

BEFORE THE ARBITRATOR

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 In the Matter of the Arbitration :
 of a Dispute Between :
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 LOCAL UNION 2489, AMERICAN :
 FEDERATION OF STATE, COUNTY : Case 238
 AND MUNICIPAL EMPLOYEES, : No. 42288
 AFL-CIO, (AFSCME) : MA-5645
 :
 and :
 :
 ROCK COUNTY, WISCONSIN :
 :

Appearances:

Mr. Thomas Larsen, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 1722 St. Lawrence, Beloit, Wisconsin 53511, appearing on behalf of Local Union 2489, American Federation of State, County and Municipal Employees, AFL-CIO, (AFSCME), referred to below as the Union.
Mr. Thomas A. Schroeder, Rock County Corporation Counsel, Rock County Courthouse, 51 South Main Street, Janesville, Wisconsin 53545, appearing on behalf of Rock County, Wisconsin, referred to below as the County.

ARBITRATION AWARD

The Union and the County are parties to a collective bargaining agreement which was in effect at all times relevant to this proceeding and which provides for final and binding arbitration. The Union requested, and the County agreed, that the Wisconsin Employment Relations Commission appoint an Arbitrator to resolve a dispute reflected in grievance number 88-Q, which was filed as a "class action" on behalf of Dispatchers in the County Sheriff's Department. The Commission appointed Richard B. McLaughlin, a member of its staff, to serve as the Arbitrator. Hearing on the matter was conducted in Janesville, Wisconsin, on July 31, 1989. The hearing was not transcribed. The parties submitted briefs by October 3, 1989.

ISSUES

The parties stipulated the following issue for decision: 1/

Does the Arbitrator have the authority, during the term of the parties' 1988-89 collective bargaining agreement, to raise or to require the County to review the Dispatchers' pay range, as requested in grievance 88-Q?

RELEVANT CONTRACT PROVISIONS

ARTICLE II - RECOGNITION AND BARGAINING UNIT

2.01 The Employer hereby recognizes the Union, referred to herein as the Local Union affiliated with the Wisconsin Council of County and Municipal Employees, AFSCME AFL-CIO, as the exclusive collective bargaining representative on matters pertaining to wages, hours and other conditions of employment for the bargaining units, described below:

. . .

ARTICLE IX - GRIEVANCE PROCEDURE

9.01 Any dispute which may arise from an employee or

1/ The parties agreed to bifurcate hearing on Grievance 88-Q. The issue stated above poses the first phase of the bifurcated proceeding. The parties agreed that if the stipulated issue was answered in the negative, the grievance would be denied and no further hearing would be necessary. The parties also agreed that if the stipulated issue was answered in the affirmative, I should retain jurisdiction pending word from the parties on how further evidence and argument would be submitted.

Union complaint with respect to the interpretation of the terms and conditions of this Agreement shall be subject to the following grievance procedure, unless expressly excluded from such procedure by the terms of this Agreement. All grievances, except those involving wage schedule movement or increase shall be initiated at Step 1. Grievances involving wage schedule movement or wage adjustments shall be initiated only at Step 3. Time limits set forth herein may be extended upon mutual agreement of the parties. The Union shall have the right to be notified and be present at all steps of the Grievance Procedure.

- 9.02 Step 1. The employee, Union steward or officer and/or the Union representative shall present the grievance to the most immediate supervisor who has the authority to make adjustments in the matter within fourteen days of the alleged grievance or knowledge thereof.
- 9.03 Step 2. If a satisfactory settlement is not reached in Step 1 within three days following its completion, the employee, the Union and/or the Union representative may present the grievance to the department head. Upon the request of said department head, the grievance shall be in writing and shall state the grievant(s) names(s).
- 9.04 Step 3. If a satisfactory settlement (sic) is not reached in Step 2 within five days of the date of submission of the written grievance to the Department Head, the employee, the Union Committee and/or the Union representative may present the grievance to the Personnel Director. The Director or his/her designee shall schedule a meeting to be held within fourteen days of the receipt of the grievance by the Personnel Director with the Union Committee and/or Union Representative for the purpose of attempting to resolve the grievance. The Personnel Director or his/her designee shall respond in writing within seven days of the date of the meeting. Time frames may be extended in writing by mutual agreement of the parties.
- 9.05 Step 4. If the grievance is not resolved at Step 3 the Union may within fourteen days after the Personnel Director's written response is due, serve written notice upon the County that they desire to arbitrate the grievance. The parties may jointly request the Wisconsin Employment Relations Commission (WERC) to appoint an arbitrator or absent the joint request, the Union may request the WERC to furnish a panel of five

