STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MARINETTE COUNTY COURTHOUSE EMPLOYEES UNION, LOCAL 1752, AFSCME, AFL-CIO,

Complainant,

vs.

MARINETTE COUNTY (COURTHOUSE),

Respondent.

Case 156
No. 53805 MP-3134
Decision No. 28675-B

Appearances:
Mr. David Campshure, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 1566 Lynwood Lane, Green Bay, Wisconsin 54311, on behalf of Local 1752.
Mr. Chester Stauffacher, Corporation Counsel, Marinette County, 1926 Hall Avenue, P.O. Box 320, Marinette, Wisconsin 54143-0320, on behalf of the County.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Marinette County Courthouse Employees Union, Local 1752, AFSCME, AFL-CIO, filed a complaint with the Wisconsin Employment Relations Commission on February 5, 1996 alleging that Marinette County had committed prohibited practices in violation of Secs. 111.70(3)(a)5 and 1, Stats., by refusing to arbitrate the Jeanne Lantagne grievance. On March 19, 1996, the Commission appointed Raleigh Jones, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order, as provided in Sec. 111.07(5), Stats. On May 31, 1996, the Union filed a motion for judgment by default or, in the alternative, a motion for judgment on the pleadings. These motions sought a ruling that the factual allegations in the complaint be deemed admitted. The basis for the motions was that the County failed to file an answer to the complaint by May 24, 1996. May 24, 1996 was the date specified in the Notice of Postponement of Hearing as the date for filing an answer. On June 3, 1996, the County filed an answer to the complaint. On June 5, 1996, a hearing was held in Marinette, Wisconsin. At the start of the hearing, the Examiner denied the Union's alternative motions on the grounds that the Union had not shown it was prejudiced by the County's tardy answer. The parties then presented their evidence and arguments. Afterwards,

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the parties filed their initial briefs in the matter. An affidavit was attached to the Employer's initial brief from County witness Roger DeGroot that alleged that the transcription of his testimony on page 48 of the transcript was incorrect. The Examiner treated the affidavit as a motion to correct the transcript pursuant to ERC 10.13(6). The parties subsequently filed responses to same. On September 19, 1996, the Examiner issued an Order Denying Motion to Correct Transcript (Decision No. 28675-A). The parties subsequently filed reply briefs, whereupon the record was closed October 7, 1996. The Examiner, having considered the evidence and arguments of the parties, makes and issues the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. Marinette County Courthouse Employees Union, Local 1752, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization with its mailing address in c/o David Campshure, 1566 Lynwood Lane, Green Bay, Wisconsin 54311.

2. Marinette County, hereinafter referred to as the County, is a municipal employer with its offices located at 1926 Hall Avenue, P.O. Box 320, Marinette, Wisconsin 54143-0320.

3. At all times material hereto, the Union has been the certified exclusive collective bargaining representative of all regular full-time and regular part-time employes of the Marinette County Courthouse as specified in the parties' collective bargaining agreement excluding elected, supervisory and confidential personnel.

4. The Union and County have been parties to a series of collective bargaining agreements. The parties' current agreement is in effect from January 1, 1995 through December 31, 1997. It contains, among its provisions, the following:

ARTICLE 4
GRIEVANCE PROCEDURE

> 4.01 Grievance Procedure. Should differences arise between the Employer and Employees or the Union, this procedure shall be followed:
>
> **Step 1:** Any Employee covered by this Agreement who has a grievance shall report h/er grievance to the steward or other representative of the Union within ten (10) work days, who shall investigate the grievance thoroughly, and if the Union feels the grievance is warranted, the Union shall request a meeting with the department head within five (5) work days. The department head shall give h/er answer to the Union in writing within three (3) work days of this meeting.

. . .

Step 4: If the matter remains unsettled, then it should be submitted in writing to arbitration.

A) The arbitration board shall consist of one (1) member selected by the Wisconsin Employment Relations Commission. The decision of the arbitration board shall be submitted to both parties hereto in writing and shall be final and binding upon both parties.

The Union shall have the right to have present the aggrieved Employee or Employees and any other Union representatives at all meetings for the purpose of resolving said grievance. Grievances shall be presented for adjustment without fear of penalty to the Employee aggrieved. No employee shall be caused to suffer loss in pay on account of carrying out the provisions of this grievance procedure.

