

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

CRAWFORD COUNTY

and

**CRAWFORD COUNTY EMPLOYEES LOCAL 3108
WCCME, AFSCME, AFL-CIO
(PROFESSIONAL UNIT)**

Case 98
No. 68161
MA-14142

Appearances:

Mr. Edward A. Corcoran, Attorney at Law, Murphy Desmond S.C., P.O. Box 2038, Madison, Wisconsin 53701-2038, appearing on behalf of the County.

Mr. Neil D. Rainford, Staff Representative, Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite "B", Madison, Wisconsin 53717-1903, appearing on behalf of the Union.

ARBITRATION AWARD

The Union requested that the Wisconsin Employment Relations Commission appoint a WERC Commissioner or staff member as Arbitrator to hear and decide a grievance dispute between the Union and the County. Subsequently, the Commission designated Coleen A. Burns as Arbitrator. Pursuant to the agreement of the parties, an arbitration hearing was held on October 16, 2008 in Prairie du Chien, Wisconsin. The hearing was not transcribed and the record was closed on December 12, 2008, following receipt of the parties' briefs.

ISSUES

The parties did not stipulate a statement of the issues. The Union frames the issues as follows:

Did the Employer violate the collective bargaining agreement, including the grievance settlement dated August 10, 1988, when it denied the reclassification request of Chief Deputy Treasurer Deanne Lutz?

If so, what is the appropriate remedy?

The County frames the issues as follows:

Did the Employer violate the collective bargaining agreement when it denied the reclassification request of Chief Deputy Treasurer Deanne Lutz?

Does the Arbitrator have the authority to establish a new wage classification?

CONTRACT LANGUAGE

The 2004-2006 collective bargaining agreement between the County and Local 3108 (Courthouse Unit) includes “Wages-Appendix A” The Appendix A wage schedule effective January 1, 2006 states as follows:

1950 HRS/YR

**APPENDIX A
Effective January 1, 2006**

Local 3108

Range	Classification	Start	After Probation	After Two Years
1				
2				
3				
4	Lead Maintenance Worker	\$30,069.00/yr. 1,156.50/biw. 15.42/hr.	\$32,604.00/yr 1,254.00/biw. 16.72/hr.	\$35,217.00/yr. 1,354.50/biw. 18.06/hr.
5		\$27,397.50/yr. 1,053.75/biw. 14.05/hr.	\$30,420.00/yr 1,170.00/biw. 15.60/hr.	\$33,130.50/yr. 1,274.25/biw. 16.99/hr.
6	*Maintenance	\$25,459.20/yr. 979.20/biw. 12.24/hr.	\$28,558.40/yr 1,098.40/biw. 13.73/hr.	\$32,593.60/yr. 1,253.60/biw. 15.67/hr.
7	Chief Deputy Register of Deeds Chief Deputy Treasurer Chief Deputy Clerk of Court Child Support Investigator Financial Employment Planner/SSP/EES	\$24,921.00/yr. 958.50/biw. 12.78/hr.	\$27,982.50/yr 1,076.25/biw. 14.35/hr.	\$30,712.50/yr. 1,181.25/biw. 15.75/hr.
8	Economic Support Specialist **Victim Witness Coordinator Benefit Specialist	\$23,595.00/yr. 907.50/biw. 12.10/hr.	\$25,798.50/yr 992.25/biw. 13.23/hr.	\$29,308.50/yr. 1,127.25/biw. 15.03/hr.

9	Social Service Aide 11 Homemaker 11 Economic Support Assistant Administrative Assistant/ Legal Secretary	\$22,834.00/yr. 878.25/biw. 11.71/hr.	\$25,018.50/yr 962.25/biw. 12.83/hr.	\$28,567.50/yr. 1,098.75/biw. 14.65/hr.
10	Clerk III - Extension Clerk III - Human Services Clerk III - Health Deputy County Clerk Deputy Clerk of Court Deputy Register of Deeds - Rotating Clerk Secretary - Land Conservation Secretary - Veterans Service Secretary - Law Enforcement Secretary - Child Support Clerk-Typist - Aging Typist III Assistant Real Property Lister Child Support Worker Community Service Maintenance Worker	\$22,620.00/yr. 870.00/biw 11.60/hr.	\$24,804.00/yr 954.00/biw. 12.72/hr.	\$28,333.50/yr. 1,089.75/biw. 14.53/hr.

