Labor Arbitration Awards: 1986 - Present, City of Boonville and Teamsters Local 215, 25-2 ARB ¶8673, (Apr. 7, 2025)

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25-2 ARB ¶8673. LEE HORNBERGER, Arbitrator. Selected by the parties. FMCS No. 251017-00475. Hearing held via Zoom on February 26, 2025. Post-hearing briefs filed by March 28, 2025. Award issued April 7, 2025.

Headnote

Wages: Contracts: Job assignment.–
The union filed a grievance contending that the employer violated the CBA by reducing the grievant's pay rate following her reassignment from Deputy Clerk Treasurer to Billing Clerk. The arbitrator denied the grievance. The arbitrator found that Article 3, Section 5, which prohibits wage reductions following reclassification, applied only where there had been a reduction in the number of employees in a classification, which was not the case here. The grievant was replaced in the Deputy Clerk Treasurer role, so the classification remained staffed. The arbitrator also rejected the claim that a binding side agreement with the mayor preserved the original pay rate, noting the union had admitted there was no *quid pro quo*. The arbitrator concluded that paying the grievant at the higher rate would violate Indiana law and expose the Clerk Treasurer to personal liability.

Andrew M. McNeil, Attorney, for the Employer. Samuel Morris, Attorney, for the Union.

[Text of Award]

DECISION AND AWARD

INTRODUCTION

HORNBERGER, Arbitrator: This arbitration arises pursuant to a Collective Bargaining Agreement (CBA) between Teamsters Local 215 (Union) and the City of Boonville (Employer). The Union contends that the Employer violated the CBA when the Employer reduced Grievant's pay rate when she was changed from Deputy Clerk Treasurer to Billing Clerk. The Employer maintains that it did not violate the CBA when the Employer reduced Grievant's pay rate when she was changed from Deputy Clerk Treasurer to Billing Clerk.

Pursuant to the procedures of the Federal Mediation and Conciliation Service, I was selected by the parties to conduct a hearing and render a final and binding arbitration award. The hearing was held on February 26, 2025, in Boonville, Indiana, via Zoom. At the hearing, the parties were afforded the opportunity for examination and cross-examination of witnesses and for introduction of relevant exhibits. The dispute was deemed submitted on March 28, 2025, the date I received the post-hearing briefs.

The parties stipulated that the grievance and arbitration were timely and properly before me, and that I could determine the issues to be resolved in the instant arbitration after receiving the evidence and arguments presented. The advocates did an excellent job of presenting their respective cases.

ISSUE

The Union framed the issue as:

Whether Grievant has received the proper pay since Grievant was demoted?

The Employer framed the issue as:

Under Indiana law and the CBA, to what pay rate is Grievant entitled in her Billing Clerk position?

The parties did not agree upon the issue, and the parties agreed that I had the authority to frame the issue.

I frame the issue as:

To what pay rate is Grievant entitled in her Billing Clerk position?

RELEVANT CONTRACTUAL LANGUAGE

ARTICLE 3

Seniority

* **

Section 5. It is understood between the parties that on occasion it may become necessary to reduce the number of employees in a particular classification. On these occasions, it is agreed that such employees shall be reclassified according to seniority to vacant positions in other classifications with the same pay grade or to other available assignments, but in no event shall the pay scale be reduced.

ARTICLE 6

Section 1. Employees covered by this Agreement who have completed their probationary period shall be considered a regular employee and shall not be discharged, suspended, or disciplined without just cause.

ARTICLE 8

Validity

(A.) This Agreement shall be subject to all federal and state laws ….

ARTICLE 9

Management Rights

It is recognized that the City has and will continue to retain the rights and responsibilities to direct the affairs of the City in all of its various aspects. Among the rights retained by the City are the right … to determine the methods, means, organization and personnel by which such operations and services are to be conducted … provided, however, that the exercise of any of the above rights shall not conflict with any of the express written provisions of this Agreement.