arbitrators. Within tens days of the receipt of the panel of arbitrators the parties shall select an arbitrator. The Union shall make the first and third strike and the County the second and fourth strike of names. The remaining individual shall serve as arbitrator and hear the dispute.

The decision of the arbitrator shall be final and binding upon the parties. The cost of the arbitration shall be borne equally by the parties, except that each party shall be responsible for the cost of any witnesses tetifying (sic) on its behalf. Upon the mutual consent of the parties more than one grievance may be heard before one arbitrator.

- 9.06 Limit on Arbitrators. The Arbitrator shall have jurisdiction and authority to interpret the provisions of the Agreement and shall not amend, delete or modify any of the provisions or terms of this Agreement.

. . .

ARTICLE XIV - HOURS OF WORK, WAGES,
CLASSIFICATION AND PAYDAY

. . .

- 14.04 The County shall provide job descriptions for each classification listed in the Wage Appendix of this Agreement.

- 14.05 Each employee covered by this Agreement shall be classified by a job title as listed in the Wage Appendix under "Classification" and when any such employee is temporarily required to perform the work of a higher classified job title for more than twenty working days, he/she shall receive the rate of pay for such job title as provided in the Wage Appendix.

. . .

- 14.10 The Employer shall provide the Union notice of all reclassifications including date of reclassification.

. . .

ARTICLE XVI - NO STRIKE, NO LOCKOUT

. . .

- 16.04 The Employer and Union agree that there shall be no discrimination against any employees or prospective employees because of race, creed, color, age, sex, national origin or handicapping condition. It is and shall be the policy of the Employer and the Union to treat all employees equally.

ARTICLE XVII - DISCHARGE, SUSPENSION

- 17.01 The Employer may discharge, suspend or otherwise discipline any employee for proper cause. . . .

BACKGROUND

Grievance 88-Q was filed as a "class action" on November 16, 1988. The grievance form states the following under the heading "Circumstances of Facts (Briefly, what happened)":

Dispatcher employees' duties and responsibilities increased, including the dispatching for police, EMS & fire for Clinton, and Milton and Edgerton P.D. Employees' decisions are crucial and must be accurate and split-second. This also involves a tremendous wealth of knowledge of locations, procedures, and law. No action has been taken by Rock County to compensate the duties of these employees.

The grievance form lists "2.01, 16.04, Article 9-whole, 14.04 (and) 14.05" as the contract provisions violated by the County, and also lists "Sections 18.405, 18.406, 18.409, (and) 18.412" of the County's "Personnel Policy" as the basis for the alleged violation. The Union, in its brief, included Section 14.10 of the parties' 1988-89 labor agreement as a relevant provision. The contract provisions cited in the grievance and in the Union's brief are set forth above. The Personnel Policy provisions cited in the grievance read as follows:

18.405 Reclassification Requests.

Reclassification requests shall be contained within the annual budget. Prior to approval of the budget, the Personnel Department shall audit the position and make a written recommendation. The County Administrator, per Section 18.1002(a) shall then recommend approval or denial of reclassification requests. If a reclassification request is denied, the position shall not be reconsidered for reclassification for one year, or until the next budget. If, in exceptional cases duties of a position change during the year, the County Board may approve a reclassification request upon the performance of an audit and the recommendation of the Personnel Director, per Section 18.1002(a) and with the confirmation of the County Board Staff Committee.

