BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**ONEIDA COUNTY**

and

**ONEIDA COUNTY COURTHOUSE, LOCAL 158,**
**WISCONSIN PROFESSIONAL POLICE ASSOCIATION**

Case 144
No. 58272
MA-10902

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Appearances:

**Attorney Richard Thal,** General Counsel, Wisconsin Professional Police Association/LEER Division, 340 Coyier Lane, Madison, Wisconsin, 53713, for the Union.

**Mr. Carey Jackson,** Personnel Director, Oneida County, P.O. Box 400, Rhinelander, Wisconsin 54501, for the Employer.

## ARBITRATION AWARD

Oneida County Courthouse, Local 158, Wisconsin Professional Police Association, hereinafter referred to as Association, and Oneida County, hereinafter referred to as County, are signatories to a collective bargaining agreement providing for final and binding arbitration of grievances on which the Association and the County are unable to agree. On December 6, 1999 the Wisconsin Employment Relations Commission received a request from the Association that the Commission supply a panel of five (5) staff arbitrators from which the parties may select an arbitrator to hear the above-referenced matter. On December 15, 1999, the parties advised said Commission that they had mutually agreed to have Commissioner A. Henry Hempe serve as the sole arbitrator to issue a final and binding arbitration award in said matter. The Commission designated the undersigned A. Henry Hempe to hear and decide this matter. An evidentiary hearing was conducted on February 24, 2000 in Rhinelander, Wisconsin. The proceedings were not transcribed. By agreement of the parties, they submitted no written briefs to the arbitrator.

## ISSUE:

The Association phrases the issue as follows:

Did Oneida County violate the parties' collective bargaining agreement when it deducted wages from the grievant for time spent with the Personnel Director, Carey Jackson? If so, what is the appropriate remedy?

The County frames the issue as follows:

Did Oneida County violate the current Courthouse Association collective bargaining agreement when it denied Art Hilgendorf paid time as Association President to attend a job duty information gathering meeting of an employee?

I state the issue as follows:

Did Oneida County violate the current Courthouse Association collective bargaining agreement when it denied Art Hilgendorf paid time as Association President to attend a meeting held on August 23, 1999 to determine the job duties of a County employee in connection with a job reclassification request of that employee? If so, what is the appropriate remedy?

## FACTS OF THE CASE

The facts are undisputed. On August 23, 1999 the grievant, Art Hilgendorf, spent approximately 1½ hours of his workday at a mid-morning meeting called by the County's Personnel Director, Carey Jackson. Mr. Jackson had called the meeting at the request of Vicki Gehrig, a member of the Courthouse bargaining unit, employed by the County's Data Processing Department and assigned to the Sheriff's Department. The purpose of the meeting was to gather information on the job duties and responsibilities of Ms. Gehrig. With the construction of a new County Law Enforcement Center, Ms. Gehrig believed her training and responsibilities would be increased, and that therefore her position should be assigned to a higher pay level.

At Ms. Gehrig's request, others present at the meeting were John Sweeny, then a Detective with the Sheriff's Department (now Chief Deputy), Jack Bergman, then Chief Deputy for the Sheriff's Department, Kaye Juel, Jail Administrator, Lynne Grube, Administrator of the County's Data Processing Department, Tom Bahr, Business Representative for the Association, Carey Jackson as well as his secretary, and the grievant, Art Hilgendorf.

Mr. Hilgendorf, formerly Association Vice-President, had become president of the Association in the month preceding the meeting. He is employed as a Land Use Specialist in the County's Planning and Zoning Department. Mr. Hilgendorf normally works out of his Department's Minoqua office; on the August 23 meeting date, however, he had made arrangements to work in his Department's Rhinelander office.

After Mr. Hilgendorf had become Association President, Ms. Gehrig advised him that she had been previously unsuccessful in her attempt to obtain reclassification of her position to a higher pay level, but that she was trying to persuade the County to reconsider its denial. Subsequently, Ms. Gehrig informed Mr. Hilgendorf that she had been successful in persuading Personnel Director Carey Jackson to call a meeting to reconsider her reclassification request. Ms. Gehrig further told Mr. Hilgendorf that she wanted either him or some Association representative to attend the meeting with her.

