#183

Howard D. Silver
Arbitrator
Columbus, Ohio

IN THE MATTER OF ARBITRATION

BETWEEN

THE STATE OF OHIO

AND

THE OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION, LOCAL 11, A.F.S.C.M.E., AFL-CIO

Appearances:

For The State of Ohio

Marlaina Eblin, Management Representative

For The Ohio Civil Service Employees Association, Local 11, A.F.S.C.M.E., AFL-CIO

Daniel Smith, Labor Representative

ISSUE

Are the classification specifications for Word Processing Specialist 1, 2 and 3 arbitrable?

The hearing in this matter was held on May 3, 1988 within the offices of the Office of Collective Bargaining, 65 East State Street, Columbus, Ohio 43215. The parties were afforded a full and fair opportunity to present testimonial and documentary evidence, examine and cross-examine witnesses, and make arguments supporting their positions. The record in this matter was closed on May 3, 1988.

FINDINGS OF FACT

The parties to this arbitration, the Ohio Civil Service Employees Association, Local 11, A.F.S.C.M.E., AFL-CIO, and the State of Ohio, operate under a collective bargaining agreement which became effective July 1, 1986 and is to remain in effect until July 1, 1989. This contract appears in the record as Joint Exhibit 1. Section 36.04 of Article 36 of this contract reads as follows:

> The Employer, through the Office of Collective Bargaining, may create classifications, change the pay range of classifications, authorize advance step hiring if needed for recruitment or other legitimate reasons, and issue or modify specifications for each classification as needed. The Office of Collective Bargaining shall notify the Union forty-five (45) days in advance of any change of pay range or specifications. Should the Union dispute the proposed action of the Employer and parties are unable to resolve their differences, they shall utilize the appropriate mechanism in Section 19.07 or 20.03 to resolve their differences.

On March 26, 1987 the Office of Collective Bargaining, in the person of its Director, Edward H. Seidler, directed a letter to the Executive Director of O.C.S.E.A., Local 11, A.F.S.C.M.E., AFL-CIO, Russell Murray, and enclosed with this letter copies of revised classification specifications for one hundred twenty-five classification titles. Included within these revised

classification specifications were specifications for Word Processing Specialist 1, code number 12611; Word Processing Specialist 2, code number 12612; and Word Processing Specialist 3, code number 12613. The letter of March 26, 1987 from Mr. Seidler to Mr. Murray, Joint Exhibit 2, informed Mr. Murray that these classification specifications were being provided to him pursuant to Article 36.04 of the contract between the State of Ohio and O.C.S.E.A. Mr. Seidler stated in this correspondence that this letter was to serve as official notice of changes within the enclosed classification specifications and that if the Office of Collective Bargaining did not hear from the Union within forty-five days the classifications would become effective and be filed with the Secretary of State. Mr. Seidler concluded his letter of March 26, 1987 with the instruction that if questions arose Sybil Griffin was to be contacted.

On April 28, 1987, Mr. Seidler directed a letter to Mr. Murray informing him that under Article 36.04 of the contract between the State of Ohio and O.C.S.E.A. more revised classification specifications, totalling fifty-four in number, were being submitted to the Union. Mr. Seidler further stated in this letter that if the Office of Collective Bargaining did not hear from the Union within forty-five days, the enclosed specifications would become effective and be filed with the Secretary of State.

On May 4, 1987, Executive Director Murray directed a letter to Director Seidler. On behalf of the Union, Director Murray

informed Mr. Seidler that the Union would be reviewing the changes made within the revised classification specifications and would consult with the State of Ohio about the Union's concerns as soon as possible. Director Murray pointed out in this letter, however, that the Union did not agree with the State's interpretation of Article 36.04 of the contract. Director Murray informed Mr. Seidler that it was the Union's view that the forty-five day provision within Article 36.04 of the contract applied only to management, requiring the State of Ohio to notify the Union forty-five days in advance of any change in pay range or specifications. Director Murray stated that it was the Union's interpretation of Article 36.04 of the contract that no time limits had been placed on the Union's response by Article 36.04 of the contract. See Joint Exhibit 7.

