

IN THE MATTER OF ARBITRATION )  
 )  
 BETWEEN )  
 )  
 WASHINGTON FEDERATION )  
 OF STATE EMPLOYEES, )  
 )  
 Union )  
 )  
 and )  
 )  
 STATE OF WASHINGTON, )  
 EMPLOYMENT SECURITY )  
 DEPARTMENT, )  
 )  
 Employer. )

AAA CASE NO. 75-390-00134-07

ARBITRATOR'S OPINION

AND AWARD

GRIEVANCE OF

ZENAIDA GUEVARA

HEARING SITE:

Office of Financial Management  
Olympia, Washington

HEARING DATE:

October 2, 2007

POST-HEARING BRIEFS DUE:

Postmarked November 9, 2007

RECORD CLOSED ON RECEIPT OF BRIEFS: November 14, 2007

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ARBITRATOR:

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**I. INTRODUCTION**

This case arises out of a grievance filed on August 17, 2006, by the Washington Federation of State Employees (Union) on behalf of Zenaida Guevara (Grievant) against her employer, Washington State Employment Security Department (ESD or Employer). The grievance alleged that ESD violated the contract when the Employer failed to pay Guevara the premium pay allowed for employees proficient in speaking and/or writing one or more foreign languages. The Employer denied the grievance. The Union advanced the case to arbitration.

**II. STATEMENT OF ISSUE**

The parties were unable to agree on a statement of the issue. The Union framed the question for decision to read:

Did the Employer, Washington State Employment Security Department, violate Article 42.25 - Assignment Pay Provisions, specifically Appendix K, Reference #18, by denying assignment pay to Guevara when (1) her current assigned job duties include proficiency in English and proficiency in a foreign language (Spanish); and (2) proficiency or formal training in such additional language (Spanish) is not required in the specifications for the job class of WorkSource Specialist 3?

The Employer offered its issue statement to read:

Did the Employer violate Reference #18 (Appendix K - Assignment Pay) of the 2005-2007 State of Washington/WFSE Collective Bargaining Agreement by not providing assignment pay to Ms. Guevara while she was working in the position of WorkSource Specialist 3 in the ESD Migrant and Seasonal Farmworker program during the time period of January 11, 2006 - May 31, 2007? If so, what is the appropriate remedy?

Based on the submissions of the parties, the Arbitrator formulates the issue to read as follows:

Did the Employer violate Article 42.25 - Assignment Pay Provisions, and Appendix K, Reference #18, by denying assignment pay to Zenaida Guevara while she was working in the position of WorkSource Specialist 3 in the ESD Migrant and Seasonal Farmworker program? If so, what is the appropriate remedy?

**III. RELEVANT CONTRACTUAL PROVISIONS**

**Article 42  
Compensation**

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**42.25 Assignment Pay Provisions**

Assignment pay is a premium added to the base salary and is intended to be used only as long as the skills, duties, or circumstances it is based on are in effect.

A. The Employer may grant assignment pay to a position to recognize specialized skills, assigned duties, and/or unique circumstances that exceed the ordinary. The Employer determines which positions qualify for the premium.

B. Classes approved for assignment pay have the letters "AP" appearing after their class title in the compensation plan. All Assignment Pay rates and Special Pay Ranges and Notes are attached as Appendices K and L to this Agreement.

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**APPENDIX K  
ASSIGNMENT PAY**

...

**REFERENCE #18:** Employees in any position whose current, assigned job responsibilities include proficient use of

written and oral English and proficiency in speaking and/or writing one or more foreign languages, American Sign Language, or Braille, provided that proficiency or formal training in such additional language is not required in the specifications for the job class. Basic salary plus two additional ranges.

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### WORKFORCE SPECIALIST 3

Definition: (1) Delivers direct core & intensive services to WorkSource, Claimant Placement Program, Food Stamps, WorkFirst Post-Employment Labor Exchange, or Collect Co-Location customers; **OR** (2) is responsible for providing bilingual outreach services in a designated Migrant and Seasonal Farmworker (MSFW) service area; **OR** (3) is responsible for providing outreach services to eligible Disabled Outreach Veterans' (DVOP) program customers; **OR** (4) as an Employer Outreach Specialist contacts local employers to develop prospective job openings and provide information on services available through WorkSource.

Distinguishing Characteristics:

This is the fully qualified professional level. Positions at this level work independently, and spend a majority of time providing intensive services or conducting outreach activities. May issue transportation vouchers or initiate supportive service vouchers, but do not have the authority to obligate supportive service or training funds.