18.406 Reallocation Requests.

Salary adjustments shall be part of the budget process. If salary reallocations are approved, they will become effective the first day of the fiscal year. Positions reallocated shall be advanced to the step with the next highest dollar amount in the new pay range.

. . .

18.409 Review of Classification Plan.

At least every three years, or as often as may be appropriate, the Personnel Director shall review the Classification Plan to ensure that the plan accurately reflects existing position responsibilities and market conditions. The Personnel Director shall take whatever action is appropriate to amend and update the Classification Plan, subject to the review of the County Board staff Committee and approval of the County Board.

. . .

18.412 Upgrade.

Re-evaluation of duties required to perform a job task equivalent to

abolishment of existing position and creation of the new. Hiring procedures for approved upgraded positions (sic) shall be subject to guidelines established by the Personnel Director and will be consistent with merit selection hiring. Upgrades shall be part of the annual budget process. Upgrades in the budget shall follow the following procedure:

- (a) Recommendations to existing classifications shall be reviewed by the County Administrator with the Personnel Director's recommendation prior to adoption of the budget in accordance with Section 18.1002(a).
- (b) Upgrades that entail creation of a new classification shall be reviewed by the County Administrator with the Personnel Director's recommendation per Section 18.1002(a). Approved positions shall then be presented to the Board in accordance with Section 18.403.

The grievance form lists the following as the "corrective action desired":

Employees shall be made whole. Employees wages shall be increased to reflect current job duties. Job description shall be revised to reflect additional job duties. Dispatchers shall perform duties specific to them.

The wage appendix of the parties' 1988-89 labor agreement places the Dispatcher classification at Range 4.

The County employs nine Dispatchers who work on three shifts on a twenty-four hours per day, seven days per week basis. The position description for the Dispatcher classification reads thus:

CHARACTERISTIC WORK OF THE CLASS

Nature: Under general supervision is responsible for the accurate and efficient receipt, routing and dispatching of such messages between the central radio room and the mobile units, as well as supervising mobile units in communicating with each other and directing vehicles and personnel to certain locations. Dispatchers are civilian employees of the Rock County Sheriff's Department.

Examples: 1. Receives and records written and voice messages by telephone and radio.

2. Transmits messages and departmental information by radio and teletype.
3. Maintains a continuous daily log of all radio and telephone conversations.
4. Maintains visual record of all assigned units as to location, availability and type of equipment.
5. Make entries and cancellations of wanted persons, or persons in custody in other jurisdictions, or persons in custody in the Rock County jail.
6. Operate the Time System Teletype Machines used for drivers license checks, registration checks, checks for wanted persons etc.
7. Operate emergency weather warning equipment.
8. Performs related work as required.

QUALIFICATIONS

Essential knowledges and abilities:

1. Knowledge of all law enforcement agencies within the County as far as availability, types of equipment, working hours, etc.
2. Knowledge of the bond posting procedure, issuing of court appearance dates.
3. Knowledge of departmental practices, rules and regulations.
4. Knowledge of the geographic boundaries of the County.
5. Ability to apply standard procedures in the receiving and dispatching of messages and personnel under normal and emergency circumstances with speed and accuracy.

REQUIRED TRAINING & EXPERIENCE

Graduation from high school or its equivalent supplemented by coursework in typing and one (1) year of experience in radio operations.

NOTE: Dispatchers shall not be authorized to carry firearms and have no arrest powers. Dispatchers may receive limited deputization, the conditions of which will be specified in writing by the Sheriff.

Mary Berger has been employed by the County as a Dispatcher for about eleven years, and has served as a Union Steward. She filed grievance 88-Q, and testified that the Union felt the County has failed to acknowledge the increase in duties assigned to Dispatchers. She acknowledged that the Union has attempted, without success, to secure an upgrade for Dispatchers in collective bargaining for the last three collective bargaining agreements. The Union's initial proposal for 1988-89 agreement sought to move the Dispatcher classification from Range 4 to Range 1a.

