BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
PROFESSIONAL EMPLOYEES ASSOCIATION of the BROWN COUNTY DEPARTMENT OF SOCIAL SERVICES	Case 416 No. 43344 MA-5956
and	
BROWN COUNTY	

Appearances:

Mr. Frederick J. Mohr, Mohr & Beinlich, S.C., Attorneys at Law, 415 South Washington Street, P.O. Box 1098, Green Bay, Wisconsin 54305, appearing on behalf of the Professional Employees Association of the Brown County Department of Social Services, referred to below as the Association.

Mr. Kenneth J. Bukowski, Brown County Corporation Counsel, 305 East Walnut Street, Northern Building, P.O. Box 1600, Green Bay, Wisconsin 54305-5600, appearing on behalf of Brown County, referred to below as the Employer or as the County.

ARBITRATION AWARD

The Union and the Employer are parties to a collective bargaining agreement which was in effect at all times relevant to this proceeding and which provides for final and binding arbitration of certain disputes. The Union requested, and the Employer agreed, that the Wisconsin Employment Relations Commission appoint an Arbitrator to resolve a dispute reflected in two grievances filed on behalf of the Association, and dated October 11, 1989. The Commission appointed Richard B. McLaughlin, a member of its staff, to serve as the Arbitrator. Hearing on the matter was held in Green Bay, Wisconsin, on April 11, 1990. The hearing was not transcribed, and the parties filed briefs by April 23, 1990.

ISSUES

The parties did not stipulate the issues for decision. I have determined the record poses the following issues:

> Is the grievance regarding the positions presently held by Ron Verlare and Debra Mason properly before the Arbitrator?
>
> Did the County violate Article 25 of the collective bargaining agreement by not posting the positions presently held by Ron Verlare and Debra Mason?
>
> If so, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

> ARTICLE 3. MANAGEMENT RIGHTS
>
> Through its management, the Employer retains the sole and exclusive right to manage its business, including but not limited to the right to direct its work force, to hire, assign . . . to maintain . . . efficiency of its employees, to determine the extent to which the Employer's operations shall be conducted, the size and composition of the work force, the number of offices and locations of such offices, equipment requirements and location of such equipment and the right to change methods, equipment, systems or processes, or to use new equipment, products, methods or facilities and to reduce the work force if, in the Employer's sole judgement, the new equipment, methods, systems or facilities require fewer personnel. In no event shall the exercise of the above rights and responsibilities of the Employer violate the terms and conditions of this Agreement or restrict any rights of the employee under Wisconsin Statute 111.70 . . .
>
> . . .

ARTICLE 8. GRIEVANCE PROCEDURE

The parties agree that prompt and just settlement of grievances is of mutual interest and concern . . .

. . . All grievances which may arise shall be processed as follows:

. . .

Step 3. Director of Personnel: If the grievance is not settled at Step 2 within five (5) working days after having been presented to the Director, then the grievance may be presented to the Director of Personnel of Brown County not later than ten (10) working days after the date of the receipt of the Director's decision. The Director of Personnel shall provide his/her written decision within ten (10) working days after receipt of the grievance.

Step 4. If the grievance is not settled at Step 3, such may be submitted to arbitration by an arbitrator appointed by the Wisconsin Employment Relations Commission, provided that the request to the WERC for such arbitration, with written notice to the other party, is made within fifteen (15) working days after receipt of the decision of the Director of Personnel.

. . .

ARTICLE 25. JOB POSTING

Whenever any vacancy occurs due to a retirement, termination, new position, or whatever reason, and in the judgement of the Employer the need to fill such vacancy continues to exist, the job vacancy shall be posted. In the event the Employer determines not to fill any job vacancy, the Employer agrees to post a notice of discontinuance for a period of five working days. The job requirements and qualifications shall be a part of the posting and sufficient space provided for interested parties to sign said posting . . .

