

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

CITY OF RACINE

and

AFSCME LOCAL 2239

Case 641

No. 61270

MA-11875

(Fowler Out of Class Pay Grievance)

Appearances:

Racine City Attorney, 730 Washington Avenue, Racine, WI 53403, by **Mr. Guadalupe Villarreal**, Deputy City Attorney, appearing on behalf of the City.

Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 624, Racine, WI 53401-0624, by **Mr. John Maglio**, Staff Representative, appearing on behalf of the Union.

ARBITRATION AWARD

Pursuant to the provisions of the collective bargaining agreement between the parties, AFSCME Local 2239 (hereinafter referred to as the Union) and the City of Racine (hereinafter referred to as the Employer or the City) requested that the Wisconsin Employment Relations Commission designate a member of its staff to serve as arbitrator of a dispute over the proper pay for work performed by Helen Fowler. A mediation session was held on the case, but the matter was not settled. A hearing was held on February 17, 2003, in Racine, Wisconsin, at which time the parties were afforded full opportunity to present such testimony, exhibits, other evidence and arguments as were relevant. A stenographic record was made and a transcript was received on March 10, 2003. The parties submitted post-hearing briefs, the last of which was received by the undersigned on June 5, whereupon the record was closed.

ISSUE

The parties were not able to agree on a statement of the issue and stipulated that the Arbitrator should frame the issue in his Award. The Union views the issue as:

Did the Employer violate the collective bargaining agreement when it refused to reclassify the Grievant's position to SU-11 by failing to compensate the Grievant out of grade pay? If so, what is the appropriate remedy?

The City views the issue as being:

Did the Employer violate the collective bargaining agreement by refusing to reclassify the Grievant's position to SU-11? If so, what is the appropriate remedy?

The Union's statement encompasses both the request for reclassification and the alternate theory, that the Grievant should receive out of grade pay for a portion of her work time. Both issues may be fairly read into the statement of the grievance. For that reason, I conclude that issue may most accurately be characterized as:

Did the Employer violate the collective bargaining agreement when it refused to reclassify the Grievant's position to SU-11 and/or by failing to compensate the Grievant with out of grade pay? If so, what is the appropriate remedy?

CONTRACT LANGUAGE

ARTICLE IV

MANAGEMENT RIGHTS

The City possesses the sole right to operate City government and all management rights repose in it, but such rights must be exercised consistently with the other provisions of this contract and the past practices in the departments covered by the terms of this Agreement unless such past practices are modified by this Agreement, or by the City under rights conferred upon it by this Agreement, or the work rules established by the City of Racine. These rights which are normally exercised by the various department heads include, but are not limited to the following:

1. To direct all operations of City government.
2. To hire, promote, transfer, assign and retain employees in positions with the City and to suspend, demote, discharge, or take other disciplinary action against employees for just cause.

3. To lay off employees due to lack of work or funds in keeping with the seniority provisions of the Agreement.
4. To maintain efficiency of City government operations entrusted to it.
5. To introduce new or improved methods or facilities.
6. To change existing methods or facilities.
7. To contract out for goods or services; however there shall be no layoffs or reduction in hours due to any contracting out of work.
8. To determine the methods, means and personnel by which such operations are to be conducted.
9. To take whatever action which must be necessary to carry out the functions of the City in situations of emergency.
10. To take whatever action is necessary to comply with State or Federal law.
11. Overtime: The City has the right to schedule overtime work as required in a manner most advantageous to the City and consistent with the requirements of municipal employment and public interest. Part-time and seasonal employees shall not be assigned overtime unless regular employees are working overtime or are unavailable.

In addition to the management rights listed above, the powers of authority which the City has not officially abridged, delegated or modified by this Agreement are retained by the City. The Union recognizes the exclusive right of the City to establish reasonable work rules. The Union and the employees agree that they will not attempt to abridge these management rights and the City agrees that it will not use these management rights to interfere with rights established under this Agreement or the existing past practices within the departments covered by this Agreement or by the City under rights conferred upon it by this Agreement, or the work rules established by the City of Racine. Nothing in this Agreement shall be construed as imposing an obligation upon the City to consult or negotiate concerning the above areas of discretion and policy.

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ARTICLE X
GRIEVANCE PROCEDURE

- A. Definition of a Grievance: Should a difference arise between the City and the Union or an employee concerning the interpretation, application, or compliance with this Agreement, such difference shall be deemed to be a grievance and shall be handled according to the provisions herein set forth.

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- G. Arbitration: If the Union grievance is not settled at the third step, or if any grievance filed by the City cannot be satisfactorily resolved by conferences with the appropriate representatives of the Union, the grievance shall be submitted to arbitration upon request of either party within thirty (30) calendar days of receipt of the Step 3 answer.

