

IN THE MATTER OF THE ARBITRATION BETWEEN

TEAMSTERS LOCAL UNION NO. 117, )  
 )  
 ) ARBITRATOR'S OPINION  
 ) AND AWARD  
 )  
 ) UNION, )  
 )  
 ) MICHAEL BOGULASKI  
and ) GRIEVANCE  
 )  
 )  
 ) STATE OF WASHINGTON, )  
 ) GRIEVANCE AHCC 101-10  
 ) DEPARTMENT OF CORRECTIONS, )  
 )  
 ) FMCS NO. 11-00582-6  
 ) EMPLOYER. )  
 )  
 \_\_\_\_\_ )

BEFORE: JOSEPH W. DUFFY  
LABOR ARBITRATOR  
PO BOX 12217  
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REPRESENTING  
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HEARING HELD: APRIL 13, 2011  
SPOKANE, WA

## OPINION

### Introduction

Teamsters Local Union No. 117 (“union”) serves as the exclusive bargaining representative for a bargaining unit of workers employed by the State of Washington, Department of Corrections (“DOC” or “employer”). The employer and the union (“parties”) submitted this dispute to arbitration under the terms of their July 1, 2009 through June 30, 2011 collective bargaining agreement (“Agreement”), a copy of which they introduced at the hearing as a joint exhibit. (J1)

This arbitration arose from a grievance filed by the union on behalf of the grievant, Michael Bogulaski, contending that the employer failed to pay the grievant properly for the work the grievant performed during his supervisor’s absence. (J2)

The hearing took place at the offices of the Airway Heights Corrections Center in Airway Heights, WA on April 13, 2011. At the hearing, both parties agreed that the grievance is properly before me for a final and binding decision on the merits. (TR6:4-8) The parties also agreed that I should retain jurisdiction to aid in the implementation of the remedy, if a remedy is awarded. (TR6:18-22)

The hearing proceeded in an orderly manner. The advocates did an excellent job of presenting the respective cases. Both parties had a full opportunity to call witnesses, to submit documents into evidence and to make arguments. Witnesses were sworn under oath and subject to cross-examination by the opposing party. A court reporter transcribed the hearing and made a copy of the transcript available to the parties and to me.

The parties submitted eleven joint exhibits into the record. (J1-J11) A total of five witnesses testified at the hearing, including the grievant (William Cody, the grievant, Superintendent Maggie Miller-Stout, Captain Ronald Haynes and Facilities Manager Richard Moore). By mutual agreement of the parties, one witness testified by telephone.

Following the testimony, the parties agreed to submit post-hearing briefs by simultaneous mailing or electronic submission to me and to each other, postmarked by May 27, 2011. (TR73:22-24) The parties later extended the deadline by mutual agreement. I received the briefs by the agreed deadline, and closed the record on June 3, 2011.

### Issue for Decision

At the hearing, the parties agreed that the issue for decision is stated as follows: Did the employer violate Article 32.3 of the Agreement when it declined to pay the grievant for performing duties of a higher classification? If so, what is the appropriate remedy? (TR9-17)

### The Agreement

Article 32.3 of the Agreement reads as follows:

#### **32.3 Pay for Performing the Duties of a Higher Classification**

A. An employee who is designated, in writing, by the Employer to assume the duties of a higher classification for three (3) consecutive calendar days or more to a higher level classification whose range is less than six (6) ranges higher than the range of the former class will be notified in writing and will be advanced to a step of the range for the new class that is nearest to five percent (5%) higher than the amount of the pre-promotional step. The increase will become effective on the first day the employee was performing the higher-level duties.

B. An employee who is designated, in writing, by the Employer to assume the duties of a higher classification for three (3) consecutive calendar days or more to a higher level classification whose range is six (6) or more ranges higher than the range of the former class will be notified in writing and will be advanced to a step of the range for the new class that is nearest to ten percent (10%) higher than the amount of the pre-promotional step. The increase will become effective on the first day the employee was performing the higher-level duties.

C. Unless other on-duty employees are unavailable to work in the higher classification, an employee may refuse an assignment to work in the higher classification, except in those positions where the classification specification allows for the assignment of such duties. (J1, p. 90-91)

### Background

Airway Heights Corrections Center (“AHCC”) is a 2,200 bed co-located medium and minimum supervision level prison facility operated by the employer. The prison employs Locksmiths who maintain the prison locking systems and security doors. The locking systems and security doors must be properly maintained at all times to ensure the safety and security of the prison and the community.