. . .

APPENDIX A
Marinette County Courthouse Pay Plan Modifications
1995 WAGES

3% ON 1/1/95

RANGES	**POINTS**	**START**	**6 Mos.**	**12 Mos.**	**24 Mos.**	**36 Mos.**
. . .						
D	330-369	$8.13	$8.40	$8.68	$8.96	$9.24
E	370-409	$8.61	$8.91	$9.20	$9.49	$9.79

. . .

APPENDIX B
RULES FOR THE ADMINISTRATION OF THE CLASSIFICATION AND COMPENSATION PLAN

The authorized pay ranges shall be interpreted and applied as follows:

1. a) **Initial Employment:** The hiring rate shall be the entrance rate payable to any employee on first appointment to a job. If recruitment difficulties exist or if a potential appointee possesses unusual qualifications directly related to the requirements of the position, the County may permit hiring at any step in the pay range provided all other employees in the same classification receive a like adjustment in salary.

b) **Probationary**: All newly hired employees shall serve a six (6) month probationary period during which time the County may discharge an employee with no right of appeals provided under the grievance procedure of the contract. An employee upon successful completion of the six (6) month period shall have his/her pay increased to the permanent appointment rate and thereafter shall receive the rate increases as reflected in Appendix A.

. . .

5. **Reclassification Requests**. The County and the Union each shall appoint three (3) County employees to serve on a Job Evaluation Committee. The Committee shall review job reclassification requests once each year using the position analysis questionnaires and job evaluation instrument used in the 1991-92 job classification study. When new jobs are proposed by the county, the County shall provide prior to the posting, a position analysis questionnaire for the Committee to score. If there is no dispute as to the score, the job shall be placed in the appropriate spot in the classification system. If there is a dispute as to the score, the County may assign on interim rate until the dispute process can be invoked.

Re-evaluation process: An employee may request a re-evaluation of his/her position, or the supervisor may request a re-evaluation of the position, by applying before August in any year, beginning in 1993. A Union/County Committee, consisting of an equal number of representatives (maximum committee of 6) shall meet to apply the job evaluation method developed by the parties in 1991-92. A majority of the committee shall decide the matter if there is disagreement on a job score.

If the committee is unable to reach a majority decision, the County or the Union may request the appointment of a W.E.R.C. staff member, mutually acceptable to both parties. This person will serve as an umpire and decide the issue by choosing between a point score recommended by the County and a point score recommended by the Union. The umpire shall make a decision based on the record considered by the committee, and he/she shall issue a one sentence decision without supporting rationale.

In all cases, there must be a documented change of duties since the last request (or appeal) for a re-evaluation to be considered in this process. No appeals shall be heard until August, 1993.

The contractual definition of a grievance contained in the first sentence of Section 4.01 has not been changed since at least 1972. The County has sought without success in several negotiations to narrow the scope of what is grievable. Thus, the County has tried to change the contractual definition of a grievance from that referenced above.

5. In early 1994, the County created a new clerical position in the Niagara office of its Human Services Department. As a newly created position, this secretary/receptionist position was rated by a job evaluation committee to determine its proper place in the parties negotiated wage schedule. This job evaluation committee, which exists pursuant to Appendix B, Section 5 referenced above, consisted of three management representatives and three union representatives. This job evaluation committee rated the new position and decided that it required "less than one year" of clerical experience. However, when the job was posted internally and externally, the posting indicated that a "minimum of one year" of clerical experience was required. County Personnel Coordinator Jacqueline Gordon unilaterally changed the minimum experience requirement from what the job evaluation committee determined because she felt that "less than one year" of clerical experience was not sufficient for the position. No bargaining unit employe posted into the position. The position was subsequently filled through the hiring of Jeanne Lantagne on February 7, 1994. Lantagne has been employed by the County since then. Neither the Union nor Lantagne was aware at the time that Gordon had changed the experience requirement for the position from "less than one year" to "minimum of one year". Had the position in question been rated by the job evaluation committee as "minimum of one year" of clerical experience required rather than "less than one year" of clerical experience required, this higher level of experience would have given the position a higher point total which, in turn, would have put the position in a higher pay range.