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- I. Arbitration Hearing: The Arbitrator shall use his/her best efforts to mediate the grievance before the final arbitration hearing. The parties shall agree in advance upon procedures to be used at the hearing and the hearing shall follow a quasi-judicial format. The Arbitrator selected shall meet with the parties as soon as a mutually agreeable date can be set to review the evidence and hear testimony relating to the grievance. Upon completion of this review and hearing, the Arbitrator shall render a written decision as soon as possible to both the City and the Union, which shall be final and binding upon both parties.

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- K. Decision of the Arbitrator: The decision of the Arbitrator shall be limited to the subject matter of the grievance and shall be restricted solely to interpretation of the contract area where the alleged breach occurred. The Arbitrator shall not modify, add to or delete from the express terms of the Agreement.

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ARTICLE XV
TEMPORARY ASSIGNMENTS

- C. In the event an employee is temporarily assigned to a higher pay rated job for eight (8) continuous work hours, he/she shall receive that higher rate of pay while on such temporary assignment, except where the employee is

being trained. When the employee is trained, determined to be qualified by the Administrative Manager (or his designee) and working on the job alone with the complete responsibility, he/she shall receive the higher rate. However, the City shall not utilize two (2) or more employees in an assignment to abridge this article.

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FACTUAL BACKGROUND

The Employer is a municipality providing general governmental services to the citizens of Racine, in southeastern Wisconsin. The Union is the exclusive bargaining representative for the City's City Hall employees, including the clerical employees. The Grievant, Helen Fowler, is a Secretary II in the City's Engineering Department. Secretary II is one of the classifications in pay grade SU-8.

In February of 2002, the Grievant filed the instant grievance, alleging that her job duties were inappropriately classified as clerical, when she was in fact working at a higher level. At Step 3 of the grievance procedure, she submitted a letter explaining her desire to be reclassified:

March 26, 2002

To Whom It May Concern:

I am writing this to request a reclassification from an SU8 to a SU11. I am now the Secretary for the Engineering Department, however my job responsibilities have expanded to such a degree that I feel that I should be reclassified to a higher grade.

Along with my regular duties I also do the Time Distribution Sheets that were the responsibility of Harold Kobbervig the Assistant City Engineer before Tom Eeg. I also do sidewalk permits and send out sidewalk orders which was the responsibility of the Sidewalk Inspector, which is an Engineering Technician I. I deal with hundreds of residents and sidewalk contractors each year in the management of the City's Sidewalk Replacement Program.

Along with the Time Distribution Reports, which involves getting all time spent on each job for the engineers and technicians, I have to put these in sonic semblance of order so that we can extract information that we need, such as billing time and hours for the CDBG reimbursement from the federal government. After I get this information I give a report to Terry Meier so that she can send this to the federal government for reimbursement.

In addition to this, I do the job of ordering the office supplies. This had fallen to the Engineering Technician II, who has retired. I train new employees in office procedures. I deal with the Accountants in Finance with regards to contract payments and special assessments. I process tax searches on a daily basis.

I process monthly contract payments for over 20 construction contracts per year. I process professional service contract payments for more than 10 different consultant contracts per year. I keep track of and pay on over 15 state construction projects each year. I keep track of numerous State and Federal Grants that the department manages to supplement the construction program each year, which, in the past, Harold Kobbervig handled, until his retirement. I request all reimbursements from the DNR for any grants that we are given and I keep track of all grants, their amounts and how we will be reimbursed. I handle the storm sewer and manhole contracts that come from the Water Utility. Along with the added duties is the added responsibility that goes along with it. If I do not get this done, then the City does not receive the money that was granted to them.

I also rent out parking spaces in all parking system facilities and handle complaints received from the general public regarding these facilities. I issue "Temporary No Parking Signs", parking meter hoods, etc.

I am responsible for renting out mooring spots for the Harbor Commission. I keep track of all the renters on a yearly basis.

I type school bus passes for the Transit System on a bi-annual basis.

I am requesting this reclassification because I feel that my work goes beyond my job description and will only get more and more expanded as time goes on, as this has been the practice since I have gotten into this position.

Thank you for your consideration of this request. If you have any questions or need additional information, feel free to contact me.

