

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration :
of a Dispute Between :
: Case 113
LA CROSSE COUNTY (DEPARTMENT : No. 42697
OF HUMAN SERVICES) : MA-5778
:
and : Case 114
: No. 42698
LOCAL 2484, LA CROSSE COUNTY SOCIAL : MA-5779
WORKERS, WCCME, AFSCME, AFL-CIO :
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Appearances:

Mr. Daniel R. Pfeifer, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, Route 1, Sparta, Wisconsin 54656, appearing on behalf of the Union.

Mr. Robert B. Taunt, Personnel Director, La Crosse County, County Courthouse, Room B-04, 400 North Fourth Street, La Crosse, Wisconsin 54601, appearing on behalf of the County.

ARBITRATION AWARD

On August 25, 1989, Local 2484, La Crosse County Social Workers, WCCME, AFSCME, AFL-CIO filed two requests with the Wisconsin Employment Relations Commission to provide the Chairman of a Tri-Partite Arbitration Panel which would issue final and binding award(s) on two grievances pending with La Crosse County. Following jurisdictional concurrence from the Employer, the Commission on October 4, 1989 appointed William C. Houlihan, a member of its staff, to hear and decide the matter. The Union designated Mr. Jack Bernfeld to serve on the Arbitration Panel. The County designated Mr. George Dawes to serve on the Arbitration Panel. A hearing was conducted on December 20, 1989 in La Crosse, Wisconsin. Post-hearing briefs were submitted and exchanged by February 14, 1989.

Both of these grievances contend that the County has subcontracted work previously performed by Social Workers.

BACKGROUND AND FACTS

Court Intervenor Unit Grievance

Prior to January 1989 the Court Intervention Unit of the La Crosse County Human Services Department consisted of two full time Social Workers, John Jensen and James Briske, and one part-time case manager, Sue Hamilton. The Unit had no clerical support, which hampered its effectiveness. Social Workers handled most of their own typing and paperwork, though some was performed by a Secretary from another Department. The Unit had requested clerical support.

Jensen and Briske performed the same duties. Each started, handled and finished cases. For instance, in a mental health detention probable cause proceeding a Social Worker would call the hospital to see if a matter was going to court, call all involved parties, advise all of a hearing, arrange transportation, type and personally serve a number of forms. The Social Worker would attend the court proceeding and arrange for testimony. If the matter proceeded beyond the probable cause phase the Social Worker would secure medical reports, type and serve numerous forms. The Social Worker might institute or receive referrals, perform an investigation and evaluation.

During the Fall of 1989 Briske took a leave of absence. During his absence Hamilton's hours were increased and the County contracted with Manpower, Inc. for clerical services. Mr. Briske resigned in December 1989. Following his resignation the County re-organized the Department and posted the vacancy as a Social Services Aide position. Marlin Vinson, an Aide, filled the position. A part-time Secretary was added. The Unit now consists of a Social Worker, an Aide and a part-time Secretary.

Mr. Vinson's work includes service of paperwork, advising people of their rights, accompanying the Social Worker on evaluations, home visits and assessments. He also reviews straightforward protective service cases. All of these tasks were previously handled by Social Workers.

Departmental re-organization has been based upon a functional break down of tasks. Jensen, the Social Worker handles assessments, evaluations and substantive decision making on cases. The Secretary does the clerical tasks. The Aide places may of the telephone calls, handles personal service of documents and does much of the paperwork. This division of labor is allocated

on a case by case basis in consideration of the needs of the individual client.

In January 1990 the Union filed a grievance over this loss of work. That grievance led to this arbitration. It is stipulated that Social Service Aides are not covered by the collective bargaining agreement. It is further stipulated that the grievance is properly before the panel.

Big Brother/Big Sister Grievance

In approximately 1969 there was a perceived need for a Big Brothers/Big Sisters Program. The program was initiated and grew so that by 1974 it required a full-time Coordinator. Wayde Anger, a Social Worker was assigned to coordinate the program in 1974. Anger occupied the position until he requested, and was granted, a reassignment, in 1983. Subsequent to that, William Adams, a Social Worker, was assigned to the position.

Adams directed the Big Brothers/Big Sisters program until he was reassigned. The Program Director was charged with recruiting, training, screening volunteers to be matched with children from single parent families. Matching decisions have to be made. The Director is in charge of monitoring the pairings and planning monthly activities. In 1987 Adams was advanced from Social Worker II to Social Worker III.

