

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**RICE LAKE AREA SCHOOL DISTRICT EMPLOYEES UNION  
LOCAL 3286, WISCONSIN COUNCIL 40, AFSCME, AFL-CIO**

and

**RICE LAKE AREA SCHOOL DISTRICT**

Case 64  
No. 60483  
MA-11629

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Appearances:

**Mr. Steve Hartmann**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 364, Menomonie, Wisconsin 54751, appearing on behalf of Rice Lake Area School District Employees Union Local 3286, Wisconsin Council 40, AFSCME, AFL-CIO, referred to below as the Union.

**Ms. Stephen L. Weld**, Weld, Riley, Prens & Ricci, S.C., Attorneys at Law, 3624 Oakwood Hills Parkway, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, appearing on behalf of the Rice Lake Area School District, referred to below as the Board or as the District.

**ARBITRATION AWARD**

The Union and the District are parties to a collective bargaining agreement which was in effect at all times relevant to this proceeding and which provides for the final and binding arbitration of certain disputes. The Association and the Board jointly requested that the Wisconsin Employment Relations Commission appoint an arbitrator to resolve a grievance captioned as 1-01, filed on behalf of Local 3286. The Commission appointed Richard B. McLaughlin, a member of its staff, to serve as arbitrator. Hearing on the matter was held on February 5, 2002, in Rice Lake, Wisconsin. The hearing was not transcribed. The parties filed briefs and a reply brief or a waiver of a reply brief by July 8, 2002.

## ISSUES

The parties did not stipulate the issues for decision. I have determined the record poses the following issues:

Did the District violate the Collective Bargaining Agreement by posting the position of Administrative Assistant Special Services/Title I on April 3, 2001?

If so, what is the appropriate remedy?

### {PRIVATE }RELEVANT CONTRACT PROVISIONS

#### **ARTICLE 2 – MANAGEMENT RIGHTS**

Section 2.01: It is recognized that the Board has and will continue to retain the rights and responsibilities to operate and manage the school system of the District, and its programs, facilities acilities and properties and the activities of its employees during work hours.

Section 2.02: Without limiting the generality of the foregoing . . . it is expressly recognized that the Board’s operational and managerial responsibilities include:

. . .

- G. The direction and arrangement of all working forces in the system . . .
- H. The creation, combination or elimination of any employee position deemed advisable by the Board. Combination shall mean the Board’s right to combine part-time positions within the District to full-time positions . . .
- I. The determination of the size of the working force, the allocation of assignments of work to employees, the determination of policies affecting the selection of employees . . .
- K. The right to . . . assign workloads. . . .

#### **ARTICLE 7 – JOB POSTINGS AND PROMOTIONS**

Section 7.01: A vacancy shall be defined as a job opening within the bargaining unit.

Section 7.02: When the District determines that a vacancy should be filled or a new position created within the bargaining unit, the new or vacated position shall be posted . . . for a period of five working days. Such postings shall set forth the job title, minimum qualifications required, work locations scheduled hours and rate of pay.

**{PRIVATE }BACKGROUND**

The grievance form, dated April 11, 2001, states the “Circumstances of Facts” thus: “The position of Administrative Assistant Special{tc "BACKGROUND"} Services/Title I was posted at Grade Level 4.” The grievance form cites “Article 7 Section 7:01 and 7:02” as the governing contract provisions, and seeks the following remedy: “Withdraw posting and do not change the grade level of this position.” Grievance 1-01 is one of four grievances prompted by this posting.

The Board awarded Donna Baird the full-time position. Prior to this, Baird held two part-time positions. The Board awarded Baird the one-half time position of Secretary for District Program Coordinators in December of 1996. In August of 1997, the Board awarded Baird the one-half time position of Special Services Secretary. At the time Baird received these positions, Suzanne Exley was the District’s Title I Supervisor and Thomas Hall was the District’s Special Education Supervisor.

