

c: Judy H.
Cathy Schick
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IN THE MATTER OF ARBITRATION)
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BETWEEN)
)
THE OREGON PUBLIC EMPLOYEES UNION,)
LOCAL 503,)
)
Union,)
)
and)
)
STATE OF OREGON)
ADULT AND FAMILY SERVICES)
DIVISION,)
)
Employer.)

ARBITRATOR'S OPINION
AND AWARD
GRIEVANCE OF
JOANNE L. ANDERSON

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GENERAL COUNSEL
DEPT. OF JUSTICE
SALEM, OREGON

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I. STATEMENT OF THE ISSUES

The parties agreed on a statement of the issues which read:

Whether the Employer violated Article 84 of the 1993-95 Collective Bargaining Agreement when it denied the Grievant work out-of-class pay?

If so, what is the appropriate remedy?

II. RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 84 - WORK OUT-OF-CLASSIFICATION

Section 1. When an employee is assigned for a limited period to perform the duties of a position at a higher level classification for more than ten (10) consecutive calendar days, the employee shall be paid at what would be the next higher salary step or the first step of the higher salary range, whichever is greater.

When assignments are made to work out-of-classification for more than ten (10) consecutive calendar days, the employee shall be compensated for all hours worked beginning from the first day of the assignment for the full period of the assignment.

Section 2. An employee performing duties out-of-classification for training or developmental purposes shall be informed in writing of the purpose and length of the assignment during which there shall be no extra pay for the work. A copy of the notice shall be placed in the employee's file.

Section 3. An employee who is underfilling a position shall be informed in writing that he/she is an underfill, the reasons for the underfill and the requirements necessary for the employee to qualify for reclassification to the allocated level. Upon gaining regular status and meeting the requirements for the

allocated level of the position, the employee shall be reclassified.

Section 4. Assignments of work out-of-classification shall not be made in a manner which will subvert or circumvent the administration of this Article.

III. STATEMENT OF THE FACTS

The Union and the Employer are parties to a three-year Collective Bargaining Agreement dated 1993 through 1995. Un. Ex. 1. One of the state agencies covered by this contract is the Adult and Family Services Division (AFS), which has branch offices located throughout the state of Oregon. AFS administers a wide variety of public assistance programs to the citizens of Oregon. Program services are delivered by employees who are classified in a variety of jobs under the state classification system.

Joanne Anderson was first employed by AFS in 1992. She was classified as Office Specialist 1 when she was hired and has been continuously so classified since then. The classification specifications for the job provides a general description of the position as follows:

GENERAL DESCRIPTION OF CLASS

The OFFICE SPECIALIST 1 performs secretarial, general office, record processing, or production typing work in support of agency programs or operations to relieve a superior of clerical details. The work performed requires a general knowledge of agency operations.

Er. Ex. 37.

The classification description distinguishes the Office Specialist 1 from the Office Specialist 2 with the following statement:

. . . This class is distinguished from the Office Specialist 2 by the absence of responsibility for administrative/technical assignments involving different and unrelated processes and methods; and requiring the exercise of independent judgment in analyzing situations and making decisions in accordance with laws, rules, and regulations.

Er. Ex. 37.

The position description gives the working title for Anderson's job as one of "DATA ENTRY CLERK." Er. Ex. 5. The purpose of the position is described to be:

THIS POSITION IS A CLERICAL SUPPORT POSITION. ONE OF THE PRIMARY PURPOSES IS TO ASSIST IN THE INTAKE CHECK-IN PROCESS AND TERMINAL ENTRY PENDING ALL REQUIRED ADC INFORMATION. PROVIDE CASE MANAGERS WITH JOB SEARCH TRACKING INFORMATION AND OTHER GENERAL PC SUPPORT FOR BRANCH DATA TRACKING.

In a memo dated June 6, 1994, Anderson requested that a desk audit be done of her work to see whether or not her position should be reclassified. After initially denying the request for a desk audit, the Employer did grant the desk audit. The task was assigned to Personnel Officer, Judy Hoke. Hoke conducted the audit in July of 1994. In conducting the audit Hoke gathered written information from Anderson and her managers, interviewed personnel connected with the position and reviewed written materials.

Hoke prepared an evaluation report dated September 8, 1994. In the evaluation report Hoke wrote in relevant part as follows:

This position exists within the Clackamas Branch Office, District 15, of the Adult and Family Services (AFS) Division of the Department of Human Resources. The Clackamas Branch provides benefits and services to applicants and clients of the agency within Clackamas County. AFS administers Food Stamps (FS), Aid to Dependent Children (ADC), medicaid, as well as other federal or state programs for low income people. The agency's mission is to assist applicants and clients to be as self-sufficient as possible. The work of this position is supervised by one of four Operations Managers (one currently vacant), all of which are classified as Principal Executive/Manager Bs. Used in the audit were an updated position description, an organizational chart, a Position Inventory Questionnaire, and an on-site review held on July 18, 1994.

