

BEFORE THE ARBITRATOR

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 In the Matter of the Arbitration :
 of a Dispute Between :
 :
 LOCAL 587, an affiliated Local of :
 MILWAUKEE DISTRICT COUNCIL 48, :
 AFSCME, AFL-CIO :
 : Case 301
 and : No. 42590
 : MA-5743
 MILWAUKEE AREA VOCATIONAL, TECHNICAL :
 & ADULT EDUCATION DISTRICT :
 :

Appearances:

Podell, Ugent & Cross, S.C., by Ms. Monica Murphy, for the Union.
 Quarles & Brady, by Mr. David B. Kern, for the District.

ARBITRATION AWARD

Local 587, AFSCME District Council 48, hereafter the Union, and Milwaukee Area Vocational, Technical and Adult Education District, hereafter the District, are parties to a collective bargaining agreement which provides for final and binding arbitration of disputes arising thereunder. The Union made a request, in which the District concurred, that the Wisconsin Employment Relations Commission designate a member of its staff to hear and decide a grievance over the meaning and application of the terms of the agreement relating to the assignment of duties. The Commission designated Stuart Levitan to serve as the impartial arbitrator. Hearing was held in Milwaukee, Wisconsin, on March 9, 1990; it was not transcribed. The District and the Union filed written arguments on April 23 and 24, respectively; on May 14, they waived their right to file reply briefs. From June 7 to September 17, the undersigned was on a leave of absence. On September 20, the undersigned made certain disclosures to the parties, and indicated they had a right until October 10 to request his recusal. Neither party made such a request.

ISSUE:

The Union frames the issue as follows:

"Did MATC violate the collective bargaining agreement when it assigned a BSW I to pick up waste paper and clean outside walks and lawns without paying him for work out of classification?"

"If so, what should be the remedy?"

The District frames the issue as follows:

"Did MATC violate Article II, Section I, or Article XIII, Section 4 by assigning Ron Parks, a BSW I, to pick up waste paper outside MATC's main campus building on March 1, 1989?"

"If so, what should be the remedy?"

The Arbitrator frames the issue as follows:

"Did MATC violate the collective bargaining agreement when it assigned a BSW I to pick up waste paper outside its main campus building on March 1, 1989, without paying him for work out of classification?"

"If so, what is the remedy?"

RELEVANT CONTRACTUAL LANGUAGE

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ARTICLE II - Working Conditions

Section 1 -

Work Assignments and Job Classifications

The parties agree that each employee shall perform all the duties of his/her classification and those other duties generally related to his/her classification. Assignments may be made outside the regular

classification of the employee in emergencies or in unusual situations, providing such duties are within the level of skills of the employee and providing further that such assignments shall not be made as a regular procedure.

The Board agrees to furnish written descriptions of each classification to the Union.

ARTICLE III - Management Rights

The Board retains and reserves the sole right to manage its affairs in accordance with all applicable laws and legal requirements, except as limited by the specific provisions of this Agreement. Included in this responsibility, but not limited thereto, is the right to:

. . .

- b. Determine the kinds and number of services performed.
- c. Determine the number of positions and classifications thereof, to perform such services.
- d. Direct the work force.
- . . .
- h. Transfer and assign employees.
- . . .
- k. Maintain efficiency of operations by determining the method, the means, and the personnel by which such operations are conducted and to take whatever actions are reasonable and necessary to carry out the duties of the various departments and divisions.
- l. Make reasonable work rule.

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ARTICLE XIII - Premium Pay

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Section 4 -- Work Out of Classification

When an employee within or out of the bargaining unit is absent for one (1) week or more and the Board assigns a member of the bargaining unit from a lower classification to the duties of the absent employee for one (1) week or more, such employee shall be paid for such work at the same rate as if promoted, provided that such employee performs all of those duties normally done during that period by the absent employee.

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BACKGROUND

Ron Parks is a Building Service Worker I (BSW I), assigned to the maintenance department of the main campus, Milwaukee Area Technical College. This grievance concerns his assignment, on March 1, 1989, to pick up waste paper on the walks and lawn.

By grievance dated March 2, 1989, the grievant alleged that the employer had violated his job description; Article II, Section 1; Article XIII, Section 4, and other, unspecified articles. The remedy sought was payment "for work out of classification."

The Building Service Worker position was created in 1977, when three Custodial Worker positions, two Maintenance Worker positions, and a Mechanical Maintenance Leadman position were merged into BSW I-IV. Relevant job descriptions are as follows:

Custodial Worker I

General Function of Position

Under supervision, to perform custodial work required for routine cleaning and upkeep of school buildings.

