

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS UNION LOCAL NO. 695,	:	
	:	
Complainant,	:	
	:	
vs.	:	Case 89
	:	No. 41527 MP-2180
	:	Decision No. 25947-A
SAUK COUNTY,	:	
	:	
Respondent.	:	
	:	

Appearances:
Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, by Ms. Marianne Goldstein Robbins, 788 North Jefferson Street, Milwaukee, Wisconsin 53202 on behalf of the Complainant.
Mr. Eugene Dumas, Corporation Counsel, Sauk County, Sauk County Courthouse, 515 Oak Street, Baraboo, Wisconsin 53913, on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Teamsters Union Local 695, herein the Union, filed a prohibited practices complaint on January 10, 1989 with the Wisconsin Employment Relations Commission wherein it alleged that Sauk County, herein the County, had committed a prohibited practice within the meaning of Sec. 111.70(3)(a)(4) Wis. Stats., by refusing to bargain over the elimination of certain job duties involving Training Specialists/Case Managers. Hearing was held in this matter on May 15, 1989 where the County filed an answer denying said allegations. Briefs and reply briefs were received by August 15, 1989.

The Examiner, having considered the pleadings and arguments of the parties, makes and issues the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. The Union, a labor organization, represents for collective bargaining purposes in one combined bargaining unit certain nonprofessional employees employed in the County's Courthouse, its Department of Human Services, and its Highway Department.
2. The County, a municipal employer, maintains its principal offices in the Sauk County Courthouse, Baraboo, Wisconsin, and operates a Department of Human Services which, since January 1, 1988 has operated a sheltered workshop in Reedsburg, Wisconsin, for its clients.
3. Prior to 1988, said workshop was operated by Tri-County Human Services Center, which is now defunct. Effective January 1, 1988, about 40 employees formerly employed by the Tri-County Human Services Board were hired by the County and accreted to the bargaining unit represented by the Union.
4. The parties engaged in collective bargaining negotiations in the latter part of 1988, with their first bargaining session being conducted on or about November 11, 1989. They reached a tentative settlement on December 14, 1988 for a two year contract, with the second year providing for a wage reopener. Said contract - which was subsequently executed in February, 1989 - has a grievance/arbitration procedure which culminates in final and binding arbitration and Article II of said contract, entitled "Management Rights," provides:

The EMPLOYER possesses the sole right to operate the County and all management rights repose in it, subject only to the express terms of this Agreement. These rights include, but are not limited to, the following:

- A.To direct all operations of the EMPLOYER;
- B.To establish reasonable work rules and schedules of work;
- C.To hire, promote, transfer, schedule and assign employees in positions within the County;
- . . .
- F.To maintain efficiency of EMPLOYER operations;
- G.To take whatever action is necessary to comply with state

or federal law;

H.To introduce new or improved methods or facilities;

I.To change existing methods or facilities;

J.To determine the kinds and amounts of services to be performed as pertains to EMPLOYER operations; and the number and kind of classifications to perform such services.

. . . .

L.To determine the methods, means and personnel by which EMPLOYER operations are to be conducted;

. . . .

5. Article XXIV of said contract, entitled "Entire Memorandum of Agreement," provides:

This Agreement constitutes the entire Agreement between the parties and no verbal statements shall supersede any of its provisions. Any amendment supplemental hereto shall not be binding upon either party unless executed in writing by the parties hereto. Therefore, the EMPLOYER and the UNION, for the life of this Agreement, each waive the right to bargain with respect to any subject or matter not specifically referred to or covered in this Agreement. Waiver of any breach of this Agreement by either party shall not constitute a waiver of any future breach of this Agreement.

6. During said negotiations, the Union tried to bargain over individual wage classifications, but the County claimed that it was conducting a job audit of certain professional positions and that, as a result, it was premature to resolve any questions regarding individual wage rates. The parties ultimately agreed to establish a study committee in 1989 to study the job classifications of all employees and they also agreed that the County would set aside an unspecified sum of money for any equity raises generated by said study.