ARTICLE 29

Wages

Classifications	*2021*	*2022*	*2023*
Clerk	$18.32	Wage Reopener	Wage Reopener
Billing Processor	$20.35		
Police Administrative Assistant	$20.35		
Clerk Treasurer/Assistant	$21.95		
Secretary to Mayor/Zoning	$21.95		
Code Enforcement Officer	$22.36		
Assistant Maintenance	$16.92		

REVIEW OF THE FACTUAL PRESENTATIONS

Testimony of Union Business Representative SV

Union Business Representative SV has been the Union Business Representative for three years. She handles negotiations and grievances over several CBAs and units. SV is responsible for Union business with the Employer. SV is familiar with Grievant. Grievant is a Union Steward. This case concerns Grievant being removed from the Deputy Clerk Treasurer position on January 2, 2024.

On January 3, 2024, SV discussed this removal with Mayor CW. They discussed the change in Grievant's job. There are two sticky notes in SV's handwriting reflecting that conversation.

> 1/3 Charlie—discuss move to other position—OK will talk!
>
> 1/8 Charlie—pay can't be reduced. Ux. 1.
>
> OK w/paying her the same as long as [B] can run her office how she wants. Ux. 1.

SV viewed the Mayor as the authority. SV viewed the Mayor's statements as a promise.

There were two grievances filed. The Union eventually agreed to drop the demotion grievance. SV had not heard the job change was a “reclassification” before the arbitration hearing. Art. 3, Sec. 5. Grievant's pay was reduced to $23.23 an hour in January 2024.

> The January 29, 2024, grievance indicated:
>
> Violation Alleged … Article 3 Subsection 1, 5 …
>
> On January 25, 2025 (sic), my pay scale was reduced by way of promotion of a less senior person into my position. The application of seniority was also not observed when I was reclassified to a vacant position over less senior employees which again resulted in the reduction of my pay scale.
>
> Resolution: To be returned to my former position and made whole. Jx. 103.
>
> The January 29, 2024, grievance indicated:
>
> Violation Alleged … Article 6 Subsection 8 …
>
> On January 2, 2024 I was called into a disciplinary meeting to demote me from my position. My demotion, which constitutes disciplinary action, came without any progressive discipline.
>
> I was also disciplined by written warning on January 2, 2024 for insubordination without progressive discipline and without union representation, which was requested. I was issued discipline without just cause.

Resolution: To be returned to my former position and made whole. Jx. 104.

The CBA was from January 2021 to December 2023. SV had no role in the CBA negotiations. On January 9, 2024, SV spoke with Employer attorney SU. Their discussion included the timeliness of arbitrations. There was no quid pro quo for the withdrawal of the demotion grievance. The Union withdrew the demotion grievance for other reasons.

Testimony of City Clerk Treasurer TB

TB has been the elected City Clerk Treasurer since 2015. The Mayor, the City Council, and Clerk Treasurer are elected. TB is the chief financial officer. She pays the bills. Payroll is set by a City Ordinance. In January 2024,

the Clerk Treasurer's office consisted of TB, one Deputy Clerk Treasurer, one bookkeeper, and one part-time filer.

The elected Clerk Treasurer removed Grievant from the Deputy Clerk Treasurer position, and Grievant was given a then-vacant Billing Clerk position with the City.

The Deputy Clerk Treasurer is appointed by TB pursuant to the Indiana Code. The Mayor has no input into this. The Deputy Clerk Treasurer can do whatever TB can do in TB's absence. Ex. 107. There is a salary Ordinance. The Deputy Clerk Treasurer rate was $24.83. The Billing Clerk rate was $23.23. Jx. 6.

The office is audited by State Board of Accounts. They look at everything. They always verify that employees in the office are not overpaid. If there is an overpayment, TB would have to personally pay it.

TB did not reduce the number of employees. CBA Art. 3, Sec. 5 did not apply. Deputy Clerk Treasurer is an appointed position. There is only one Deputy Clerk Treasurer. There is no intermediate pay position.

Grievant is not the most senior processor Billing Clerk.

The CBA was not approved by the City Council. The CBA in effect was a rollover CBA. TB knew Grievant was a Union Steward. During negotiations, the Employer met with the Union. There were several meetings with the Union. They went through the language together. The Union asked for a raise. The CBA was taken to the City Council. The City Council has ultimate authority. In 2024 the City Council adopted the pay scale Ordinance. TB was not involved in the 2021 negotiations.

Grievant was replaced in the Deputy Clerk Treasurer position. TB moved another employee to that position.

