

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

GENERAL TEAMSTERS UNION LOCAL 662

and

RUSK COUNTY (SHERIFF'S DEPARTMENT)

Case 80
No. 51705
MA-8706

Appearances:

Ms. Christel Jorgensen, Business Agent, General Teamsters Union Local 662, appearing on behalf of the Union.

Weld, Riley, Prens & Ricci, S.C., Attorneys at Law, by Mr. Jeffrey P. Hansen, appearing on behalf of the County.

ARBITRATION AWARD

General Teamsters Union Local 662, hereinafter referred to as the Union, and Rusk County (Sheriff's Department), hereinafter referred to as the County, are parties to a collective bargaining agreement which provides for the arbitration of disputes arising thereunder. The Union, with the concurrence of the County, requested that the Wisconsin Employment Relations Commission designate a member of its staff to act as an arbitrator to hear and decide a grievance over the meaning and application of the terms of the agreement. The undersigned was so designated. Hearing was held in Ladysmith, Wisconsin, on January 12, 1995. The hearing was not transcribed and the parties filed post-hearing briefs which were exchanged on March 7, 1995.

BACKGROUND:

The facts underlying the grievance are not in dispute. On June 17, 1994, the County's Sheriff posted a Patrol Deputy position. 1/ The grievant, Bonnie Stoneberg, signed the posting and was awarded the position commencing on or after August 26, 1994. 2/ Stoneberg began her employment with the County on November 29, 1983, and prior to posting for the Road Deputy position, she was a Dispatcher/Jailer. Prior to the 1992-93 agreement, the Road Deputies and

1/ Jt. Ex. 4. (Patrol Deputy and Road Deputy are the same classification.)

2/ Jt. Exs. 3 and 4.

Dispatcher/Jailers were paid at the same rate. 3/ Effective July 1, 1991, these rates were as follows:

Start	\$10.16/hr.
After 1 year	\$10.36/hr.

3/ Jt. Exs. 6 and 7.

After 3 years \$10.61/hr. 4/

In the 1992-93 contract, the parties agreed that the Road Deputy would receive \$.20 per hour more than the Dispatcher/Jailer and after July 1, 1993, the rates were as follows:

	Road Deputy	Dispatcher/Jailer
Start	\$11.36/hr.	\$11.16
After 1 year	\$11.56/hr.	\$11.36
After 3 years	\$11.81/hr.	\$11.61 5/

Prior to August 26, 1994, Stoneberg was making \$11.61 per hour as a Dispatcher/Jailer and when she started as a Road Deputy her wage rate went to \$11.36 per hour. 6/ Stoneberg filed the instant grievance alleging that instead of a \$.25 per hour decrease in pay, she should receive an increase of \$.20 per hour. 7/ The grievance was denied and appealed to the instant arbitration.

ISSUE:

Did the County violate the parties' collective bargaining agreement by placing the grievant at the starting rate when she moved from Dispatcher/Jailer to Road Deputy?

If so, what is the appropriate remedy?

PERTINENT CONTRACTUAL PROVISIONS:

ARTICLE 3

MANAGEMENT RIGHTS

4/ Jt. Ex. 7.

5/ Jt. Ex. 1.

6/ Jt. Ex. 3.

7/ Jt. Ex. 2.

Except as expressly modified by other provisions of the contract, the Employer possesses the sole right to operate the County and all management rights repose in it. These rights include, but are not limited to the following:

. . .

- B. To hire, promote, transfer, schedule and assign employees to positions within the County and to create, combine, modify, and eliminate positions within the County.

. . .

ARTICLE V

WAGES

Exhibit "A" attached to this Agreement, and a part hereof, sets forth the classifications and wage rates of the employees covered by this Agreement. It is mutually agreed that Exhibit "A" and the contents thereof shall constitute a part of this Agreement.

. . .

ARTICLE 16

SENIORITY

. . .

Section 2. Seniority shall prevail in all matters of employment unless otherwise stated in this Agreement.

. . .

Section 5. All bargaining unit jobs and assignments shall be subject to seniority.

. . .

Section 8. In the event that no employee makes application for

a bulletined position, the Sheriff may assign such position to the least senior employee who qualifies. If new employees are hired, such new employees shall be hired for such vacant position. If a full time employee is assigned, his/her rate of pay shall be increased commensurate with the above.

...

RUSK COUNTY SHERIFFS DEPARTMENT

EXHIBIT "A"

The following wage rates shall be in effect during the term of this Agreement:

... 7-1-93

...

ROAD DEPUTY

Start	...	\$11.36
After 1 year	...	11.56
After 3 years	...	11.81

DISPATCH/JAILER

Start	...	\$11.16
After 1 year	...	11.36
After 3 years	...	11.61

...