11	Clerk II – Human Services Janitor	\$20,280.00/yr. 780.00/biw. 10.40/hr.	\$24,141.00/yr. 928.50/biw. 12.38/hr.	\$25,876.50/yr. 995.25/biw. 13.27/hr.
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* Wages based on 40 hour week.

** Incumbents in these positions will be paid one range higher than currently listed, due to red circling in a reclassification.

BACKGROUND

On August 10, 1988 the parties entered into a grievance settlement that states as follows:

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

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

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

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

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

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

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

...

Deanne Lutz, the Grievant, began her County employment in August of 2001 and has held the position of Chief Deputy Treasurer since May of 2004. On or about March 14, 2008, the Grievant filed a grievance challenging the County's February 27, 2008 denial of her reclassification request. The grievance request for settlement is "Reclassification of Chief Deputy Treasurer from Class 7 to Class 6 Annual Salary and Be Made Whole." The grievance was denied and, thereafter, submitted to arbitration.

POSITION OF THE PARTIES

Union

The collective bargaining agreement and the Fritsche-Roberts Reclassification Grievance Settlement from 1988 clearly provide for the increase by one pay level through reclassification if the employee has been assigned new duties comprising at least 35% of his/her work week hours. This agreement between the parties has resulted in a number of reclassifications over the past two decades.

Questions about the precise meaning and scope of the Fritsche-Roberts Reclassification Settlement have been interpreted broadly in previous grievance arbitration decisions that are binding upon the parties to mean that "a reclassification is called for when a job is changed by at least 35%." The "Fritsche" agreement makes no limitations on the kinds of job duty changes.

If, as the County argues, the parties intended the job duty changes to be limited to “fundamental changes,” the parties would have so stated. The County’s attempts to limit the scope of the “Fritsche” agreement have been rejected by both Arbitrator Greco and Arbitrator Levitan.

The Grievant, through testimony and documentation, has established that her job has been changed by at least 35%. As the direct supervisor of the Grievant, as well as of her predecessor, the County Treasurer is in the best position to determine the extent of this change. The County Treasurer has confirmed the accuracy of the Grievant’s characterization of the work performed by the Grievant and her predecessor, as well as the accuracy of the Grievant’s documents detailing the changes in the duties of the Grievant’s position.

The Grievant’s reclassification request was summarily rejected by the County without explanation. The Chair of the County Personnel Committee asserted that he did not believe that there was sufficient evidence of a 35% change to the position, but offered no explanation for this assertion.

Neither the County argument that to sustain the grievance would be to establish a new wage classification, nor the County argument that Range 7 is the top of the applicable pay scale for a Chief Deputy position has any substance. The grievance should be sustained. Additionally, the Grievant should be made whole by reclassifying the Chief Deputy Treasurer position from Range 7 to Range 6, effective December 27, 2007; the date of the reclassification request.

County

The Grievant has requested that she be reclassified from Range 7 to Range 6. The position description in effect at the time that the Grievant was hired into the Chief Deputy Treasurer, as well as the job description that she helped to create and signed in 2008 include a “General Statement of Duties” indicating as follows:

General Statement of Duties: Performs a wide variety of responsible clerical-accounting tasks in the office of the County Treasurer; Acts as County Treasurer in his/her absence.

Under the Fritsche-Roberts agreement, an employee shall be eligible for a reclassification if the employee “has been assigned new duties comprising 35% of his/her work week hours.” The Grievant admits that all of the tasks she performs to accomplish her job, other than a few miscellaneous clerical tasks, constitute “responsible clerical-accounting tasks;” and that there has been no change in her “General Statement of Duties” or “Distinguishing Features of the Class.” There has not been any fundamental change in the Grievant’s job duties that would warrant a reclassification.