6. The job evaluation committee referenced in Appendix B, Section 5, also reviews job position reclassification requests. This committee makes adjustments in job ratings to account for any changes in job responsibility that may have occurred since the last reclassification study. Lantagne's position was reviewed in 1995 after she had been employed by the County for more than one year. In the course of reviewing Lantagne's position, the job evaluation committee determined that Lantagne's position required more clerical experience than originally rated. Specifically, it changed the clerical experience requirement from "less than one year" to "one to two years" clerical experience. Since the job evaluation committee changed the rating for her position, Lantagne subsequently received a pay increase. This pay increase became effective June 7, 1995.

7. On November 3, 1995, the Union filed the following grievance on Lantagne's behalf concerning the matters referenced in Findings of Fact 5 and 6:

> **(Circumstances of Facts): (Briefly, what happened)** Jeanne was hired on February 7, 1994 as a Secretary/Receptionist in Job Class D with a score of 367. This was in error due to the fact that the position required a minimum of One Year experience. This should have given her a "B" rating in #12 of the Job Study Position Evaluation Form. Due to an error she was given an "A" rating which lowered her points to the 367 figure when in fact she should have been ranked at 392 putting her in the Class "B" position.
>
> **(The contention - what did management do wrong?) (Article or Section of contract which was violated if any)** Erroneously placed Jeanne in the wrong category causing her wages to be incorrect. Appendix A & B of the contract and any other Articles that apply.
>
> **(The Request for Settlement or corrective action desired):** Compensation of wages retro to her date of hire. Make employee whole.

8. This grievance, which hereinafter is referred to as grievance 95-3, was denied at Step 1 of the grievance procedure. On appeal to Step 2, the County did not respond to the grievance. The Union treated this as a denial and appealed the grievance to Step 3 on November 21, 1995. On November 30, 1995, Union president Mary Scoon and Union representative Dave Campshure met with County Administrator Stephen Fredericks regarding this grievance. During the meeting, Fredericks indicated it was the County's position that grievance 95-3 was not grievable. On December 11, 1995, the Union made a second written request to proceed to Step 3 of the grievance procedure and present the grievance to the County's Personnel Committee. The parties then exchanged the following three letters regarding the matter. On December 13, 1995, Fredericks sent the following letter to Scoon regarding the grievance:

> As I indicated to you and Dave at our meeting on November 30th, it is the County's position that the rating of Jeanne Lantagne's position is not a violation of the collective bargaining agreement, and therefore, is not a grievable matter. Therefore, in accordance with Appendix B of the Courthouse Union's current collective bargaining agreement, options of remedy are provided as follows:
>
> 1. The job was rated according to the terms of the contract language: Appendix B, Article 5. Reclassification Requests. ". . .When new jobs are proposed by the county, the County shall provide prior to the posting, a position analysis questionnaire for the Committee to score. If there is no

dispute as to the score, the job shall be placed in the appropriate spot in the classification system."

2. The rating may be appealed to the Job Study Committee, (which has never been done on this position before).

3. If the committee is unable to reach a majority decision on the matter, an umpire may be called in. (See re-evaluation process, page 34 of contract).

The above is the process that that the Union and the County has agreed to follow in these types of matters. If you wish to discuss this further with me, please feel free to contact my office.

On January 3, 1996, Campshure sent the following letter to Fredericks:

> This is in response to your Memo of December 13, 1995 to Mary Scoon regarding the grievance filed on behalf of Jeanne Lantagne. The Union vehemently disagrees with the County's position that the matter is not grievable. The grievance arises not from the rating the Reclass Committee gave to the Secretary position filled by Ms. Lantagne, but from the fact that Management changed the requirements for that position after it was rated. The Union maintains the County had an obligation to: (a) inform the Union when it altered the years of experience required and (b) reconvene the Reclass Committee to re-rate the position based on the change in requirements. Because the Union was unaware Management had changed the requirements of the position, there was no dispute as to the initial rating. It was for that same reason the initial rating was never appealed.
>
> The Union urges the County to reconsider its position that this grievance is not grievable or arbitrable. Therefore, please confirm the County's position in writing so that the parties can process the grievance or the Union can give consideration to filing a prohibited practice complaint with the WERC.
>
> Please contact me if you have any questions regarding this matter.

