

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
LAFAYETTE COUNTY COURTHOUSE EMPLOYEES
UNION LOCAL 678, AFSCME, AFL-CIO

and

LAFAYETTE COUNTY

Case 77
No. 58342
MA-10916

Appearances:

Brennan, Steil, Basting & MacDougall, S.C., by **Attorney Howard Goldberg**, P.O. Box 990, Madison, Wisconsin 53701-0990, appearing on behalf of the County.

Mr. Thomas Larsen, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 1734 Arrowhead Drive, Beloit, Wisconsin 53511, appearing on behalf of the Union.

ARBITRATION AWARD

Lafayette County Courthouse Employees Union Local 678, affiliated with Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, hereinafter Union, and the County of Lafayette, hereinafter County, are parties to a collective bargaining agreement that was in effect at all times relevant to this proceeding and which provides for final and binding arbitration of certain disputes. The Union by request to initiate grievance arbitration received by the Commission on December 21, 1999, requested that the Commission appoint either a staff member or a Commissioner to serve as Arbitrator. The Commission appointed Paul A. Hahn as Arbitrator on December 23, 1999. The hearing was originally scheduled for January 19, 2000 and was then postponed until April 11, 2000. The hearing took place in the County Board Room of Lafayette County, Darlington, Wisconsin. The hearing was not transcribed. The parties were given the opportunity but did not file post hearing briefs. The record was closed on the date of the hearing, April 11, 2000.

ISSUE

The parties stipulated to the following issue:

Did the County violate Article XX, Wages and Classification, Section 2, Reclassification, when it refused to reclassify the Grievants to a Grade V Secretary II position? If so, what is the remedy?

RELEVANT CONTRACT PROVISIONS

Article I – Recognition

The Employer recognizes the Union as the exclusive collective bargaining representative of all regular full-time and regular part-time employees of the Lafayette County Courthouse and related departments, excluding professional, supervisory, confidential, craft, law enforcement employees, blue collar Highway Department employees, and employees of the Lafayette County Home and Lafayette County Hospital, certification by Wisconsin Employment Relations Commission, Decision No. 17260 (November 12, 1979), for the purposes of conferences and negotiations with the Employer or its lawfully authorized representatives, on questions of wages, hours and conditions of employment.

Article II – Management Rights

The Union recognizes and acknowledges that the Employer retains all responsibilities, powers and authority that is (sic) not specifically modified by other provisions of this Agreement. Such management rights include, but are not limited to the following: the right and authority to determine, plan, direct and control its operation and the operations of its work force, to determine the size, composition, qualifications and work of the work force, to make assignments of work, including overtime, to hire, promote and layoff, to discipline and discharge for just cause, to establish, revise and enforce reasonable rules of conduct, to terminate or modify existing, or to introduce new or improved, methods of operation, to determine and uniformly enforce minimum standards of performance, provided, however, that none of such actions by the Employer shall conflict or be contrary to other provisions of this Agreement.

. . .

Article IV – Grievance and Arbitration

. . .

Section 4: The arbitrator's award shall be final and binding upon the Employer, the Union, and the employee or employees involved. He/she shall have no authority, however, to add to, detract from, alter, amend, or modify any provisions of this Agreement or impose on any party hereto a limitation or obligation not provided for in this Agreement.

. . .

Article XX – Wages and Classifications

. . .

Section 2. Reclassification: Employees will be reclassified to a higher pay range when the job duties of the position are modified substantially to include new duties. Reclassification may take place at any time during the calendar year.

. . .

STATEMENT OF THE CASE

This grievance involves the Lafayette County Courthouse Employees Union Local 685, affiliated with the Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO and the County of Lafayette as set forth in Article I – Recognition. (Jt. 1) The Union alleges that the County violated the parties’ collective bargaining agreement when the County refused to reclassify the two Grievants, Nancy Kilcoyne and Lori Leahy to Secretary II positions under the salary and classification schedule of the parties’ labor agreement. (Jt. 10 and Jt. 1)

The County operates a Human Services Department. The two Grievants have been employed by the County as Clerk-Typist II since their employment with the County. Grievant Leahy has been employed by the County since 1994, first as a limited term employe, then as a contract employe and finally as a full-time employe since January 2, 1997. Grievant Kilcoyne has been an employe of the County since April of 1996. As Clerk-Typist II, the Grievants’ duties are set forth in the County job description for said classification. (Jt. 14) The duties of the Secretary II position, to which the Grievants requested reclassification, are set forth in the County’s job description for said classification. (Jt. 13) Said job descriptions have been appended to this decision as Appendix I and II.