CONTENTIONS OF THE PARTIES

Union Contentions

Grievant was a nine-year employee of the Employer when, on January 2, 2024, she was demoted or reclassified from her position as Deputy Clerk Treasurer to the position of Billing Clerk, a change that carried with it a $1.60 per hour reduction in pay. The reason for the change she was told was that the Clerk wanted to select a new person of her own choosing to fill the position of Deputy Clerk Treasurer.

Grievant grieved both her demotion/reclassification to Billing Clerk and the corresponding reduction in pay. As the grievances progressed, Union Business Agent SV had a conversation with the Mayor about the grievances. According to SV's notes, the Mayor proposed that he was “OK w/[ith] paying her the same as long as [the Clerk] can run her office how she wants.” Ux. 1. The Mayor offered to keep Grievant's pay at the same rate, provided the Union did not contest Grievant's change in job.

Although the Union had initially grieved Grievant's demotion/reclassification to Billing Clerk, it ultimately agreed to drop the grievance as to the action itself (not the pay reduction). While the Union kept its part of the bargain proffered by the Mayor, the Employer did not. Grievant's reduction in pay was also grieved, which led to the arbitration that was heard by me on February 26, 2025. Jx. 2.

The Mayor did not testify at the arbitration hearing. SV's testimony about what the Mayor promised was uncontested. The Mayor was the Employer representative who negotiated the CBA between the Employer and the Union and had authority to bind the City.

The Union's position in the grievance procedure was that not only was the Mayor's promise breached, but that CBA Art. 3, Sec. 5, required the Employer to pay Grievant at the same rate upon her demotion/reclassification to Billing Clerk. Jx. 1.

Solely at the whim of the City Clerk, Grievant was transferred from Deputy Clerk Treasurer to the less desirable position of Billing Clerk. As a result, her pay rate dropped significantly. The reduction in her pay violated both the CBA and the settlement agreement entered into by the Union and the Employer at the Mayor's behest, as well as general principles of equity. The only equitable resolution to this matter is for Grievant's original rate of pay to be restored and for Grievant to receive backpay for the pay she lost in the intervening period.

Employer Contentions

On January 2, 2024, the elected Clerk Treasurer for the municipal Employer, removed Grievant from the Deputy Clerk Treasurer position and offered Grievant an open utility billing clerk position, which Grievant accepted. Under the Employer's salary ordinance, this move changed Grievant's hourly rate of pay. The Deputy Clerk Treasurer rate under the 2024 salary ordinance was $24.83. The rate for the billing clerk position was $23.23. Ex. 107.

On January 29, 2024, nearly four weeks after the reassignment, the Union Business Representative SV filed two grievances - one challenging Grievant's removal from the Deputy Clerk Treasurer Position (Ex. 104, the Demotion Grievance) and one challenging the change in her rate of pay (Jx. 2, the Pay Scale Grievance).

After the Employer denied both grievances, Jx. 3, the Union sought arbitration only with respect to the Pay Scale Grievance. That is, the Union is not challenging TB's reassignment of Grievant from the Deputy Clerk Treasurer position. Instead, accepting that Grievant will remain in the billing clerk position, the Union contends that Grievant is nevertheless entitled to continue receiving the pay rate for the Deputy Clerk Treasurer position.

The Pay Scale Grievance fails because the Clerk Treasurer is not subject to the CBA, because the CBA was never approved by the City Council and is not binding on the Employer, and because no provision of the CBA allows or requires the Employer to pay Grievant at a higher wage classification than her position allows - to do otherwise would violate Indiana law and expose the Clerk Treasurer to personal financial liability to the Indiana State Board of Accounts. The Pay Scale Grievance should be denied.

DISCUSSION AND DECISION

The instant case involves a contract interpretation in which I am called upon to determine the meaning of some portion of the CBA between the parties. I may refer to sources other than the CBA for enlightenment as to the meaning of various provisions of the CBA. My essential role, however, is to interpret the language of the CBA with a view to determining what the parties intended when they bargained for the disputed provisions of the CBA. Indeed, the validity of the award is dependent upon my drawing the essence of the award from the plain language of the CBA. It is not for me to fashion my own brand of workplace justice nor to add to or delete language from the CBA.

