

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
**CRAWFORD COUNTY COURTHOUSE AND HUMAN SERVICE
EMPLOYEES LOCAL 3108, AFSCME, AFL-CIO**

and

CRAWFORD COUNTY

Case 87
No. 62451
MA-12294

(Grievance of Deanne Lutz)

Appearances:

Daniel R. Pfeifer, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 18990 Ibsen Road, Sparta, Wisconsin 54656-3755, for the labor organization

Dennis White, Brennan, Steil, Basting & MacDougall, S.C., Attorneys at Law, P.O. Box 990, Madison, Wisconsin 53701-0990, for the municipal employer.

ARBITRATION AWARD

Crawford County Courthouse Local 3108 and Crawford County are parties to a collective bargaining agreement which provides for final and binding arbitration of disputes arising thereunder. The Union made a request, in which the County concurred, for the Wisconsin Employment Relations Commission to appoint a member of its staff to hear and decide a grievance over the interpretation and application of the terms of the agreement relating to reclassification. The Commission appointed Stuart D. Levitan to serve as the impartial arbitrator. Hearing in the matter was held in Prairie du Chien, Wisconsin, on September 23, 2003. The County and Union submitted written arguments on October 23 and October 28, respectively, and jointly waived their right to file replies.

ISSUE

The parties stipulated that the issue before me is:

“Has the grievant met the criteria for a reclassification pursuant to the August 10, 1998 agreement?” The parties further stipulated that if the grievant is found to meet the criteria, the appropriate remedy would be to reclassify her to Grade 10, effective August 7, 2002.

BACKGROUND

On August 10, 1988, the Union and the County agreed to resolve a reclassification grievance as follows:

The parties agree that the grievance of Joyce Fritsche-Roberts shall be resolved as follows:

1. Grievant shall be reclassified to a Clerk III position as of the date of this agreement and shall be paid all applicable wages and fringe benefits from the period her Clerk III position was rescinded (on or about March 11, 1988) to the date of this agreement. Grievant shall hereafter receive all wages and fringe benefits applicable to the Clerk III position.

2. The parties further agree that in the future the process for reclassification of employees shall be as follows:

- a. job position subject to Wisconsin Statutory laws or Wisconsin Administrative regulations shall not be subject to the procedure set forth herein.
- b. on all other reclassifications, the reclassification shall be evaluated and determined by a joint meeting of the representative standing committee and the Personnel Committee and the Finance Committee and/or its representatives.
- c. the standard for evaluation for reclassification from an existing position to another existing position under the collective bargaining agreement shall be that reclassification shall be granted if the employee has been assigned new duties comprising 35% of his/her work

week hours (which 35% is a composite change after considering the deletion of old duties and the addition of new duties).

- d. if the reclassification concerns the change from an existing job position to a new job position which does not exist under the collective bargaining agreement, due to the addition of new duties, the employee shall be reclassified one grade level higher provided that position meets the aforesaid 35% standard described in Paragraph 2(c) above.

3. The parties agree that the procedure under Paragraph 2(d) above may be addressed in future collective bargaining negotiations. The parties agree that the reclassification procedure does not apply to the creation of entirely new jobs to which the posting procedure would apply under the collective bargaining agreement.

4. The parties agree that the issue of whether the 35% standard applicable to Paragraph 2(c) and 2(d) above has been established is subject to review by arbitration.

Among its general governmental duties, Crawford County is responsible for recording data relating to land use, ownership and division. In furtherance of these responsibilities, the County employs a Real Property Lister, an appointed position reporting to the County's Land Use Concerns Committee. Since approximately 1999, Gionne "Gigi" Collins has been the Real Property Lister. To assist the Real Property Lister, the County also employs a position identified in the collective bargaining agreement as "assistant tax lister." Prior to June 4, 2001, the incumbent assistant tax lister, Norma Bloyer, operated under the following position description:

ASSISTANT TAX PROPERTY LISTER

GENERAL STATEMENT OF DUTIES:

Performs computer work, typing and clerical; does related work as required.