The grievant, Michael Bogulaski, went to work for the employer on January 17, 1995 as a Custodial Supervisor. In 1996, the grievant had the opportunity to fill in as a Locksmith while the regular Locksmith, Mr. Wilkins, filled in for his supervisor, Mr. Orcutt. This temporary

assignment lasted about three months. About a year later, the grievant again filled in for Mr. Wilkins and Mr. Wilkins filled in for Mr. Orcutt, who again was off work for medical reasons. The grievant enrolled in a correspondence course so that he could obtain journey level status as a Locksmith. He completed the correspondence course in eighteen months. (TR21:1-4) He testified that he had to go through a reallocation process in order to be granted the classification of Locksmith. (TR21) Ultimately, the grievant obtained the regular Locksmith position and he has worked in that job continuously since the early 2000's.

The grievant and his supervisor Mr. Orcutt are the two Locksmiths employed at AHCC. They are classified as Locksmith and Locksmith Supervisor, respectively. The grievant is paid at Range 42G and Mr. Orcutt is at Range 49G. The grievant and Mr. Orcutt both perform Locksmith duties, but Mr. Orcutt has additional, higher level responsibilities, including supervising the Locksmith, making keys and chits, prioritizing and coordinating the work, managing the lock shop and maintaining the key control database. (J4; TR40:1-18; TR50:11-TR51:3; TR67:8-17)

The Position Description for Locksmith describes the objective of the position as follows:

Provides support and assistance to a Locksmith Supervisor representing the physical security interests at a correctional facility that houses approximately 2,164 adult male offenders. This position serves as a back up to the Locksmith Supervisor position and performs most of the repairs and preventative maintenance of all lock and lock related hardware located throughout the institution to include all institution security sliders. (J3)

The DOP Class Specification for Locksmith defines the position as follows:

Functions as a fully qualified journey-level locksmith. Positions perform a variety of duties in skilled locking systems repair and installation work. (J5)

The Position Description for Locksmith Supervisor contains the following description of the position objective:

At Airway Heights Corrections Center this position manages the locksmith department which is responsible for the physical security interests at a correctional facility that houses 2200 adult male offenders. This position performs repairs and maintenance on all lock and lock related hardware located throughout the institution, services and maintains over 1500 institution key rings, orders replacement lock parts and equipment, researches/budgets for new construction and upgrade modifications, and supervises/directs the locksmith position who performs maintenance on all institution security sliders and the

majority of the department[']s lock and lock related repairs outside the locksmith shop/office. (J4)

The DOP Class Specification for Locksmith Supervisor defines the position as follows:

This is a supervisory or expert level. Positions in this class supervise locksmiths and/or trade helpers working in locking system maintenance and repair and perform skilled locksmith work. (J6 and see J10)

AHCC has two lock shops. One is located in "C" building, which is outside the secure perimeter of the prison. The other is located inside the perimeter in "J" building. The grievant testified that he usually starts his work day in the C building shop, which is where Mr. Orcutt's office area is located. At the C shop, the grievant usually obtains his work orders for the day and he obtains the parts that he needs to perform the work. Most of his work day is then spent inside the perimeter working from the J building shop.

The Locksmiths at AHCC maintain all of the locking systems at the prison. They also maintain slider doors, which are electronic high security doors that are twelve to fourteen feet in height and weigh approximately three or four hundred pounds. The security doors and the locks at AHCC are operated by high voltage, low voltage and mechanical systems.

This dispute arose following an absence for medical reasons that kept Mr. Orcutt away from work for about three months. During Mr. Orcutt's absence, the grievant's workload changed. The question in this case is whether the change in workload met the criteria for pay for performing the duties of a higher classification contained in Article 32.3 of the Agreement. The grievant contends he worked in the higher classification. The employer contends that the grievant had more work to do, but the work was all within the Locksmith classification.

During Mr. Orcutt's absence, the grievant asked his next-level supervisor, Captain Haynes, for information about pay for covering Mr. Orcutt's duties. The exchange of emails included the following email from the grievant to Captain Haynes, dated April 20, 2010:

Captain, This week is 7 weeks I've been doing my job and my bosses job. I have spoken to you twice about being paid as a Locksmith, but I am continuing doing Locksmith Supervisors work backfilling for my my boss Dave Orcutt before and after his back surgery and receiving only Locksmith pay. The CBA states "after 72 hrs, 3 consecutive days.

