

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
DENMARK EDUCATION SUPPORT PROFESSIONALS

and

DENMARK SCHOOL DISTRICT

Case 11
No. 64625
MA-12957

(DeGrave Reclassification Grievance)

Appearances:

Kathy Rohde, Bayland UniServ Director, on behalf of the Denmark Education Support Professionals.

Godfrey & Kahn, S.C., Attorneys at Law, by **John A. Haase**, on behalf of the Denmark School District.

ARBITRATION AWARD

The Denmark Education Support Professionals, hereinafter the Union, requested that the Wisconsin Employment Relations Commission provide a panel of Commissioner/staff arbitrators from which the parties could select an arbitrator to hear and decide the instant dispute between the Union and the Denmark School District, hereinafter the District. Thereafter, the parties selected the undersigned, David E. Shaw, to arbitrate in the dispute. A hearing was held before the undersigned on November 2, 2005, in Denmark, Wisconsin. There was no stenographic transcript made of the hearing and the parties completed the submission of post-hearing briefs by December 28, 2005.

Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following Award.

ISSUES

The parties stipulated there are no procedural issues and to the following statement of the substantive issue:

Whether the Denmark School District violated the Collective Bargaining Agreement when it denied the Grievant a reclassification request from a food service position to a secretarial position?

If so, what is the appropriate remedy?

CONTRACT PROVISIONS

The following provisions of the parties' Agreement are cited in relevant part:

ARTICLE V – GRIEVANCE PROCEDURE

Section 5:01: The purpose of this procedure is to provide a structure to insure equitable solutions at the lowest possible level to disputes or complaints which may arise from time to time.

Section 5:02: A grievance is any claim by the Association or an employee that there has been a violation, misrepresentation, misinterpretation, or misapplication of the terms of this Agreement. A grievant may be an individual employee, a group of employees, or the Association.

. . .

Section 5:08: Step Five – If the grievance is not resolved satisfactorily through the above procedure, the Association may appeal within thirty (30) calendar days for arbitration.

. . .

The arbitrator shall have no authority to alter the terms of this Agreement. . .

. . .

ARTICLE IX – EMPLOYEE CLASSIFICATION/JOB DESCRIPTIONS

Section 9.01 The parties agree as to the significance of job descriptions. Within ninety (90) days after ratification of this Agreement, the Board shall, after consultation with the Association, establish workable, meaningful job descriptions covering each job classification. Once established, these job descriptions shall be distributed to all current bargaining unit members when hired by the District. These descriptions will include at a minimum:

- A. Job title and description
- B. A specific statement of required tasks and responsibilities

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ARTICLE XXXI - RECLASSIFICATION PROCEDURE

Section 31.01 Employees, either individually, or the D.A.S.P. on behalf of groups of employees, are eligible to submit a request for a job study and reclassification if they meet the following criteria:

1. They have been employed in the position continuously for a period of one year (school year for 9 month employees) and;
2. They have not received a reclassification within the previous year (school year for 9 month employees).
 - A. Said employee(s) must submit the reclassification request on a form provided, upon request, by the District.
 - B. The request shall be submitted to the District Administrator.
 - C. The request shall be considered by the District Administrator, who shall conduct a job study and evaluate the request based upon work being performed and established job descriptions within ten (10) working days of receipt of the request. If the reclassification is approved, the reclassification shall be effective retroactively to the date the request was received by the District.
 - D. The employee making the reclassification request shall be informed in writing of the results of the study and the decision made.

BACKGROUND

The Grievant has been employed by the District for approximately eight years. The District's education support staff was organized approximately the same time the Grievant started her employment. In negotiating the first labor agreement (1998-2000), the parties agreed on the wage categories in which employees' jobs would be placed and the pay rates for those categories:

Maintenance	Playground
Custodian	Bus Patrol
Food Service	Rec Center Coordinator
Secretary	Assistant Librarian
Aide	Hot Lunch
Special Ed. Aide	Lawn Care

The parties also agreed to Section 9.01 in their agreement and, pursuant to that provision, job descriptions were drafted for the various positions held by employees in the bargaining unit. This was completed in large part by having the employees list the various tasks they performed in their jobs.

The Grievant held a number of part-time positions in the District at the time, including what was to be classified as Hot Lunch Hostess/Ticket Sales.

The Grievant begins her workday at 8:15 a.m. by first going to the bank and then to the Early Childhood Center (ECC), the Elementary School and the Middle School to pick up money. She then arrives at the High School where she works in the Food Service office in the back of the kitchen area until 11:00 a.m. She then goes to the bank with the deposits and to the ECC where she works for 1 ¼ hours per day in the lunchroom. In addition, the Grievant works as a Kindergarten Aide at the ECC 1 hour per day and on Bus Patrol at the Elementary School for 20 minutes per day. The Grievant testified that she considers herself to hold four positions:

Hot Lunch Hostess at the High School	(2¾ hours)
Lunchroom Supervisor at the ECC	(1 ¼ hours)
Kindergarten Aide at the ECC	(1 hour)
Bus Patrol at the Elementary School	(20 minutes)

The Grievant is paid at the “Hot Lunch” category rate for the hours of 8:15 a.m. to 12:30 p.m. at the High School and the ECC.

The only job descriptions for the Food Service area are for “Hot Lunch Hostess/Ticket Sales” and “Cooks and Bakers”, there is no job description for a “Lunchroom Supervisor” position. The Hot Lunch Hostess/Ticket Sales job description states, as a “summary” of the position: “Maintains records related to the purchase of lunch and assists with the supervision and serving of lunch.”