In a memo to “All Parties Concerned” dated March 28, 2000, Baird requested “that my job grade level be raised to a full Grade 4 secretarial position” and supported the request thus:

All areas of my position require higher level thinking skills, math skills, creative skills, and advanced computer skills as well as a working knowledge of the programs I support. I work frequently with financial records. I monitor and reconcile the Title I and Special Services’ claims and am coordinating the new Medicaid claiming program.

As secretary to the Special Services’ Administrator, I design and edit the department’s newsletter, keep detailed budgets with databases, type special service purchase orders, maintain special service staff database; in addition, process school psychologist/guidance department’s computer psychological reports, (seven different programs), create graphs and special psychologist’s forms, update computer IEP forms for district-wide Special Services’ staff, along with general secretarial support to administrator and psychologists.

As Title I secretary, I provide assistance to the Title I Coordinator and Title I staff. I take notes at the Action Team meetings, type purchase orders, collect the annual needs assessment data, design and edit the Title I newsletter, create and maintain Title I student database, process correspondence, and as previously stated, maintain records and reconcile the Title I claims.

In addition, I assist the District Assessment Coordinator in the administration and coordination of the Rice Lake Area School's testing program. This includes maintaining test results and data, corresponding to parents and staff, dispensing testing directions, materials and results, budgeting and ordering test supplies and keeping current with DPI procedures.

As secretary in the Administration Building, I support my co-workers with the telephones, share my knowledge of computers, and provide secretarial support to the Administration Building Administrators as needed. . . .

In a memo to Paul Vine, the Board's Superintendent, dated June 20, 2000, and headed "Upgrade of Donna Baird's Secretarial Grade Level", Hall stated his formal recommendation of Baird's request, supporting the recommendation thus:

. . . I believe that the rationale for this belated recommendation should be self-evident but will list a few of the more impressive reasons.

Donna functions at a technical level that is equal to or surpasses all of the Grade 4 secretaries in the district. She has been instrumental in assisting and training others to become better assistants. She has financial responsibilities far and above the levels that she is currently being compensated for. She is able to multi-task in both the technical and functional phases of her job. . . .

Vine responded in a letter to Hall dated October 19, 2000, which states:

. . . (O)n June 20, 2000 I received a copy of a letter from you requesting reconsideration of Donna Baird's secretarial grade level from grade 3 to grade 4. We've reviewed the master agreement, as well as held numerous discussions with Pat Blackaller regarding this request.

I am in agreement, Donna functions at a high technical level. She does have significant financial responsibilities, as well as the ability to multi-task. Because of the technical skills required in this position, I support increasing this position to grade 4 level.

To facilitate this process, I suggest revising the job description, posting the new position and interviewing prospective candidates. The job description should include district responsibilities such as the RAG publication, as well as annual updating the district accountability forms for the strategic plan. . . .

Hall issued the following letter to Baird dated March 12, 2001:

This letter is to inform you of the intent of the Rice Lake Area School District to exercise its right to eliminate your current job and to replace it with a newly defined administrative assistant position that requires substantially higher skill levels than the current split position. We project that this layoff will become effective at the end of the workday on April 12, 2001. You are encouraged to apply for the new position or to exercise your rights under the Layoff and Recall Article (8) of your bargaining unit agreement. . . .

Hall drafted the position description for the position Administrative Assistant, Special Services/Title I, dated March 29, 2001. The position description was attached to the April 3, 2001 posting that prompted the grievance.

As noted in Hall's March 12 letter, each of Baird's part-time positions had a position description, which were supplanted by the March 29 position description. All three documents include a "Qualification Requirements" section that includes sub-headings for Education, Language Skills, Mathematical Skills, Reasoning Ability and Other Skills and Abilities. The March 29 job description deleted a GED as a permissible qualification and deleted any reference that experience could substitute for an educational requirement. It also demanded a "two year degree as an administrative assistant." The language of each document regarding Language Skills is essentially the same. The March 29 position description incorporated essentially the same language for Mathematical Skills as the two other documents, but added the necessity to perform the skills "using computer technology." The language of each document regarding "Reasoning Ability" is the same. The March 29 position description is more detailed in the "Other Skills" section regarding necessary software applications.