Could you please email me back with where my pay status is. Thanks. (J7)

Following the above-quoted email, Captain Haynes responded that he did not have any additional information on the pay question. He also asked the grievant what emergency work he had been doing that Mr. Orcutt would normally do and how much time had he spent on this work. The grievant responded with a detailed description of the work. (J8) The employer did not grant the grievant's request for additional pay. (TR28:5-TR29:6)

The union filed a grievance, dated April 22, 2010, contending that the employer, from April 8, 2010 forward, required the grievant to cover his supervisor's work without paying him for working in the higher classification. The union requested a make-whole remedy. (J2)

The employer denied the grievance at Step One, contending that the grievant continued to perform Locksmith work during Mr. Orcutt's absence, but did not perform supervisory duties. In the grievance response, the employer recognized that Mr. Orcutt's absence increased the grievant's workload, but the increased work did not constitute performing the duties of a higher classification. (J2) The Grievance Resolution Panel deadlocked on August 26, 2010 and the union appealed the matter to arbitration. The pre-arbitration review panel could not resolve the dispute and so this arbitration followed.<sup>1</sup> (J2)

#### Discussion

This dispute presents an issue of contract interpretation. When asked to interpret a collective bargaining agreement, the labor arbitrator's task is to carry out the intent of the parties. As one leading commentator put it:

Labor arbitration is a matter of contract. It is the role of the parties to a collective bargaining agreement to determine the value of their exchange and, then, the role of arbitrators to interpret the labor contract consistent with the parties' negotiated preferences. Arbitrators generally refrain from evaluating the prudence of a particular contract term or inquiring into bargaining power imbalances and issues of justice. It is the role of arbitrators to use standards of contract interpretation to understand the meaning of the parties' contractual goals and to render a decision in keeping with the parties' intent. (St. Antoine, Ed. *The Common Law of the Workplace*, 2<sup>nd</sup> Ed. (BNA Books; 2005) p. 69. See also Elkouri & Elkouri, *How Arbitration Works*, 6<sup>th</sup> Ed., Chapter 9 (BNA Books; 2003) p. 427)

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<sup>1</sup> In an email exchange in December 2010 and January 2011, the union and the grievant expressed concern that Captain Haynes did not attend the pre-arbitration review and was not available to answer questions about the directions he gave the grievant concerning his duties during Mr. Orcutt's absence. (J9 and see TR29:16-TR30:18)

Standards of contract interpretation commonly applied in labor arbitration include the following principles: 1.) The meaning of a contract cannot be derived from a single word or phrase. The labor agreement must be interpreted as a whole and words or phrases must be interpreted in context. 2.) When alternative interpretations of a contract provision are possible, the arbitrator should select the interpretation that gives meaning and effect to all provisions of the labor agreement. 3.) When alternative interpretations of a contract provision are possible, the arbitrator should select the interpretation that produces just and reasonable results over the interpretation that produces harsh, absurd or nonsensical results. (Elkouri, *supra*)

The focus of this dispute is the application of Article 32.3B to the facts of this case.

Article 32.3B provides:

An employee who is designated, in writing, by the Employer to assume the duties of a higher classification for three (3) consecutive calendar days or more to a higher level classification whose range is six (6) or more ranges higher than the range of the former class will be notified in writing and will be advanced to a step of the range for the new class that is nearest to ten percent (10%) higher than the amount of the pre-promotional step. The increase will become effective on the first day the employee was performing the higher-level duties. (J1, p. 90)

Article 32.3B addresses situations in which the range for the higher classification is six or more ranges above the range of the employee who is designated to assume the duties of the higher classification.

Three factors activate the application of Article 32.3B. Those factors are: 1.) The employer designates in writing that the employee will assume the duties of the higher classification. 2.) The employee must assume the duties. 3.) The assumption of the higher level duties must last three consecutive calendar days or more.

When the three factors are present, the affected employee is advanced to a step of the higher range “that is nearest to ten percent (10%) higher than the amount of the pre-promotional step.”

The employer contends that it did not designate in writing that the grievant assume the duties of the higher classification because he did not assume any supervisory responsibilities during Mr. Orcutt’s absence. The employer concedes that the grievant’s workload increased, but the employer argues that the work the grievant performed continued to be exclusively Locksmith work that both he and Mr. Orcutt ordinarily perform in the regular course of their employment.