On January 15, 1996, Fredericks sent the following letter to Scoon and Campshure:

You state in your letter of January 3, 1996, that the basis of this grievance is the fact that management changed the experience requirements for the position that the above-named grievant now occupies, AFTER the Job Study Committee rated the position. This is not the case, which will be explained below. Further, the County still maintains that this is not a grievable issue and contends that the options for remedy are as stated in my December 13, 1995, memo to Mary Scoon regarding this matter.

Management DID NOT change the experience rating. My assistant, on her own volition, and under no direction from me or anyone else in management, solely recorded the change in the experience rating of this position after the Job Study Committee rated it at "less than 12 months" experience. Her confusion centered around the difference between 1 - 2 years experience and less than 12 months experience, and how to describe it on the job description. In her own judgment, she recorded one year. It is therefore management's conclusion, that this is a clerical error - not a change in rating directed by management.

The committee's rating and management's approval of that rating has ALWAYS been "less than 12 months", (up until the recent review of the position), regardless of what my assistant recorded in the subsequent job description, union posting and job ad.

The rating of "less than 12 months" was approved by the Job Study Committee at the time the position was initially rated. The incumbent did accept the position knowing what the position paid based on the job rating. Subsequent to the 1/3 review, the employee now feels an error was made on the job description and the posting and believes that the job was incorrectly rated. The union and the incumbent did accept the job rating and placement in the appropriate pay range without timely filing an appeal at the time the initial rating was completed, and in accordance with Appendix B. In fact, her job was not incorrectly rated, nor did management change the job experience requirement after the rating. There simply is not an issue in this matter - it was only a clerical error.

The County must raise the question as to why the employee did not bring this error to the employer's attention prior to the committee's review of 1/3 of the positions? The time to request appeals is immediately following the rating as described in Appendix

> B of the current contract. As stated above, the County maintains its position that this is not a grievable issue, but must be dealt with in the manner as described in Appendix B.
>
> If you wish to discuss this matter further, please feel free to contact me.

9. On February 5, 1996, the Union filed the instant complaint with the Wisconsin Employment Relations Commission. The County has refused to proceed to arbitration on grievance 95-3 on the basis that the matter is not grievable/arbitrable.

10. Grievance 95-3 raises a claim that comes within the definition of a grievance contained in Section 4.01 of the parties' collective bargaining agreement. Additionally, there is no provision in the parties' collective bargaining agreement which specifically excludes arbitration of grievance 95-3, including Appendix B, Section 5.

Upon the basis of the foregoing Findings of Fact, the Examiner makes and issues the following

CONCLUSION OF LAW

Marinette County, by refusing to submit grievance 95-3 to arbitration, has violated Article 4 of the parties' collective bargaining agreement (Grievance Procedure) and by this action has violated Sec. 111.70(3)(a)5 and 1, Stats.

Upon the basis of the foregoing Findings of Fact and Conclusion of Law, the Examiner makes and issues the following

ORDER 1/

IT IS ORDERED that Marinette County, by its officers and agents, shall immediately:

1. Cease and desist from refusing to submit grievance 95-3 identified in Finding of Fact 7 above to binding arbitration.

2. Take the following affirmative actions which the Examiner finds will effectuate the policies of the Municipal Employment Relations Act:

    a. Immediately submit grievance 95-3 to binding arbitration.

(Footnote 1/ appears on the next page.)

b. Notify the Commission within twenty (20) days of the date of this Order, in writing, of what steps have been taken to comply with this Order.

Dated at Madison, Wisconsin this 11th day of February, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Raleigh Jones /s/
Raleigh Jones, Examiner

1/ Any party may file a petition for review with the Commission by following the procedures set forth in Sec. 111.07(5), Stats.

Section 111.07(5), Stats.

> (5) The commission may authorize a commissioner or examiner to make findings and orders. Any party in interest who is dissatisfied with the findings or order of a commissioner or examiner may file a written petition with the commission as a body to review the findings or order. If no petition is filed within 20 days from the date that a copy of the findings or order of the commissioner or examiner was mailed to the last known address of the parties in interest, such findings or order shall be considered the findings or order of the commission as a body unless set aside, reversed or modified by such commissioner or examiner within such time. If the findings or order are set aside by the commissioner or examiner the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the commissioner or examiner the time for filing petition with the commission shall run from the time that notice of such reversal or modification is mailed to the last known address of the parties in interest. Within 45 days after the filing of such petition with the commission, the commission shall either affirm, reverse, set aside or modify such findings or order, in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted. If the

> commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another 20 days for filing a petition with the commission.

