

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
**MONROE COUNTY COURTHOUSE EMPLOYEES,
LOCAL 138, AFSCME, AFL-CIO**

and

MONROE COUNTY

Case 163
No. 63101
MA-12497

Appearances:

Daniel R. Pfeifer, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 18990 Ibsen Road, Sparta, Wisconsin 54656, appearing on behalf of the Union.

Ken Kittleson, Personnel Director, Monroe County, 14345 Co Hwy B, Room 3, Sparta, Wisconsin 54656, appearing on behalf of the County.

ARBITRATION AWARD

The Union and the County are parties to a collective bargaining agreement which was in effect at all times relevant to this proceeding and which provides for final and binding arbitration. The parties requested that the Wisconsin Employment Relations Commission appoint either Dennis P. McGilligan or Richard B. McLaughlin as arbitrator to resolve the dispute set forth below. By letter dated January 14, 2004, the Commission appointed the undersigned. Hearing on the matter was held on February 9, 2004, in Sparta, Wisconsin. The hearing was not transcribed, and the parties completed their briefing schedule by March 22, 2004.

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

ISSUES

The parties were not able to stipulate the issues for decision. The Union poses the following issues:

1. Did the County violate the collective bargaining agreement by eliminating the bargaining unit position of Payroll and Accounts Coordinator and reassigning a portion of the duties previously performed by the Payroll and Accounts Coordinator to the newly created, non-bargaining unit position of Accounting Manager?
2. If so, what is the appropriate remedy?

The County suggested the following issues for determination:

1. Did the County violate the collective bargaining agreement when it eliminated the Payroll and Accounts Coordinator position and established an Accounting Manager position?
2. If so, what is the appropriate remedy.

Having reviewed the entire record, I adopt the Union's framing of the issue.

DISCUSSION

By Resolution 8-03-4, the County Board of Supervisors by a 20-2 vote on August 6, 2003, voted to create a non-bargaining unit Accounting Manager position and to eliminate a bargaining unit Payroll and Accounts Coordinator position in the County Clerk's office. The Payroll and Accounts Coordinator position was held by Kathy Brownell ("Grievant") who subsequently bumped into the County Courthouse bargaining unit position of Child Support Specialist.

The Union argues that the contract has been violated, particularly the recognition clause and seniority provisions, "by the fact that a substantial number of the duties previously performed by the Payroll and Accounts Coordinator are now being performed by the Accounting Manager." In support thereof, the Union cites CITY OF FOND DU LAC, Case 169, No. 59283, MA-11242 (Gallagher, 3/01).

As pointed out by Arbitrator Gallagher, arbitrators are divided on the question of whether, in the absence of contract provisions to the contrary, management has the right to assign bargaining unit work to employees outside the unit. CITY OF FOND DU LAC, *supra*,

p. 14. Elkouri and Elkouri, *How Arbitration Works*, (BNA, 6th Ed., 2003), p. 757. In holding that management has such right, some arbitrators have emphasized the absence of a specific restriction in the contract. Elkouri and Elkouri, *supra*, p. 757. However, other arbitrators have found in favor of the union and have refused to allow employers to assign work away from the unit, on the ground that it is not included within the scope of general management-rights clauses. Elkouri and Elkouri, *supra*, pp. 759-760. Similarly, arbitrators have so ruled on the basis that the recognition, seniority, or job security clause is violated by such action; or that the job, being listed in the contract, is a part of the contract, and its reassignment outside the bargaining unit violates the contract. Elkouri and Elkouri, *supra*, p. 760 and cases cited therein.