It further appears that Mr. Jackson requested that Ms. Gehrig advise Association Business Representative Tom Bahr of the meeting date, time and place. Mr. Jackson states that he values Mr. Bahr's participation and insight in matters involving Association Courthouse bargaining unit persons.

After learning of Ms. Gehrig's wish that an Association representative attend the meeting with her, Mr. Hilgendorf relayed her request, along with the particulars of her case, to Association Business Representative Tom Bahr. Mr. Bahr indicated that he was unsure that his schedule would permit him to attend. Mr. Hilgendorf then called Personnel Director Jackson and indicated his desire to attend the meeting in the capacity of Association president. Mr. Jackson did not object to Mr. Hilgendorf's attendance, but told Mr. Hilgendorf that he would not be paid for the time spent at the meeting. Mr. Hilgendorf did not respond, but resolved to attend the meeting and address the issue of his pay at a later time.

Mr. Hilgendorf received the requisite permission from his supervisor to attend the meeting, and proceeded to do so. When he arrived at the meeting, he immediately saw that Business Representative Bahr was present. At hearing, Mr. Hilgendorf acknowledged that Business Representative Bahr was an active participant in the meeting, and that he (Mr. Hilgendorf) functioned as an observer. He stated he remained at the meeting even after he saw Mr. Bahr was present because 1) he believed Vicki Gehrig wanted him to be present and 2) he had told his supervisor he would be at the meeting.

At the conclusion of the August 23 meeting Mr. Hilgendorf believed he had reason to be hopeful that Ms. Gehrig would be reclassified. (His optimism was justified; on October 19, 1999, by County Board Resolution Ms. Gehrig was elevated from Grade Level 7 to Grade Level 10.) Prior to the meeting, however, Mr. Hilgendorf had no idea of the meeting's outcome.

Mr. Hilgendorf subsequently had 1½ hours of pay deducted from his paycheck.

## POSITIONS OF THE PARTIES

**Association:**

The Association believes the Local 158 President was contractually entitled to be paid by his employer for the time he spent at the August 23 meeting.

The Association argues that the August 23 meeting can be broadly characterized as "negotiations" on a mandatory subject of bargaining, namely the salary level of a bargaining unit member.

In support of its contention, the Association cites CITY OF CEDAR RAPIDS, 85 LA 1140 (FLATEN, 1985) in which the arbitrator found 5 ½ hours of study and review of a final version of a negotiated labor contract by a union committee in consultation with the personnel director to constitute a logical extension of the negotiating process.

The Association then points to Article 3, Section B of the parties' collective bargaining agreement.

Article 3, Section B provides:

> Section B: Negotiations. If such negotiations meetings must be conducted during work hours and are called by the Employer, such time shall not be deducted from the pay of the designated Association representatives.

The Association cites HOUDAILLE INDUSTRIES, INC., 73 LA 872 (FROST, 1979), for the proposition that the employer can't unilaterally decide who gets paid and who doesn't. (In HOUDAILLE, the arbitrator found union stewards and employees to be contractually entitled to full pay for the several hours they spent preparing two grievances.)

**County**

The County vehemently denies that the August 23 meeting constituted negotiations.

The County notes that under the parties' labor contract position reclassification activity may be initiated in two ways:

> 1. Article 6, Section I, 1, 2 and 3 allows an *incumbent employee* who believes his or her job has substantially changed to make a written request for a classification review to his or her department head as well as the designated Courthouse Association Reclassification Committee. With the necessary approvals, the review ends up with the Personnel Committee or the County Board, but the decision of either is expressly excluded from the grievance procedure.

2. Article 6, lines 16-28 of the labor contract provides that the *County itself* may initiate a review of positions. According to this provision, such review shall be handled by the Personnel Director in the manner he or she deems most appropriate. The incumbent employee and his or her department head are expected to participate in the investigation. The Personnel Director's recommendations go to the Personnel Committee, but subsequent action on the reclassification request by the Committee is not subject to the grievance procedure.

