

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

SUPERIOR SCHOOL DISTRICT EMPLOYEES
LOCAL #1397, AFSCME, AFL-CIO

and

SCHOOL DISTRICT OF SUPERIOR

Case 108
No. 50385
MA-8237

Appearances:

Mr. James E. Mattson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 1701 East Seventh Street, Superior, WI 54880, on behalf of Superior School District Employees Local #1397, AFSCME, AFL-CIO.

Mr. Kenneth A. Knudson, Hendricks, Knudson & Gee, S.C., Attorneys at Law, 312 Board of Trade Building, Superior, WI 54880, on behalf of School District of Superior.

ARBITRATION AWARD

The Superior School District Employees Local #1397, AFSCME, AFL-CIO (hereinafter Union) and the School District of Superior (hereinafter Employer) have been parties to a collective bargaining agreement at all times relevant to this matter. Said agreement provides for the final and binding arbitration of unresolved disputes by an arbitrator appointed by the Wisconsin Employment Relations Commission (hereinafter Commission) from its staff. On January 18, 1994, the Union filed with the Commission a request to initiate grievance arbitration in this matter. The Employer concurred in said request. On February 22, 1994, the Commission appointed James W. Engmann, a member of its staff, as the impartial arbitrator in this matter. A hearing was held on May 18, 1994, in Superior, Wisconsin, at which time the parties were afforded the opportunity to present evidence and to make arguments as they wished. The hearing was not transcribed, and the parties filed briefs and reply briefs, the last of which was received February 6, 1995. Full consideration has been given the evidence and arguments of the parties in reaching this decision.

STATEMENT OF THE FACTS

The Secretary for the Director of the Food Service Department retired. She was classified as a Class 3 Secretary who worked 52 weeks a year. In its posting, the Employer upgraded the position to a Class 1 Secretary and stated the work year for the position was 44 weeks.

Collette Aldolfson (hereinafter Grievant), a Class 1 Secretary, bid on the position and received the job.

The Union grieved the matter. Said grievance was not resolved by the parties' grievance procedure and is properly before this arbitrator.

PERTINENT CONTRACT LANGUAGE

Article 6 - Salary Schedule - Paydays - Guaranteed Hours of Work
Shift Differential Pay - Overtime Pay

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Section 2. Work day - Work Week:

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B. The work day and work week for Secretaries 1-3 and Accounts Clerk 1 and 2 shall be as follows:

1. During the time school is in session and all inservice days as set forth in the School Board calendar, Secretaries and Account Clerks will work eight (8) hours each day Monday through Friday for a total of forty (40) hours each week.

a. Shifts will begin no earlier than 7:00 a.m. and shall end no later than 5:00 p.m.

Lunch periods may vary from one-half (1/2) hour to one (1) hour in the various schools or the office of the Board of Education.

2. During all school year vacation periods and summer vacation as set forth in the school calendar; 9:00 a.m. to 12:00 noon and from 1:00 p.m. to 4:00 p.m. Monday through Friday or a total of thirty (30) hours each week. Class 3 Secretary at the Lincoln School will work as per the job description

for that position.

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C. Work Year for Class 3 Secretaries Shall Be As Follows:

1. All days students are scheduled for attendance;
2. Class 3 Secretaries begin work as needed by the school administration;
3. Five work days before opening of school term;
4. Five work days after end of school term;
5. Two inservice days and additional days as needed;
6. The hours of work should be the same as Section 2 (B) above.

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Section 3. Overtime Pay. For the purpose of computing overtime pay for all non-instructional employees the following shall apply:

...

- C. For Accounts Clerk 1 and 2 and Secretary 1 and 2, their salary shall be divided by 1948 hours.

...

Section 4. The work day, work week and monthly and annual schedule of hours, and salaries contained above herein shall be considered to be a guarantee and employees shall be paid accordingly.

