

BEFORE THE ARBITRATOR

In the Matter of the Arbitration Between

**MARATHON COUNTY SOCIAL SERVICES
DEPARTMENT PROFESSIONAL EMPLOYEES
UNION, LOCAL 2492-A, AFSCME, AFL-CIO**

and

MARATHON COUNTY

Case 256
No. 56110
MA-10174

(Grievance of Judy Finger)

Appearances

Mr. Philip Salamone, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 7111 Wall Street, Schofield, Wisconsin 54476, for the Union.

Mr. Dean R. Dietrich, Ruder, Ware & Michler, S.C., Attorneys at Law, 500 Third Street, P.O. Box 8050, Wausau, Wisconsin 54402-8050, for the County.

SUPPLEMENTAL ARBITRATION AWARD

On August 17, 1998, I issued an Arbitration Award in the above-cited matter, sustaining the Union's grievance concerning the interpretation and application of the terms of the parties' collective bargaining agreement relating to seniority and wage rates. I reserved jurisdiction for thirty days in case a dispute arose over the application of my Award.

On September 2, Mr. Salamone wrote on behalf of the Union, seeking a clarification of an aspect of the award. On September 9, I wrote to inform the parties that I was indefinitely extending my jurisdiction in the matter, and requesting a written statement from the employer on the issue at hand.

On September 11, Atty. Dietrich responded on behalf of the County. He wrote that the County was continuing to pay Judy Finger at the hourly rate that existed as of the date of the

Award, and that Ms. Finger would “also receive any annual wage adjustments (cost of living) that are granted to all other Social Service Professional Employees through the collective bargaining process.” On September 14, Mr. Salamone responded, contending that such a wage adjustment would be “inconsistent with the letter and spirit” of the Award.

On September 22, the parties and I conducted a telephonic conference call, during which it was agreed that the parties would submit brief written statements on the dispute. The parties submitted such statements by September 30, 1998.

On February 8, 1999, I wrote to the parties seeking clarification on the matter of Judy Finger’s then-current rate of pay, and a further statement of the Union’s position on remedy in the event I sustained its interpretation of the underlying award. The parties responded, in writing, by February 16, 1999.

ISSUE

Did the County violate the Award of August 17, 1998, by granting to Judy Finger the same across-the-board wage increase it applied to all other members of the Department of Social Services Professional Employees Bargaining Unit? If so, what is the remedy?

BACKGROUND

The relevant text of the Award at issue read as follows:

2. That Judy Finger’s hourly pay rate is frozen at the level as of the date of this award.
3. That Judy Finger shall advance on the salary schedule when she accumulates sufficient service based on a November 2, 1997 starting date on the salary schedule.

On August 17, 1998, Judy Finger’s hourly pay rate was \$17.97, the rate for a 30-month Social Worker III. On November 11, 1998, the County notified the Union as follows:

We have decided to pay employees in the two bargaining units representing employes in the Social Services Department the annual 3% annual adjustment for 1998, even though these contracts have not been settled:

DSS Professional Employees Bargaining Unit
DSS Paraprofessional and Clerical Bargaining Unit

The new rates will be reflected on the employee's November 20, 1998 paychecks or direct deposits. Back wages will be calculated and paid to employees before the end of the calendar year.

Accordingly, as of February 8 1999, Judy Finger's rate of pay was \$18.51 per hour, which reflected a 3% annual adjustment for calendar year 1998.

POSITIONS OF THE PARTIES

The Union believes the answer to the question posed in the statement of the issue is "yes." In support of this position, it asserts and avers as follows:

A reasonable interpretation of the August 17 Award is that Finger's wage rate be restricted at the rate as of that date until she achieves sufficient service to advance to the Social Worker III, 30-month rate. The arbitrator's intention was that Finger's hourly rate be frozen and she not receive any other increases, negotiated or otherwise, until that time.

If allowed, the County's payment of an annual wage adjustment will render the award meaningless. The outcome would be the same had the grievance been denied, which would be absurd and meaningless.

If allowed, the County's action would provide the employer with unfettered future license to place any supervisor or new employe anywhere they chose on the salary structure without any possible challenge. This would be contrary to the spirit and letter of the collective bargaining agreement as well as the arbitration award.

Just as "start" meant "start," so does "frozen" mean "frozen," that is, incapable of being changed, moved or undone. The County did not understand what "start" meant until the award; now it shows equal difficulty understanding "frozen."