DISTINGUISHING FEATURES OF THIS WORK:

This is high level secretarial work of moderate complexity and variety. Work requires knowledge of computer inputting, typing, working with maps, ability to check on property owners – parcel numbers, descriptions and addresses. Work with general public on day-to-day problems. Can help out and run office when needed.

EXAMPLES OF REQUIRED WORK:

Types letters, committee minutes and other related forms.

Input figures from Assessors into computer update and records for all new owners and new addresses and other necessary information. Adding and proof reading of Assessment Rolls and distribute summaries and envelopes that are used for Board of Review. Same work is needed for Tax Roll and Tax Bills yearly job.

Distribute supplies, forms and print-out to the local Assessors, Clerks and Treasurers as needed during the year.

Type and mail out Tax Deed Notices to delinquent property owners; proof read and type publication for paper of all lands acquired by Crawford County.

Make copies of mylar maps on blue print machine for townships, surveyors, hunters, land owners and anyone else that needed them.

Answer telephone and screen calls; take messages for Surveyor's office. Also answer any inquiries which does not require boss's attention.

Check Zip + four addressing update quarterly – will also be working with 911 in the future.

Copies maps and listings for Plat Book.

Operates various office machines such as adding machine, burster, computer and printer.

REQUIRED KNOWLEDGE SKILLS AND ABILITIES:

(Thorough knowledge of Real Property Lister's Office terminology, procedures and equipment). Ability to type, work on Computers, answer questions on property descriptions, assessment and taxes, and some knowledge of the interpretation of maps. Ability to get along well with others; ability to perform office procedures in a confidential manner.

ACCEPTABLE TRAINING OR EXPERIENCE

Completion of a standard high school course in business with addition training in computers. Some previous experience in abstracting or a related real estate field, and in cartography or drafting would be very helpful. Any equivalent combination or experience and training which provides the required knowledge, skills and abilities.

When Boyer retired in the early summer of 2001, Collins took prepared a new position description which added certain qualifications and duties. The revised job description, which the Land Use Concerns Committee approved on June 14, 2001, read as follows:

Job Description
Assistant Real Property Lister

Position Summary:

This position is a full time union position. You will need to have a good understanding of legal descriptions, land transfers, assessment rolls and tax rolls. Computer experience and legal description experience is a must. You will be computer inputting, typing and working with maps on a daily basis. Must be able to work well with the general public, be dependable and adaptable to any new changes.

Duties and Responsibilities:

- Input figures from Assessors into computer; update assessment rolls for all new property owners and new addresses and any other necessary information.
- Adding and proofing of Assessment Rolls and Tax Rolls and distribute the appropriate paperwork to the Assessors and Municipal Clerks.

- Type correspondence and all other related office work as required by the Real Property Lister.
- Use various office machines such as 10 key calculator, burster, blue print machine and large printer.
- Answer telephones and help the public locate property by parcel number, legal description and/or by parcel maps.
- Work with Certified Survey Maps and the Surveyor's Office.
- Various other duties as called upon by the Real Property Lister.
- Must be able to run the office when the Lister is not available due to monthly meetings and/or seminars, etc.

Education and Training Requirements:

Completion of the standard high school course in business with additional training in computers. Must have experience working with legal descriptions and land transfers. Experience working with abstracts or a related real estate field would be very helpful. Any equivalent combination or experience and training which provide the required knowledge, skills and abilities.

Deanne Lutz was hired on August 28, 2001, under this position description. Over the next year, she performed at a level well beyond that of her predecessor. Among her initiatives was creating and implementing a program in Microsoft Access that allowed the county to more efficiently post and log various land transfer activities. She also performed many other duties which the prior incumbent was not qualified to undertake, including duties which Collins formerly performed, but which had been passed on to Lutz so that Collins could attend to new responsibilities of her own relating to Geographic Information Systems (GIS) mapping and other initiatives regarding the modernization of land records. .