Employees desiring such posted jobs shall sign posted notice. Employees older in seniority shall have preference on all jobs, provided that the employee meets the qualifications required for the job. Employees who receive a posted job shall demonstrate their ability to perform the job during a twenty (20) work day trial period . . . 1/

BACKGROUND

The two grievances at issue here were filed by Dawn Roder, the Association's Steward, and dated October 11, 1989. The first grievance form lists the following under the heading "**REASON FOR GRIEVANCE (State in Detail)**":

> Prior to 10-1-89, Ron Verlare's job title was "CBRF Coordinator." His job duties were to coordinate CBRF admissions and to provide on-going direct services to clients in CBRFs that were COP/SHC eligible. He had approximately 50-70 CBRF cases. He also provided direct services to about 10 cases of "community undesirables." On 10-1-89, this job was changed. Mr. Verlare is no longer CBRF coordinator. He now is responsible for about 16 SHC clients placed in CBRFs. He also continues to provide services to the "community undesirables."

The grievance states the following under the heading "**SPECIFIC ADJUSTMENT REQUESTED**":

1/ This language is from the parties' 1987-88 collective bargaining agreement. The parties stipulated that the language of Article 25 has not been changed in the successor agreement.

> In accordance with Article 23, we are requesting the position of "CBRF Coordinator" be posted as a job discontinuance. We also are requested that Mr. Verlare's new job responsibilities be posted as a new job vacancy.

Verlare's Supervisor, Phil Chaudoir, answered the grievance thus:

> Mr. Verlare's position with this department is Social Worker, not "CBRF Coordinator." A change in job responsibilities does not warrant job posting under Article 25 of the contract. Further no new position has been created as per Article 25 of the contract. Therefore, there is no need to post. Your figures regarding caseload/workload size are inaccurate.

The second grievance states the following under the heading "**REASON FOR GRIEVANCE (State in Detail)**":

> Prior to 10-1-89, Debra Mason's job title was "Adult Family Home Coordinator." She coordinated admissions and provided direct case management services to clients in adult family homes. She also provided case management services for approximately 12 Protective Payee Clients. On 10-1-89, Ms. Mason's job was changed to "CBRF and Adult Family Home Coordinator." She no longer has an on-going case load and does not provide case management services to Protective Payee clients. Her new job responsibilities are coordinating admissions to CBRFs and Adult Family Homes.

The second grievance states the following under the heading "**SPECIFIC ADJUSTMENT REQUIRED**":

> 1) That a notice be posted eliminating the job of "Adult Family Home Coordinator." 2) That the new job of "CBRF and Adult Family Home Coordinator" be posted as per Article 25 of the contract.

Chaudoir is also Mason's supervisor, and answered this grievance on October 12, 1989, thus:

> Mrs. Mason's position with this department is Social Worker, not "Adult Family Home Coordinator." A change in job responsibilities does not warrant job posting under Article 25 of the contract. Further no new position has been created as per Article 25 of the contract. Therefore, there is no need to post. Your figures regarding caseload/workload size are not accurate.

Each grievance was presented to the Department Director on October 13, 1989, and each was summarily denied by the Director on the same day. Each grievance was then presented to the Personnel Director, Gerald E. Lang, on October 13, 1989, and each was summarily denied by him on November 14, 1989. The Association submitted the grievances for arbitration in a letter to the Commission dated December 18, 1989, with a copy of that letter being mailed to the Personnel Director.

Lang responded to the Association's arbitration request in a letter dated December 22, 1989, which reads thus:

> I received a copy of your request to initiate grievance arbitration on the grievance dated 10/11/89 regarding Article 25.
>
> Please be advised that the request to the WERC dated December 18, 1989, was not made within the 15 working days from receipt of the decision of the Director of Personnel time limit in Article 8, Grievance Procedure, Step 4. The Personnel Director's response was made on November 14, 1989, which was 23 working days prior to the request to the WERC.

It is the County's position that the request for grievance arbitration was not filed in a timely manner.

Lang testified that he conducted a meeting on the grievances on October 24, 1989, and that the County and the Association had not strictly applied the time limits in the grievance procedure in the past. This grievance is the first time the Employer has sought to compel the Association to strict compliance with the timelines of Article 8.

