

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**AFSCME LOCAL 990**

and

**KENOSHA COUNTY**

Case 244  
No. 64871  
MA-13035

(Reclassification Grievance)

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**Appearances:**

**Mr. Thomas G. Berger**, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 044635, Racine, Wisconsin, appearing on behalf of Local 990.

**Ms. Lorette Pionke**, Senior Assistant Corporation Counsel, County of Kenosha, Courthouse, 912 - 56<sup>th</sup> Street, Kenosha, Wisconsin, appearing on behalf of Kenosha County.

**ARBITRATION AWARD**

AFSCME Local #990, hereinafter "Union," and Kenosha County, hereinafter "County," requested that the Wisconsin Employment Relations Commission provide a panel of arbitrators to the parties in order to select an arbitrator to hear and decide the instant dispute in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. Lauri A. Millot, of the Commission's staff was selected. The hearing was held before the undersigned on November 2, 2006, in Kenosha, Wisconsin. The hearing was not transcribed. The parties submitted post-hearing briefs, the last of which was received on December 14, 2006 whereupon the record was closed. Based upon the evidence and arguments of the parties, the undersigned makes and issues the following Award.

**ISSUES**

The parties stipulated to the substantive issues as:

1. Did the County of Kenosha violate the collective bargaining agreement when it denied reclassification to certain bargaining unit members?

2. And if so, what is the appropriate remedy?

In addition, the County put forth a procedural challenge asserting that the grievance was untimely.

**RELEVANT CONTRACT LANGUAGE**

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**ARTICLE I - RECOGNITION**

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Section 1.2. Management Rights. Except as otherwise provided in this agreement, the County retains all the normal rights and functions of management and those that it has by law. Without limiting the generality of the foregoing, this includes the right to hire, promote, transfer, demote or suspend or otherwise discharge or discipline for proper cause; the right to decide the work to be done and location of work; to contract for work, services or materials; to schedule overtime work, to establish or abolish a job classification; to establish qualifications for the various job classifications; however, whenever a new position is created or an existing position changed, the County shall establish the job duties and wage level for such new or revised position in a fair and equitable manner subject to the grievance and arbitration procedure of this agreement. The County shall have the right to adopt reasonable rules and regulations. Such authority will not be applied in a discriminatory manner. The County will not contract out for work or services where such contracting out will result in the layoff of employees or the reduction of regular hours worked by bargaining unit employees.

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**ARTICLE III - GRIEVANCE PROCEDURE**

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Section 3.5. Work Rules and Discipline. Employees shall comply with all provisions of this Agreement and all reasonable work rules. Employees may be disciplined for violation thereof under the terms of this Agreement, but only for just cause and in a fair and impartial manner. When any employee is being disciplined or discharged, there shall be a Union representative present and a copy of the reprimand sent to the Union.

The foregoing procedure shall govern any claim by an employee that he has been disciplined or discharged without just cause. Should any action on the part of the County become the subject of arbitration, such described action may be affirmed, revoked, modified in any manner not inconsistent with the terms of this Agreement.

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### **BACKGROUND**

In 1996 the County contracted with David M. Griffith and Associates, LTD. (hereinafter, "Griffith") to conduct a comprehensive classification study and determine the appropriate classification of all clerical support positions in Local 990. The County Board adopted the Griffith recommendations and implemented the modifications to the classifications which included modifications to the wage schedule. After implementation, Circuit Court employed Office Associates and Senior Office Associates.

The newly-created classification specification for the position of Office Associate reads as follows:

**GENERAL STATEMENT OF DUTIES:** The purpose of this classification is to perform a variety of clerical and secretarial duties to support a department, division, or program.

**DISTINGUISHING FEATHERS OF THE CLASS:** Under general supervision, performs a variety of routines with some moderately complex clerical and secretarial functions which may include work processing or data entry of a variety of moderately complex documents: scheduling appointments; providing assistance to the public; preparing vouchers and requisitions for payment; drafting routine correspondence as directed; transcription from a recorded source and considerable record-keeping responsibilities.

The distinguishing characteristics of this classification are work within the clerical series which involves performance of a variety of routine with some moderately complex clerical and secretarial tasks; performed in accordance with department policies and procedures and federal and state regulations; requiring the exercise of judgment; I (sic) the application of procedures and regulations to routine matters. Work in this class allows limited independence of action and requires a correspondingly high degree of accuracy. Requires knowledge of procedures and terminology pertinent to the department.