The description lists the following as “Essential Duties and Responsibilities”:

- Sells lunch tickets daily.
- Assists with free and reduced lunch ticket program.
- Monitors children’s trays to make sure they have proper meal requirements.
- Punches lunch tickets.
- Assists with supervision.
- Assists with service if needed.
- Keeps daily records of all lunch counts, regular, adult, free and reduced tickets.
- Assists students and adults with any needs.

In 1998, the clerical tasks associated with the "Hot Lunch Hostess" position were completed manually, without the aid of computers. Money was exchanged for tickets and tic marks were written on a sheet of paper to tally the number of various types of tickets sold (lunch, milk, reduced lunch, etc.) Ticket sales were conducted before school and the taking of tickets occurred during the lunch periods in the various school lunchrooms by those in the Hot Lunch Hostess/Ticket Sales position.

In 2001 the District hired a private company, Taher, to manage the Food Service Program. Taher's arrival signaled a change in the way students purchased food in the District. In January 2002, computers were added to the Food Service Department. Instead of money changing hands, ID numbers were charged for the food taken in the lunch line.

Working out of the Food Service Office in the High School, the Grievant was trained in the computer software, WordWare, used to keep food service records. The Grievant also now reported to the Food Service Director, rather than a school principal, while working in the Food Service office. The Grievant enters data into WordWare and other computer software programs, generates reports, disseminates information and notices to teachers, parents, and other District employees, and responds to requests for information via e-mail. The Grievant does not answer the phone, unless the Director is not present, and does not type correspondence for the Director. During the 1¼ hour period at the ECC, the Grievant, like the other employees working as "Hot Lunch Hostesses" in the District, continued to work in the lunchroom of the various school buildings, standing at the end of the lunch line helping students purchase food items and keeping track of the purchases with a computer, instead of manually.

In June of 2004, the Union's President, Kay Hansen, submitted a request to the then-District Administrator, LeRoy Meles, that the Grievant and herself be reclassified from Hot Lunch Hostess to Secretary (Grievant) and Food Service (Hansen). Present District Administrator Tony Klaubauf replaced Meles in the summer of 2004 and Hansen reiterated the requests for the reclassifications. In August of 2004, Klaubauf responded that he wanted to wait and see if the Grievant's responsibilities would be the same as the prior year's, and whether she is doing work different from what her job classification requires. In early November of 2004, Hansen inquired as to whether Klaubauf had made a decision regarding the Grievant's reclassification request.

Klaubauf apparently misunderstood the Grievant's request to be reclassified to another position in the Food Service area, rather than to "Secretary", and issued the following response of November 9, 2004:

To: Deb DeGrave
From: Kay Hanson
Re: Level of pay for Deb De Grave
Date: 11/9/04

Last week Kay sent me an e-mail reminding me we were going to look at Deb's job duties and determine if her pay should be adjusted for her work involving the breakfast and lunch program. This is my response to that request.

From the information I received from Peggy Heise, Deb works from 8:15 – 11:00 at the high school and from 11:10 – 12:25 at the ECC in the food service area. (She obviously has other duties as well). I am assuming the question regarding wages has to do with the 8:15 – 11:00 time period. Looking at page 24 of the Master Agreement between the DESP and the Denmark School District, there are three possible categories for anyone working in the food service area to be placed. They are:

- Food Service
- Elementary Head Cook
- Hot Lunch

It is obvious, that Deb is not the Elementary Head Cook. That leaves Food Service or Hot Lunch positions. I have attached both copies of the job descriptions that I have available. One is for Cooks and Bakers and the other is for Hot Lunch Hostess/Ticket Sales. From reading each essential duties, it seems clear to me that most of Deb's duties are closer to the Hot Lunch/Ticket Sales than Cooks and Bakers. It is my understanding Deb does not do anything with food preparation. Her duties include:

- Collecting money from boxes
- Inputs the money into the family accounts
- Closes out breakfast on the computer system
- Works on free/reduced lunches when needed
- Completes sheets for low balances
- Completes other miscellaneous tasks as assigned by the Food Director

While we don't have lunch tickets anymore, Deb predominantly completes these office tasks rather than works with the food preparation. Therefore, I believe her wage category is correct for the tasks she is completing.

As stated to Kay this summer when we had this discussion, I realize that none of the job descriptions may be 100% accurate for the jobs that are being completed. However, I have to live with what is in print until we change these.

If you believe I have misinterpreted some fact or wish to discuss this further, please let me know.

Hansen then reminded Klaubauf that the Grievant was requesting reclassification to "secretary". Klaubauf subsequently responded with an e-mail that stated, in relevant part:

I am not going to repeat the entire letter that I sent last week. However, even though I was mistaken, I still believe Deb's duties are better aligned to the position of Hot Lunch Hostess/Ticket Sales than it is to a secretary. In fact, there is no position for a food service secretary that I can find.

I even called LeRoy Meles to discuss this to find out if there was any intention of changing this position that I was not aware of. LeRoy was emphatic – that he made it clear that it was not changing to a secretarial position. He said Deb may have had more duties toward the end of last year, but that was only the case because of some situation with the Taher Food Service Director.

I am sorry, but I am denying the re-classification of Deb DeGrave at this time.

In considering the Grievant's request, Klaubauf testified he spoke to the Grievant's supervisor (Food Service Director), former District Administrator Meles, and the District's payroll person, but did not interview the Grievant about her duties. According to Klaubauf, while he did not interview the Grievant or others in the Hot Lunch Hostess position, he watched what Hot Lunch Hostesses did, and discussed with some of the secretaries what the latter did, as well as discussed the matter with legal counsel.

The parties were unable to resolve their dispute and proceeded to arbitration before the undersigned.