. . .

COMPARISON AND ANALYSIS

. . .

The OS1 does a wide variety of clerical and secretarial tasks following established work methods and procedures. This is also characteristic of the OS2 class as well but with the OS2 class there is the addition of administrative and technical assignments as well as work assignments which involve different and unrelated processes and methods and requires analyzing situations and making decisions on selecting the most appropriate course of action within established procedures. Distinctions between these classes are relative and some overlap is to be expected. Incumbents in both the OS1 and OS2 classes are expected to perform their assignments at a competency level that precludes close oversight and review by the supervisor.

. . .

The assistance she gives to others with computer related problems grows out of her own experience and duties with CMS and the personal computer and is once again consistent with the OS1 classification. The incumbent has demonstrated initiative in this area and I recognize her achievements with both computer software and hardware. I also find that the work performed by the incumbent requires a more general knowledge of agency operations found at the OS1 level than the knowledge specific to at least one agency program or operation that characterizes the OS2 class.

SUMMARY

In summary, I find that the general level of work of this position and how that work is done is indicative of the Office Specialist 1. Therefore, I find the incumbent properly classified as an Office Specialist 1.

Er. Ex. 9.

The results of Hoke's work led to a rejection of Anderson's request for a reclassification.

On November 28, 1994, Anderson wrote to her manager requesting:

I would like to request OUT OF CLASS PAY from August 1, 1994 through the present. This is for duties that have been performed at a higher level classification for more than 10 consecutive calendar days. Per Article 84 of the current Collective Bargaining Agreement.

Er. Ex. 11.

The request for out-of-classification pay was followed by a grievance dated December 6, 1994. In the grievance Anderson claimed that Article 84 of the Collective Bargaining Agreement had been violated. Anderson requested out-of-classification pay and to

be made whole for all wages lost. Anderson alleged in the grievance that based on her job duties since September 1993 she was doing work considered at an Administrative Specialist 1 level and Human Resources 1 and at times, Anderson claimed she was working at the Administrative Specialist 2 level.

Manager Bob Hand wrote to Anderson in a memo dated December 6, 1994, giving her the following instruction:

Jody, the desk audit completed in September indicated your position and duties were correctly classified as an Office Specialist 1. Therefore there is no justification for approving your pay out of class request.

The management team appreciates your PC interest, and knowledge. We want to support you in continuing some of these projects you like doing. However, if you feel some of these activities warrant a higher classification then we will discontinue them and have you focus entirely on your assigned position description duties.

Er. Ex. 12; emphasis added.

On December 19, 1994, Hand denied the out-of-class pay grievance. Er. Ex. 14. The Union appealed the case to Step 2 where it was again denied by the Employer. The grievance was placed in abeyance while Anderson's situation was reviewed. Subsequently, the grievance was removed from abeyance and advanced to arbitration.

There was some confusion in scheduling this case to arbitration due to a second grievance filed by Anderson. On March 17, 1995, Anderson filed a second grievance alleging the violation of Article 81 of the 1993-95 contract seeking a reclassification of

her position. Er. Ex. 19. This grievance was also denied by the Employer. The reclassification grievance was later dropped by the Union. Er. Ex. 24.

The out-of-class pay grievance was advanced to arbitration. A hearing was held at which time both parties were accorded the full and complete opportunity to present evidence and argument in support of their respective positions. Two separate arbitration sessions were necessary in order to present all of the evidence on this matter. Post-hearing briefs were timely filed. The grievance is now properly before the Arbitrator for decision.

IV. POSITIONS OF THE PARTIES

A. The Oregon Public Employees Union

The Union began its argument by stating there are three basic questions for the Arbitrator to answer. In the post-hearing brief, the Union framed the questions as follows:

1. What is the standard that the arbitrator should apply in determining whether or not grievant was working out-of-class?
2. Applying that standard, was grievant working out-of-class?
3. If so, for what period was grievant entitled to out-of-class pay?

The outcome of this grievance is controlled by Article 84 of the Collective Bargaining Agreement. A number of arbitrators have previously considered the contractual requirement when the worker claims to have been assigned "the duties of a position at a

higher level classification." In OPEU vs. the State of Oregon, (1991), arbitrator Janet L. Gaunt endorsed the "Core Element Rule" for examining claims for out-of-class pay. Un. Ex. 39. Under the core element rule, the Arbitrator must look to the "key or core elements of the jobs involved which distinguish one job from the other(s) and justify the wage rate differentials between (among) them." If the worker performed work that is part of the core elements of a higher paid job, the Union submits the worker is entitled to pay for work out-of-class. The Arbitrator should apply the core element test to the case of Grievant Anderson.