ESSENTIAL JOB FUNCTIONS:

(This is a list of representative tasks performed in positions within this classification. A single position may not include all of these tasks, nor do these examples include all tasks which may be found in this classification.)

- Performs general secretarial and clerical duties for department or program area such as typing/work processing letters, reports, memos, meeting minutes, and other documents; may draft letters from general instructions.
- Assists the public, clients or citizens requesting information or service provided by the program assigned either over the telephone or in person; answers questions regarding the department or program and provides forms, applications, and other information.
- Answers the telephone and contacts clients, parties and others to relay or gather information.
- Compiles data and prepares a variety of reports and records for assigned program area.
- Prepares vouchers and requisitions for payments.
- Schedules hearings and makes appointments.
- Performs cashier duties including receiving money and writing receipts.
- Maintains clerical and bookkeeping records and prepares reports.
- Attends meetings, transcribes from a recorded source as required.
- Maintains inventories and related records and may order supplies.
- Performs other duties as required or assigned.

The newly-created classification specification for the position of Senior Office Associate reads as follows:

GENERAL STATEMENT OF DUTIES: The purpose of this classification is to provide advanced clerical and secretarial support to elected officials, department/division heads, judges or court commissioners.

DISTINGUISNG FEATURES OF THE CLASS: Under general supervision, performs a variety of advanced clerical and secretarial tasks which may include drafting correspondence, taking and transcribing dictation; establishing and maintaining confidential files and records; coordinating scheduling of activities and maintaining appointments and calendars; preparing, assembling and distributing agendas; and making travel arrangements.

The distinguishing characteristics of this classification are work within the clerical series which involves performance of moderately difficult and detailed routine clerical and secretarial tasks with some non-routine tasks; in accordance with department policies and procedures and state and federal regulations; and requiring independent judgment, initiative, and discretion. Some tasks may be confidential in nature. In-depth knowledge of department policies and procedures as they relate to the position is necessary. Positions are found in departments/divisions without Office Managers and as a result may assign work under the authority of the director, judge, or court commissioner or may follow up on assignments given to other clerical employees.

ESSENTIAL JOB FUNCTIONS:

(This is a list of representative tasks performed in positions within this classification. A single position may not include all of these tasks, nor do these examples include all tasks which may be found in the classification).

- Schedules and maintains department, division, or branch activities which may include scheduling of appointments, trials, and hearings; and updating and maintaining calendars.
- Performs word processing and data entry duties to prepare a variety of documents requiring considerable knowledge of the department , divisions, or branch procedures including agendas, contracts, letters, claims, correspondence and reports; legal documents including orders, judgments, bonds, and warrants; drafts correspondence independently.
- Takes dictation, transcribes letters, and meeting minutes, records court proceedings.
- Acts as receptionist for director/division head or court branch; answers, screens and forwards calls; answers both routine and specific inquiries regarding department.

- Initiates telephone contacts to advise various departments, agencies or individuals of appointments, hearings, trials, meetings, etc.; to schedule appointments; to make inquiries to solve problems; to obtain information.
- Prepares, assembles, copies and distributes agendas to appropriate departments, agendas, or individuals.
- Collects, analyzes, and summarizes information and statistics for cases, news letters, reports and projects.
- Establishes, maintains and updates branch, division or department files. Follows up on and tracks necessary paperwork.
- Prepares purchase requisitions, payment vouchers, account entries and posts to ledgers; reviews bills and processes for payment; deposits moneys; monitors account balances and tracks expenses.
- Prepares travel itineraries and makes travel arrangements.
- Orders or assists in ordering office supplies.
- Assists in the orientation of new department employees, temporary staff or volunteers.
- Assists in developing and revising operating procedures affecting immediate work load.
- Performs other duties as required or assigned.

### **FACTS**

The facts in the case are not in dispute. The Union filed a grievance on behalf of seven members on July 16, 2003 alleging:

Denial of reclassification of Senior Office Associates. We are and have been performing the duties of Senior Office Associates, as indicated in the job description. Denying reclassification is in violation of Labor Management Agreement Article 8, Section 8.5 and Section 8.7, and any other sections that may apply.