Other cases have turned upon whether there are business justifications to support the assignment of unit work away from unit employees where there is no work preservation clause and the employer has acted in good faith. CITY OF FOND DU LAC, *supra*, p. 15, Elkouri and Elkouri, *supra*, pp. 758-759. Those justifications include the following:

1. The quantity of work or the effect on the bargaining unit is minor or *de minimis* in nature.
2. The work is supervisory or managerial in nature.
3. The work assignment is a temporary one for special purpose or need.
4. The work is not covered by the contract.
5. The work is experimental.
6. Under past practice, the work has [or has not] been performed exclusively by bargaining unit employees.
7. The transfer was caused by a reorganization or change in work methodology or processes.
8. There is a change in the character of the work.
9. Automation or a technological change is involved.
10. An emergency is involved.
11. Some other special situation or need is involved. Elkouri and Elkouri, *supra*, pp. 758-759 and the cases cited therein.

These cases generally include more than one such justification to support a ruling in favor of the employer on this basis. CITY OF FOND DU LAC, *supra*, p. 15.

The issue in the prior case was whether the City's assignment of Assessment Clerk duties to supervisors/managers for a two-month period violated the labor agreement. CITY OF FOND DU LAC, *supra*, p.15. Arbitrator Gallagher found that the agreement did not contain any provisions specifically granting or deny the employer the right to assign unit work away from the bargaining unit or preserving work to the unit. *Id.* Arbitrator Gallagher also found no business justification for the assignment of work outside the bargaining unit. *Id.* Based on the

recognition clause, various seniority provisions, the fact that the position in dispute was listed in the agreement with a wage rate and was clerical in nature, and a strong past practice reserving unit work to unit employees, Arbitrator Gallagher found “based upon the specific facts of this case” that the agreement had been violated by the City’s actions. CITY OF FOND DU LAC, *supra*, p. 16.

Like CITY OF FOND DU LAC, the parties’ collective bargaining agreement contains a general management rights clause and does not contain a work preservation clause. (Joint Exhibit No. 20). Also like CITY OF FOND DU LAC, the agreement contains a recognition clause, seniority provisions and the position is covered by the agreement. *Id.* However, unlike CITY OF FOND DU LAC, there are a number of business justifications for reassigning a portion of the bargaining unit duties previously performed by the Payroll and Accounts Coordinator to the non-bargaining unit position of Accounting Manager.

The County Clerk is the chief accountant for the County. However, the previous County Clerk who retired on September 5, 2003, had no business background or accounting knowledge. During her seven years in office, much of the financial burden fell upon the Payroll and Accounts Coordinator, a high school graduate lacking an accounting degree. Although the Coordinator worked hard to maintain the books, she did not have certain accounting skills (including computer) and had to lean heavily on the County’s external auditor for basic accounting help, assistance that cost the County an additional \$16,000.00 per year. (County Exhibit No. 10). Even with the auditor’s help, books were generally in disarray, (County Exhibit Nos. 11-12), the County ran out of money to pay bills (County Exhibit No. 13), and accounts did not reconcile. (Testimony of Edward Westphal).

The new County Clerk has degrees in finance and management. (Testimony of Susan Matson). When Matson took office, she reorganized the office to better manage the County’s financial and accounting affairs. *Id.* One important step in this direction was to establish an Accounting Manager position in the County Clerk’s office. *Id.* Under the County Clerk, the Accounting Manager “is responsible for a county-wide financial system, including overall financial management, accounting, reporting, budgeting, internal auditing, financial record keeping,” and compliance with county, state and federal requirements. (Joint Exhibit No. 3). This is a more responsible position than the old Payroll and Accounts Coordinator which performed certain duties involving County financial and payroll functions. (Joint Exhibit No. 2). The new position was created to address many of the financial and accounting problems noted above.

The County’s independent auditors “recommended for a number of years that the county consider creating a finance director/county auditor position.” (County Exhibit No. 10). Various reasons were given in support of implementing such a recommendation. *Id.* The County’s current auditor noted that while the newly created Accounting Manager position

“does not equate to a finance director or county auditor, we feel confident that the creation of this position is a step in the right direction.” Id.

