

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

PORTAGE COUNTY

and

WISCONSIN COUNCIL 40, AFSCME, AFL-CIO, LOCAL 348

Case 204

No. 68540

MA-14264

Appearances:

Mr. J. Blair Ward, Portage County Deputy Corporation Counsel, 1516 Church Street, Stevens Point, Wisconsin 54481, appearing on behalf of Portage County.

Mr. Houston Parrish, Wisconsin Council 40, AFSCME, AFL-CIO Staff Representative, 1457 Somerset Drive, Stevens Point, Wisconsin 54481, appearing on behalf of AFSCME Local 348.

ARBITRATION AWARD

Portage County ("County") and Portage County Courthouse Health Care Center, Department of Health and Human Services, and Library System Employees Local 348, AFSCME, AFL-CIO ("Union") are parties to a collective bargaining agreement dated January 1, 2005, through December 31, 2006 ("Agreement"). The Agreement provides for final and binding arbitration of disputes arising thereunder. On January 5, 2009, the Union filed a request with the Wisconsin Employment Relations Commission to initiate grievance arbitration concerning the proposed reclassification of the position occupied by Collene Ottum ("Ottum"). In response, the Commission supplied to the parties a panel of arbitrators, from which the undersigned was selected. A hearing was held on August 24, 2009, in Stevens Point, Wisconsin. A transcript of the proceeding was made and distributed by September 9, 2009. Post-hearing initial and reply briefs were filed and exchanged by December 4, 2009, whereupon the record in this matter was closed.

Now, having considered the record as a whole, the undersigned makes and issues the following award.

ISSUE

The County and the Union stipulated to the following issue to be heard by the arbitrator:

Did Portage County violate Article 23 of the Agreement when it denied the grievant reclassification from bookkeeper to accounting specialist in October of 2007.

If so, what is the remedy?

The parties further entered into two additional stipulations. First, the parties stipulated that this matter is properly before the arbitrator – that is, that there are no procedural or substantive bars to arbitrability. Second, the parties stipulated that, if the Union prevails in this matter, the parties will attempt to reach an accord as to damages. This stipulation anticipates that the undersigned will retain jurisdiction, which is to be exercised if the parties cannot reach such an accord.

RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 23 – RECLASSIFICATION PROCEDURE

- A) **Reclassification Request**: A request for reclassification may be initiated by: (1) the employee, with department head concurrence; (2) the department head; or (3) the Union. All requests will be forwarded to the Personnel Committee¹ by the appropriate Governing Committee or Governing Board with the governing body’s recommendation. A request for reclassification should include the following supporting documentation: A current job description, a rationale for reclassification outlining additional duties and/or changes to the position, organization chart for the appropriate work unit, suggested classification or pay grade, reason for the reclassification request (see Section C), and an indication of other positions with a similar level of qualifications and/or performing similar duties and responsibilities.
- B) **Process**: In general, reclassification requests shall be processed in the following manner:
1. The appropriate governing committee shall recommend a proposed new classification or pay grade;
 2. An audit will be conducted by the Personnel Department to determine what adjustment, if any, should be made in the classification;

¹ Although Article 23 of the Agreement makes reference to the “Personnel Committee” and the “Personnel Department”, in the context of this case the County refers to these entities as the “Human Resources Committee” and the “Human Resources Department”. This award employs the latter terminology.

3. The recommendation contained in the above-referenced audit shall be acted on by the Personnel Committee.

Requests for reclassification will be accepted each year no later than May 1. Audits will be conducted by the Personnel Department by August 1 and recommendations forwarded to the Personnel Committee for action in August.

By the end of May, the Employer shall provide the Union with a list of all bargaining unit employees and positions for whom a reclassification request has been made. The Employer shall furnish the Union with a copy of the results of the Personnel Department's audit. The Personnel Committee shall make a decision to approve or to reject the reclassification by the end of September. The decision shall be communicated promptly to the Union. A report on the fiscal impact of upgrade and/or reclassification will be forwarded to the Finance Committee for review. If a reclassification is granted, the appropriate wage upgrade shall be effective July 1 of the year initiated. The decision of the Personnel Committee shall be subject to the grievance procedure.

- C) Reasons for Reclassifications: There are three primary reasons for considering the reclassification of a position or upgrade of a classification: (1) If it is felt that the position was improperly classified or graded when it was first placed on the salary schedule (reclassification submitted for this reason must be submitted at the first reclassification cycle following the incumbent's completion of twelve (12) months in the position or they will not be considered); (2) If the duties and responsibilities of a position undergo a major alteration, it may be necessary to amend the class plan to reflect such changes; and (3) more commonly, there is a gradual growth of a position as additional duties and responsibilities are assigned.

If the qualifications and/or duties and responsibilities of a position gradually increase to the extent that they substantially exceed the normal requirements for the class, a reclassification may be in order. It must be understood that the classification is based on the kinds and levels of duties assigned to the position, not the employee's level of performance. Reclassifications are not to be used as a performance award.