The request and the grievance were both denied and the dispute was referred to arbitration. After several attempts at settlement, a hearing was held on February 17, 2003, and the following testimony was taken:

Helen Fowler

The Grievant testified that her job has changed and become more complicated than it was when she posted into the position in 1993. A great deal of her time is now devoted to performing work that had been performed by technical and professional employees. Since

2000, she has been responsible for every aspect of the City's Sidewalk Inspection program other than the actual inspections themselves. Much of this work was previously performed by an Engineering Technician, but since his retirement it has occupied 50% of her time on a seasonal basis, beginning each March. In addition to this, she has taken over the work of a retired Engineering Technician II who formerly was responsible for purchasing for the Department. While this only occupies 5% of her time, these are new duties. She has likewise taken over responsibility for the tracking of grant money and submitting reimbursement requests. That work occupies 5 to 10% of her time, and had been performed by the Assistant City Engineer until he retired. She has also from time to time compiled materials for bid specifications. Finally, she now spends at least a day each month tracking time reports in the Department, making sure that time spent on reimbursable projects is appropriately charged to those projects. The Grievant noted that she received out of grade pay in 2000, when she worked on Snow Citations in the absence of the Engineering Technician, but has not received that pay for performing all of these other higher rated duties.

On cross-examination, the Grievant acknowledged that she did no actual inspection work in the Snow Citation program, nor in the Sidewalk Inspection program. Her new work on the Sidewalk program and the time distribution reports consists of entering data into a computer database. She also agreed that her purchasing work was a matter of ordering supplies as instructed and receiving authorization for the purchases from the City Engineer or one of his deputies. She works about eight hours of overtime each week, because of a vacancy in the other clerical job in the Department, but she explained that the overtime was principally devoted to the City's Parking system.

James Blazek

James Blazek testified that he has been the City Engineer for 25 years. The Grievant functions as his secretary. Blazek explained that the change in purchasing duties was principally due to a switchover to an electronic system of ordering, rather than manually filling out requisitions and purchase orders. The same transition took place in the Sidewalk Inspection program, when a specialized program was written to handle the record keeping for the program. The program does the necessary calculations, whereas they used to be done manually by an Engineer. Time distribution reports were also computerized in the late 1990's. As with the Sidewalk program, the Grievant merely enters the data, and the computer program does the calculations. Blazek said her responsibilities for obtaining reimbursement from grant providers consisted of typing up requests for reimbursement, including breakouts of City costs, but only after he had reviewed and approved the documents. Blazek characterized all of these tasks as work that used to require some technical skills, but which programming had rendered essentially clerical.

Blazek acknowledged some overlap between the Grievant's job description and that of the Engineering Technician I, in that she helps assemble needed documents for project specifications, and inputs information related to construction projects. He also acknowledged that she tracked the performance of work on grant projects, but opined that this was largely a clerical function.

Blazek also acknowledged that the Grievant was paid out of class pay for her work in the Snow Citations program in 2000. He explained that the winter was particularly snowy and that the Engineering Technician could not keep up. He assigned a Sanitarian to assist with the inspections themselves, and the Grievant to perform the clerical work of the program. Because it was an assignment to a completely different project, and was an on-going duty of a Technician, he approved out of class pay for her.

On cross-examination, Blazek agreed that the clerical work in the Sidewalk program was performed by an Engineering Technician before it was assigned to the Grievant, as was the purchasing for the Department. He also agreed that the tracking of grants was previously done by an Engineering Technician. He agreed that, in 2000, she received out of class pay for doing clerical work usually performed by an Engineering Technician. He also acknowledged that, while he reviewed and approved requisitions and reimbursement requests prepared by the Grievant, he also did this for all such requests in the Department, whether prepared by Fowler or by a technical or professional employee.

Additional facts, as necessary, will be set forth below.

THE POSITIONS OF THE PARTIES

The Position of the Union

The Union takes the position that the Grievant is plainly working at a job that above her classification, and that she should more appropriately be placed in pay grade SU-11. While her position may once have merited the Secretary II pay grade, over the years it has accumulated duties previously performed by much higher paid employees. She is now responsible for the Sidewalk Inspection project, which occupies half of her time in the summer months. While many of the job duties are clerical in nature, this job was previously performed by an Engineering Tech I. When the Grievant performed these duties in his absence, she received SU-14 pay. Now that he has retired and she is solely responsible for this work, she receives no additional compensation. On the face of it, this is not reasonable.

The Grievant has also been assigned responsibility for purchasing for the Engineering Department, as well as requisitioning needed equipment. These duties are generally supervised by the City Engineer, as they were when they were previously performed by an Engineering Tech II, in pay grade SU-16. Again, the Grievant is doing the work of a higher rated job without additional compensation. Five to ten percent of the Grievant's time is spent tracking grant monies received by the City, insuring that the contractors are paid and the City is reimbursed by the granting authority. Additional time is spent tracking and reporting reimbursable staff hours spent on grant projects. This work was previously done by the Assistant City Engineer. Once again, the Grievant has been assigned the work of a highly paid professional, and is required to do it with no additional compensation.

