

RECEIVED  
FEB - 8 1995

WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

STATE OF WISCONSIN  
BEFORE THE INTEREST ARBITRATOR

In the Matter of the Interest  
Arbitration Between

OFFICE AND PROFESSIONAL  
EMPLOYEES INTERNATIONAL UNION,  
AFL-CIO, CLC LOCAL 35

and

CITY OF WAUWATOSA

Case 97  
No. 49547 INT/ARB - 6942  
Decision No. 28001-A

APPEARANCES: GORDON E. McQUILLEN of Cullen, Weston, Pines &  
Bach, Attorneys at Law, appearing on behalf of the  
Union.

DAVID B. KERN of Quarles & Brady, Attorneys at Law,  
appearing on behalf of the City.

OPINION AND AWARD

The City of Wauwatosa, hereinafter referred to as the City or Employer, and Office and Professional Employees International Union, AFL-CIO, CLC, Local 35, hereinafter referred to as the Union, were unsuccessful in their efforts to negotiate the terms to be included in an initial collective bargaining agreement covering the years 1993, 1994 and 1995. On July 1, 1993, the Union filed a petition with the Wisconsin Employment Relations Commission (WERC), seeking to initiate interest arbitration pursuant to Section 111.70 (4)(cm)6. of the Municipal Employment Relations Act (MERA). After an investigation conducted by Commissioner William K. Strycker, the WERC issued a decision, dated April 4, 1994, wherein it certified the existence of an impasse and issued an order requiring interest arbitration. The parties selected the undersigned, from a panel of arbitrators submitted to them by the WERC and the WERC, on May 23,

1994, issued an order appointing the undersigned to serve as arbitrator and issue a final and binding award, pursuant to Section 111.70 (4)(cm)6. and 7. of the MERA. A hearing was held in Wauwatosa, Wisconsin on August 12, 1994, at which time the parties presented their evidence. A verbatim transcript of the hearing was prepared and received on August 26, 1994. Thereafter, at the urging of the undersigned, the parties engaged in further mediation and bilateral discussions and resolved all but one of the remaining issues in dispute. Initial written arguments on that issue were filed and exchanged on November 5, 1994. Reply arguments were filed and exchanged January 30, 1995. Full consideration has been given to the evidence and arguments presented in rendering this opinion and award.

#### ISSUE IN DISPUTE

For several years, the City has maintained a series of clerk classifications, identified as municipal clerk I, municipal clerk II, and municipal clerk III. During the negotiations, the Union proposed to reclassify a number of positions into higher classifications. Included among those proposals was a proposal to reclassify all eight full-time police desk clerk positions from municipal clerk I to municipal clerk II positions. The City refused to agree to the proposed change and it was included in the Union's final offer. That proposal represents the sole remaining issue in dispute in this proceeding.

Prior to 1989, the City maintained numerous clerical classifications and the police desk clerk positions were treated as being in a separate classification. The last formal notice announcing a vacancy in that classification set forth the following statement of duties, qualifications-training and experience, and knowledge, skills and abilities desired:

**"DUTIES:** Under the direction of police personnel, an employee of this class performs the following duties; processes window complaints; processes citations, warrants, commitment papers, and arranges for court appearances; processes bicycle license applications; records recovered property; assists in processing and checking prisoners; may search prisoners of same sex when required.

**"NOTE:** This position involves working an assigned shift of 8.4 hours. The work schedule requires being on duty for four days and off two days. Because of this schedule, it will be necessary on certain weeks, to work Saturday, Sunday, and holidays with days off scheduled on weeks (sic) days. A shift premium of 20 cents per hour is paid to employees required to work the second shift and 25 cents per hour for the third shift. The work assignment may be on any of three shifts.

**"QUALIFICATIONS - TRAINING & EXPERIENCE:**

High school graduate, preferably in a commercial course. One year of experience in a business office. Ability to type from copy at a reasonable rate of speed. Valid Wisconsin driver's license.

**"DESIRABLE KNOWLEDGE, SKILLS, ABILITIES:** Knowledge of business English, spelling and arithmetic; some knowledge of modern office practices and procedures; working knowledge of basic bookkeeping; knowledge in the operation of a typewriter; ability to make arithmetical computations with both speed and accuracy; ability to

learn assigned clerical tasks readily, the adhere to prescribed routines and to develop skill in the operation of office machines; ability to deal with the public in a tactful manner over the counter and over the phone."