County Clerk Geisler's undisputed testimony is that the hourly rate reflected for the Lead Maintenance Worker effective January 1, 2006 was incorrect and that it should have been asterisked because it was a 40 hour per week position. The Grievant works a 37½ hour scheduled workweek and she seeks an annual salary that was bargained for a 40 hour workweek. A change from Range 7 to Range 6 would actually result in a lower hourly wage for the Grievant unless the Arbitrator changes the hourly rate for the Range 6 classification.

If a reclassification were to be granted, it would result in a lower hourly wage unless the Arbitrator established a new hourly rate and/or salary classification. The Fritsche-Roberts agreement has no meaningful application when the employee is at the top of her classification.

A comparison of the other Range 7 positions is relevant in that all of the County Chief Deputies or Chief Assistants are paid as Range 7 employees. The Arbitrator should not be upsetting the product of the parties' collective bargaining process.

The Union's argument regarding the separation of the Professional and General Unit is not based upon any record evidence. The relief requested is beyond the scope of the Arbitrator's authority because it would require the Arbitrator to establish a new contractual hourly rate and a new salary classification. The grievance should be denied.

DISCUSSION

Issue

The parties were not able to stipulate to a statement of the issues. In this case, the Union is challenging the County's decision to deny the reclassification request of the Grievant. The reclassification procedure agreed upon by the parties is set forth in the Fritsche-Roberts grievance settlement of August 10, 1988. Accordingly, the issue is most appropriately stated as follows:

Did the County violate the Fritsche-Roberts grievance settlement of August 10, 1988 when it denied the reclassification request of the Grievant?

If so, what is the appropriate remedy?

Merits

As set forth in Paragraph 2 (a) of the Fritsche-Roberts grievance settlement of August 10, 1988, hereafter "settlement," the reclassification procedure contained therein does not apply to "job positions subject to Wisconsin Statutory laws or Wisconsin Administrative regulations." Neither party argues that the Grievant's reclassification request involves such a job position. Paragraph 2(b) states that all other reclassifications "shall be evaluated and determined by a joint meeting of the representative standing committee and the Personnel Committee and the Finance Committee and/or its representatives."

Paragraph 2(c) of the “settlement” provides a procedure for reclassifying “an existing position to another existing position under the collective bargaining agreement.” Paragraph 2(d) of the “settlement” provides a procedure for reclassifying “a change from an existing job position to a new job position which does not exist under the collective bargaining agreement.”

As set forth in Paragraph 3 of the “settlement,” the reclassification procedure does not apply to the creation of entirely new jobs to which the posting procedure would apply under the collective bargaining agreement. Under the language of Article X, Job Posting & Transfers, the posting procedure applies to vacancies.

In the present case, the Grievant does not seek to be reclassified from her existing position of Chief Deputy Treasurer to another existing position. The remaining reclassification procedure agreed upon by the parties is the reclassification procedure set forth in Paragraph 2(d).

The Grievant requests to have her position of Chief Deputy Treasurer “reclassified” by placing her at Pay Range 6. At first blush, this request does not appear to involve “a change from an existing job position to a new job position which does not exist under the collective bargaining agreement.” However, within the context of the “settlement,” a “new job position” is not defined by a position title or a job description, but rather, is defined by the addition of new duties to an existing position that comprise at least 35% of the employee’s work week hours.

The “settlement” recognizes that a successful reclassification request results in reclassification “one grade level higher.” To have meaning under the parties’ collective bargaining agreement, the term “one grade level higher” must be construed to be the next higher Pay Range. This construction is consistent with the prior arbitration Awards involving reclassified employees.

The record does not establish that, when the parties entered into the “settlement,” they agreed to limit Pay Range 6 and higher to Maintenance positions or to limit a Chief Deputy position, such as that occupied by the Grievant, to Pay Range 7. Nor is it evident that the parties subsequently interpreted the “settlement” as establishing such limitations.

Appendix A establishes that, during the contract negotiations that resulted in the 2004-2006 collective bargaining agreement, the parties agreed that all Chief Deputies, as well as other positions, were to be paid at Pay Range 7. It is not evident, however, that there was any agreement between the parties that positions in Pay Range 7, including that of the Grievant, could not be reclassified under the “settlement.” The County’s argument that the “settlement” does not apply to the present situation because the Grievant is at the top of the reclassification progression is not supported by the record evidence.