The County contracted with MAXIMUS, the new name for the Griffith & Associates consulting firm, to determine whether any of the current Office Associate staff members should be assigned to the Senior Office Associate classification. Each of the 15 Office

Associates in the Circuit Court were asked to complete a comprehensive position questionnaire which described, in detail, their job duties and responsibilities. The questionnaire was subsequently reviewed by the employee's supervisor, by MAXIMUS and MAXIMUS conducted either group or individual interviews with the employees. MAXUIMUS issued the following recommendations:

MAXIMUS's recommendations are based on comparing the information obtained from the CPQ's prepared by the clerical staff and the staff interviews with the classification specification descriptions for the Office Associate and Senior Office Associate positions. To supplement this analysis, MAXIMUS evaluated each CPQ using the key factors from its proprietary job evaluation system.

MAXIMUS recommends the following:

- 1) Except for the Jury Clerk position, MAXIMUS recommends no change in the classification assignment of the other fourteen clerks to the senior level.
  - The duties performed by the fourteen clerks are generally covered by the class specification for the Office Associate level.
  - None of the fourteen directly support administrator or function in a true lead worker role.
  - It could be argued that the clerks in Criminal, Probate, and possibly Family Court require a more in-depth understanding of the policies, procedures, and laws pertaining to their area. But this would not alone, absence (sic) the other criteria, be enough to make a difference.
- 2) MAXIMUS recommends that as described the Jury Clerk deserves a different, probably higher classification than an Office Associate.
  - The position is solely responsible for providing the necessary jurors to meet the changing court requirements. This requires logistical planning and extensive interaction with prospective and summoned jurors.
  - These duties and responsibilities are not covered by the Office Associate classification specification.

The County committee of jurisdiction addressed the reclassification grievance/requests on November 2, 2004 and approved the reclassification request for the Jury Clerk position. The Committee denied the remaining requests. As a result of the County's denial of the reclassifications, the grievance processing continued.

The Union sent a letter to County Administration Committee Chair, David Singer, on November 18, 2004 requesting that the reclassification grievance proceed to Step 5 of the grievance procedure. The Union indicated to Chairman Singer that it was having difficulty obtaining information from the County necessary to pursuing the grievance and thereafter requested that the grievance be held in abeyance. The Union did not receive a response from Chairman Singer and concluded that it was approved. The County Human Resources Department was unaware of the letter to Singer. The parties bargained the reclassification at issue in the grievance during the 2004-2006 labor agreement, but were unable to reach resolution. The Union thereafter informed the County it was taking the grievance to arbitration.

The following individuals testified at hearing:

**Gina Beaudry**

Beaudry is a seven year employee in the Circuit Court records area and was one of the original 2003 grievants. Beaudry initially testified that she did not recall completing any paperwork or questionnaire for MAXIMUS and that she was not interviewed, but admitted during cross examination that she had completed a questionnaire and participated in an interview. Beaudry testified that her work level has increased and that duties have been added including work with criminal court diversions, indexing citations and work bail jumping.

**Janice Koehne**

Koehne has held the position of Circuit Court Records File Clerk for 10 months and previously was the Circuit Court Receptionist. Koehne testified that she has more responsibility as the Records File Clerk than she did as the Receptionist. Koehne indicated that she was being trained by her co-workers and not management. Koehne works with Beaudry.

**Debra Stein**

Stein was hired to the Circuit Court Criminal Records area in 1999 and was one of the original 2003 grievants. Stein testified that she believed reclassification was necessary because she compared the position descriptions and the majority of her duties are Senior Office Associate responsibilities rather than the Office Associate responsibilities. Stein testified that the work she performs is more advanced than the Receptionist duties. Stein completed a MAXIMUS questionnaire and participated in a group interview. Stein noted that MAXIMUS did not ask the group very many questions during the interview. Stein holds the same position as Beaudry.



**Linda Hughes**

Hughes has held the position of Civil Clerk in Circuit Court since October 2, 2000. Hughes testified that she performs a lot of work with the judges and that when the judges are upset, it is communicated to her through the Judicial Clerks. Hughes indicated that she believed the difference between herself and the Office Associates that work the counter is that she didn't "think that they know what I know" referencing the extent to knowledge required of Office Associates in Circuit Court. Hughes further indicated that the only duty in the Senior Office Associate job description that she does not perform is dictation. Hughes confirmed that she completed the MAXIMUS questionnaire and that she participated in an interview.

**Kristin Peterson**

Peterson has been employed by the County for six years and has worked in the Criminal Records division of Circuit Court for the last seven months. Peterson previously held the position of Office Associate in Family Court. Peterson testified that her current position has more time sensitive work than her prior position with Family Court. Peterson indicated she was trained by her co-workers and that many of her job functions are those of a Senior Office Associate including typing and reading bonds, completing paperwork for the judges and completing paperwork for sentencing.