In 1988, the City had contracted with an outside firm (Carlson Patterson Associates) to conduct a classification and compensation study. The purpose of the study, in the case of non represented positions, was to determine the proper classification of positions through updated job descriptions; reduce and consolidate the number of position classifications; establish accurate and equitable internal position classification relationships; determine appropriate compensation levels based upon internal and external comparisons; and determine the appropriateness of requiring certain employees to work a 44 hour work week. According to the report filed by Carlson Patterson in December 1988, a "point-factor" method was utilized to evaluate the job content of 76 managerial, technical and professional jobs. The 31 existing clerical jobs were analyzed and classified using 11 "job specifications." The rating was done by a committee consisting of 9 City managerial and professional employees appointed by the City administrator. The committee included Peter Petroll, personnel director, and John Walkner, police department operations commander.

According to the report, the committee sought to simplify and consolidate the pay system for the 31 clerical jobs by developing a classification series for clerical jobs based upon the job specifications developed by Carlson Patterson and modified by the

committee itself. The committee created four functional job groups consisting of municipal clerks, secretaries, fiscal clerks and clerk stenographers. Each group was to have different levels of expertise measured by educational requirements, experience and skills. Job specifications were written defining typical duties, supervision or direction, interaction levels and training and experience required for each group and level. There were three levels in the case of the proposed classifications of secretary, municipal clerk and fiscal clerk and two levels in the case of the proposed classification of clerk stenographer. According to the report, the committee analyzed and discussed each of the 31 clerical job descriptions then in existence until a "consensus was reached on the appropriate classification for each job."

During the course of developing a salary structure, to go with the classifications proposed, Carlson Patterson reached the conclusion that the existing salary structure for clerical positions called for pay which was relatively high in relation to the comparisons suggested by the City and those used by Carlson Patterson for labor market analysis. The report states that Carlson Patterson refrained from recommending a "much more moderate salary structure" than that actually recommended, because of the "high regard in which the City holds its clerical work force." It noted their understanding that the City wished to "pay premium rates in the market to continue to attract and retain the best available officer workers." The report recommended the creation of

21 salary ranges. All of the clerical positions were to be assigned to salary ranges 18, 19, 20, and 21. Police desk clerks were to be assigned to the fiscal clerk I classification in salary range 21. The classifications of municipal clerk I and secretary I were to be assigned to salary range 20, along with the classification of fiscal clerk II.

There were a number of changes made in the proposed classification and pay plan, adopted on the recommendation of the City administrator in the City's employee relations committee. A report drafted by the City administrator, dated October 27, 1989, reflects revisions in the proposed pay plan and the following revision relevant herein:

"...a basic change was made in the clerical area based upon a recommendation from the employee committee and that is to change the clerical categories from 4 (municipal clerk, secretary, clerk stenographer, and fiscal clerk) to 2 (municipal clerk and secretary)."

The revised pay plan reduced the salary ranges from 21 to 20 and assigned both the municipal clerk I and secretary I classifications to pay range 20.

The proposed fiscal clerk I and II classifications were to have read as follows:

"Fiscal Clerk I

"Positions at this level perform basic clerical responsibilities involving financial matters. Typical duties include basic verifying, recording and processing of financial and related data. Also may perform clerical duties such as typing correspondence. Positions allocated to this classification carry out established procedures and apply policies. Interactions usually

involve furnishing or obtaining information. Positions in this classification normally require a high school diploma and 1-2 years office experience. Work is performed under routine supervision.

"Fiscal Clerk II

"Positions at this level perform more advanced clerical work of a financial nature. Typical duties include the auditing or processing of financial reports, maintaining journals, performing clerical duties and accepting payments or making disbursements. Positions in this classification follow policies and procedures. Interactions usually involve furnishing or obtaining information. Positions allocated to this level normally require a high school diploma with business or accounting course work and 3-5 years of work experience handling financial transactions (2 years experience as a Fiscal Clerk I maybe (sic) substituted for the degree). Work is performed under general supervision."

In further consolidating the number of clerical classifications, no changes were made in the job description of the municipal clerk I and II classifications. They read as follows:

"Municipal Clerk I

"Positions at this level perform basic clerical responsibilities. Duties include typing and filing reports, basic record processing, answering basic inquiries and maintaining files. Positions in this classification follow established work routines and practices. Interactions usually involve furnishing or obtaining information. Positions allocated to this level normally require a high school diploma with business and clerical course work and 1-2 years office experience. Work is performed under routine supervision.