The March 29 position description states seventeen "Essential Duties and Responsibilities", the Secretary for District Program Coordinators states eleven and the Special Services Secretary position description states ten. The March 29 position description states more detail regarding the duties than the other documents. There is considerable overlap between the three documents. The March 29 document highlights a number of responsibilities regarding computer operation and the use of computer software in maintaining a variety of district publications and forms.

Hall testified that Baird's original half time positions were primarily clerical involving typing, copying and filing. She handled little or no money. With the growth of special education programs, the positions grew in complexity and in sophistication particularly regarding computer operations and the handling of money. As Special Services grew, Hall became less able to consistently oversee her work, thus making Baird increasingly more autonomous in the performance of her duties.

Hall specified her increasing involvement in financial transactions by stating that Baird now works directly with outside vendors. She has also become responsible for processing medial assistance payments. The District secures a significant amount of funding through federal grants in the Title I program. Baird has played a role in the process since 1997, but her role has expanded and become more autonomous over time. Her role in handling financial matters has, in Hall's view, developed to the point that it bears little, if any, relationship to the demands of her half time positions.

The District has developed a web-based system for its Individual Education Plan (IEP) system to permit staff access to forms. Baird developed the forms and monitors the system, including the permissions systems by which individual users can either read-only or read-write on the web based forms. Baird did not develop the web based operation of the system. She is responsible for creating and publishing reports on the District's testing procedures.

Reclassification requests have been a troublesome issue for the parties for a considerable period of time. During the 1992-93 school year, the Board and the Union established a reclassification committee to attempt to set mutually agreeable criteria to evaluate then pending and future reclassification requests. The committee made some progress, and did produce criteria to define pay grades within support staff positions, but consensus on the point proved impossible. Kathy Pepper is the Union's President, and testified that since at least 1992 the parties have handled all reclassification requests through the bargaining process.

The bargaining process for the parties' 2000-2003 labor agreement coincided with District action on Baird's request for an upgrade. Patrick Blackaller is the District's Director of Finance and Operations and served as its spokesman through the bargaining process. He testified that at one of the parties' initial meetings in March or April of 2000, the Union asked if the District planned to act on any reclassification requests. He responded that he was not aware of any. He was aware of Baird's request, but did not mention it. Baird's request, in his view, was at an early stage and necessitated time to evaluate. He was not actively involved in the evaluation process until sometime after Hall's June 20 letter. The negotiations took sometime, but resulted in a tentative agreement sometime in the summer or early fall of 2000. The parties signed the collective bargaining agreement in December of 2000, due to extensive discussions about the wording of the final draft of the tentative agreement. Steve Hartmann, the Union's spokesman during this bargaining, testified that he asked the District about

pending reclassifications early in the bargaining process, and repeated the request late in the process, to avoid the divisiveness of a post-bargaining reclassification. At the time of the tentative agreement, rumors were rife that the District planned to reclassify certain positions.

In April of 2001, elementary school secretaries within the bargaining unit requested an upgrade for their positions. Pepper and Blackaller discussed the request over a period of time, but could not reach agreement. In a letter to Pepper dated October 25, 2001, Blackaller stated:

. . .

To date, the district has used the criteria provided by the unit in previous reclassification requests (criteria attached). If there is some other mutually agreed upon criteria, please forward to my office a copy indicating the date the agreement was reached between the district and the unit. In the absence of any new criteria, the district will continue to use the criteria used in previous reclassifications. Also, please be aware in the event positions appear to be eligible for reclassification, it is the intent of the district to post all reclassified positions and select the most qualified applicants based upon skill, ability, and if skill and ability are equal, seniority. The district also reserves the right to post these positions externally.

Finally . . . (t)he district will evaluate positions, not individuals, in determining the need for grade level advancement. The interview process, prior evaluations, and test results will determine an employee's eligibility for any new or reclassified position. The level of skill required and responsibilities associated with the position will determine the position's grade.

The "criteria attached" state the following:

. . .

GRADE II – Secretaries in this category perform mostly routine tasks but with some record keeping and/or accountability necessary. They do not have the direct responsibility for the job they do or the office they occupy but do have a degree of responsibility that pay classification I does not have.

