

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
GREEN COUNTY COURTHOUSE EMPLOYEES LOCAL 3813
WISCONSIN COUNCIL 40, AFSCME, AFL-CIO

and

GREEN COUNTY

Case 151
No. 61723
MA-12044

Appearances:

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

Mr. William E. Morgan, Corporation Counsel, Green County, 1016 16th Avenue, Monroe, Wisconsin 53566, appearing on behalf of the County.

ARBITRATION AWARD

Pursuant to a request by Green County Courthouse Employees, Local 3813, Wisconsin Council 40, AFSCME, AFL-CIO, herein "Union," and the subsequent concurrence by Green County, herein "County" or "Employer", the undersigned was appointed arbitrator by the Wisconsin Employment Relations Commission on January 22, 2003, pursuant to the procedure contained in the grievance-arbitration provisions of the parties' collective bargaining agreement, to hear and decide a dispute as specified below. A hearing was conducted by the undersigned on March 25, 2003, at Monroe, Wisconsin. The hearing was not transcribed. The parties completed their briefing schedule on May 14, 2003.

After considering the entire record, I issue the following decision and Award.

ISSUES

The parties were unable to stipulate to the issues.

The Union frames the issues as follows:

1. Did the Employer violate the collective bargaining agreement by downgrading the Legal Secretary position from Grade 11 to 10?
2. If so, what is the appropriate remedy?

The County frames the issue in the following manner:

1. Did the Employer act reasonably and in conformance with Article 3 when it created the grade and job description for the Legal Secretary/Victim Specialist position?

Having reviewed the entire record, the Arbitrator frames the issues as follows:

1. Did the Employer violate the collective bargaining agreement when it created the grade for the Legal Secretary/Victim Specialist position?
2. If so, what is the appropriate remedy?

DISCUSSION

By letter dated August 23, 2002, District Attorney Gary L. Luhman (“Luhman”) requested that the Personnel and Labor Relations Committee reorganize the District Attorney’s office such that the position of Crime Victim Witness Coordinator/ Secretary (Grade 10) and the position of Executive Legal Secretary (Grade 11) be eliminated and that a position of a Victim Services Coordinator/Office Manager (Grade 13) and a Legal Secretary/Victim Specialist (Grade 11) be created.

The Personnel and Labor Relations Committee at its meeting of August 28, 2002, approved Luhman’s recommendations except that they downgraded Victim Services Coordinator/Office Manager to a Grade 12 and the Legal Secretary/Victim Specialist to a Grade 10.

The new positions were posted on September 12, 2002 based on the actions of the Personnel and Labor Relations Committee. The Union filed a grievance on September 19, 2002 complaining that the Legal Secretary/Victim Specialist position “should be returned to the grade 11 and the employee in the position be made whole.”

The grievance was heard and denied by the Personnel and Labor Relations Committee on September 25, 2002. By letter dated September 27, 2002, the Committee informed the Union of its decision to deny the grievance. The basis for the denial was that the Legal Secretary/Victim Specialist position was graded appropriately (Grade 10) "given the reduction in supervisory responsibilities." Further, compared "to other union and non-union positions that are substantially the same, such as the Zoning secretary and the non-union legal secretary position, this position is appropriately graded." The Committee felt that the position did not warrant a higher Grade level.

The matter proceeded to arbitration as noted above where the parties stipulated that there are no procedural issues and that the instant dispute is properly before the arbitrator for a decision on the merits pursuant to the terms of the parties' collective bargaining agreement.

The Employer argues that it acted reasonably and in conformance with Article 3 in creating and establishing a grade for the position entitled Legal Secretary/Victim Specialist position. The Employer correctly points out that Section 3.01 specifically states it has the exclusive right to direct its employees, to plan and direct and control its operations, and to determine the amount and quality of work to be done, and by whom it is to be performed. (Emphasis in the Original). It is undisputed that the Employer has repeatedly exercised its innate rights of management in conformance with this section by eliminating and creating positions as it has done in the instant case. The Union is not challenging these rights. However, as pointed out by the Employer, the Union is challenging the "appropriateness of the grade level."

The Employer admits that its management rights clause (Article 3) states "generally" that the County retains "all rights of management which it had prior to the Agreement." Section 3.02 entitled "Legal Rights" expressly provides that the "County and the Union have all the rights which they had at law except those expressly bargained away in this Agreement." In addition, Section 1.01 provides Employer recognition of the Union "on all matters relating to wages, hours and conditions of employment" for all employees in the instant bargaining unit. Pursuant to these obligations, the parties bargained pay Grade 11 for the position of Executive Secretary (also referred to as "Legal Secretary") in Appendix "B" of the collective bargaining agreement. The record is clear that the primary responsibility of the new position of Legal Secretary/Victim Specialist is Legal Secretary duties. In fact, both Union witness Susan Dahl and Employer witness Luhman testified that 75% of the new position of Legal Secretary/Victim Specialist's duties are Legal Secretary duties. This is a substantial portion of the job's duties. According to Appendix "B" of the agreement, said position should, therefore, be assigned to pay Grade 11.

