

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

PRICE COUNTY

and

THE LABOR ASSOCIATION OF WISCONSIN and
PRICE COUNTY PROFESSIONAL DEPUTIES
ASSOCIATION

Case 65
No. 54538
MA-9709

Appearances:

Mr. Patrick J. Coraggio, Labor Consultant, for the Association.

Ms. Laura Millot, Human Resources Coordinator, for the County.

ARBITRATION AWARD

Pursuant to the terms of their 1993-95 contract, the parties asked the Wisconsin Employment Relations Commission to designate a member of its staff to serve as arbitrator of a grievance filed by employe Dudley Whitcomb.

The case was originally assigned to Debra L. Wojtowski and then reassigned to Peter G. Davis.

The parties agreed to brief an arbitrability issue and filed written argument in support of their respective positions, the last of which was received on March 26, 1997.

ISSUE

Is the grievance of Dudley Whitcomb arbitrable?

CONTRACT PROVISIONS

ARTICLE 6-SENIORITY RIGHTS FOR LAYOFFS, RECALL & SHIFT ASSIGNMENTS

. . .

G. Shift Selection by Seniority:

. . .

H. Dispute: Any dispute as to the shift assignment of seniority standing of any employee shall be subject to the grievance procedure.

ARTICLE 7-GRIEVANCE PROCEDURE

A. Definition of Grievance: A grievance shall mean a dispute concerning the interpretation or application of this contract. .

.

. . .

C. Arbitration:

2. Arbitration Board. Any grievance which cannot be settled through the above procedures may be submitted to an Arbitration Board.

6. Decision of the Arbitration Board: The decision of the Arbitration Board shall be limited to the subject matter of the grievance and shall be restricted solely to the interpretation of the contract in the area where the alleged breach occurred. The Arbitration Board shall not modify, add to or delete from the express terms of the Agreement.

DISCUSSION

The grievance of Dudley Whitcomb alleges that the County violated Articles 2 and 6 by assigning him to work 10:00 p.m. to 7:00 a.m. on June 21, 1996 when less senior officers were available.

The parties agree that in Wisconsin a grievance is arbitrable unless it can be said with "positive assurance" that the arbitration clause is not susceptible to an interpretation which covers the asserted dispute. Jt. School Dist. No. 10 v. Jefferson Ed. Asso. 78 Wis. 2d 94, 111-113 (1977).

Here, the arbitration clause applies to "Any grievance which cannot be settled. . ." A "grievance" is defined as "a dispute concerning the interpretation or application of this contract." The contract has a provision (Article 6) which creates seniority rights for "shift assignments". The Association claims Whitcomb's assignment on June 21, 1996, was a "shift assignment" governed by seniority. The County disagrees. Given the definitions of a "grievance" and the scope of the arbitration clause, there seems to be little doubt that the Whitcomb grievance is arbitrable. Any possible doubt is removed by the contract language in Article 6 which specifies that: "Any dispute as to the shift assignment or seniority standing of any employee shall be subject to the grievance procedure." Thus, I find the grievance arbitrable because it cannot be said with "positive assurance" that the arbitration clause is not susceptible to an interpretation that covers the parties' dispute.

In reaching this conclusion, I have considered the County's argument that the grievance is not arbitrable because there is no specific provision related to temporary assignments and the arbitrator is contractually prohibited from modifying or adding to the contract. In my view, these arguments go to the potential merits of the grievance, but not its arbitrability. I reviewed the existing contract under the Jefferson standard to determine arbitrability. I did not add to or modify the contract.

Dated at Madison, Wisconsin, this 24th day of June, 1997.

By Peter G. Davis /s/
Peter G. Davis, Arbitrator