7. There was no agreement in negotiations that the three Training Specialists/Case Managers, herein Training Specialists, at the Reedsburg facility - Pauline Dietrich, Mary Bianco, and Dieter Radke - would be reclassified in said study or that they would be automatically entitled to a subsequent wage increase generated by said study. Furthermore, there was no mention of the Training Specialists in said negotiations even though Radke was also on the Union's bargaining team.

8. Dietrich, Bianco, and Radke throughout 1988 had direct talks with their immediate supervisor, Vocational Services Coordinator Denise Kass, over their complaints that they were performing many of the same duties as the professional employees who were earning about \$2.50 an hour more than they and that, accordingly, all three of them should be paid more. The Training Specialist's duties significantly increased between 1985-1988 because they had to fill in the gaps caused by the failure of the Tri-County Human Services Board to fill vacant professional positions during that time frame. Specialists thus served as advocates for their clients in the community; they did diagnostic team reviews; they helped secure maximum benefits for their clients; they monitored their clients' compliance with medications; and they prepared daily and monthly reports.

9. In response, Kass told them in the early part of the year that she did not believe that the Training Specialists should be performing case management duties and in July or August, she told them that she would be recommending the hire of an additional full-time case manager in the professional bargaining unit to help relieve their case management duties. Kass subsequently formally made that recommendation on or about September 8, 1988 to the County's Personnel Committee which, in turn, denied it.

10. In November, 1988, employee Sue Hebel asked Community Treatment Manager Judy Pellowski whether she would go from a five to a four day week by not working on Mondays. Said permission was granted after it was determined that Kass would fill in for Hebel on Mondays and that, furthermore, a Human Services Worker I could be hired on a temporary basis with some of the money generated by Hebel only working one less day a week.

11. On December 4, and 5, 1988, the County decided on a six (6) month trial basis to transfer the case management functions from the Training Specialists to a newly hired limited term Human Services Worker who was outside the bargaining unit and it subsequently did so on January 16, 1989. Said reassignment of duties was not resulted in any layoffs of employees or reduction of their hours.

12. After the parties reached their tentative agreement on December 14, 1988, Dietrich, Bianco, and Radke met with supervisor Kass and Pellowski where they requested additional compensation for their case management responsibilities. On January 4, 1989 they met with Director of Sauk County Human Services Norman Brickl, Kass and Pellowski, with Brickl informing them that the case management duties would be shortly taken away from them. Radke later that day informed Union Business Representative Ruth Ann Stodola about the transfer of said duties. That was the first time she learned of said transfer.

13. The Union earlier on January 10, 1989 filed the instant complaint. The Union has never requested to bargain over the transfer of said duties and it has never filed a grievance over same.

14. The County's decision to transfer the case management duties was unrelated to the Training Specialists' request that said duties warranted extra compensation.

Based upon the foregoing, the Examiner makes and issues the following

CONCLUSION OF LAW

Sauk County has not violated Sec. 111.70(3)(a)4 Wis. Stats., by taking away the case management duties from the Training Specialists/Case Managers.

On the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Examiner makes the following

ORDER 1/

IT IS ORDERED that the complaint filed in this matter be, and it hereby is, dismissed in its entirety.

Dated at Madison, Wisconsin, this 7th day of November, 1989.

By _____
Amedeo Greco, Examiner

1/ See footnote on page 4.

1/ Any party may file a petition for review with the Commission by following the procedures set forth in Sec. 111.07(5), Stats.

Section 111.07(5), Stats.

(5) The commission may authorize a commissioner or examiner to make findings and orders. Any party in interest who is dissatisfied with the findings or order of a commissioner or examiner may file a written petition with the commission as a body to review the findings or order. If no petition is filed within 20 days from the date that a copy of the findings or order of the commissioner or examiner was mailed to the last known address of the parties in interest, such findings or order shall be considered the findings or order of the commission as a body unless set aside, reversed or modified by such commissioner or examiner within such time. If the findings or order are set aside by the commissioner or examiner the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the commissioner or examiner the time for filing petition with the commission shall run from the time that notice of such reversal or modification is mailed to the last known address of the parties in interest. Within 45 days after the filing of such petition with the commission, the commission shall either affirm, reverse, set aside or modify such findings or order, in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another 20 days for filing a petition with the commission.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

