

BEFORE THE ARBITRATOR

 :
 In the Matter of the Arbitration :
 of a Dispute Between :
 : Case 89
 PORTAGE COUNTY COURTHOUSE, HEALTH : No. 46005
 CARE CENTER, HUMAN SERVICES AND : MA-6841
 LIBRARY EMPLOYEES LOCAL 348, :
 AFSCME, AFL-CIO :
 :
 and :
 :
 PORTAGE COUNTY :
 :

Appearances:

Mr. Guido Cecchini, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.
Mr. Philip H. Deger, Personnel Director, Portage County, appearing on behalf of the County.

ARBITRATION AWARD

Local 348, AFSCME, AFL-CIO, herein the Union, on July 19, 1991, requested the Wisconsin Employment Relations Commission to designate a member of its staff as Arbitrator in the captioned matter. The County concurred in the Union's request and hearing in the matter was held on September 30, 1991. The hearing was not transcribed and the County filed its posthearing brief on October 31, 1991. The Union, on April 2, 1992, filed its reply brief in the captioned matter.

ISSUE:

At hearing, the parties stipulated to the following statement of the issue to be resolved by the undersigned:

Should Carrie Davies be awarded a wage "upgrade" pursuant to Article 23 of the labor agreement? If so, what should it be?

PERTINENT CONTRACT LANGUAGE:

ARTICLE 23 - RECLASSIFICATION PROCEDURE

A) A request for reclassification may be initiated by: (1) the employee, with department head concurrence; (2) the supervisor or department head; (3) the appropriate governing committee; (4) the Personnel Committee; or (5) the Union. A request for reclassification should include the following supporting documentation: A current job description, organization chart for the appropriate work unit, suggested classification or pay grade, reason for the reclassification request, and an indication of other positions performing comparable work.

B) 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;

(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 15. Audits will be conducted by the Personnel Department by September 1 and recommendations forwarded to the Personnel Committee for action in September. However, the Personnel Committee may initiate a reclassification at any time it feels a particular department would benefit from it. 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.

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. The decision of the Personnel Committee shall be subject to the grievance procedure.

C) 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; (2) If the duties and responsibilities of a position undergo a major alteration, either expansion or curtailment, 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 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 skills or level of performance. Reclassification should not be used as a performance award.

Memorandum of Understanding

During the negotiations leading to the 1990-1991 contract, the following agreements were reached that

are not part of the contract text:

. . .

4. The County shall process the following reclassification requests under article 23 of the Agreement, as soon as possible (any approved request to be effective 7-190)

| <u>Dept</u> | <u>Position</u> | <u>Incumbent(s)</u> |
|-------------|--------------------|---------------------|
| CHSD | Bookkeeper II | S. Haasl |
| CHSD | Typist II | J. Mattlin |
| CHSD | Typist II | J. Jaworski |
| Dist. Atty. | Fraud Investigator | C. Davies |

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BACKGROUND

This grievance involves the denial of the request to upgrade the Financial Crimes Investigator position, formally titled Welfare Fraud Investigator. Originally, the Welfare Fraud Investigator position was created in 1982, and the duties and responsibilities were split between welfare fraud investigation and lead worker responsibilities within the Income Maintenance section of the Human Services Department. However, approximately three years later, in 1985, the position became a full-time Welfare Fraud Investigator and the lead worker responsibilities involved with Income Maintenance were removed from the position. On May 14, 1990, the Union requested that the Welfare Fraud Investigator position, then held by Nancy Eggleston, be reclassified. Thereafter, on May 30, 1990, the supervisor, Lauri Rockman recommended that the position be downgraded to reflect the change in responsibilities due to the removal of the lead worker responsibilities relative to Income Maintenance, and that this downgrade would more appropriately reflect the level of responsibility within the Income Maintenance section of the Human Services Department. However, before the Personnel Committee acted upon the request, the position was moved to the District Attorney's office in November of 1990. The Human Services Department believed having welfare fraud investigations done by the District Attorney's office would be more effective because clients would perceive the position as having more authority if attached to that office rather than if it were in the Human Services Department. Thus, pursuant to a purchase of service contract with the District Attorney's office, the position was moved. The Human Services Department reimbursed the District Attorney's office for the position and 75% of the salary was funded through state and federal dollars with the remaining 25% funded from monies recovered through fraud investigations.

The testimony established there were many similarities between the District Attorney's Welfare Fraud Investigator position and the Corporation Counsel's Child Support Specialist. Both positions conduct investigations, prepare stipulations, work out repayment arrangements, meet with clients, appear in court and perform basically the same para legal duties and responsibilities. The major difference between positions is that the Child Support Specialist is responsible for only one program whereas the Fraud Investigator is responsible for several programs.