By its very nature, the “settlement” permits the Arbitrator to “upset” the pay rates that have been bargained by the parties in the collective bargaining agreement. By reclassifying an employee who is entitled to be reclassified under the “settlement,” an arbitrator would not be exceeding the scope of his/her authority by establishing a new classification or hourly rate.

The language of the “settlement” does not base the reclassification decision upon the comparison of job descriptions within the affected employee’s Pay Range, or any other job description. As the Union argues, for the purposes of this proceeding, the job descriptions of Chief Deputy Register of Deeds, Chief Deputy Clerk of Court, and the Administrative Assistant Crawford County District Attorneys Office are irrelevant.

At hearing and through documents prepared in support of the reclassification request, the Grievant claims that, since she assumed the Chief Deputy Treasurer position, she has been assigned new duties that comprise more than 35% of her work week hours. One of the documents prepared by the Grievant is her “Employee Reclassification Request” dated December 27, 2007. In this document, the Grievant claims that originally the following duties involved 100% of her work time, but now these duties are as follows:

...

Current Duties and Percentage of Time Performed

DUTY PERFORMED	PERCENTAGE OF TIME
❖ ISSUES & RECORDS RECEIPTS OF MONIES RECEIVED FROM COUNTY OFFICES	10%
❖ ENTERS AND RECORDS PAYMENTS FROM ALL TAX RECEIPTS ISSUED BY THE MUNICIPAL TREASURERS FOR THEIR COLLECTIONS THRU JANUARY 31	4%
❖ ISSUES COUNTY TAX RECEIPTS FOR ALL UNPAID REAL ESTATE TAXES	10%
❖ MAINTAINS DELINQUENT TAX REGISTER & MAI LS DELINQUENT STMTS.	8%
❖ MAI LS NOTICE TO ALL PROPERTY OWNERS - TAX CERTIFICATE ISSUED	1%
❖ ISSUES REDEMEPTIONS TAX RECEIPTS FOR UNREDEEMED TAX CERTIFICATE	10%

❖ RECONCILES DAILY CASH RECEIPTS AND PREPARES BANK DEPOSIT	3%
❖ ANSWERS DETAILED QUESTIONS REGARDING OWNERSHIP/ASSESS/PAYMENT	5%
❖ ANSWERS QUESTIONS ABOUT LOTTERY CREDIT APP. FOR THE NEXT YEAR	1%
❖ SUPERVISES AND CHECKS THE WORK OF SUBORDINATE PERSONNEL	2%

The Grievant claims that the following duties are new duties which involve the following percentage of work time:

❖ RECONCILES GENERAL & PAYROLL CHECKS WITH AS400 COMPUTER SYSTEM	5%
❖ BALANCES THE CHECKING ACCOUNT WITH THE BANK	3%
❖ BALANCES OUTSTANDING CHECK REGISTER	3%
❖ RECONCILES GENERAL LEDGER BALANCES	3%
❖ BALANCES, ISSUES PAYMENT VOUCHER, COPY, MAILES OUT REAL ESTATE TRANSFER RETURNS: FILES THE COPIES IN TOWHSIP/ DATE ORDER	3%
❖ UPDATES ALL MAILING ADDRESS CHANGES FOR THE PROPERTY OWNERS	2%
❖ UPDATES AND BALANCES DOG LICENSE REPORT WITH COUNTY CLERKS OFFICE	1%
❖ TAX DEEDS-PREPARES NOTICES, AFFIDAVIT OF MAILING, APPRAISAL SHEETS, AND TAX DEED WORKSHEETS. MAILS CERTIFIED NOTICES	3%
❖ RECORDS REVENUES & FEES COLLECTED FROM COUNTY OFFICES FOR ANNUAL REPORT ON A DAILY BASIS	3%