BACKGROUND

The classification system that is set forth in the Agreement has three accounting staff classifications that are relevant to this dispute. The "account clerk" position is ranked the lowest classification of the three, "bookkeeper" is second, and "account specialist" is the highest.

Collene Ottum, the grievant, has been employed by Portage County since May of 1987. She originally was hired as a nursing assistant at the County Healthcare Center and subsequently moved to a receptionist position at that facility. In 1989, she transferred to the Finance Department in a position classified as bookkeeper/payroll account clerk. That position was reclassified in 1996 to the accounting specialist classification. Subsequently, in 1996, Ottum moved to the Solid Waste Department as an accounting specialist. In September of that year, when her accounting specialist position was eliminated, Ottum posted into the bookkeeper position she held at the time the present grievance arose. That bookkeeping position is in the County's Health and Human Services Department ("HHS"), Division of Administration/Business Services ("Division"). Ottum has a Bachelor's Degree in Business Administration with an emphasis in Accounting and Human Resources Management.

The event giving rise to this grievance occurred in April of 2007. Ottum submitted a reclassification request for the bookkeeper position she occupied.² The request complied with the format required by Article 23 of the Agreement. The Agreement provides that there are three reasons for considering a reclassification of a position: (1) if it is felt that the position was improperly classified when it was first placed on the salary schedule, (2) if the duties and responsibilities of a position undergo a major alteration, and (3) if there is a gradual growth of a position as additional duties and responsibilities are assigned. The stated reasons in the reclassification request submitted for Ottum's position asserted that reasons two and three supported the request. The request further offered the following explanation supporting the reclassification request:

Duties of this position have expanded. This position would more properly be classed as an Accounting Specialist. Foster Care payroll duties were added in July 2004. Employee payroll auditing duties were added in 2006. This position is also responsible for answering employee payroll questions. This position is responsible for monitoring accounts for reimbursement, for preparing and submitting invoices and state reports, and for annual and final guardianship accountings to be submitted to Branch II. This position needs to be familiar with guardianship accounting and court reporting rules and requirements. This position needs to be familiar with union contracts and personnel policies.

Attached to the reclassification request, Ottum submitted a revised position description. That revised description added the following to the list of essential functions associated with Ottum's position:

- 15% C. Payroll Auditing
 - 1. Audit payroll submitted by employees
 - 2. Reconcile time sheets to payroll logs and time authorizations
 - 3. Verify use of benefits

² As President of Local 348, it was typical for Ottum to take responsibility for seeing that such reclassification requests were submitted to the County on behalf of bargaining unit members. On this occasion, the request was being submitted with regard to Ottum's own position.

4. Communicate with staff and supervisors regarding payroll log time and time sheet issues
- 10% D. Substitute Care Payment Processing
1. Process substitute care payments for children.
 2. Transfers information from the WISACWIS computer system to the AS400 computer program.
 3. Enters substitute care collections information in the WISACWIS trust program.
 4. Reconciles payment and collection information to ensure proper recording.
 5. Distributes payment reports to management staff.

Further, the following additions were made to the Knowledge, Skills, and Abilities section of the position description:

Knowledge of union contracts and personnel policies
Ability to learn eWISACWIS
Ability to learn, use, and communicate guardianship accounting regulations

Following submission of the reclassification request, the County communicated with Ottum specifically regarding the representation in the request that, as part of her payroll auditing duties, she had been verifying for employees the availability of benefits they sought to use. The County indicated to Ottum that she should not be answering such questions for employees, as that duty was not envisioned to be a part of her job. The record indicates that she followed that direction.

The reclassification request related to Ottum's position was audited by the County Human Resources Department. The County's human resources director, Laura Belanger-Tess ("Belanger-Tess"), testified as to the audit process undertaken with regard to Ottum's reclassification request. It was her testimony that she reviewed the existing position description and compared it against the proposed new position description. She generally was looking to determine if new duties with increased complexity were involved, as opposed to added duties of the same basic complexity. Her testimony included the following:

I look at the position descriptions previous to the current to see if there has been a gradual increase in duties and not only if there is a gradual increase in duties or if the position has changed over the years, that's the other criteria, but seeing not only if there is additional duties; but if those additional duties are significant enough to warrant to the next level so they have to exceed the normal requirements for the position, for example, if – I will take my position, for example, you know, you get busier and busier.

If for some reason myself, as HR director, is required to do more filing. Just because I do more filing, that doesn't mean I should get paid more. It just means that I may be doing more lower level work to help out or also if I'm doing more of the same, for example, we get more and more positions, for example, you know, the number of employees grows; so if we are doing more reclasses or if we're recruiting more, we don't get more reclass for doing more of the same. It actually has to be more complicated work. It has to be an additional responsibility that you didn't previously have.