"Municipal Clerk II

"Positions at this level perform more advanced clerical work. Typical duties include the issuing of licenses, answering detailed inquiries, processing records, applications or citations, maintaining records and compiling information. Positions in this classification work from standard policies, practices and procedures. Interactions usually involve furnishing or obtaining

information, but may involve controversial subjects requiring tact to avoid friction and obtain cooperation. Positions allocated to this classification normally require an associate degree in secretarial science or related field and 1-2 years work experience (Additional relevant experience could be substituted for an associate degree). Work is performed under general supervision."

During the negotiations, the Union asked the police desk clerks to prepare a "position description" describing the specific duties of the position. In response, the desk clerks modified a preexisting position description for the lead desk clerk, dated August 1, 1988, by eliminating references to lead work as such and adding references to activities not reflected on that position description. Attached to the position description, was a copy of one of the department rules, emphasizing the special importance of complying with departmental rules, especially when dealing directly with the public, because of their "conspicuous and visible role as representatives of City government." It is undisputed that all employees of the department are subject to the rule in question.

One of the lead clerks, Marie Kushner, provided the Union with a copy of a completed "position questionnaire," which set forth a total of 39 activities she performed "when necessary," bi-weekly, weekly, daily, or several times a day. All of these activities were said to be performed under "general supervision" rather than direct or routine supervision; and under "general direction" and "administrative direction" rather than specific direction.

At the hearing, the Union emphasized certain of the activities described by Kushner as being of particular significance. They



included the fact that the female desk clerks can be and have been called upon to help conduct searches, including body searches. However, according to Captain Frederick Basting, the administrative captain who supervises the desk clerks, there is currently little need for the desk clerks to perform this activity. The department now has four female police officers who perform this task when it is required on a shift they are working and there are a number of sworn, parking specialists who are female and second in line to do so, on weekdays until 6:30 p.m.

The Union noted that the desk clerks also help monitor prisoners in their cells and bring the prisoners food and possibly prescription medications.<sup>1</sup> The Union also notes that, in performing the duty of checking property (evidence) in and out of the property room, it is sometimes necessary for the desk clerks to handle weapons and needles, which could be contaminated. It is undisputed that desk clerks perform the duty of running computer checks on the Milwaukee Area Joint Information System (MAJIS) for stolen automobiles. They also answer citizen questions and complaints, but are expected to refer non routine questions and serious complaints to others.

In the City's view, the position description for the lead desk clerk does not accurately describe the position of police desk clerk. Because there is no official position description for the

---

<sup>1</sup>Captain Basting was unfamiliar with the arrangements for handling prescription medications.

police desk clerk position, it submitted into evidence two performance appraisal documents developed in 1992 and utilized in 1992 and 1993 to evaluate the performance of police desk clerks working on the day shift and on the late shift. Those documents reflect significant differences in the activities emphasized for purposes of evaluation. In general, the activities utilized for evaluating the day shift clerks emphasized the processing of "window complaints," various types of citations, warrants and bicycle license applications; disbursing money; recording recovered property; assisting in the processing and checking of prisoners; functioning as a receptionist; and making computer entries. On the other hand, the appraisal form used to evaluate the late shift clerks emphasized the processing of a wide variety of paperwork on a daily, monthly, weekly and "as needed" basis.

The City also submitted into evidence, a copy of a position questionnaire which Kushner had previously prepared in January of 1991. It contained no general description of the position and a shorter list of activities, but was generally consistent with the position questionnaire she completed in 1992. Unlike the position questionnaire Kushner completed in 1992, the earlier questionnaire was not countersigned by Captain Basting. In both questionnaires, Kushner emphasized the fact that police desk clerks work the same shifts and hours as police officers and are subject to the same rules, including those that apply to the taking of breaks and eating lunch.

The City introduced into evidence a two-page exhibit comparing the police desk clerk positions to allegedly similar positions in the City of Milwaukee and 11 suburban communities, based upon the essential duties of the position and the 1993 minimum and maximum rates paid. In support of this exhibit, which was prepared by Captain Basting with the assistance of the City's employee relations manager, Carol Thomas, the City offered into evidence job descriptions from 10 of the suburban communities in question. According to the City's exhibit, police desk clerks in Wauwatosa would enjoy the third highest bi-weekly wage rate at the maximum if their classification is not changed. If the Union's proposal is adopted, they would receive the second highest bi-weekly rate at the maximum.