POSITIONS OF THE PARTIES

Union

By way of background, the Union asserts that the Grievant, Debra DeGrave, is a nine-year employee of the District who works six hours a day in four different positions in three different District buildings. Her positions, by hours per week, are as follows: Hot Lunch Hostess – 13.75 hours; Lunchroom Supervisor – 6.25 hours; Kindergarten Aide – 5 hours; and Bus Patrol – 6 hours. The first two positions are paid at the "Hot Lunch" wage rate. The only position in question for the purposes of the instant grievance is the "Hot Lunch Hostess" position consisting of 2.75 hours per day with the duties performed at the High School Food Service office. According to the Union, it formed as an association in 1998, and the parties' first collective bargaining agreement stipulated to the establishment of job descriptions for the then-existing support positions. That task was accomplished sometime during the duration of the parties' first agreement, with each employee then currently holding a position chronicling the duties and responsibilities of their position at that time. Thus, the "Hot Lunch Hostess" job description was not a generalized representation of duties, but a list of specific tasks that was currently being conducted at that time.

In 1998, the clerical tasks associated with the position were completely manually. Following the District's contracting with a private company, Taher, in January of 2002 computers were added to the Food Service department. It was at this point that the core elements of the Grievant's position as "Hot Lunch Hostess" changed significantly, as did her worksite. Now operating out of the Food Service office at the High School, the Grievant was trained in the computer software, WordWare, used to keep food service records. Instead of interacting with students in the lunch room, the Grievant entered data into WordWare and other software programs, generated reports, disseminated information to teachers, parents, and

other District employees, and took care of phone, mail, and e-mail correspondence. This was unlike the other employees working as “Hot Lunch Hostesses” who continued to work in the lunch rooms of the various school buildings, standing at the end of the lunch line assisting students to purchase food items, with the core elements of their job changed only in the method by which they performed them, i.e., with a computer rather than a pencil.

The Union asserts that the core elements of the Grievant’s position as a “Hot Lunch Hostess” are significantly different than those of other employees who hold that position and are more closely aligned with those of the secretarial positions in the District. The job study required by the Agreement and conducted by the District Administrator, was inadequate, and was therefore grieved in dispute of the denial of the Grievant’s reclassification.

The testimony of the Grievant and Kay Hansen, another Hot Lunch Hostess, demonstrates the contrast in the core elements of the individuals’ two positions. Unlike the Grievant, other Hot Lunch Hostesses perform the core elements of their jobs in the lunchroom of the various school buildings and interact only with students as they purchase food products. In contrast, the Grievant produces correspondence and reports, enters data using specific food service software under the direction of the Food Service Director, and is the only person employed in that position whose name appears on the District’s list of Food Service phone numbers, and is identified as one of the “administrators” of the program. The Grievant is the only one other than the Director who is trained to use the food service software and the Grievant trained the Director in that regard.

The Arbitrator must consider the above comparisons of the Grievant’s duties and responsibilities to those of the other employees holding the position of “Hot Lunch Hostess” as relevant and controlling. In considering reclassification grievances, it is the “key” or “core” elements of positions that determine the merits of a reclassification request, rather than the hypothetical duties the District would have the Arbitrator rely upon.

When the Grievant’s actual duties are compared with those of other “Hot Lunch Hostesses”, it is evident that she should be reclassified to the secretarial category.

The Union cites the “Occupational Outlook Handbook” as describing the core elements of the job of “secretary” as “performing and coordinating an office’s administrative activities, and storing, retrieving, and integrating information for dissemination to staff and clients.” According to that Handbook, the training required for the job requires extensive knowledge of software applications involving word processing, spreadsheets, and database management. Further, employers are to look for good customer service and interpersonal skills, and other organizational or management abilities. The Union asserts that this sort of general job description is not available in the District, as the job duty descriptions that exist for secretaries here consist of a list of duties that individuals holding the positions have listed as tasks they performed at the time of the parties’ first agreement. Many of the job descriptions include general clerical duties, while each secretarial position also includes specific duties unique to a particular position. However, all of the core elements of the secretarial positions mirror the

core elements of the Grievant's position as "Hot Lunch Hostess". The Grievant collects money, enters daily totals into a spreadsheet, and the money that is collected and recorded gets entered into the WordWare program, which allows other Hot Lunch Hostesses to have current account information available for the performance of their jobs. The Grievant answers the phone in the Food Service office and takes messages for Smith, and also acts upon phone, mail, and e-mail messages and fulfills information requests from staff and parents. The Grievant also compiles reports such as the "Family Directory" that enables her to initiate correspondence to parents when account funds are low. Thus, all the core elements of the Grievant's position as Hot Lunch Hostess are clerical in nature, and support the work of the Food Service Director. Again, consideration of the core elements of the Grievant's position is the controlling factor in determining the outcome in this case. A comparison of the Grievant's duties and responsibilities to the core elements of the secretary positions provides compelling evidence to sustain the reclassification.

Next, the Union asserts that the job study performed by the District was inadequate, which explains why the District did not come to the correct conclusion. While Article XXXI in the Agreement does not set forth the specific procedures for the District to follow in conducting a job study pursuant to the reclassification procedure, a simple internet search reveals the basic purpose and components of a job study or job analysis. The Union cites the definition of a "job analysis" from Wikipedia, and asserts that this simple definition of a job analysis establishes the sort of study that is used to gather information for use in personnel selections and classification/compensation. Thus, it makes sense that the reclassification procedure in the Agreement requires a job study. Here, the Grievant initiated the reclassification process because she felt her job duties had changed substantially and were significantly different than the other employees holding the title "Hot Lunch Hostess", and deserved greater compensation. The Agreement requires that the District Administrator perform a job study, and while the language of the provision does not set forth the specific requirements in this regard, the job study cannot be merely perfunctory. Where employers have operated arbitrarily and capriciously, an arbitrator will reject such efforts. Here, the District Administrator's job study did not even rise to the level of "perfunctory".