In June of 1987, Berger prepared a formal statement of the Union's position on the need for the upgrade. The Union submitted this statement to the County during negotiations, and resubmitted the statement with Grievance 88-Q. That statement was entered into the record of this proceeding as Union Exhibit 3. The statement begins with the following description of the duties of the Dispatcher classification:

PURPOSE OF POSITION AND OVERALL STATEMENT OF RESPONSIBILITIES:

- 1; Responsible for the complete knowledge of radio operations and capabilities.
- 2; Responsible for the radio communications from Rock County to patrol units, and from Rock County to other agencies within the county and state.

- 3; Responsible for the telephone communication to and from the Rock County Sheriff's Department, Edgerton Police Department, Milton Police Department, Milton Fire Department/EMS, Clinton Police Department, Clinton Fire Department/EMS.
- 4; Responsible for the complete knowledge of the teletype operations and capabilities.
- 5; Responsbile (sic) for the teletype communications for Rock County Sheriff's Department, Rock County Jail, and all agencies served by Rock County-all record and warrant checks.
- 6; Responsible for receving (sic) and sending all NAWAS traffic regarding Rock County or areas of responsibility effected by any NAWAS message, i.e. severe weather.
- 7; Responsbile (sic) for the complete knowledge of the paging system operation.
- 8; Responsible for the complete knowledge of the geography of Rock County.
- 9; Responsible for the knowledge of traffic and criminal laws of Wisconsin and the bond posting procedure.
- 10; Responsible for knowledge of numerous policies and procedures of the Sheriff's Dept., as well as for various miscellaneous duties and responsibilities such as bank alarms, business alarms, all types of complaints, accidents, and general information.

The statement includes, after this description, an in-depth description of the listed duties as well as the following recitation of "MISCELLANEOUS DUTIES/RESPONSIBILITIES" of the position:

Dispatchers are responsible for a large number of other duties. Following a brief overview of some of these.

- 1: Contacting wrecker services for disabled vehicles, vehicles involved in accidents, and for any problem in which a Rock County squad car might need a wrecker. We have a wrecker list which shows wreckers in various sections of the county and unless a specific wrecker is requested, dispatchers call the next wrecker on the list. We have a service contract for any towing of county squads.
- 2: Contacting any special team or unit within the county such as SWAT, DIVE, BOAT, or METRO/NARCOTICS. This is done by initially paging the

supervisor of each unit and then placing phone calls to the respective teams members if the situation warrants such.

- 3: Hazardous Materials spills are handled by the dispatchers in the effect that we will receive the call relating to the spill and then we contact the proper authorities. We also have the capability of contacting a hazardous materials hotline where we can immediately find out the severity of the material spill to the environment and to the danger to human/animal life within a certain distance to the spill. We also can obtain the information needed for crews/equipment needed to handle the clean up of the spill.
- 4: Contacting social services personnel after their office hours is done by the dispatchers. This is done by checking the social services on call list and paging out the subject that has the duty at that given time. We must know who it is that is requesting social services and why. That information is then passed on to the on call worker.
- 5: Bank Alarms. When a bank alarm is received in the dispatch office, a certain procedure must be followed until the alarm is confirmed as actual or false.
We receive many different alarms in the dispatch office. These include alarms for businesses, residences, as well as banks. We must know the locations of these alarms and respond officers, key holders, and whoever else might be needed such as our detectives.
- 6: Emergencies at Rock County Airport are called in through the dispatch office either by personnel from the Rock County Airport or from Rockford Airport. These can come in by telephone or on the radio. When there is an emergency with any plane landing or attempting to land, the information is taken and squads are sent to pre-planned positions at and around the airport. At the same time, airport personnel are paged out to respond, as well as fire and ambulance personnel.
- 7: During the cold months of the year, we have a fuel emergency program in effect. This entails contacting fuel companies to respond to residences where they have run out of gas/oil and they have no means of paying for this service. Dispatchers must determine if the persons requesting fuel assistance qualify under the rules of the program as set up by social services. If the subject that is requesting assistance qualifies, a squad is sent to the residence to determine other qualifying criteria and then we contact a fuel company which will go out and deliver under this program. In the non-business hours of the day this often ends up consisting of many calls before someone can be located to make the delivery.
- 8: On holiday weekends, Rock County has the use of "Air-12", which is a helicopter that is used to repond (sic) to major accidents where medical

assistance is needed. We have radio contact with the helicopter and send them to incidents as needed.