In determining the meaning of the instant CBA, then, I draw the essence of the meaning of the CBA from the terms of the CBA of the parties. Central to the resolution of any contract application dispute is a determination of the parties' intent as to specific contract provisions. In undertaking this analysis, I will first examine the language used by the parties. If the language is ambiguous, I will assess comments made when the bargain was reached, assuming there is evidence on the subject. In addition, I will examine previous practice by the parties related to the subject. When direct evidence is not available, circumstantial evidence may be determinative.

For the reasons that follow, I conclude that Grievant received the proper pay rate when she was made Billing Clerk.

This is a contract interpretation case. The basic issue revolves around whether Grievant received the proper pay rate when she was made a Billing Clerk. The Union maintains she was not. The Employer maintains that she was.

Burden of proof

The issue in this case is what should the pay rate be for Grievant once she became a Billing Clerk. This is a contract interpretation case, not a discipline case. The burden lies with the Union to identify a CBA provision which prohibited the Employer from acting as it did. Abrams, *Inside Arbitration*, pp. 246-247 and 301-303. The party asserting the claim has burden of proving it. [C] & [C], *How Arbitration Works* (8th ed. 2016), p. 8-104.

General overview

CBA **Art. 3, Sec. 5 CBA says,**

> It is understood between the parties that on occasion it may become necessary to **reduce the number of employees in a particular classification. On these occasions**, it is agreed that such employees shall be reclassified according to seniority to vacant positions in other classifications with the same pay grade or to other available assignments, but **in no event shall the pay scale be reduced**. Emphasis added.

The Clerk Treasurer did not "reduce the number of employees" in the Deputy Clerk Treasurer classification. She replaced Grievant with another employee, so there was one person in the Deputy Clerk Treasurer classification before the switch and one person in the Deputy Clerk Treasurer classification after the switch. There was no layoff or classification reduction.

Art. 3, Sec. 5, contains the condition that first requires a reduction in the number of employees in a particular classification (which did not occur). The pay scale is preserved only when a reduction in classifications causes an employee to take a position in a lower classification. That is not what occurred here. There has been only one deputy clerk treasurer classification. An interpretation that reads language out of a contract is not a reasonable one.

TB testified that the Clerk Treasurer cannot pay an employee more than the City Council appropriated for a given classification through the salary ordinance. If the Clerk Treasurer, who manages the City's payroll, were to pay Grievant more than allowed under the salary ordinance for the billing process classification, the Clerk Treasurer would be required by the Indiana State Board of Accounts to repay the City the wage differential out of her own pocket. An interpretation of a contract that results in an illegal or unlawful act is unreasonable per se. *City of Lawrenceburg*, 1993 WL 13767022, *9-10 ([D], 1993). St. [E], *The Common Law of the Workplace* (2005), p. 83, states,

> When a provision in a collective bargaining agreement is susceptible of more than one meaning, and one interpretation would result in an unlawful contract term while the other would not, arbitrators strive to interpret the term in conformity with the law. This principle has deep arbitral and common law roots. It is premised on an assumption that parties intend to enter into a lawful agreement.
>
> Abrams, p. 289, states,
>
> The use of external law would also be appropriate where an ambiguous provision of the parties' CBA might have one reading that is legal under external law and another that is illegal. The arbitrator should presume that the parties sought to write a legal provision.

All of the witnesses testified honestly and to the best of their recollections.

All words of the CBA have to be given meaning. "Ordinarily, all words used in an agreement should be given effect. The fact that a word is used indicates that the parties intended it to have some meaning …." [C] & [C], , p. 9-36. Each word and phrase of a contract is to be given meaning.

If CBA wording is clear and definite, clear language should be enforced. In cases where the language is clear and unambiguous, arbitrators are generally unlikely to consider extrinsic forms of evidence such as the intent of the parties, bargaining notes or history, or practices. *Champion Int'l Corp.*, 85 LA 877, 880 (Allen, 1985); and [C] & [C], (2014 Supp), p. 59. Words should be given their ordinary and popularly accepted meaning in the absence of anything indicating that they were used in a different sense or that the parties intended some special or technical meaning.

It has been indicated that:

> Although [I] may use [my] expertise in interpreting and applying the contractual provisions, [I] cannot substitute [my] own sense of equity and justice but the award must be grounded in the terms of the agreement. To do otherwise would, in effect, be to change or alter the agreement through indirection. This [I] cannot, and should not do in the interest of *all* parties and the collective bargaining process. In other words, it is the [my] duty … to interpret the contract as precisely as [I] can, and not to rewrite it. *[F]-Tombigbee Mfg Co.*, 113 LA 1015, 1020 (Howell, 2000). Emphasis in original.