**Paula Pfeuffer**

Pfeuffer was hired by the County in 1995 and has held the position of Criminal Clerk, Deputy Clerk Circuit Court and currently works as a Small Claims Clerk. Pfeuffer was one of the original 2003 grievants. Pfeuffer believes that her duties are those of a Senior Office Associate. Pfeuffer testified that her position is "more intense" than that of an Office Associate in as much as she is in court, works with court proceedings and works with the court calendar. Pfeuffer testified that she and the Small Claims Court legal secretary alternate inputting cases into the court system computer. Pfeuffer testified that she is doing the same job as the judges' clerk. Pfeuffer believes that the previous Clerk did not accurately describe the duties of her position when the classification study was initially completed.

Additional facts, as relevant, are contained in the **DISCUSSION** section below.

**DISCUSSION**

**Timeliness**

The County challenges the arbitrability of this grievance on the basis that its Human Resources Office was unaware and did not grant the Union's November, 2003 request to hold the grievance in abeyance. The evidence establishes that Union timely directed correspondence to the County Personnel Committee chair seeking to place the grievance in abeyance. While it is true that the County Human Resources Department did not receive a

copy of the Union's correspondence, the request was received by a representative of the County within the contractual time parameters.

The evidence is inconclusive as to the parties' manner of dealing with regard to requests for extension and/or abeyance. The County's Assistant Personnel Director Diane Yule testified that in every instance she sends a written response to grievance procedure processing requests. In contrast, Union President testified that the County does not always send written confirmation for requests. Ultimately, in the context of processing this grievance, the County indicated to the Union that if it could produce evidence that this request had been sent, it would abandon its timeliness challenge. The Union provided the County the letter sent to Chairman Singer.

Given that the Union timely offered the request for abeyance, the contrasting testimony as to the parties' prior dealings and the County's concession, I find the grievance timely.

### **Merits**

The collective bargaining agreement provides that reclassification decisions are subject to the grievance procedure, including arbitration, but the contract is silent as to the standard by which the Arbitrator is to review the County's decision to deny the reclassification requests. It is not the role of the Arbitrator to substitute her judgment for that of the County decision-makers. Rather, it is the role of the Arbitrator to evaluate the County's determination in the context of the reasonableness standard and so long as the County's decision was not arbitrary or capricious, it will prevail.

This is a grievance arbitration case and not an interest arbitration case. The Grievants' allege that the County violated the labor agreement when it failed to approve the reclassification of Office Associates in the Circuit Court to Senior Office Associates. This analysis derives from the premise that the Office Associate classification and its accompanying wage, adopted by the parties in 1996 and unchanged in the context of bargaining since that date, is fair, appropriate and valid. Working from this premise, the labor agreement shall remain intact unless the criteria for reclassification are met.

Reclassification is a process which evaluates the validity of an employee's classification to determine whether the position has changed thereby requiring its wage to change. The change may have occurred gradually over time or may have occurred on a date specific. Regardless of when the change occurred, it must be sufficiently substantial to alter the characteristics and nature of the position in such a way that another job classification better describes the knowledge, skills, abilities and duties of the new position.

The Grievants' challenge is grounded in their conclusion that their duties are more appropriately those of the Senior Office Associate classification rather than the Office Associate classification. The County hired Griffith in 1996 to review 117 clerical position classifications. Griffith conducted the evaluation, created a classification system and all of the

positions subject to this grievance were determined to be Office Associate positions. Griffith determined the requirements of each position; evaluated the job with regard to the complexity/difficulty of job duties and responsibilities and the requisite skills and qualifications; considered the job in relation to other jobs; and attached a comparable wage to the position. Griffith's determination was accepted without challenge by the Union and remained uncontested through 2003.<sup>1</sup>

None of the Grievants were incumbent to their current position in 1996 when the Classification Study was conducted. The study followed a rationale process. Given that the Union and the 1996 incumbents accepted their status as Office Associates, it is fair to presuppose that the classifications were accurate and reflective of the positions. The position and wage rate for the Office Associate was agreed upon by the parties and included in the parties' collective bargaining agreement. As a result, the position and wage rate are presumed to be correct.