On August 6, 2002, Collins appeared before the county Land Use Concerns Committee to request that the position be reclassified. In support of her request, she submitted a written statement that read in part, "because of the diverse changes in the Property Lister's Office throughout the past year, there has been a profound increase in the duties and skill requirements required for this position." (JT. EX. 12)

Lutz also submitted supporting documentation, a three-page, single-spaced statement explaining why she and Collins felt she satisfied the terms of the reclassification procedure. (JT. EX. 13) After explaining several duties she performed that her predecessor did not, Lutz added a final element, as follows:

One other thing that has been given to me to work on is for the Surveyor Richard Marks. It is not listed on my percentage break down sheet, but I would like to tell you about it. Rich had approached me on putting together a new format for his Certified Survey maps and Plat maps to be logged. The program that he is currently using is out of date and doesn't have the potential that he needs. After reviewing the program that I had created in Microsoft Access to help the Appraisers, he asked if I could set one up for him. He has over 4 thousand maps that need to be re-entered and logged a specific way in order for them to be able to sort right. When I have any spare time, I am working on that for him. This program will be able to help him retrieve a specific map a lot quicker than he can right now. It will also narrow down any other maps located in the same area.

By unanimous vote, the committee recommended to the personnel committee that the position be reclassified. (JT. EX. 7) The following day, following presentations and the same submissions by Lutz and Collins, the Personnel Committee voted unanimously to reject the reclassification, along with two others, "as the 35% increase in duties was not met." The committee's discussion had been in closed session, and it offered no further explanation or analysis of its action. (JT. EX. 8)

Lutz and the Union filed a grievance on August 13, claiming that the County violated two provisions of the 1988 agreement, namely that "the reclassification shall be granted if the employee has been assigned new duties comprising 35% of his/her work week," and that the reclassification "shall be evaluated and determined by a joint meeting of the representative standing committee and the personnel committee and the finance committee and/or its representatives." The Personnel Committee considered the grievance on August 30, at which time Lutz and Collins provided the committee with a submission they jointly prepared entitled "Percentage Break Down of Job Duties," which purports to show how much time Lutz spends on her various duties. (JT. EX. 11)

Based on her direct observation of Lutz, Collins quantified the amount of time she was spending on each task, and assigned the appropriate percentage. Under this analysis, Lutz was spending 55% of her time in duties which the prior ARPL performed, and 45% of her time performing new duties, as follows:

- A. Create and update program on Microsoft Access for each Deed. (8%)
- B. Prepare monthly billing statements for the Title Companies (1%)
- C. Preparation of Deeds for Property Lister to post (8%)
- D. Proof read legal descriptions before transferring Deeds (5%)
- E. Ordering Office Supplies (1%)

- F. Posting name changes from land transfers to the Assessment Roll for the Village and City of Prairie du Chien (8%)
- G. Update parcel maps with name changes (3%)
- H. Input Open Book and Board of Revue (sic) changes from the Assessor & balancing the new summary (5%)
- I. Update Agenda list for Property Lister's monthly committee meeting and prepare folders as needed for meetings. (1%)
- J. Organize the Manufacturing List and Special Classifications list received from the State of Wisconsin (1%)
- K. Prepare file folders for Certified Survey Maps (4%)

In a written statement, Collins added that, "I would also like to bring to your attention that when I came to the committees a year ago to hire a new employee, I informed each committee at that time that this position will have more responsibilities and it does."

Following discussion in closed session, the personnel committee unanimously denied the grievance. (JT. EX. 9) The Union advanced the matter to arbitration.

Collins and Lutz, the only two witnesses at the arbitration hearing, testified in details as to the scope and nature of Lutz' duties. The union also submitted Lutz' daily planner for September 9, 2002 – November 8, 2002, as verified by Collins. (U. Ex. 1).

POSITIONS OF THE PARTIES

In support of its position that the grievance should be sustained, the Union asserts and avers as follows:

The only issue before the arbitrator is whether the grievant has been assigned new duties comprising 35% of her work-week hours. Both the grievant and her supervisor testified as to the grievant's new duties. Evidence shows that there has actually been a 45% increase in duties, far exceeding the standard needed. The grievant's supervisor is in the best position to determine the duties actually being performed by the grievant, and there is no evidence to contradict her testimony showing that the grievant has been assigned new duties comprising 35% of her work-week. The arbitrator should sustain the grievance.