I interpreted and applied the CBA provisions and did not add to, subtract from, modify, or delete any of its provisions.

I gave full and careful consideration to the general principles of contract interpretation and the entire record, including the credibility of the witnesses, the CBA, the exhibits, and all arguments.

The Union argues that there was a binding settlement agreement. This argument does not control. SV testified that on January 9, 2024, she spoke with Employer attorney SU. This discussion included the timeliness of arbitrations. During the arbitration hearing, the Union said that there was “no quid pro quo” for the withdrawal of the demotion grievance, and that the Union withdrew the demotion grievance “for other reasons.” [C] & [C], p. 5-93, indicates,

> Proof of any settlement must be established by the proponent, and, in the absence of a document memorializing the alleged prior settlement, satisfying the burden of proof is especially difficult.

The Union argues that the CBA requires the pay rate stay the same. This argument does not control. There was no reduction of the number of employees in a classification. CBA Art. 3, Sec. 5.

The Union argues that “pay scale” equates to “pay rate.” This argument does not control. Whether or not pay scale equates to pay rate, there was no reduction of the number of employees in a classification. CBA Art. 3, Sec. 5. No CBA language is being rendered ineffective or meaningless.

The Union argues that equity demands a fair result. This argument does not control. If CBA wording is clear and definite, clear language should be enforced.

> It is widely recognized that if a contract “is clear and unambiguous it must be applied in accordance with its terms despite the equities that may be present on either side.” [C] & [C], p. 9-52.
>
> *John Deere Tractor Co.*, 5 LA 631 (Updegraff, 1946), states,
>
> It is axiomatic in contract construction that an interpretation which tends to nullify or render meaningless any part of the contract should be avoided because of the general presumption that the parties do not carefully write into a solemnly negotiated agreement words intended to have no effect.
>
> *Southington*, 2008 WL 8578979 (Parker, 2008), states,
>
> Ordinarily, all words used in an agreement should be given effect. The fact that a word is used indicates that the parties intended it to have some meaning and it will not be declared surplusage if a reasonable meaning can be given to it consistent with the rest of the agreement. It is a rule of contract interpretation that each word and phrase of a contract be given meaning on the theory that if the parties to the contract had not intended to give each word and phrase meaning, they would have deleted such language. Even where the employer's actions were deemed “reprehensible,” “callous and unfeeling,” arbitrators have been compelled to enforce clear, unambiguous language.

Additional allegations and arguments

The parties have made additional allegations and arguments that I have not discussed. I have rendered a Decision and Award concerning the CBA allegations and arguments.

The National Academy of Arbitrators, American Arbitration Association, and Federal Mediation & Conciliation Service, Code of Professional Responsibility for Arbitrators of Labor Management Disputes, C(1)(a), states:

C. Awards and Opinions

> 1. The award should be definite, certain, and as concise as possible.
>
> a. When an opinion is required, factors to be considered by an arbitrator include: desirability of brevity, consistent with the nature of the case and any expressed desires of the parties; need to use a style and form that is understandable to responsible representatives of the parties, to the grievant and supervisors, and to others in the collective bargaining relationship; necessity of meeting the significant issues; forthrightness to an extent not harmful to the relationship of the parties; and avoidance of gratuitous advice or discourse not essential to disposition of the issues. Emphasis added. Abrams, pp. 297-298.

CONCLUSION

The crucial points in this case include;

1. There is a preponderance of the evidence that Grievant received the proper pay rate when she was made Billing Clerk;
2. The number of employees in a classification was not reduced, Art. 3, Sec. 5;
3. Clear and unambiguous language that is interpreted consistent with the parties' intent as reflected by clear and explicit terms,
4. Ordinary meaning given to words unless they are clearly used otherwise,
5. The totality of the circumstances, and
6. The wording of the CBA.

This decision neither addresses nor decides issues not raised by the parties.

AWARD

Having heard or read and carefully reviewed the evidence and argumentative materials in this case and in light of the above discussion, I deny the Grievance.

April 7, 2025

[A]

[G]

Arbitrator

Traverse City, Michigan