Joint Exhibit 3 is an interoffice communication dated May 20, 1987, from Sybil Griffin, then Contract Compliance Chief within the Office of Collective Bargaining, to Gail Lively, head of the section within the Ohio Department of Administrative Services which revised the classification specifications at issue. This interoffice communication is titled New Classes to be Filed. The body of this memorandum reads, "These can be filed! Call me". Attached to this interoffice communication is the cover letter and list of classification specifications directed to the Union by the State of Ohio through Mr. Seidler's letter of March 26, 1987.

Joint Exhibit 4 is a letter, dated June 17, 1987, from

Marianne Steger, Assistant to the Executive Director of O.C.S.E.A., to Sybil Griffin, Manager of Contract Administration within the Office of Collective Bargaining. This correspondence from the Union informed the State of Ohio that the Union was in possession of copies of proposed revisions for classification specifications for the classifications Word Processing Specialist 1, 2 and 3. Ms. Steger informed Ms. Griffin within this letter that the Union's initial review had indicated several problems with the proposed revised classification specifications and that a detailed explanation of the Union's concerns would follow in the near future.

On June 29, 1987, Director Seidler directed a letter to Ms. Steger in her capacity as Assistant to the Union's Executive Director. This correspondence, Joint Exhibit 5, informed Ms. Steger that the Word Processing Specialist classification specifications had already been approved by the Secretary of State. The effective date for these classification specifications, as provided in this letter, was June 21, 1987, and Mr. Seidler wrote that if Ms. Steger had any questions about this she should contact Ms. Griffin.

Joint Exhibit 10 is a letter dated August 7, 1987 from the Director of the Office of Collective Bargaining on that date, N. Eugene Brundige, to Executive Director Murray. Mr. Brundige informed Mr. Murray within this correspondence that he was submitting to the Union, pursuant to Article 36.04 of the contract between the State of Ohio and O.C.S.E.A., revised

classification specifications. Attached to this letter were the classification titles which had been revised, numbering two hundred thirty-two. Director Murray was informed that if he had questions, he was to contact Ms. Griffin.

On August 10, 1987, Executive Director Murray directed a letter, Joint Exhibit 8, to Director Brundige. On behalf of the Union, Mr. Murray informed the Office of Collective Bargaining, through Mr. Brundige, that Article 20 of the contract, the article which governed a classification modernization study of, among other things, classification specifications employed by the State of Ohio, was in effect and could not be avoided through operation of other articles within the contract. Director Murray stated for the record that he was objecting to all proposed changes of the classification specifications submitted to the Union and wished to proceed with the resolution of these objections under procedures outlined in Article 36.04 of the contract. Mr. Murray stated in his letter that while he wished to object to each and every one of the proposed classification specifications, he was open to discussing other ways of resolving these disputes.

On December 23, 1987, Stephanie Pina, a classification specialist employed by the Union, directed a letter, Joint Exhibit 9, to Marlaina Eblin of the Office of Collective Bargaining. Ms. Pina informed Ms. Eblin that she was writing to her as Ms. Pina understood Ms. Eblin to be the person in charge of revised/new classification specifications on behalf of the

Office of Collective Bargaining. Ms. Pina referred to Director Murray's letter of August, 1987, objecting to the proposed/ revised specifications that went into effect September 21, 1987. Ms. Pina stated that these specifications had never been approved by the Union, that the Union had repeatedly tried to schedule a hearing for the Emergency Response Coordinator and Hazardous Materials Specialist classifications in order to establish their proper pay range, but had not met with success in scheduling such a hearing. Ms. Pina also stated within this letter that a hearing should be scheduled for consideration of the Word Processing Specialist 1, 2 and 3 revised specifications. Other specifications were also raised within this letter by Ms. Pina. Ms. Pina expressed the frustration of the Union in the delays in scheduling hearings and meetings as to these classifications, but expressed the hope that she and Ms. Eblin could get the ball rolling in this area and speed up what had been too slow a process.