In support of its position that the grievance should be denied, the County asserts and avers as follows:

There has not been a 35% change in duties for the grievant since she started work. The Union's attempt to compare the grievant's work to her predecessor is misplaced; the question is whether there has been a 35% change in duties for the grievant since she started work. Since the supervisor had already incorporated the majority of the changes into a new job description established in June 2001, several months before the grievant was hired, the changes in the grievant's work duties since she started have been minimal.

Further, the supervisor was aware that the position was range 11 when she submitted the new job description in June 2001, but she did not request reclassification at that time. It is therefore inappropriate at this time for either the grievant or the supervisor to request a reclassification, and they are estopped from claiming that the grievant should be compared to the prior incumbent as a basis for reclassification.

In the alternative, the alleged changes in job duties are not changes but are generic tasks encompassed within the job description. It is merely after-the-fact rationalization for the grievant to claim the alleged new duties, so clearly related to existing tasks, do not fall within the reasonable and expected bounds of the language used in the job description to describe job duties.

Moreover, even if some tasks are not generically encompassed within the job description, grievant has still not met the 35% requirement. The tasks the grievant claims are new duties are largely tasks which fall squarely within the language of the job description. There is nothing new about these duties for the grievant.

DISCUSSION

The parties stipulated that the issue before me was whether or not the grievant "met the criteria for a reclassification" under the August 10, 1988 agreement which settled an earlier reclassification grievance.

That agreement read, in pertinent part, as follows:

2. The parties further agree that in the future the process for reclassification of employees shall be as follows:

...

- b. on all other reclassifications, the reclassification shall be evaluated and determined by a joint meeting of the representative standing committee and the Personnel Committee and the Finance Committee and/or its representatives.
- c. the standard for evaluation for reclassification from an existing position to another existing position under the collective bargaining agreement shall be that reclassification shall be granted if the employee has been assigned new duties comprising 35% of his/her work week hours (which 35% is a composite change after considering the deletion of old duties and the addition of new duties).
- d. if the reclassification concerns the change from an existing job position to a new job position which does not exist under the collective bargaining agreement, due to the addition of new duties, the employee shall be reclassified one grade level higher provided that position meets the aforesaid 35% standard described in Paragraph 2(c) above.

The Union asserts that the unrebutted testimony of Collins and Lutz establishes that the 35% threshold was more than met, so the grievance should be sustained. The County counters with several reasons why the grievance should be denied.

The County first emphasizes that the 1988 agreement refers specifically to “the employee” being assigned new duties, not the position, and notes that the majority of the changes from the prior incumbent’s duties were incorporated into a new job description which was established over two months before the grievant began work. The County also argues that since Collins did not ask for a reclassification at the time she submitted a new position description in 2001, such an action would be inappropriate. The County also says that any alleged new duties are subsumed by previously existing assignments and the language of the position description.

There may be much merit to these arguments of opposition. But before I can evaluate the County’s analysis of how and why the union failed to satisfy the terms of paragraph 2c, however, I must first address the County’s apparent failure to comply with the terms of paragraph 2b. That paragraph explicitly states that reclassifications “shall be evaluated and determined by a joint meeting of the representative standing committee and the Personnel Committee and Finance Committee and/or its representatives.” However, the evidence and testimony before me indicates that no such joint meeting was ever held; rather, the committees

met on successive days, with the Land Conservation Committee endorsing the reclassification on August 6, 2002, and the Personnel Committee acting to the contrary on the following day.

That is not the procedure the 1988 agreement requires. I believe the parties knowingly and properly provided for the joint meeting in the 1988 settlement because such a joint meeting improves the decision-making process. It is generally understood that the standing committee is the most informed about the merits of the reclassification because it has the direct knowledge of the position's particulars, but its members' objective judgment may possibly be clouded by their natural desire to be supportive of the staff they oversee. The Personnel and/or Finance committee(s), meanwhile, with their broader countywide perspective, have an institutionalized instinct to oppose reclassifications. Standing committee members are the most knowledgeable and supportive; the personnel and finance committees are the skeptical fiscal watchdogs. Having served more than five years as a county supervisor, I take notice of the fact that a joint meeting enables members of each committee to make their best case where it will be most effective – where members from the other committee can hear it.