This decision was placed in the mail on the date of issuance (i.e. the date appearing immediately above the Examiner's signature).

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

In November, 1995, the Union filed grievance 95-3 which was subsequently processed through the second step of the contractual grievance procedure. Respondent County ultimately refused to proceed to arbitration on that grievance. The Union then filed a complaint with the Commission asserting that Respondent County's refusal to arbitrate the grievance violated Secs. 111.70(3)(a)5 and 1, Stats. The County's answer essentially admitted that it refused to arbitrate that grievance, but denied that the grievance was grievable/arbitrable under Appendix B of the parties' collective bargaining agreement.

POSITIONS OF THE PARTIES

Union

The Union's position is that grievance 95-3 is both grievable and arbitrable. It notes at the outset that the contract defines a grievance in broad terms, namely any "difference" arising between the parties. According to the Union, grievance 95-3 certainly qualifies as a difference between the Employer and the Union. The Union therefore contends that grievance 95-3 is covered on its face by the parties arbitration clause (Article 4). The Union submits that what the County is trying to do here is impose its own interpretation of what is grievable and arbitrable.

Next, the Union argues that the County has not shown that there is any provision in the labor agreement which excludes grievance 95-3 from arbitration. According to the Union, the arbitration exclusion found in Appendix B, Section 5 is inapplicable to this case because the Union is not challenging the rating the reclass committee gave to the Niagara clerical position or the actions of the reclass committee. Instead, the Union believes that the issue in grievance 95-3 is that the experience requirement for the position was changed after the position was rated and the vacancy filled on the basis of the altered minimum experience requirements. As the Union sees it, the County is trying to distort the real issue in this case so as to fit the grievance into the Appendix B, Section 5 arbitration exclusion. The Union contends that since grievance 95-3 falls within the scope of the parties' broad statement of what constitutes a grievance, and is not precluded by any other provision of the agreement, the grievance is arbitrable. The Union argues that since the County has refused to participate in arbitrating grievance 95-3, it has violated Secs. 111.70(3)(a)5 and 1.

Finally, the Union notes that the County raises various arguments relating to the merits of the grievance. According to the Union, all those arguments are immaterial to this case because the merits of the grievance are for the arbitrator to decide -- not the Examiner.

The Union therefore seeks an Order requiring the County to submit grievance 95-3 to arbitration. As part of the Order, the Union seeks to have the County pay $225 as its share of the now applicable $250 WERC filing fee. According to the Union, this payment is appropriate because the WERC filing fee for grievance arbitration has increased from $25 to $250. The Union notes that this monetary payment was recently awarded by another examiner in another refusal to arbitrate complaint case, Marinette County, Dec. No. 28783-A (Gallagher, 9/96).

County

The County's position is that grievance 95-3 is not grievable or arbitrable. The County characterizes this case as follows: "the bottom line in this matter is that the Union relies on the broad language of Section 4.01 as authority for the proposition that the Union can grieve absolutely anything and everything on any sort of a whim, regardless of ultimate merit. This may sound fine and dandy, but we should attempt to stay in touch with reality and practicality." The County contends that Appendix B, Section 5 precludes grievance 95-3 from being arbitrated. The County avers that provision does not allow a rating assigned by the job evaluation committee to be appealed to arbitration. The County argues there is no appeal process provided for in the classification/reclassification procedure to which an employe may resort. According to the County, what the Union is trying to do in this case is invent an appeal procedure and inject it into the contract. As the County sees it, the Union is trying to create an employe appeal provision from the results of the job evaluation committee when the contract does not expressly allow for same. The County therefore reasons that the grievance is not a proper subject for arbitration.

The County then goes on to make the following arguments concerning the merits of the grievance. To begin with, it contends that contrary to the allegation raised in the grievance, it has not violated Appendix A (the wage provision). To support this premise, it asserts that Lantagne has been paid in accordance with the pay rate that was established by the job evaluation committee. It notes in this regard that she was initially paid at the rate contemplated for less than one year's clerical experience because that is what the evaluation committee initially rated her position. It also notes that when the job evaluation committee later increased the clerical experience requirement as a result of a subsequent reevaluation of her job, her pay was increased. The County therefore argues that the Union has not shown that Lantagne was paid less than the proper contractual rate.