UNION'S POSITION:

The Union contends that during the negotiations for the 1992-93 contract, the wage rate for Road Deputies was increase \$.20 per hour above the wage for Dispatcher/Jailer but nothing was bargained that would allow the County to move an employe to the starting rate when said employe moves from one classification to another. The issue of movement to the starting rate was never raised in negotiations and to uphold the County's position would make a mockery of bargaining and allow the County to make changes without bargaining. The Union insists that as there were no restrictions bargained on movement through the wage schedule when the parties agreed on the \$.20 adjustment it must be concluded that the parties agreed to exclude such restrictions. The Union points out that Article 16, Section 1 provides for unit-wide seniority and nothing in

Article 16 provides for a reduction in wages upon the exercise of seniority. The Union notes that the only provisions relied on by the County are Article 4 and Exhibit "A" and these do not allow a reduction in pay. The Union contends that the contract language is clear and unambiguous and it must be enforced, otherwise the County would gain through arbitration which it failed to obtain in negotiation.

The Union's position is that the County's argument on past practice is irrelevant. It notes that the only example in support of the County is Gary Hahn's movement from Patrol Sergeant to Investigator but it submits that the County violated the agreement by its actions and Hahn didn't care or didn't grieve but this case is not binding on other employees. It claims that Ziegler's example supports the Union's position and the docking of his pay a few days before the arbitration is ridiculous.

The Union takes the position that by moving Stoneberg to the starting rate, she suffered a \$.25 decrease in pay when she should have gotten a \$.20 increase, and it will take her three years to reach the maximum pay. It asserts the County's position is illogical because if a Road Deputy moves into Dispatch/Jailer classification, he/she would go to the starting rate and have to work another three years to reach the maximum. The Union claims that the County's position discourages posting and renders the job posting procedures useless.

In conclusion, the Union alleges that the County has offered no evidence to support its position and past practice and contract language does not support the County. It argues that if the Employer prevails, it will be granted the right to change the contract without bargaining. It asks that the grievance be sustained.

COUNTY'S POSITION:

The County contends that the language in Appendix "A" is clear and unambiguous. It argues that the wage rates for various positions have a start rate, the rate after one year and the rate after three years. The County claims that the meaning of Appendix "A" is plain and self-explanatory and indicates that an individual will receive a wage rate in the "start" position when they begin work in that classification. The County alleges that its position is bolstered by an abundance of case law. The County points out that there is no language in Appendix "A" or elsewhere in the contract that modifies the fact that Road Deputies begin at the "start" wage level.

The County claims that this interpretation is reinforced by past practice in that Gary Hahn was working as a Patrol Sergeant until April, 1990, and was at the maximum pay when he posted to the Investigator position where he began at the "start" level of pay. It claims that this is identical to the instant grievance.

The County maintains that the past practice supports the clear meaning of the contract. It notes that Hahn never grieved his rate of pay and at no time in negotiations was there an attempt to change the policy followed in the Hahn matter. It argues that the Union put forth no examples that were contrary to this practice and the cases of Olejniczak and Kaminski are not applicable because they were in the same wage classification. The County notes that Ziegler was erroneously given a one-year anniversary wage increase and that error was corrected, and furthermore, the instant case was in dispute before the Ziegler matter arose.

The County contends that bargaining history supports its interpretation. It points out that there is a clear distinction between the wage classifications of Road Deputies and Dispatcher/Jailers which was negotiated into the 1992-93 labor agreement, yet with the Hahn promotion, the Union made no attempt to change the Sheriff's interpretation in negotiations nor were any ramifications about separate wage classifications discussed. It submits that the Union had full knowledge of the separate wage classification change but it did not insist on the retention of a more senior wage rate for employees posting from one classification to another.

The County insists that the grievant's claim, as set forth in her grievance, that she lost her seniority in violation of Article 16, Section 2 is without merit. It submits that she retained all seniority rights and rightfully was assigned to the start rate of Road Deputy with the additional benefits including being eligible for a higher rate and this was a step up the employment ladder for the grievant.

The County concludes that the clear contract language supported by past practice and the failure of the Union to negotiate a change to the Sheriff's interpretation supports the conclusion that the grievance must be denied.

DISCUSSION:

This is not a simple case. Both parties have asserted that the contract language is clear and unambiguous, that past practice supports their respective interpretation and that bargaining history indicates that neither side proposed changes to the status quo.

A review of the collective bargaining agreement reveals that there is no language as to the rate of pay an employee receives when they post for a vacancy. The only mention of a promotion or transfer appears in Article 3, Management Rights, Section B, but the contract provides no definition of these terms. The contract does not mention demotion or provide a definition for it. The only mention of rate of pay for a vacant position occurs in Article 16, Section 8 which provides that if the Sheriff assigns a full-time employe to a vacant position, "his/her rate of pay shall be increased commensurate with the above." This is very ambiguous as "the above" does not contain anything about how an employe's rate of pay is increased, decreased or anything else. The only provision in the contract that has rates of pay is Exhibit "A" referenced in Article 4.