The Union next noted that much of the Employer's evidence addressed the issue of whether or not Grievant should have been classified as an Office Specialist 2 rather than an Office Specialist 1. The testimony of Judy Hoke and Paul Koch centered on the issue of whether Grievant was properly classified as an Office Specialist 1. The witnesses incorrectly concluded out-of-class pay was not due based on the fact Anderson was properly classified. According to the Union, the witnesses are legally wrong to suggest that if a person should not be classified in the higher level classification, the person is necessarily not entitled to out-of-class pay. The issue in the case before this Arbitrator is not whether the Grievant was properly classified, but involved the question of whether she was performing work in the higher classification.

The Union takes the position that Grievant worked out-of-class so she is entitled to the pay for the higher rated job.

Grievant was classified as an Office Specialist 1 when she was hired and has been continuously so classified since her date of employment. Grievant's initial position description did not call for a wide variety of tasks and she performed those tasks consistent with the published job description.

After a year or so of employment, the Employer began to assign additional duties to Anderson without changing the position description. The new tasks involved among other things, to design systems, forms and tools for management analysis for use throughout the branch. In addition, Grievant was assigned to assist coworkers on how to use their computers, to develop more efficient ways of using their computers and to address computer troubles as they arose within the branch. The diversity of tasks that were now being assigned to Grievant are at the core of the difference between the Office Specialist 1 and the Office Specialist 2 position. In addition, the system and form creation responsibilities are at the core of the Administrative Specialist 1 classification. Likewise, the computer assistance responsibilities performed by Anderson are at the core of the User Support Analyst position.

The job of User Support Analyst is to provide "training, technical support, diagnostic help, and operating instructions to users of microcomputer, minicomputer and/or mainframe systems to enable them to use their system(s) more effectively." Un. Ex. 25. The desk audit of July 1994 showed that Grievant was spending 20% of her time providing general personal computer data management as

well as assisting her coworkers and managers with computer related problems. In addition, the desk audit revealed Grievant was spending another 20% of her time doing special projects, some of which fall into the category of helping to design program-user applications and others of which more closely resemble the duties of the Administrative Specialist 1 classification. The desk audit reported that Grievant was sometimes involved in developing a spreadsheet, a graph or a flow chart, all of which may be used to assist workers to keep track of their clients.

The tasks to which Grievant testified she was performing and which were confirmed in the desk audit show Anderson was working out-of-class in several higher paid classifications. The higher rated classifications in which Grievant was performing the core elements of the job were Office Specialist 2, User Support Analyst and Administrative Specialist 1. The Union addressed the tasks Grievant was allegedly performing in the post-hearing brief as follows:

Office Specialist 2.

(1) Created forms, spreadsheets, and macros to help co-workers more efficiently do their work. Beginning in March 1993 when she set up a hearing management system for Joe Marlia; in late 1993-early 1994 when she created a tracking system for UN cases for Millie Black at her supervisor's direction; in 1993 when she created a work search tracking sheet at the request of Mary Lynn Pritchett, operations manager; in September 1994 when Will Rheinhart, operations manager, asked her to create a set of charts showing data on intakes in a variety of ways useful for management analysis; and from April 1994 through December 1995 when she assisted Jana

Longstreet to use merge systems to expedite her hearings work.

(2) Placed program data (including performance measure data supplied by the state and caseload information developed locally) in graphic form to assist in management decision-making at the request of Will Rheinhart; this was done from May 1994 though November 1995.

(3) Research tasks. In February 1994, grievant was assigned by her operations manager to gather information available to her concerning young parents in the YPOP program; this was a special project without guidance; the task required one month. In August 1995, for a month, grievant was assigned another special project by Will Rheinhart; it involved examination of a number of data bases for a research project administered by the Employment Division.

User Support Analyst.

(1) Served as the sole provider of on-site assistance with computer and hardware and software problems to co-workers in a rather large office; taught co-workers the nuts and bolts of computer programs. Beginning February 1993 and recognized to be occurring by grievant's supervisor; Will Rheinhart, operations manager, actually assigned grievant to assist all employees in the office with learning the windows operating system in 1995 and referred other employees to her earlier. This went on far longer than 10 days. The amount of this work slowly declined from 15% of grievant's work in 1993 to 5% in 1996.