Job analysis techniques include interviews with incumbents and supervisors, as well as questionnaires and direct observation of the jobs, and gathering background information. In conducting the required job study, as evidenced by the written documentation and the District Administrator's testimony, the District Administrator interviewed the payroll clerk, the former District Administrator, and the Food Service Director, but never interviewed the Grievant or any other Hot Lunch Hostess or any other secretary. It was not until after the grievance was filed that the District Administrator talked to the Grievant about the core elements of her position. The District Administrator conceded that he never formally observed the Grievant or any other Hot Lunch Hostess in the performance of their duties, nor did he formally observe any of the secretaries during the course of the job study, nor were any questionnaires administered. Had the District Administrator performed an adequate job study, it would have been evident that the Grievant performs the functions of a secretary, rather than a Hot Lunch Hostess. The District's inadequate effort produced faulty and inaccurate information upon

which the District Administrator improperly relied in denying the Grievant's request. Thus, the Arbitrator must reject the conclusion based on that basis and find that the District improperly denied the Grievant's request.

The Union asserts that the District's argument for denying the Grievant's reclassification request are not supported by the facts and do a disservice to the Grievant's actual performance of her duties for the District in her four positions. In this regard, the Union first asserts that the Arbitrator has authority to review the District Administrator's decision and to determine whether the District violated the Agreement when the reclassification request was not granted. Under Article V, Section 5.02, of the parties' Agreement, a grievance involves the "misinterpretation" and/or "misapplication" of the terms of the Agreement, in this case Article XXXI. Here, the District violated the Agreement by conducting a pretextual study to support its predetermined conclusion that the Grievant was not performing secretarial duties. The District further violated the Agreement when it denied the Grievant's request, and failed to consider the actual duties she performs. Were the Arbitrator to agree with the District's assertion that Article XXXI shields its pretextual efforts, the District would be allowed to conduct flimsy job studies and deny every reclassification request it received without recourse. The Union also asserts that there is no provision in the Agreement that expressly prohibits the use of the grievance procedure to contest reclassification decisions. Had the parties intended to exclude various issues from the grievance procedure, they had the capacity to exclude reclassifications, but did not do so.

The District cannot establish that the parties were required to bargain a new wage category here, rather than resort to the reclassification procedure. During the Union's lifetime, three agreements have been negotiated, and it is evident that new wage categories have been negotiated each time. However, the Union is not asking for a new wage category as a remedy, since the category of "secretary" already exists in the Agreement. The Union is asking only that the Grievant's position as "Hot Lunch Hostess" be reclassified to the higher-paying wage category of Secretary. The Union cites RACINE UNIFIED SCHOOL DISTRICT (Malamud, 1998) as finding that while there was no contractual basis for a grievance in that case, the salary schedule established the principle that employees performing different functions should receive the rate of pay agreed to by the parties for that work. Here, both Article XXXI and the existing salary schedule differentiating between the various positions evidence that bargaining a new wage category is not an issue.

The Union asserts that it is absurd for the District to rely on DeGrave's duties in her separate position as lunchroom supervisor at the ECC to justify its refusal to reclassify her position of Hot Lunch Hostess. The lunchroom supervisor position is not at issue. It is DeGrave's position of "Hot Lunch Hostess" performed in the Food Service office that requires the much different skills from those she uses at the ECC. The two positions cannot be lumped together.

The scope of the Grievant's clerical responsibilities, as compared to those of other secretaries, is also not probative. The District Administrator testified that he considered the

location of the secretaries' desks, and the greeting and information responsibilities of the secretaries in dealing with the public, as opposed to the Grievant's being located in the Food Service office and not performing such greeting duties. Rather than the location of the other secretaries' work sites, it is comparison of the Grievant's work site with that of the other Hot Lunch Hostesses (in lunchrooms) that is the basis for the reclassification. As to the breadth of the tasks performed by other secretaries as opposed to the Grievant, the Union asserts that the Grievant's position is part-time (2.75 hours per day). This does not give the Grievant the breadth of tasks that could be comparable to other full-time secretaries. Further, the fact that the Grievant works for the Food Service Director naturally limits the scope of her duties. However, there are at least three current secretary job descriptions that embody similar limitations: Secretary - Curriculum Office, Secretary/Clerical Aide, and Teacher Substitute Secretary. Those positions also do not include a wide variety of tasks the District attempts to associate with secretarial work. It is not the location of the Grievant's desk, but the core elements of the job she performs that must be considered. While the Grievant does not greet visitors face-to-face, she does greet parents by phone and corresponds by mail and e-mail and fulfills their requests for information, much the same as other current secretarial positions in the District. She also compiles reports, types, and distributes correspondence, enters data into the computer program and organizes and files information. These core elements of the Grievant's position are generally recognized as secretarial functions. It is the nature of the core elements of the job, not the scope of her tasks, that are probative.

Last, the Union asserts that the District Administrator relied too heavily on existing job descriptions in making his decision upon the reclassification request. Klaubauf maintained in his letter of November 9, 2004 to the Grievant that she cannot be reclassified as a secretary because "there is no position for a food service secretary." Such an argument is circular. If the job analysis had been conducted appropriately, it would have resulted in a new job description for the Grievant's position. Further, Klaubauf admitted in his letter that the Grievant's duties are clerical in nature. The Union concludes that the job descriptions have not been updated since the parties' first agreement (1998-2000) and the job description for the "Hot Lunch Hostess" does not reflect the introduction of computers to the food service program. Thus, the District cannot rely on this or other job descriptions as a basis for denying the grievance.

The Union requests that the Arbitrator sustain the grievance and order the District to reclassify DeGrave's position from a "Hot Lunch" wage category to the "Secretary" wage category and make her whole for all lost wages and benefits.