The changes in Verlare's and Mason's job duties were the result of a multi-phased reorganization within the Adult Protective and Alternate Care Services Unit. Chaudoir supervises the six employes of that unit, including Mason and Verlare. Each of those six employes is classified as a Social Worker.

The reorganization started in June of 1989, and continued through the summer and fall. Chaudoir noted that the reorganization generally sought to distribute caseloads more equitably, and to avoid duplication of services.

Chaudoir detailed the effects of the reorganization on Mason. Prior to October of 1989, Mason, a half-time employe, spent the bulk of her time attending to the certification of Adult Family Homes (AFH). Chaudoir stated that, roughly speaking, Mason would devote seventy percent of her time to this duty. She also devoted about fifteen percent of her time, according to Chaudoir, to case management of AFH residents, with the remaining fifteen percent of her time being devoted to a caseload of Adult Protective Payee Clients or to miscellaneous administrative duties.

As a function of the reorganization, the Employer moved her Adult Protective Payee cases to the Adult Protective Services Unit, and transferred her AFH cases to the social worker or workers who handled the funding for each case. As a result of the reorganization, Mason was relieved of all her case management duties. After the reorganization, Mason devoted roughly fifty percent of her work time to Community Based Residential Facilities (CBRF). Separate statutes govern CBRF and AFH facilities. Chaudoir stated these changes altered Mason's specific work duties, but left her area of responsibility unchanged.

The Employer documented the changes to Mason's position thus:

Workload/Caseload Changes Between 1988 and 1989 (Effective 6/89)

. . .

	Before	After
A.	Certification of Adult Family Homes (AFH) for DSS	A. Certification of Adult Family Homes for DSS (CRBF's are licensed by the State)
B.	Case Management of AFH residents (9) and some protective payee (4)	B. Transfer AFH resident cases to SHC/COP case managers to avoid duplication; transfer protective payee cases to protective service
C.	Alternate Care Resource location and placement coordination between AFH's and prospective residents	C. Alternate Care Resource and location placement coordination between AFH's/CBRF's and pro-spective residents
D.	Maintain, monitor, update an Alternate Care waiting list for AFH's	D. Maintain, monitor, update an Alternate Care waiting list for AFH's and CBRF's
E.	Maintain and monitor an Alternate Care Resources Registry for AFH's including placements, discharges and openings; and communicate the info with Adult Services Case Managers	E. Maintain and monitor an Alter-nate Care Resources Registry for AFH's and CBRF's including placements, discharges and openings; and communicate the info to Adult Services Case Managers

The Job Description in effect for Verlare's position before the reorganization listed the following duties and percentages for each duty: Locate community living arrangements/CBRFS for clients of Brown County appropriate to their level of care (9%); Make placement into community living arrangement/CBRFS in Brown County in relation to clients level of care . . .

(e)nsure proper documentation at time of placement (20%); Counsel clients in the community living arrangements/CBRFS in relation to their needs (20%); Monitor and document client services, client status and changes in CBRFS (7%); Assisting CBRF Staff in reviewing, maintaining, updating client service plans and records (6%); Review facility program statements, admission policies and agreements, licenses, menus and activity schedules (7%); Provide case management services to department clients in CBRFS and community living arrangements as assigned (4%); Establish and maintain a schedule of regular visits to CBRFS assigned and establish a standard format for reviewing facility services (7%); Work cooperatively and coordinate services with other agency workers, other service providers, and other community agencies/resources who work with clientele of this department . . . (i)ncludes maintaining current report of facility placements, openings, and client status on service waiting lists (7%); Complete social service plans, reviews and other case related documents and reports within the required time limits (6%); Attend all scheduled supervisory conferences, unit meetings, inter-unit meetings, and COP (Community Options Program) meetings as deemed appropriate by supervisor (4%); Attend staffings on particular clients as needed (1%); Attend training approved by the department as work related (1%); and Carryout other specific tasks as assigned by supervisor (1%).