On the other hand, all but three of the comparable communities would have a higher or slightly higher minimum (hiring) rate under the City's proposal. Under the Union's proposal only four communities would have a higher minimum (hiring) rate. At \$728.92 (the City's offer), Wauwatosa's hiring rate would be \$30.52 below the average of all of the hiring rates reflected on the City's exhibit. At \$782.01 (the Union's proposal) Wauwatosa's hiring rate would be \$18.78 above the average of those figures.

In their negotiations, the parties agreed to a bi-weekly wage rate schedule for municipal clerks, which sets forth a hiring rate for employees hired after the execution date of the agreement and six progression steps leading to a maximum rate approximately 25 to

30% higher than the hiring rate. They also agreed to increase the rates set forth in the schedule by 4% in each year of the agreement. This will result in the following hiring and maximum rates for the two classifications in the three years covered by the agreement:

	<u>New Hire Rate</u>	<u>Maximum Rate</u>
Municipal Clerk I		
1993	\$ 728.92	\$ 970.99
1994	758.08	1,009.83
1995	788.40	1,050.22
Municipal Clerk II		
1993	782.01	1,019.58
1994	813.29	1,060.36
1995	845.82	1,102.78

Based upon the above rates, the difference between the new hire rate for the two classifications is approximately 7.3% and the difference between the maximum rates for the two classifications is approximately 5.0%. Utilizing the 1992 rates currently being paid to the eight incumbents and to municipal clerk II's, the City estimates the annual cost of the Union's proposal to be \$10,777 or an average of \$1,347 per employee. Utilizing a work year of 2,038.4 hours, the difference in the hourly rate would be approximately 66 cents per hour, on average, for the eight employees in question. Based upon the 4% increases agreed to, the difference in rate would be worth an additional two to three cents per hour during each year of the agreement. According to the City, the initial cost of reclassifying the eight employees in question would add approximately one-half percent to the total cost of the

settlement. The Union disputes the City cost estimates, arguing that its proposal to reclassify the police desk clerks is not identified as one which would take effect retroactively.

#### UNION'S POSITION

It is the Union's position that those statutory criteria which are not irrelevant or of *de minimus* importance, in whole or in part, all favor the Union's position. In its view, the criteria references to the interests and welfare of the public, internal and external comparisons, and "other factors" (in this case the special job duties performed by the police desk clerks), all fall into this category. In support of this position, the Union makes the following points:

1. The City does not claim that it lacks the lawful authority to grant the Union's proposal or that it is affected by the stipulations of the parties.

2. There is no evidence that would support a finding that the City lacks the financial ability to pay the modest additional cost of the Union's proposal.

3. The cost of living criterion is likewise irrelevant because of the *de minimis* nature of the cost of the proposal on the City's overall budget.

4. The criterion relating to overall compensation is largely irrelevant, since the proposal affects less than 10% of the bargaining unit and will have little impact on the overall compensation paid to the bargaining unit.

5. There have been no meaningful changes in matters covered by the statutory criteria during the pendency of this proceeding.

6. The interests and welfare of the public will be better served by the adoption of the Union's reclassification proposal. As the Carlson Patterson study noted, the City then took the position that it was its desire to pay premium rates in the market in order to continue to attract and *retain* the best available office workers. There is nothing in the evidence to suggest that the City has abandoned that position. Opportunity for advancement also constitutes a significant factor for purposes of retention of employees, especially when their duties change over time, as they have in this case. In addition, those duties are of a different nature than the routine duties performed by other City employees working in the municipal clerk I classification and in the positions in comparable communities, relied upon by the City.

7. Relevant wage comparisons favor the Union's reclassification proposal. Internally, there are no other City employees performing similar work. No other municipal clerks are responsible for searching and monitoring prisoners, checking property in and out, or handling routine police duties. Because of the nature of the job, police desk clerks cannot stray far from the central office for any length of time; do not have assigned breaks or lunch hours; must eat at their desks in between phone calls and counter traffic, teletype monitoring and monitoring of prisoners; work weekends and holidays for straight time rates; and be bound by

the same rules and regulations that apply to sworn police officers.