The employer argues that Captain Haynes assumed the supervisory duties that Mr. Orcutt previously performed and that the grievant worked under Captain Haynes' supervision throughout Mr. Orcutt's absence. (TR49:16-23) The employer contends that the grievant's claim that expert status qualifies him for higher level pay should be handled by the Department of Personnel or the Personnel Resources Board and should not be decided in labor arbitration.

The union contends that the grievant assumed Mr. Orcutt's duties and ran the lock shop in Mr. Orcutt's absence for an extended period of time. The union argues that the DOP class specification for Locksmith Supervisor is either "supervisory or expert" level work and in this case, the grievant qualified under the expert category even though he did not supervise anyone. (J6) The union argued that testimony in the record shows that other DOC Locksmiths have attained the Locksmith Supervisor classification even though those employees did not supervise anyone. The union contends that the written notice contained in Article 32.3B is not a precondition to an upgrade, but only serves to confirm that the decision to assign the employee to higher level work has been made.

In a contract interpretation case, the union has the burden to prove that a contract violation occurred. In this case, each of the three factors noted above that activate the application of Article 32.3B must be established by persuasive evidence. The dispute really centers on the first two factors, as no one disagrees that Mr. Orcutt was away from work continuously for about three months. Therefore, if the evidence shows that the first two factors are present, then the third factor would also be established by the admitted fact that Mr. Orcutt was absent more than three consecutive calendar days.

1.) The employer designates in writing that the employee will assume the duties of the higher classification.

The employer did not designate in writing that the grievant was to assume Mr. Orcutt's duties. The union argues that the employer designated the grievant to take over the duties, but did not issue the written confirmation of that decision.

Concerning the writing, the union correctly argues that an employer cannot evade contractual responsibilities by simply failing to issue a written designation. Every contract imposes on the parties a duty of good faith and fair dealing in the performance of the contract.<sup>2</sup>

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<sup>2</sup> Robert S. Summers, "The General Duty of Good Faith-Its Recognition and Conceptual Duty", 67 *Cornell Law Review* 810 (1982); St. Antoine, *supra*, Section 2.13, p. 81.



Labor arbitrators have applied the duty of good faith to prevent parties from willfully rendering an imperfect performance of contractual obligations.

Therefore, if the evidence shows that the employer made the designation, then the grievant is entitled to the higher classification pay. The writing is a secondary consideration. Consequently, the first question is what evidence supports the assertion that the employer designated the grievant to perform the work of the higher classification during Mr. Orcutt's absence?

Captain Ronald Haynes serves as Mr. Orcutt's direct supervisor and the grievant's second level supervisor. Captain Haynes testified that when Mr. Orcutt was out of work on medical leave, he checked with Human Resources to see what it would take to place someone in Mr. Orcutt's position temporarily. Captain Haynes learned from Human Resources that he could not place the grievant in the Locksmith Supervisor job since the grievant had no one to supervise. Captain Haynes testified that he did not direct the grievant in any way to perform duties outside the Locksmith job classification. (TR47:3-15) He testified that he assumed the primary duties of supervising the lock shop and the grievant. (TR49:16-18)

When Mr. Orcutt had to leave work in February 2010, the grievant conferred with Captain Haynes about his responsibilities during Mr. Orcutt's absence. The grievant testified Captain Haynes told him the following:

"You're going to go ahead and run the shops, and only do emergent work that's there. If the work comes into you."....

"Just send me an email or 'cc' to me, and then I will go ahead and tell you, either it's an okay or not. ... You could have 300 things that are there that I okay, but you need to just prioritize and just do those that are emergent; just put out those fires." (TR27)

The grievant testified that, from the conversations he had with Captain Haynes shortly after Mr. Orcutt left, the grievant understood that he would be performing Mr. Orcutt's duties during Mr. Orcutt's absence. (TR27:16-18)

In April 2010, the grievant attempted to get clarification from the Captain about his responsibilities and about receiving pay for working in a higher classification. In one email, the grievant wrote: "Captain. This week is 7 weeks I've been doing my job and my boss's job." The grievant also wrote in the same email: "Could you please email me back with where my pay

status is.” (J8) Captain Haynes responded that he did not have any additional information for the grievant, but he also asked him what emergency work he had been doing and how much time he had spent on this work. (J8)

The grievant then provided a detailed response that included administering the lock shop, answering email inquiries, reviewing work requests for emergency work, coordinating with other shops on work orders, prioritizing work, monitoring parts and supplies, making chits and keys. (J8) Nothing in the record indicates that Captain Haynes told the grievant in response to his April 2010 inquiry about his status that the grievant was not functioning in the higher classification and he was not going to receive higher level pay for working in a higher classification. (TR28:24-TR29:15)

In this email exchange in April 2010, the grievant made it clear that he believed that he was performing the higher level job and no one in management had told him otherwise.