Chaudoir proposed a Job Description for Verlare's position after the reorganization which listed the following duties: Make placement of clientele of this department into CBRFs in Brown County in relation to clients level of care . . . (e)nsure proper documentation at time of placement; Counsel clients in the community living arrangements and CBRFs in relation to their needs; Monitor and document client services, client status and changes in CBRFs and other community living arrangements as assigned; Establish and maintain a schedule of regular visits to assigned clientele in community living arrangements and CBRFs; Work cooperatively and coordinate services with other agency workers, other service providers, and other community agencies/resources who work with clientele of this department; Complete social service plans, reviews and other case related documents and reports within the required time limits; Attend all scheduled supervisory conferences, unit meetings, inter-unit meetings, and COP meetings as deemed appropriate by supervisor; Attend staffings on particular clients as needed; Attend training approved by the department as work related; and Carry out other specific tasks as assigned by supervisor. Chaudoir distributed this Job Description to Mason and Verlare, but due to the filing of the grievance at issue here, the Job Description has not yet been approved. The proposed Job Description contains no estimate of the percentage of time devoted to each listed duty.

Verlare is one of the most senior members of the bargaining unit represented by the Association. He has worked in adult services from his date of hire on October 15, 1974. He was hired by the Employer to assist in the development of Adult Group Homes, which, in October of 1978, became CBRFs. He has worked with placing clients in such facilities and overseeing CBRF operations since that time. Verlare stated that, prior to the reorganization, he maintained a caseload of roughly sixty clients. Of those sixty, forty would typically have been CBRF cases. Of those forty, fifteen to seventeen would have been COP clients. The balance of his caseload was devoted to non-CBRF, non-COP clients, including about eight to ten clients referred to as "community undesirables." Verlare noted that after the reorganization, he still handles CBRF clients, but does not place them in homes. Any such placements must now be handled through Mason. He also noted he has only one COP client. He still maintains the same caseload of "community undesirables."

Chaudoir confirmed that COP cases are being removed from Verlare's duties as a function of the reorganization. Chaudoir stated that the most marked change in Verlare's duties is the transfer of his CBRF placement responsibilities to Mason. The Employer's reorganization, according to Chaudoir, sought to lighten Verlare's caseload, and to concentrate his efforts on direct client services. For example, the County relieved Verlare of his duty to maintain waiting lists for CBRFs. The Employer documented the changes to Verlare's duties thus:

Workload/Caseload Changes Between 1988 and 1989 (Effective 6/89)

. . .

Before			
A.	Case Management of CBRF residents and other community based residents in need of supervision (60 - 70)		tion and placement coordination between CBRF's and prospective residents
B.	Alternate Care Resource loca-	C.	Maintain, monitor, update an Alternate Care waiting list for CBRF's

After

A. Case Management of CBRF residents and other community based residents in need of supervision (50 - 55); COP case transferred to COP case managers to reduce caseload and avoid duplication

B. Alternate Care Resource loca-tion and placement coordination between CBRF's and prospective resident SHC eligible

C. Duty transferred to Deb Mason's position

Chaudoir characterized the changes to Verlare's position as a change of workload, not responsibility. He estimated that Verlare spent about thirty-five percent of his time, prior to the reorganization, on CBRF related duties. Verlare estimated that his duties changed by substantially more than twenty percent, and by perhaps as much as fifty percent.

Beyond the effects of the reorganization on Verlare's and Mason's positions, the parties adduced evidence on past job postings within the Social Services Department. Chaudoir noted that since he became supervisor in June of 1986, his unit has posted only two positions. Those positions did not involve new or reorganized positions, but the expansion of an existing position by the hire of two employes.