The external comparisons relied upon by the City are not persuasive. A review of the content of the job descriptions provided reflects that the duties of those jobs are only marginally like those performed by the police desk clerks in Wauwatosa. The clerk I in South Milwaukee is not responsible for searching and monitoring prisoners or handling evidence. The secretary in the City of Franklin likewise engages in no such activities. The district station clerks employed by the city of Milwaukee perform dissimilar services. In view of these dissimilarities, the wage comparisons drawn by the City in its exhibits are irrelevant. Also, the parties have agreed as to the wages for 1993, 1994, and 1995 for all of the municipal clerk positions represented by the Union. All that is needed is for the arbitrator to decide which classification the contested positions should be assigned to.

Because of the unique nature of the duties performed by the police desk clerks, no meaningful comparisons can be drawn to positions held by employees in private employment. In fact, neither party to this proceeding has attempted to do so and that particular criterion should be given no weight for that reason.

8. The unusual nature of the one remaining issue in this case requires that the arbitrator give consideration to the criterion dealing with "other factors" normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment. In addition to the unique duties performed by the

employees in question, they are subject to police department rules, including the rule that treats them as a "special class of public employees because of their conspicuous and visible role as representatives of City government." In addition, it should be noted that other exhibits in evidence, related to other municipal clerk positions in the police department, reflect upon the high level of responsibility of municipal clerk positions in that department. In one case, the clerk's position had previously been filled by a police lieutenant and in the other, the clerk's duties have reached an increasingly higher level of responsibility over time.

In reply to City arguments, the Union contends that the City's argument about the cost of the proposal is overstated and not supported by the evidence; that there should be no requirement in this case that the Union show a "need" for a change in the *status quo* since this is a first contract, but even if there were, it has done so; and that the Union had no obligation to offer a *quid pro quo* for the proposal, since the City never indicated that it was willing to enter into such an exchange. The Union notes that all other issues have been resolved by the parties and argues that its remaining proposal is not as significant as the City argues, since it calls for a modest increase for a small group within the bargaining unit. The Union takes the position that its proposal is not intended to be retroactive in its application and that the cost is, therefore, substantially less than that projected by the City.



The Union also argues that the City's reliance on outside comparisons is misplaced, because the issue is one that turns on internal comparisons. Also, the Union argues that the City is incorrect in contending that the duties performed by the desk clerks are covered by the City's job evaluation and job posting forms.

#### CITY'S POSITION

It is the City's position that the Union is "overreaching" by its proposal, which is costly and unsupported by any evidence of a need for change or an offer of a *quid pro quo*. In support of this position, the City makes the following points:

1. The City has utilized appropriate criteria for the selection of external comparables and selected comparables which include the City of Milwaukee and nearby suburbs which are similarly influenced by the City of Milwaukee and each other. They are generally in line with the communities used by arbitrators in prior proceedings involving the fire department. There is some overlap between the City's comparables and those proposed by the Union and, the cities used by the Union which are not common to both groups are inappropriate because of their size and lack of proximity.

2. Because the Union is proposing to change the *status quo*, with regard to the classification of police desk clerks, it has the burden of justifying the need for change and proving support among the comparables. Its burden is particularly heavy, because this is

a first contract between the parties and arbitrators have recognized that the parties should not expect to achieve major changes in a first contract.

3. Arbitrators recognize that it is appropriate to avoid making changes in the *status quo* in arbitration proceedings, because to do so substitutes the arbitrator's opinion for that of the parties and grants one party, that which it could not achieve at the bargaining table. For this reason, a proponent of change must not only establish that the change is needed, but must also offer a *quid pro quo*. Contrary to its contentions, the Union's proposal is costly. Eight clerks would be affected by the Union's reclassification proposal.

4. The Union has failed to offer persuasive evidence of a need for the change. The information gathered by Captain Basting and Thomas reflects that the work performed by the clerks in question is not substantially different from that required by the positions in the comparable communities. Further, the Wauwatosa clerks do not perform many duties that go beyond what is required of the others, as reflected in the job evaluation and job posting forms introduced into evidence. Like the employees in Menomonee Falls, their duties may include searching and monitoring prisoners, but they are essentially clerical in nature. They do not exercise independent judgment, such as that which would be required of them if they were classified as municipal clerk II's. Only a high school diploma is required, as opposed to the associate degree in

secretarial science or a related field, required of municipal clerk II's.

