

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

BARRON COUNTY COURTHOUSE EMPLOYEES
LOCAL 518-B, AFSCME

and

BARRON COUNTY

Case 128
No. 55030
MA-9867

Appearances:

Mr. Steven Hartmann, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO,
on behalf of the Union.

Weld, Riley, Prenn & Ricci, S.C., by Ms. Kathryn J. Prenn, on behalf of the County.

ARBITRATION AWARD

The above-entitled parties, herein "Union" and "County", are privy to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in Barron, Wisconsin, on July 16, 1997. The hearing was not transcribed and the parties there presented oral arguments in lieu of filing briefs. The parties then asked for a bench decision, which this Award augments.

ISSUES

1. Is the grievance substantively arbitrable?
2. If so, did the County violate the contract and a proposed side letter when it failed to increase grievant Ken Filter's hours and wages and, if so, what is the appropriate remedy?

DISCUSSION

The first issue that must be decided here is whether the grievance is substantively arbitrable. The County argues that it is not because the grievance does not allege which part of the contract has been violated and because Article 4, Section 4.01, of the contract states:

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

As I ruled at the hearing, this claim is without merit for two reasons: The first is that the

County's Attorney, Ms. Kathryn J. Prens, by letter dated December 2, 1996 1/ (Joint Exhibit 4), informed Union Staff Representative Steve Hartmann that the County wanted to increase grievant Filter's hours and wages and she thus proposed that "these issues could be addressed through a side letter of agreement." (Emphasis added). Attorney Prens made that offer after the County's Salary and Personnel Committee ("Personnel Committee") voted to that effect on November 19. County Corporation Counsel John Muench by letter dated November 21 (Joint Exhibit 9), also told Prens about the County's desire to "negotiate a side letter agreement to the Union contract . . ." (Emphasis added). Side letters, of course, are grievable. 2/ Secondly, the grievance is arbitrable because the parties were negotiating over Filter's rate of pay, a matter provided for in Appendix "A" of the contract which sets forth the wages for all bargaining unit employees.

Hence, the grievance centers on an important part of the contract: i.e., what is Filter's correct rate of pay given the situation herein? As a result, and contrary to the County's claim, it is proper to address this issue without running afoul of Article 4, Section D, of the contract which states: "The arbitrator shall not modify, add to or delete from the express terms of the Agreement." For here, it is proper to determine whether the side letter and Appendix A have been violated without adding to, or deleting from, the contract.

Turning now to the grievance's merits, it is clear that the County via Attorney Prens's December 2 letter to Hartmann proposed to increase Filter's wages and hours. The County did so because it did not want Filter, a Land Information Technician, to take a higher paying job at Burnett County - a matter acknowledged by Filter's immediate boss, Mark Netterlund. It is clear that Hartmann subsequently accepted the County's offer via a December 31 telephone call with Attorney Prens; that Attorney Prens on January 8, 1997, received written confirmation of that acceptance from Hartmann; and that the County's Salary and Personnel Committee knew by January 6, 1997, that the Union had accepted its offer.

Furthermore, Filter reasonably relied on the County's representations that it would offer him higher wages and more hours in order to keep him from taking the Burnett County job. That is why Filter cancelled his January 3, 1997, interview with Burnett County.

It is true that Filter knew that the County's proposal ultimately had to be approved by the full County Board. However, he also knew that County Board Chair Arnold Ellison also chaired the Personnel Committee; that Ellison as Chair of that Committee had earlier favored the County's proposal to increase his hours and wages; and that, as the most influential voice on the County Board, Ellison's vote would be pivotal. Thus, even though the County Board is not legally required to accept the recommendations of its Personnel Committee, Ellison admitted that it is

1/ Unless otherwise stated, all dates herein refer to 1996.

2/ See How Arbitration Works, Elkouri and Elkouri, p. 598-599 (BNA, 5th Ed., 1997).

"extremely rare" for the full Board to reject any such recommendations.

Given the Union's acceptance of the County's own proposal, and Filter's detrimental reliance, the Personnel Committee was required to then forward the matter to the full County Board. By failing to do so, the Personnel Committee breached its duty of fair dealing because it refused to take the necessary steps to ensure that its own earlier proposal to Filter would be considered by the body authorized to finally act on it, i.e., the County Board.

Ellison explained that the Personnel Committee on January 6, 1997, voted to rescind its earlier proposal to Filter because Article 22 of the contract provided for reclassifications only a few months later and because he did not want to go outside that contractual procedure. That is why the full County Board never voted on whether to approve Attorney Prenn's December 2 offer and that is why the County in June, 1997, ultimately reclassified Filter to a higher rate, effective January 1, 1998 (that rate, however, is lower than the one initially offered to Filter).

While Ellison and the County have legitimate concerns over not expanding the reclassification procedure provided for in Article 22 of the contract, those concerns cannot undo the County's earlier offer and the Union's subsequent acceptance. They similarly cannot undo Filter's detrimental reliance on that understanding and the fact that the County has been able to secure something of value - i.e., Filter's continued employment with the County and his earlier refusal to pursue the Burnett County job. That is why there is now a binding side letter per the terms outlined in Attorney Prenn's December 2 letter. By failing to honor its terms, the County therefore has violated both the side letter and Appendix A as modified by the parties.

As for remedy, the County must pay Filter the \$13.03 an hour promised to him for a six-month period running from the first pay period in February, 1997, and the County must then pay Filter \$13.23 an hour after that six-month period ends. 3/ In addition, it shall increase his hours to 40 hours a week and it shall assign him additional duties effective the first pay period following the date of this Award. In that way, all of the terms outlined in Attorney Prenn's December 2 offer will be effectuated. In order to resolve any questions over application of this Award, I shall retain jurisdiction for at least thirty (30) days.

In light of the above, it is my

3/ Filter's wage increase will not adversely affect the County's budget since the County Board in November, 1996, included \$8,000 in its 1997 budget for that purpose.

AWARD

1. That the grievance is arbitrable.
2. That the County violated Appendix "A", the wage provision of the contract, and the side letter herein when it failed to increase grievant Ken Filter's hours and wages.
3. That the County shall make Filter whole by paying him \$13.03 for all hours worked from the first pay period in February, 1997, and running for a six-month period and it thereafter shall pay him \$13.23 an hour. The County effective the first pay period after the date of this Award shall also assign Filter new duties and increase his hours to 40 hours a week so that all terms of its December 2, 1996, proposal will be effectuated. 4/
4. That I shall retain my jurisdiction for at least thirty (30) days.

Dated at Madison, Wisconsin, this 18th day of July, 1997.

By Amedeo Greco /s/
Amedeo Greco, Arbitrator

4/ The County's belated attempt to reclassify Filter to a different rate effective January, 1998, is therefore nullified.