Roder testified that, in 1981, she was employed in the Family Services/Intake unit. The Job Description covering her position at that time listed "Investigating child abuse/neglect intakes" and "Assessment and/or referral of intakes" among the duties of her position. The former duty was listed as requiring 20% of her time, with the latter duty listed as requiring 30% of her time. The latter duty was also listed as the duty which "involves the greatest responsibility." Roder testified that the Employer reorganized the unit, and transferred her investigation duties to the Protective Services unit. The Employer posted a "NOTICE OF JOB DISCONTINUANCE" for the four positions, including Roder's, which included the investigative duties, posted the transferred duties and ultimately awarded those duties to another employe. The "NOTICE OF JOB DISCONTINUANCE" referred to above reads thus:

> Effective Monday, July 13, 1981, all four current Social Worker positions in the Access Unit are discontinued.
>
> . . .

The balance of Roder's duties were unchanged, and were separately posted. The Association filed a grievance to stop the postings. Ultimately the matter was settled in mediation, and the Association withdrew the grievance.

On September 4, 1984, Thomas J. Dudzik filed a grievance "on behalf of the PEA," which stated the following as the "**REASON FOR GRIEVANCE (State in Detail)**":

> In the past any new job duties which changed an employees position/responsibilities by 25% or more was posted as a new position. It has come to the attention of the association that Sandy O'Brien's job position and duties have changed substantially. As of yet, this new position has not been posted.

The grievance sought the "Job posting of said position" as the "**SPECIFIC ADJUSTMENT REQUESTED**." The Employer answered the grievance at the first and second steps thus:

> Grievance denied. The job duties for this position have not changed substantially enough to warrant posting of the position.

Lang issued the Employer's third step answer in a letter to Dudzik dated October 22, 1984, which reads thus:

> Since the meeting which was conducted between the Bargaining Unit and Management Staff, I have researched our files and cannot find anything in writing regarding the amount a job changes before we have agreed to post the job. I have also asked Fred Mohr and he is unable to come up with any written information. We both recall some discussion took place regarding an issue with Dawn Roder but there is no written documentation.
>
> The job description for the Social Worker in Family Service assigned to Sandra O'Brien specifies that 20% of the time is to direct service coordination of intensive in-home treatment cases to include case record keeping, agency casework as needed, and attendance at related meetings and staffings. The Unit Supervisor states that initially more than 20% of Sandra O'Brien's time was spent on these duties but the time spent now is in the 20% range. Also, the Unit Supervisor has directed Sandra O'Brien not to exceed 20% of her time on the duties in question.
>
> The grievance is denied and the job will not be posted.

The Employer did not post the position, but the Association did not appeal the Dudzik grievance to arbitration.

Roder testified that she felt the parties had a "pretty solid history" of posting positions where there had been at least a twenty percent change in the position's duties. Joe Schiebel, the Department's Deputy Director, testified that the parties have had, for years, an ill-defined dispute over the Association's position that a change in twenty percent of a position's duties required a job posting. Schiebel stated that the parties have discussed the percentage a position's duties could be changed without a posting but that the parties had never been able to reach any oral or written understandings on this point.

Further facts will be set forth in the DISCUSSION section below.

THE UNION'S POSITION

The Union phrases the issues for decision thus:

> 1. Is Management required to post job vacancies if a position's duties change by more than twenty (20) percent?
>
> a. If so, was Management required to post the Verlare and Mason positions?
>
> 2. Was Management required to post the Verlare and Mason jobs as a result of the substantial change in job duties?
>
> 3. What is the appropriate remedy?

Noting that unit employes' pay "is not determined by job they hold but instead is based on years of experience and educational attainment," the Union concludes that "working conditions are essentially filled through the posting procedure." The posting procedure has, then, a significant impact on the unit, according to the Union. Bargaining history and past practice establish, the Union argues, that the parties have determined that a "significant" change of job duties must be posted and have defined a standard to measure what constitutes a "signif-icant" change of job duties. "In the alternative," the Association contends "that under any standard definition of "significant" . . . the changes in the Mason and Verlare jobs qualified and had to be posted." More specifically, the Union argues that the evidence regarding the Roder and O'Brien cases, viewed in light of Schiebel's and Lang's testimony, establish that the parties have evolved a mutually understood standard which defines a significant change of job duties as one in which "twenty (20) percent of the job duties had changed." Because the evidence establishes that both Mason's and Verlare's job duties changed by greater than twenty percent, it follows, according to the Association, that the changes should have been posted. Noting generally that Commission case law establishes that job selection procedures are a significant
benefit, and noting specifically that the benefit "is much treasured among Association members," the Association concludes that "(t)he impact of not

requiring Management to post these positions has far reaching effects and significantly deteriorates the bargaining relationship of the parties."