In summary, the evidence concerning designation of the grievant as the Locksmith Supervisor is as follows: 1.) The employer did not designate in writing that the employee will assume the duties of the higher classification. 2.) The grievant assumed from conversations that he had with Captain Haynes that he had been designated to assume Mr. Orcutt’s duties. 3.) The grievant inquired in April 2010 to ask about his pay status. 4.) The employer did not directly answer his inquiry about his pay status. 5.) The employer did not tell the grievant, in response to his questions about his status and pay in April 2010, that he was not working in the higher classification and he would not be paid at the higher classification rate.

2.) The employee must assume the duties of the higher classification.

The Locksmith Supervisor Position Description provides that the job involves regular Locksmith duties in addition to higher level responsibilities, such as supervising the Locksmith, prioritizing the work, coordinating with other supervisors and contractors, maintaining the key control database and making keys and chits. (J4)

Testimony in the record shows that the type of work and the volume of work at AHCC requires the employment of a Locksmith and a Locksmith Supervisor. (TR42:21-24)

Captain Haynes testified that during Mr. Orcutt’s absence the grievant performed work that he normally would not have done, such as cutting keys, making chits and fixing the key-making machine. Captain Haynes testified that those tasks, however, are tasks that the grievant could be assigned anytime in his job as a Locksmith. (TR47:16-25) As discussed above, Captain

Haynes testified that he did not direct the grievant in any way to perform duties outside the Locksmith job classification. (TR47:3-15) He testified that he assumed the primary duties of supervising the lock shop and the grievant. (TR49:16-18)

The grievant described the working relationship with Captain Haynes during Mr. Orcutt's absence as follows:

I was permitted to go ahead and use Dave's computer to get the emails from folks that were requesting things.

And Captain Haynes and I had discussed before that about me cc'ing or sending a copy to him on these requests, and that to save time that I would just "cc" that to him for his permission, because anything that has to do with keys or chits or additions or deletions or new locks or old locks, everything has to go through the Captain—the Captain's permission first and then he will yea or nay it.

And normally what he would do is he would just okay and it and just said, "You prioritize"..."and if you have a problem, get back with me." (TR66:18-TR67:7)

The grievant also testified that during Mr. Orcutt's absence Captain Haynes approved work orders and then the grievant prioritized the work, much as Mr. Orcutt did when he was working. (TR25:19-TR27:23; TR67:8-14) Captain Haynes, however, testified that, during Mr. Orcutt's absence, he prioritized the work in consultation with the grievant. ("Mike and I would sit down and discuss [the work orders] and we'd come up with a priority of stuff that needed to get done." (TR49:16-23)) These two versions of the working relationship are not really in conflict. The grievant consulted with Captain Haynes because everything having to do with keys and locks had to be approved by the Captain. Once the Captain approved work orders, the grievant had the responsibility to decide how the work would get done and then he did the work.

Superintendent Miller-Stout testified that the primary factor that distinguishes the Locksmith Supervisor from the Locksmith is the supervisory responsibility. Therefore, in her view, the grievant had to supervise someone to be designated as the Locksmith Supervisor, and since he did not supervise anyone he did not perform any higher level duties. (TR40:1-TR41:12)

William Cody testified at the hearing. He worked as a Locksmith, Locksmith Lead or Locksmith Supervisor for the employer from 2003 until April 1, 2011 when he retired. He testified that he obtained Locksmith Supervisor/Expert status through a "Director's Review" of

his position through the Department of Personnel. He testified that he had been assigned higher level work and was not reclassified so he appealed and eventually was awarded the higher level position. He testified that another Locksmith, Charles Halcomb, followed a similar process and also obtained the higher classification of Locksmith Supervisor. Mr. Cody worked at the Washington Correction Center for Women (“WCCW”) and Mr. Halcomb worked at McNeil Island and then took over Mr. Cody’s position at WCCW when Mr. Cody retired.

