

BEFORE THE ARBITRATOR

In the Matter of the Arbitration  
of a Dispute Between

DOOR COUNTY COURTHOUSE EMPLOYEES  
LOCAL 1658, AFSCME, AFL-CIO

and

DOOR COUNTY (COURTHOUSE)

Case 89  
No. 50594  
MA-8312

Appearances:

Mr. Gerald D. Ugland, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.

Mr. Dennis Costello, Corporation Counsel, Door County, appearing on behalf of the Employer.

ARBITRATION AWARD

The Employer and Union above are parties to a 1991-93 collective bargaining agreement which provides for final and binding arbitration of certain disputes. The parties requested that the Wisconsin Employment Relations Commission appoint an arbitrator to resolve the reclassification grievance of Diane Pluff.

The undersigned was appointed and held a hearing on July 12, 1994 in Sturgeon Bay, Wisconsin, at which time the parties were given full opportunity to present their evidence and arguments. A transcript was made, both parties filed briefs, and the record was closed on November 11, 1994.

Issues:

The Employer proposed the following:

1. Is the grievance substantively arbitrable?

The parties agreed on the remaining issues:

2. Did the Employer violate the collective bargaining agreement by failing to reclassify Diane Pluff?
3. If so, what is the remedy?

Relevant Contractual Provisions:

ARTICLE VI - SENIORITY

D. Job Posting:

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Whenever any vacancy occurs, it shall be given to the senior qualified employee within seven (7) work days after the completion of the posting period.

...

ARTICLE XXVI - SALARY SCHEDULE AND PAY PLAN

B. Pay Plan

...

6. Change in Classification: Any change in classification shall be recommended by the Department Head and approved by the Executive and Personnel Committee. The provisions governing promotions and movement downward shall apply in determining the new pay level.

C. Step-up Pay: When an employee is on an approved leave designated by the Door County Board of Supervisors, Executive & Personnel Committee or the Personnel/ Human Resource Director and a department head or an employee's supervisor request the employee to fill in for the absent employee, the employee filling in will receive step up pay to the starting rate of the position of the absent employee. If that rate is lower than what the employee is presently receiving there will be no step up pay. The fill in must be for a (sic) least an 8 hour day. When an employee fills in for a higher paid non-bargaining unit employee the Employer and the Union shall meet and negotiate the pay rate.

## ARTICLE XXVIII - MANAGEMENT RIGHTS

- A. Lawful Authority: Nothing in this agreement shall be construed as divesting the Employer of any of its vested management rights or as delegating to others, the authority conferred by law on the Employer, or in any way abridging or reducing such authority.

This agreement shall be construed as requiring the employees to follow the provisions in the exercise of the authority confirmed upon the employer by law.

### Discussion:

Grievant Diane Pluff has been employed by the County's Public Health Department for 17 years. After a period as a Clerk Typist II, she was reclassified to an Administrative Assistant I, and subsequently to an Administrative Assistant II. In 1986 she requested a reclassification to Administrative Assistant III, but this was denied, and she re-requested the same reclassification in 1987. The record shows that on this occasion, the decision was postponed pending a study of positions by an independent consultant. In May, 1989, the grievant was reclassified as an Administrative Assistant III. In 1993, the grievant timely filed a reclassification request for the classification of Support Staff Coordinator. The County employs only one individual in that classification at present, who is employed in the UW-Extension office. The grievant's supervisor supported the grievant's reclassification request in writing, but the Executive and Personnel Committee denied the request. At the time of the hearing, both parties anticipated that the grievant would renew the request for the following year.

The grievant gave testimony, and the Union introduced other evidence, to the effect that the grievant performed work consistent with the Support Staff Coordinator title. The official job description for the grievant's present position reads as follows:

### ADMINISTRATIVE ASSISTANT III

#### PUBLIC HEALTH

#### GENERAL SUMMARY OF POSITION

Reports to Director of Public Health Nursing, assists in management of office practices and procedures, as well as coordination and completion of office clerical duties.