UNION POSITION

The Union contends that there are two reasons to find that the specifications at issue are arbitrable. First, the Union argues that the language of the contract between the parties places a time limitation as to advance notice of proposed changes of classification specifications upon management by express language to that effect, but is silent as to any time limit for

the Union's review of the proposed changes of the classification specifications. The Union points out that the contract clearly envisions and promotes bargaining between the parties as to differences related to proposed changes of classification specifications, and only if the parties are unable to resolve their differences should arbitration procedures be invoked. The Union argued at hearing that Article 36.04 is intended to get discussions going, not to get arbitrations started.

The Union's second argument in support of arbitrability of the specifications at issue is to the effect that even if the State's incorrect interpretation of the language of Article 36.04 of the contract is accepted, the Union did notify the employer in a timely manner that the Word Processing Specialist specifications were problematic and that they would require appropriate resolution mechanisms found within sections 19.07 or 20.03. In this regard the Union offered the testimony of two witnesses, Marianne Steger and Daniel Smith.

As stated previously, Ms. Steger is an Assistant to the Executive Director of O.C.S.E.A. At the time of hearing Ms. Steger had held this position for approximately fifteen months. Ms. Steger stated that she assists in the day to day operation of the Union and focuses a substantial amount of time on contract compliance matters. Ms. Steger testified that prior to March 26, 1987 she had had a discussion with Sybil Griffin, then head of Contract Compliance for the Office of Collective Bargaining, wherein Ms. Griffin informed Ms. Steger that the Office of

Collective Bargaining was directing specifications to the Union, including specifications for the Word Processing Specialist series. According to Ms. Steger, Ms. Griffin informed Ms. Steger during this conversation that Ms. Griffin knew that the Union would have problems with the Word Processing Specialist series. Ms. Steger testified that she informed Ms. Griffin that it was ridiculous to send over revised classification specifications in the volume that was occurring and expect the Union to be able to complete its analysis of these hundreds of specifications in forty-five days. Ms. Steger stated she also pointed out to Ms. Griffin that the class modernization study which was then on going made operation of Article 36.04 nothing more than duplicate work. Ms. Steger stated that Ms. Griffin responded that she was aware that it was a lot of specifications but the Ohio Department of Administrative Services was continuing with these revisions and the Office of Collective Bargaining would continue to direct them to the Union.

Ms. Steger testified that following March 26, 1987 but within forty-five days of that date, she informed Ms. Griffin that the Union had serious problems with the Word Processing Specialist series specifications. Ms. Steger stated that major problems raised by the Union were discussed with Ms. Griffin subsequent to March 26, 1987 and that talks were held in an effort to find a way to resolve these disagreements. Ms. Steger also stated that at no time did Ms. Griffin say that the matter had to be resolved within forty-five days. Ms. Steger testified

that she informed Ms. Griffin that if the Union and Management could not resolve these differences as to these specifications, resolution procedures within Articles 19.07 or 20.03 of the contract between the parties would have to be utilized. Ms. Steger testified that at some point Ms. Griffin agreed that agreement could not be reached and that the matter would have to be submitted to arbitration. Ms. Steger stated that when Ms. Griffin admitted the impasse, she asked Ms. Steger to send her something in writing. Ms. Steger said that correspondence was not immediately sent to Ms. Griffin as heightened activity at the Union and insufficient staff at that time required her attention on more pressing matters. Ms. Steger stressed that due to limited staff resources there was no one at the Union who was assigned specifically to handle this particular matter. Ms. Steger testified, however, that continuing discussions with Ms. Griffin ensued on how to proceed under Articles 19.07 or 20.03 and as to which arbitrator to employ.

When Ms. Steger was asked why written objections were not delivered to the State of Ohio within the forty-five day period following March 26, 1987, Ms. Steger stated that the March 26, 1987 letter from Director Seidler referred to hearing from the Union and that nothing within the contract required a written response. Ms. Steger also stated that the Union was attempting to reach resolution of the dispute concerning the Word Processing Specialist series specifications without the necessity of arbitration.