Next, the County argues that contrary to the allegation raised in the grievance, it has not violated Appendix B either. To support this premise, it first avers that the change in the experience requirement which Gordon made was a "clerical error." Second, the County asserts that Lantagne accepted the position knowing the rate of pay. Third, it submits that neither the Union nor the grievant filed a timely appeal of the job evaluation committee's rating.

The County summarizes its position thus: "the Union cannot possibly succeed in the arbitration of something that does not exist", so "it makes no sense to arbitrate." Accordingly, the County contends it has not violated Secs. 111.70(3)(a) 5 and 1. It asks that the complaint be

dismissed.

DISCUSSION

The issue presented in this case is whether grievance 95-3 is arbitrable. The Commission has the authority under Sec. 111.70(3)(a)5, Stats., to determine alleged municipal employer violations of "an agreement to arbitrate questions arising as to the meaning or application of the terms of a collective bargaining agreement. . ." The Commission has enforced contractual agreements to arbitrate disputes regarding the interpretation of the contract, and where necessary, will address disputes regarding whether a particular grievance falls within the scope of an agreement to arbitrate. 2/

The law governing a Commission determination of whether a particular grievance falls within the scope of a contractual arbitration clause is ultimately rooted in the Steelworkers Trilogy. 3/ The Wisconsin Supreme Court adopted the principles of the Steelworkers Trilogy in Denhart v. Waukesha Brewing Co., Inc., 17 Wis. 2d 44 (1962). Later, in Jt. School District No. 10 v. Jefferson Education Association, 78 Wis. 2d 94 (1977), the Court applied the law enunciated in the Steelworkers Trilogy to the Municipal Employment Relations Act. In that case the Court held that a party cannot be required to submit to arbitration any dispute which it has not agreed to submit. The Court further held that in determining arbitrability, the arbitration agreement enforcement forum's function "is limited to a determination whether there is a construction of the arbitration clause that would cover the grievance on its face, and whether any other provision of the contract specifically excludes it." 4/ The Commission has held that a party has a right to proceed to arbitration when it makes a claim which on its face is governed by the grievance arbitration clause of the collective bargaining agreement. 5/

Applying these principles here, the focus of inquiry is not whether the grievance has merit,

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2/ The Commission first acknowledged its adherence to these policies in the administration of the Municipal Employment Relations Act in Oostburg Joint School District No. 14, Dec. No. 11196-A, B, 11/72, 12/73. The Commission had consistently applied the same policy for many years in the administration of the equivalent provisions contained in the Wisconsin Employment Peace Act. See, for example, Dunphy Boat Corporation, Dec. No. 3588 (WERB, 1953).

3/ United Steelworkers v. American Mfg. Co., 363 U.S. 564 (1960); United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960); and United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960).

4/ Jt. School District No. 10, at p. 111.

5/ State of Wisconsin, Dec. No. 18012-C (WERC, 11/81).

but whether it (the grievance) is arbitrable. In making this call, the Examiner will answer the following two questions: first, is the parties' arbitration clause susceptible of an interpretation that covers the asserted dispute and second, is the grievance excluded from arbitration by any other provision of the agreement. These questions will be answered in the order just listed.

Based on the following rationale, the Examiner finds that the parties' arbitration clause is susceptible of an interpretation that covers the matter referenced in grievance 95-3. My analysis begins with a review of the grievance itself. It essentially alleges that the County violated Appendix A and B of the parties' labor agreement when it changed the minimum experience requirement for the newly-created Niagara clerical position and when it failed to present the changed requirements to the job evaluation committee for reevaluation. On its face, the Union's grievance alleges that the County's actions violated Appendix A and B. Both of these provisions are part of the labor agreement. The contractual grievance and arbitration clause gives the parties the right to grieve and arbitrate all "differences" which exist between them. By its express terms, Section 4.01 covers all "differences between the Employer and Employees or the Union". Under this broad statement of what constitutes a grievance, the "differences" do not even need to relate to the interpretation or application of a specific term of the labor agreement. Grievance 95-3 can certainly be read to involve a "difference" between the parties. That being so, it is held that Section 4.01, on its face, covers the grievance in question.