The Union argues that the County violated Sec. 111.70(3)(a)4 Wis. Stats., by unilaterally removing the case management duties from the Training Specialists in January, 1989, asserting that said removal constituted a mandatory subject of bargaining under the Commission's decisions in Town of Salem, Dec. No. 18812-A (1982), and Milwaukee Board of School Directors, Dec. No. 21893-B (1986). The Union also asserts that their duties were taken away in order to avoid bargaining over the higher wages the Training Specialists were seeking, thereby constituting bad faith bargaining under the Commission's decision in Dane County, Dec. No. 17893-B (1981), and that, furthermore, the "County's motive is so strong that it could well be viewed as reprisal for employees' wage demand in violation of Sec. 111.70(3)(a)1 and 3," citing City of Green Bay Public Schools, Dec. No. 23039-B (1986). Going on, it claims that "the motive of the County is particularly questionable given its failure to notify the Union of the intended removal of the job duties during the course of bargaining."

The County sees things differently. In support of the Motion to Dismiss which it made at the hearing and which has been held in abeyance for resolution, the County contends that the complaint fails to state a cause of action because the Union has failed to meet its burden of proof in establishing that the parties in contract negotiations ever specifically discussed the Training Specialists or ever agreed that their duties would remain the same pending completion of the job study and that, accordingly, Article XXIV of the contract, entitled "Entire Memorandum of Agreement," prevents the Union from trying to alter the contract via its alleged understanding. The County also contends that the complaint must be dismissed because the Union did not exhaust the contractual grievance/arbitration procedure; because the Union has waived its right to bargain over this matter; and because the Union is trying to bargain over a nonmandatory subject of bargaining.

The resolution of the issue turns on bargaining history.

It is true, as the Union points out, that the County did not formally inform the Union of its decision to take away the case management tasks from the Training Specialists until January 4, 1989, several weeks after the parties had reached agreement on a new contract on December 14, 1988. It is also true that the Training Specialists throughout 1988 asked for a substantial wage increase to compensate them for performing said tasks and that the County knew that the removal of said tasks would save it from paying that additional compensation. Furthermore, the record shows that there may have been merit to said request, since the Training Specialists over the years were given more and more responsibilities. Lastly, there is no question but that the three Training Specialists are highly dedicated and competent employees who performed all of the tasks expected of them in a difficult job environment.

But having said all that, it is also true that the former Tri-County Human Services body experienced severe management problems and that the County tried to rectify them when it took over Tri-County's functions on January 1, 1988. One of those problems involved the Training Specialists' case management duties - duties which they assumed over the years by default because of the absence of professional employees who were better qualified to render the same.

Thus, Kass flat-out told Dietrich, Bianco, and Radke in the beginning of 1988 that she did not believe that they should be performing any case management functions. She subsequently told them in the summer that she was recommending the hire of a full-time professional to take over some or all of those duties.

While her recommendation was later rejected by the County's Personnel Committee on or about September 8, 1988, said statement put the three on express notice that the County might take away their case management duties. Furthermore, since Radke was a union steward and was on the Union's bargaining team, said notice was constructively conveyed to the Union.

Hence, it was incumbent on the Union to halt any such possible transfer of duties, particularly when it is remembered that the parties here did not commence their negotiations until November 11, 1988. Neither the Union nor Radke, however, ever brought up this subject in negotiations. Thus, it is undisputed that the County in negotiations never agreed that the duties of the Training Specialists would remain the same or that they would automatically receive any additional wage increase by virtue of the joint job wage study which was to be conducted in 1989.

That being so, it can only be concluded that the Union waived any rights to bargain over the transfer of said duties since the contractual Management Rights' clause gives the County the right "to determine the methods, means and personnel by which Employer operations have to be conducted" and because it also provides that it retains all management rights which are not expressly limited in the contract. The Union therefore is bound to the deal that it did strike with the County - i.e., that the Training Specialists would be paid certain hourly rates for 1989 which are set forth in Appendix B of the contract. Since the County is paying those rates, it is honoring the terms of

the bargain both parties struck regarding their compensation.

Accordingly, it follows that the County has not refused to bargain over this issue. The complaint therefore is dismissed in its entirety.

Dated at Madison, Wisconsin this 7th day of November, 1989.

By _____
Amedeo Greco, Examiner