Under cross-examination, Ms. Steger stated that she was aware of no letter in existence requesting an extension of time frames, but also pointed out that she was unaware of any time frames imposed upon the Union in this matter. Ms. Steger explained that she scheduled many arbitrations and in many cases follow-up letters as to the need for arbitration are not sent. Ms. Steger pointed out that in discussions of other classification specifications resolution was reached.

Daniel Smith, General Counsel to O.C.S.E.A., testified at hearing that he too had attended meetings with Sybil Griffin. Mr. Smith recalled a meeting in June, 1987 wherein he, in the company of Ms. Steger, discussed with Ms. Griffin the Union's concern with the Word Processing Specialist specifications. Mr. Smith stated that Ms. Griffin was informed that this was a top priority item of the Union and that the Union was very interested in getting the matter resolved.

EMPLOYER POSITION

The State of Ohio contends that the language of Article 36.04 of the contract between the parties not only requires the State of Ohio to provide notice to the Union forty-five days in advance of any change of specifications, but that this language also places a time limit upon the Union to raise objections as to these changes with the State of Ohio. Management contends that the language of Section 36.04 of Article 36 of the contract

between the parties empowers the Employer to create, modify and issue specifications for each classification as needed. The Employer points out that finality at some point must be imposed upon specifications used by the State of Ohio within its classification plan and that the language of Article 36.04 clearly requires that the Union notify the State of differences as to proposed changes within specifications within the forty-five day period between the notification provided to the Union by the State of Ohio of the proposed changes, and the effective date of the new specifications. The State argues that in the event the Union does not notify the State of its disagreement with proposed changes, the specifications should become effective without being subject to arbitration at a subsequent time.

The Employer contends that the forty-fifth day following March 26, 1987 is May 8, 1987. The State argues that there is no documentary evidence that the Union provided notification of problems with any of the specifications to the State. Management pointed out that the State of Ohio received a letter postmarked June 18, 1987 expressing problems with the specifications but that this date was eighty-six days after the March 26, 1987 notification of the proposed changes directed to the Union. The Employer further pointed out that while the June 18, 1987 postmarked letter, Joint Exhibit 4, promised a detailed explanation of the concerns raised by the Union in the near future, the Office of Collective Bargaining had never received any further clarification of concerns. The State of Ohio also

argued that on June 29, 1987 the Office of Collective Bargaining informed the Union that the Word Processing Specialist series specifications had been approved by the Secretary of State and were in effect, but that it was not until December, 1987 that the Union notified the Office of Collective Bargaining that it wished to trigger the dispute resolution mechanism outlined in Article 36.04.

The Employer premises its view that this matter is not arbitrable on its interpretation of language within Article 36.04 which invests the State of Ohio with the authority to create new specifications as needed, requires the State of Ohio to provide forty-five days advance notice to the Union of such changes, and implicitly applies to the Union a forty-five day time limit in which to express its differences, if any, with the proposed specification changes. The Employer contends that it has satisfied all requirements imposed on management within Article 36.04 and that as it received no complaint from the Union as to the Word Processing Specialist series' specifications within the forty-five day period following notice from the State of the proposed changes within these specifications, the Union had waived its right to invoke the resolution mechanisms within Article 36.04 of the contract between the parties.

DISCUSSION

Article 36.04 of the contract clearly reserves to the Employer, through the Office of Collective Bargaining, the power to modify classification specifications as needed. This article imposes a contractual duty upon the Office of Collective Bargaining, that duty being to notify the Union forty-five days in advance of any change to a specification.

Article 36.04 grants to the Union the right to dispute the proposed action of the Employer in changing a specification. This article provides that if the dispute as to the change cannot be resolved by the parties through bargaining, the appropriate mechanism for the resolution of the dispute is to be found in Section 19.07 or 20.03 of the contract.

Article 19 of the contract between the parties covers job audits and reclassifications. Section 19.07 of Article 19 refers to the appeals procedure to be employed by an employee or agency that disagrees with the decision of the Ohio Department of Administrative Services arising from a job audit.