The County contends that the August 23 meeting reflects the second alternative set forth above, i.e., a County-initiated investigation as set forth on page 8, lines 16-28 of the parties' labor agreement, not negotiations. According to the County, the sole purpose of the meeting was to gather information.

The County asserts that the facts of this grievance are a "first-time" occurrence in Oneida County. According to the County, it has granted Association members paid time only for matters involving grievances or labor contract negotiations.

## RELEVANT CONTRACT LANGUAGE

### ARTICLE 2 – REPRESENTATION

Section A: The Association shall be represented in all such bargaining or negotiations with the County by such representatives as the Association shall designate. In the event that bargaining occurs during work hours, the Association Bargaining Committee shall consist of not more than two (2) employees and the staff representatives. Other bargaining unit members can observe bargaining sessions as long as they are not in work status.

Section B: The County shall be represented in such bargaining or negotiations by the Personnel Committee as designated by the County board.

### ARTICLE 3 – ASSOCIATION ACTIVITIES

Section A: The Association agrees to conduct its business off the job as much as possible. This Article shall not operate as to prevent a steward or officer from the proper conduct of any grievance in accordance with the procedures outlined in this Agreement; nor to prevent routine business such as posting of Association notices. Business representatives may contact members at reasonable times. The Employer agrees not to deduct such reasonable time from the pay of such employees.

Section B: Negotiations. If such negotiations meetings must be conducted during working hours and are called by the Employer, such time shall not be deducted from the pay of the designated Association representatives.

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ARTICLE 6 – SENIORITY – PROMOTIONS – RECLASSIFICATION – LAYOFF

. . .

Section I: The County shall have the right to initiate reclassification procedures as described at the end of this section. The following steps shall be followed when an incumbent employee requests reclassification:

1. When an incumbent employee believes that his/her job has substantially changed in duties and responsibilities, he/she shall make a written request to their Department Head as well as the designated Courthouse Association Reclassification Committee asking them to review the employees classification. If the Department Head and/or Association Committee find that the reclassification request is appropriate, the request will be forwarded to the appropriate Committee of Jurisdiction for their review. Included in the request shall be supporting documentation justifying the request. Job factors to be considered may include, but are not limited to, typical duties performed, qualification requirements, complexity of work, the extent of supervision or guidance provided, the variety and degree of knowledge and skills required, mental requirements, responsibility for public contact, responsibility for decision making, supervisory responsibilities, and working conditions.

2. The Personnel Office will in all instances, prepare up-dated job descriptions with the cooperation of the employee and the Department Head.

3. The Committee of Jurisdiction will review the request and will make a determination as to whether or not to forward the request to the Personnel Committee. The decision of the Committee of Jurisdiction shall be recorded in the Committee's minutes. A copy of those minutes shall be forwarded to the Personnel Office. When a Committee of Jurisdiction forwards a reclassification request to the Personnel Committee with a recommendation that a study of the position be conducted, a copy of all documentation on the request shall accompany the request. If the Committee of Jurisdiction decides not to forward the request to the Personnel Committee, the Department Head shall notify the incumbent employee of the reasons for that denial in writing.

4. Upon completion of the study by the Personnel Director, the employee, union rep, and Department Head shall meet with the Personnel Committee regarding the request. All parties shall be afforded the opportunity to present pertinent information to the Committee.

5. After listening to the parties, the Personnel Committee shall go into closed session to discuss what they have heard and to review materials. The Personnel Committee shall return to open session to make their decision. This decision shall be communicated in writing to the employee, the Association, the Department Head and the Chairperson of the Committee of Jurisdiction. Unless mutually agreed otherwise in writing, the Personnel Committee shall make a decision not more than forty-five (45) days from receiving the request.

6. When necessary, the Personnel Committee shall submit a resolution to the Oneida County Board of Supervisors for consideration.

7. The decisions of the Personnel Committee and/or County Board of Supervisors are final and shall not be subject to the grievance procedure.