Characteristic Duties and Responsibilities

(Duties listed may vary in terms of relative importance and

others may be added or eliminated as this position develops. In addition, specific positions within this classification may have special duties and special qualifications.)

Mops, sweeps, and scrubs floors, stairways, halls, and other surfaces.
Operates various cleaning machines to clean, renovate, and renew floor surface finishes.
Cleans and dusts furniture, exhibit cases, fixtures, windows, doors, trim, and related furnishings.
Washes and/or cleans inside windows, door glass, metal, glass partitions, and chalk boards.
Moves furniture, supplies, and miscellaneous equipment in connection with cleaning.
Collects waste paper and other debris for disposal.
Cleans and services lavatories, toilet rooms, and rest rooms, including sinks, mirrors, urinals, and replenishing supplies of soap, towels, toilet paper, and disinfectants.
Relief and part-time elevator operation.
Perform related duties as required or assigned.

Qualifications

Required Skills, Knowledge and Abilities

Some knowledge of cleaning methods, materials, and equipment.
Ability to follow routine oral and written instructions.
Ability to exercise care in the use of cleaning materials for different types of building surfaces.
Physical strength and agility sufficient to perform extended manual tasks.

Minimum Training and Experience

High School graduation or G.E.D. equivalency.
Or, an equivalent combination of training and experience.

Custodial Worker II

General Function of Position

Under supervision, to perform custodial work of a responsible nature involved in the cleaning and upkeep of the school's buildings.

Characteristic Duties and Responsibilities

(Duties listed may vary in terms of relative importance and other may be added or eliminated as this position develops. In addition, specific positions within this classification may have special duties and special qualifications.)

Performs various cleaning duties as needed; serves as leadworker while working as part of a crew.
Operates various cleaning machines to clean, renovate, and renew floor surface finishes.
Moves furniture, supplies, and equipment in connection with cleaning.
Delivers supplies and equipment to custodial workers in work areas.
Mixes waxes, cleaners, floor reconditioners, soap, and disinfectants from bulk supply and places in small containers for usage.
May assist in training of new custodial workers and student help.
May collect waste paper and other debris; move large containers of rubbish to loading dock or other disposal areas.
Performs related duties as required or assigned.

Qualifications

Required Skills, Knowledge and Abilities

Working knowledge of cleaning methods, materials, and equipment related to custodial maintenance.
Ability to follow oral and written instructions.
Ability to exercise care in the use of small motorized equipment and cleaning materials.
Skill in the operation and care of motorized equipment.

Physical strength and agility sufficient to perform extended manual tasks.

Minimum Training and Experience

High school graduation or G.E.D. equivalency.
Two years of experience in custodial work.

Or, an equivalent combination of training and experience.

Building Service Worker I

General Function of the Position

Under supervision, to perform a variety of custodial and related duties associated with the upkeep of school buildings and campus areas.

Characteristic Duties and Responsibilities

(Duties listed may vary in terms of relative importance and others may be added or eliminated as this position develops. In addition, specific positions within this classification may have special duties and special qualifications.)

- Sweep, mop, scrub, wax and vacuum floors, stairways, halls, and other surfaces.
- Operate cleaning machines to clean and renovate floor surfaces.
- Clean and dust furniture, exhibit cases, fixtures, windows, doors, trim, and related furnishings.
- Wash and/or clean windows, door glass, metal surfaces, glass partitions, and chalk boards.
- Move furniture, supplies and miscellaneous equipment in connection with cleaning.
- Check and lock windows and doors as required during the performance of other duties.
- Collect and dispose of waste paper and other debris.
- Clean and service laboratories, toilet rooms, and rest rooms, including sinks, mirrors and urinals.
- Fill soap, towel, toilet paper, disinfectant and other dispensers.
- Operate elevators as needed.
- Perform related duties as required or assigned.

Qualifications

Required Skills, Knowledge and Abilities

- Some knowledge of cleaning methods, materials and equipment.
- Ability to follow routine oral and written instructions.
- Ability to exercise care in the use of cleaning materials.
- Physical strength and ability sufficient to perform extended manual tasks.

Minimum Training and Experience

18 years of age or older.

Building Service Worker II

General Function of the Position

Under supervision, to perform a variety of custodial and general maintenance duties associated with the cleaning and maintenance of school buildings, grounds, and equipment.