Turning to the Employer's timeliness argument, the Association contends that "(the Association's) delay was less substantial than Management's own delay in responding to the third level step." Since the parties have a long history of not strictly applying grievance time lines, it follows, according to the Association, that the Employer's procedural objection must be dismissed.

The Association seeks, as the remedy appropriate to the Employer's violations, that "management . . . post the positions held by Ron Verlare and Debra Mason."

THE EMPLOYER'S POSITION

The Employer focuses, initially, on "the grievance itself," and notes that the grievance "makes no reference whatsoever to . . . Debra Mason." The Employer then asserts that "no such position (as CBRF Coordinator) existed, nor does one exist now." It follows, according to the Employer, that the "grievance applies only to Mr. Verlare's situation and his position." Beyond this, the Employer contends that the Employer acted within the scope of its rights under Article 3 in reorganizing the Department. Characterizing the evidence of a past practice regarding the "20% rule" as "meager," the Employer concludes that "no such rule of any percentage has ever been followed in the Agency." Nor can Article 25 serve as a basis of a contractual violation, according to the Employer, since no "vacancy" within the meaning of that provision has been established by the evidence. Viewing the record as a whole, the Employer "moves the Arbitrator to in fact deny this grievance."

DISCUSSION

The first issue is whether the Verlare and Mason grievances have been properly processed for arbitration. The Employer asserts, as a threshold issue, that the Mason and Verlare grievances are separable, with only the Verlare grievance posed here. The December 18, 1989, request for arbitration refers to a single filing fee. The Verlare and Mason grievances were received into the record as a single exhibit (Joint Exhibit 6). Each grievance was submitted and answered, at each step, on the same date. The testimony establishes that the reorganization simultaneously affected each position, and that duties of one position were transferred to the other. The underlying contractual and factual issues are essentially the same. Thus, the Verlare and the Mason grievances are so inextricably intertwined that they must be treated as a single grievance.

Beyond this threshold issue, the Employer asserts that the untimeliness of the Association's request for arbitration precludes consideration of the merits of the grievance. The collective bargaining agreement does not state a sanction for untimeliness, other than the general statement that "prompt and just settlement of grievances is of mutual interest and concern." The contract does not, then, unambiguously address this issue.

The most reliable guide to clarify the ambiguity is the parties' practice. It is undisputed that the parties have historically been flexible in applying the grievance procedure's time requirements, and that the County's objection in this case is the first attempt by either party to seek strict compliance with those requirements. The parties' past and present flexibility in applying the timelines of the grievance procedure undercuts the persuasive force of the County's request for strict compliance in this case. Since the parties have not required strict compliance with the timelines in the past, and since the County itself has not strictly complied with the timelines in this case, it is impossible to conclude that the Association's late filing of its request for arbitration precludes consideration of the merits of the grievance.

The parties could not stipulate the issue on the merits of the grievance. The issue stated above reflects that there is no dispute that Article 25 governs the grievance. The parties' conflicting contentions essentially pose three issues on the interpretation of the article. The first is whether the term "vacancy" can be construed to require the County to post a position based on a change in anything less than all of the duties of that position. The second is whether the parties have applied the article to require the County to post any position in which the duties have been changed by at least twenty percent. The final issue is whether the parties have applied the article to require a posting when the duties in a position have changed "substantially."

