

BEFORE THE ARBITRATOR

In the Matter of the
Arbitration between

DANE COUNTY, WISCONSIN MUNICIPAL
EMPLOYEES LOCAL 60, AFSCME, AFL-CIO

And

CITY OF MADISON, WISCONSIN

Case 196 No. 54913
Int/Arb-8110
Decision No. 29461-A

INTEREST ARBITRATION AWARD

Appearances:

Mr. Jack Bernfeld, Staff Representative AFSCME Council 40, on behalf of Local 60.

Mr. Mike Deiters, Labor Relations Manager, on behalf of the City of Madison.

The above-captioned parties, hereinafter referred to as the Union and the City respectively, have been parties to a series of collective bargaining agreement throughout the years. As a result of a unit clarification decision issued by the Wisconsin Employment Relations Commission (City of Madison, Case 12, No. 52106, ME-746), the parties entered into extensive negotiations with respect to certain accreted positions at the Water Utility. They were able to resolve all issues except for the appropriate classification of Susan Gjertson, who was then classified as an Engineering Technician I. An arbitration petition was filed and the parties selected the undersigned to serve as arbitrator pursuant to an order of the Wisconsin Employment Relations Commission. Hearing was held in Madison, Wisconsin on July 19, 1999. A stenographic transcript of the proceedings was made and received on August 2, 1999. All parties were given the opportunity to appear, to present testimony and evidence, and to examine and cross-examine witnesses. The parties completed their post-hearing briefing schedule on September 24, 1999. The record was closed upon receipt of the last reply brief. Now, having considered the evidence adduced at the hearing, the arguments of the parties, the contract language, and the record as a whole, the undersigned issues the following Award.

ISSUE AND FINAL OFFERS:

The only issue in dispute is the appropriate classification for Susan Gjertson's position.

The Union's final offer is as follows:

Reclassify Susan Gjertson from an Engineering Program Specialist 1 (Compensation Group 16, Range 17) to an Engineering Program Specialist 2 (Compensation Group 16, Range 19) effective December 29, 1996.

The City's final offer is:

The City maintains that the duties and responsibilities assigned to Susan Gjertson fail to provide a basis for further reclassification and it would retain her at the Engineering Program Specialist 1 (Compensation Group 16, Range 17) level with no change effective December 29, 1996.

STATUTORY CRITERIA:

The criteria to be utilized by the Arbitrator in rendering the award are set forth in Section 111.70(4)(cm), Wis. Stats., as follows:

- A. 'Factor given greatest weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer.
- 7g. 'Factor given greater weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified under subd. 7r.
- 7r. 'Other factors considered.' In making any decision under the arbitration procedures authorized in this paragraph, the arbitrator or arbitration panel shall also give weight to the following factors:
 - a. The lawful authority of the municipal employer.
 - b. Stipulations of the parties.
 - c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
 - d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of employees performing similar services.
 - e. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.

- f. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees in private employment in the same community and in comparable communities.
- g. The average consumer prices for goods and services, commonly known as the cost of living.
- h. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- i. Changes in any of the foregoing circumstances during the pendency of the arbitration.
- j. Such other factors, not confined to the foregoing, which are normally or traditionally taken in consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

BACKGROUND:

Susan Gjertson, whose position is the subject of the instant dispute, works for the Water Utility that provides water service in the City. She works in the Engineering Division that oversees construction involving the installation or service of pipes. For at least the past twenty years, three technicians have been employed to oversee and maintain the mapping of the City's water service. These technicians have historically performed three separate functions in the Water Utility. One position involves overseeing projects that involve the replacement of the water service and monitoring contracts for compliance. Jerzy Brania has occupied that position for more than twenty years. It was historically classified as Engineering Technician 2, but with the parties' recent collective bargaining agreement, Brania was reclassified to an Engineering Program Specialist 2. A second position, occupied by Duane Kleinfeldt for over seventeen years, involves overseeing projects requiring the installation of new water main service and the monitoring of said contracts for compliance, although assignments relating to replacement mains are also made to this position as the workload demands. This position had historically been classified as Engineering Technician I. In the bargaining over the accreted employees, the parties agreed that Kleinfeldt should also be classified as an Engineering Program Specialist 2.