GRADE III -- These employees are responsible for the operation of the offices they occupy and work with very little supervision, and, in some cases, may supervise the work of others. They are responsible for completion of many kinds of reports, accountable for money received, an (sic) in general, are responsible for all clerical operations taking place within the school or office.

They have a multiplicity of tasks not found in pay classifications I or II and are expected to be completely familiar with all aspects of the school or office.

GRADE IV – This position has a high degree of accountability in the preparation of reports and/or the handling of funds. They perform a wide variety of duties, all of which require a high degree of accuracy and some of their work is subject to annual audits. They work with a minimum of supervision and, in some cases, supervise others. They are expected to be completely familiar with all of the operations of their office.

The Union did not respond to Blackaller's letter, and thus the reclassification effort ended.

Hall informed Baird that the Board had selected her to fill the position of Administrative Assistant Special Services/Title I in a letter dated April 12, 2001, which states:

. . . Your level of education and accumulation of technical skills are a perfect fit for the posted job responsibilities. Please be aware that there are pending grievances regarding this position, however, it is clear you are the most qualified applicant for the position. . . .

Further facts will be set forth in the DISCUSSION section below.

**{PRIVATE }THE PARTIES' POSITIONS{tc "THE PARTIES' POSITIONS"}**

**{PRIVATE }The Union's Initial Brief{tc "The County's Initial Brief"}**

The Union states the issues for decision thus:

Did the School District violate the Agreement when it posted a position that was neither vacant nor new?

If so what is the remedy?

The Union argues that Baird has served as Secretary since December of 1996 and as Secretary-Special Services since August of 1997. In late March of 2000, Baird formally requested an upgrade. Neither Baird nor the District provided the Union a copy of this request until the arbitration hearing. Her duties in the two positions have not changed since the negotiation of the parties' most recent labor agreement.



Reclassifications have been a long-standing source of friction between the parties and have consistently been handled through the bargaining process. Baird's request for an upgrade "is a reclassification under the guise of a new position." Since a posting demands a vacancy or a new position, the District violated Article 7 by posting Baird's existing position. Whether or not Baird deserves an upgrade, the labor agreement does not permit the District to "post a position that is neither new nor vacant." The posting is, therefore, "null and void."

**{PRIVATE }The Board's Initial Brief{tc "The Union's Initial Brief"}**

The Board states the issue for decision thus:

Did the Employer violate Section 7.01 or 7.02 of the collective bargaining agreement when it created a new position of Administrative Assistant Special Services/Tile I and posted it as a Grade 4 position?

Section 7.02 clearly demands that a new position be posted. The grievance cannot be squared with the facts or the contract.

The Board has "the inherent right to create new positions" and, under Article 2, Section H, "has the express right to create, combine and eliminate positions." Other rights stated under Article 2 underscore the existence and breadth of this authority. The evidence clearly establishes that Baird's assignments and responsibilities have changed over the years. The increased skill requirements warrant a pay increase, but rather than unilaterally awarding a reclassification, the Board determined to draft a new job description and to post the new position within Pay Grade 4.

The evidence will not support Union claims that Baird's duties have not changed. In fact, undisputed evidence shows "only minimal resemblance" between her current duties and those covered by the old job descriptions. To assert that the Board cannot draft a new job description for a position whose duties have evolved over time runs counter to arbitration precedent.

The District concludes that the duties of Baird's position "have evolved over time" and have grown "more complex, more technical, and (now) require more independent judgment." The Union has asserted a series of internally inconsistent positions. The inconsistencies are magnified by the incongruity of the Union demanding that the District not increase a unit member's wages. The Board concludes that the "only plausible explanation for the Union's position is petty jealousy between bargaining unit members," and "requests that the Arbitrator deny this grievance in its entirety."

