

BEFORE THE ARBITRATOR

 In the Matter of the Arbitration :
 of a Dispute Between :
 :
 GENERAL TEAMSTERS UNION, LOCAL 662 :
 : Case 166
 and : No. 43731
 : MA-6054
 CHIPPEWA COUNTY :
 :

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, 788 North Jefferson, Room 600, P.O. Box 92099, Milwaukee, Wisconsin 53202, by Mr. William S. Kowalski, appearing on behalf of the Union.
 Mulcahy & Wherry, S.C., Attorneys at Law, 715 South Barstow, Suite 111, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, by Mr. Joel L. Aberg, appearing on behalf of the County.

ARBITRATION AWARD

General Teamsters Union, Local 662, hereinafter the Union, and Chippewa County, hereinafter the County or Employer, are parties to a collective bargaining agreement which provides for the final and binding arbitration of grievances arising thereunder. The Union, with the concurrence with the County, requested that the Wisconsin Employment Relations Commission appoint an arbitrator to hear and decide the instant dispute. The Commission appointed Coleen A. Burns, a member of the Commission's staff, to act as arbitrator. Hearing in the matter was held on May 16, 1990 in Chippewa Falls, Wisconsin. The hearing was not transcribed and the record was closed on June 28, 1990.

ISSUE:

The parties were unable to agree upon a statement of the issue.

The Union frames the issue as follows:

Is the Employer in violation of the collective bargaining agreement by having non-bargaining unit workers perform Drivers' work?

If so, what is the appropriate remedy?

The Employer frames the issue as follows:

Has Article 18 of the collective bargaining agreement been violated because Eugene Karker did not work 1,480 hours during the 1989 work year?

If so, what is the appropriate remedy?

The Arbitrator frames the issue as follows:

1. Did the County violate the collective bargaining agreement when it did not offer the Grievant an opportunity to work more than 1,394.75 hours in 1989?

2. If so, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE:

. . .

ARTICLE 1

RECOGNITION

The County recognizes the General Teamsters Union, Local 662, as the exclusive bargaining representative of all regular full time and regular part time employees of the Courthouse, Social Services Department, Department of Community Programs,

Public Health, and Highway Department in classifications listed in the Appendix of this Agreement to include related positions, but excluding professional, administrative, managerial, confidential, temporary and part time employees employed less than 976 hours per year for collective bargaining of wages, hours and conditions of employment.

ARTICLE 2

MANAGEMENT RIGHTS

The County possesses the sole right to operate the County Government and all management rights related to the same, subject only to the provisions of this Agreement and applicable law. These rights include:

1. To carry out and comply with statutory mandates and goals required of the Employer. To utilize personnel methods and means it determines the most appropriate and efficient.
2. Manage the employees, to hire, to promote, transfer, assign, or retain employees, and in that regard, to establish reasonable written work rules. Reasonable work rules may be adopted providing they do not conflict with the terms of this Agreement.
3. Suspend, reclassify, discharge or take other appropriate disciplinary action against the employees for just cause. To lay off or reclassify employees in the event lack of work or funds or under conditions when continuation of such work would be inefficient and/or non-productive.

. . . .

ARTICLE 4

GRIEVANCE

Section 1. Definition. A grievance shall mean a dispute concerning the interpretation or application of this Contract as it relates to wages, hours, discipline, discharge and/or working conditions.

. . . .

F. Decision of the Arbitrator. The decision of the arbitrator shall be limited to the subject matter of the grievance and shall be restricted solely to the interpretation of the Contract in the areas where the alleged breach occurred. The arbitrator shall not modify, add to, or delete from the express terms of the Agreement.

. . . .

ARTICLE 18

REGULAR PART TIME STATUS AND COMPENSATION

Section 1. Fringe benefits shall relate to the following: holidays, vacations, emergency leave, sick leave, jury duty and hospital/medical health insurance.

The amount of fringe benefits shall be paid annually as follows:

- 1900-2080 hours - full time - (100%) - average 73 hours or more per pay period.
- 1481 - 1899 hours - three-quarter time- (75%) - average 56 - 72 hours per pay period.

976 - 1480 hours - one-half time - (50%) - average 39 - 55
hours per pay period.

Less than 976 hours - none - (0%) - average less than 38
hours per pay period.