As a part of the audit, Belanger-Tess considered positions that were potentially comparable to Ottum's. With regard to those considerations, she testified as follows:

. . . I would look at other accounting specialist job descriptions. Specifically those that were mentioned in the reclassification request, I do pull those; and either if I don't have personal knowledge on some of the functions or why they are different, I would talk to some of the other supervisors of those positions to find out the differences of what some of the functions may be.

For example, a position, especially an accounting position could have reconciles reports. Reconcile reports can mean a lot of different things and the complexity of that can be very different. It could be as simple as checking to see if something matches to reconciling something that has grant reporting, that have a lot of different areas to be reviewed and have to be looked into. So there is a lot of different functions.

In an effort to clarify the nature of the work being performed in these comparable positions, Belanger-Tess spoke with the following individuals: Erica Wojcik, the assistant business manager in the Division and Ottum's direct supervisor ("Wojcik"); Jennifer Jossie, the Division business manager and Wojcik's direct supervisor ("Jossie"); and Daryl DeDeker, the director of the finance department in that Division and Jossie's direct supervisor ("DeDeker").

Belanger-Tess also attempted specifically to determine the nature of the payroll auditing duties that had been added to Ottum's position. She described that part of the process as follows:

. . . I asked them to explain to me what the payroll auditing functions that were being asked to do, what was involved in that and they had explained that it's basically matching payroll logs to time keeping, time authorizations and making sure that on one sheet it totals up to 40 and that matches on the other sheet, and then also indicating that if there was a difference, if all the sudden one said 40 and one said 37, I asked what was the requirement, what job was the person was supposed to do and they said just call the supervisor and/or the employee and indicate that their sheets didn't match, and that they weren't to investigate why it didn't match, but they were supposed to inform the supervisor that they didn't

match and they needed to submit the correct paperwork to payroll by the time payroll was submitted.

She also established the following with regard to the substitute care payment processing duties that the reclassification request claimed had been added to Ottum's job responsibilities:

And then the substitute care payment processing, that was being claimed as an additional duty and that was explained to me that it was split up into two areas. One was for children and one was for adults that the substitute care payment processing currently for children, I believe, was being done by Deb Danczyk who was an account clerk and that this position was also doing it; and of course, I asked, well, how can you have an account clerk do it and a bookkeeper do it, which is it really a function of or the complexity supposed to be under, and they indicated that it was just assigned to the bookkeeper because that position had more time to do it and that the timing of when it had to be done fit better with that position than some of the other positions, some of the other account clerks in the section.

Ultimately, the Human Resources Department recommended against the reclassification based upon the following findings:

The position has not undergone major alterations or has not experienced gradual growth of additional duties and responsibilities. The position description that was submitted with the reclassification request is not an accurate position description of the position. The position description that was submitted with the reclassification request outlined additional duties that were never assigned to the position by Portage County.

The County Human Resources Committee subsequently met to review the reclassification request and the audit. Based on the recommendation of the Human Resources Department, the Human Resources Committee denied the request. Based on that denial, the Union filed a grievance in December of 2007, which grievance was denied and pursued to this proceeding. Ottum testified at hearing that, during the grievance meetings that followed the filing of this grievance, Wojcik, Jossie, and DeDeker all indicated to Ottum that they thought her position would be more appropriately classified as an accounting specialist position.

In the meantime, on October 2, 2007, the County updated the position description for Ottum's position to include the substitute care payment processing duties that had been added to the position description submitted by Ottum when she requested the reclassification in April of 2007. Further, although the County did not add payroll auditing duties as a new category of essential functions, it added the following task under the "general accounting" heading:

Reconcile payroll forms to staff logs. Communicate variances with staff and supervisors.

The following spring, on or about April 24, 2008, Jossie caused a reclassification request to be submitted relative to Ottum's bookkeeper position. Jossie submitted the reclassification request at the direction of her supervisor, DeDeker. Of the three possible explanations supporting the reclassification request, the request submitted by Jossie indicated that the position had been improperly classified or graded when it was first placed on the salary schedule. This reclassification request further made the following representation in support of the reclassification:

The bookkeeper position is not classified appropriately in comparison to other similar positions within the AFSCME contract. The bookkeeper functions are much more closely related to the functions of the accounting specialist position. Such functions include the preparation of fiscal reports for grants and contracts, preparation of worksheets used to allocate expenses to various programs for reporting purposes, assisting in the preparation of worksheets for internal use and for annual audit, preparation of monthly journal entries, reconciliation of various asset and liability accounts (patient accounts receivable, patient room & board, special deposits, trust accounts), monitoring grant program reimbursement, preparation of non-patient accounts receivable, and guardianship accounting. Functions not performed by the bookkeeper that are functions of other accounting specialist positions include voucher processing, payroll processing, and patient account receivable billing. Within the HHS Finance division, these functions are performed by account clerk positions which are at a lower hourly rate than the bookkeeper position.