**PRINCIPLE (sic) DUTIES AND RESPONSIBILITIES:**

1. Acts as lead clerical staff person and performs office management/coordinator of status of office project assignments.
2. Types and files department correspondence.
3. Maintains department records and accounts, cash receipts, and department and project budgets.
4. Prepare monthly vouchers and program billings.
5. Compile statistical information and prepare reports to federal, state, district, and local agencies.
6. Maintain inventory of office and nursing supplies.
7. Maintain personnel, inservice, communicable disease, and program records.
8. Screen, register, and track clients for immunization program.
9. Assist Director of public health nursing in evaluating performance of other clerical staff employees.
10. Screen citizen requests and provide information or referral to appropriate public health staff member or agency.

**KNOWLEDGE, SKILLS, ABILITIES, AND EXPERIENCE REQUIRED:**

1. Possess the ability to read, comprehend, and communicate both verbally and in writing, at a level normally associated with completion of a high school degree or equivalent training.
2. Knowledge of office and public health practices, procedures, and policies.

3. Skill to operate all office clerical equipment at reasonable rate of speed and accuracy, to include: typewriter, computer, calculator, and word processor.
4. Ability to work with many distractions due to walk in clients with ill young children.
5. Specialized training in bookkeeping and basic accounting.

\*This position was reclassified from Admn. Asst. II to Adm. Asst. III with no changes in job description. This was done by Executive & Personnel (1989).

6. Knowledge of medical terminology is desired/required.
7. One year or more of progresive (sic) clerical work experience in a public health environment is desired.
8. Ability to use tact and courtesy in dealings with employees, supervisors, officials, clients, or other county and outside agencies.
9. Capable of maintaining records of a confidential and personal nature.

#### WORKING CONDITIONS:

Office environment offers little or no discomfort due to extreme temperatures, dust, wetness or the like. Occasionally it will be noisy due to presence of ill infants or young children. May come in contact with bodily fluids and must use preventive methods to evade contracting communicable diseases. Cramped working conditions may exist.

#### DISCLAIMER

"The above statements are intended to describe the general nature and level of work being performed by people assigned to this job. They are not intended to be an exhaustive list of all responsibilities, duties, and skills required of personnel so classified."

The grievant prepared a modified description of her position, with the agreement of her

supervisor, was admitted into the record.

### ADMINISTRATIVE ASSISTANT III

#### PUBLIC HEALTH

##### GENERAL SUMMARY OF POSITION:

Reports to Director of Public Health Nursing, assists in management of office practices and procedures, as well as coordination and completion of office clerical duties. Performs work which assists overall operation of a large (8+ employees) department by providing direction and supervision to lower classified support personnel and coordinating the support work between support staff and department director. Assists Director with administrative detail.

##### PRINCIPALE (sic) DUTIES AND RESPONSIBILITIES:

1. Acts as lead clerical staff person and performs office management/coordination of status of office project assignments. Furnishes information to department head and nursing staff.
2. Performs bookkeeping tasks; prepares financial/operating cost reports for reimbursement of funds from State for agency projects and programs.
3. Compiles statistical information and prepares reports to federal, state, district, and local agencies.
4. Screen and register clients for immunization clinics. Collect monies during clinics and prepare (forms, etc.) for clinics. Coordinate clinic dates with satellite clinic sites.
5. Use typewriter/computer to develop/prepare a variety of detailed material, including: complex reports, meeting minutes, correspondence, memoranda, or project forms.
6. Maintain department records and accounts, cash receipts.
7. Prepare department monthly vouchers and program billings.

8. Screen phone calls or walk-in requests from clients, medical providers, school personnel, etc. Provide information or refer to appropriate public health staff member or community agency. May schedule appointments for vision/hearing checks and immunizations.
9. Assist in preparation of department budgets and obtain quotes/bids for outlay items.
10. Maintain inventory of office and nursing/medical supplies.
11. Maintain confidential communicable disease records; maintain personnel/in-service records, etc.
12. Assist Director in evaluating performance of other clerical staff employees.
13. Relieve Courthouse Switchboard Operator during breaks.