- 9: Dispatchers must know the 10 code signals for radio transmissions. This is a list of 100 different codes which indicate certain complaints, assignments, responses, and acknowledgements of the officers activities.
- 10: Dispatchers must know abbreviations used on Department of Transportation responses on drivers records indicating prior convictions.
- 11: Dispatchers must be somewhat familiar with state and local criminal and traffic laws. We must know where to look statutes up, how to figure bond amounts on all charges, what the court assessments are, and what the court dates will be.
- 12: Dispatchers receive and must properly deal with citizen complaints against officers. This entails taking the information from the complainant and passing it along to a shift supervisor to then deal with however he/she sees fit. Oftentime a citizen complaint can be handled by the dispatcher to the point of satisfying the complainant with an explanation of policy and procedure used by our department.
- 13: Dispatchers must know and keep up with the departments policies and procedures. For example, the policy for high speed pursuits has come under major scrutiny in government in the past year. Rock County's policy on this has changed, and being that pursuits are called in over the radio, the dispatchers handle all radio traffic concerning each chase. All radio traffic is carefully documented and repeated so all units are aware of what is happening. A supervisor must be kept updated as to all information and they then make the decision whether or not the pursuit should be continued or discontinued.
- 14: In the dispatch office is a DICTAPHONE 5500 Recorder. This records all phone calls that come in to the dispatch office. It also records all radio transmissions made from the dispatch office and those coming in. This machine records on tapes which are changed each day at midnight. The tapes are kept for 1 month, unless there is information on the tape which must be used in court or for some other important evidence. Dispatchers must know how to change the tapes, clean the tape heads, demagnetize the tapes prior to putting them on the machine to record, and also how to reset the machine in case of a power failure or some other type of malfunction.

Berger testified that the County has, over a considerable period of time, added duties to the Dispatcher classification. She summarized those changes in a document headed "CHRONOLOGY OF WORKLOAD CHANGES", which reads thus:

11/79 Added Clinton Fire and EMS (had PD line)

09/81	Added 2nd & 3rd shift for Edgerton PD (phones and radio)
01/82	Added Milton PD, Fire & EMS (phone & radio)
11/82	Added Rock Co. Metro Unit, (implemented 1/81) RCSD became responsible for phones and paging.
1985	Complete takeover for Rock Co. METRO Unit
06/87	Increased teletype activity, transfered (sic) to new facility
11/88	Milton PD, Fire & EMS went to 911 system
07/89	Added Orfordville PD, Fire, EMS & Footville Fire this change added 2-911 lines, 2 emergency township lines & 1 footville (sic) FD line

Berger acknowledged that the County has added four Dispatchers since 1979.

As noted above, the Union was unsuccessful in its attempt to secure an upgrade in the Dispatcher classification during the bargaining for a 1988-89 collective bargaining agreement. In response to the submission of Grievance 88-Q, the County performed an audit of the Dispatcher position. Dawn Grosse, the County Personnel Analyst who performed the audit, concluded that the Dispatcher position description was consistent with the duties performed by Dispatchers, with one minor exception. James Bryant III, the County's Personnel Director, responded to Grievance 88-Q thus:

I have reviewed the facts presented in the above cited case. It appears that the Dispatcher's class description is appropriate. There was a request for a reallocation, which is a proper topic for the collective bargaining process. The grievance is accordingly denied.

Bryant testified that the County regularly granted reallocation requests in collective bargaining until 1985, but has not granted any reallocations since that date. Bryant acknowledged that the County, in May of 1981, eliminated the classification of Deputy County Treasurer and upgraded the position to Title Research Analyst. Both positions were bargaining unit positions, with the position of Deputy County Treasurer placed at Range 2 and the position of Title Research Analyst placed at Range 1.