(2) Created forms, spreadsheets, and macros to help co-workers more efficiently do their work. Beginning in March 1993 when she set up a hearing management system for Joe Marlia; in late 1993-early 1994 when she created a tracking system for UN cases for Millie Black at her supervisor's direction; in 1993 when she created a work search tracking sheet at the request of Mary Lynn Pritchett, operations manager; in September 1994 when Will Rheinhart, operations manager, asked her to create a set of charts showing data on intakes in a variety of ways useful for

management analysis; and from April 1994 through December 1995 when she assisted Jana Longstreet to use merge systems to expedite her hearings work.

Administrative Specialist 1.

(1) Created forms, spreadsheets, and macros to help co-workers more efficiently do their work. Beginning in March 1993 when she set up a hearing management system for Joe Marlia; in late 1993-early 1994 when she created a tracking system for UN cases for Millie Black at her supervisor's direction; in 1993 when she created a work search tracking sheet at the request of Mary Lynn Pritchett, operations manager; in September 1994 when Will Rheinhart, operations manager, asked her to create a set of charges showing data on intakes in a variety of ways useful for management analysis; and from April 1994 through December 1995 when she assisted Jana Longstreet to use merge systems to expedite her hearings work.

Brief, pp. 6, 7.

The narrow issue in this case is whether Grievant is entitled to out-of-class pay. However, the broader issue is whether this Employer may utilize persons classified in the mid-range of the clerical series in lieu of a computer specialist to support the computer infrastructure of the Employer. The Union submits the state may not use a clerical person to perform the extensive computer work accomplished by Grievant Anderson. The Union concedes that Grievant would not be appropriately classified as either a User Support Analyst 1 or an Administrative Specialist 1. Because of the mix of duties assigned to her, she is appropriately classified as a clerical worker. The Union's position is that when she takes on duties that are peculiar to the user support and administrative classification series, she is

performing the core functions of those jobs and should have been paid the 5% differential prescribed in the Collective Bargaining Agreement for out-of-class work.

Even if the Arbitrator were reluctant to find the Grievant did the core functions of these jobs, Union submits Anderson is certainly performing at the Office Specialist 2 level for the higher level is characterized in the job description as having responsibility for assignments that require "different, unrelated processes."

The Union asserts that the record established Grievant devoted some 40% of her time doing computer support, form-creation and report-preparation functions at the time the position audit was performed in the summer of 1994. After the audit was completed she was required to spend only 20-25% of her time on computer related tasks. This continued until at least November 1995 when the report preparation functions were removed and the computer support functions had diminished to 5% of her work. The evidence shows computer support work continues at this diminished level even to the date of the arbitration hearing. The Collective Bargaining Agreement conditions out-of-class pay on performance of work at a higher level by assignment of a supervisor for more than ten days. The Union submits the evidence did prove Grievant performed higher rated work that persisted for than ten days.

Regarding the Employer's claim that the work was not assigned and Grievant was performing any higher rated work as a volunteer, the Union maintains nothing in the contract makes a

worker a volunteer because they like their work. In the instant case, the Grievant's operation managers assigned her to design forms and prepare reports for the use of staff. Manager Rheinart directed employees with computer problems to go to Grievant for help and he asked her to orient employees on new computer systems. Rheinart was well aware of Grievant's ongoing work with computers in the office. Therefore, the Arbitrator should hold that the higher rated work Grievant was performing was assigned to her by management within the meaning of the Agreement.

The Arbitrator should also reject the Employer's claim the work Grievant was performing was not work at a higher level. The work Grievant performed at the higher level did not occur at isolated points of time during the workday. This case involves a large office that relied exclusively on Grievant for computer support and ad hoc training. The record reflects that Grievant's work required knowledge of software and the beginning steps of programming. There is nothing in the classification specification for an Office Specialist 1 that suggests the requirement to apply that level of knowledge. Thus, the Arbitrator should conclude the work performed by Grievant was indeed at a higher level than the class to which her position is allocated.

In sum, the Arbitrator should hold that Grievant Anderson satisfied the tests under Article 84 for out-of-class pay.

The contract requires that Grievant be paid 5% above her regular rate for the entire period commencing in 1993 when the new duties were first assigned. However, it was not until June 1994

that Grievant called this problem to the attention of management. Hence, the Union submits that back pay should be ordered from June 1, 1994, through the date of the Award.