**KNOWLEDGE, SKILLS, ABILITIES, AND EXPERIENCE REQUIRED:**

1. Possess the ability to read, comprehend, and communicate both verbally and in writing, at a level normally associated with completion of a high school degree.
2. Considerable knowledge of office and public health practices, procedures, and policies of numerous public health programs.
3. Skill to operate all modern office clerical equipment at reasonable rate of speed and accuracy, to include: electronic typewriter, computer, calculator, word processor, and copy machine.
4. Ability to work with many distractions due to walk-in clients with young children receiving lab tests or immunizations.

5. Specialized training in bookkeeping and basic accounting.
6. Knowledge of medical terminology is desired/required.
7. Ability to carry out general and special assignments requiring organization of materials and development of procedures without direct supervision.
8. Capable of maintaining records of a confidential and personal nature.
9. Working knowledge of administrative, managerial and supervisory principles and practices.
10. Ability to make decisions in accordance with department and County policies.
11. Ability to use tact and courtesy in dealing with employees, supervisors, officials, clients, or other county and outside agencies.
12. Two years or more of progressive clerical work experience in a public health environment desired.

#### WORKING CONDITIONS:

Office environment offers little or no discomfort due to extreme temperatures, dust, wetness or the like. Often it will be noisy due to presence of infants and young children. May come in contact with bodily fluids and must use preventive methods to evade contracting communicable diseases. Cramped working conditions may exist.

#### DISCLAIMER

"The above statements are intended to describe the general nature and level of work being performed by people assigned to this job. They are not intended to be an exhaustive list of all responsibilities, duties, and skills required of personnel so classified."

The grievant's supervisor, Director of Nursing Rhonda Kolberg, gave testimony supporting the grievant's claim to the higher classification. Kolberg testified that over the years the Department has acquired many more accounts and increased grant funds, and that this has meant that the grievant has acquired more "accounting-type" duties. Kolberg testified that the increased workload of the grievant, in her opinion, justifies the reclassification. The Union introduced several performance evaluations covering the grievant's work in several successive years which praised the grievant's performance and supported Kolberg's testimony.

The County Director of Human Resources, James Jetzke, testified that in the reclassification process he interviewed the grievant for about an hour, and that he prepared the information for the Executive and Personnel Committee. Jetzke testified that the Committee, in reviewing the grievant's request, felt that the grievant had used some of the same rationale

for her previous reclassification to Administrative Assistant III, and that the grievant had work responsibilities equivalent to other Administrative Assistant III's. Jetzke testified that the additional work that the grievant had received was of the same character as that she was already performing, and that the Support Staff Coordinator in the University Extension Department has duties of a highly varied character because that individual serves four extension agents with varied responsibilities, and also handles many responsibilities relating to the County fair. Jetzke testified that he considers performance evaluation matters to be less relevant in a reclassification request than the technical nature of the position, because "we are not talking about the person, we are talking about the position". Jetzke also testified that the grievant's draft of a job description for the work she was performing was in fact reviewed by the Committee, and that he was aware that it was developed with the cooperation of the grievant's department head. He testified that it was not, however, an official job description for her current position.

The Union contends as to arbitrability that the contract clearly offers arbitration for resolving grievances, and has a clause covering change in classification. The Union argues that these factors result in the grievance being substantively arbitrable. With respect to the merits, the Union contends in detail that the grievant's work with accounting, with computer programs, with budgets, and with other records has increased markedly over the years and has met the requirements for the Support Staff Coordinator job description. The Union notes that Support Staff Coordinator requirements include a minimum of one year experience as an Administrative Assistant II, which the grievant more than meets. The Union contends that the Health Department has several nurses for which Pluff provides service, and that the range of programs in which Pluff has responsibility is as varied as the County extension agents' responsibilities. The Union further contends that the result of inaccurate work by the Support Staff Coordinator in the UW-Extension office might be inaccurate awarding of prizes, while similar inaccuracy by the grievant could result in wrong medications being given -- a greater impact. The Union requests that the Arbitrator order the County to reclassify the grievant and make her whole for any losses.