The County has the right to review all positions to determine their proper classification. County initiated reviews of positions shall be handled by the Personnel Director in the manner he/she deems most appropriate. Should the County initiate a review of a position, the Department Head and incumbent employee, if there is one, shall be notified and shall participate in the investigation/analysis of the position. Upon completion of the investigation, the Department Head and incumbent employee, if there is one, shall be notified of the findings and recommendation of the Personnel Director. The Personnel Committee has the authority to up-grade and down-grade positions as it deems appropriate. The Personnel Committee's decisions in this regard shall not be subject to the grievance procedure. However, no incumbent shall suffer a reduction in wages caused by down-grading a position. In addition, the incumbent shall receive whatever raises are negotiated during contract negotiations unless agreed otherwise during such negotiations. This agreement does not infringe upon the County's right to create or delete positions as covered under Article 7 Vested Rights of Management as found in the current courthouse union agreement.

Appeal Process: The incumbent employee shall have the right to appeal the reclassification decision of the Department Head and/or Committee of Jurisdiction. This appeal shall be in writing and shall be sent to the Personnel Office. The Personnel Director shall investigate the position under appeal and shall make a written response to the incumbent employee. The decision of the Personnel Director shall be final except where the decision

favors reclassification. Favorable reclassification decisions shall be forwarded to the Personnel Committee for action. The decision of the Personnel Committee shall be final.

## DISCUSSION

The Association contends that the August 23, 1999 meeting attended by Association President Art Hilgendorf constitutes "negotiations."

I am not inclined to credit the claim. Traditionally, in labor relations parlance the term "negotiations" refers to bargaining activity between union and management representatives at a meeting place, date and time to which mutual agreement has been reached. Each side present is responsible for assembling its own bargaining team. While the bargaining activity at such a meeting may include an exchange of information by each side to the other, it is also characterized by each side advocating its own position, consistent with its perception of its own interests. There is a strong give-and-take component of the session. Ultimately an agreement is reached through compromise and an exchange of *quid pro quos* by each side. 1/

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***1/ There is an alternate negotiating process known in Wisconsin as "consensus bargaining." It is a facet of "labor-management cooperation" and consists of a non-adversarial problem solving process that focuses on a mutual identification of both separate and mutual interests in an effort to resolve issues. While the relationship between Oneida County and the Association appears to include some very positive elements of a cooperative relationship, neither party has described the activities at the August 23, 1999 meeting as coming under the aegis of "labor-management cooperation."***

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Subjects of bargaining can be as broad as the parties agree, subject to any applicable conditions of the law. While "negotiations" is a term usually thought of as referring to a process through which a labor contract is obtained, "negotiations" can also represent attempts to resolve grievances or other disputes that have arisen between the parties.

It does not appear to me that negotiations took place at the meeting in Rhinelander on August 23, 1999. In my opinion the Association's definition of "negotiations" is simply too broad. Put another way, the activities that took place at the meeting in question were too narrow to qualify as "negotiations" within the commonly understood meaning of the word in labor relations.

I note the meeting purpose, place, date and time were not established by mutual agreement of the parties, but rather by the unilateral decision of the Personnel Director. It is true that the Personnel Director asked the affected employee to invite the local union's business representative to the meeting. Yet despite his uncertainty as to whether or not he could attend

the meeting, the business representative did not attempt to stop the meeting from occurring or obtain a more convenient date. From this it seems fair to infer that the business representative may well have regarded his potential role at the meeting as one of bolstering the apparent insecurities of a bargaining unit member rather than active advocacy. For clearly, the Personnel Director intended to proceed with the meeting whether or not an Association representative could be present and the Association offered no objection. Neither does the record indicate that the Association business representative attempted to make arrangements for some other Association representative to attend the meeting. All in all, this background does not suggest that either the County or the Association anticipated negotiations would be taking place at the meeting.

Moreover, it is by no means clear that a dispute had yet developed between the County and the Union. Certainly the employee, Vicki Gehrig, whose job responsibilities were the focus of the meeting, knew what she wanted. But it does not appear that either the County or the Association knew enough about the matter to have yet developed competing positions with each other.