In settling the Fritsche-Roberts grievance in 1988, the County agreed that future reclassifications would be based on a joint meeting of the standing and personnel and/or finance committee(s). I believe such a commitment was more than an idle offer, but was instead a significant procedural element to the agreement. The County failed to honor this commitment.

Having established that the County did not comply with paragraph 2b of the Fritsche-Roberts settlement, the question then arises – so what? The Union agreed that the 1988 settlement was the operative relevant language to be assessed in considering this grievance, so there is no threat of a jurisdictional disqualification. Indeed, the Union itself never raised paragraph 2b, either at hearing or in its written argument.

The initial grievance filed on August 13, 2002 by Lutz and the local Union representative cites the County's non-compliance with 2b as a distinct violation. On its face, it was. The employer was aware at the outset that this argument was made, and the record shows no response thereto. For reasons I neither know nor understand, the Union did not pursue this angle at hearing or in its brief. While arbitrators may analyze evidence as they see fit, it is widely disfavored to base a decision entirely on language which the parties don't cite and arguments they don't make. Thus, while I find the County's non-compliance with the terms of paragraph 2b to be highly instructive, I cannot hold it dispositive.

However, the fact that the County considered the Lutz reclassification through a process which on its face violated the 1988 agreement resolving the Fritsche-Roberts grievance informs me of the County's relaxed attitude toward the explicit terms of the 1988 agreement. With that understanding, I return to its argument that the facts before me do not meet the technical terms of paragraph 2c.

On closer review, I question whether the terms of paragraph “c” are even appropriate for this grievance. That paragraph refers to reclassification “from an existing position to another existing position under the collective bargaining agreement...” That, of course, is not the situation before me, where the change is not in the position, but in the employee (namely, the change from Bloyer to Lutz). Lutz has not gone from one existing position to another; rather, she holds the same position as did Bloyer, albeit under a different position description, and with a slightly different name.

Does that slight difference in terminology make the terms of paragraph “d” apply? That section pertains to a reclassification based on “the change from an existing job position to a new job position which does not exist under the collective bargaining agreement.” The collective bargaining agreement identifies the position as “assistant tax lister.” Bloyer’s position description was for “assistant property lister,” with the word “tax” handwritten in. The 2001 position description was for “assistant real property lister.” Depending on the outcome one wanted, a case could be made that this shifting nomenclature indicates that Lutz does serve in a new job position which does not exist under the collective bargaining agreement, or that she does not.

The parties have stipulated that I am to base my award on the August 10, 1988 agreement. I have now made three determinations about that agreement and its application to this grievance. The first is that the County did not comply with paragraph 2b, a mandatory term establishing the reclassification procedure. The second is that the terms of paragraph 2c do not meet the facts before me. The third is that the application of the terms of paragraph 2d are ambiguous and uncertain.

The precise terms of the 1988 agreement therefore not being applicable to this grievance, I look for the “essence” of that agreement. UNITED STEELWORKERS OF AMERICAN V. ENTERPRISE WHEEL AND CAR CORP., 363 U.S. 593 (1960). It’s not hard to discern. The essence of the Fritsche-Roberts agreement is that a reclassification is called for when a job is changed by at least 35%. Therefore, I believe the essential question before me is, “compared to her predecessor, does the grievant perform new duties which comprise 35% of her work week hours?”

Thus, I do not believe the proper comparison is between Lutz’ duties as of her hiring on August 28, 2001 and the request for reclassification on August 7, 2002. Rather, I believe the proper comparison is between Lutz’ duties as of that latter date and Bloyer’s duties as of her retirement in June, 2001. Accordingly, I reject the County’s contention that none of Lutz’s duties which arguably could come under the language of the June 2001 position description should be counted towards the 35% threshold; instead, I conclude that if 35% of the duties Lutz performs are duties which Bloyer did not perform, Lutz is entitled to a reclassification to pay grade 10.