Section 20.03 is contained within Article 20 of the contract, an article covering a classification modernization study. As stated within the contract, this classification modernization study reflects a desire on the part of the Employer to modernize the State's classification specifications in order to provide a more systematic approach to career development. To accomplish this, the Employer, under Article 20, will conduct a

study of the present classification plan within six months of the ratification of the contract.

Article 20 obligates the parties to establish and operate a special labor-management committee on classification modernization, consisting of an equal number of Union and Employer representatives. This committee on classification modernization is to function and continue to function in an oversight capacity in an ongoing review of the classification system.

Article 20.03 of the contact between the parties reads as follows:

> If the Union disputes a proposed classification specification or pay range designation as determined by the study, the Union and the Employer shall meet to discuss these issues.
>
> If the issues are not agreed upon, the Union and the Employer shall mutually agree to choose an independent third party who is knowledgeable in labor relations and classification and compensation systems to serve on this committee. The committee's decision will be binding on both parties. The expenses of the third party will be borne equally by the parties.

It should be noted that for purposes of the classification modernization study, it is clear that the Union has the right to dispute a proposed classification specification and has an obligation to meet and discuss this dispute with the Employer in an attempt to resolve the matter. In the event agreement cannot be reached, the matter is to be submitted to an arbitrator for determination. It is significant that there are no time limits

within this dispute resolution provision, a provision utilized by both Article 20 and Article 36.

The interpretation urged by the Employer which imposes a time limit upon the Union within Section 36.04 of Article 36 creates an anomaly within the contract. If it is held that under Article 36.04 the Union is required to provide written notification to the State of Ohio of objections to proposed changes of classification specifications within forty-five days of receipt of notice of such changes, and if such notice is not found to have been given to the State of Ohio within that period of time, the operation of Article 36 would extinguish, at least as far as the specifications at issue are concerned, the rights of the Union under Article 20. For example, if any one of the one hundred twenty-five classification titles which were submitted to the Union on March 26, 1987 were also the subject of the classification modernization study, on May 8, 1987, the forty-fifth day following March 26, 1987, the operation of Article 20 as negotiated by the parties would no longer be in effect as to the classification specifications for which notice was provided to the Union on March 26, 1987, pursuant to Article 36.04.

Such an interpretation would require a finding that Article 36 is somehow superior to Article 20, that is, the operation of Article 36 under certain circumstances destroys the contractual rights of the Union under Article 20, at least as to specific classification titles. This is an extreme view and one not

favored in analyzing articles which make up a collective bargaining agreement. It is normally the case that if such an interpretation should be reached, express language be present making it unambiguously clear that one article, under certain facts, is to take precedence over another.

The Employer premises its argument that the classifications at issue are not arbitrable upon a time limit which the Employer claims is imposed by the contract upon the Union. The Employer admits that there is no express language placing such a time limit on the Union, but contends that the requirement that the State of Ohio provide forty-five days advance notice of changes within classification specifications to the Union reflects an implicit time frame imposed upon the Union to make its objections known within the forty-five day notification period.

The conclusion that Article 36 is determinative of Article 20 rights is therefore based not on express but implied contractual language. This does not in and of itself doom the Employer's position in this case, but because Management's argument is implicit rather than expressed, the burden of presenting persuasive evidence that the implied duty involving time limits upon the Union was within the intent of this language when it was agreed to by the parties at its inception must be borne by the Employer.

The implied time limit to be imposed upon the Union under the Employer's view must reflect a shared intention of the parties during bargaining when the language of Article 36.04 was

hammered out and agreed. A contract requires a meeting of the minds, that is, a mutual understanding of what agreed language means. It is only through such mutual understanding that mutual respect for the effect of the language can be maintained. Because the Employer argues that a time limit exists for the Union under Article 36.04 but admits that the time limit is implicit, the Employer must bear the burden on whether during the negotiation of Article 36.04 it was the mutual agreement of the parties that such an implied time limit was to be imposed upon the Union.