- ❖ FILES STATE WITHHOLDING WITH THE DEPT. OF REVENUE: FILES FEDERAL WITHHOLDING, SOCIAL SECURITY AND MEDICARE WITHHOLDING 2%
- ❖ PRINT AND REVIEW OWNERS WHO DIDN'T RECEIVE LOTTERY CREDIT. FILL OUT AND MAIL LATE APPLICATIONS, TAX BILL, INF. SHEET 2%
- ❖ PRINT AND REVIEW REPORT OF 911 ADDRESSES. REMOVE LOTTERY CREDIT OF OWNERS WHO NO LONGER QUALIFY 2%
- ❖ UPDATES NEW 911 ADDRESS THAT ASSIGNED BY 911 COORDINATOR 2%
- ❖ MEAT AND ANIMAL AUCTION FOR COUNTY FAIR – INPUT BUYER NAME, SELLERS NAME, ANIMAL TYPE, WEIGHT, AND PRICE; BALANCE CHECKS 1%
- ❖ ISSUES TIMBER CUTTING NOTICES – FILES PROCEEDS AGREEMENT 3%
- ❖ TRANSFER OWNERSHIP OF TAXES FOR DEEDS RECORDED OCT.- DEC. 2%
- ❖ COLLECTION NOTICE FOR THE LOCAL TREASURERS 1%
- ❖ PREPARES BILLING STATEMENTS & KEEPS TRACK OF BILLS FAXES/COPIES 2%
- ❖ TYPE CORRESPONDENT LETTERS 1%
- ❖ ORDERS OFFICE SUPPLIES 1%
- ❖ MAINTAINS WEBSITE 1%

...

The Grievant's immediate supervisor, County Treasurer Sprosty, signed off on the portion of the "Employee Reclassification Request" relating to the "new duties." Additionally, he

confirmed that he agreed “with the description of current duties and percentage of time performed.”

In his testimony at hearing, Sprosty, who has been the County Treasurer since the early 1970’s, stated that the Grievant’s testimony was correct concerning her job duty changes; that he and the Grievant prepared the documents in support of her reclassification; and that her duties have changed by at least thirty-five per-cent (35%). According to the County Treasurer, this change was due to the fact that the Grievant has the ability to perform duties that had been previously performed by the County Treasurer and has been assigned such duties, as well as to the fact that there has been a change in the duties performed by the County Treasurer’s office. In her testimony at hearing, the Grievant states that she is now performing work that the County Treasurer had performed, as well as duties that are new to the County Treasurer’s Office.

The Grievant’s reclassification request was placed on the Personnel Committee Agenda of December 27, 2007, but was not acted upon until the meeting of February 27, 2008. The Grievant recalls that, during the reclassification procedure, she provided the County with a revised position description that identified over twenty new job duties (U Ex. #3). The Grievant further recalls that, during the reclassification procedure, she provided the County with a two page document that identifies the duties of her position at the time that she started her position, her increased duties, and the percentage “break down” of time which was agreed upon by the County Treasurer and the Grievant. (U Ex. #4) At some point, the Grievant also provided the County with a letter dated February 12, 2008 that identifies duties that she now performs, but had not been performed by her predecessor in the position of Chief Deputy Treasurer, and duties that had been performed by her predecessor, but which now involved different procedures. (U Ex. #5) These documents are consistent with her testimony, as well as her reclassification request of December 27, 2007.

The minutes of the February 27th meeting indicate that the Personnel Committee went into closed session to discuss, *intra alia*, the reclassification request of Deanne Lutz. The minutes of this meeting also indicate that, following a return to open session, the following occurred:

Krachey moved Garvey seconded to deny the reclassification request of Deanne Lutz. The motion carried with Supervisor Fogelson opposing.

The minutes provide no explanation for the denial. The Grievant states that no explanation of the February 27, 2008 denial was provided by the Personnel Committee.

In a letter to the County Personnel Committee dated March 18, 2008, the County Treasurer states as follows:

. . .

Deanne L Lutz has filed a Grievance after the denial for reclassification by the Personnel Committee on February 27, 2008. There was very little explanation of why the reclassification was denied.

I feel there are questions about the duties, responsibilities and workload of the County Treasurer's Office. I have not had any discussion with any members of the County Board, or the County Attorney. Why?