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#### **IV. STATEMENT OF FACTS**

Zenaida Guevara was first employed by the ESD in May 2000 as a Job Service Specialist 2. During her employment, Guevara held several different positions within the ESD. Guevara is fluent in both English and Spanish. Guevara has worked some positions that were designated as "dual language" and was paid the additional dual language assignment pay provided in the contract.

At the time this grievance was filed, Grievant held the position as WorkSource Specialist 3 (WSS 3) in ESD's Migrant and Seasonal Farmworker (MSFW) program. Specifications for the class of WSS 3 are set forth in Employer Exhibit 13. In a grievance dated August 17, 2006, the Union alleged the Employer violated Article 42.25 - Assignment Pay Provisions, and Appendix K, Assignment Pay, Reference #18, by failing to provide additional assignment pay to an employee whose assigned job responsibilities include proficiency in speaking and/or writing in one or more foreign languages. Er. Ex. 1. The Employer responded to the grievance stating in relevant part:

Ms. Guevara holds the position of WorkSource Specialist 3 in the Migrant and Seasonal Farmworker program that is described in the Department of Personnel Job Specification 30130. The job specification states that the position "was responsible for providing bilingual outreach services in a designated Migrant and Seasonal Farmworker (MSFW) service area." As the language skill is required by the job specification, there is no remedy to be provided.

Un. Ex. 2.

The Union moved the case 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. Post-hearing briefs were timely filed. The issue is now properly before the Arbitrator for a final and binding decision.

**V. POSITIONS OF THE PARTIES**

**A. The Union**

The Union takes the position that proficiency or formal training in the language of Spanish is not required in the specifications of the job classification of WSS

3. According to the Union, the specifications do not indicate any requirement for a proficiency or formal training in Spanish. In addition, the ESD's own documents clearly show that proficiency or formal training in Spanish is not a requirement of the WSS 3 position. Employer's Exhibit 19 is a form used by ESD when an employee wishes to transfer to a different position. Employer Exhibit 19 shows there is no indication that the position is a "dual language" position.

At one point in the history of the WSS 3 job specification there was a requirement for the MSFW outreach person to be bilingual. However, this specific requirement was revised out of the job specification in or about September 1991. Both the Union and ESD witnesses testified that assignment pay was designated to be a premium added to the base salary for an employee's specialized skills.

The Union concluded in its post-hearing brief as follows:

The purpose of assignment pay is to reward employees who possess and utilize specialized skills over and above their normal work duties. In the case at hand, it is clear that Guevara utilized the specialized skill of proficiency in Spanish in addition to the regular job specifications required of a WSS 3. She was the "designated bi-lingual staff" for multiple departments. Guevara testified, and documentation supported the assertion, that her Spanish skills were utilized inside and outside of the MSFW program. Her Spanish skills clearly exceeded the ordinary skills required of a WSS 3. As such, Guevara must be entitled to assignment pay for the use of this skill above and beyond her regular job duties as a WSS 3. Therefore, Grievant [sic] respectfully requests on behalf of Guevara that the grievance filed for retroactive assignment pay and other remedies be granted in full.

Brief, pp. 5, 6.

**B. The Employer**

The Employer takes the position there has been no violation of the assignment pay provision in Article 42.25 or Appendix K, Reference #18. The Employer has historically taken the position that employees who were required to use a foreign language would be eligible for a two range assignment pay provided the use of one or more foreign languages was not called for in the class specifications. Er. Exs. 7, 8A, 8B, 9, 10.

The Employer points to the portion of the class specification dated January 11, 2002, that reads: "(2) is responsible for providing bilingual outreach services in a designated Migrant and Seasonal Farmworker (MSFW) service area;" Er. Ex. 13. Appendix K, Reference #18, excuses the obligation to pay the additional wages when the "proficiency or formal training in such additional language is not required in the specifications for the job class." Emphasis added. Since Grievant is required by the class specifications to provide bilingual outreach services, she is not eligible to receive the two-range assignment pay that is provided for in Reference #18.

*Webster's Dictionary* defines bilingual as "using or able to use two languages with equal fluency." Grievant is bilingual and utilizes her language skills as an employee working as a WSS 3 in the ESD's MSFW program. Therefore, Grievant Guevara has no contractual right to claim the additional pay for utilizing her bilingual language skills in the performance of her work as a WSS 3.

## **VI. DISCUSSION**

The Arbitrator finds the Union failed to prove by a preponderance of the evidence ESD violated Article 45.25 - Assignment Pay Provisions, or Appendix K, Assignment Pay, Reference #18, when management refused to provide premium pay to Grievant Guevara. This conclusion is supported by an examination of the contract language and evidence offered at the arbitration hearing. Accordingly, the grievance will be denied. The following is the reasoning of the Arbitrator.