District

The District asserts that the Union apparently wants the Grievant to have yet another job category for pay purposes, as it proposes pulling out a portion of the Grievant's Hot Lunch duties and paying her as a Secretary for such time. However, the Grievant admitted that during the period of 8:15 a.m. to 12:30 p.m. she performs nearly all of the duties listed on the "Hot Lunch Hostess/Ticket Sales" job description, and at the same time concedes that she does

not perform many of the tasks routinely performed by secretaries. The Union's position that because the Grievant spends a couple of hours a day in an office maintaining records related to lunch and food service, she should be considered a secretary, is wrong for the following reasons.

First, the Union cannot secure a wage increase or the creation of a new position except at the bargaining table. Here, the Union and the Grievant are attempting to create a new position and secure a wage increase without bargaining those changes with the District. This is not permitted by either the language of the parties' Agreement, nor by basic principles of labor relations.

According to the District, the Union negotiated a number of job categories for wage purposes when it originally organized in 1998, the same time that the Grievant began working in the District. At that time, the District also agreed to prepare job descriptions for each wage category. Through this bargaining process, the Grievant was placed in the "Hot Lunch" wage category for pay purposes for the work she performed related to food services, such as collecting money and maintaining records related to the purchase of lunch. While the District's management of the food service department changed in early 2002, it is undisputed that the Grievant remained in that department and still performed virtually all of the duties described in the Hot Lunch Hostess/Ticket Sales classification. Until June of 2004, there was no claim that the Grievant's job description was no longer relevant and that she should be paid as a secretary. The Grievant still performed the functions outlined in the job description. She collects money from the school buildings related to the food sales (the equivalent of collecting money through food service ticket sales), she spends a couple of hours each day maintaining records related to the food service program, and spends approximately an hour and a half each day supervising lunch. Thus, the bargained-for job category into which the Grievant was placed in 1998, along with the job description prepared as a result of the bargaining process, remain applicable to the Grievant's current work. If the Union believes that the job description and rate of pay are no longer appropriate, it should rely on the bargaining process to obtain changes, as is specifically contemplated in Section 9.01 of the Agreement. Likewise, if the Union believes that the Grievant no longer fits within the Hot Lunch category for pay purposes, it is up to the Union to negotiate a new category and new wage rate. The parties have a history of negotiating such changes to the job categories, e.g., "computer para-educator". The Union's fundamental position in this case is that a new position and job category should be created for the Grievant, however, the process to obtain such a change must occur at the bargaining table, and not through the grievance and arbitration process.

In the last round of bargaining, the parties reached agreement concerning a reclassification procedure which provides extremely limited rights to the Union. Significantly, the employee's right is to request reclassification, and no language in the reclassification provision requires a request to be granted under any circumstances. Also significant, paragraph 2, C of the procedure establishes the District Administrator as the authority to "evaluate the request". The Administrator is to conduct a job study and base his/her decision on the "work being performed in established job descriptions." The procedure also indicates

that “if the reclassification is approved” it is effective retroactively. (Emphasis added). However, nothing in the reclassification procedure establishes a standard under which the District Administrator is required to grant a reclassification request. The Union seeks to impose such a standard, arguing that the Administrator is required to grant a request for reclassification if the duties currently being performed “fit more closely” to that of another position. The Union never negotiated such a standard into the reclassification language, and Section 5.08 of the Agreement specifically limits the Arbitrator’s authority. The latter provision states, “The arbitrator shall have no authority to alter the terms of this Agreement.” The Arbitrator could only find in favor of the Union by imposing a limit on the District Administrator’s discretion to grant or deny reclassification requests and by imposing a standard that would require granting a reclassification request, when no such standard was obtained through negotiations.

Even if such a standard were to be imposed, the Union has failed to demonstrate that the Grievant’s current job duties are more like that of a secretary’s. The evidence established that the Grievant is appropriately categorized as a Hot Lunch employee for pay purposes. As Klaubauf explained in his response to the request, the Grievant’s duties “are better aligned to the position of Hot Lunch Hostess/Ticket Sales than it is to Secretary.” The Grievant admitted that she currently performs nearly all of the job duties listed in the Hot Lunch Hostess/Ticket Sales job description during her workday beginning at 8:15 a.m. and ending at 12:30 p.m. She admitted that she travels to the District’s various schools to collect money related to lunch and other food service items and that from approximately 8:40 a.m. until 11:00 a.m., her essential duty is to maintain records related to the purchase of lunch or other food items. Her job description indicates that the Grievant’s job duty involves keeping “daily records of all lunch counts, regular, adult, free and reduced tickets.” The Grievant remains responsible for maintaining daily records related to lunch and food service. From 11:00 a.m. to 12:30 p.m., the Grievant performs other duties listed in the job description, e.g., assists with supervision of lunch, monitors children’s trays and assists with supervision and service.

The Grievant also admitted that the District Administrator’s description of her current duties in his November 9, 2004 response was accurate. All of these duties are related to the food service program and are consistent with the duties listed in the Hot Lunch Hostess job description. Conversely, it was clear from the testimony that the Grievant does not perform many of the tasks commonly performed by secretaries, e.g., she does not have any responsibility for greeting people entering the school building, dealing with student discipline, interacting with parents on a variety of issues, preparing state reports on various topics, managing the District’s phone system or creating correspondence from scratch. While the Union submitted all of the secretarial job descriptions currently in place, neither the Grievant, nor anyone else, presented any testimony suggesting that the Grievant’s current essential duties and responsibilities are captured in these other secretarial positions. Although the title of the Grievant’s current position is a bit of a misnomer, the summary of the position and the essential duties and responsibilities are consistent with her current job duties. The fact that she performed some of the records-related work in an office does not make her a secretarial employee. Her current job category and rate of pay was negotiated by the parties, along with

the job description that was developed with the Union's input in 1998. The Grievant's job duties have not drastically changed since then and there is no basis to grant her request for a reclassification.