In August of 1999 the Grievants requested that their jobs be reclassified from Grade III, Clerk-Typist II, to Grade VII, Clerk IV. (Jt. 3 and Jt. 5) The Grievants were able to present these reclassification requests at any time during the term of the collective bargaining agreement pursuant to Article XX - Wages and Classification, Section 2 – Reclassification based on their belief that their duties had substantially increased during their employment, justifying their reclassification to the higher level Clerk IV position. (Jt. 1, Jt. 3 and Jt. 5) This reclassification request was supported by their immediate supervisor, Janet Swanson. (Jt. 4 and Jt. 6) This reclassification request was modified to a reclassification to Grade V, Secretary II and was presented, pursuant to County policy, to the County’s Bargaining Committee, on September 1, 1999 for both Grievants. (Jt. 11 and Jt. 7) At its meeting on September 15, 1999, the Bargaining Committee considered the reclassification request of the two Grievants and denied the reclassification:

Mr. Martin moved that a reclass is not apparent and Nancy Kilcoyne and Lori Leahy should go through normal bargaining channels. Mr. Alexander seconded the motion. On a role call vote, all voted yes. (Jt. 10)

On October 5, 1999, pursuant to Step 1 of the contractual grievance procedure, the Grievants met with interim director of Lafayette County Human Services, Paul Godfrey. Mr. Godfrey and the Grievants were unable to resolve the grievances. The grievances were then presented, in writing, to Richard Buschor, Chairman of the County Grievance Committee on October 6, 1999 pursuant to Step 2, of the contractual grievance procedure. (Jt. 2) The County Grievance Committee notified the two Grievants on November 5, 1999, by memorandum, that their grievances had been denied:

The Grievance Committee does not feel your duties have been modified substantially, therefore your grievance is denied. (Jt. 8 and Jt. 9)

The Union appealed the grievances to arbitration. At the arbitration hearing on April 11, 2000, the County raised an issue as to arbitrability of the grievances. The hearing in this matter was held by the Arbitrator on April 11, 2000 in the City of Darlington in the County Board room of the Lafayette County Courthouse. The hearing concluded at 12:45 p.m.

POSITIONS OF THE PARTIES

Union Position

The Union takes the position that the grievances in this matter were timely and that it was inappropriate for the County to raise an arbitrability issue at the arbitration hearing to which the Union would have an inadequate opportunity to respond. The Union argues that the only action of the County about which the grievances were filed was the denial of the reclassification requests by the Bargaining Committee on September 15, 1999, and, therefore, the grievances were timely. The Union notes that at no time during the grievance procedure did the County argue that the grievances were not timely submitted.

As to the merits of the grievances, the Union argues that the Grievants clearly perform Secretary II responsibilities pursuant to the Secretary II job description. The Union states that the Grievants meet all of the qualifications and requirements of the Secretary II position and have been performing those duties. The Union argues that since their employment the Grievants have assumed greater responsibilities as the Human Services Department has grown. The Union posits that the Grievants' duties have incrementally increased in responsibility and now merit the reclassification of the two Grievants to a Grade V Secretary II position. The Union points out that Grievants' testimony substantiates that the Grievants have assumed duties previously performed by managers within the Human Services Department as those managers have assumed increased managerial responsibilities due to the expansion of the Human

Services Department since its inception in 1986. The Union believes that if the Department had had a regular director for the past two years the reclassification of the Grievants probably would have already taken place, but because the Department has been operating with an interim Director, procedures have not gone forward as they should have regarding the reclassification of the Grievants.