The fundamental goal of contract interpretation is to determine and give effect to the intent of the parties as expressed in the contract. In issues of contract interpretation, arbitrators are controlled in the first instance by the contract language. Past practice and bargaining history may be important in ascertaining the meaning of a contract in dispute where the provision is ambiguous or unclear.

Interpretation of a collective bargaining agreement begins with an examination of the text of the agreement and the context of the agreement as a whole. If the language is clear and unambiguous, it should be enforced without further analysis. A contract provision is considered ambiguous if, in context, it is reasonably susceptible to more than one interpretation. Extrinsic evidence, such as bargaining history and past practice, may be considered to define what the parties intended when they adopted ambiguous language. If this analysis does not resolve the issue, traditional maximums of contract construction may be utilized to interpret the ambiguous language.

Arbitral authority instructs language is ambiguous that can be given more than one meaning by reasonable people. If the words convey distinct ideas, there is no need or obligation to resort to the traditional rules of contract interpretation. The clear



and express meaning of the words used by the parties will apply. The Arbitrator holds the Employer has advanced an argument consistent with a plain language reading of the contractual provisions and that an analysis of the contract language is sufficient to determine and give effect to the intent of the parties in this case.

The controlling language to resolve the issue is contained in Article 42.25 - Assignment Pay, and Appendix K, Reference #18. The Arbitrator rejects the Union's contention that proficiency in Spanish is not required in the specifications for the WSS 3 position.

In analysis of this case, the Arbitrator begins with Article 42.25.A that expressly authorizes the payment of premium pay "to recognize specialized skills, assigned duties, and/or unique circumstances that exceed the ordinary." Article 42.25.B directs the parties to Appendix K - Assignment Pay. Relevant to this case is Appendix K, Reference #18 that reads:

Employees in any position whose current, assigned job responsibilities include proficient use of written and oral English and proficiency in speaking and/or writing one or more foreign languages, American Sign Language, or Braille, provided that proficiency or formal training in such additional language is not required in the specifications for the job class. Basic salary plus two additional ranges.

Emphasis added.

The language of this provision is clear. I need not reach beyond the four corners of the contract to explore the parties' intent. The Employer is excused from providing premium pay where proficiency or formal training in an additional language is not required in the specifications for the job class.

Applying the contract language to the facts of this case, the Arbitrator must turn to the specifications for the class of WorkSource Specialist 3 that states:

(1) Delivers direct core & intensive services to WorkSource, Claimant Placement Program, Food Stamps, WorkFirst Post-Employment Labor Exchange, or Collect Co-Location customers; **OR** (2) is responsible for providing bilingual outreach services in a designated Migrant and Seasonal Farmworker (MSFW) service area; **OR** (3) is responsible for providing outreach services to eligible Disabled Outreach Veterans' (DVOP) program customers; **OR** (4) as an Employer Outreach Specialist contacts local employers to develop prospective job openings and provide information on services available through WorkSource.

Emphasis added.

The essence and core of the WSS 3 is to provide "bilingual outreach services in a designated Migrant and Seasonal Farmworker (MSFW) service area;" Emphasis added. Grievant is a WSS 3 assigned to the MSFW service area. As such, Guevara is responsible for providing bilingual outreach services to the population she serves in her WSS 3 position. A plain reading of the class specifications leaves no room for doubt that Grievant was responsible for providing bilingual services. Therefore, I am compelled to hold that proficiency in an additional language is required in the job specifications for the WSS 3. Appendix K, Reference #18, excuses the ESD from payment of premium pay where the bilingual proficiency requirement is stated in the job specifications.

The remainder of the WSS 3 specifications describes distinguishing characteristics of the position and technical work to be performed by the WSS 3. A requirement that a WSS 3 is responsible for providing bilingual outreach services is embedded in the characteristics and work performed by the WSS 3. Proficiency in Spanish is necessary to provide the bilingual outreach services set forth in the WSS 3 job specifications.

In sum, I hold ESD acted in conformance with the Collective Bargaining Agreement when management refused to pay Grievant Guevara premium pay for providing bilingual outreach services to Migrant and Seasonal Farmworkers as set forth in the job specifications for a WSS 3.

**AWARD**

Having reviewed all of the evidence and argument, the Arbitrator holds the Employer acted in conformance with Article 42.25 and Appendix K, Reference #18 of the Collective Bargaining Agreement when management denied Zenaida Guevara Assignment Pay for providing bilingual services. The grievance is denied and dismissed in its entirety.

Respectfully submitted,

Gary L. Axon  
Arbitrator  
Dated: December 14, 2007