Association Reply

The Association asserts that the District continues to attempt to combine two of the Grievant's positions into one in order to convince the Arbitrator that her duties in the Food Service office do not constitute secretarial work. The Association has shown that the two positions are delineated, and there is no dispute that the duties the Grievant performed at the ECC as lunchroom supervisor are correctly categorized in the Hot Lunch wage category. The District's effort to combine the two discreet positions only evidences the weakness of their argument.

Second, the Association asserts that the Arbitrator has the authority to review the District Administrator's decision regarding reclassification. While the parties do not consider a review process in Article XXXI, the inclusion of the reclassification article in the Agreement makes it subject to the grievance process, thereby subjecting it to an arbitrator's review. If the District Administrator were the sole decision-maker in the process, there would be no point in having a reclassification process included in the Agreement. The Association wants to see evidence of a thoughtful job study, and in the absence of such, wants the right to submit the decision of the District Administrator for review.

Third, contrary the District's claim that the bargaining process is the proper venue for this request, a secretary wage category already exists in the schedule, and the Union is asking only that a position currently categorized under "Hot Lunch" wage category be reclassified to another existing category.

Fourth, the Union disputes a number of facts the District alleges regarding the Grievant's duties. Contrary to the District's assertion, the Grievant did not admit that her duties were not secretarial in nature. Also, when Taher came to the District, the Grievant's duties changed significantly and were completely different from those of the other Hot Lunch Hostesses. The Union challenged her wage classification after the reclassification article was added to the Agreement. While the Grievant's duties might be described under the broad terms of the current "Hot Lunch Hostess" job description, it does not include the other secretarial duties that the Grievant currently performs. Last, the Union asserts that the District Administrator's testimony regarding specific secretarial tasks the Grievant does not perform, is refuted by the Grievant's testimony regarding the core elements of the secretary position in general.

District Reply

The District asserts that the Union incorrectly argues that the Grievant currently holds the "position" of "lunchroom supervisor" and inaccurately states that this position is a

“separate and distinct position” from the Grievant’s duties as Hot Lunch Hostess, however, no such position exists within the District. There is no “lunchroom supervisor” position in the Agreement’s wage schedule, nor is there such a position contained in the job descriptions. The Union’s motivation is clear. The Grievant currently holds the position of Hot Lunch Hostess from the start of her workday at 8:15 a.m. until she goes to work as a Kindergarten Aide at 1:00 p.m. During this entire time, the District pays the Grievant pursuant to the “Hot Lunch” wage classification and has considered her to be filling the Hot Lunch Hostess/Ticket Sales job. The fact that the Grievant performs some of her duties at the Food Service office and also at the ECC, does not mean her position has changed from the duties that she is performing earlier in the workday. Both the duties she performs at the ECC and the duties she performs at the Food Service office are delineated on the Hot Lunch Hostess job description. The Union is attempting to remove from consideration significant job duties performed by the Grievant as a Hot Lunch Hostess by claiming those duties fall under a separate non-existing position of “lunchroom supervisor”, even though no such position exists. The Union cannot “carve out” select portions of the Grievant’s Hot Lunch Hostess duties in order to bolster its claim that the job should be aligned with the secretarial staff. The cumulative scope of the Grievant’s job duties must be considered in assessing the merits of this reclassification request.

Next, the District asserts that the Union’s primary argument in this case is that the core elements of the Grievant’s Hot Lunch Hostess position more closely match those of a secretarial position, however, the argument is based almost entirely upon the Union’s submission of a general job description from the “Occupational Outlook Handbook”, which the Union attached to its initial brief. The Union entered this new evidence without requesting that the record be re-opened or allowing the District to respond to the submission in a timely fashion. The Arbitrator “closed” the record at the end of the grievance hearing. Elkouri and Elkouri, *How Arbitration Works*, makes clear that “no new evidence should be included in post-hearing briefs.” At page 320. Arbitrators routinely reject such attempts to submit new evidence for the first time in post-hearing briefs. The Union’s attempt here should also be rejected. Further, the Arbitrator must ignore any arguments made by the Union based on such a job description.

While the Union is correct in stating in the consideration of reclassification grievances arbitrators often rely on “key” or “core” elements of job descriptions, the contention that a comparison of the Grievant’s duties with those of the other employees holding the position of “Hot Lunch Hostess” is relevant and controlling, is misguided. The arbitral precedent cited by the Union in support of its “intra-position” comparison theory, is in fact silent in that regard. Further, the precedent notes the need to compare the two positions at issue in assessing the reclassification request. What is necessary in this dispute is an assessment of the Grievant’s job duties as compared to the higher-level secretarial duties within the District. In order to prevail, the Union must prove that the Grievant’s job duties are key and relatively exclusive to the secretarial classification, but the Union fails in this regard. As noted previously, the Grievant is currently classified as a “Hot Lunch Hostess/Ticket Sales” employee, and is paid at the “Hot Lunch” rate for the time spent performing the duties of a Hot Lunch Hostess (8:15 a.m. until 12:30 p.m.) During that time period, the Grievant has a number of job duties;

however, the core elements of this work are not synonymous with the secretarial position. A comparison with the duties set forth in the various job descriptions for the secretary positions in the District underscore the difficulty in accepting the Union's contention that the Grievant's core duties match the secretarial duties in the District. The truth is, that the Grievant's job duties in the Food Service office are accurately captured in the Hot Lunch Hostess job description. The Grievant "maintains records related to the purchase of lunch" and food service items, and in the course of conducting these lunchroom recordkeeping tasks, the Grievant works with a single software program and sporadically generates form letters or reports. Thus, her duties do not rise to levels synonymous with other District secretaries.