The third position is occupied by Gjertson. This position is responsible for maintaining the computerized mapping records of the Utility and inputting any changes in to the Geographic Information System (GIS) and for coordinating contract administration for new main development projects. The ongoing responsibility for the mapping system is assigned to this position, however, Gjertson is responsible for only the Water Utility's input into the system and not the entire system. It had been historically classified as an Engineering Technician 1 as was Kleinfeldt's position. The parties could not agree on the proper reclassification of the instant position.

In 1995, the Utility requested that both Gjertson and Kleinfeldt be reclassified to Engineering Technician 2, the same level as that held by Brania at the time. The City deferred action and Marian Walluks, a Personnel Analyst, conducted a study of the positions in the summer of 1997. In her initial recommendation to the City Personnel Board on September 30, 1997, Walluks noted that the basis for the study was that the duties of the positions had been expanded to deal with the computerization of the Utility's maps and additional workload in the area of water main installation. Her memorandum to the personnel Board states in pertinent part, as follows:

The position occupied by Susan Gjertson is responsible for maintaining the computerized mapping records of the Utility and for coordinating contract administration for new main developments projects. Although this position worked closely with a professional engineer to set up the Water Utility's computerized mapping system (which interfaces with the systems in other City agencies) and to convert all existing maps and records to the new system, the ongoing responsibility for maintaining the system is assigned to this position. The fact that the position is responsible for this function, as well as contract administration responsibilities is considered to warrant allocation to the "Engineering Program Specialist 2" classification in CG16, Range 19.

At that time Walluks recommended that both Gjertson and Kleinfeldt be reclassified to Engineering Specialist 2 positions in Compensation Group 16, Range 19.

Shortly after making the initial recommendation to the Personnel Board, Larry Nelson, the Director of the Engineering Department, objected to Walluks' recommendation. He indicated that if Gjertson were reclassified, individuals who worked with the computer and other aspects of the Geographic Information System (GIS) in other City departments might also be able to argue that they were entitled to reclassifications. The individuals in the positions of Coordinator and Specialist in the Engineering Department work with GIS as do others in the Environmental Section, Traffic Engineering and Parks and Planning and Development. The Engineering Department employees with whom the Personnel Department became most concerned are unrepresented employees. Those engineering positions had not been submitted for study at that time.

Walluks, in a November 24, 1997 e-mail, indicated that she needed more information. She wrote "Unfortunately the information they supplied is simply too sketchy to base a 'close call' reclass on or to turn down, if that's what's called for. This is especially true in view of the union's strong interest in the outcome and Larry Nelson's claim that he has lots of people doing work at this level who should also be reclassified."

On February 6, 1998, Walluks changed her recommendation. She continued to recommend that Kleinfeldt be reclassified to the Engineering Program Specialist 2, but recommended that Gjertson be reclassified as an Engineering Program Specialist 1. Her memo, at that time, stated in pertinent part as follows:

The position occupied by Susan Gjertson is responsible for maintaining the computerized mapping records of the Utility, coordinating contract administration for new main development projects and supervising the work of a lower level staff person who prepare water main plan and updates maps and records. This position worked closely with a professional engineer to set up the Water Utility's portion of the computerized mapping/GIS system (which interfaces with the systems in other City agencies) and to convert all existing maps and records to the new system. Once the conversion process was completed, the ongoing responsibility for maintaining the system is assigned to this position, along with the responsibility to train other staff in its use relative to accessing data in the field.

In terms of the computerized mapping responsibilities, it is important to note that the main control of the City's computerized mapping system is located in the Engineering Division. Agencies with a need are allowed to interface with the bigger system, but all system hardware and software decisions are made on a centralized basis. The positions in charge of the program are classified as "Computer Mapping/GIS Coordinator" (CG18, Range 11) and "Computer mapping/GIS Specialist" (CG18, Range 08). The duties of these two positions are as follows:

Computer Mapping/GIS Coordinator – responsible for the coordination of the City's computerized Mapping/Geographic Information System (GIS) including the development and administration of policies, standards, procedures, and guidelines relating to access and utilization of the system; the selection and installation of hardware and software to support the system; supervision of lower level staff; supervision and/or provision of technical assistance; and coordination of activities with other City departments, governmental agencies and private agencies such as utilities.