Let me remind you that the Chief Deputy Treasurer has to wear many "hats". Accountant, Office Manager, Bookkeeper, Computer Operator, Receptionist, and Tax Collector are a few. Property Tax Collection and Issuing General Receipts for the monies received by all the County Departments are just two of the duties and responsibilities.

There are only two full-time employees (County Treasurer and Chief Deputy) and a LTE Office Assistant in the office. In the County Treasurer's Office, the duties, responsibilities and workload has increased greatly in the past 35 years, with no increase in staff. I am in agreement that Deanne should pursue the reclassification.

Thank You.

...

At hearing, the Head of the Personnel Committee, Gerald Krachey states that he was involved in the decision to deny the Grievant's reclassification request and that he did not think that there was enough evidence of a 35% change in duties.

As the County argues, on July 29, 2008, the Grievant and the County Treasurer signed a new position description for "Chief Deputy County Treasurer." As the County further argues, the "Distinguishing Features of the Class" as well as the "General Statement of Duties" sections of this new position description (Jt. Ex. #5) is the same as in the previous position description (Jt. Ex. #4)

The "General Statement of Duties" states as follows:

Performs a wide variety of responsible clerical-accounting tasks in the office of the County Treasurer; Acts as the County Treasurer in his/her absence.

The Grievant acknowledges that all of the duties claimed to be new duties are "responsible clerical-accounting tasks"

In the prior Award of Arbitrator Levitan, the County argued that it would be inappropriate to reclassify an employee because the alleged new duties were subsumed by the

language of the position description. Arbitrator Levitan rejected this argument and concluded that “the essence of the Fritsche-Roberts agreement is that a reclassification is called for when a job is changed by at least 35%.”

Under other circumstances, an acknowledgment that the “new duties” are the type of duties that fall within the purview of the old position description could support the County’s assertion that there has not been a fundamental change in the Grievant’s job duties that would warrant a reclassification. In the present case, however, this Arbitrator, like Arbitrator Levitan, must judge the appropriateness of the reclassification request based upon the “settlement.” Under the “settlement,” the standard for granting or denying the reclassification request is that the Grievant’s position has changed by the addition of new duties that comprise 35% of her work week hours.

In his prior Award, Arbitrator Greco was confronted with a disputed factual question of whether the 35% standard had been met. Arbitrator Greco concluded that the one person in the best position to answer that question is the employee’s immediate supervisor, who works with the employee on a day-to-day basis. The County Treasurer is the Grievant’s immediate supervisor and works with the Grievant on a day-to-day basis.

Documentation prepared by the Grievant and presented to the County during the reclassification process identifies new duties that have been added to the Grievant’s position and assigns a percentage of time worked to these duties. The assigned percentages indicate that these new duties exceeds 35% of the Grievant’s work week hours. The Grievant’s immediate supervisor confirms that new duties have been added to the Grievant’s position, as described by the Grievant, and that these new duties involve at least 35% of the Grievant’s work week hours.

In summary, the Grievant and the County Treasurer have credibly testified that the Grievant’s position has been changed by the addition of new duties that comprise at least 35% of the Grievant’s work week hours. Neither County Board Member Krachey’s testimony, nor any other record evidence, establishes otherwise.

In the current Appendix A of the collective bargaining agreement, there is only one classification listed at Pay Range 6 and this classification is Maintenance. As set forth in Appendix A, the * next to the Maintenance classification denotes that the wages of this position are based upon a “40 hour week.” It follows, therefore, that the absence of an * denotes that the wages of the position are based upon something other than a “40 hour week.” According to the County Clerk, no one is currently in Range 6.

A review of Appendix A, as a whole, reveals that, if a classification does not have an asterisk, then the appropriate hourly wage is determined by dividing the annual wage of the Pay Range by 1950 hours, which are the annual hours of a 37½ hour work week. The Grievant’s classification of Deputy County Treasurer does not have an asterisk because she works the annual hours of a 37½ hour work week.