The overall picture here is of a job that has evolved over time into a more complex and more technically demanding position than the clerical job the Grievant posted for in 1993. The appropriate remedy is to reclassify her as an SU-11. If, for some reason, the Arbitrator finds that a reclassification is not appropriate, she is at a minimum entitled to receive out of class pay for the time spent on work previously performed by Engineering Techs and the Assistant City Engineer.

The Position of the City

The City takes the position that there is no cause to adjust the Grievant's pay rate. The Grievant is a clerical employee and she has been assigned to perform clerical functions. There is no evidence that she has performed anything of a technical or professional nature. She has input data into a program designed by others. That is clerical work. She has completed purchase requests. That is clerical work. She has done record keeping for the time distribution system. That is clerical work. She has tracked the expenditure of grant monies. That is clerical work. Certainly, the volume of her work has increased because of vacancies within the clerical ranks. She has been paid overtime for the increased work.

The Grievant is a clerical employee. She is a skilled employee, but the skills are clerical, not technical. She is a hard working employee, but she is paid the appropriate rate for the time she puts in. There is no basis in the contract, nor in the facts of the case, for an order that the Grievant be paid more than her current rate. Accordingly, the grievance must be denied.

DISCUSSION

The question in this case is not the Grievant's overall merit as an employee, nor whether she performs her assigned duties well. The question is whether those duties are fairly within her job description. If a substantial percentage of her work is actually that of a higher rated job, it may be that she is improperly classified. If a discrete portion of her work is that of a higher rated job, she is entitled to out of class pay, per the contract.

The Union's principle argument is that the Grievant has, over time, assumed duties previously performed by Engineering Technicians and the Assistant City Engineer, and that the City should not assign this work to her without a commensurate increase in pay. That argument has a facial appeal, but it is only persuasive if the additional duties are themselves higher rated duties. Few technical and professional jobs are solely comprised of tasks requiring the full range of technical or professional expertise that is the basis for the higher rate paid to such positions. The fact that an Engineer may answer her own phone, prepare her own correspondence, or file her own documents does not mean that that work is Engineer's work. On the contrary, those are clearly clerical duties, and if they are transferred to a clerical employee it does not follow that they should be paid at the Engineer's rate.

The Grievant's job description specifies, *inter alia*, that her duties include:

- Acts as an intermediary for the supervisor, maintaining frequent contacts with public and private executives and other officials.
- Keeps departmental financial, statistical and other records and files.
- Creates and maintains informational files on a personal computer.
- Receives complaints or supplies information explaining standard departmental procedures; interprets regulations according to established standards and applies rules to a variety of work situations.
- Prepares a variety of routine reports and correspondence.

Of the duties described by the Grievant, most fit easily into the listed categories. Her work on the Sidewalk Inspection program consists of data entry, as did her work in the Snow Citation program. Data entry is also the major portion of the her work on tracking grant money and submitting reimbursement requests. The keeping of financial and statistical records, the creation of information files and the production of routine reports are all listed as elements of her job. None of the tasks, as she described them, require specialized technical or professional knowledge or calculations. To the extent that specialized calculations are involved in these reports and records, the computer program performs those calculations automatically.

The tasks at issue are clerical tasks, but it is the case that the Grievant received out of class pay at the Technician's rate when she performed these same type of tasks in the past. The City makes a reasonable distinction, however, between those instances and the current situation. Where the Grievant has received out of class pay, it has been for temporarily assuming the duties – albeit clerical duties – still assigned to an Engineering Technician. There has been no conscious permanent redistribution of work from the Technician to the Secretary, and thus the City has treated the work as Technician's work for pay purposes. The work at issue here is clerical work that has been redistributed to the clerical staff, generally upon the retirement of the technical or professional employee who had been performing it as an adjunct to his technical and professional duties. While that clearly increases the volume of clerical work the Grievant is responsible for performing, it does not change the nature of the work. The appropriate response to an increase in work volume is the payment of overtime or an increase in clerical staffing. It is not the payment of a higher hourly rate.

The Grievant's job has clearly evolved over time, and she is now required to perform different tasks than she was when she took the job ten years ago. Those new tasks, though more closely related to the technical and professional projects performed in the office, are not themselves technical or professional work. While the Grievant is plainly a very accomplished and hardworking employee, the work she performs consists of clerical tasks that are fairly

within the scope of her existing job description. As such, they do not require either a reclassification of her position or the payment of out of class pay. Accordingly, the grievance is denied.

On the basis of the foregoing, and the record as a whole, the undersigned makes the following

AWARD

The Employer did not violate the collective bargaining agreement when it refused to reclassify the Grievant's position to SU-11 and/or by failing to compensate the Grievant with out of grade pay. The grievance is denied.

Dated at Racine, Wisconsin, this 9th day of September, 2003.

Daniel Nielsen /s/

Daniel Nielsen, Arbitrator