The County asserts that only a portion of the duties within Verlare's and Mason's positions changed, and that their responsibilities as employes classified as Social Workers did not. While this assertion has some support in the language of Article 25, and some support in the policy considerations urged by the County, the assertion is, in light of the evidence, unpersuasive. The references to "retirement," "termination" and "new position" following the term

"vacancy" in the first sentence of Article 25 support the County's contention that a vacancy means the full duties of a position. The reference to "whatever reason," however, inserts an element of ambiguity to that sentence, which can not be considered to clearly affirm the County's assertion.

The parties' past practice is the most persuasive means to resolve the contractual ambiguity, since their conduct in applying Article 25 is the most reliable means to determine their mutual intent. That practice offers no support for the County's assertion that Article 25 defines a vacancy to require a change in all of the duties of a position. Roder's unrebutted testimony establishes that the County, in 1981, posted the eighty percent of her position which was unchanged by the transfer of investigative duties to the Protective Services Unit, as well as the twenty percent which was changed by the transfer. Arguably, the County's cumulation of investigative duties from three other positions would have been sufficient to create an entirely new position, thus requiring a posting of that position. The July 2, 1981, posting refers, however, to the discontinuance of "all four current Social Worker positions." This reference establishes that the removal of twenty percent of Roder's duties was sufficient to create a "vacancy" requiring a notice of discontinuance. This also undercuts the assertion in the County's first step answer that changes in workload within positions of the Social Worker classification cannot warrant a posting. In 1981, Roder remained a Social Worker after the reorganization, yet the positions subject to the Notice of Job Discontinuance were "Social Worker Positions." In that case, the County asserted that the twenty percent modification of her workload warranted a posting, and the Association ultimately acquiesced to that view.

The County's responses to the Dudzik grievance offer further proof that the parties understand that Article 25 can require the posting of a change in less than all of the duties of a position. The County's first and second step answers to that grievance note not that the position is new or entirely reformulated, but that "(t)he job duties for this position have not changed substantially enough to warrant posting of the position." Similarly, the County's third step answer does not assert that a posting can occur only if a new or entirely reformulated position exists. Rather, that response notes that although O'Brien's position changed initially by more than twenty percent, "the time spent now is in the 20% range . . . (and) the Unit Supervisor has directed Sandra O'Brien not to exceed 20% of her time on the duties in question." Nor does Schiebel's testimony contradict this. His testimony establishes that the parties have been unable to agree on how significant the changes to a position must be to require a posting, but this acknowledges a posting can occur where such changes are less than one-hundred percent. That Schiebel could not recall the County's ever having changed the duties of a position by more than twenty-five percent without a posting underscores this point.

The roughly defined practice noted above does not support the Association's assertion of a "twenty percent rule." The County's 1981 posting of Roder's position offers some support for this assertion. The Dudzik grievance, however, totally undercuts the persuasive force of the assertion. The Dudzik grievance refers to a change in responsibilities of "25% or more," and the Association did not arbitrate the matter after Lang's third step response which notes a change "in the 20% range" is insufficient to warrant a job posting.

The final issue posed regarding the application of Article 25 is whether the parties' practice affirms a duty to post positions subject to a "substantial" change in duties. This issue has, on a general level, been addressed above. The evidence establishes that the parties have, by practice, recognized a duty to post positions subject to a substantial change in duties.

Although the existence of a practice generally recognizing a duty to post positions subject to a substantial change in duties has been demonstrated, the precise scope of that duty is ill-defined. The parties have not expressly agreed upon what amount of change is necessary to constitute a substantial enough change to warrant a posting. Rather, the parties have been able to agree on this point on a case by case basis. No such agreement has been reached here. Thus, the parties' dispute here is whether the changes to Mason's and Verlare's positions are sufficiently substantial to warrant a posting. Resolution of this dispute poses the final interpretive point.

Application of the practice to the facts posed here is not without difficulty, but the evidence affirms the Association's position that the reorganization of Mason's and Verlare's positions was sufficiently substantial to warrant a posting.

