BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between TAYLOR COUNTY COURTHOUSE & HUMAN SERVICES DEPARTMENT EMPLOYEES, LOCAL 3679, AFSCME, AFL-CIO and TAYLOR COUNTY	Case 63 No. 53354 MA-9325

Appearances:

Mr. Philip Salamone, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.

Mr. Charles A. Rude, Personnel Director, appearing on behalf of the County.

ARBITRATION AWARD

Taylor County Courthouse & Human Services Department Employees, Local 3679, AFSCME, AFL-CIO, hereinafter referred to as the Union, and Taylor County, hereinafter referred to as the County, are parties to a collective bargaining agreement which provides for the final and binding arbitration of disputes arising thereunder. The Union made a request, with the concurrence of the County, that the Wisconsin Employment Relations Commission designate a member of its staff to act as an arbitrator to hear and decide a grievance over the meaning and application of the terms of the agreement. The undersigned was so designated. Hearing was held in Medford, Wisconsin, on February 6, 1996. The hearing was not transcribed and the parties filed post-hearing briefs which were exchanged on March 12, 1996.

BACKGROUND:

The facts underlying this case are not in dispute. The grievant is employed as a Bookkeeper in the County's Health Department in Grade 9 of the negotiated Salary Schedule. The grievant requested that her position be reclassified to Grade 14. The parties' collective bargaining agreement provides that a mini-committee of management and union representatives consider the request for reclassification. The mini-committee's decision must be unanimous to grant a reclassification. The mini-committee considered the request and it was denied. The grievant thereafter filed a grievance which was processed to the instant arbitrator.

ISSUES:

The parties were unable to agree on a statement of the issues. The Union stated the issue as:

> Did the County violate the collective bargaining agreement when it refused to reclassify the grievant from Labor Grade 9 to Labor Grade 11, 12 or 14?
>
> If so, what is the proper remedy?

The County stated the issue as follows:

1. Is the grievance arbitrable?
2. If so, what Article or Section of the collective bargaining agreement was violated?
3. If there was a violation, what is the remedy?

The undersigned frames the issues as follows:

1. Is the grievance arbitrable?
2. If so, did the County violate the collective bargaining agreement by the denial of the grievant's reclassification request?
3. If so, what is the appropriate remedy?

PERTINENT CONTRACTUAL PROVISIONS:

ARTICLE 6 - Grievance Procedure and Arbitration

Section 1 - Grievance: A grievance is defined to be a controversy between the Union and the Employer or between any employee or employees and the Employer as to a matter involving the interpretation or application of this Agreement.

. . .

ARTICLE 26 -- Reclassifications

Reclassification means the movement of a position from one salary grade to another. Reclassification requests will be accepted no more than once during a calendar year, in the month of June. The reclassification requests will be considered by a mini-committee consisting of the Personnel Director, the chairperson of the Personnel Committee, and two union representatives. Union representatives shall not suffer any loss of wages for their service on this committee.

Any employee requesting a reclassification shall make his/her request to the department head. If the department head concurs, the request shall be presented to the Personnel Director, along with an approved, updated job description and any other relevant documentation.

The Personnel Director shall immediately inform the Union president of such request. Before a decision on the request is made by the Mini Committee, the Union Negotiating Committee shall review the request and within 15 days of receiving notice of the request, render its opinion in writing as to the granting or denying of the reclassification, and the position's placement in the Union salary structure. The Mini Committee's decision on a reclassification request shall be made in writing to the employee, department head, and the Union president no later than 45 days after its receipt by the Personnel Director.

The decision of the mini committee shall be unanimous, final and binding upon the parties and based solely upon the merits of the individual case.

The criteria which must be used by the mini committee for its decision are as follows, with the weighing of the factors to be at the mini committee's discretion. The reclassification, if granted, shall take effect on July 1 in the year it was submitted for consideration. The parties shall include the newly-established wage rate in their subsequent collective bargaining agreement.

1. Increases (or decreases) in duties or responsibilities of the

position.

2. Increased requirements in skill levels, training requirements, or certification/licensing of the position.

3. Internal comparability.
4. Structural inconsistencies.
5. General equity.

UNION'S POSITION:

The Union contends that there can be little doubt that the grievance is clearly arbitrable. It points out that Article 6 defines a grievance as a "controversy . . . as to a matter involving the interpretation or application of this Agreement." The Union submits the grievance relates to the interpretation or application of the collective bargaining agreement and is arbitrable under the criterion set out above. The Union further notes that arbitrability was raised by the County for the first time at the hearing. It argues that the County chose to lay in the weeds for well over a year and then claimed the grievance to be improper. It insists the arguments on arbitrability are without merit and should be dismissed in their entirety.