The Arbitrator should reject any Employer attempts to reduce the back pay award to 30 days prior to the filing of the grievance. Further, the Arbitrator should decline the Employer's invitation to cut off its liability to compensate Grievant for work out-of-class in March 1996 because Grievant took on even more duties outside her classification at that time. While she performed additional duties she was expected to keep doing the work she had been performing prior to her assignment to do HRS work. Finally, the Arbitrator should reject the Employer's claim a pay reduction is due because there was a delay in processing the grievance. Both parties hold an equal responsibility to see that grievances are timely processed through the grievance procedure to arbitration. It would be unfair to place any blame for delay on the Union.

Based on all the above stated arguments, the Arbitrator should sustain the grievance and award the requested relief.

B. The Employer

The Employer begins by noting that Grievant requested a desk audit by memo dated June 6, 1994. A desk audit was subsequently conducted by Judy Hoke, Personnel Officer 3, with the Adult and Family Services. Hoke has conducted hundreds of desk audits during her ten years of service as a personnel officer. Hoke performed a desk audit which included collecting information from Grievant, conducting an on-site review of Grievant's work and developing a position audit evaluation report which described the Grievant's duties and percentage of time spent performing the duties. Both the Grievant and her supervisor, Bob Hand, had the opportunity to review and comment on Hoke's position evaluation report. Hoke reviewed and analyzed all the information and concluded in her September 8, 1994, report that Grievant Anderson was working at the level of Office Specialist 1, and she was properly classified as an Office Specialist 1. Er. Ex. 9. Hoke's analysis included consideration of job classifications which the Grievant suggested might apply, such as Office Specialist 2.

Anderson did not grieve the desk audit and filed a grievance dated December 6, 1994, seeking out-of-class pay. The grievance was denied and held in abeyance at Step 2 where a second desk audit was conducted by Classification Manager, Daryl Reister who worked for the Department of Human Resources. After conducting the second desk audit, Reister concluded that Grievant was working at the level of Office Specialist 1. Er. Ex. 18. On March 10, 1995, Grievant filed a reclassification grievance. When the

reclassification grievance was scheduled for hearing in October 1995, it became clear that the parties had a different understanding of which grievance had been submitted to arbitration. The Grievant requested the work out-of-class grievance to be taken out of abeyance, and advanced this grievance to arbitration. The Employer views this grievance as an attempt by Anderson to achieve a pay raise when she was unsuccessful in getting a reclassification.

The Employer suggests that under Article 84, four conditions must be met in order to trigger the Employer's obligation to pay for work out-of-class:

- (1) The Employer must assign an employee;
- (2) for a limited period of time;
- (3) to perform the duties of a higher level classification; and
- (4) the assignment must be for more than 10 consecutive calendar days.

Brief, p. 3.

Since this is a contract case, the Union bears the burden of proving the four conditions necessary to trigger the Employer's obligation to pay the Grievant for work out-of-class.

The Employer agrees with the Union the "core element" rule applies in the instant case. The core element rule was described by arbitrator Carol Daugherty in Wilson Jones Co., 51 LA 35 (1968) to be:

- . . . (1) In all such cases the critical questions are (a) What are the key or core

elements of the jobs involved which distinguish one job from the other(s) and justify the wage differentials between (among) them agreed to by the parties, and (b) did the aggrieved employee(s) perform actual work that 'invaded' said core elements?

An employee in one job cannot properly be said to have assumed the work of another job unless the employee has been required to perform the tasks that distinguish the higher paid classification from the lower one. Alaska Department of Transportation, 78 LA 999, 1005 (Tilbury, 1982); Hanna Mining Co., 73 LA 123, 125 (Axon, 1979). The Employer submits the Union failed to prove any one of the core elements necessary to establish a contract violation.

The Grievant Has Not Performed the Core Elements
of a Higher Level Classification

The Employer takes the position that Grievant is taking existing statistical information and producing documents that reflect the information by using software applications that are consistent with the Office Specialist 1 classification. The tasks which the Union has identified as being part of a higher rated classification are not the focus of the higher level classifications which the Union has cited. The Employer reviewed and discussed the computer related duties that Grievant alleges are higher classifications and rejected those claims. The conclusion at every level of review is that the Employer has not assigned the Grievant work outside of her classification.

The Grievant's duties and responsibilities are not exactly the same now as they were when she was hired in 1992.

However, they still are within the Office Specialist 1 classification because the toolbox of the workplace has changed from electric typewriters to computers. The relative duties of clerical positions like Anderson's remain the same even though employees in those positions are using computers.

The Union asserts that Grievant's duties entail gathering statistical data and producing charts and graphs for use by management. The Employer does not dispute that it has asked Grievant if she was interested in and capable of producing such documents. A review of the Office Specialist Classification 1 specifications reveals that these are tasks that fall well within this particular job. The general duties and responsibilities performed by an Office Specialist 1 include secretarial and general office support, record processing, typing in information and assistance. The Office Specialist 1 is a secretary to a work unit or team. The fundamental duty of an Office Specialist 1 is record processing.