Finally, the Union points the Arbitrator to the contractual language regarding reclassification which the Union states makes very clear that a reclassification request can be submitted at any time during the labor agreement and that a denial of a reclassification is subject to the grievance and arbitration procedure. The Union submits that the increased job duties of the Grievants justify their reclassification to a Secretary II position. The Union asks the Arbitrator to sustain the grievances and award the Grievants a remedy of back wages and benefits.

County Position

The County raised an arbitrability argument, based on timeliness, at the arbitration hearing. Although raised for the first time at the hearing before the Arbitrator, the County argues that it can raise a jurisdictional argument at any time and that it was not aware of a potential arbitrability issue until the testimony of the Grievants. The County's arbitrability issue arises from the Grievants' testimony that the Grievants allege a promise of reclassification back in 1997 from the then Human Services Department Head and, not having received that reclassification, the grievances should have been filed in 1997 and therefore are untimely filed in 1999.

As to the merits of the Union's case, the County takes the position that pursuant to the collective bargaining agreement and the reclassification language of Article XX, Section 2, the Grievants have not "substantially" increased their duties since their employment. The County argues that the Grievants are only doing what is described in their description for Clerk-Typist II and are not performing the higher level responsibilities that require accountability as set forth in the Secretary II job description. While the County acknowledges that Grievants are good employees, the Grievants have only experienced an evolution, which has increased their duties, but they are essentially performing the same duties that they have been performing since their original full-time employment with the County.

The County argues that the Grievants never in their testimony stated that their responsibilities or duties have "substantially" increased as required by the parties' collective bargaining agreement. The County points out that there is nothing in the collective bargaining agreement that makes reclassification of an employee automatic, citing the testimony of Grievant Leahy and Joint Exhibit 12 that employees in a lower classification would be automatically reclassified to a higher classification after one year of employment.

The County argues that the Arbitrator only need look to the language of the collective bargaining agreement and determine that Grievants' expanded duties are not substantial and therefore do not meet the requirement of the parties' collective bargaining agreement to justify reclassification. Therefore, the action of the Bargaining Committee in denying the reclassifications should be sustained. The County points out that the labor agreement between the Union covering the two Grievants and the County is not settled for a successor contract to Joint 1 and therefore the Union can always raise the reclassification issue at the bargaining table.

The County asks the Arbitrator to deny the grievances.

DISCUSSION

This is a contract interpretation case. The Union has alleged, on behalf of the Grievants, that the County violated Article XX, Section 2 of the parties' labor agreement when it refused to reclassify the Grievants from a Clerk-Typist II position to Secretary II in the fall of 1999. This provision states: "Employees will be reclassified to a higher pay range when the job duties of the position are modified substantially to include new duties. Reclassification may take place at any time during the calendar year." Simply stated, this dispute is over whether there has been a substantial increase in the Grievants' duties since their original employment with the County.

The County raised for the first time at the arbitration hearing that the grievances were untimely and should be denied on that basis. The Union argued strongly at the hearing that the County should not be allowed to raise arbitrability at the hearing as it would unjustly prejudice the Union because the Union would not have a reasonable opportunity to respond. I agree with the County that it has the right to raise such a jurisdictional issue at any time before the close of the record. This is not to say that the Union does not have certain legal rights when arbitrability is raised at this point in grievance and arbitration proceedings. I do not have to address those legal rights in this case as I believe and find on the facts that the grievances are timely.

The County seems to base its arbitrability argument on the testimony of Grievant Leahy, who testified that when she was hired as a full-time employe in 1996 she was promised by then Human Services Department Head Chrest that although she was hired as a Clerk-Typist II she would be promoted to a Secretary II after a year of employment. The Union argued that Joint Exhibit 12 confirms that individuals hired to entry level positions would be advanced to the next level of performance after one year. (Jt.12) Grievant Kilcoyne testified that she did not remember such a statement being made to her at the time of her hire but remembered the memorandum from Chrest (Jt.12) being shown to her about a year and one-half ago. The County argues that the Grievants therefore knew when they were not

reclassified in 1997, as promised by Chrest, that they had a grievance over the broken promise and should have filed their reclassification grievance in 1997 and therefore by filing it in 1999 the grievances are untimely.