Bryant also testified regarding the bargaining history to the second and third sentences of Section 9.01. He stated that the County proposed this language in response to an arbitration decision issued by Donald G. Chatman on March 18, 1988, in which Chatman stated, among other things, the following:

The Register of Deeds is an official department head and an agent of Rock County. In this capacity, the Register of Deeds duly heard Step 1 of the Grievance, and agreed with the grievant (Union Exhibit 5). This Arbitrator's reading of the labor agreement does not show any point where a department head's decision on a grievance is subject to review by other department heads, administrators, or legislators, particularly if the department head agrees with the grievant. Thus, the County Personnel Director reversed a department head's decision with the consent of the County Administrator. This arbitrator could find no Labor Agreement provision permitting this action, now was any evidence or testimony presented that would demonstrate that the Employer had this unilateral right. The grievance apparently was settled at Step 1.

Bryant testified that the County proposed modifying Section 9.01 to protect the County from being bound by the actions of elected officials serving as the heads of departments within County government. The County drafted the second and third sentences of Section 9.01 to preclude such department heads from unilaterally awarding pay increases. The County proposed broad language on these points, according to Bryant, to assure that economic improvements for employees were addressed at the bargaining table and not within departments. The County did not, according to Bryant, contemplate creating any employee entitlement to a reallocation, upgrade or reclassification by proposing the language which ultimately became the second and third sentences of Section 9.01.

Further facts will be set forth in the Discussion section below.

THE UNION'S POSITION

After an overview of the record, the Union asserts that "(t)he first issue to be determined is what authority the Arbitrator has to hear the merits on the Union's request that the Dispatchers be reallocated to a different pay range". Section 9.01 and Section 14.10 of the collective bargaining agreement provide the authority necessary to establish arbitral authority to "hear the dispute and render a final and binding decision on the parties", according to the Union. Specifically, the Union argues that Section 9.01 establishes that "wage schedule movement or wage adjustments" fall within the scope of the grievance procedure, and that Section 14.10 "provides further authority in that the language clearly provides that employees are to be reclassified during the term of the collective bargaining agreement". Because grievance 88-Q is arbitrable, it follows, according to the Union, that further hearing on the merits of the grievance should be scheduled, and, if the Union "is able to show that the County failed to properly raise the pay or review the pay of the grievants", an appropriate remedy should be ordered.

THE COUNTY'S POSITION

After an overview of the record, the County asserts that "Grievance #88-Q must be dismissed" since "(i)t is completely evident that this grievance is nothing more than a demand from the dispatchers to be paid a higher wage for performing the dispatching function". Contending that there has been no evidence to establish any violation of Section 2.01 or Section 16.04, the County concludes that the citation of these sections in the grievance must be given no persuasive weight. Beyond this, the County contends that un rebutted testimony establishes that the Union "has abandoned (the) theory" that Sections 14.04 or 14.05 have been violated in this case. In addition, the County argues that testimony of Union witnesses establishes that the Union is seeking to achieve in grievance arbitration a pay increase it could not secure in collective bargaining. The Union's attempt to secure this result risks violating the distinction between rights and interest arbitration, according to the County. Beyond this, the County contends that any conclusion that grievance 88-Q poses arbitrable issues would violate the provisions of Section 9.06. In addition, the Union's position has no support in Section 9.01, according to the County. That section "only addresses procedural matters . . . (and) creates no substantive rights . . . (since) (n)o contractual provision exists creating the right to receive a mid-term pay raise except on a temporary basis pursuant to sec. 14.05". Nor does the broad reference in Section 9.01 to "wage schedule movement or wage adjustments" afford any support to the Union's case, according to the County. That language was inserted in the contract, the County contends, to bring all wage-related claims to step 3 so that elected Department heads could not grant a wage increase at step 1 and bind the County to that increase. Noting that the reallocation sought in Grievance 88-Q was asserted and abandoned during the bargaining for the parties' 1988-89 collective bargaining agreement, the County concludes that granting the requested reallocation "would be fatal to the collective bargaining process". Beyond this, the County asserts that upgrade of the Deputy County Treasurer position to Title Research Analyst does not establish a practice relevant to this matter. In addition, the County contends that the present matter poses no arbitrable issue regarding its Personnel Ordinance. Viewing the record as a whole, the County asks that the grievance be denied.

