

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
**ONEIDA COUNTY COURTHOUSE EMPLOYEES
LOCAL ASSOCIATION NUMBER 159**

and

ONEIDA COUNTY

Case 148
No. 59201
MA-11217

Appearances:

Mr. Mark Hollinger, Staff Counsel, Wisconsin Professional Police Association/LEER Division, appearing on behalf of the Union.

Mr. Carey L. Jackson, Personnel Director, Oneida County, appearing on behalf of the County.

ARBITRATION AWARD

The Union and the Employer named above jointly requested the Wisconsin Employment Relations Commission to appoint the undersigned as the Arbitrator to resolve the wage dispute of Denice Darges. A hearing was held on January 3, 2001, in Rhinelander, Wisconsin, at which time the parties were given the opportunity to present their evidence and arguments. The parties argued their positions at the conclusion of the hearing in lieu of filing briefs.

ISSUES

The County asks whether this is a timely grievance under Article 4 of the collective bargaining agreement and whether the grievance is arbitrable. The Union asks whether the County violated the 1998-2000 collective bargaining agreement by compensating Denice Darges at the Year 2, Step 8 level, effective January 3, 2000, and if so, what is the remedy.

At the hearing, the parties asked the Arbitrator for a bench decision on the timeliness issue, and the Arbitrator ruled that the grievance missed the 10-day period under Article 4, Section B, of the collective bargaining agreement. However, the Arbitrator also found that the grievance constitutes a continuing grievance, because grievances involving benefits or wage rates are often considered to be of a continuing nature, as contract violations remain unremedied each pay period. Accordingly, the Arbitrator determined that if there were to be any remedy, it would be retroactive only to the date of the filing of the grievance on June 28, 2000, and not to the date of January 3, 2000. Thus, the remaining issues are on the merits of the grievance and whether it is substantively arbitrable.

BACKGROUND

The Union filed a grievance regarding the placement of Denice Darges on the wage schedule following her reclassification. Darges was a Secretary III in the Minocqua Planning and Zoning Office and was paid at a Grade 7 in the step called Year 3. Darges was reclassified to a Permit Specialist, which is a Grade 8 position. The dispute centers on whether she should have been placed in Year 2 or Year 3.

Darges started working for the County on August 21, 1995, as a Typist I, and took the position of Secretary III in the Minocqua office of the Planning and Zoning Department on January 1, 1997. She was doing the functions of the Permit Specialist and had trained another person for that position. On May 4, 1999, she requested a reclassification to the Permit Specialist position. Personnel Director Carey Jackson discussed the reclassification with her at the Minocqua office. Darges main concern was that her wages would not go down if she were to be reclassified. Union President Art Hilgendorf was also at the meeting with Darges and Jackson. Hilgendorf did not make any agreement regarding the wages of the position being sought, but believes that they had talked about a rate of \$12.08 per hour.

On June 21, 1999, Jackson prepared a document for the reclassification request for the Planning and Zoning Committee and the Personnel Committee. The report notes that the Permit Specialist classification requires the incumbent to have (a) one year post high school education involving land surveying, plumbing, drafting, resource management, environmental sciences or legal land descriptions; (b) three years experience in one of the above related areas; (c) State of Wisconsin certification as a Plumbing Inspector II; and (d) knowledge of plumbing pertaining to failed private sewage systems and building codes. Darges did not have those requirements. To qualify for the reclassification, she agreed to the stay in her job through January 2, 2000, to meet the three-year work requirement, get a Plumbing II certification before that date and complete two classes pertaining to sewage systems, building codes or other related areas. She had to attend class on her own time but the Department paid for the tuition, books and materials.

Planning and Zoning Administrator Steven Osterman was present at the June 25, 1999, meeting of the Personnel Committee where the wages and reclassification of Darges were discussed. He understood that Darges was to be paid the hourly rate of \$12.08 because she was boosted from Grade 7 to Grade 8 at Year 2. At the time of decision to reclassify Darges, Osterman noted that she did not have experience or educational credits required. The effective date of the reclassification was January 3, 2000, which would have put Darges past her anniversary date in the Zoning Department. The Personnel Committee felt they made accommodations and incurred expenses to reclassify Darges by giving her the three years of experience and giving her tuition to take the courses she needed.

The Union and Darges followed the procedures of Article 6, Section I, of the collective bargaining agreement for the reclassification. Under Section I, Paragraph 7 states:

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

The Personnel Committee made a final decision to reclassify Darges and submitted it to the County Board, which passed it with a fiscal impact statement showing the difference in wages for the year 2000 is \$599.33.

The parties have a Letter of Agreement (Union Ex. #5) that states in part:

5. When an incumbent employee's position is reclassified to a higher grade level the following shall apply:

A. The employee shall be placed into the wage schedule pursuant to their years of service within the previous classification.

The County stipulated that it did not follow the Letter of Agreement in this case.

DISCUSSION

The Union argues that Darges is entitled to back pay retroactive to the date of the filing of the grievance, based on the ruling regarding procedural arbitrability. The Union contends that the side letter of agreement (Union Ex. #5) controls in this case. The County submits that the collective bargaining agreement is clear that the decisions of the Personnel Committee and/or County Board are final and not subject to the grievance procedure. Moreover, the County argues that Darges was not qualified and the Committee could have denied the reclassification. The County paid for her tuition and insisted that she be placed at Year 2 on the schedule. While the side Letter of Agreement adds stability, it's a guide and does not supersede the contract, the County contends.

I find that Article 6, Section I, Paragraph 7, does not mean that the County may reclassify employees and set their wage rates at any place on the negotiated wage schedule. The wage rates are established by the wage schedule, which is also part of the contract and is also to be given effect. Article 6, Section I, clearly is intended to prohibit employees from grieving decisions to grant or deny their reclassification requests. The County is correct when it states that it could have denied the reclassification request and Darges or the Union would have no remedy. However, the County granted the request, and it has to follow the negotiated wage schedule as part of its contractual obligations.

Grievance settlement agreements are the collective bargaining agreements (see CARAVELLO AND WISCONSIN STATE EMPLOYEES UNION, AFSCME, COUNCIL 24, AFL-CIO V. STATE OF WISCONSIN, DEC. NO. 25281-C, WERC, 1991, *AFF'D*, CIR.CT., DANE CO., DEC. NO. 25281-D, 12/92). The side Letter of Agreement was a grievance settlement agreement and became part of the collective bargaining agreement. It applied in the future to reclassified employees. It had no expiration date. The County admits that it follows the side Letter of Agreement most of the time, but did not in this case, primarily because it made some accommodations to give Darges the experience and education required for the reclassification. While the County may have thought it had at least a tacit agreement from the Union President and the affected employee regarding the rate of pay, it had no such agreement from the Union that was binding on the parties.

Accordingly, the County was obligated to follow the collective bargaining agreement, as modified by the side Letter of Agreement, and pay the wage rate of the schedule for Year 3 for Darges. It's failure to do so violates the labor contract.

AWARD

The grievance is granted.

The County violated the collective bargaining agreement by failing to pay Denice Darges the wage rate listed for Year 3, Grade 8, when it reclassified her to a Grade 8 position. The County is ordered to make Denice Darges whole for the difference between Year 2 and Year 3, retroactive to June 28, 2000. The Arbitrator will hold jurisdiction until February 23, 2001, for the sole purpose of resolving any dispute arising over the scope and application of the remedy ordered.

Dated at Elkhorn, Wisconsin this 25th day of January 2001.

Karen J. Mawhinney /s/

Karen J. Mawhinney, Arbitrator