In November of 1988 Marvin Iverson, Supervisor of the Human Resources Department requested a new Social Worker position. In response the County Board directed that 3/4 of Adams position be reassigned. Iverson was told to use an Aide in the Big Brothers/Big Sisters Program with 1/4 of Adams time assigned to the program. Linda Hansen, a Social Services Aide II was assigned to the position. Ms. Hansen has a Bachelor of Arts Degree in Home Economics.

Adams was reassigned. According to Adams, only about 10 percent of his time is actually spent on the Big Brothers/Big Sisters Program. When the reassignments were made, it appears that Adams was retained to handle the more traditional Social Work type tasks; i.e., evaluation, matching and monitoring of the pairings. As a practical matter with Adams removed from the scene physically, that has not proven to be the case. Rather, Adams had focused his efforts on the ongoing public relations efforts of the Program. Hansen has assumed the balance of the duties.

The County was scheduled to drop the Big Brothers/Big Sisters Program at the end of 1989. As of January 1, 1990 the YMCA will be operating the Program. The YMCA will be affiliated with Big Brothers/Big Sisters of America. One of the requirements of that affiliation is that the Program Director have a degree in Social Work, or a related field.

ISSUE

The parties were unable to stipulate the issue. The majority believes the issue to be:

Has the County contracted for work normally performed by Social Workers?

If so, what relief is available and appropriate?

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

ARTICLE II

ADMINISTRATION

2.01 Except as otherwise provided in this Agreement, the County retains all the normal rights and functions of management and those that it has by law. Without limiting the generality of the foregoing, this includes the right to hire, promote, transfer, demote, or suspend or otherwise discharge or discipline for proper cause; the right to decide the work to be done and location of work; to determine the services to be rendered, the material and equipment to be used, the size of the workforce, and the allocation and assignment of work or workers; to schedule when work shall be performed; to contract for work not normally performed by Social Workers, and for services and materials; to schedule overtime work; to establish or abolish a job classification; to establish qualifications for the various job classifications; and, to adopt and enforce reasonable rules and regulations.

POSITIONS OF THE PARTIES

The County contends that there has been no contracting out. Work went to Social Service Aides who are employes of the County, covered by another AFSCME contract. The Aides belong to the same Local, have the same Union officers, the same Union Representative and Union dues are sent to the same office. The County cites Balmoral Truck Garage and United Mine Workers of America, 87 LA 967 (Volz) for the proposition that the Union cannot be heard to complain that some of its members have taken work from others.

According to the County, Article 2 must be given a reasonable reading. A good deal of the work involved was not Social Work. Two non-Union employes, Hamilton and Spiltz, shared the caseload. The Union complains about the work which has gone to Aides but not that which has been assigned to clericals. The County believes it has engaged in a good faith re-organization of the work, with tasks appropriately assigned.

Social Work is being performed by degreed Social Workers. Aides have merely taken over some of the work which does not require a degreed Social Worker.

It is the view of the County that any effect on the Union is de minimis. No one lost work or pay because of this.

The Union relies upon Article 2.01. That Article permits the County "to contract for work not normally performed by Social Workers". The vacated Social Worker position was replaced with an Aide position. The Aide position is not in the bargaining unit. It is the view of the Union that the language in Article 2.01 is intended to keep work in the bargaining unit. The Union cites White Motor Co., 43 LA 683 (McGury), Pabst Brewing Co., 78 LA 772 (Wolff) and Fisher-Stevens, 89 LA 556 (Kramer) in support of its work preservation contention.

In the Union's view the clause becomes meaningless if the County is allowed to transfer work out of the Unit.

The Union's arguments with respect to the Big Brothers/Big Sisters grievance are essentially the same. In both cases it is the view of the Union that work formerly performed by Social Workers is now being performed by Aides in violation of Article 2.01.

DISCUSSION

The threshold question raised by these two grievances is whether the County has contracted for work normally performed by Social Workers. Inferentially it is precluded from so doing. The parties use contracting and sub-contracting interchangeably. I regard the terms as terms of art connoting a replacement of employees of the employer by employees of a third party. This view is compatible with Robert's 1/ definition of subcontracting:

subcontracting A procedure followed by many companies to sublet certain parts of the operation to subcontractors, rather than have the company's employees perform the work, frequently on the ground that the work can be performed more efficiently and with less expense to the main company. Many agreements negotiated between unions and companies specify the conditions under which work may be contracted out. One such agreement reads: "Work usually performed by employees in this bargaining unit will not be contracted out if it will result in layoff of the employees covered by this agreement."
The term privatization is used to refer to the subcontracting of public services to private industry. Services commonly "privatized" include, among others, building construction, janitorial services, and refuse collection.