There is no evidence in the record that the Union during the negotiations producing Article 36.04 or thereafter acknowledged a time limit upon the Union emanating from Article 36.04. The Union, in its correspondence to the Office of Collective Bargaining, consistently denied that any such time limit existed within Article 36.04. See Joint Exhibits 7 and 8. Without such evidence in support of an agreement between the parties as to this implied time limit, the arbitrator is not persuaded that the Union had agreed, in establishing this language within the contract, that it should have to make a decision as to whether arbitration was necessary within forty-five days of notice received from the State of Ohio as to proposed changes within specifications. Such a burden is a heavy one and it would appear that had such a heavy burden been accepted by the Union such acceptance would have been expressly set out within the language of Article 36.04. The duty of the Employer to provide advance

notice and the fact that it is to be provided forty-five days in advance of any change is expressly noted within this article. Had the Union agreed to make its determination as to whether it wished to utilize a resolution mechanism, should disputes arise, within forty-five days of that advance notice, it would seem likely that this circumstance would have appeared in express language as well.

As there is no evidence that the Union agreed to a time limit on objecting to changes in specifications under the provisions of Article 36.04 of the contract, and as there is no express language which places such a burden upon the Union, it is determined herein that objections raised by the Union with the State of Ohio as to the Word Processing Specialist specifications are subject to the appropriate mechanisms for resolution found in Section 19.07 or 20.03 of the contract between the parties.

The aforementioned view also places on equal rank the activities carried out under Article 36 and the activities carried out under Article 20. Under this interpretation no rights are extinguished and all provisions of the contract are enforceable.

Above and beyond the interpretation of the language of Article 36.04, the facts of this case tend to support the Union's argument in support of arbitrability. The testimony of Ms. Steger appeared trustworthy and credible, and her testimony was to the effect that notice within forty-five days of March 26, 1987 was provided to the Office of Collective Bargaining in the

person of Sybil Griffin, through telephonic and face to face communications concerning objections to proposed changes within the Word Processing Specialist series. Nothing within Article 36.04 requires written notification, and Ms. Steger's testimony as to providing this notification to the Office of Collective Bargaining was unrebutted.

Finally, finding that the Word Processing Specialist classification specifications at issue are arbitrable, pursuant to Article 36.04 under the facts of this arbitration, promotes lengthier periods of bargaining on the differences raised by the Union as to changes made by the Employer within classification specifications, rather than pushing the parties inexorably toward arbitration. The working relationship between the parties functions on the lubricant of bargaining and is halted, albeit momentarily, by the arbitration process. Mutual agreements arrived at through bargaining are inherently more valuable than the imposition of an outcome by a third party in order to overcome an impasse. While a resolution mechanism allowing the continuing operation of the contract is necessary, it is obviously a last resort, with resolution through bargaining the more preferable route. By interpreting Article 36.04 as not imposing an implicit time line upon the Union to demand arbitration within forty-five days after receipt of notice of proposed changes to the classification specifications at issue or waive forever its right to arbitrate differences that cannot be resolved, the bargaining process is lengthened and strengthened,

and the arbitration process deferred. Had the Union been required to determine in writing that arbitration was necessary as to these specifications within forty-five days of receipt of the proposed changes, or face a waiver of rights as to independent dispute resolution, the Union would be compelled to limit the bargaining of its concerns and move to arbitration in an all or nothing scramble which would increase expenses, interrupt bargaining and deny both parties the opportunity to find common ground through compromise and negotiation.

The interpretation urged by the State of Ohio is in no way illogical, frivolous or unreasonable. However, the arbitrator must determine, based on the language within the contract and the evidence presented at hearing, which interpretation of the language of the contract most accurately reflects the agreement reached by the parties in producing that language. In making this determination in this case, it is found that the Union is empowered under Article 36 and Article 20 of the contract to submit issues as to changes within the classification specifications for the Word Processing Specialist series to an appropriate arbitration procedure.

AWARD

The classification specifications for Word Processing Specialist 1, 2 and 3 are arbitrable.

Howard D. Silver
Arbitrator

May 20, 1988
Columbus, Ohio