DISCUSSION

The stipulated issue is limited to Grievance 88-Q, but implicates the more general point of the extent of arbitral authority granted in the parties' 1988-89 collective bargaining agreement. Under the terms of Section 9.06, an "arbitrator shall have jurisdiction and authority to interpret the provisions of the Agreement . . ." Resolution of the stipulated issue thus requires that the contractual provisions cited by the parties be examined to determine their bearing on Grievance 88-Q.

Grievance 88-Q seeks a wage increase, a revised job description and an order that "Dispatchers shall perform duties specific to them". The grievance cites provisions from the labor agreement as well as the County Personnel Policy to ground this request.

Although the grievance cites provisions of the Personnel Policy, the Union has not clarified how the provisions of that Policy have been incorporated into the parties' collective bargaining agreement. A conclusion that the provisions of the Policy, standing alone, can serve as a basis for the exercise of arbitral authority is unpersuasive. The final paragraph of the "FOREWARD" section of the Policy reads thus:

THIS PERSONNEL MANUAL SHALL NOT BE DEEMED A CONTRACT OF EMPLOYMENT. ANY INDIVIDUAL MAY VOLUNTARILY LEAVE

EMPLOYMENT UPON PROPER NOTICE AND MAY BE TERMINATED BY THE EMPLOYER AT ANY TIME AND FOR ANY REASON. ANY ORAL OR WRITTEN STATEMENTS OR PROMISES TO THE CONTRARY ARE EXPRESSLY DISALLOWED AND SHOULD NOT BE RELIED UPON BY ANY PROSPECTIVE OR EXISTING EMPLOYEE. THE CONTENTS OF THIS HANDBOOK ARE SUBJECT TO CHANGE AT ANY TIME AT THE DISCRETION OF THE EMPLOYER.

Potential conflicts between this language and the collective bargaining agreement are apparent. To cite only one such potential conflict, in Article XVII, the Union has negotiated limitations on the County's right to discharge employes. Presumably, an Arbitrator could not use the Policy language noted above to conclude that the County need not demonstrate proper cause to discharge an employe. Thus, it can not be simply presumed that the provisions of the Personnel Policy, standing alone, empower an arbitrator to effect the provisions of the Policy. No basis in the collective bargaining agreement has been demonstrated to permit arbitral review of the Personnel Policy in this case, and that authority can not be presumed. It follows that the Policy provisions cited in Grievance 88-Q do not afford a basis to grant the remedies sought by the Union.

No evidence or argument has been presented which would establish that either Section 2.01 or 16.04 have any bearing on this matter. The County, in Section 2.01, has recognized the bargaining unit represented by the Union. The section is silent on wage upgrades. Section 16.04 obligates the Union and the County to "treat all employees equally" by not discriminating against any employe "because of race, creed, color, age, sex, national origin or handicapping condition". There is no evidence in the record that either the Union or the County has discriminated against Dispatchers as a class or against any individual Dispatcher on any basis within the meaning of that section.

Neither Section 14.04 or 14.05 has any demonstrated bearing on the Grievance 88-Q. Section 14.04 obligates the County to "provide job descriptions for each classification listed in the Wage Appendix of this Agreement". There is no dispute that Dispatcher is a classification listed in the Wage Appendix and that a job description has been provided for that classification. The grievance form does request a revision of the Dispatcher job description. While some of the evidence indicates the existing job description is less detailed than the Union would prefer, that evidence does not demonstrate that the job description is either inaccurate or misleading on the core duties of Dispatchers. It is apparent from the evidence and the argument submitted that the essence of Grievance 88-Q concerns the request that Dispatchers be placed at a pay range other than 4. Section 14.04 is silent on this point, and affords no basis for the pay range review sought by the Union.

