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 242
No. 42747
MA-5794

Appearances:
Thomas E. Larsen, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, for the Union.
Stephen D. Meyer, Deputy 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. 1. Is the grievance arbitrable?

2. If so, should Child Support Reimbursement Specialists be reclassified to Paralegals or, in the alternative, should Child Support Reimbursement Specialists be reallocated from pay range 4 to a higher pay range which would accurately reflect position responsibilities and labor market conditions?

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 October 19, 1988, the Union filed a class action grievance on behalf of all employes, a total of eight (8) at the time of the hearing, holding the classification of Child Support Reimbursement Specialist, herein CSRS. The grievance requested that the CSRS be reclassified as a Paralegal.

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

One of the Union's proposals for changes to be included in the successor contract to the 1988-89 contract is a proposal to reclassify/reallocate the CSRS 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. 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

Simply stated, the grievants want to make more money. However, at the time the instant grievance was filed, the parties had an existing contract in which the pay range and wage rate for the CSRS 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 employes 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 CSRS employes are not performing the work of a higher classified job title listed in the Wage Appendix. Instead they seek, as one remedy, the creation of a new job classification title. Such a modification of the Wage Appendix is beyond the arbitrator's authority.

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. The only purpose of the language was to prevent a department head from bypassing the County's budgeting process and collective bargaining in order to grant mid-term pay increases.

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.

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

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).