This is reflected both by the activities that took place at the meeting and the persons present. No evidence suggests that the activities were not limited to the information gathering session described by the County. Although the local union's business representative is described as an active participant in the meeting, no witness describes his conduct as adversarial or advocatory.

Management personnel along with a member of another County local bargaining unit were also present. But except for the Personnel Director and his secretary, *all other participants, including the Association business representative had been invited by the employee who wanted her position reclassified*. Moreover, the list of active participants also included at least one member of a different bargaining unit, also invited by the employee who wanted her job description reviewed. If "negotiations" had been on the meeting's agenda, it seems unlikely that the management team assembled would have reflected the composition of those persons who did assemble. 2/

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***2/ E.g., Article 2, Section B of the parties' labor contract explicitly provides that "(t)he County shall be represented in such bargaining or negotiations by the Personnel Committee as designated by the County Board."***

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Moreover, Article 3, Section B language of the parties' labor contract specifically refers to "*such* negotiations." (Emphasis supplied.) The *American Heritage Dictionary* defines the word "such" as follows: "1. Of this or that kind; 2) Being the same as that which has last been mentioned or implied." But Article 3, Section A refers only to the right 1) of an

Association steward or officer to participate in the grievance process later outlined in the contract and conduct routine business such as the posting of Association notices, and 2) of the Association business representatives to contact members at reasonable times. The only contractual appearance of the word "negotiations" *prior* to Article 3, Section A occurs in Article 2, Sections A & B. The context in which the term appears in these sections strongly suggests that the parties intended to limit its applications therein to *interest* or *contract* negotiations.

The County's claim is further bolstered by the fact that the process leading up to, including and following the August 23 meeting is specifically authorized by the language of the parties' collective bargaining agreement, p. 8, lines 16-28. These lines refer to a County-initiated position review, and specify the steps to be followed. Nowhere does the term "negotiations" or "bargaining" appear. Significantly, however, the terms "investigation analysis," "investigation," and "findings and recommendations" do appear – terms that suggest a measured and deliberative fact-finding process as opposed to negotiations. If the steps enumerated in these lines had been intended to include "negotiations" or "bargaining," it seems likely to me that the parties would have included some reference to these steps in Article 2 or Article 3, Section B. No such reference was made, and I conclude that the omission was intentional.

For these reasons I credit the County's claim that the August 23, 1999 meeting was neither scheduled nor conducted for negotiating purposes, but rather to gain information. No provision obligates the County to grant paid time to a County employee to attend such a meeting, even if that employee is a steward or officer of the Association local. If Association stewards or officers employed by the County are to receive paid time for attendance and/or participation at this type of meeting, such provision must be bargained collectively by the parties.

I do not find the CEDAR RAPIDS arbitration result cited by the Association applicable to the facts herein. The CEDAR RAPIDS arbitrator found the proofreading activity in question to constitute a logical extension of collective bargaining. I cannot say the same of the information-gathering activity of the instant matter. The HOUDAILLE result is equally distinguishable, for the activity in that case involved paid time for grievance preparation. Grievance preparation was not the issue in this matter.

This is not to say whether or under what circumstances an Association representative employed by the County has a right to attend and participate in such meetings, but only that the current labor agreement places no obligation on the County to pay that representative.

To his credit, the County's Personnel Director recognizes the value of the Association business representative's presence and contributions at August 23-type meetings as a matter of enlightened self-interest on the part of the County. Equal credit should also be given to the Association's Business Representative whose insights on matters affecting the local Association

bargaining unit are valued by the Personnel Director. But whether the parties choose to expand this example by authorizing some form of paid attendance at such meetings by an Association representative employed by the County is a matter for the parties to determine in collective bargaining.

Based on the foregoing discussion, the grievance is dismissed.

Dated at Madison, Wisconsin this 6th day of March, 2000.

A. Henry Hempe /s/
A. Henry Hempe, Arbitrator

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