- A. For all classifications recognized in Article 2, except

Bus Drivers (which are covered under Section 2F of this Article), the work day, work week, monthly and annual schedule of hours (as referred to in Section 3 of this Article or elsewhere) and salary contained herein shall be considered to be a guarantee and employees shall be paid accordingly; provided, however, that in the event of a school closing due to a labor dispute between the District and some or all of its teachers or the teachers' representative, the Board may reschedule work to different hours or days, but if some or all such rescheduled work constitutes overtime within the meaning of the Article, then such overtime shall be compensated at the overtime rate; in no event, however, shall any employee's normal total annual amount of work hours be reduced on account of such a teacher-labor dispute.

- B. The guarantee contained in this Section shall cease to be in effect for any position which is terminated by the Board action.

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Section 12. Secretarial Classifications

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Secretary 1 - Performs highly responsible, varied secretarial and general office work involving complex problems and situations; does related work as required.

Distinguishing Features of the Class:

1. Specialized secretarial knowledge.
2. Office organizational experience.
3. Supervision of clerical subordinates.
4. Independent performance of duties.
5. Exercise of independent judgment.
6. Independent definition of routine.
7. Primary allocation factor is the relative difficulty and responsibility of secretarial and clerical work.

. . .

Secretary 3 - Performs responsible, varied secretarial and general office work; does related work as required.

Distinguishing Features of Class:

1. Performs clerical tasks following well established procedures.

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Article 22 - Management Rights

Section 1. The Board, on its own behalf, and on behalf of the electors of the district, hereby retains and reserves unto itself, without limitations, all powers, rights, authority, duties, and responsibilities conferred upon and vested in it by the laws and the Constitution of the State of Wisconsin, and the United States, included, but without limiting the generality of the foregoing, the right:

- A. To the executive management and administrative control of the total school system and its properties and facilities, and the assigned school activities of the employees;
- B. To hire all employees;
- C. To establish job specifications for their employees, the reasonableness of which shall be subject to arbitration.

Section 2. The exercise of the foregoing powers, rights, authority, duties and responsibilities by the Board, the adoption of policies, rules, regulations and practices in furtherance thereof, and the use of judgement and discretion in connection therewith shall be limited only by the specific and express terms of this Agreement, and then only to the extent such specific and express terms hereof are in conformance with the Constitution and laws of the State of Wisconsin, and the Constitution and laws of the United States.

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ISSUES

The parties stipulated that the Arbitrator would frame the issue in the Award.

The Union would frame the issue as follows:

Did the Employer violate the Collective Bargaining Agreement by unilaterally changing the work hours and work year of the Grievant's classification? Likewise, did this action cause the loss of Class 1 benefits without the Employer ever bargaining such changes with the Union?

And if so, the remedy is for the Employer to either post this position as a Class 3 Secretary or give this position/classification the hours and work year of a Class 1 Secretary.

The Employer would frame the issue as follows:

Did the Employer violate the Collective Bargaining Agreement by upgrading a secretarial classification from a Class 3 to a Class 1 in order to reflect the responsibilities of the position?

I frame the issue as follows:

1. Did the Employer violate the collective bargaining agreement by posting the position of Secretary for the Director of the Food Service Department as a Class 1 Secretary with 44 week work year?
2. If so, what is the appropriate remedy?

POSITIONS OF THE PARTIES

On brief, the Union argues that the actions of the Employer in this case are a direct

violation of the terms of the collective bargaining agreement; that what the Employer did was to make a unilateral change in the work place by changing the hours that a Class 1 Secretary was to work; that no discussions or negotiations occurred between the Union and the District before the change in hours for this Class 1 Secretary were made; that the contract contains very specific language as to the hours that a Class 1 Secretary is guaranteed; that the Class 1 Secretary has a full-time schedule guarantee; that the Employer has inflicted economic injury upon union represented employes by taking this unilateral action; that Class 1 Secretaries work full-time hours and receive full benefits; that the reduction of this Class 1 Secretary position hours means a loss in the economic security which has always been associated with Class 1 Secretary positions; that what on the surface appears to be an economic gain to union employes by creating a new Class 1 Secretary position is, in fact, an economic loss; and that the Arbitrator should sustain the Grievance and direct the Employer to either re-post the position as a Class 3 Secretary or re-post the position as a Class 1 Secretary with the appropriate full-time hours and with the contractual guaranteed benefits.