Both the District Attorney and the Assistant District Attorney supported the request for an upgrade for the Fraud Investigator position and appeared before the Personnel Committee. Both the Assistant District Attorney and the District Attorney believe that they significantly increased the responsibilities of the Fraud Investigator once the new position was created

within the District Attorney's office. Furthermore, both are of the opinion that the Welfare Fraud Investigator has more discretionary duties than those of the Child Support Specialist position. The Fraud Investigator now prepares drafts of criminal complaints, deferred prosecution agreements, as well as performing other duties which can lead to the arrest of citizens. These duties were added to the position when it was transferred to the District Attorney's office.

The Personnel Department did an audit pursuant to the collective bargaining agreement and concluded that the position should be upgraded with a rate increase of \$1.00 per hour over the then existing rate. The audit concluded that the internal comparable positions within county government included the Financial Service Training Specialist at \$9.77 per hour, the Victim/Witness Coordinator in the District Attorney's office at \$10.43 per hour and the Child Support Specialist in the Corporations Counsel's office at \$11.75 per hour. The audit also examined external comparables and revealed that Marathon County Human Services Department had a similar position paying \$9.73 per hour, Wood County Sheriff's Department had a similar position paying \$14.14 per hour and the Waushara County contracted out a similar position at \$10.50 per hour. The result of the audit was a recommendation from the Personnel Department to upgrade the classification to a rate of pay of \$10.22 per hour effective November 15, 1990, the date the District Attorney's office assumed responsibility for the position. However, the Personnel Department recommendation was rejected by the County Board Personnel Committee. The Committee's refusal to upgrade the position resulted in the instant grievance.

The Union's position in this case is simply that the job duties and responsibilities are comparable to those of the Child Support Specialist position in the Corporation Counsel's office which is paid \$2.30 an hour more than the Fraud Investigator in the District Attorney's office. The Union believes the evidence establishes the duties and responsibilities for the position of Fraud Investigator are at least at the same level as the Child Support Specialist, and therefore upgrade is warranted. Further, it points out that the supervisor and governing committee supported the request, and that the Personnel Department, although not agreeing to upgrade it to the level of the Child Support Specialist did recommend upgrade. Thus, the Union concludes that the Personnel Committee's decision to reject the request should be reversed and the position should be upgraded to the level of the Child Support Specialist.

The County, to the contrary, believes that because there is not a clear cut consensus on whether the position of Fraud Investigator should be upgraded to the level of the Child Support Specialist, a change in the status quo should not occur. The County points to the fact that one supervisor, Rockman, in the Human Services Department, believed that the upgrade request should be denied, and in fact recommended a downgrade for the position. Also, the Human Services Department Head, Bablich, as well as the County Personnel Committee, recommended no additional compensation was warranted. Additionally, others recommended that there be some change, but not as radical a change as being proposed by the grievance. In instances such as these, the County believes that considerable deference should be given to the decision of the elected officials charged with representing the interests and welfare of the public.

With respect to an analysis of the application of Article 23 C) to the facts of this case, the County concludes that the Union's argument that the position should have been initially rated higher is not supported by the evidence. It concludes that no satisfactory explanation was given as to why this alleged inequity was not addressed either at the bargaining table in earlier contracts or via prior annual upgrade requests, inasmuch as the position was created in 1982. The County acknowledges that in its own audit it found similarities in the level of responsibility between the Fraud

Investigator and at least three other County positions including the Child Support Specialist position. However, it also notes that the Department Head, Bablich, believed that the Fraud Investigator position was as responsible and complex as the Financial Services Case Manager, a lower paid bargaining unit position. Finally, the County contends that the upgrade grievance is in fact an interest arbitration case to establish a wage rate for a specific position, and that being so, the question appropriately asked is where would the parties have ended up if negotiations had continued to an eventual voluntary settlement when these matters were previously discussed. It notes, that at one point during contract negotiations the Union submitted a final offer to the WERC containing a proposed Fraud Investigator rate of pay of \$8.46 per hour, substantially below that for the Child Support Specialist position. However, the contract was resolved short of interest arbitration and one outcome of the bargain was an agreement to process the upgrade request for this position pursuant to Article 23. As a part of processing that request, the Personnel Department proposed, as a compromise to the conflicting positions being taken with regard to the upgrade request, an arbitrary \$1.00 per hour increase. The County concludes from all of the above

that the more persuasive argument in this case is made for no change at all because the Union's proposed remedy of a \$2.30 per hour upgrade should be construed as an all or nothing strategy and should not be sustained.