The position description submitted with this reclassification request was the position description for Ottum's position as it had been updated by the County in October of 2007.

When asked, under direct examination, to explain the basis for that reclassification request, Jossie testified as follows:

We had asked in terms of the position was it improperly classified originally. We had some discussions in terms of potentially looking at restructuring the position or adding some duties to it. We tried to make some links to other accounting specialist positions. As we brought it forth to the finance committee, it failed. One of the things I did not know about the position improperly classified was that it had to be done within a year of the position originally being put into place.

When further asked, also under direct examination, to explain the apparent discrepancy between the reclassification request brought by the County in April of 2008 and the position the County has taken against reclassification in the present proceeding, Jossie testified as follows:

. . . At that point in time, we had discussed within the AFSCME contract, that positions were not alignment. Accounting staff was maybe not properly classified as a whole. We had a hard time sometimes filling positions when there are other comparable county positions that might be paid higher. I felt that the system was somewhat broken.

When I did this, I was trying to pull pieces of accounting specialist positions that were comparable to the bookkeeper position; but in retrospect, in terms of looking at this, the pieces that I pulled out of those positions were small in nature. They weren't large components of the position in looking at it now.

There was no audit conducted into this 2008 reclassification request, no deliberation by the Personnel Committee, and the request failed. The request was not formerly considered apparently because the reason cited for the request was that Ottum's position had been misclassified originally. Pursuant to the Agreement, such requests must be made within one year of the position having been created, and this request had not been made within that timeframe.

The testimony at hearing focused primarily on four major areas of job duties that the Union asserts have been added to Ottum's position and provide support for her 2007 reclassification request. As to payroll auditing activities, Ottum testified that, since 2006, she has performed auditing responsibilities with regard to the County's payroll. She described such duties as follows:

My portion, what I do for payroll auditing is that every week I get the payroll time sheets and the payroll logs from all of the employees. I verify that each employee has the proper number of hours. If they are full-time they will have 40; or if they are a 36-hour a week position, they have 36 hours a week. I verify that all of the hours total on the payroll form, on the payroll time sheet are also on the payroll log. I then verify that if they have time off or overtime or on-call time, that all of those are also on the payroll log and properly coded. The payroll logs are keyed into the system because that's how health and human services derives a great deal of the grant funding, and payroll logs have to match the time sheets or we don't have a proper paper trail for the grants should we be audited on those grants.

I also verify that when they have time off, they have to have what we call a half sheet. It is a time authorization that the supervisor signs to say, yes, this person requested vacation on these dates of this many hours. The supervisor signs that. They need to have that attached to their payroll in order for that benefit to be used. If they don't have it, I have to find the employee, find the supervisor, get it filled out, get it signed and get it back to the payroll and also make sure it is properly on the payroll log.

On the payroll log, they list fund sources and activity codes and service codes. These again derive what we get in reimbursement for grants. So there are specific ones that I look to make sure that they are coded correctly, emergency assistance reporting and economic support, elder abuse funds, source 66 to make sure that those hours are recorded. There are people who do these who should always have these, and there is a range of normal amount of hours that they should have each payroll. So I check those.

If they are out of the normal range, then it's my job to go to the employee and say, what did you do this week? Is this how you really needed to report this or do we need to make changes here before the payroll gets submitted and entered into the computer and imaged. I have a list of everyone in the agency and who their supervisor is. It shows how many hours a week they normally work, what their benefits percentage is, and I check that out to make sure I've gotten payroll from everybody, that I've gotten a log from everybody, and I've submitted it over to KJ who will key it into the system, and that I have given the logs to Laurie who will key those into the system.

Ottum testified that she spends ten to twelve hours per week on these payroll auditing activities. She further testified that these payroll duties were formerly a supervisor task, that they are more complex than typical bookkeeping duties, and that she is not aware of any other bookkeeper employed by the County who does such work. In contrast, Jossie testified that these tasks were not performed by any other County employee prior to the time when the tasks were assigned to Ottum. Further, Jossie testified that payroll auditing duties were assigned to Ottum's bookkeeper position only because of workflow demands, and that the complexity of the work does not require the skills of a bookkeeper. Jossie testified that the reconciling of the two documents simply requires Ottum to compare numbers on the two documents, and if she notes a discrepancy, bring it to the attention of a supervisor.

Ottum testified that foster care payroll duties were added to her position in the summer of 2004. She described those duties as follows:

Foster care or substitute care is when a child is removed from their home and placed in a different setting for basic daily care. Sometimes that's in a foster home. Sometimes it's in what we call a treatment foster home, which is a higher level of care. There are group homes and residential homes. In 2004, the county switched from an internal system to the state eWISACWIS Foster Care System; and at that time, those job duties were added to my position.