In its brief, the Employer argues that the School District did not make a unilateral change in the hours which the Secretary for the Director of Food Services, now a Class 1 Secretary, is required to work; that as clearly established in the posting, no violation of the collective bargaining agreement is shown; that Article 6, Section 2, Subsection B establishes the work day and work week for all three of the secretarial classifications; that the guarantee of hours is the same for all three classifications of secretaries; that to argue that this classification changes the work hours pursuant to the above section holds no basis upon the plain reading of the contract; that the guarantee of work day and work week is the same for all three secretarial classifications; that the Union is attempting to establish that a Class 1 Secretary is automatically guaranteed a full-time schedule; that the Employer is unable to grasp how such an argument can even be attempted when Subsection B applies to all three secretarial classifications; that Article 6, Section 3, Subsection C, only discusses overtime pay and its computation; that Subsection C contains the number with which a secretary's salary will be divided to determine an hourly rate for the purposes of computing overtime pay; that nowhere in the collective bargaining agreement does it specifically state that a Class 1 Secretary is entitled, as a contractual right, to a full-time 52 week schedule; that the classification of a particular secretary is not determined by the total number of hours worked in any given year; that it is, however, determined by the duties and responsibilities of a given job; that this heightening of responsibilities and the recognition of the same mandates that a Class 1 Secretary should receive greater compensation than a Class 3 Secretary, as seen by Addendum A of the collective bargaining agreement; that the School District realized the inequality of paying an employe a Class 3 Secretary wage rate when, in reality, the duties, responsibilities and level of expertise required to adequately perform as the Secretary to the Director of Food Services were defined as Class 1 characteristics; that the School District exercised its management rights to establish job specification and duties where it determines a need for certain skills; that it must be a management right to determine the time necessary for an employe to do the job; that it would be bad management to have an employe sitting without job duties and a breach of the School District's public mission; that, in a sense, the School District terminated the Class 3 Secretary

position that existed prior to the 1994-95 contract year, created a Class 1 Secretary position in its place, and set the duration of the employee's year; that the Employer's action is fully in compliance with the terms and conditions of the agreement and with common sense management principals; and that, accordingly, the grievance should be denied.

On reply brief, the Union argues that the Employer, without regard to the terms of the collective bargaining agreement, unilaterally and arbitrarily changed the hours of the Union represented position of Class 1 Secretary; that the work hours of a Class 1 Secretary are 52 weeks a year, not a lesser amount, such as 44 weeks a year; that this has always been the case for the hours worked by Class 1 Secretaries in this bargaining unit; that the Employer demands the right to exercise its management rights in an unlimited fashion; that, however, such unrestricted use of management rights would certainly destroy a fundamental protection of Union represented employees' rights, the preservation of basic economic security; that if the Employer's position is upheld, there would be an economic loss to all Class 1 Secretaries; that a fundamental component of the collective bargaining agreement is to insure employees basic protection of hours of work and economic benefits; and that the proper place to make changes of this nature are across the bargaining table.

DISCUSSION

Let me clearly state how I interpret parts of this collective bargaining agreement.

Article 6 is captioned "Salary Schedule - Paydays - Guaranteed Hours of Work (-) Shift Differential Pay - Overtime Pay." Section 2 is captioned "Work Day - Work Week."

One reading of Subsection B is that Secretaries in Class 1, 2 and 3 work eight hours per day Monday through Fridays for a total of 40 hours per week when school is in session, including inservice days, and six hours per day or 30 hours per week during school year vacation periods and summer vacation, for a total of 52 weeks a year.

Another reading of Subsection B is that Secretaries in Class 1, 2 and 3 work eight hours per day Monday through Friday for a total of 40 hours per week when school is in session, including inservice days, and six hours per day or 30 hours per week during school year vacation periods and summer vacation when they are scheduled to work; in other words, that Section B is a work day and work week guarantee, not a work year guarantee.