The District asserts that it was appropriate to rely on the Grievant's job description in evaluating the reclassification request. The notion that the District cannot rely on job descriptions in evaluating whether an individual's work is properly categorized is bizarre, particularly in light of the language of Section 31.01, 2, C, of the Agreement requiring the District Administrator to evaluate the request based upon the work they perform and "established job descriptions". It is undisputed that the District Administrator followed those mandates in evaluating the Grievant's request. That evaluation reinforces the conclusion that the Grievant is performing core elements of the Hot Lunch Hostess position during the period from 8:15 a.m. to 12:30 p.m.

The Union argues that the District Administrator relied too heavily on existing job descriptions in making his decision, since those job descriptions have not been updated since the parties' first contract, however, a comparison of the Grievant's current tasks with those performed by secretarial staff, includes the need to review current job descriptions. Further, the parties agreed as to the reliability of such a measure in the language of Section 31.01, 2, C. As Klaubauf did exactly what the contract mandates, the Union's argument in this regard should be rejected.

Equally puzzling is the Union's contention that a job study would have resulted in a new job description for the Grievant's position. This argument ignores that the parties have agreed that the evolution of job descriptions is a bilateral process requiring input from both parties. If the Union believes the Grievant should have a new job description, it has had several years to suggest one. The development of a new job description cannot be mandated through the grievance arbitration process.

Another bizarre element to the Union's argument is that the scope of the Grievant's alleged clerical responsibilities should not be compared to the job duties of other secretaries in the District because the Grievant is only part-time and would therefore not have the "breadth of tasks" that could be comparable to those of full-time secretaries. This concession proves the District's case. The suggestion that the Grievant might qualify as a secretarial employee, if circumstances were different, illustrates that she does not currently perform the job of a secretary. The Union also argues that the scope of the Grievant's duties are naturally limited because she works for the Food Service Director and suggests that similar limitations exist with regard to the Curriculum Office Secretary, the Secretary/Clerical Aide and the Teacher

Substitute Secretary. However, a review of the job descriptions for those positions reinforces the fact that the Grievant should not be categorized as a secretarial employee. The bottom line is that the Grievant spends only a small portion of her time entering food service data into the computer and maintaining lunch records. Those functions have always been included in the Hot Lunch Hostess/Ticket Sales job description, and classified in the "Hot Lunch" wage category. The fact that a portion of the time is spent in an office, rather than in a lunchroom, does not alter the fact the Grievant is appropriately categorized as a Hot Lunch Hostess rather than a secretary.

The District finds no merit in the assertion that because the Grievant's duties are conducted in the Food Service office, rather than a lunchroom, she is more appropriately aligned with secretarial employees, as opposed to with the other Hot Lunch Hostesses. Location is not the predictor, however, in aligning the Grievant's duties with the secretaries, the analysis must be premised upon the specific job duties in comparison with those identified in the job description. Here, the Grievant performs the duties set forth in the job description for the Hot Lunch Hostess classification.

The District finds it interesting that the Union is contending that the Grievant should be reclassified to the secretarial wage classification, as opposed to lesser-paid classifications. If anything, the job descriptions in the food service classification contain recordkeeping tasks similar to what the Grievant is responsible for performing. While the Grievant's job may include select duties that other Hot Lunch Hostesses do not perform, those duties do not rise to the level of responsibility required of secretarial staff, and to the accompanying pay rate for that classification. While the manner in which the Grievant accomplishes her duties has evolved over time, the fact remains that the scope of her job and the tasks she performs still fall within the confines of her existing job description.

Last, the District disputes the Union's contention that Klaubauf's job study was inadequate. The job study that Klaubauf performed conformed with the mandates of the parties' Agreement. The Grievant seeks movement into the secretarial classification; however, there is not a position that is synonymous with the Grievant's. Here, the Grievant is in fact seeking the creation of a job in a higher-wage classification. In assessing the merits of the Grievant's request, Klaubauf interviewed individuals privy to the Grievant's job duties, i.e., the payroll clerk, the former District Administrator, and the Grievant's supervisor. All were able to provide Klaubauf with reasonable feedback as to the Grievant's job duties. Further, he reviewed the job descriptions, as required by the contract. Klaubauf's assessment of the request was thorough, unbiased and fair. What the Grievant seeks is the creation of a new position, a request that is outside the mandates established by Section 31.01. The bargaining process, rather than grievance arbitration, is the proper forum to resolve that issue. The District requests that the grievance be denied.

DISCUSSION

The first issue that must be addressed is the District's claim that pursuant to Section 31.01, 2, C, of the Agreement, the District Administrator's decision regarding reclassification is final and not subject to review by an arbitrator. Neither the wording of that provision, nor of the parties' grievance procedure (Article V), supports that claim. Section 31.01, 2, C, provides that the reclassification request will be "considered by the District Administrator, who shall conduct a job study and evaluate the request based upon work being performed and established job descriptions. . ." Nowhere does it state that the District Administrator's decision is not subject to challenge through the parties' grievance procedure, and the latter broadly defines a grievance as "any claim. . .that there has been a violation, misrepresentation, misinterpretation, or misapplication of the terms of this Agreement." In this case, the claim is that the District misapplied Article XXXI in that the District Administrator did not conduct a valid job study and therefore reached an erroneous conclusion.