Foster care payroll entails coordinating with both the county's system and the state system and there is a great deal of reconciliation and transfer of information back and forth between those systems. I get from the state system, I will get the preliminary report about three days before the end of the month, and I have to go through that state report, verify it against all the placement

beginnings, placement closings, rate changes, target population changes and just general placement changes that have occurred within the month, and I keep a copy of the previous month's foster care payroll, and I make those changes on that.

I compare that to the preliminary report I get from the state so that if there is anything that has happened during the month that the social workers or the child welfare specialist hasn't forwarded to me, I can also put that on the foster care payroll. Then I get that preliminary report. I send that out to the social workers to make sure that they look at it and they can say, okay, I forgot to tell you this child went to respite. This child changed placement from an RCC to a group home, and then I can make those changes to my payroll proof.

I then have to calculate out the rates that would properly be paid to the providers based on those changes and to ensure that when eWISACWIS sent over their final report, that those rates and proper payments are on that report as well. I get a second report, which is called a pending checks report, where I can change the information that's contained within the state system before the checks are generated; and I again, I proof that. I reconcile or go through that report, compare to my payroll report and all of the changes that have happened during the months.

On the third report – at the time that the third report comes from the state system, I can no longer change things on the state system. I have to do adjustments, overpayments, one-time payment requests, but I can no longer just go in and change the information that's there. So if it doesn't reconcile, there is a lot of work that has to be done after the fact to make the county system match the state system; and again, we get reimbursed at HSS based on what these two systems say, so it is very important that they are accurate, and the providers get a little bent out of shape if they don't get the right payments either, so it is important to make sure that the systems reconcile. So I deal with, again, changes of placement, placement endings, placement beginnings, clothing reimbursement, and the clothing reimbursements have four different levels depending on the age of the child.

It's my responsibility to track when the foster parent has gotten the clothing allowance reimbursement, to have they maxed out on that clothing allowance reimbursement. If the child has left care, had they been out of care for more than 120 days so they are eligible for clothing allowance reimbursement. Again, it's my job to track all of that.

If there is an issue with placement that's been created in error or the social worker hasn't closed it or the social worker hasn't started it and we want payment to the provider to happen, then it's my responsibility to calculate out

what the proper payment for that provider would be based on whether it's a residential setting, whether it's a group home setting, whether it is a treatment foster care setting, whether it's a regular foster care setting and then where the child is based. There is basic supplemental and exceptional rates for foster care reimbursement.

I have to make sure that all of those rates are entered into the state system and then use that information to calculate out what would be the proper payment to the providers so that they are paid timely and properly and we don't have to go back and say, oh, I'm sorry, we overpaid you by four days. We have to take that money back from you.

Ottum testified that she spends an average of four to five hours per week performing these foster care duties. She testified that these duties are of a higher complexity and responsibility than those typically assigned to a bookkeeper. She also acknowledged, however, that before the work was assigned to her it was performed by an account clerk, a position that is classified below a bookkeeper position.

Ottum testified that certain grant accounting and client trust accounting duties also have been added to her position. Based on a review of the position descriptions associated with her position, it is Ottum's understanding that such duties were assigned to her position sometime between 2001 and when she assumed the position in 2004. The grievant testified as follows about her responsibilities in that area:

In my position, I prepare all of the state grant reports, the financial portion of those reports obviously. That entails pulling the information from the accounts that used to receive money from those grants and to record expenses for those grants to properly classify those expenditures and receipts of money according to that particular grant requirement and update the spreadsheet with those new numbers, prepare the grant submission and give it to my supervisor for signature.

That entails, you know, you print out the accounts, you reconcile the actual amount of the account to make sure that what the current amount is for that month actually is and that there haven't been any journal entries or other entries into the accounts that affect prior periods that aren't showing in the current amount, so you always have to verify that the year-to-date amounts, the current year-to-dates subtracting the previous year-to-date equals the current monthly amount and that is actually what is in the accounts or the county computer system reports that I run.

If it's not, I need to go back in and find out where there are vacancies, what journal entries happened, what charges happened that weren't reported in the previous month that will now need to be reported in this month. I will need

to look at invoices and travel expenses that are submitted and paid throughout the month to make sure that they meet the grant requirements for reporting and reimbursement.

I prepare the grant reports worksheet, which transfers all of that information from my handwritten calculations into a computer generated worksheet, and then from there I verify that worksheet back to the county accounting system reports and my manual adjustments. Then I transfer – again, I take that information and prepare the grant submission. Once that's all done, I put it all together in a packet with all the backup and submit it to my supervisor, Erica, for review and signature prior to submitting that grant report to the state.

