

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LOCAL 990, WISCONSIN COUNCIL 40,  
AFSCME, AFL-CIO,

Complainant,

vs.

KENOSHA COUNTY,

Respondent.

Case 168  
No. 54739 MP-3254  
Decision No. 29028-A

ORDER GRANTING RESPONDENT'S MOTION  
TO DEFER TO GRIEVANCE ARBITRATION

Respondent Kenosha County ("County"), by motion dated March 6, 1997, moved to dismiss and/or defer this complaint proceeding to grievance arbitration. Complainant Local 990, Wisconsin Council 40, AFSCME, AFL-CIO ("Union"), by letter dated March 17, 1997, opposed the motion.

Having considered this matter, I find the following:

One, the County's motion to dismiss the instant complaint is hereby denied, as no valid grounds have been advanced for doing so at this time.

Two, the County's alternative motion to hold this matter in abeyance pending resolution of the grievance arbitration proceeding is hereby granted.

The Union's complaint asserts that the County has violated its bargaining obligations by unilaterally adopting and implementing the results of a wage study which resulted in reclassifying some jobs; raising the wage rates of other jobs; and red-circling other jobs whose wage rates have been lowered. The County replies that this issue is addressed in Section 1.2 of the parties' collective bargaining contract, entitled "Management Rights", which states in pertinent part that the County reserves the right:

"to establish or abolish a job classification; to establish qualifications for the various job classifications; however, whenever a new position is created or an existing position changed, the County shall establish the job duties and wage level

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for such new or revised position in a fair and equitable manner subject to the grievance and arbitration procedure of this Agreement."

Pursuant thereto, the Union on January 5, 1997, filed a grievance challenging the County's implementation of the wage study. As a remedy, the grievance seeks a cease and desist order and a make-whole remedy for all employees adversely affected by the plan. The Union also has indicated its intent to arbitrate this issue and the County has agreed to do so.

That being so, it appears that said grievance centers on the same controversy and issue raised here. The Commission previously has ruled in similar circumstances that it will defer a refusal to bargain complaint to arbitration if it is arguably covered by the contract. 1/ Since that appears to be the case here, such deferral will be granted provided that the County agrees to submit the merits of that grievance to arbitration and provided, further, that the City does not raise any procedural objections to having that grievance heard on its merits. If the City raises any such procedural objections, the Union is to notify me immediately so that this complaint proceeding can go forward.

Furthermore, the parties are to notify me as soon as an arbitration award is issued regarding the grievance.

Dated at Madison, Wisconsin, this 10th day of April, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Amedeo Greco /s/  
Amedeo Greco, Examiner

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1/ See, for example, Cadott Community School District, Dec. No. 27775-C (WERC, 6/23/94).