**{PRIVATE }The Union's Reply Brief{tc "The County's Reply Brief"}**

The Union notes that the Board questions its motivation in grieving the matter. The Union rejects the assertion that “petty jealousy” prompted the grievance. Beyond this, if speculation on motives is appropriate, the Union contends that upgrades may not turn on “what one knows or does but” on “who one knows and how important that person is.” Nor can the Board persuasively assert that it can unilaterally set the wage rate for a new position, since “the wages of any new position in the bargaining unit must be bargained.”

**The Board's Reply Brief**

The Board waived the filing of a reply brief. **{PRIVATE }**

**DISCUSSION{tc "DISCUSSION"}**

I have adopted a statement of the issue that draws on, but does not adopt, either party's. Both parties' statements focus on Sections 7.01 and 7.02, although the Union's leaves this implicit. My statement incorporates the labor agreement to make the contractual focus explicit, if broad. It is broad to highlight that the grievance pulls Article 2 into the interpretation of Article 7. The District's express reference to the posted pay grade, in my view, unnecessarily broadens the dispute. The grievance questions the validity of the posting itself. The evidence is not detailed regarding the appropriate wage placement of the position, and there is no need to speculate on that point to address the validity of the posting.

The evidence poses the practical effect against the contractual basis of an evidently divisive action. District arguments highlight the anomaly of the Union opposing a wage upgrade. Pepper's testimony highlights that reclassifications have been a troublesome issue. Hartmann's testimony highlights the ramifications of the issue, since the Union sought to bring the matter into the bargaining process, as has been done with past reclassifications. Blackaller's October 25, 2001 letter highlights that the reclassification process is designed to look to individual positions, not personalities. However, the correspondence prompting the posting slurs any line between the two. Baird's and Hall's memos refer to an upgrade, but focus on Baird's individual performance as well as the position's demands. Hall's support for Baird is spirited. His June 20, 2000 and April 12, 2001 letters do not stop at asserting that she meets necessary requirements. Rather, they highlight her superiority to other applicants and employees. This is not improper, but underscores the obviously divisive nature of the issue.

The source of an arbitrator's authority is contract language. Whatever tension the grievance reflects, the issue is whether the District has acted in a fashion that violates the language of the labor agreement. The evidence does not support a conclusion that it has.

The grievance ultimately questions the interpretation of Section 7.02, which demands that the District “shall” post a “vacancy” or “a new position.” Section 7.01 defines a “vacancy” as “a job opening within the bargaining unit.” The Union asserts the April 3 posting is invalid, since the position is neither vacant nor new.

The provisions of Article 2 focus the dispute. Subsection 2.02 H authorizes the District to combine part-time positions into a full-time position. The April 3, 2001 posting did just that. The grievance thus asserts that the contractually authorized combination of two part-time positions does not create a job opening or a new position. In itself, this raises troublesome issues. For example, are two part-time positions distinguishable from a full-time position for purposes of layoff or recall? This point is not posed for interpretation. However, this highlights that it is troublesome to conclude that the combination of two positions into one does not create an “opening” of some type. This is more evident if viewed on other facts. If two part-time positions, undesirable to full-time employees due to hours or other considerations, were combined into a single, desirable full-time position, it is probable that at least some full-time employees would view this as an “opening” demanding a posting.

These general considerations highlight that “job opening” and “a new position” are broad references. Placed in context, the purpose of their breadth is evident. A “vacancy” in the first sentence of Section 7.02 is a broad reference to existing positions within the unit that no longer have an incumbent. A “new position created in the bargaining unit” is a position that has never had an incumbent. The terms are broad standing alone and broad when combined to sweep any position the District determines to fill into the posting process. The purpose of the terms is to broadly mandate posting.

Without regard to the evidence, this overview establishes the contractual difficulty of the Union’s position. The act of combining positions is contractually significant under Section 2.02 H. To conclude this action did not create “a new position . . . within the bargaining unit” undercuts the broad language and the contractual purpose of Sections 7.01 and 7.02.

A review of the evidence does not make it persuasive to conclude the April 3 posting did not address a “a new position created within the bargaining unit.” It is clear that there is considerable overlap in the duties of the combined position and their part-time predecessors. It is no less clear that Hall, in testimony and in correspondence, was prone to understate the overlap and to underscore Baird’s personal abilities. This cannot obscure that the District changed the educational requirements for the position and recognized the growing significance of the financial and computer-based duties of the job. Even if this was no more than a gradual evolution, the difference in duties underscores that the position posted on April 3 was factually distinguishable from its part-time predecessors.