I also am responsible for monitoring to make sure that we get all of our grant reimbursements. If we are not getting them, I need to contact the agency and find out what the problem is, why we're not getting them. I invoice other agencies based on charges that are made. Postage is a good example. Postage and photocopying. I get the quarterly reports and then I have to go through and find out what should be charged to the Well Woman Fund, what should be charged out to the Garret Lee Smith Grant, what should be out to the employee foundation, and I take that from the information, you know, that they give me, the printouts and I collate the information and prepare the invoices and invoice that agency based on that information, and then again track to make sure that we received that money back from the other agency.

Ottum described the trust accounting duties as follows:

Since 2001, the trust bank reconciliation where I've reconciled our client trust account records to the bank records, the program accounts within that trust account. That reconciliation is new. I believe the month-end report where I analyze what's in the account at the month end and give that to the social workers because there are requirements as to what the client can have and still qualify for social security or SSI or any of those programs, so the social worker needs to know that and needs to know when they are getting close to that max so they can spend down that account and make sure the client always stays within the right amount.

Foster care, social security payments, we're representative payee for children in foster care who receive social security, federal securities, social security supplements and state social security supplements. So we get those checks. I have to reconcile every month whether the checks we get for SSA or SSI are related to a child that's in foster care.

I have to calculate out how much of that social security or supplemental security that the county is allowed to keep as a reimbursement for the foster

care, and then I have to take that information and go to the eWISACWIS system and enter it into that child's trust account information on the state eWISACWIS system so that there is proper take backs and charges of reimbursements between that state and the county. The savings transfers, actually I have to physically go to the bank now.

She further stated:

We have clients in our trust account who also have savings accounts at the bank which currently is Chase Bank. I'm signatory on the client trust account checking account. I'm signatory on the individual clients who have trust accounts so that when the social worker or the home and financial manager requests it, I can transfer money from their savings to the general checking so that we can pay their bills, or I can transfer money from checking into savings because we are required – where we manage their money, we are required to do as best we can to get them good interest and to be fiscally responsible with the money.

Ottum spends an average of fifteen to twenty hours per week or approximately half of her time performing these grant accounting and client trust accounting responsibilities. It was Ottum's testimony that this work was previously performed by a higher paid, accounting assistant position and that it had never been assigned to a lower class position within the County. Jossie testified that this work simply increased in the amount of reports that were being compiled but did not change in terms of complexity and it, therefore, is work that is properly classified at the bookkeeper level.

Finally, the testimony at hearing focused on Ottum's guardianship accounting duties as an area of added responsibility that arguably supported her reclassification request. Ottum described her responsibilities in this area as follows:

The agency has social workers that are responsible for what we call guardianships and that's when a client is not able to either physically take care of themselves or to financially take care of themselves or both. I deal with the court ordered guardianships and they are required to submit annual reports of what they've done with the ward's money throughout the year, and those reports are due by April 15 of each year.

This is a duty that was added to the job description in 2004. It can be – doing the guardianship accounting can be fairly complicated as I have to deal with, do they have investments, have those investments increased or decreased throughout the year, what kind of income do they have, what are the disbursements or the expenditures that the guardian has undertaken on behalf of the ward.

Where do they fall in the realm of what's acceptable and then what do they have, what are their asset balances at the end of the year. Is the spouse the guardian? Is there a spousal interest in the assets or the income that needs to be reported and adjusted for? If there's a change of guardian, we have to do a guardianship inventory at that time so that the new guardian starts with a clean sheet and the courts have signed off on this, yes, this is what we agreed. This is what you started with so there aren't any questions later. It's good accounting practice.

If the ward dies, you have to do the final accounting. You have to do the estate inventory. You have to prepare the paperwork for the guardianship to submit to the court depending upon whether the ward had less than \$25,000 or more than \$25,000. It can be pretty complicated.

She further stated:

The guardian brings me the information for the ward, and I don't have any guardians that actually categorize anything. They will bring me the checkbook register, the canceled checks or copies of them, any investment accounts, any W2's, 1099's, anything that shows income, and it's my job to reconcile all of that with what they have. Actually shows what the bank shows for their asset balances at the end of the year, and so I take what they have at the beginning of the year from the last guardianship accounting that I did, calculate out what the asset balances are at the end of the year and then I go through everything that they give me for income and disbursements. When they get rid of assets, they get new assets. If they have funeral trust accounts or burial trust accounts, any change in their financial circumstances, and then I have to make sure that all of that stuff that happens during the year adds up to what the beginning and ending balances should be so that it all reconciles.

If it doesn't, then I have to get back in contact with the guardian and say I need these specific things so I can make it reconcile, or I have to say what happened here, who did this? I have to talk - I've occasionally talked to the judge about this, which would be Judge Finn, I believe, talked to Terry Gagas, who is the register in probate whose job it is to make sure all these accountings get submitted to the court every year, talk to the lawyers that the guardian of the ward have.

Ottum testified that she spends approximately three and one-half hours per week performing these guardianship accounting duties. She further testified this work previously was performed by an accounting specialist and that this work is more complex than bookkeeping work. Jossie testified that it is bookkeeper-level work.