This second reading is supported by a reading of the caption Subsection C, which immediately follows: "Work Year for Class 3 Secretaries Shall Be As Follows." This makes it clear that Subsection B is not a guarantee of the work year for Class 3 Secretaries. This certainly suggests that Subsection B is not a guarantee of the work year for Class 1 Secretaries.

The Union also points to Section 3, Paragraph C, noting that in determining overtime for Secretary Class 1 and 2, their salary shall be divided by 1948 hours which is a full work year, according to the Union. But the Employer argues that this section, captioned "Overtime Pay," is for the purpose of computing overtime pay and does not guarantee any specific work year.

I agree that on its face, this Section does not guarantee that Secretary Class 1 work the full year. And if this was all there was, I would find that there is no guarantee of a 52 week work year and the grievance would be denied. 1/

The Union also points to Section 4 in support of its position. Section 4 reads that the work day, work week, monthly and annual schedule of hours and salaries shall be considered to be a guarantee. But, again, on its face, the language does state that the annual schedule of hours for Secretary Class 1 is 52 weeks. Thus, standing alone, this does not change the result of this case.

Then, in Paragraph A, the agreement once again says that the work day, work week, monthly and annual schedule of hours and salaries shall be considered to be a guarantee. This appears to be redundant, except Paragraph A adds several things. Specifically, it includes all classifications recognized in Article 2, except Bus Drivers. This includes Secretary Class 1.

Then, and this is the key point, Paragraph A states that the "annual schedule of hours (as referred to in Section 3 of this Article or elsewhere) and salary contained herein shall be considered a guarantee and employees shall be paid accordingly."

Section 3, as noted above, is the Overtime Pay Section which states that, for the purpose of computing overtime pay for Secretaries in Class 1, their salary shall be divided by 1948 hours. But Section 4, Paragraph A, gives Section 3 an additional meaning; instead of being only for the computation of overtime pay, Section 3 is the determination of "annual schedule of hours . . . which shall be considered to be a guarantee . . ." under Section 4.

In other words, while the figure of 1948 hours referred to in Section 3 for Secretary 1 is used for the determination of overtime under Section 3, it becomes the annual schedule of hours guaranteed under Section 4.

Thus I find that a unilateral change in the annual schedule of hours for Secretary Class 1 by the Employer is a violation of the collective bargaining agreement, specifically Article 6, Section 4. Any management right the Employer had to determine the work year in this matter was modified by the collective bargaining agreement to which it is a signatory.

The Employer also alleges that the named Grievant desired the job as posted. That is of no

1/ I am not making any determination as to whether a past practice exists regarding the work year for the Secretary Class 1 as this case can be resolved without making that determination.

importance here. The collective bargaining agreement is between the Employer and the Union and it is within the Union's right, even obligation, to enforce the agreement, irrespective of the position of any one of its members.

The relief the Union seeks is for this Award to "direct the Employer to follow the terms of the Collective Bargaining Agreement and either re-post the position as a Class 3 Secretary or re-post this position as a Class 1 Secretary with the appropriate full-time hours and benefits."

As to the first aspect of the Union's requested relief, I assume the Employer will follow the collective bargaining agreement, and that my finding a violation will reinforce the Employer's resolve to do so. Therefore, I respectfully decline to issue that form of relief.

As to the second aspect of the Union's requested relief, this is not the form of the relief I would have necessarily ordered in this matter but, as stated by the Union, the relief requested is proper and fitting and I will so order.

Therefore, for the reasons stated above, the Arbitrator issues the following:

AWARD

1. That the Employer did violate the collective bargaining agreement by posting the position of Secretary for the Director of the Food Service Department as a Class 1 Secretary with a 44 week work year.
2. That the appropriate remedy is that the Employer re-post the position either as a Class 3 Secretary or as a Class 1 Secretary with the appropriate full-time hours and benefits.

Dated at Madison, Wisconsin, this 29th day of August, 1995.

By James W. Engmann /s/
James W. Engmann, Arbitrator