This is particularly true where, as here, the collective bargaining agreement expressly provides that a job posting is to include the wage scale. Article 7, Section 7.04 specifically states: “If an employee bids into a) a higher paid job, b) a lower paid job, or c) a job paying the same, said employee shall go back one (1) longevity pay step in the new classification during the trial period.” (Emphasis added). In fact, the posting for the disputed position designated an incorrect wage Grade of 10. (Joint Exhibit No. 19). Because the posting designated an incorrect wage scale, it did not meet the requirements of Article 7 and Appendix “B” of the agreement. ONEIDA COUNTY (COURTHOUSE EMPLOYEES), Case 78, No. 44689, MA-6385 (Burns, 6/91).

The Employer argues contrary to the above that it took a position which had been historically graded as a Grade 11, removed certain duties and responsibilities to make it equivalent to other secretarial positions in general, and other legal secretarial positions in particular, within the County and graded it accordingly. The Employer adds: “To argue as the Union does that it needs to be graded at a step higher simply because it previously was, is simply without merit.”

First, the Union does not argue that the Legal Secretary/Victim Specialist position needs to be graded at Grade 11 simply because it previously was. The Union argues that the person holding this position continues to perform many of the same functions as were previously performed by the Legal Secretary who was paid at Grade 11. As noted above, the Union is correct on this point.

Second, the Employer claims that its removal of certain duties and responsibilities from the Legal Secretary/Victim Specialist position justifies a downgrade to Grade 10. The Employer points out that both of the aforesaid witnesses “agreed that the position does not entail any supervision or overall office management.” However, there is no mention of any supervisory duties in the Legal Secretary job description. (Joint Exhibit No. 6). Luhman testified that the Legal Secretary supervised another Legal Secretary position but there is no evidence that this amounted to anything more than a de minimis amount of her job duties. In fact, Luhman testified that one of the reasons for reorganizing his office was that he had “three people with the same responsibilities and duties all at the same pay range.” He added: “who was in charge got to be a problem.” In practice, the former Legal Secretary position performed no more or less supervisory and management duties than the other employees in the District Attorney’s office.

The Employer also argues that because the Legal Secretary/Victim Specialist was to be “under the direction of the Victim Services Coordinator/Office Manager,” (Joint Exhibit No. 4, p. 3), Luhman recommended a two-gap difference between the positions. (Supra, p. 4). However, as pointed out by the Employer, Luhman proposed a Grade 13 and Grade 11 spread between the two positions, not the Grade 12 and Grade 10 spread ultimately adopted by

the Personnel Committee. Grade 11 was the same Grade as the Executive Secretary which is appropriate because under the reorganization the Legal Secretary/Victim Specialist would be performing primarily Legal Secretary duties. If the Employer had assigned a Grade 13 to the Victim Services Coordinator/Office Manager position as requested by Luhman, there would still be a two-gap difference between the positions.

In his letter asking to reorganize his office and reclassify the positions in question, Luhman wrote:

In making this proposal to reclassify these positions, the District Attorney's Office looked both to comparable positions within Green County as well as comparable positions within similarly situated District Attorney's Office in smaller rural counties in Southern Wisconsin. Our initial comparisons (as noted below) suggest that the present classifications are below those in comparable positions in other southern Wisconsin counties. The proposed reclassifications are still comparable to and even slightly below those of similarly comparable positions in Green County. (Id.).

A pay Grade 11 for the Legal Secretary/Victim Specialist is appropriate based on those comparisons. (Supra, pp. 4-5).

The Employer argues that a Grade 12 and Grade 10 spread is the same Grade spread found in the offices of Clerk of Court, Register of Deed and Treasurer. That may be. However, the issue here is the appropriate Grade for the Legal Secretary/Victim Specialist not the Grade spread in a particular office. For the reasons discussed above, the Arbitrator finds that it is Grade 11.

In reaching this conclusion, the Arbitrator rejects the Employer's argument that because the new position of Legal Secretary/Victim Specialist performs routine office tasks she is appropriately at Grade 10. The Victim Services Coordinator/Office Manager also performs "all routine clerical and administrative tasks necessary for effective functioning of the District Attorney's Office." (Joint Exhibit No. 9, p. 1). Said position is at Grade 12.

