

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 298

No. 56898

MA-10451

(Fenrich Out-Of-Class Pay Grievance)

Appearances:

Mr. Richard C. Badger, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.

Mr. William Bracken, appearing on behalf of the City.

ARBITRATION AWARD

The above-captioned parties, herein “Union” and “City”, are signatories to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in Oshkosh, Wisconsin, on December 9, 1998. There, the parties presented oral arguments in lieu of filing briefs and I there issued a “bench” decision, which this Award augments.

DISCUSSION

Grievant David Fenrich, a Groundsperson, has been employed by the City since 1968. In that role, he sometimes works on the water system and assists employees classified as Parks Trades Technicians, a task that requires step-up pay under the contract if he works in that capacity for ten or more consecutive days.

The City on May 12, 1997 (unless otherwise stated, all dates hereinafter refer to 1997), promulgated a Change of Status Notice which reclassified Fenrich from a Groundsperson to a Parks Trades Technician and which also upgraded him from pay range 4 to pay range 6, thereby increasing his wages by about \$30 in every two-week pay period. Fenrich did not sign said Change of Status Notice even though there is a place for his signature on the Notice and he was not informed of that change when it was implemented. Hence, he did not become aware of his changed pay status until the City told him about it in 1998.

Dennis Behnke, the new Parks Supervisor, learned about Fenrich's changed status and higher pay in January, 1998. The City investigated the situation and lowered Fenrich to pay range 4 at the beginning of 1998. In order to recoup the \$395.20 it perceived to be an overpayment between July and December, 1997, the City – pursuant to Fenrich's wishes – deducted 25.9 hours of compensatory time from Fenrich's compensatory time bank since that equalled the \$395.20 in question. The Union grieved the City's attempt to recoup Fenrich's past wages, but it did not contest the City's right to reclassify him to the lower pay range 4.

As I related at the hearing, it is impossible to achieve perfect justice in this case because on the one hand it was the City, not Fenrich, that initially erred in making the overpayment here and because on the other hand Fenrich is not entitled to a windfall by receiving extra compensation to which he was not entitled. Hence, the best that can be done here is to find that the City must restore the 25.9 hours of compensatory time it took from Fenrich, with the further understanding that the City for the next three years can assign Fenrich to perform the duties of the higher paid Parks Trades Technician without paying him the range 6 step-up pay. In that way, Fenrich gets to keep the compensatory time that was taken from him and the City gets the opportunity to get something of value in return by having Fenrich perform higher-rated duties at his current range 4 wage rate.

Lastly, it should be noted that this Award is limited to the highly unique facts of this case and that, as a result, it should not serve as precedent in any future case.

Dated at Madison, Wisconsin this 4th day of January, 1999.

Amedeo Greco /s/

Amedeo Greco, Arbitrator

AAG/gjc
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