Characteristic Duties and Responsibilities

(Duties listed may vary in terms of relative importance and others may be asked or eliminated as this position develops. In addition, specific positions within this classification may have special duties and special qualifications.)

- Sweep, mop, scrub, wax and vacuum floors, stairways, halls, and other surfaces.
- Operate cleaning machines to clean and renovate floor surfaces.
- Replace light bulbs, fluorescent tubes and starters.
- Assist in unloading, loading, delivery and/or moving of

furniture, supplies, and miscellaneous equipment, and set up rooms for special events.
Drive light duty school vehicles as required to complete duties.
Assist in the removal of snow, ice, and debris from walkways and parking areas.
Occasionally operate mowing machines to cut grass and mechanical hand tools to trim shrubbery and weed garden areas.
Assist in the performance of maintenance duties such as minor repairs to doors, windows, outside equipment, lights, faucets, drains, traps, filters, shades, desks, chairs, etc.
Assist in the maintenance and minor repair of motors, valves, fans, pumps and related equipment.
Perform related duties as assigned.

Qualifications

Required Skills, Knowledge and Abilities

Working knowledge of the methods, materials, and equipment used in custodial and maintenance work.
Ability to understand and follow oral and written instructions.
Ability to work independently.
Physical ability and strength to perform extended manual tasks.
Skill in the use and care of tools, equipment, and machinery.

Minimum Training and Experience

18 years of age, or older.
Two years of experience in building maintenance or related operation.
Valid Wisconsin driver's license.

Or, an equivalent combination of training and experience.

Additional Desirable Training and Experience

High School graduation or G.E.D. equivalency.
Related vocational or trade school training.

Subsequent to the events being grieved, MATC promulgated new position descriptions. These new descriptions do not make substantive changes in the duties of the BSW I or II positions.

On March 3, 1989, the Manager of Campus Operations denied the grievance, stating:

Assignments may be made outside the regular classification of the employee in emergencies or in unusual situations, providing such duties are within the level of skills of the employee. The work assigned the grievant on 3/1/89 was clearly within the grievant's level of skills. There is no work-out-of-classification pay that is applicable in this situation since the grievant has not performed the higher level of work for a one-week period as defined in the contract, see Article XIII, Section 4.

The grievant appealed this denial on March 6. On March 7, the Manager of Engineering and Building Services denied the appeal, with an explanation identical to that of March 3.

On March 10, the grievant directed his Union steward to cancel his grievance, explaining that he wanted "no further proceedings to take place regarding this matter." On March 11, the Union steward, on behalf of the Union, appealed the March 7 denial.

On April 5, the parties waived certain procedural and contractual timeframes regarding fourth step consideration of this grievance.

On April 14, the Director of Labor Relations denied the appeal, stating:

The grieved assigned work of Ron Parks is neither subject to the work out of classification provision, nor is it recognized as a duty outside the scope of responsibilities in the BSW I job classification description. The fact that the grievant was directed to pick up papers outside does not elevate the recognized BSW I responsibility of picking up debris

and trash to a BSW II level. (emphasis in original).

POSITIONS OF THE PARTIES

In support of its position that the grievance should be sustained, the Union asserts and avers as follows:

Although the grievant himself no longer wishes to participate in the processing of grievance, the Union is pursuing the matter because of the importance of making sure that Building Service Worker I's are not routinely assigned to duties -- such as outside trash pickup, and other outside duties -- properly allocated to the BSW II classification. Due to the often inclement nature of the weather -- exposure to which justifies the higher pay of the BSW II's -- BSW I's object to being assigned to outside duties.

Outside duties have always been assigned to workers in the BSW II or higher classification; workers classified as BSW I (or as the predecessor Custodial Worker I) have not had any responsibility for grounds. Ample testimony from numerous witnesses established that BSW I's do not perform outside duties, unless as volunteers during the summer.

Further, MATC cannot show an accepted practice of assigning outside work to BSW I's. MATC's attempt to cite the placement of BSW I Michael Nemish on the call list for snow removal is without merit, as Nemish was removed from said list in response to a Union grievance. Moreover, the District cannot take support in this case from its use of Nemish as the only one of over 20 BSW I's to be used to for outside duties, inasmuch as (a), the Union was unaware of this happening, (b), Nemish's desire for advancement is so great that he has already grieved the District's denial of the opportunity for him to become a BSW II, and, (c), Nemish suffers from a learning disability and does not thoroughly understand that he is being taken advantage of.

