I am requesting that you clarify the tasks ahead for me. I believe that in all fairness to both sides, you should provide me with a detailed check list of all of the new duties that I am to learn in the next few months. By doing so, this will ascertain there is a good faith attempt on each side to accomplish the cross training.

In addition to the list of cross training, I am requesting you provide me with a formal denial on the grievance brought before the Personnel Committee November 5, 1997.

Thank You,

Laurie Kriewald /s/
Laurie Kriewald

Mulder responded to the Grievant's request with the following memorandum of November 25, 1997:

TO: Laurie Kriewald
FROM: John Mulder, Administrative Coordinator
DATE: November 25, 1997
SUBJECT: Cross training request

Attached per your request is the denial of your grievance by the Personnel Committee. This denial was provided to your Union representative. In regards to your request for a check list for the cross training, I informed you on November 7, 1997 that I was not willing or prepared to provide you with this information at this time. However, I will provide a written plan for cross training prior to Jan 31, 1998. This plan will be detailed enough to demonstrate that you have been cross trained in the appropriate areas by July 1, 1998 if you follow the plan.

At time of hearing, the Grievant had not yet been provided with further details as to the cross-training she was to complete by July 1, 1998.

The parties attempted to resolve their dispute, but were unsuccessful and proceeded to arbitrate the grievance before the undersigned.

POSITIONS OF THE PARTIES

Union

The Union takes the position that the County violated Section 12.01 of the parties' Agreement when it granted the Grievant's reclassification, but made it effective at a date later than the first day of the first pay period following its approval. The Grievant was granted a reclassification and the Agreement clearly and unequivocally spells out the precise timing of the assignment to the new wage of the reclassification. Section 12.01 of the Agreement explicitly states that "The effective date of the reclassification shall be the first day of the first pay period following approval." (Emphasis added). The County granted the reclassification on October 21, 1997, but made it effective July 1 of 1998, rather than the next pay period. The Union asserts that even the Personnel Director acknowledged in his testimony that if the effective date was one day later than the next pay period, he believed the Agreement would be violated.

The testimony clearly established that the Grievant has been regularly performing work that is similar, if not identical, to other employees paid at the Fiscal Clerk wage rate. Thus, even absent the clear and definitive language of Article 12, the County would be in violation of the contractual wage schedule.

There is, however, such clear language in the Agreement and there is no reasonable basis for making the effective date of the reclassification any time other than that expressly required by contract. It is a well-established principle of contract interpretation that clear and unambiguous contract language must be given its full effect according to its terms. The Union cites a Wisconsin Supreme Court decision as holding that an arbitrator is without authority to ignore or amend clear and unambiguous contract language. *MILWAUKEE POLICE ASSOCIATION V. LUND*, 97 Wis.2d 15 (1980). Thus, there can be little question that the Agreement has been violated.

With regard to the appropriate remedy, the Union asserts that the Agreement at Article 5, Section 5.02(6) and Section 5.03(2), requires that any remedy or adjustments must be consistent with the terms of the Agreement. As the subject matter of this grievance is the timing of the reclassification award (the reclassification decision itself, not being in dispute), there is no other reasonable remedy other than directing the County to follow the specific contract language requiring the effective date of the reclassification to be the next pay period.

County

The County takes the position that it did not violate the contract for a number of reasons. First, under Article 2, Management Rights, of the Agreement, the County has the right to “Manage and direct the working force, to make assignments of jobs, to determine the size and composition of the work force, and to determine the work to be performed by employees.” In that regard, the County has established certain positions within the Clerk of Courts Office. Article 12, Reclassification, of the Agreement, provides a way for an employee to obtain a promotion without waiting for an opening and then posting into that position based on the procedures outlined in Article 11 of the Agreement. In effect, in the reclassification process, the County creates a different position specifically for the person making the request. When the County provides a reclassification they are changing the number and types of positions, and the Union tacitly agrees that the person in the position does not have to compete with other employees for the new position. In this case, the County announced that it would eliminate two Clerical Assistant positions in the Clerk of Courts Office and create two additional Fiscal Clerk positions on July 1, 1998, provided the two incumbent Clerical Assistants were cross-trained.

Second, the Grievant is performing the work of a Clerical Assistant consistent with the job posting and job description for that position. Thus, she is not a Fiscal Clerk and should not be reclassified. In that regard, the job posting used to fill the position in May of 1997 was for a Clerical Assistant, and that is the position the Grievant accepted. The posting listed the specific duties of the position, the job title and the wage rate of the position. The job description for the Clerical Assistant position is a general job description for that classification. Examples of work listed in the job description are consistent with the duties listed on the job posting. The job description for the Fiscal Clerk position includes, “Posts vouchers, prepares payroll, keeps track of salary increases, new employees, terminations, prepares vouchers and statements, assists in preparing the annual budget.” None of those duties are included in the posting for the Clerical Assistant position, nor are they in the Grievant’s description of her duties. In her letter to the Clerk of Courts, the Grievant laid out her

justification for her request to reclassification to Legal Secretary; however, the job duties upon which she relies in her letter to justify her request for reclassification are consistent with the duties listed in the job posting. Based upon the job description of the Clerical Assistant position, it is unclear what the Grievant was surprised about regarding the duties of the position. Further, if the Grievant felt that the level of responsibility was too much, she had the right under the Agreement to return to her former position pursuant to Article 11, Section 11.04.