Computer Mapping/GIS Specialist – specialized technical and professional work involving assisting the Coordinator in developmental and system management activities,

providing technical support, and using the system to produce products. This position is also responsible for performing software and hardware feasibility selection studies; providing support to planning and analysis efforts; providing training; developing, testing, installing and documenting new applications and systems; and coordinating data exchange/access with other agencies.

A comparison of Ms. Gjertson's duties and responsibilities relative to the City's GIS system to those of "Computer Mapping/GIS Specialist", indicated that the maintenance of an agency's portion of the system could not be considered comparable to the broader and more technically demanding work of the Engineering Division position. Consequently, since the level of the Computer Mapping/GIS Specialist" position – CG 18, Range 08 is comparable to the level of the class of "Engineering Program Specialist 2" (CG16, Range 19), it would be inappropriate to place the Water Utility position at that level and thus, have these two positions at the same level.

This conclusion, along with the fact that the other duties performed by the Water Utility position are no higher than "Engineering Program Specialist 1" level, we recommend that the position in question (#1861) be reallocated from the current class of "Engineering Technician 1" (CG 16, Range 16) to the class of "Engineering Program Specialist 1" in Compensation Group 16, Range 17 and that their current class of "Engineering Technician 1" in Compensation Group 16, Range 16 be abolished. Additionally, we recommend that the incumbent (S. Gjertson) be reallocated to the higher level.

At the hearing, Walluks testified that she had performed approximately 80 to 100 reclassification studies. During the course of the classification study, she noted that it was withdrawn so that other information and data relative to the position in question could be further studied. In response to the question of whether or not anything in this study is different from any other study, she replied "The only thing that is slightly unusual is, you know, not all studies get pulled and redone. So the fact that it did have a second review is a little unusual, but the basis of the review, the manner in which it was reported, the kinds of comparisons that are used, are all standard practice in a position comparison system." Walluks also conceded that it is very "infrequent" that studies are pulled and that she could not recall another occasion on which this occurred.

POSITION OF THE PARTIES:

City

The City asserts that it employs Walluks, a full-time trained and experienced professional to analyze and make recommendations as to the appropriate job classification within the context of an internally based classification structure. Said determinations are made with a view to the hierarchy of other City positions in comparison. The City's position is that Walluks is so qualified that the Union did not question her qualifications. It notes that she had the advantage of conducting interviews with the employee and management as well as collecting data for making accurate comparisons to other citywide jobs.

It stresses that the Union has not supported its theory that the classification determination was changed to the detriment of the grievant. Rather, in the City's view, the procedure was changed to ensure that all the information needed was acquired. The City alleges that the Union did not provide any witnesses with knowledge, training, or experience in the area of job classification to challenge Walluks' recommendation. In its view, the Union witnesses offered very little information to offset Walluks' recommendation.

The City insists that it is vital to the City's interest to maintain a consistent and proper classification system. If the Union's position were to be upheld, it would jeopardize the City's classification structure. Changing classifications based upon personal opinion, instead of utilizing the long-standing City procedure opens the door for undermining the very employees it was designed to help.

For these reasons, the City requests that the arbitrator select its proposal.

Union

The Union argues that the case presents an issue of internal equity. It submits that the evidence demonstrates that Gjertson should be classified at the same level as Kleinfeldt and Brania. It notes that this was the Utility's conclusion when it recommended the upgrade in 1995, Walluks' conclusion before she received pressure from a powerful department head, and the Utility supervisors' conclusions at the hearing, albeit Cawley's with some reluctance.

The Union points out that Gjertson and Kleinfeldt have been traditionally linked for at least twenty years and that the only meaningful change in the two positions is the significant expansion and change in Gjertson's duties. The Union stresses that the revised recommendation and analysis is based upon a comparison with unrepresented positions in the Engineering Department. An inter-compensation group comparison between represented employees and those for whom the City can unilaterally set wages is, in the Union's view, fairly meaningless. In this vein, it notes that there is no evidence that the wage levels for positions in compensation group 16 which are represented by the

Union have any relationship to those of the unrepresented positions in compensation group 18. According to the Union, it is like comparing apples to oranges and no meaningful comparison can be made.