The County believes the answer to the question posed in the statement of the issue is, "no." In support of its position, the County asserts and avers as follows:

The language at issue means that Finger does not receive credit for prior service in the unit or as a supervisory employe, and thus would not move to a new level on the salary schedule until she accumulates sufficient seniority based on a

November 2, 1997 starting date; but the language at issue does not preclude Ms. Finger from receiving annual cost of living adjustments not related to her seniority or salary level.

Denying Finger annual adjustments which are not related to her salary schedule placement would certainly cause her harm, and would be unfair and inappropriate. The dispute at issue focused on placement on the salary schedule, not on general wage increases. The issue as presented by the Union does not include a dispute over the granting of yearly increases that may arise in the future. Any suggestion that the Arbitrator has the authority to limit future increases would be contrary to the language in the collective bargaining agreement that prevents the Arbitrator from adding a new provision to the agreement.

The only issue before the Arbitrator was whether the County had the right to place Finger at the 30-month step on the salary schedule. This issue and the award have nothing to do with the yearly cost of living adjustments, so Finger should be entitled to receive such adjustments while her step placement on the salary schedule is frozen.

The Arbitrator should clarify the Award to indicate that Finger is entitled to cost of living adjustments in future years however, her salary schedule placement is frozen at the current step she was in at the time of the arbitration award until sufficient service/seniority is earned in the bargaining unit.

DISCUSSION

On August 17, 1998 I issued an Award which held that the County had violated the terms of the collective bargaining agreement by placing Judy Finger at the Social Worker III position, 30-month step upon her appointment on November 2, 1997. I held that “by the explicit, express, clear and unambiguous terms of the collective bargaining agreement,” Finger had lost all seniority rights by working more than 100 months in an unrepresented position, and that the collective bargaining agreement thus prevented the County from placing her at the 30-month step.

At the time of the Award, Finger’s pay was \$17.97. Had I ordered her placement at the actual starting rate, she would have been reduced to \$15.65 for the period November 2, 1997 – May 2, 1998, with movement at that time to \$16.37. Instead, the Award directed that Ms. Finger’s hourly pay rate be “frozen at the level” as of the date of the award, and that Ms. Finger “shall advance on the salary schedule” when she accumulates sufficient service based on a November 2, 1997 starting date for that position.

On November 11, 1998, the County granted to all members of the affected bargaining units a 3% across-the-board wage increase. It applied this increase to Finger as well. The Union complained that such action was contrary to the August 17, 1998 Award. The County denied that such was the case.

It is possible that the County interpreted the phrase “frozen at the level” to mean, “kept at the Social Worker III, 30-month rate.” It is possible the County believed this meant that Finger would receive all wage adjustments as other Social Worker III, 30-month employees. Given the further provision in the award – that Finger advance on the salary schedule only upon reaching sufficient seniority – I had hoped that the award was understood as an exercise of “red-circling.” But perhaps I could have been more precise in my language. “Frozen at the level” meant, and means, “paid the same amount” until her seniority was sufficient to put her *appropriately* in the 30-month slot. That is, the Award determined her starting date for the purposes of the application of seniority in this instance to be November 2, 1997. She would thus move to the 6-month rate on or about May 2, 1998 and the 30-month rate on or about May 2, 2000 (subject to any changes arising out of collective bargaining or other methods of mutually agreeable dispute resolution).

The Union brought a grievance by which it sought a reduction in the wages being paid a member of its bargaining unit. It then brought a request for further interpretation, again to reduce the represented employe’s wages. It claimed that the County’s actions effectively nullified the meaning and impact of the underlying award.

The Union is correct. Adherence to the collective bargaining agreement requires that I clarify my award consistent with the Union’s analysis and theory of the case.

Accordingly, on the basis of the collective bargaining agreement, the record evidence and the arguments of the parties, it is my

AWARD

That the Award of August 17, 1998 is clarified as follows:

Effective as of the date of this Award, Judy Finger's hourly rate of pay is \$17.97. She continues as a Social Worker III with a starting date for purposes of salary schedule placement of November 2, 1997. Her rate of pay will continue at \$17.97 until she accumulates sufficient seniority to advance on the salary schedule, or until the parties mutually agree to provide otherwise.

Dated at Madison, Wisconsin this 14th day of May, 1999.

Stuart Levitan /s/

Stuart Levitan, Arbitrator

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