In sum, the April 3 posting covered “a new position created in the bargaining unit.” It was, therefore, necessary for the District to post the position under Section 7.02.

The Union seeks to establish that the District wired a wage upgrade for Baird, obscured the upgrade from the bargaining process and shoved it through the posting process, knowing the result was preordained. This line of argument puts the District’s motivation at issue. Analyzing motivation does not, however, improve the interpretive process for any of the provisions at issue. Motivation is hard to define and harder to prove. Its use in litigation is thus limited. Where it is a factor, the risk of using it is overcome by the need to address a significant wrong, such as anti-union bias or discrimination with regard to race, gender, age, etc. Here, the wrong involved is the reclassification of a single position, and there is no persuasive reason to enter the thicket of what motivated the District in acting to reclassify or the Union in acting to challenge the reclassification.

The grievance must turn on the interpretation of the agreement against the District’s behavior. Whether or not the process was wired, the District combined two part-time positions into a single full-time position. To find this did not create a “job opening” or a “new position” in the bargaining unit would eviscerate those terms. This is improper as a matter of contract interpretation for it narrows obviously broad terms. Nor is it persuasive as a policy matter. The purpose of the posting language is to sweep all openings determined to be filled by the District into the posting process. As in the example noted above, the Union’s desire to secure that result on these facts could expose it to larger problems on other facts.

Similar considerations govern other concerns raised by the Union. It may be that the addition of an Associate Degree requirement in the revised job description tailored the position to Baird. Speculation on Hall’s motivation does little to address this point. If this is a bona fide change in the educational background sought by the District there is no contract violation, since the District has the right to set qualifications under Section 2.02 I. If it is not, it is unclear that anything is gained by addressing the matter as a posting issue. Rather, it would appear that the District has opened itself to reclassification claims from employees lacking the nominal paper qualification but performing the required work.

The Union has understandable concerns regarding the District’s unwillingness to be open about its actions, thus avoiding bargaining. As noted above, much of the correspondence concerning the reclassification treats the matter as a wage upgrade and the evidence indicates the parties have handled such upgrades in the past during bargaining. However, Vine’s October 19, 2000, letter emphasizes action on a position. Baird’s two part-time positions were eliminated in March of 2001. Whether or not this secured a preordained result, this is action on a position and it exposed the District to the risk of arbitration regarding how it filled the posted position. Whatever impact this had or may yet have on the parties’ bargaining relationship, from the perspective of Articles 2 and 7 regarding the posting process, it reflects contractually permitted action on the affected positions.

The grievance challenges that the District posted the position at Grade 4. The District's statement of the issue similarly puts the Grade level at issue. As noted above, I do not view this issue to be posed for determination. Section 7.02 demands the posting of "a new position created in the bargaining unit" when the District determines it should be filled. It is evident the District determined to create a Grade 4 position. That grade level exists in the labor agreement, and secretarial positions are allocated to it. That the District determined to fill the position at that grade level is the only significant fact for this matter. If the position is "overrated", the District exposes itself to the risk that similar jobs will follow it to Grade 4. Neither the evidence nor the parties' arguments make it appropriate for me to speculate on whether the position is in its proper grade.

Ultimately, the Union's arguments seek a practical result that reflects the depth of its frustration over the filling of the posted position. The persuasive force of those arguments cannot, however, outweigh the damage that would be done to the terms of Sections 7.01 or 7.02 if they are limited in scope as the Union seeks.

**{PRIVATE }AWARD{tc "AWARD"}**

The District did not violate the Collective Bargaining Agreement by posting the position of Administrative Assistant Special Services/Title I on April 3, 2001.

The grievance is, therefore, denied.

Dated at Madison, Wisconsin, this 24th day of July, 2002.

Richard B. McLaughlin /s/

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Richard B. McLaughlin, Arbitrator