5. The Carlson Patterson study determined that the police desk clerks were properly classified. It reached the same conclusion with regard to the other municipal clerk I position in the police department and, by dropping its proposal to reclassify that position, the Union has effectively agreed that the Carlson Patterson study was correct in its conclusions as to both classifications.

6. If the Union's proposal is accepted, the police desk clerks in Wauwatosa would rank number two among the 13 comparables utilized by the City. If they remain assigned to the municipal clerk I classification, they will still rank near the top. The Union has offered no evidence (or *quid pro quo*) which would justify pushing the clerks up to a higher ranking than that provided by the *status quo*.

7. While arbitrators should not refuse to entertain proposals involving innovation or change, they should give consideration to the above described matters, along with the question of whether such a change would have likely occurred in give and take bargaining. The Union has failed to establish that the proposed change is justified or should have occurred in the give and take of bargaining.

In reply to Union arguments, the City notes that the Union failed to offer any evidence of significant turnover among the

police desk clerks, in support of its contention that its proposal is needed to retain such employees. Also, according to the City, the fact that police desk clerks may perform duties which are "different" than other municipal clerks, does not mean that they deserve higher pay. More important, it argues, is the evidence concerning the duties performed by employees in comparable positions in the communities used for comparison purposes. It notes that four municipalities (all of which pay less at the maximum) currently require their desk clerks to perform activities with respect to searching and transporting prisoners. Also, the vast majority of the desk clerks' duties are of a routine clerical nature. The fact that they work different hours and have unique working conditions because they work in the police department and may be held to a different standard in terms of their dealings with the public, does not provide a basis upon which to justify a reclassification. Comparisons drawn to other municipal clerks working in the police department are irrelevant, because those positions are no longer an issue. And finally, the City argues, the Union is wrong when it states that its proposal would only cause a *de minimis* increase in the City's costs.

#### DISCUSSION

While the dispute in this case arises in the context of a first contract, it also arises in the context of an existing job classification system. In an interest arbitration setting, the burden is properly placed on the proponent of a reclassification

(in this case the Union) to justify its proposal in the context of the existing classification scheme as well as the statutory criteria that are implicated by the proposal. The evidence supporting the proposed reclassification should be convincing, unless it can be shown that the employer (or parties) have engaged in the practice of using reclassifications for the purpose of granting general wage increases or effecting general wage reductions. To do otherwise would undermine the integrity of the classification scheme and constitute a disservice to the parties. Even so, it is possible that a proposed reclassification which is shown to be justified in relation to the existing classification scheme might require rejection under the statutory criteria, for reasons such as a lack of support among the comparables or the overall cost in relation to the period covered by the agreement.

In this case, the evidence offered in support of the proposed reclassification is not found to be convincing and suffers from some lack of support under the relevant statutory criteria. The merit of the proposed reclassification in relation to the existing classification scheme should be reviewed at the outset.

According to the Carlson Patterson report, the committee that reviewed the 31 existing clerical jobs utilized a list of 11 "job specifications" for purposes of developing the classifications. Then, each of the jobs was analyzed and discussed in relation to the job descriptions developed. This resulted in the assignment of the position of police desk clerk to the fiscal clerk I

classification. When the City administrator and the City's employee relations committee reduced the number of clerical classifications, the fiscal clerk I classification was merged into the more generally worded municipal clerk I classification.

The record does not include a description of the 11 "job specifications" used by the committee in developing the classifications. However, based upon the wording of the two classifications in question, the merger of the fiscal clerk I classification into the municipal clerk I classification would not appear to have been inappropriate. One result of that action was to equate the two classifications within the new salary schedule. That fact would appear to be particularly relevant for present purposes, since the net result was to move the police desk clerks up from salary range 21 to salary range 20. It also served to equate the predominantly fiscal activities emphasized in the fiscal clerk I classification with the general clerk duties emphasized in the municipal clerk I classification.

In the absence of an official position description for the police desk clerk position, some weight must be given to the description set forth in the 1989 notice announcing a vacancy. It is reasonable to assume that it was that description, or one like it, that was considered by the committee in the course of developing the new classifications and assigning positions to the new classifications. A careful review of its wording indicates that, while it may not reference every duty and activity, it is

relatively consistent with the other evidence concerning the level of duties of the position. Thus, any judgment that the police desk clerks should be assigned to the municipal clerk II classification necessarily involves a judgment that the committee acted in error during its deliberations. A comparison of the wording of the announcement in question and the wording of the municipal clerk I classification does not support such a conclusion.