Section 14.05 grants an employe "the rate of pay for . . . a higher classified job title" if "any such employe is temporarily required to perform the work of a higher classified job title for more than twenty working days . . ." The Union has not demonstrated that Dispatchers are performing the work "of a higher classified job title", and has not demonstrated that any such work is "temporary". Rather, the Union asserts that dispatching duties permanently assigned to Dispatchers have been added to the classification to such a degree that the classification must be considered underpaid. The language of Section 14.05 can not be stretched to fit the violation asserted here without rendering that language meaningless.

The persuasive force of the Union's arguments lies in the second and third sentences of Section 9.01 and in Section 14.10. These arguments are distilled in the Union's brief. The citation of Article IX as a whole in the grievance does not add any weight to this argument.

The force of the Union's argument is, however, limited to establishing that the labor agreement contemplates the possibility of "wage schedule movement or wage adjustments". As the Union points out, Section 14.10 indicates reclass-ifications can be made effective during the term of the labor agreement. Similarly, the second and third sentences of Section 9.01 admit the possibility of in-term wage adjustments. The first sentence of Section 9.01 limits grievances to "the interpretation of the terms and conditions of this Agreement . . . unless expressly excluded from (the grievance) procedure by the terms of this Agreement". With this as background, there would be no need of the express reference to "wage schedule movement or wage adjustments" in the second and third sentences of Section 9.01 unless the collective bargaining agreement permitted such adjustments.

That the contract contemplates the possibility of an in-term wage adjustment does not, however, establish that the adjustment sought by Grievance 88-Q has a persuasive contractual or factual basis. Section 14.10 can not afford the contractual basis for the adjustment sought by the Union, because the Dispatchers do not seek to be reclassified to a higher rated classification. Rather, they seek to retain their present classification, but move that classification to a higher pay range. Nor can the second and third sentences of Section 9.01 supply this contractual basis. That wage adjustments

are possible as a general matter offers no basis to conclude the specific adjustment sought by the Union for Dispatchers is warranted.

The record does not offer a persuasive contractual or factual basis for the wage adjustment sought by the Union. It is essential to the exercise of arbitral authority under Section 9.01 that the parties have reached an "Agreement" on "terms and conditions" of employment, and that a dispute has arisen regarding those agreed upon terms and conditions. It is undisputed that the parties agreed, during collective bargaining for a 1988-89 contract, to place the Dispatcher classification at Range 4. What the Union seeks in Grievance 88-Q is for an arbitrator to set aside this agreement and either replace it with an agreement never reached by the parties, or require the County to study the matter as a preface to reaching a new agreement. As noted above, no clear contractual authority exists for such an action. For the Union's assertion that the Dispatcher classification should be upgraded or reviewed for an upgrade to have persuasive force, it is necessary that the Union demonstrate that the duties of the classification have changed so radically that the parties' agreement to place the classification at Range 4 can not be considered meaningful. To make such a demonstration, the Union would have to establish that the changes occurred during the term of the 1988-89 agreement, thus precluding the parties from addressing the matter during collective bargaining.

It is not necessary to resolve whether the contract could permit the remedy sought by the Union because the Union has not demonstrated that the changes at issue here occurred during the term of the present labor agreement.

The "CHRONOLOGY" prepared by the Union and set forth above establishes that the changes at issue here have spanned a considerable amount of time, and that the bulk of the changes occurred prior to the effective date of the parties' 1988-89 agreement. The Union and the County were able to reach agreement on a series

of contracts throughout this period. Thus, Grievance 88-Q seeks, essentially, to overturn results reached through collective bargaining. Such a result is inconsistent with the authority granted an arbitrator under Section 9.01. It follows from this that the grievance must be denied.

AWARD

The Arbitrator does not have the authority, during the term of the parties' 1988-89 collective bargaining agreement, to raise or to require the County to review the Dispatchers' pay range, as requested in grievance 88-Q.

Grievance 88-Q is, therefore, denied.

Dated at Madison, Wisconsin this 17th day of November, 1989.

By _____
Richard B. McLaughlin, Arbitrator