Of these four major areas of responsibility, only the payroll auditing duties were added to Ottum's position after she took her bookkeeping job in 2004. The foster care payroll duties, the grant accounting and client trust accounting duties, and the guardianship accounting duties were all added to Ottum's position sometime before she assumed the position.

Ottum testified that, in her opinion, these four areas of responsibility are more complex than bookkeeper responsibilities and are more appropriately characterized as accounting specialist duties. Ottum articulated this point as follows:

My job is more complex because I'm responsible. I don't just get information to transfer. I have to actually go out and create, collate that information, put it into a workable form for the grants and the invoices and the auditor and all those types of things. It's not just keying the information into the system and running a report from it, it's generating the information that would actually be keyed into the system. There is a great deal more responsibility and a higher knowledge and skill base required to do the duties of my job than what there is required to do the duties listed here in the bookkeeper jobs.

Ottum further testified that these duties that were added to her position were more complex in nature than any that were removed from her position, in exchange, by the County.

DISCUSSION

Standard of Review

The parties disagree as to the degree of deference to be afforded the County in this matter. The Union contends that a traditional de novo review of the County's decision is appropriate, and that the question should be whether the preponderance of evidence establishes that the duties of the position warrant a reclassification. The County on the other hand cites arbitral authority for the proposition that reclassification decisions should be subject to an arbitrary and capricious standard. It relies most specifically on PORTAGE COUNTY, CASE 117, NO. 51883, MA-8768 (McLaughlin, 2/7/96), which involves the same parties and the same provision at issue in this case. The County asserts that the McLaughlin award establishes that an arbitrary and capricious standard should be applied here. The County further relies on the Agreement for its position that it retains discretion in this area. Article 23(C) provides that there are three primary reasons for "considering" the reclassification of a position or upgrade of a classification and that a reclassification "may" be in order in situations where qualifying standards are satisfied. The County argues that the non-mandatory nature of this terminology gives the County latitude – that is, the language indicates that there is no circumstance that mandates a reclassification and that the County's reclassification decisions are discretionary and must be afforded deference. Thus, relying on the McLaughlin award and the language of the Agreement, the County takes the position that its decision in this case must be upheld because the audit relating to Ottum's position represented a significant procedural and substantive review concerning the reclassification request and the County's decision with regard to that request cannot be viewed as arbitrary or capricious.

I am not persuaded that an arbitrary and capricious standard of review is appropriate. First, I am not persuaded by the cases cited by the County that it has been established that reclassification cases are subject to such a standard of review. Nor am I persuaded that the McLaughlin award relied on by the County establishes that it is the standard of review that must be applied in this case. It is clear that the McLaughlin award gave some level of deference to the decision of the Personnel Committee. Recognizing the complex and potentially controversial nature of classification systems, Arbitrator McLaughlin stated that “the judgment of the committee entrusted with maintaining those relationships must be afforded deference”. The precise level of deference to be afforded, however, was not articulated, and the award certainly does not go so far as to apply an arbitrary and capricious standard. Nor am I persuaded that the language of the Agreement establishes such a standard. On its face, the language of the Agreement, including that specifically relied on by the County, does not preclude a factual analysis of a reclassification request that becomes the focus of an arbitration case. Thus, while keeping in mind that some deference is owed to the County’s decision here, this award will turn on a consideration of the facts on the record.

Merits

I have concluded that the record requires sustaining the grievance. First, I am persuaded that significant duties in the areas of payroll auditing, foster care payroll auditing, grant accounting and client trust accounting, and guardianship accounting have been added to Ottum’s position over a period of time.³ Belanger-Tess provided an explanation at hearing as to what gradual growth in duties would be sufficient to warrant reclassification:

I look at the position descriptions previous to the current to see if there has been a gradual increase in duties and not only if there is a gradual increase in duties or if the position has changed over the years, that’s the other criteria, but seeing not only if there is additional duties; but if those additional duties are significant enough to warrant to the next level so they have to exceed the normal requirements for the position, for example, if – I will take my position, for example, you know, you get busier and busier.

If for some reason myself, as HR director, is required to do more filing. Just because I do more filing, that doesn’t mean I should get paid more. It just means that I may be doing more lower level work to help out; or also if I’m doing more of the same, for example, we get more and more positions, for example, you know, the number of employees grows; so if we are doing more reclasses or if we’re recruiting more, we don’t get more reclass for doing more of the same. It actually has to be more complicated work. It has to be an additional responsibility that you didn’t previously have.

³ This time includes a period before Ottum posted into the bookkeeping position. Where the reason for a reclassification request is that there has been a major alteration or a gradual growth of duties, there appears to be nothing in the Agreement that precludes the consideration of duties added before a specific grievant or individual held the position.