A review of the other documents in evidence likewise fails to support such a conclusion. Most of the duties and activities referred to in those documents were referred to in the 1989 document. The position questionnaires completed by desk clerk Kushner add significant detail to the general description of the duties and activities of desk clerks, but fail to establish that the performance of those duties and activities requires the level of discretion referred to in the municipal clerk II classification description. They also serve to emphasize certain activities which are unique, because of the police department setting and/or because they would be viewed as undesirable. The fact that those duties are performed in a police department setting does suggest that they must be performed with greater care and attention to detail and procedures than might be required in some other settings. However, it does not establish that the duties are performed at a "more advanced" level. The performance of undesirable duties is sometimes used as a factor in job analysis and it may have been used as a factor in 1989. In either event, the performance of

these duties was reflected in the old job description and the evidence establishes that, to some extent, the need to occasionally perform one of those duties (body searches) has decreased and is still decreasing over time.

On the other hand, the two job evaluation instruments used in 1992 and 1993 serve to confirm at least two important matters. First, they serve to establish that the duties and activities of a police desk clerk are varied, but that the variance is substantially less on an individual basis, depending upon the shift to which the police desk clerk is assigned. Secondly, they serve to establish that the duties viewed as essential for purposes of evaluation are those duties, consistent with the reference to "basic clerical responsibilities" in the municipal clerk I classification. In effect, the "basic clerical responsibilities" performed by clerks on the first shift predominantly relate to "financial matters," as they were referred to in the discarded fiscal clerk I classification description. And the "basic clerical responsibilities" performed by the clerks on the late shift predominantly relate to the duties described in the municipal clerk I classification description, i.e., typing and filing reports, basic record processing, answering basic inquiries and maintaining files." In both cases, the work involves the following of established work routines and practices and interactions normally involved in the furnishing or obtaining of information.



The undersigned recognizes that the above review of the evidence of record is less reliable than a job study and evaluation with a point by point analysis, utilizing a mathematical scale or other device for measurement purposes. However, the existing classification scheme was not established in that way and the above review does serve to convince the undersigned that, on the record presented, the Union has failed to justify its proposed reclassification in relation to the existing classification scheme.

Given this conclusion, a review of the other evidence of record is arguably unnecessary. However, such a review does add support to the conclusion that the Union has failed to meet its burden of proof in this proceeding.

The rates of pay that will be earned by municipal clerk I's under the agreement generally compare quite favorably to the rates of pay earned by incumbents in the positions in the comparable communities cited by the City. Further, a review of the job descriptions utilized by 10 of those communities reflects that the jobs being compared are reasonably comparable in most cases. This finding is consistent with the observation made regarding compensation by Carlson Patterson in 1989.

Under the agreement, the City will not be paying above average rates to new hires. That may serve to modify the City's labor market position in the future, unless some of the comparable communities pare back their rates, as the City argues some are already doing. The record does not include any evidence that the

City is experiencing difficulty in recruiting or retaining police clerks at this time.

The City is correct when it argues that the cost of the Union's proposal is not insubstantial. It would result in the reclassification of 8 out of 19 municipal clerk I's. If determined to be retroactive, it would do so at a contract cost of approximately one-half percent. In either case, it has permanent, future cost implications. If unjustified or only marginally justified, it could also result in the need to reclassify other positions, at additional cost in the future.

Finally, the Union is correct when it argues that the interests and the welfare of the public are implicated by proposals going to the proper classification of employees. This not only relates to the laudable goal of seeking to hire and retain the best qualified employees, referred to in the Carlson Patterson study, but to the concepts of equity and fairness which can serve to impede or help the City in its efforts to achieve and maintain that goal. However, on the record presented, the Union has failed to establish that the assignment of the police desk clerk positions to the municipal clerk I classification is inequitable or unfair.

For the above and foregoing reasons, the undersigned renders the following

AWARD

The City's final offer, to maintain the *status quo* with regard to the assignment of the police desk clerk position to the municipal clerk I classification, shall be included in the parties' collective bargaining agreement covering the years 1993, 1994, and 1995, along with their stipulated agreements reached during their negotiations, including those negotiations which involved mediation by the WERC and the undesignated.

Dated at Madison, Wisconsin this 7th day of February, 1995.

  
George R. Fleischli  
Arbitrator