Pay Range 6, like all the other Pay Ranges listed in Appendix A, references an annual, biweekly and hourly wage. The bi-weekly wage for Pay Range 6, as with the other Pay Ranges, is the equivalent of the annual wage divided by twenty-six weeks. With respect to Pay Range 6, the hourly wage is the equivalent of the annual salary divided by 2080; which is an hourly rate based upon a forty hour work week.

The County argues that, if the Grievant is placed at Pay Range 6, she must be paid the hourly rate set forth in Pay Range 6. As the County argues, inasmuch as the Grievant works a thirty-seven and one-half ($37\frac{1}{2}$) hour week, application of the hourly wage set forth in Appendix A, Pay Range 6, would result in a lower hourly wage than the Grievant now earns at Pay Range 7.

As the County further argues, the record provides no evidence to support the Union's assertion that, at one time, Pay Range 6 contained professional social service positions that worked a $37\frac{1}{2}$ hour work week. Nor does the use of the * next to the Maintenance classification reasonably imply that Range 6 previously included positions with a $37\frac{1}{2}$ hour work week.

County Clerk Janet Geisler testified that, with respect to Pay Range 4, which contains only the classification of Lead Maintenance Worker, the asterisk was erroneously omitted, with the effect that the hourly wage set forth in Appendix A is a mistake in that it reflects a $37\frac{1}{2}$ hour work week, rather than the 40 hour work week of the Lead Maintenance Worker position. According to the County Clerk, the Lead Maintenance Worker is paid \$16.93 per hour and not the \$18.06 hourly rate set forth in Appendix A.

It is not evident that, when the parties negotiated Appendix A, they agreed that the hourly wage takes precedence over either the annual or bi-weekly wage that is assigned to the Pay Range. The plain language of Appendix A, taken as a whole, reasonably establishes that the parties intended the hourly rate to be determined by dividing the annual wage of the Pay Range by the classification's normal annual hours of work. Such a construction of Appendix A is buttressed by the County Clerk's testimony, which indicates that the Lead Maintenance Worker's hourly rate is determined by dividing his normal annual hours of work (2080) into the annual wage; rather than by the Pay Range 4 hourly wage set forth in Appendix A.

Notwithstanding the County's argument to the contrary, the reclassification of the Grievant's position from Pay Range 7 to Pay Range 6 does not result in the Grievant receiving a lower hourly rate. Rather, under the Appendix A negotiated by the parties, the annual wage set forth in Pay Range 6 is applicable to the Grievant. Thus, the Grievant's hourly wage is determined by dividing the annual wage in Pay Range 6 by her normal annual hours of work, *i.e.*, 1950.

In conclusion, the "Fritsche-Roberts" settlement contains the reclassification procedure that has been agreed upon by the parties. Under this settlement, the arbitrator has authority to determine whether or not the 35% standard applicable to Paragraph 2(c) and 2(d) has been established.

The testimony and documentation provided by the Grievant and the County Treasurer is sufficient to establish that new duties have been added to the Grievant's position and that these new duties comprise at least 35% of her work week hours. The 35% standard applicable to Paragraph 2(c) and (d) has been established. Accordingly, the Grievant's request to be reclassified from Pay Range 7 to Pay Range 6 must be granted. As discussed above, the reclassification of the Grievant from Pay Range 7 to Pay Range 6 does not result in a reduction in the Grievant's wages because the Grievant is entitled to have her hourly wage based upon the annual wage set forth in Range 6.

Based upon the foregoing, and the record as a whole, the undersigned makes and issues the following

AWARD

1. The County violated the Fritsche-Roberts grievance settlement of August 10, 1988 when it denied the reclassification request of the Grievant.
2. As the appropriate remedy for this violation, the County shall immediately:
 - a) reclassify the Grievant to Pay Range 6 retroactive to December 27, 2007, which is the date of reclassification request;
 - b) make the Grievant whole for all wages and benefits lost by the County's failure to reclassify the Grievant to Pay Range 6 effective December 27, 2007.

Dated at Madison, Wisconsin, this 27th day of March, 2009.

Coleen A. Burns /s/

Coleen A. Burns, Arbitrator

CAB/gjc
7409