The Office Specialist 2 position also involves record processing but it differs because the employee must use independent judgment to select the course of action based on law, rules and policies. An Office Specialist 2 makes the final determination to process, reconstructs records and resolves problems. The Grievant was not performing at that level of responsibility but was producing information at a basic level of computer programming.

The Employer next argues the tasks Grievant has performed in order to produce the various reports involved taking statistical

data which was readily available, imputing the data into the computer system and using the existing computer software application to produce a report in the format the Grievant requests from the system. In the view of the Employer, Grievant does not exercise independent judgment as to the data itself, and what it means, nor is she required to have specialized knowledge about the programs for which she produces reports.

The Employer concedes that there is some overlap between the record processing and recording duties of the Office Specialist 1 and Office Specialist 2 that is to be expected. The distinction between the two jobs is that the Office Specialist 2 position requires the employee to exercise much more discretion in their decision making and judgment. The level of decision making and independent judgment which the Office Specialist 2 exercise is not present in the work the Grievant performs. Thus, the Arbitrator should reject the claim that Grievant was performing tasks in the Office Specialist 2 classification.

Turning to the claim the Grievant was performing the core elements of the Administrative Specialist 1 or User Support Analyst 1 classifications, the Employer avers that Grievant was not performing the core elements of those two jobs. The Administrative Specialist 1 typically develops work flow procedures within the agency or with other agencies within the state of Oregon. The Administrative Specialist 1 is responsible for coordinating administrative assignments on an agency-wide basis. All the tasks that the Grievant has performed have been limited to a branch

office of the agency. Further, the level of coordination and administrative activities performed by the Administrative Specialist 1 require job based knowledge of laws, rules, regulations and agency policies and procedures. There is no evidence Grievant has this in-depth knowledge of any one program or that Grievant was responsible for activities at this level. The purpose of Grievant's position is to provide clerical support. The Administrative Specialist is not responsible for general office support duties.

The evidence offered by the Union failed dramatically to prove Grievant was performing work as a User Support Analyst 1. The User Support Analyst 1 is a technical job which requires in-depth knowledge of computers and computer systems. The Grievant was not providing that level of assistance on a regular, ongoing basis.

The Employer Did Not Assign the Grievant to Perform Computer-Related Duties on a Regular and Consecutive Basis

Article 84 obligates an employer to compensate an employee at a higher rate of pay if the employee is assigned duties outside of the employee's classification for more than ten consecutive calendar days. This is consistent with the Employer's fundamental right to assign work. A substantial portion of the evidence offered by the Union involved cases where coworkers requested Grievant's assistance with computer related problems. To hold the Employer responsible for work which it did not assign to employees permits employees and coworkers of employees to determine

their own work assignments. If the Employer is going to be required to pay for higher rated work, management must make the decision to assign the higher level work. When Grievant volunteered to help her coworkers with computer related problems, the conditions for higher pay required under Article 84 were not established.

Should the Arbitrator Determine That the Employer Violated Article 84, any Remedy Awarded Should be Limited to the Period of Time Between November 6, 1994 and October 1995

The Employer received no notice from Grievant or the Union indicating the belief that the Grievant was working outside of her classification until the Grievant's request of November 28, 1994, and the grievance of December 6, 1994. It should be recalled that Anderson did not grieve the earlier desk audit. Article 21 limits any remedy awarded to begin 30 days prior to the filing of the grievance. This provision found in Article 21 is applicable to the filing of the work out-of-class grievance on December 6, 1994.

The Employer next argues that if the Arbitrator determines that a retroactive remedy is in order, the time line should end as of October 1995. This case was originally scheduled for hearing in October 1995, but was canceled at the request of the Union due to procedural flaws. Permitting the Union to delay the arbitration of this grievance and place the financial responsibility for the delay on the Employer is unjustified.

The Employer closed its post-hearing brief as follows:

The core elements of the grievant's job is to provide clerical support to management and the reception team in a branch office of Adult and Family Services. Simply by virtue of her own personal interest and background with computers, managers have requested the grievant to perform special projects such as producing charts, graphs and tables. However, these projects do not require the grievant to actually perform tasks which distinguish the higher paid classifications from the grievant's classification of Office Specialist 1. Assuming for the sake of argument that the grievant has performed tasks of a higher level classification, performing those tasks is not an on-going requirement of the grievant's position, nor has the grievant been assigned those tasks for a limited period of time lasting longer than ten consecutive days. Accordingly, the employer did not violate Article 84 of the collective bargaining agreement, and the employer respectfully requests that the grievance be denied.