The District's actions here are an attempt to circumvent the provisions of Article II, Section I of the collective bargaining agreement, which prohibits the District from making assignments outside the regular classification of any employe as a regular procedure. MATC's assignment of BSW I's to outside work is eroding the distinctions between BSW I and BSW II classifications, giving MATC the undue benefit of BSW II work done at the lower BSW I rate. This contravenes the whole purpose of negotiating job classifications and pay rates and should not be allowed to continue.

In summary, the outside pickup of trash is work properly assigned to workers in the BSW II, or higher, classification; when such duties are performed by BSW I's, it is work out of class and should be paid for accordingly. Such work is not now, and has not, been accepted as properly belonging to the BSW I classification.

Because MATC is violating Article II, Section 1 and Article XIII, Section 4 of the collective bargaining agreement, the grievance should be sustained.

In support of its position that the grievance should be dismissed, the District asserts and avers as follows:

The assignment description. That description calls for the BSW I to perform duties generally related to the upkeep of the "school buildings and campus area, including the specific assignment to "collect and dispose of waste paper and other debris." This is what the grievant was doing -- collecting debris. That this work was being performed outside rather than inside is irrelevant; the two tasks are closely related, if not identical. Further, numerous arbitral precedents affecting these parties support the conclusion that the work which the grievant was performing was not work out of his classification.

The essential difference between BSW I and II is the level of sophistication required of the employe; for example, a BSW II must be a licensed driver and is responsible for operating certain equipment and assisting in minor maintenance duties, while a BSW I is primarily concerned with custodial duties. Therefore, as the grievant was not asked to do anything essential and/or unique to the BSW II classification, and as the tasks he was asked to perform were those which another BSW I had been performing daily since 1981, it is clear there was no work out of classification here.

The Union strains to argue that the BSW I's duties do not extend to work outside of the buildings. Their job description, however, refers to the upkeep of both school buildings and the "campus areas," a term which

all dictionaries concur includes the grounds, walkways and other outside areas which a normally considered part of the "campus area."

Further, the bargaining history concerning the job descriptions, plus the parties' past practice, establish that no violation occurred.

The Union assertions that the parties agreed that the BSW I duties would include only inside work was directly contradicted by the individual who actually drafted the language in question. At best, the parties "agreed to disagree." The Union wanted language explicitly emphasizing the interior nature of the work, the District wanted language referencing outdoor duties, and the language ultimately incorporated -- requiring employes to perform "related duties as assigned" -- let each side preserve its position.

Actual practice further establishes the District's authority to assign limited exterior work on a regular basis to BSW I's. Nemish has been assigned daily exterior litter pickup duties since 1981, also the time he began snow removal. The grievant himself was assigned snow removal work in 1987, work which differently significantly from that done by BSW II's, who handled plows and other sophisticated equipment. These assignments are further evidence that the essential distinction between the two classifications is the level of sophistication of the equipment which the employe must operate, not the location of the work. Moreover, there is no evidence that any BSW I's from the outlying campuses ever received or sought higher classification pay for such outside work for which they volunteered.

Nor can the Union claim lack of knowledge of these past incidents, as a BSW II, a member of the Local 587 bargaining committee since 1988, was aware of Nemish's outside work. Other bargaining unit employes were also aware that Nemish was doing exterior work, and it is well-established that knowledge of the employees is knowledge of the Union.

That the Union intended to carve language providing for only interior work for the BSW I's does not conclusively establish that such result is what the parties intended.

Moreover, even if the work which the grievant performed is found to be work out of classification, there are several reasons why the grievant is still not entitled to higher class pay -- the work assigned was only for one day; the grievant was filling in for another BSW I, not a BSW II, and the grievant did not perform "all of those duties" done by the absent employe. Thus, even if a violation of Article II, Section 1 is found, there can still be no violation of Article XII, Section 4.

Because the collection of debris, both inside and outside, is within the regular scope of duties of a BSW I, is work which has been assigned for many years to a BSW I, and is work which is not unique to a higher classification BSW, the assignment of such work to the grievant was not the assignment of work out of classification. Accordingly, the grievance should be denied.

DISCUSSION

The Union alleges that the outside pickup of trash and debris is work properly assigned to BSW II and above, and that when such work is performed by a BSW I, it is work out of classification and should be paid accordingly. The employer's assignment of outside trash pickup to a BSW I is, the Union alleges, violative of Article II, Section 1 and Article XIII, Section 4.