The Union avers that the preponderance of arbitral thought is that comparisons to unrepresented employees carry little or no weight because the terms and conditions of employment are unilaterally established rather than bargained. Even if the arbitrator accepts the argument that comparison to unrepresented employees is appropriate, the conclusion reached by the City is flawed. Because the classification study process is subjective and Walluks performed the second study under pressure from Nelson without reexamining Kleinfeldt's and Brania's positions or studying the Engineering Department positions that she used for comparison, her second conclusion is flawed.

The Union argues that the people who best know the work of Brania, Kleinfeldt and Gjertson are their co-workers, in particular Quirk, an engineer who has directed the work of all three. Without hesitation, Quirk testified to Gjertson's working at the EPS 2 level. Cawley, it notes, reached the same conclusion, although hesitantly.

The Union believes that the City has denied Gjertson her proper compensation because of heavy-handed political pressure. The arbitrator must not condone such an unfair and tainted process. It requests that its offer be selected to award Gjertson the same respect and recognition by way of salary as that of her co-workers.

DISCUSSION:

Any evaluation of the offers submitted by the parties must begin within the statutory framework set forth above. Section 111.70(4)(cm) 7. is inapplicable because no state law or directive exists which places limitations on expenditures made by a municipal employer with respect to this bargaining unit. Because the City is under no such statutory limitation, this factor does not clearly favor one party over another and the case will be determined by evaluation of the lesser factors. Likewise Section 111.70(4)(cm)7g. is also inapplicable because the determination as to whether Gjertson is properly classified does not rest upon the economic conditions in the county. Rather, the 'other factors considered' in Section 111.70(4)(cm) 7r. determine the outcome of the instant dispute, in particular, subsections a., d., i., and j. It should be noted that no evidence was presented by either party with respect to subsections b., c., e., g., and h.

The preponderance of the evidence submitted by both parties focused on the pay of the other employees within the Utility and other unrepresented employees within the City whom the City believes perform comparable duties. The evidence within the Water Utility itself, clearly supports the Union's offer. The twenty year history of treating Gjertson and Kleinfeldt similarly when coupled with Quirk's detailed description of the actual duties and responsibilities performed by Gjertson, Kleinfeldt and Brania convinces the undersigned that the evidence within the Utility favors the Union's position.

The external evidence presented by Walluks as to the Engineering Department employees slightly favors the City's offer as does the City's desire to retain uniformity within its classification system. However, Walluks' and therefore, the City's analysis is flawed in that Walluks' compares Gjertson to employees in the Engineering Department whose sole responsibilities are related to computer skills and the maintaining of the GIS. Gjertson's responsibilities go beyond the monitoring of the mapping function and correlate more closely with those of Kleinfeldt whom the City believes is appropriately classified as EPS 2. The Union is also correct in its contention that comparisons between represented and unrepresented employees are not entitled to the same weight as those between represented employees because such comparisons do not entail the same give and take which results at the bargaining table.

The undersigned in considering all of the evidence presented must conclude that the Union's offer is preferred because it preserves internal equity within the Water Utility between Kleinfeldt and Gjertson and acknowledges Gjertson expanded responsibilities in the most recent few years. The changed recommendation for the reclassification based upon comparisons to unrepresented positions outside of the Utility which have not been studies with respect to the appropriateness of their placement on the wage schedule is insufficient to overcome the strong arguments advanced by the Union in this case.

CONCLUSION:

Evaluation of the 'other factors' criteria set forth in Section 111.70(4)(cm)7r., in particular, the internal comparables among the represented employees, results in this

AWARD

That the Union's final offer is adopted as the award in this proceeding and incorporated into the parties' collective bargaining agreement covering the newly-accreted employees and incorporated into the parties' 1996-1997 collective bargaining agreement effective December 29, 1996.

Dated this 15th day of October, 1999, in Madison, Wisconsin.

Mary Jo Schiavoni, Arbitrator