Attention is now turned to the question of whether grievance 95-3 is excluded from arbitration by any other provision of the agreement. The County contends that Appendix B, Section 5 excludes grievance 95-3 from arbitration. Based on the following rationale, the Examiner disagrees. The reclass procedure found in Appendix B, Section 5 precludes employes who are dissatisfied with the point total they are assigned by the job evaluation committee from grieving and/or arbitrating same. By its express terms though, it is only the assignment of points by the committee that is excluded. Grievance 95-3 is not covered by this exclusion for the following reason: the issue in that grievance is not the point rating that the job evaluation committee gave to the Niagara clerical position; instead, the issue concerns the fact that the experience requirement for the position was changed after the position was rated by the job evaluation committee and the vacancy subsequently filled on the basis of the changed minimum experience requirements. Thus, in grievance 95-3, the Union is not challenging the actions of the job evaluation committee; it is challenging the actions of management. As a result, it is held that grievance 95-3 is not excluded from arbitration by Appendix B, Section 5.

Finally, the Employer raises the following defenses as grounds why it should not be obligated to arbitrate this particular grievance: 1) that Lantagne is being paid in accordance with the committee's rating, 2) that the change in the experience rating which Gordon made was a "clerical error", 3) that Lantagne accepted the position knowing the rate of pay, and 4) that neither the Union nor the grievant filed a timely appeal of the committee's rating. All these defenses go to the merits of the grievance, not the question of whether the County has obligated itself to proceed to arbitration. The County may ultimately persuade the arbitrator that its actions did not violate

Appendix A or B. However, under Jefferson, supra, it is clear the County has contractually obligated itself to make its case to an arbitrator and cannot rely upon what it believes to be its unassailable arguments as to a valid basis to escape that obligation. The County therefore violated Secs. 111.70(3)(a)5 and 1, Stats., by refusing to submit grievance 95-3 to arbitration. It is directed to submit grievance 95-3 to binding arbitration.

In sum then, it is held that the County is obligated to arbitrate grievance 95-3. Section 4.01, on its face, covers the grievance in question. Additionally, there is no other provision in the contract which specifically excludes arbitration of the subject of the grievance, including Appendix B, Section 5. The remaining defenses raised by the County are relevant to the merits of the grievance but not to the question of whether the County is obligated to present those arguments to a grievance arbitrator. Accordingly, the County has contractually obligated itself to arbitrate grievance 95-3.

As part of the make-whole relief requested, the Union seeks to have the County pay $225 as its share of the now applicable $250 WERC grievance arbitration filing fee. According to the Union, this payment is appropriate because the WERC filing fee for grievance arbitration increased on January 1, 1996 from $25 (payable by the initiating party) to $250 (split by the parties to the contract). This particular monetary remedy was recently awarded by an examiner in another refusal to arbitrate complaint case involving Marinette County. 6/ However, on appeal, the Commission set aside that remedy. 7/ Part of the Commission's rationale for doing so was that it concluded that the filing fee which was applicable in that case was the previous $25 filing fee, not the current $250 filing fee. The Examiner finds that in this case however, the filing fee which is applicable is the current $250 fee. In the previous Marinette County case, the Union paid the then-applicable $25 filing fee with the Commission and the County subsequently refused to concur with the Union's request to arbitrate. The Union then filed its refusal to arbitrate complaint. Here, though, the Union has yet to file a formal request with the WERC for grievance arbitration or pay any filing fee. Instead, all it has filed with the Commission is the instant complaint. By law, the WERC grievance arbitration filing fee of $250 is to be equally split by the parties (i.e., each party paying $125). Given the statutory directive in Sec. 111.71(2) Stats., that "the Commission shall require that the parties to the dispute

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6/ Marinette County (Courthouse), Dec. No. 28783-A (Gallagher, 9/96).

7/ Marinette County (Courthouse), Dec. No. 28783-B (WERC, 12/96).

equally share in the payment of the fee", (emphasis added) the Examiner declines to order a split of the filing fee that differs from that just noted. Accordingly, the Examiner has not included the monetary payment requested by the Union in the Order.

Dated at Madison, Wisconsin, this 11th day of February, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Raleigh Jones /s/
Raleigh Jones, Examiner

gjc
28675-B.D