As a general preface to this point, it should be noted that AFHs and CBRFs are separately defined and regulated under the Wisconsin Statutes. The specific changes in the positions at issue here are more difficult to define. The contention that those specific changes impact workload, not responsibility, can be accepted, but is so general that it offers little guidance here.

Roder's ultimate responsibility before the 1981 reorganization was that of intake worker. One workload aspect of that responsibility was "(i)nvestigating child abuse/neglect intakes," another was "(a)ssessment and/or referral of intakes." The removal of the former duties warranted a posting in 1981, although that change was one of workload, not responsibility.

More to the point here, the record establishes that the changes to Verlare's and Mason's positions were substantial under any view of that term. Verlare's estimate that his duties changed by more than twenty percent, and by perhaps as much as fifty percent, is unrebutted. The proposed changes in his job description do not rebut this estimate. Those portions of his revised job description which were pulled verbatim from the prior job description, if assumed to require the same percentage of his time, total fifty-three percent of his workload. More significantly, Verlare's testimony on the specific changes to his position is unchallenged. Among other changes, he has given up the CBRF placement duties he had historically performed, and has given up his COP cases. Chaudoir's testimony establishes that the reorganization effected the removal of Mason's case management duties, which had occupied between fifteen and thirty percent of her time prior to the reorganization. In addition, Chaudoir estimated that Mason presently spends roughly one-half of her time with CBRF-related duties, and spent none of her time on such duties prior to the reorganization. Each of witness balked at setting precise percentage estimates of the social work tasks at issue here, which are difficult to standardize. However, even granting considerable leeway for the accuracy of the percentage estimates, the record establishes a degree of change well within the confines of the parties' roughly defined practice, and exceeding the twenty-five percent threshold asserted in the Dudzik grievance.

The parties' policy arguments can not play a significant role here, due to the presence of the practice discussed above. The Association has noted that the posting of positions is a valued right to this unit since salary improvement can be made only through educational attainment and experience. The ability to bid for duties thus assumes considerable significance in determining the working conditions of Social Workers. The County counters that the administration of the Social Services Department is unduly complicated by the posting procedure, and must be restricted to those instances where absolutely necessary. Both of these competing considerations are significant, but neither can be considered controlling, for the parties' practice defines their own accommodation of these competing concerns. While the precise scope of the practice can not be defined in the abstract, it is apparent that the parties, by practice, have sought to restrict postings to those instances in which substantial changes in a position have occurred. This balances the County's need for flexibility with the Association's desire to permit employes an opportunity to effect their working conditions through the posting procedure. The evidence produced in this case establishes that the changes to Verlare's and Mason's positions were sufficiently substantial to, under the parties' practice, warrant a posting.

In sum, Article 25 does not clearly and unambiguously define a "vacancy" which must be posted. The parties have, by practice, established that substantial changes in a position's duties should result in the posting of the position. What constitutes a substantial change has not been defined by the parties, although no change in less than twenty-five percent of the duties in a position can be defined as substantial. In this case, the duties of Verlare's and Mason's positions changed by no less than twenty-five percent, and by perhaps as much as fifty percent. Thus, the reorganization which effected those changes discontinued their old positions and created new positions requiring a posting under Article 25.

The parties have not raised any remedial issues. The new positions created by the reorganization must, as the Association requests, be posted. The AWARD entered below orders that posting. The Association has not, in its brief, requested the posting of a separate notice of discontinuance covering Mason's and Verlare's pre-reorganization positions. Given the passage of time since the reorganization, requiring a separate notice of discontinuance would serve no useful purpose, and has not been ordered.

AWARD

The grievance regarding the positions presently held by Ron Verlare and Debra Mason are properly before the Arbitrator.

The County did violate Article 25 of the collective bargaining agreement by not posting the positions presently held by Ron Verlare and Debra Mason.

As the remedy appropriate to this violation, the County shall post the positions presently held by Ron Verlare and Debra Mason and shall comply with the provisions of Article 25 in filling those positions.

Dated at Madison, Wisconsin, this 11th day of June, 1990.

By _____
Richard B. McLaughlin, Arbitrator