Mr. Cody testified, without rebuttal, that he and Mr. Halcomb did not supervise anyone while they held the position Locksmith Supervisor. (TR13-TR17)

Superintendent Miller-Stout testified that AHCC differs from WCCW because AHCC is larger both in offender population and number of buildings. In addition, about half of the WCCW facility is minimum security, whereas three quarters of AHCC is a secure medium security perimeter. Therefore, AHCC has more work for the Locksmiths, as demonstrated in part by the fact that AHCC employs a Locksmith and a Locksmith Supervisor rather than a single Locksmith. (TR42:2-24) Her testimony, however, did not address the issue of other DOC Locksmith Supervisors at other prisons holding that status without supervising anyone.

Although the employer asserts that supervising someone is the only distinguishing feature between the Locksmith and the Locksmith Supervisor jobs, the testimony shows that Mr. Orcutt had other responsibilities that the grievant ordinarily did not perform. (TR47; TR29:7-15)

An area in which the employer asserts the grievant did not handle Mr. Orcutt’s duties involves the key control database. Captain Haynes testified as follows concerning the grievant’s work on the key control database:

Q. ...but in terms of the nature of the work, he [the grievant] was doing everything that Orcutt had been doing, right? I mean, there was no one else to be doing it.

A. Well, no, because the database was not kept up. It was written in a notebook and given to Dave when he got back to update all the –database.

Q. Who was keeping the notes on that?

A. Mike would keep a notepad, just writing the stuff that he would do and Dave kept the database up. (TR56:6-14)

The grievant testified that he and Mr. Orcutt discussed what the grievant should do to maintain the key control database during Mr. Orcutt's absence. They agreed that rather than having the grievant learn the system for maintaining the database on the computer, the grievant kept a notebook and Mr. Orcutt entered the information when he returned. (TR69:7-TR70:9)

Therefore, although the grievant did not enter information into the database on the computer, he maintained handwritten records on a daily basis and made them available to Mr. Orcutt to enter when he returned.

When asked directly which of Mr. Orcutt's duties, apart from supervising another Locksmith, that the grievant did not perform in Mr. Orcutt's absence, Captain Haynes testified that the grievant did not: a.) Enter the information in the key control database, even though he kept the handwritten records, and; b.) He did not make all the keys and chits that needed to be made. (TR56:4-TR57:1) Captain Haynes also testified that some of Mr. Orcutt's work was curtailed during his absence, but he did not identify what work. (TR57:9-12)

The employer argued that the maintenance department was available to and did assist the grievant with Locksmith duties during Mr. Orcutt's absence. Captain Haynes testified as follows in response to a question about obtaining assistance for the lock shop from other departments:

Mike and I discussed that, and with that I took it up the chain of command to find out if we can get some assistance from the maintenance department, because there was a large workload.

So, when I talked to the superintendent and Dick Moore, the facilities manager, we came up with that Mike would submit work orders on these additional things and the work orders would be sent to the plant managers, and they would make the determination on who would do the work that couldn't get done. (TR48:19-TR49:8)

Captain Haynes testified that assistance from the maintenance shop could occur on any day depending on the demands on the lock shop. He also testified that he did not know the details of any assistance provided by the maintenance department. (TR52:1-16; see also TR43:18-TR44:19)

The Superintendent testified that maintenance workers often work with the Locksmiths to accomplish particular tasks. (TR41:13-TR42:1) She also testified that she did not know the details of the extent to which maintenance assisted the lock shop during Mr. Orcutt's absence. (TR43:18-TR44:19)

Richard Moore serves as Facilities Manager at AHCC. He supervises two Plant Managers who in turn supervise tradespeople who perform maintenance work. He does not supervise the lock shop. The maintenance shop is a separate shop from the lock shop, but the two shops often work together on projects that require the skills of both shops. Some of the skilled work that maintenance provides in joint projects with the lock shop include high voltage electrical, low voltage electrical and welding.