When presented with the reclassification grievance in 2003, the County contracted with the same entity that prepared the initial classification study. This was done at a cost to the County. The County requested that MAXIMUS, previously known as Griffith and Associates, evaluate the request. This was logical in that Griffith had conducted the initial classification study which was adopted and implemented by the County in 1996. Jim Hughes conducted the evaluation. Hughes has 50 years experience in position classification evaluations and was involved in the initial 1996 study. Hughes sought position information from the 15 individuals via first a written questionnaire and followed-up with small group discussions with the involved employees. Hughes utilized the four-part matrix in analyzing whether the positions were properly classified and concluded that one of the 15 positions should be reclassified. Hughes concluded, given his knowledge of the positions and the matrix evaluation process that the remaining positions were appropriately classified. This process was rationale.

There is no evidence in the record to warrant reclassification. The MAXIMUS study in 2003 and Hughes' testimony establish that the County investigated and considered the Grievants' request, but ultimately did not agree with the conclusions. While it may be that the Grievants view a specific job duties which they currently perform to be encompassed within or more accurately described by a job detail contained in the Senior Office Associate classification, I find the methodology of Hughes's analysis and his ultimate conclusion more persuasive.

The MAXIMUS Report differentiated between the positions in the following four areas:

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<sup>1</sup> The 1996 Griffith study placed Clerk Typist III's in the Senior Office Associate positions. In 2000, the County judiciary successfully obtained the new position of legal secretary for these individuals which resulted in a void in the Senior Office Associate position the Circuit Court area.

- 1) Provides advanced clerical and secretarial support to elected officials, department/division leads, judges, or court commissioners versus providing a variety of clerical and secretarial duties to support a department, division or program.

The difference appears to be that the senior level directly supports and administrator rather than being part of a team supporting the work unit.

- 2) Requires in-depth knowledge of department policies and procedures and federal and state regulations relevant to the job versus requiring a general knowledge, which can be applied to routine matters.

The difference appears to be that a senior level has broader scope of responsibility, which requires a broader understanding of department policies and procedures and relevant state and federal regulations. Experience in the job could be a differentiating factor.

- 3) Requires a greater degree of independent judgment, initiative, and discretion.

The difference appears to be the degree to which existing policies and procedures involved in the job are clear-cut and can readily be applied to carry out the job. The less clear cut, the more independent judgment, initiative and discretion would be required.

- 4) May work in departments/divisions without Office Managers, which may result in the senior level acting in a lead role with other clerical employees.

Looking to the first area, the evidence establishes that the Grievants work as a part of a team. They assist one another, give guidance to one another and do not directly report to the Judicial Officers, the District Attorneys or Court Commissioners. I do not doubt that when a function is completed in a manner which is disagreeable to one of these entities, they communicate their dissatisfaction to a Grievant, but this does not mean that that particular Grievant is responsible to any one position or individual.

As to the second area, the Grievants work in one Civil Court - some in Records and one in Small Claims. They do not have responsibilities that extend beyond those areas. Stein testified that when she worked at the Counter she was required to have a greater knowledge of more areas while now she has more specific knowledge of the Records area. The evidence

established that their work is relatively narrow in scope and specific to one aspect of Civil Court.

With regard to the third area, the Grievants are responsible for complex duties which support the court system. The process records according to various internal and external methodologies. They input data in CCAP. While there are occasions in which they are required to deviate from these regular procedures, they do so within parameters set by the Judicial Officers or departmental procedure.

The fourth area identified by the MAXIMUS study involved an analysis of whether the Grievants were acting as lead workers in the absence of a departmental Office Manager. The Circuit Court employs a and the Grievants do not act as lead workers. There are occurrences in which one employee will know more than another or have greater experience in an area than another employee, but they do not possess the characteristics of a lead worker.

The evidence establishes that the criteria which MAXIMUS utilized was reasonable and that based on that criteria, the Grievant's are properly classified as Office Associates. The Union takes issue with the MAXIMUS analysis. The Union is certainly at liberty to criticize MAXIMUS's process and findings, but when that system is the basis for the entire County classification system which has been in place for greater than 11 years, is factually supported by the record and is buttressed by a objective reasoned analysis, I cannot find it to be invalid. This is not a situation where the process is flawed. Rather, this is a situation where there is a difference of opinion as to where these positions are properly classified. This disagreement and its ultimate resolution are best handled at the bargaining table and not before an arbitrator.

#### AWARD

1. The County's procedural challenge to timeliness is denied.
2. The County of Kenosha did not violate the collective bargaining agreement when it denied reclassification to certain bargaining unit member.
3. The grievance is dismissed.

Dated at Rhinelander, Wisconsin, this 13th day of March, 2007.

Lauri A. Millot /s/

Lauri A. Millot, Arbitrator

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