This is in contrast to a decision to assign work to employees of the employer who are outside the bargaining unit. Elkouri 2/ draws such a distinction.

The Union has cited arbitral authority for the proposition that contracting out is a phrase of broad connotation. A broad construction is to be applied in order to satisfy the work preservation purpose of the clause. While each of the cases-cited is distinguishable the cases do fairly stand for the above premise. As noted by the County, contrary authority exists. I simply do not agree that the term contracting out necessarily encompasses so sweeping a meaning.

The Union fears emasculation of the clause in question if its construction is not sustained. I disagree. If bargaining unit employees are replaced by employees of another Employer 3/ it may well be that the contractual restrictions on contracting out become operative. Where, as here, the County has assigned work to other of its employees, the Union is hardly without relief. This collective bargaining unit has been certified by the Wisconsin Employment Relations Commission pursuant to its authority under Sections 111.70(1)(b) and (4)(d)2a, Wis. Stats.

Among the factors considered in establishing appropriate bargaining units include the following:

1. Whether the employees in the unit sought share a "community of interest" distinct from that of other employees.
2. The duties and skills of employees in the unit sought as compared with the duties and skills of other employees.
3. The similarity of wages, hours and working conditions of employees in the unit sought as compared to wages, hours and working conditions of other employees.
4. Whether the employees in the unit sought have separate or common supervision with other employees.

1/ Robert's Dictionary of Industrial Relations, 3rd Ed. BNA, 1986, p. 693.

2/ Elkouri and Elkouri, How Arbitration Works, BNA, 4th Edition, 1985, pps. 537-552.

3/ City of Green Bay, Dec. No. 18731-A (6/82), aff'd Dec. No. 18731-B (WERC, 6/83).

5. Whether the employees in the unit sought have a common workplace with the employees in said desired unit or whether they share a workplace with other employees.
6. Whether the unit sought will result in undue fragmentation of bargaining units.
7. Bargaining history. (M342) See Boyceville Community School District, Dec. No. 20598 (WERC, 4/83).

Here, a professional unit has been certified. Work has been taken from the bargaining unit and assigned to Social Worker Aides, who are members of another bargaining unit. Section 111.70(4)(d)2a, Wis. Stats., provides, in part, as follows:

. . . The Commission shall not decide, however, that any unit is appropriate if the unit includes both professional employees and non-professional employees, unless a majority of the professional employees vote for inclusion in the unit . . .

If the Union believes that work of a professional character has been reassigned to a non-professional bargaining unit it is free to reclaim the work, and possibly the workers performing it, by pursuing a unit clarification.

Here, however, the Union has made a rather selective claim. In the Court Intervenor case, the Union seeks reinstatement of a Social Worker position. It contends that the work performed by Mr. Vinson constitutes an intrusion into the work historically performed by Social Workers. The Union is contemporaneously content to permit clerical workers to usurp the clerical tasks previously performed by Social Workers. It appears that at least some of this clerical work was performed by employees supplied by Manpower, Inc., a separate employer. Of all the work described, this comes closest to being "contracted". This work the Union does not seek and this work contributes to the context in which the Union seeks a sweeping construction of Article 2.1. The Union argues that Article 2.1 is so broad that distinctions between professional and non-professional work and the identity of the Employer are to be ignored in favor of a single test: have the tasks previously been performed by Social Workers. That test becomes immediately irrelevant as applied to the less desirable clerical work.

Similarly, with respect to the Big Brothers/Big Sisters dispute the claim does not address the replacement of County employes by the YMCA, a separate employer. 4/ It complains instead that an Aide has replaced a Social Worker. In this case it appears that Ms. Hansen did assume a number of the professional attributes of the position. Had the position continued to exist it might well have been drawn into the professional unit in a unit clarification proceeding. However, as above, I do not believe that work has been contracted for, within the meaning of Article 2.1.

AWARD

The grievances are both denied.

Dated at Madison, Wisconsin this 26th day of April, 1990.

By _____
William C. Houlihan,
Chairman, Arbitration Panel

I Dissent

I Concur

Mr. Jack Bernfeld

Mr. George Dawes

4/ It may well be that the County has simply gone out of the Big Brothers/Big Sisters business, and that no contracting out has occurred.