The contractual provision on Work Assignments and Job Classification, Article II, Section 1, provide as follows:

The parties agree that each employe shall perform all the duties of his/her classification and those other duties generally related to his/her classification. Assignments may be made outside the regular classification of the employe in emergencies or in unusual situations, providing such duties are within the level of skills of the employe and providing further that such assignments shall not be made as a regular procedure.

The Board agrees to furnish written descriptions of each classification to the Union.

The contractual provisions on Premium Pay - Work Out of Classification, Article XIII, Section 4, provides as follows:

When an employe within or out of the bargaining unit is absent for one week or more and the Board assigns a member of the bargaining unit from a lower

classification to the duties of the absent employe for one week or more, such employe shall be paid for such work at the same rate as if promoted, provided that such employe performs all of those duties normally done during that period by the absent employe.

Here, the erstwhile grievant was assigned on March 1, 1989 to clean and pick up waste paper on the walks and lawn. Clearly, he did not perform "all of the duties" of a BSW II, which duties include general maintenance duties up to an including assisting in the maintenance and minor repair of motors, valves, pumps and related equipment. Nor did he perform BSW II duties for one week or more. Accordingly, under the provisions of Article XIII, Section 4, he is not due pay for work out of classification.

Ordinarily, I would close the discussion at this point, and issue an award denying the grievance. That I do not do so does not reflect of any desire on my part to expound upon a settled question, but rather my belief that the parties desire an answer to a question which goes beyond whether this particular employe is entitled to added compensation for this particular work done on this particular day. That is, based on the way they framed their issue, presented their evidence, and made their written arguments, it seems to me that the parties want me to address the question of whether the outside pickup of trash and debris is within the job duties of a BSW I.

In considering whether to do so, I am torn between conflicting theories of arbitral responsibility. One is that awards should address those aspects, and those aspects only, required for an informed discussion and a conclusion which draws its essence from the agreement. The other is that an arbitrator should address those issues which are really at stake, whether or not they are necessarily required for a determination on the actual grievance itself.

Here, the situation is further complicated by the fact that my three-month leave of absence has resulted in this matter becoming fairly protracted. That is, having had this matter before me for some time, I am especially mindful of the need for providing to the parties the service they expect. But, again, my authority under the contract is to determine whether or not there has been "a violation of one or more specific provisions" of the agreement, not to issue advisory opinions.

In the initial filing of the grievance, the sought remedy was for the grievant to "be paid for work out of classification." Because there was no violation of Article XIII, Section 4, that remedy is not appropriate.

In its Request To Initiate Grievance Arbitration filed with the Commission, however, the Union described the grievance as relating to the "assignment of duties outside of classification on regular basis w/o (without) emergency and/or unusual circumstances...." This language refers directly to the language and concepts of Article II, Section 1. Moreover, the prior grievance documents themselves also refer to an alleged violation of Article II, Section 1. And, as noted above, so too does the framing of the issue as proposed by the employer.

Accordingly, I conclude that the dispute as to Article II, Section 1 is as much a legitimate subject for my consideration as is that of Article XIII, Section 4.

The parties state their positions succinctly: the Union asserts that "the outside pickup of trash and debris is work that is assigned to the BSW II or higher classification." The employer asserts that "the collection of litter and debris is within the regular scope of duties of a BSW I"

In a sense, this disputes requires me to analyze and reach conclusions about position descriptions written in 1977. The full text of the descriptions for the BSW I and II are included above. However, because of the importance of the full range of BSW responsibilities -- the Union says outdoor trash pickup is for BSW II "or higher," while the employer says the ascension from I - IV solely concerns levels of responsibility and skill, with no relevance of indoors vs. outdoor work -- I cite the respective position descriptions in detail, in a comparative format, as follows:

General Function of the Position

BSW I: Under supervision, to perform a variety of custodial and related duties associated with the upkeep of school buildings and campus areas.

BSW II: Under supervision, to perform a variety of custodial and general maintenance duties associated with the cleaning and maintenance of school buildings, grounds and equipment.

BSW III: Under supervision, to perform a variety of maintenance duties associated with the maintenance of

school buildings, grounds and equipment.

BSW IV: Under the general supervision of the Building Operations Manager or Regional Administrator, to perform a variety of skilled and semi-skilled maintenance and repair activities and control functions in the physical plant.