As to the merits of the reclassification request, the Union asserts that the Union representatives on the mini-committee supported the reclassification while management opposed it. It claims that the management representatives unreasonably denied the request. It asserts that an objective evaluation of the job descriptions of the Highway Bookkeeper/Accountant position and the Bookkeeper in the Health Department reveals that the positions are functionally equivalent as to duties and responsibilities and are as equal as clerical positions can reasonably get. The Union maintains that the intent of Article 26 assumes that denials are not to be made in an arbitrary, capricious or unreasonable fashion. It explains that the intent of the parties is that the matter will be given a fair and proper consideration by the committee, otherwise the County would never have another reclassification. The Union alleges that there was no reason given for the denial and no evidence that the mini-committee considered the contractually expressed criteria and if these were considered, it believes the outcome would be different. It supports its arguments by reference to a recent arbitration decision, Portage County, MA-8768 (McLaughlin, 2/96), wherein the employer was found to have violated the contract by denying the reclass of a Legal Secretary I to a Legal Secretary II. It asks that the grievant be made whole for all losses due to the contract violation. It seeks back pay for the difference in pay between Grade 9 and Grade 14.

COUNTY'S POSITION:

The County contends the grievance is not arbitrable. It points out that Article 26 states that the decision of the mini-committee is final and binding, thus there is no recourse to the grievance procedure. It also notes that during negotiations it was proposed that the appeal process was to an impartial arbitrator but this was not agreed to and was not included in the contract. It insists that as the mini-committee's decisions are final and binding, the grievance is not arbitrable.

The County argues in the alternative that if the grievance is arbitrable, there was no violation of any section of the agreement with respect to the reclassification. The County details the steps set out in Article 26 with respect to the processing of the reclassification noting that there was no job evaluation data introduced to substantiate the claim that the position belonged in a higher pay grade. The County alleges that the mini-committee met and the Union members espoused an advance to Grade 12 but the County's representatives considered the fact that the duties of the position had not changed since 1989, and thus merited no reclassification and the reclassification request was not allowed. It seeks dismissal of the grievance.

DISCUSSION:

With respect to the arbitrability of the grievance, the undersigned finds that it is arbitrable. Article 6, Section 1 defines a grievance as a controversy as to a matter involving the interpretation or application of the agreement. The issue involved in this matter is the denial of a reclassification request. Article 26 sets forth the procedure with respect to reclassification requests. A dispute over the interpretation or application of Article 26 certainly falls within the definition of a grievance under Article 6. Article 26 does provide that the mini-committee's decision is final and binding but that does not mean a grievance alleging a violation of Article 26 is not arbitrable otherwise the parties would have stated the decision of the mini-committee is not subject to the grievance procedure. The procedures and application of Article 26 can be grieved including what is meant by the mini-committee's decision being final and binding. Thus, the grievance is arbitrable.

Turning to the merits, it appears that the procedural requirements of making the request and having it considered by the mini-committee have been met. The grievant takes issue with the mini-committee's decision. Article 26 provides that the mini-committee must weigh certain criteria set forth therein. Mr. Rude testified that the mini-committee considered these factors. No other member of the mini-committee contradicted this testimony. The County's members felt that there had been no change in the duties or requirements of the position. The Union members were of the opinion that the position was not properly slotted from the beginning and the County's members' response was that the original placement had been negotiated and agreed to by both the County and the Union. Article 26 provides that the weighing of the criteria are at the mini-committee's discretion and the mini-committee's decision is final and binding. It appears the mini-committee complied with the provisions of Article 26 and the undersigned can find no violation.

The Union has relied on an arbitration award, Portage County, (McLaughlin, 2/96); however, the language in Portage County's contract is very different from Article 26 of the instant contract. In Portage County, the Personnel Department does an audit and forwards it to the Personnel Committee for action and the Personnel Committee's decision shall be subject to the grievance procedure. The agreement was silent on the deference to be given the Personnel Committee's decision. Arbitrator McLaughlin concluded that the Personnel Committee's decision

lacked the factual basis necessary to support its conclusion.

The bargaining history of Article 26 demonstrates that the initial proposal was for the Personnel Committee to make a decision and that decision could be appealed to an impartial arbitrator whose opinion would be final and binding and the criteria used by said arbitrator were as provided in Article 26 with the weighing of factors in the sole discretion of the arbitrator. 1/ The parties did not agree to this and substituted the mini-committee for the Personnel Committee and the arbitrator. 2/ Thus, the parties did not agree to the type of reclassification review in Portage County, above. Article 6 of the parties' agreement provides that the arbitrator shall not modify, add to, or delete from, the terms of the Agreement. Thus, the undersigned cannot review the mini-committee's decision as that would delete the final and binding language of the agreement and reintroduce the arbitrator as a decision maker in the process when the parties rejected this in negotiations. The undersigned cannot grant in this procedure what the parties failed to obtain in negotiations. The undersigned concludes that the parties negotiated a procedure that met their needs and the evidence establishes that they followed this procedure and have not violated the contract.

Based on the above and foregoing, the record as a whole and the arguments of the parties, the undersigned issues the following

AWARD

1. The grievance is arbitrable.

2. The County did not violate the collective bargaining agreement by denial of the grievant's reclassification request, and therefore, the grievance is denied.

Dated at Madison, Wisconsin, this 6th day of May, 1996.

By Lionel L. Crowley /s/
Lionel L. Crowley, Arbitrator

1/ Ex. 12.

2/ Ex. 11.