The County contends that the collective bargaining agreement does not contain any

provision requiring the Executive and Personnel Committee to reclassify an employee. The County argues that the grievant's position continues to resemble the job description for Administrative Assistant III, and that her work has not changed sufficiently to justify reclassification. The County contends that the addition of a few new accounts to the ledger sheet does not warrant reclassification, and that both the Administrative Assistant II and III job descriptions include almost everything that the grievant used for her reclassification request in 1993. The County argues in detail that the Support Staff Coordinator in the UW-Extension office does a significant amount of work of types which the grievant either does less of or does not perform at all. The County further argues that there is no language in the collective bargaining agreement mandating that the Employer reclassify a position when requested to do so, but instead Article XXVI states that a reclassification will not take effect unless it is approved by both the department head and the Executive and Personnel Committee. The County further argues that Article XXVII, Management Rights, reserves this authority to management.

Upon review of the collective bargaining agreement and the record in general, I conclude that while the grievance is substantively arbitrable, management has reserved rights to act in this area, and has not acted arbitrarily or in bad faith in such a manner as to make nonsense of the wage schedule.

First, the contract clearly does provide some reference to reclassification and at least outlines a procedure for obtaining a reclassification. This, combined with the grievance and arbitration procedure, is sufficient to conclude that reclassification is treated in the collective bargaining agreement and is subject to the grievance and arbitration procedure to that extent. The grievance is therefore substantively arbitrable.

That, however, does not mean that the grievance has merit within the agreement's terms. Here, the difference in language between the "change in classification" clause found at Article XXVI, Subsection B, Subsection 6, and the much tighter language of Article VI, Subsection D, covering job posting, is instructive. The job posting language specifies that "whenever any vacancy occurs, it shall be given to the senior qualified employee within seven work days after the completion of the posting period." Contrasting this to language which specifies that "any change in classification shall be recommended by the department head and approved by the Executive and Personnel Committee" demonstrates that where the parties have bargained for a mandatory standard for the application of a promotion, that fact is reflected in the collective bargaining agreement. The absence of such a standard is conspicuous in the "change in classification" clause, and all that is reflected there is the requirement that for a change to take place, it must be approved at two different levels. In this instance, one of those levels has declined to approve the request, and the conditions of Article XXVI, B, 6 are therefore not met.

Many arbitrators have postulated that when an employer reserves rights to act in a certain area, that reservation is not and cannot be a blanket reservation of authority to act arbitrarily,

capriciously or in bad faith. I do not, however, reach the issue of whether the Employer here is to be allowed such extraordinary latitude. The record demonstrates sufficient commonality between the grievant's work and the Support Staff Coordinator job description that the Union has a "colorable claim" to bargain for the grievant's reclassification; but it also shows a similar enough relationship between the grievant's current work and the Administrative Assistant III job description that the Committee's refusal to grant the reclassification cannot be described as arbitrary. 1/ At the same time, the evidence is that the Committee did not act capriciously, but only after considering the request, and there is no evidence that the Committee acted in bad

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1/ I note that under Article XXVI-C, "step-up" pay is available in this agreement only under limited circumstances and that the Union did not argue that any of these would apply in the present case.

faith, or even differently than it had sometimes done before. I note in this respect that the grievant has previously requested reclassifications and been denied them at first, only to prevail upon subsequent re-requests. There is also nothing in the record to demonstrate that the Union has ever prevailed in a grievance protesting a reclassification decision by the Committee.

For the foregoing reasons, and based on the record as a whole, it is my decision and

AWARD

1. That the grievance is arbitrable.
2. That the County did not violate the collective bargaining agreement by denying Diane Pluff's 1993 reclassification request.
3. That the grievance is denied.

Dated at Madison, Wisconsin this 31st day of January, 1995.

By Christopher Honeyman /s/  
Christopher Honeyman, Arbitrator