Under these standards, Ottum's position has undergone the kind of growth that would warrant a reclassification. The record establishes that Ottum is not simply busier with more of the same work. Nor is she merely doing work to help out in some other area. Rather, her position has experienced the addition of permanent, time-consuming, substantively new duties in four significant areas.

Having recognized that the position has undergone a growth in duties, the question then becomes whether the added duties were bookkeeper-level duties or accounting-specialist-level duties. The complexity of the work is the context in which a reclassification request must be evaluated. To address this issue, the parties spent a significant amount of time comparing Ottum's position with other account clerk, bookkeeper, and accounting specialist positions. In so doing, the focus naturally turned to the detail-oriented analysis regarding whether the assigned tasks were permanently associated with those positions or whether they were originally or ultimately assigned to some position of a lower or higher classification. Each party finds what appears to be an equal degree of support from the evidence of record. The Union highlights higher-rated position descriptions that list functions performed by Ottum. The County highlights lower-rated position descriptions that list functions Ottum performs. Beyond that, both parties argue that the lineage associated with each of these specific functions supports their respective views, regardless of the positions to which those functions have been or are currently assigned.

What the record establishes in the end is that many work assignments are not exclusive to single position descriptions and tasks do not fit neatly into position description compartments. The Union, for example, solicited evidence suggesting that Doreen Check was promoted from bookkeeper to accounting specialist and took many of the tasks she had performed as a bookkeeper into her accounting specialist position. The County solicited evidence suggesting that some of Check's duties reverted back to the bookkeeper position from whence they originated and others were assigned to an account clerk position. In many cases tasks are assigned based on workflow demands rather than a strict notion of where they belong in terms of proper classification. Thus, the bottom line is that such evidence in these circumstances is inconclusive and cannot be determinative as to the outcome of this matter.

While I recognize that Ottum testified from self interest in this case, I nonetheless found her testimony relative to the nature of her work to be most persuasive. Ottum is the one who performs the work in her position and knows its complexity best. She previously worked as an accounting specialist for a period of approximately eight years. In the course of earning a degree in business administration with an emphasis in accounting and human resource management, Ottum took courses in bookkeeping and accounting. Her testimony was filled with detailed explanation that distinguished between tasks that typically can be categorized as bookkeeper tasks and those that typically can be categorized as accounting tasks. Thus, I find Ottum's testimony to reliably indicate that the work she performs would be more appropriately classified as accounting rather than bookkeeping work.

It is also significant that, in the past, the County appears to have supported the reclassification of Ottum's position. Ottum provided un rebutted testimony that Jossie,

DeDeker, and Wojcik made statements, in the course of grievance meetings, indicating that they supported Ottum's 2007 reclassification request. Further, although Jossie testified at hearing that the work Ottum performs supports the current bookkeeper classification of her position, such testimony must be viewed in the context of previous events. In 2008, Jossie persisted, at the direction of DeDeker, in seeking a reclassification of Ottum's position to the accounting specialist classification. The County contends that the purpose of the 2008 request was not to take a position in favor of reclassification of Ottum's behalf, but that the request was submitted for "informational purposes" only. The documentation associated with the County's 2008 reclassification request, however, does not read as though the request is being made for informational purposes only. Rather, the request states, without condition, that Ottum's position "is not classified appropriately." Jossie also testified at hearing that her reclassification request was misguided because she was focusing too much on components of Ottum's position that were "small in nature". This explanation does not appear to be supported by the record and is simply not persuasive. Nor is the County's argument that the 2008 request should not be considered because it was made after the grievance in this case arose. Even though the County's reclassification request was brought after the grievance, it is relevant because it was based on the same set of duties Ottum cited as a basis for her 2007 request. All of these factors indicate that the County itself has recognized that Ottum's position warranted a reclassification.⁴

Recognizing that some deference is due to the County in this area, a review of the relevant facts relating to Ottum's position establishes that the Human Resources Committee's denial of Ottum's reclassification request violated the Agreement. The Union has met its burden to show that the level of duties performed by Ottum in 2007 made her position appropriate for the requested reclassification.

AWARD

The grievance is sustained.

⁴ Nor am I influenced by the outcome of this second reclassification request. The request was rejected not because it was found to be without merit. Rather, it was never evaluated on a substantive level because, insofar as the request asserted that the position had been misclassified originally but had not been brought to the County's attention within one year of the classification, it was rejected as untimely.

REMEDY

The parties have stipulated that if the Union prevails in this matter they will attempt to reach an accord on damages, and the undersigned is to reserve jurisdiction which is to be exercised if the parties cannot reach such an accord. Accordingly, I will retain jurisdiction to resolve any dispute as to remedy, until such time as I am advised that my jurisdiction is at an end.

Dated at Madison, Wisconsin, this 1st day of June, 2010.

Danielle L. Carne /s/

Danielle L. Carne, Arbitrator