I agree with the position of the Union that the grievances before me resulted from the denial of the Grievants' reclassification requests by the County Bargaining Committee on September 15, 1999. (Jt. 10) The contract language is clear under Article XX, Section 2, that reclassification requests may be filed at any time during the term of the labor agreement and at any time during the calendar year. The Grievants were under no obligation to file their grievances at an earlier time as argued by the County. I therefore find the grievances timely and the submission to arbitration timely and dismiss the arbitrability argument of the County.

The parties agreed at the hearing in this matter to treat the grievances together, or as one, as I understand it, so that however I would rule, both Grievants would be treated the same. As stated, both Grievants were hired as Clerk-Typist II. The current job description, (Jt. 14) which I have attached as Appendix I to this decision, bears a date of September 22, 1999. No testimony was elicited at hearing that this job description for Clerk-Typist II is the same as it was when the Grievants were employed. The testimony of the two Grievants, the only testimony at the hearing, substantiated that when they were first employed the Grievants performed the following duties:

- Transcribe dictation for Family Services Unit
- Back up receptionist
- Prepare court documents for Family Services Unit
- Transcribing and filing social worker dictation
- Secretarial work and clerical filing

Both Grievants testified that the current job description, (Jt. 14) Appendix I to this decision, was received by them, but as I have already stated above, the record is unclear whether this was the same job description in place at the time of their employment. Even if the job description has not changed, it is apparent from the testimony of the Grievants that they have added the following duties in the past year to year and a half of their employment:

- Transcribe for more social workers than at time of hire
- Prepare the social worker on call schedule which used to be a supervisor's task
- Backup to the secretary to Medical Director
- Prepare adult unit report
- Backup to the Corporation Counsel secretary, prepare and file court documents
- Backup to the Department receptionist
- Work with the Community Support Program, prepare minutes and mailings, offer input to community activities and prepare report for HS Board
- Reconcile reports with the State of Wisconsin for Family Services and Foster care
- Prepare Family Services report to HS Board, previously done by a manager

Responsible for medication requests, including verification of correct medication
Prepare Court documents for Family Services
Pick up mail and distribute incoming mail

There was no argument from the County that the Grievants were not performing any of these activities. The argument is whether these duties were a “substantial” increase in the duties of the Grievants. There also was no dispute that the Grievants meet all the qualifications for the Secretary II position they seek. Those qualifications are part of that position’s job description which I have attached as Appendix II to this decision.

In these types of cases, the word “substantial” can be subjective, as different from a case where an employe is turning out or making a specific product that can be counted. It is understandable that the Grievants would tend to emphasize their new or expanded duties and the County would tend to minimize those increased duties or responsibilities. I find that the Grievants were creditable witnesses and the County stated on the record that the Grievants were good employes.

I find that the jobs of the Grievants have changed to include increased responsibilities, some of which were previously performed by managers. I also find that the backup work for the secretaries to the Medical Director and the Corporation Counsel is not covered in the Clerk-Typist II job description and is a significant increase in duty and responsibility. Reconciliation of County reports with the records of the State of Wisconsin also is an important expansion of duties. But I also agree with the County that some of the other areas described above are a reasonable expansion of the duties described in the Clerk-Typist II job description and they would be expected as the Department grew and are not substantial.

I believe that an analysis of the job description of the Secretary II position, (Jt.13) attached as Appendix II, reveals that the Grievants in fact are performing the duties of that classification. The County argues that the Grievants do not have the responsibility that the Secretary II position calls for. But one has to analyze that position description in the context of when it was prepared. It was prepared in 1986 when the Human Services Department was formed. The job description clearly applies to one employe who would be at that time the first and only secretary in the Department. The word “responsibility” in that context does not imply supervisory duties; it merely means that with just one employe performing those duties that employe would be responsible for their successful completion. I believe and so find that the Grievants are in fact and in practice performing the duties of the Secretary II position.