BACKGROUND:

The County's Community Programs Department provides a transportation service for the handicapped and the elderly. Two types of services provided by the County are regular routes and extra-runs. The regular routes run Monday through Friday and involve a morning and afternoon trip along a defined route. The morning trips are run between 7:00 a.m. and 10:00 p.m. and the afternoon trips are run between 3:00 p.m. and 6:00 p.m. Each trip is approximately three hours in length. The extra-runs normally occur between the morning and afternoon trips of the regular routes and are provided in response to client requests. At times, these extra-runs involve a degree of regularity, such as the once-a-month trip in which visually impaired clients from Chippewa Falls are transported to a meeting in Eau Claire or the weekly trip to the Cadott nursing home. At other times, the trips are unique, e.g., providing transportation for a medical appointment or a recreational activity.

Since at least June of 1986, when Eugene Karker, hereinafter the Grievant, commenced employment with the County, the County has employed part-time Drivers and relief Drivers. The relief Drivers, unlike the part-time Drivers, are not bargaining unit employes. Since the Grievant commenced his employment, the part-time Drivers' primary work assignment has been to drive the regular routes. 1/ On occasion, the part-time Drivers have driven an extra-run, but extra-runs are normally assigned to relief Drivers. The relief Drivers have also been used to fill in for part-time Drivers.

In 1989, the Grievant, a part-time Driver, worked 1,394.75 hours. On January 8, 1990, the Grievant filed a grievance with the County alleging that the County violated Article 18 of the collective bargaining agreement when it used relief Drivers to the extent that the Grievant was deprived of 1,480 hours of work in 1989. The County denied the grievance, responding that there was no provision in the contract that guaranteed part-time employes a specified number of hours. The grievance was processed through the contractual grievance arbitration procedure and, thereafter, submitted to arbitration.

POSITIONS OF THE PARTIES:

Union

The Grievant is a part-time Driver and is a member of the Union's collective bargaining unit. The Grievant is not receiving the maximum hours of work due to the fact that non-bargaining unit employes have been utilized to perform the same type of work which the Grievant performs. The Employer should not be permitted to whittle away at the bargaining unit by assigning bargaining unit work to non-bargaining unit employes. The grievance should be sustained and the Grievant should be awarded back pay.

County

The Grievant alleges that the County violated Article 18 by not assigning the Grievant 1,480 hours of work during 1989. Article 18 merely sets forth the amount of fringe benefits earned by County employes at various levels of employment and does not serve to guarantee employment. Regular part-time employes who work between 976 and 1,480 hours are considered one-half time and are paid fringe benefits on an annualized basis equal to 50% of fringe benefits earned by regular full-time employes (1900 to 2,090 hours per year). The record demonstrates that the Grievant worked 1,394.75 hours during 1989, an average of 53.644 hours per two-week pay period.

In arguing that the County has violated the contract, the Union has cited only one provision, i.e., Article 18. Under the collective bargaining agreement's definition of a grievance in Article 4, Section 1, it is incumbent upon the Union to identify the provisions of the contract which have been violated. The Arbitrator's power to issue a decision is restricted solely to the interpretation of those provisions of the contract. No decision of the arbitrator may modify, add to, or delete from the express terms of the agreement.

Under the express management rights reserved and retained in Article 2 of

1/ While it may be that the regular routes existed prior to the Grievant's employment with the County, such a fact was not clearly established at hearing.

the labor agreement, it is clear that the County has the sole right to operate County government, establish work positions and assign employes. The grievance of the Union must be denied and dismissed.

DISCUSSION:

As the County argues, Article 18, the only contract language relied upon by the Union, does not serve to guarantee bargaining unit members, such as the Grievant, any hours of employment. Nor does it provide bargaining unit employes, such as the Grievant, with a right to perform the work assigned to relief Drivers. Rather, the function of Article 18 is to establish the level of fringe benefits which are payable to bargaining unit employes. It is undisputed that the Grievant, who worked 1,394.75 hours in 1989, received the fringe benefits due an employe working such hours.

Relief Drivers are not and have not been bargaining unit members. Accordingly, the work historically performed by the relief Drivers cannot be considered to be bargaining unit work. Inasmuch as it is not evident that the County's use of the relief Drivers in 1989 differed in any material respect from its past use of relief Drivers, the record does not support the Union's assertion that the County has been assigning bargaining unit work to non-bargaining unit employes.

In summary, the language relied upon by the Union does not provide the Grievant with the contractual right to perform the work which the County assigned to the relief Drivers in 1989. Nor was the County otherwise obligated to provide the Grievant with an opportunity to work more than the 1,394.75 hours that he worked in 1989.

Based upon the above and foregoing, as well as the record as a whole, the undersigned issues the following

AWARD

1. The County did not violate the collective bargaining agreement when it did not offer the Grievant the opportunity to work more than 1,394.75 hours in 1989.

2. The grievance is denied and dismissed.

Dated at Madison, Wisconsin this 6th day of September, 1990.

By _____
Coleen A. Burns, Arbitrator