In addition to the reorganization, the County is changing how it manages its financial matters. For example, double entry of payroll data will be eliminated. (Testimony of Susan Matson). The Accounting Manager will only oversee payroll data, unlike the Payroll and Accounts Coordinator, whose responsibilities also included input. Id. See also Joint Exhibit No. 2. The Accounting Manager “oversees a centralized county-wide accounting system through development and maintenance of uniform county policies and procedures for accounting and budget control.” (Joint Exhibit No. 3). The Payroll and Accounts Coordinator did not have this responsibility. (Joint Exhibit No. 2, Testimony of Kathy Brownell). The new position will provide “budget information on county web site.” (Joint Exhibit No. 3). The Payroll and Accounts Coordinator did not have this responsibility. (Testimony of Kathy Brownell).

The Union concedes that the County needs a Financial Manager/Accounting Manager position. (Union brief, p. 4). Kathy Brownell testified that the County “needed a higher level of expertise” to deal with the County financial system particularly in light of all the new financial regulations it faced. It is clear that the character of the work being performed by this position in the County Clerk’s office is changing in substantive ways necessary to meet the accounting and budget needs “of a \$41 million dollar operation.” (Testimony of Carl Anderson). Ultimately, the new Accounting Manager position will not be performing the paraprofessional/clerical duties of the Payroll and accounts Coordinator position, but instead will be more of a professional, managerial, oversight position. (Testimony of Carl Anderson).

The Union also concedes that there has been “a change in the character of the work through technology” and other reasons. (Union brief, p. 5). The County hired an Information Systems Director in 1999 to network the computers for integrated data exchange. (Testimony of John Mehtala). The Grievant “did not understand why this was important and what could be gained.” Id. The Grievant also did not have “the knowledge and expertise” for GASB #34 (a set of comprehensive government accounting rules designed to improve financial reporting and “give taxpayers, governments, and others a clearer understanding of the cost of providing services to the public”) planning and implementation. Id. Nor did she have the knowledge and ability to implement a modern accounting and bookkeeping system on a timely basis that the County wanted to install. Id.

The Union argues, however, that it was not necessary to eliminate the Payroll and Accounts Coordinator position in order to create the Accounting Manager position. Absent budget considerations that is probably true. However, the County did not have the money necessary, due to reductions in shared revenue from the state in addition to other fiscal restraints, to add a new position and retain the old position. (Joint Exhibit No. 1, County Exhibit No. 13, Testimony of Susan Matson and Carl Anderson).

In reaching her decision that the City violated the contract when it reassigned the work of a bargaining unit position to management for two months, Arbitrator Gallagher noted that it was “significant that this case does not involve automation, technological changes or changes in the character of the” work involved. CITY OF FOND DU LAC, *supra*, p. 15. As noted above, that is not true in the instant case.

It is also noteworthy to point out that the reorganization plan includes a migration of payroll duties from the former Payroll and Accounts Coordinator position to the bargaining unit positions of Deputy County Clerk and department bookkeepers. (Testimony of Kathy Brownell and Carl Anderson). Other duties from the former position have been and will be assigned to other bargaining unit positions in the County Clerk’s office and other County departments. (Testimony of Susan Matson). In the future, new bargaining unit positions might be added to assist the Accounting Manager. *Id.*

The Union does not allege, and the record does not support a finding, that the County acted in bad faith by its actions herein.

Based on all of the above, and in particular on the numerous business justifications for assigning at least some of the Payroll and Accounts Coordinator’s duties to the Accounting Manager position, and the County’s good faith actions, I find that the CITY OF FOND DU LAC decision relied upon by the Union actually supports the County’s actions in the present matter.

In view of all of the foregoing, the Arbitrator finds that the answer to the issue as framed by the Union is NO, the County did not violate the collective bargaining agreement by eliminating the bargaining unit position of Payroll and Accounts Coordinator and reassigning a portion of the duties previously performed by the Payroll and Accounts Coordinator to the newly created, non-bargaining unit position of Accounting Manager.

Based on the above, and the record as a whole, it is my

AWARD

The grievance is denied and the matter is dismissed.

Dated at Madison, Wisconsin, this 24th day of May, 2004.

Dennis P. McGilligan /s/

Dennis P. McGilligan, Arbitrator

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