There's no question the County intentionally and with cause increased the qualifications needed and the duties assigned when the land use concerns committee adopted the revised description on June 14, 2001. The County openly acknowledges that it upgraded the position, stating in its brief:

Collins felt that Bloyer was limited in what she could do. Once Collins knew that Bloyer was going to retire, Collins determined that she wanted the new incoming employee to be able to do more things. Collins therefore drafted a new job description for the Assistant Property Lister.

Among the "changes in duties" which Collins included in the new position description, the County cites the requirement "that the employee must have experience in legal descriptions and land transfers," a skill set which Bloyer lacked. As the County also acknowledges:

Collins also inserted the new duties of "various other duties as called upon by the Real Property Lister" (Bullet 7); "type correspondence and all other related office work as required by the Real Property Lister" (Bullet 3)' "help the public locate property by parcel number, legal description and/or parcel maps" (Bullet 5); and "work with Certified Survey Maps and the Surveyor's office"(Bullet 6).

This means, of course, as the County further acknowledges, that "Collins has assigned Lutz duties which Bloyer did not perform."

At the time the Personnel Committee considered the reclassification, it was aware that Collins had taken the retirement of Bloyer as an opportunity to upgrade the position. As Collins reminded the committee in August:

I would also like to bring to your attention that when I came to the committee a year ago to hire a new employee, I informed each committee at that time that this position will have more responsibilities and it does.

As prepared by Collins and endorsed by both the standing committee and the personnel committee, Lutz's position description represents a significant upgrade from Bloyer's. Where the earlier expectations were "Ability to type, work on Computers, answer questions on property descriptions, assessments and taxes, and some knowledge of the interpretation of maps," the 2001 version stipulated a much higher standard:

.... **You will need to have a good understanding of legal descriptions, land transfers, assessment rolls and tax rolls. Computer experience and legal description experience is a must.** You will be computer inputting, typing and working with maps on a daily basis....

The new description also includes a significant addition among the educational and training requirements:

Must have experience working with legal descriptions and land transfers.

As Collins testified, this qualification was critical and essential to the new position being what she needed it to be.

I turn now to the question of whether 35% of Lutz's duties are tasks Bloyer did not perform.

I start with two duties which are obviously included in that tally because they have been assigned to Lutz after the adoption of the 2001 position description, namely "create and update program on Microsoft Access for each Deed" (8%) and "ordering office supplies" (1%).

Collins testified that "before Deanne, we never even billed the title companies," which justified assigning a 1% increase in Lutz' duties to this task. She testified that, inasmuch as Bloyer "could not read legal descriptions, and did not read deeds," "preparation of deeds for property lister to post" (8%) and "proof read legal descriptions before transferring deeds," (5%) should be counted as duties new to Lutz. Collins further testified that updating parcel maps with name changes (3%) and inputting Open Book and Board of Review changes from the Assessor and balancing the new summary (5%) were unique and new duties, as was the process for preparing file folders for Certified Survey Maps. (4%). Collins further testified that Lutz performed certain tasks relating to Collins' committee appearances which Bloyer had never performed (1%). Thus, Lutz has been assigned new duties comprising no less than 36% of her work week hours.

"I am the best judge of Deanne's duties," Collins testified, and I am inclined to credit her sworn testimony – with which Lutz agrees -- as being an accurate assessment of how Lutz's job differs from the one held by Bloyer. While the County ably cross-examined both witnesses, it offered no rebuttal evidence or testimony.

The department head and the relevant standing committee both determined that Lutz met the standard for a reclassification. The Personnel Committee, violating the terms of the 1988 agreement by acting without a joint meeting with the standing committee, decided otherwise, giving only a cursory and conclusory explanation as to why. For reasons explained above, I believe the request by Collins and endorsement by the standing committee were most in keeping with the essence of the 1988 agreement.

Accordingly, on the basis of the relevant language, the record evidence, sworn testimony and arguments of the parties, it is my

AWARD

That Assistant Real Property Lister Deanne Lutz has met the criteria for a reclassification pursuant to the August 10, 1988 agreement. Pursuant to the stipulated remedy, the grievant's position is reclassified as Pay Grade 10, effective August 7, 2002.

Dated at Madison, Wisconsin, this 15th day of January, 2004.

Stuart Levitan /s/

Stuart Levitan, Arbitrator