The Employer also argues that Union witness Dahl testified that the level of responsibility in completing the work of Legal Secretary/Victim Specialist was like that of the Deputy Clerk of Court which was also graded at Grade 10. However, a comparison of the two job descriptions indicates that the Legal Secretary/Victim Specialist has higher level more complex duties. (Joint Exhibit Nos. 7 and 11). For example, under "Essential duties and responsibilities" the Program Assistant in the Clerk of Court office does primarily routine office tasks like updates office files and cases, operates typewriters and other office equipment, performs receptionist duties, calculates and collects fees, drafts correspondence and processes

documents and data. (Joint Exhibit No. 11, p. 1). In contrast, while the Legal Secretary/Victim Specialist performs some routine secretarial tasks the person occupying that position also reviews police investigative reports and prepares criminal complaints and summons as well as other legal documents including court notices. (Joint Exhibit No. 7, p. 1). The Legal Secretary/Victim Specialist also performs “self-directed, program related tasks” and exercises “independent decision-making under the direction of the Victim Services Coordinator/Law Office Manager.” (Emphasis added). In comparison, the Deputy Clerk of Court position simply “requires independence in implementing personal and procedural control over the specific program.” (Emphasis added).

In addition, Dahl did not testify that the level of responsibility was the same between the two aforesaid positions. She testified that the level of responsibility for the Legal Secretary/Victim Specialist position was in many ways “more complex” than testified to by Luhman. She also testified, as noted above, that 75% of the Legal Secretary/Victim Specialist duties were Legal Secretary duties previously at Grade 11. For these reasons, the Arbitrator rejects this argument of the Employer.

The Employer further argues that there are two other comparables to which the disputed position is closely akin. First, the Employer argues that the level of secretarial duties and responsibilities between the Zoning Secretary (Grade 10) and the Legal Secretary/Victim Specialist position are substantially the same. However, contrary to the assertion of the Employer, a review of the job descriptions for the two positions does not support such a conclusion. The job description for the Zoning Secretary makes no reference to independent decision making authority unlike the Legal Secretary/Victim Specialist job description noted above. (Joint Exhibit No. 10). In addition, the Zoning Secretary job description includes mostly routine secretarial and clerical duties like typing, word processing, data processing, answering the phone, scheduling appointments, and file management. (Id.). The Legal Secretary/Victim Specialist position has higher level duties and responsibilities as noted above.

The Employer believes that “an even closer comparable is to that of the non-union Confidential Legal Secretary position shared between the Corporation Counsel’s office and the District Attorney’s office.” The Employer adds: “Not only are these both legal secretarial positions, but they are in the same office. As can be seen on Joint Exhibit 5, the pay grades for the two positions are now nearly identical.” The Employer concludes that not only is the grading of the Legal Secretary/Victim Specialist position internally appropriate, but it is also consistent with the general market comparables used by the salary study conducted by an outside vendor hired by the County.

First, the salary study would be relevant if it included the Union-represented positions in the instant bargaining unit as well. It did not. Second, a comparison between the two job descriptions reveals that the Legal Secretary/Victim Specialist position is appropriately

classified at a higher level. Not only does the Confidential Legal Secretary perform largely routine secretarial and clerical duties, unlike the Legal Secretary/Victim Specialist, these duties are not performed in a “self-directed” or “independent decision-making” manner like the Legal Secretary/Victim Specialist. (Joint Exhibit No. 15). Therefore, the Arbitrator rejects this argument of the Employer.

Finally, the Employer argues that “grade inflation without the justification of additional responsibilities or training/education is not appropriate.” First, this is not grade inflation. Grade 11 for the Legal Secretary/Victim Specialist position is the same Grade assigned to the former Executive (Legal) Secretary position. The duties and responsibilities for the two jobs are essentially the same. Second, contrary to the Employer’s position, the education/training required for the new Legal Secretary/Victim Specialist position is actually higher than that required under the old Executive Secretary position. The Executive Legal Secretary position only required for training and experience “graduation from high school supplemented by business and vocational school courses in secretarial sciences . . . office management; or any combination of training and experience which provides the required knowledge, skills and abilities.” (Joint Exhibit No. 6). The Legal Secretary/Victim Specialist position, on the other hand, requires an “Associate’s degree (A.A.) or equivalent from a two-year college or technical school; or six months to one year related experience.” (Joint Exhibit Nos. 7 and 19).

Based on all of the above, the Arbitrator finds that the answer to the issue as framed by the undersigned is YES, the Employer violated the collective bargaining agreement when it created the grade for the Legal Secretary/Victim Specialist position. A question remains as to the appropriate remedy.

The new position of Legal Secretary/Victim Specialist was first posted on September 12, 2002. (Joint Exhibit No. 19). The grievance challenging the Grade for this position was filed shortly thereafter. As a remedy, the grievance requested that said position “be returned to the grade 11 and the employee in the position be made whole.” (Joint Exhibit No. 17). The Arbitrator finds that the remedy sought by the Union is appropriate under the circumstances.

In light of all of the foregoing, it is my

AWARD

The instant grievance is hereby sustained. The Employer is ordered to return the Legal Secretary/Victim Specialist position to Grade 11 and make the person holding this position whole for all lost wages and benefits that she incurred as a result of the Employer's action.

Dated in Madison, Wisconsin, this 19th day of May, 2003.

Dennis P. McGilligan /s/

Dennis P. McGilligan, Arbitrator