Exhibit "A" contains a "Start" rate, an "After 1 year" rate and an "After 3 years" rate for four categories, one category has more than one classification, i.e. Matron, Secretary/Computer Operator and Receptionist. Article 8, Section 1 refers to the classifications of Secretary, Receptionist and Computer Operator having an option to work four (4) ten (10) hour days per week. Exhibit "A" has a "Start" rate but it again is not defined. It could mean, as espoused by the County, that it is the date when the person starts in that classification or it could mean, as espoused by the Union, that the rate is calculated from when an employee initially starts with the County and not in that class, and the Union insists that the schedule is seniority based and the County claims just the opposite. Exhibit "A" by itself could be interpreted either way or perhaps another way, but it is not clear and unambiguous such that by reviewing it, someone could determine the pay of a Matron with four years of County service who posts for a Dispatch/Jailer position and is awarded the position.

A review of past incidents reveal the following:

In November, 1988, Bernie Olejniczak posted from a Dispatch/Jailer to a Road Deputy and was paid at the three year rate rather than the start rate for the Road Deputy classification. In May, 1990, Gary Hahn went from Patrol Sergeant to Investigator and was paid at the start rate of Investigator rather than the three year rate. Hahn's hourly rate actually increased by \$.04 per hour. In April, 1991, Dave Kaminski went from Dispatch/Jailer to Road Deputy and was paid at the three year rate rather than the start rate for the Road Deputy classification. The County justifies its actions with respect to Olejniczak and Kaminski on the basis that under the prior contracts, the Dispatcher/Jailers and Road Deputies were paid the same, that is, they were in the same wage schedule. However, Road Deputy and Dispatcher/Jailer are separate classifications. Although they were in the same wage schedule, years of seniority with the County controlled placement on the wage schedule rather than years of experience in the classification. The Hahn situation may have been an anomaly or error or it may have been something else, and that is, if an employee posts to a higher paying classification with greater duties and responsibilities requiring a higher degree of skill, the person would go to the wage step in the schedule that provides an increase in pay. It may also mean that the County's interpretation is correct but there was no evidence that any employee who posted for a different classification suffered a pay loss. On an involuntary transfer under Article 16, Section 8, it speaks about a pay increase and the County's position in the instant case seems inconsistent with this language. A binding past practice must be unequivocal, clearly understood and acted upon for a reasonably long enough period and accepted by both parties. Inasmuch as both parties agree that when the Road Deputy and Dispatch/Jailer classifications were in the same wage schedule, the rate paid was based on overall seniority and not classification seniority, this was accepted as the past practice.

In the 1992-93 contract, a wage increase of \$.20 additional was negotiated for the Road Deputy over the Dispatch/Jailer classification and the classes were now in different wage schedules. In the negotiations for their contract, there was no discussion or agreement as to what pay rate applied when a Dispatcher/Jailer became a Road Deputy by a posting. In short, the

negotiating history is silent on this issue as it never came up. Thus, negotiating history does not assist in determining the meaning of Exhibit "A." It also must be concluded that past practice was not changed in negotiations. The only factor is the past practice when both classes were in the same wage schedule. That practice established that movement from one class to the other resulted in the use of County seniority as opposed to class seniority for wage purposes. The issue is did this past practice change when the parties negotiated the \$.20 differential? The undersigned concludes that it did not in light of a failure to discuss it in negotiations. It is therefore more consistent in the instant case that the grievant be granted the wage based on County seniority as opposed to class seniority when she posted for the Road Deputy position and she should have been paid at the "three year" rate rather than the "Start" rate.

Alternatively, assuming that the practice is as theorized above that an employe who posts to a classification with a higher wage schedule moves to a step that results in an increase in pay, the result here would be the same. This further supports the conclusion reached above and is completely consistent with the Hahn, Olejniczak and Kaminski cases.

Based on the above and foregoing, the record as a whole, and the arguments of the parties, the undersigned issues the following

AWARD

1. The County violated the parties' collective bargaining agreement by placing the grievant at the "Start" rate when she moved from Dispatcher/ Jailer to Road Deputy.
2. The County shall immediately place the grievant at the "three year" rate and make her whole for all lost pay and benefits from the date of her movement which was on or about August 26, 1994.
3. The undersigned will retain jurisdiction for a period of thirty (30) days from the date hereof solely for the purposes of resolving any disputes with respect to the remedy herein.

Dated at Madison, Wisconsin, this 20th day of April, 1995.

By Lionel L. Crowley /s/
Lionel L. Crowley, Arbitrator