Brief, p. 13.

IV. DISCUSSION AND FINDINGS

The issue before the Arbitrator is whether the Employer violated the Article 84--Work Out-of-Classification provision. This is not a grievance to determine whether Joanne Anderson is properly classified as an Office Specialist 1. During the processing of this grievance and in the testimony of Employer witnesses there was some treatment of Anderson's work out-of-class grievance as a reclassification grievance. While the Employer's September 1994 desk audit resulted in a conclusion Anderson was properly classified as an Office Specialist 1, the findings in the study do not necessarily answer the question of whether Anderson was performing work in a higher classification.

The position evaluation report and testimony of Hoke and other Employer witnesses provided valuable information about the work Grievant was actually performing. However, the conclusion that Grievant was properly classified as an Office Specialist 1 does not equate to a finding this Employer was in conformance with Article 84. The essence of a work out-of-classification grievance is a claim the worker is performing the core tasks of a higher rated job. In order to establish a violation of Article 84, it is not necessary for the Union to prove the employee was improperly classified.

Article 84 provides that when certain conditions are met employees working in a higher level classification are entitled to the higher salary step. The controlling language is found in Section 1 which reads:

Section 1. When an employee is assigned for a limited period to perform the duties of a position at a higher level classification for more than ten (10) consecutive calendar days, the employee shall be paid at what would be the next higher salary step or the first step of the higher salary range, whichever is greater.

When assignments are made to work out-of-classification for more than ten (10) consecutive calendar days, the employee shall be compensated for all hours worked beginning from the first day of the assignment for the full period of the assignment.

The Employer correctly argued four conditions must be met to trigger an obligation to pay for work out-of-class. In order to prove a violation of Article 84, Section 1, the Union must demonstrate the following:

- (1) The Employer must assign an employee;
- (2) for a limited period of time;
- (3) to perform the duties of a higher level classification; and
- (4) the assignment must be for more than 10 consecutive calendar days.

The first requirement is management must assign the employee to the higher level classification. The Employer has a written procedure to authorize work out-of-classification. Er. Ex. 39. The form requires the approval by four managers and the employee. No written approvals authorizing Anderson to perform higher level work were entered into evidence in the present case. However, the lack of written assignment and authorization to perform higher level work is not fatal to an Article 84 grievance.

First, the contract does not require the assignment to higher level work to be in writing. Second, Section 4 states that assignments of work out-of-classification "shall not be made in a manner which will subvert or circumvent the administration of this Article." Verbal assignments by management of work to employees in a higher classification also represent a potential violation of Article 84.

Moreover, management cannot knowingly permit an employee to assume the work of a higher classification and permit it to continue without instruction to the employee to perform tasks in their own classification. By the same token, employees who volunteer to perform the work of a higher classification, without the knowledge of management, cannot claim a violation of Article 84.

The record in this case reveals Grievant volunteered to perform some of the work at issue. In other instances, coworkers, not management, requested her help with computer related problems. Performing higher level work at the request of coworkers does not trigger a violation of Article 84. In the present case part of the disputed work Anderson claims was in a higher classification was performed voluntarily by Grievant without the knowledge of management, and some of the work was assigned by management.

A critical document in this case is the December 6, 1994, memo from Hand to Anderson. Er. Ex. 12. Manager Hand advised Grievant that if she felt she was doing higher level work "then we will discontinue them and have you focus entirely on your assigned position description duties." This letter provided clear notice to

Grievant to work within her position description. From this date on Grievant acted at her peril when she voluntarily performed work which could be categorized as higher level work.

Regarding the second test of performance of the tasks for a limited period of time, there is no disagreement that Grievant was never given a permanent assignment in a higher rated job.

The third criteria is the most important and difficult to determine. The issue under the third factor to be decided is whether the employee was actually performing work out-of-class. The "core element" rule is the appropriate test to apply in determining whether work being done by the employee was in a higher classification. The Grievant asserts she performed work at the core of three higher rated positions. The Arbitrator will review the positions separately.

User Support Analyst 1

The essence of the User Support Analyst 1 job is described in the position classification to be:

The USER SUPPORT ANALYST 1 provides training, technical support, diagnostic help, and operating instructions to users of microcomputer, minicomputer and/or mainframe systems to enable them to use their system(s) most effectively.

Un. Ex. 25.

While there is no doubt that Grievant is knowledgeable about computer systems, the User Support Analyst 1 position requires a higher level of technical knowledge and diagnostic ability than Grievant was shown to have performed. Grievant may have performed

some aspects of the User Support Analyst 1 position. However, there is no basis to conclude Grievant invaded the core elements of the higher rated job on a regular and ongoing basis. Therefore, the Arbitrator finds no basis for an Article 84 violation in the claim Grievant was assigned to perform the core elements of the User Support Analyst 1 position.