Third, the Personnel Committee could have simply denied the Grievant's reclassification request. Instead, the Committee reviewed the organization chart of the Clerk of Courts Office and decided that, from an organizational standpoint, eliminating the two Clerical Assistant positions and creating two additional Fiscal Clerk positions had some merit, provided that the Fiscal Clerks were cross-trained and could fill in for each other and provide back up for other positions within the Department. Given the language in Article 12, perhaps the Committee should have denied the reclassification and set in motion the cross-training, and then reconsidered the reclassification requests at a later date. Had it done so, that would potentially have left the Grievant wondering if the Committee would grant the reclassification later and would have forced her to reappear before the Committee with her request at a later date. Instead, the Committee announced its decision that it would approve the reclassifications when the contingency of the cross-training was completed. In effect, the reclassification requests were not granted on October 7, 1997; rather, the Committee announced its decision that it would grant the reclassifications when the conditions were met.

Fourth, the County asserts that there is not unanimity amongst the Union's membership, nor consistency on the part of the Union, as to the validity of the grievance. The other employe in the Clerical Assistant classification in the Clerk of Courts was granted the same reclassification under the same conditions, but did not grieve that action. While the Union dismisses this as the employe's personal preference with allegations of retaliation, there is no evidence of retaliation in the past, or of any specifically directed toward that employe. Further, the Agreement specifically allows the Union to file a grievance, but it did not do so.

With regard to remedy, the County asserts that if it is found to have violated the contract, the Union's proposed remedy is inappropriate. Based on the issue and the argument asserted by the County, it is not the Arbitrator's role to decide whether the Grievant should be paid at the Fiscal Clerk rate of pay. If it is found that the County cannot place a condition on the reclassification, then the Personnel Committee should be required to reconsider the request. That is, if the County violated the Agreement by postponing the reclassification, then the Committee's action is void, and would be

rescinded. The Union's proposed remedy does not automatically follow from a conclusion that the contract was violated and to award the remedy suggested would be beyond the Arbitrator's authority and in violation of Article 5.02, paragraph 6, which provides that, "The Arbitrator shall be restricted solely to the interpretation of the contract in the area where the alleged breach occurred. The arbitrator shall not modify, add to, or delete from the terms of the Agreement."

DISCUSSION

Despite the County's argument on this point, the question of whether a reclassification of the Grievant's position was, or was not, justified is not before this Arbitrator. The stipulated issue before the Arbitrator is whether the County violated the parties' Agreement by making the Grievant's reclassification effective at a date later than the first pay period following the County's action on the reclassification request. On that point, it is noted that the Grievant's reclassification request was not unqualifiedly approved on either October 7, 1997 (the date of the Personnel Committee's action) or on October 21, 1997 (the date of the County Board's action). Rather, Resolution No. 41-97 indicates that the County Board's approval of the Grievant's reclassification to Fiscal Clerk was conditional upon her completing cross-training by July 1, 1998. In other words, there is no final approval until the condition is satisfied.

Therefore, subsumed within the stipulated issue is the question of whether the County may, under the Agreement, make approval of a reclassification conditional and effective upon the completion of such condition by some future date. The answer to that question is in the affirmative, provided the condition, i.e., in this case the additional training, is reasonably related to the work to be performed, is placed in good faith and the employe is given a reasonable opportunity to meet the condition.

The Union relies almost exclusively upon the wording of the last paragraph of Article 12 – Reclassification, to support its contention that the reclassification had to be made effective the first pay period following the County's action on the Grievant's reclassification request. That argument, however, ignores the conditional aspect of the County's approval. There is nothing in the wording of Article 12 that precludes making approval conditional upon meeting further requirements by a certain date. The wording upon which the Union relies simply makes clear when the reclassification is to take effect once approval has been granted. Further, the last paragraph of Article 12 cannot be read in isolation. It is a principle of contract interpretation that an agreement must be construed as a whole. In this case, the County has the authority under Article 2 – Management Rights, Section 2.01, J, of the Agreement, “. . .to determine the size

and composition of the work force, and to determine the work to be performed by employees. . .” Mulder testified that he recommended, and the Personnel Committee agreed to recommend, changing the staff makeup in the Clerk of Courts Office from two Clerical Assistants and two Fiscal Clerks, to four Fiscal Clerks, provided they would be interchangeable in their positions. Under the language of Section 2.01, J, the County had the right to decide the type of work the Fiscal Clerk positions in the Clerk of Courts Office would perform, and the right to decide it would reclassify the Grievant’s position to Fiscal Clerk upon her successfully completing cross-training with the other Fiscal Clerks by July 1, 1998.

As stated previously, while conditions may be placed upon the approval of a reclassification request, those conditions must be *bona fide* and the employe must be given a reasonable opportunity to meet them. The conditions may not simply be a sham to prevent or delay the reclassification. The record does not establish that the County placed the condition of her receiving cross-training on the approval of the Grievant’s reclassification for anything other than *bona fide* reasons. Although Mulder’s less than prompt response to the Grievant’s inquiries about the cross-training she was to receive is troublesome, at time of hearing (February 18, 1998), there were still four and one-half months remaining before the cross-training was to be completed and the Arbitrator will not speculate in that regard.

It is therefore concluded that the County did not violate the parties’ Agreement by making approval of the Grievant’s reclassification effective upon her completing cross-training by July 1, 1998.

Based upon the 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 28th day of September, 1998.

David E. Shaw /s/

David E. Shaw, Arbitrator

DES/gjc
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