

BEFORE THE ARBITRATOR

In the Matter of the Arbitration  
of a Dispute Between

ROCK COUNTY

and

ROCK COUNTY EMPLOYEES, LOCAL 2489,  
AFSCME, AFL-CIO

Case 241  
No. 42746  
MA-5793

Appearances:

Thomas E. Larsen, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, for  
the Union.

Thomas A. Schroeder, Corporation Counsel, Rock County, for the County.

ARBITRATION AWARD

Rock County, herein the County, and Rock County Employees, Local 2489, AFSCME, AFL-CIO, herein the Union, requested the Wisconsin Employment Relations Commission to designate a member of its staff as arbitrator to hear and decide a dispute. The undersigned was so designated.

Hearing was held in Janesville, Wisconsin on November 7, 1989. No transcript of the hearing was taken. The parties completed the filing of post-hearing briefs on December 5, 1989.

ISSUE

The parties stipulated to the following issues:

1. Is the grievance arbitrable?
2. If so, should Social Service Aide II's be reclassified to Social Service Aide III's or, in the alternative, should Social Service Aide II's be reallocated from pay range 9 to pay range 5?

The parties agreed that the arbitrator first would decide the issue of arbitrability (issue number 1) and, if the grievance was found to be arbitrable, then the arbitrator would schedule a hearing on the merits of the grievance (issue number 2).

## RELEVANT CONTRACTUAL PROVISIONS

. . .

### ARTICLE IX - GRIEVANCE PROCEDURE

- 9.01 Any dispute which may arise from an employee or 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.

. . .

- 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.

. . .

## BACKGROUND

On November 18, 1988, the Union filed a class action grievance on behalf of all employees, a total of five (5) at the time of the hearing, holding the classification of Social Service Aide II, herein SS Aide 2. The grievance alleged that the SS Aide 2 performs duties equal to those of employees in the classification of Income Maintenance Worker and requested that the SS Aide 2 wages be increased to reflect the reallocation of job duties and that the job description be revised to reflect current job duties.

The County denied the grievance on the basis that there was no contractual violation and, further, that the matter was appropriate for collective bargaining.

In 1984, as a result of contract negotiations between the parties, the classification of SS Aide 2 was moved from pay range 13 to pay range 10, which range carried a higher wage rate. In November of 1985 one of the Union's proposals for the 1986-87 contract was to move the classification of SS Aide 2 from pay range 10 to pay range 7. The County did not agree to said proposal. Due to a renumbering of the pay ranges, the SS Aide 2 classification was put in pay range 9, however, said renumbering did not increase the wage rate for the SS Aide 2 position.

In the Spring of 1988, the County's Personnel Department, at the request of the management of the County's Department of Social Services, conducted a job audit of the SS Aide 2 position. In September of 1988 the County issued a revised job description for the position. The County denied a subsequent request for the SS Aide 2 position to be reclassified and the instant grievance was filed.

One of the Union's proposals for changes to be included in the successor contract to the 1988-1989 contract is a proposal to reclassify/reallocate the SS Aide 2 position.

## POSITION OF THE UNION

Section 9.01 is explicit language which shows that the parties anticipated grievances involving wage schedule movement or wage adjustments. If said provision was not intended to apply to grievances like the instant one, the language could have stated such an intent.

Similarly, Section 14.10 provides for notification to the Union of reclassifications, which indicates the parties anticipated there would be a need for wage schedule changes during the contract. There is a generally accepted rule that an increase in wages should follow any material increase in the workload. The fact that the County felt it was necessary to revise the job description is prima facie evidence that substantial changes have occurred in the SS Aide 2 position. Thus the grievance should be arbitrable and a hearing on the merits of the grievance should be held to determine if the workload changes were substantial enough to warrant the remedy requested by the Union.

## POSITION OF THE COUNTY

At the time the instant grievance was filed, the parties had an existing contract in which the pay range and wage rate for the SS Aide 2 position were established. Under Section 9.06 of the contract, the arbitrator has no authority either to modify the wage appendix of the contract, to create a new job classification, or to grant a wage increase. Whether the employees are entitled to make more money is of no relevance in this matter. Those matters must be dealt with in the collective bargaining process.

The SS Aide 2 employees are not performing the work of a higher classified job title listed in the Wage Appendix. Therefore, Sections 14.04 and 14.05 are eliminated from consideration. Further, the arbitrator does not have the authority to modify the contractual Salary Schedule by creating the classification of SS Aide 3. Neither does the arbitrator have the authority to modify the wage rates agreed to by the Union and the County during contract negotiations.

The reclassification of Jan Kinneman in 1981 is not a precedent. In that case, Kinneman was found to be working out of classification and was reclassified from a SS Aide 1 to a SS Aide 2. Both of those classifications were in the then existing contract.

The language in Section 9.01 was intended to avoid improper wage adjustments by department heads by requiring such grievances to be filed with the Personnel Director. That language was procedural in nature and did not create a substantive right to file a wage adjustment grievance.

## DISCUSSION

In determining issues of arbitrability, arbitrators frequently rely on the so-called Trilogy of 1960, 1/ which set forth the following standard: whether the party seeking arbitration is making a claim which on its face is governed by the contract.

1/ United Steelworkers v. American Manufacturing<sup>5</sup>Co., 80 S. Ct. 1343, 34 LA 559 (1960); United Steelworkers v. Warrior & Gulf Navigation Co., 80 S. Ct. 1347, 34 LA 561 (1960); United Steelworkers v. Enterprise Wheel & Car Corp., 80 S. Ct. 1358, 34 LA 569 (1960).

The undersigned concludes that the instant grievance does make a claim which on its face is governed by the contract. The grievance seeks a wage increase based on increased duties and responsibilities. Such an issue appears to be covered by the second and third sentences of Section 9.01. Those sentences express the possibility of wage adjustments occurring during the term of the contract.

However, such a conclusion does not reach either the issue of whether there is any merit to the grievance, or the question of the arbitrator's authority to grant the requested relief if the grievance has merit. Such determinations can not be made until a hearing has been held on the merits.

The County's arguments primarily relate to the arbitrator's authority to grant the relief requested by the Union, if the grievance is found to have merit, rather than to the arbitrability of the grievance.

Based on the foregoing, the undersigned issues the following

#### AWARD

That the grievance is arbitrable; and, that the undersigned will schedule a hearing on the merits of the grievance.

Dated at Madison, Wisconsin this 13th day of February, 1990.

By \_\_\_\_\_  
Douglas V. Knudson, Arbitrator

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1/ United Steelworkers v. American Manufacturing Co., 80 S. Ct. 1343, 34 LA 559 (1960); United Steelworkers v. Warrior & Gulf Navigation Co., 80 S. Ct. 1347, 34 LA 561 (1960); United Steelworkers v. Enterprise Wheel & Car Corp., 80 S. Ct. 1358, 34 LA 569 (1960).