The District also asserts Sec. 31.01 is silent as to any standard by which to judge the District Administrator's decision. It is noted in this regard that Sec. 31.01, 2, C, provides that the reclassification request is to be evaluated "based upon work being performed and established job descriptions." In this case, it is necessary to determine whether the District Administrator's decision had a reasonable basis in fact based upon the "work being performed" and "established job descriptions." Further, as with a "fitness and ability" determination that is left to management, either expressly or based on reserved rights, arbitrators have held that management's decision is subject to challenge on the basis it was "unreasonable" or "arbitrary, capricious or discriminatory." ¹

In reviewing the District Administrator's job study and evaluation, Klaubauf testified he talked to the Food Service Director about the work the Grievant performs while working in the Food Service office and talked to some of the secretaries about the work they perform in their positions, as well as the District's payroll person who had been a secretary at one time. Regarding job descriptions, the Union asserts that, rather than looking at the District's job descriptions for the specific secretary positions to determine the core duties of that classification, the Arbitrator should consider the general job description for a secretary in the "Occupational Outlook Handbook", which the Union attached to its brief. ² Section 31.01, 2, C, is clear, however, that the District Administrator is only to consider "established job descriptions" in this regard. Thus, Klaubauf was restricted to existing District job descriptions in conducting his evaluation of the request, as is the Arbitrator.

¹ Elkouri and Elkouri, *How Arbitration Works* (Sixth Ed.), page 877.

² The District objects that the Union is attempting to submit additional evidence after the record has been closed. However, regardless of whether the excerpt from the Handbook constituted "evidence" or is merely a citation of authority, similar to citing a dictionary definition, the Arbitrator finds it inappropriate to consider the document on other grounds.

There is also the basic issue as to what job Klaubauf was to consider for reclassification. The District asserts that the Grievant's position of Hot Lunch Hostess/Ticket Sales consists of both her duties at the Food Service office and her lunchroom duties at the ECC and that they cannot be separated out, while the Association asserts they are clearly two separate positions and that only the Grievant's position in the Food Service office is in issue. Although it is the Grievant's duties in the Food Service office that is the basis for her request to be reclassified, and Klaubauf recognized this as well in his November 9, 2004 response (Union Exhibit 7), the record does not support a finding that those duties constitute a separate position from the Grievant's lunchroom supervision duties at the ECC. As the District notes, there is no job description for a "lunchroom supervisor" position. Further, it is those lunchroom duties that the Union asserts the other employees in the "Hot Lunch Hostess/Ticket Sales" position perform, and they are clearly reflected in the job description for that position. There is also no evidence that the parties have recognized the Grievant's duties as constituting separate positions. The Grievant has been paid the "Hot Lunch" rate for her time spent working in both the Food Service office and in the lunchroom at the ECC and the duties have been considered to constitute a "Hot Lunch Hostess/Ticket Sales" position. Thus, the Grievant's position must be reviewed on the basis of all the duties she performs from 8:15 a.m. until 12:30 p.m.

The nub of the issue then, is whether the Grievant's duties that she performs in the Hot Lunch Hostess/Ticket Sales position from 8:15 a.m. to 12:30 p.m. are sufficiently similar to the duties reflected in secretary job descriptions, as opposed to the duties reflected in the Hot Lunch Hostess/Ticket Sales job description, so as to require a conclusion that the Grievant is primarily performing the duties of a secretary. It is not sufficient in this regard to deny the reclassification request on the basis that there is no secretary position in the Food Service area to which one can be reclassified. If the District has assigned the Grievant to perform primarily secretary duties in her position, it has created a *de facto* secretary position, regardless of what title the position is given.

The record establishes that in her Hot Lunch Hostess position, the Grievant performs what are essentially clerical and basic bookkeeping duties from 8:15 a.m. to 11:00 a.m. at the Food Service office, and a combination of lunchroom supervision and some recordkeeping duties from approximately 11:10 a.m. to 12:30 p.m. at the ECC. The testimony of the Grievant and Hansen establish that the duties the Grievant performs in the Food Service office are unlike the duties performed by the other employees in the Hot Lunch Hostess/Ticket Sales position, and that the duties she performs from 11:10 a.m. to 12:30 p.m. are essentially the same as those employees' duties. According to the Grievant, from 8:15 a.m. until 11:00 a.m. she picks up the lunch and milk money from the ECC, elementary and middle schools, does monthly deposits, records payments, lunch account balances, responds to requests for information from parents, and sends out various notices. She does not answer the telephone at the Food Service office unless the Director is not there,³ and there is no evidence that she prepares correspondence for the Director.

³ Contrary to the Union's assertion that the Grievant's duties in the Food Service office include answering the phone, the Grievant testified she only does so when the Director is not there.

A comparison of those duties with those listed in the job descriptions for the various secretary positions in the District reveals that while the Grievant's clerical and recordkeeping duties are similar to some of the duties performed by those employees in the secretary positions, such duties are only a minor portion of their duties. The Grievant's clerical duties are not of the equivalent breadth and scope of the duties of those employees in the secretary positions, especially with regard to such core secretarial duties as preparation of correspondence for others and telephone reception duties. Thus, as the District argues, the scope of the Grievant's clerical and recordkeeping duties is not sufficient to equate her position to the existing secretary positions in the District. Conversely, those duties are reflected to some extent in the job description for Hot Lunch Hostess/Ticket Sales position, while the Grievant's lunchroom duties clearly are set forth for that position. On that basis, it is concluded that the District did not violate the parties' Collective Bargaining Agreement when it denied the Grievant's request to be reclassified to "secretary". The Grievant's position appears to be unique, falling somewhere between the Hot Lunch Hostess/Ticket Sales and the Secretary classifications and will have to be addressed at the bargaining table, rather than through Article XXXI.

Based on the foregoing, the evidence and the arguments of the parties, the undersigned makes and issues the following

AWARD

The grievance is denied.

Dated at Madison, Wisconsin, this 27th day of July, 2006.

David E. Shaw /s/

David E. Shaw, Arbitrator