Mr. Moore testified that during Mr. Orcutt's absence, maintenance provided the same kind of assistance to the lock shop that it would have provided if Mr. Orcutt had been working. (TR61:9-17) He testified that on one occasion during Mr. Orcutt's absence the maintenance shop assisted with a door closure and that work was beyond what maintenance would ordinarily have done. Aside from that single occasion that involved about one and one-half hours of work, any work that maintenance did with the lock shop was the same as it would have done whether or not Mr. Orcutt was working. (TR62:3-TR64:13) Mr. Moore testified that the only other change with the maintenance shop during Mr. Orcutt's absence was that greater priority was often given to requests from the lock shop. (TR63:14-TR65:1)

The grievant testified that no one else performed Locksmith work during Mr. Orcutt's absence, with the exception that he did receive assistance from maintenance with Locksmith work on one or two occasions. (TR70:10-TR73:7)

In summary, the evidence of the grievant's assumption of the duties of Locksmith Supervisor is as follows: 1.) Although the grievant did not supervise anyone during his supervisor's absence, unrebutted testimony in the record shows that other DOC Locksmiths at other prisons have held Locksmith Supervisor status, but did not supervise anyone. 2.) The grievant performed work that he ordinarily did not perform when Mr. Orcutt was working. This work included making keys and chits. 3.) The grievant discussed priorities and received approval from Captain Haynes to proceed with work orders, but the grievant had the responsibility to determine how to carry out the work without any supervision. From the record, his role does not seem to differ significantly from the role that Mr. Orcutt had in working with the Captain on setting priorities. 4.) The grievant did not enter information into the computerized key control data base, but he created and preserved handwritten records of the work performed and those records were then entered later into the database. The only difference between what he did and what Mr. Orcutt did concerning the key control information is that the

grievant did not use the computer to enter the information he collected and preserved. 5.) No one other than the grievant performed Locksmith work during Mr. Orcutt's absence with the exception of one or two instances in which maintenance assisted in emergencies. Otherwise, the assistance that maintenance provided to the lock shop was of the same character as assistance that the shop provided when Mr. Orcutt was working.

#### Conclusion

During his supervisor's absence of more than three consecutive calendar days, the grievant assumed, based on conversations he had with his higher level supervisor, that he was expected to take over the duties of his absent, immediate supervisor. Whether or not that was a reasonable assumption, the grievant asked for clarification of his pay and status in writing in April 2010. That correspondence from the grievant gave the employer clear notice that the grievant believed he had taken over the duties of the higher classification. The employer did not provide the requested clarification. The employer took no action to address the grievant's understanding of his status until after he filed a grievance. By allowing the grievant to continue to work under the belief that he was expected to perform higher level duties, while not providing a written designation that he should assume those duties, the employer received the benefit of the grievant's performance at a higher level without paying him properly for his work. The employer's actions violated Article 32.3 of the Agreement when it declined to pay the grievant for performing duties of a higher classification. The appropriate remedy is to make the grievant whole for the difference in wages and benefits to which he was entitled for assuming the duties of the Locksmith Supervisor during the extended absence of his supervisor.

The employer argues that this case should have been dealt with under the procedure for reallocation contained in Article 31 of the Agreement. The employer contends that the union is asking me to make a decision that rightfully should be made by the State Department of Personnel or the Personnel Resources Board. I don't agree with that contention. This case is about an employee who was not paid properly under the Agreement when he temporarily assumed the duties of his supervisor. As the grievant stated in his testimony at the hearing: "...I was doing the work. I should be paid for it." (TR31:11-12)

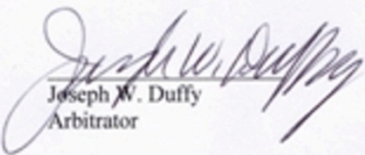
The union argued that the grievant met the criteria for an expert Locksmith and therefore he could be placed in the Locksmith Supervisor job on that basis. (J6, J10) My award in this case is not based on that theory.

IN THE MATTER OF THE ARBITRATION BETWEEN

TEAMSTERS LOCAL UNION NO. 117,	)	
	)	ARBITRATOR'S
	)	AWARD
UNION,	)	
	)	MICHAEL BOGULASKI
and	)	GRIEVANCE
	)	
STATE OF WASHINGTON,	)	GRIEVANCE AHCC 101-10
DEPARTMENT OF CORRECTIONS,	)	
	)	FMCS NO. 11-00582-6
EMPLOYER.	)	
_____	)	

For the reasons set forth in the Opinion that accompanies this Award the grievance must be and it is sustained. The employer shall make the grievant whole for the additional wages and benefits he would have earned for assuming the duties of the Locksmith Supervisor while Mr. Orcutt was absent. This matter is remanded to the parties to calculate the appropriate make whole remedy. If the parties cannot reach agreement, then, consistent with their agreement on retained jurisdiction, they shall return the matter to me for resolution.

Dated this 12<sup>th</sup> Day of July 2011



Joseph W. Duffy  
Arbitrator