The parties must live by the job descriptions which were entered in the record without objection. I find that while the parties could legitimately argue over whether the Gievants’ duties have “substantially” increased, if the Grievants are performing the duties of the Secretary II position, which I find they are, then it must follow that the duties must have increased substantially to justify reclassification of Grievants to Secretary II. To find otherwise would result in the job descriptions and the labor agreement classification schedule having no meaning.

I therefore find that the Grievants' duties have been modified substantially under Article XX, Section 2 of the parties' labor agreement justifying their reclassification to Secretary II.

Based on the foregoing and the record as a whole, I enter the following

AWARD

The County violated Article XX, Section 2 of the Labor Agreement when it failed to reclassify the Grievants to Secretary II, Grade V. The grievances of the Grievants are sustained.

REMEDY

The Grievants will be reclassified to Grade V, Secretary II and be made whole for lost wages and benefits from September 15, 1999, the date the Grievants' reclassification requests were denied by the County Bargaining Committee.

Dated at Madison, Wisconsin this 26th day of April, 2000.

Paul A. Hahn /s/

Paul A. Hahn, Arbitrator

rb
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Appendix I
JOB DESCRIPTION
CLERK-TYPIST II

Qualifications

Good grammar and spelling skills; able to type at least 50 words per minute; high school diploma or equivalent; working knowledge and skills to use personal computers and some data entry knowledge; at least one year's experience in an office environment. Experience with Word Perfect is preferred.

Responsibilities and Duties

Under the direct supervision of the Office Manager, will perform the following tasks:

- a) Provide general typing for agency staff such as court reports, letters, statistical reports, etc.
- b) Use word processing and spread sheet programs on a personal computer with minimum of supervision.
- c) Keep agency filing organized and up-to-date.
- d) Act as receptionist, answer telephone, handle routine inquiries, and make appointments.
- e) Keep tickler systems for agency staff with regard to deadlines.
- f) Distribute mail and other communications between clinic building and other offices.
- g) Prepare statistical and financial reports as requested.
- h) Participate in appropriate training and performs other duties as assigned by administrative personnel.

Additional Requirements

- a) Considerable knowledge of modern office methods and procedures.
- b) Knowledge of business English and spelling.
- c) Ability to type from clean copy, to type copy correctly, from rough manuscript, to set up and type tabular matter neatly and correctly, and to transcribe dictation.
- d) Ability to perform somewhat varied and difficult clerical tasks and to give instructions to other clerical employees performing routine tasks.
- e) Ability to make mathematical computations and to keep a variety of records.
- f) Ability to work flexible hours.

Salary and Fringe Benefits

Salary presently \$16,283.28 (1996 rates) plus county fringe benefit package.

Appendix II

JOB DESCRIPTION – SECRETARY II POSITION WITH THE NEWLY MERGED HUMAN SERVICES PROGRAM (formerly Unified Services and Social Services)

Lafayette County Human Services is being formed effective Aug. 1, 1986. This organization is in need of a secretary who will assume some of the duties previously performed by Chris Sauer. Chris had been classified as a Category VII – Secretary/Family Specialist. Some of her previous duties have been removed from this job description leaving primarily secretarial duties.

Of special importance in this position is the ability to transcribe reports and letters from tape dictation. This dictation will contain psychological, medical, psychiatric, and social service terminology which will have to be mastered by the applicant within the allotted probationary period. A pre-existent (demonstrable) ability to transcribe from tape is required.

QUALIFICATIONS – Shall be a high school graduate or its equivalent. At least one year experience as a secretary with training and experience in taking or transcribing dictation, typing, word processing, terminal operation, and record keeping.

DUTIES – Shall be responsible for performing all official Agency typing; maintaining client records; taking and transcribing dictation for all agency staff; providing filing and reporting services; conducting agency reporting utilizing computer terminal; and coordinating all Agency mailings and other duties as assigned by the Director.

Secondarily, shall be responsible for meeting clients when they come into the Agency for appointments; scheduling appointments; answering phone; handling emergency/information phone calls during Agency hours; and referring to therapist (in the absence of the receptionist).

ADDITIONAL REQUIREMENTS – Must be able to communicate effectively both verbally and in writing. Must possess the ability to work within the Agency's administrative structure and maintain strict confidentiality.