DISCUSSION

My analysis of the testimony and documentary evidence in this case has lead me to conclude that the classification of Fraud Investigator in the District Attorney's office should be upgraded, pursuant to Article 23 of the collective bargaining agreement, to a wage level equivalent to that of the Child Support Specialist position in the Corporation Counsel's office. Article 23 C) of the collective bargaining agreement provides:

"...three primary reasons for considering the reclassification of a position or upgrade of a classification; (1) If it is felt the position was improperly classified or graded when it was first placed on the salary schedule; (2) If the duties and responsibilities of a position undergo a major alteration, either expansion or curtailment, 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."

In this instance, the evidence makes it clear that when the position was moved to the District Attorney's office, the duties and responsibilities of the position underwent a "major alteration" from what existed previously when the position was a part of the Human Services Department. It is the additional responsibilities and duties which made the position more in the nature of a paralegal, like the duties and responsibilities of the Child Support Specialist, and distinguish it from the position that existed in the Human Services Department. The absence of these additional duties and responsibilities when the position was in the Human Services Department explains why when the lead worker responsibilities with respect to income maintenance were removed from the position that the supervisor and Department Head believed that a downgrade was in order instead of an upgrade. However, as testified to by the Assistant District Attorney, the job as it now exists in the District Attorney's office does not resemble the job as it functioned in the Human Services Department. Consequently, the undersigned is satisfied that the Union has established by the preponderance of the evidence that the second criteria listed in Article 23 C) of the collective bargaining agreement has been satisfied warranting the upgrade.

Furthermore, this case needs to be distinguished from the companion case involving the request for reclassification from Typist II to Account Clerk II. The Typist II position is a position which appears in several departments within County government and is held by several different employes whereas the Fraud Investigator position is a single position within the District Attorney's office and no other employe holds the classification in any other department within the County. This is significant because in my analysis of the request for reclassification in that case I noted that without classification specifications being available by which to measure the level of responsibilities performed by the two Typist II's requesting reclassification, a determination as to the appropriate level of responsibility is impossible.

In the case of the Fraud Investigator, because there is not more than one position assigned to the same classification, class specifications are less necessary to a determination of appropriate ranking. Here I am satisfied that the evidence shows the duties and responsibilities of the Fraud Investigator

are at least equal to if not greater than the level of duties and responsibilities of the Child Support Specialist. Both perform similar work, one in the Corporation Counsel's office the other located in the District Attorney's office. Consequently, on that basis and because the duties of the position were modified extensively once it was moved to the District Attorney's office, the standard of Article 23 C)(2) has been met and upgrade is appropriate.

The undersigned also rejects the Employer's argument that because a consensus does not exist as to the appropriate class level for the Fraud Investigator the grievance must be denied. This logic would dictate that absent agreement between all of the parties as to what if any upgrade should occur then no change can be made to the status quo. If that were true, it would negate the purpose and intent of providing that these determinations are grievable. The purpose of the grievance and arbitration procedure in this context is to review the determination made by the Personnel Committee that an upgrade was not warranted. If consensus is the yardstick for whether an upgrade is warranted, there clearly would never be a time when a grievance was appropriately filed, for if there were consensus there would be no grievance.

Finally, I have also rejected the Employer's argument that the facts and bargaining history establish that the Union's proposed remedy is far too unreasonable to adopt, and therefore the grievance ought to be denied. The issue in this case is whether the position of Fraud Investigator should be upgraded to the level of Child Support Specialist. Article 23 C) establishes the standards for determining whether an upgrade is appropriate. Once those standards have been met, as they have in this case, then the outcome is ordained. The fact that an employe will receive a large increase as a consequence of the upgrade is not a standard established in Article 23 C) for measuring whether upgrade is appropriate. To engraft such a standard into Article 23 C) would go beyond the Arbitrator's authority as set forth in Article 8 (G)4., wherein it provides "the arbitrator shall not modify, add to or delete from the expressed terms of the agreement." Furthermore, the bargaining history to which the Employer refers pertains to negotiations for the 1990-91 collective bargaining agreement. The final offer was dated October 12, 1990, some three weeks before the position was moved to the District Attorney's office. Consequently, it is reasonable to conclude therefrom that at that time the Union was reviewing the position in the context of its existence within the Human Services Department. Therefore, any proposals then being made by the Union with regard to rates of pay are irrelevant inasmuch as it wasn't until November, 1990, that the position was moved to the District Attorney's office where the position underwent major alteration.

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

AWARD

The Grievant, Carrie Davies, should be awarded a wage upgrade pursuant to Article 23 C)(2) of the 1990-91 collective bargaining agreement. Further, the County shall award Davies backpay from November 10, 1990, to the present at the rate of pay in effect from that date forward, taking into account any contractual wage increases which were awarded during that time period to the Child Support Specialist classification.

Dated at Madison, Wisconsin this 2nd day of April, 1992.

By _____
Thomas L. Yaeger, Arbitrator