Administrative Specialist 1

The general description for an Administrative Specialist 1 reads:

The ADMINISTRATIVE SPECIALIST 1 performs and/or coordinates administrative tasks in support of an agency program or operation. The work performed is usually concentrated in a specific program or operational area, requiring in-depth knowledge of that program or operation.

Un. Ex. 24.

The essence of this job is to coordinate tasks of an agency program in a specific operational area on an agency-wide basis. The evidence offered by the Union failed to demonstrate Grievant was assigned the core elements of this position. Grievant's work was confined to a single branch where her job was to support the branch. The services actually provided by Grievant fell within her job description. Specifically, Anderson was to provide clerical support for the branch. The use of her computer skills was one of the means by which she provided clerical support to the branch.

Office Specialist 2

The Office Specialist 1 classification is the third level of a four level series. Er. Ex. 37. The primary purpose of the Office Specialist 1 job is to provide clerical support for the branch in order that services are delivered efficiently to the clients. Er. Ex. 41. The job description contemplates the Office Specialist 1 will use computers to perform the designated duties. Record processing through the use of the computer by Grievant is at the crux of this dispute.

There is a degree of overlap in the duties of the Office Specialist 1 and the Office Specialist 2. Both positions contemplate the employee will use computers to perform their designated duties. The Office Specialist 2 differs from the Office Specialist 1 by the following:

This is the fourth level of a four-level series. The OFFICE SPECIALIST 2 is distinguished from the OFFICE SPECIALIST 1 by the administrative/technical assignments which involve different and unrelated processes and methods. Work consists of a variety of duties which differ in nature and sequence because of the particular characteristics of each transaction, case, or assignment. Numerous guides, instructions, regulations, manuals, precedents, etc., are applied in carrying out assignments. Guidelines and precedents are less detailed and explicit. Judgement is required in analyzing situations and making decisions on selecting the most appropriate course of action within the established procedures.

Er. Ex. 38; emphasis added.

The record processing element of the two jobs reveals the Office Specialist 2 exercises independent judgment and makes decisions on matters not required of the Office Specialist 1.

The Union seeks to make a case for Grievant based on her computer skills. The record evidence established the computer related functions which Grievant was assigned were consistent with the specifications of an Office Specialist 1. Grievant retrieved available data, and through the use of existing software applications produced reports for the AFS branch.

The evidence revealed Grievant exercised no independent judgment on the data itself, and what it meant. In addition, Grievant did not have to make decisions concerning the data or its use. She simply produced reports at the request of her supervisors for use in the branch. The fact Grievant did high quality work does not establish she was working at the Office Specialist 2 job.

Based on all of the evidence submitted, the Arbitrator must conclude Grievant was not assigned work on a regular basis which invaded the core elements of the Office Specialist 2 classification.

Even if it could be concluded some of the work performed by Grievant was in a higher classification, the fourth factor still must be satisfied. The final test is whether the employee was "assigned" work in the "higher level classification for more than ten (10) consecutive calendar days." The record in this case is mixed concerning what specific work tasks Grievant was assigned by management which could be construed as work in a higher

classification, and those duties which she performed voluntarily or at the request of coworkers. What is clear is that Grievant was never assigned higher rated duties which invaded the core elements of any of the classifications for more than ten consecutive days.

The Arbitrator wants to make it clear for the record that this case is not about the quality of Grievant's work for AFS. Grievant Anderson is recognized by her managers as an excellent and valuable employee. Nor should this decision be taken to diminish Grievant's efforts to improve her knowledge and skills about computers through advanced training. Your Arbitrator was impressed with Anderson's enthusiasm over computers and her willingness to share her knowledge with coworkers. It is easy to understand why coworkers sought her out to assist them with computer related problems.

In the final analysis, the essence of Grievant's position was to provide clerical and record processing support for the branch. The fact she was able to perform these functions efficiently and competently because of her knowledge of computers does not trigger a violation of Article 84. A close examination of the evidence has not convinced the Arbitrator Grievant performed the tasks related to the higher level jobs sufficient to satisfy the four part test contained in Article 84 necessary to prove a contract violation.

AWARD

Having reviewed all of the evidence and argument, the Arbitrator finds the Employer acted in conformance with Article 84 when it denied Grievant Joanne Anderson work out-of-class pay. The grievance is denied and dismissed in its entirety.

Respectfully submitted,



Gary L. Axon
Arbitrator

Dated: July 2, 1997