Characteristic Duties and Responsibilities

BSW I: Sweep, mop, scrub, wax and vacuum floors, stairways, halls, and other surfaces. ... Collect and dispose of waste paper and other debris. ... Perform related duties as required or assigned.

BSW II: Sweep, mop, scrub, wax and vacuum floors, stairways, halls, and other surfaces. ... Assist in the removal of snow, ice, and other debris from walkways and parking areas. ... Occasionally operate mowing machines to cut grass and mechanical hand tools to trim shrubbery and weed garden areas. ... Perform related duties as required or assigned.

BSW III: Remove snow, ice and debris from walkways and parking areas. ... Operate mowing machines to cut grass and mechanical hand tools to trim shrubbery and weed garden areas. ... Assist in the operation, maintenance and repair of air handling, controls, and other mechanical equipment. ... Perform related duties as required or assigned.

BSW IV: Operate and maintain air handling system, air conditioning systems, and related equipment, including fans, motors, controls, and pumps. ... Adjust and maintain control instruments of various types Direct other building service employes in the performance of related duties, ... Perform related duties as required or assigned.

Qualifications

BSW I: Some knowledge of cleaning methods ability to follow routine oral and written instructions ... physical strength and ability sufficient to perform extended manual tasks.

BSW II: Working knowledge of the methods, materials and equipment used in custodial and maintenance work ... physical ability and strength to perform extended manual tasks ... skill in the use and care of tools, equipment and machinery.

BSW III: Considerable knowledge of the methods, materials and equipment used in maintenance work ... physical ability and strength to perform extended manual tasks ... above average skill in the use and care of tools, equipment and machinery.

BSW IV: General knowledge of heating, ventilating, refrigeration, electrical, water and sewerage systems and the tools and equipment used in their repair and maintenance. ... ability to diagnose mechanical failures

Minimum Training and Qualifications/Additional Desirable Training

BSW I: 18 years of age or older.

BSW II: 18 or older ... two years experience in building maintenance or related operations ... valid Wisconsin driver's license ... high school graduation or G.E.D. equivalency ... related vocational or trade school training.

BSW III: Same as BSW II, except three years experience.

BSW IV: High school/G.E.D. ... five years experience in building maintenance/repairs, including at least two years in maintenance of air handling and related equipment ... related vocational or trade school training.

In its conditions for work assignments and job classifications, the contract sets rights and duties for both parties: management is to provide

written position descriptions; employes are to perform all the duties reflected therein plus "those other duties generally related to" their classification. Management may, in times of "emergencies or in unusual situations," make assignments outside the regular classification, but only when the new duties are within the capability of the employe. Further, management may not make such out-of-classification assignments "as a regular procedure."

The record indicates that there is a BSW I who, for several years, apparently has routinely performed outdoor trash pick-up. The employer correctly notes that other employes, including at least one member of the Union bargaining committee, were aware of such assignment. This knowledge of the employees, the employer contends, is the same as knowledge of, and acquiescence by, the Union. I disagree. Given the special circumstances surrounding this individual, the fact that the Union has not grieved this assignment does not establish the kind of past practice which the employer suggests.

The Union argues that the outdoor trash pickup has, over time, consistently been a duty for BSW II and above, and that there is no past practice of its having been an assignment for BSW I. As noted above, I agree with the Union that the willingness of Mike Nemish to perform this task does not, by itself, become a past practice binding upon the Union. However, if the contract in other ways provides that the work is appropriately considered BSW I duty, that there may not be corroborating past practice would not bar such assignment.

The ultimate question in this case is whether outdoor trash pickup is within the position description of a BSW I, or is at least "generally related" to such classification. For a variety of reasons, I find that it is.

First, the general function of the BSW I is to perform a variety of custodial and related duties associated with "the upkeep of school buildings and campus areas." (emphasis added) The employer contends that this reference to "campus areas," by definition, takes the BSW I job duties beyond indoors and into outdoors. That is, a "campus area" is precisely exterior grounds, rather than building interiors. Were the intended meaning to apply only to interiors -- already incorporated by the reference to "school buildings" -- this specific reference to campus areas would be meaningless surplusage. As the presumption is that all words in contracts have specific meaning, "campus areas" must mean something other than "school buildings" -- namely, the grounds and walkways surrounding the buildings themselves.

There is merit to this argument. While it is not itself dispositive, it does establish that the general function of the position is not necessarily limited to the upkeep of the (indoors) school buildings but may include the (outdoors) campus areas as well. I do not find persuasive the Union's argument that "campus areas" relates to particular buildings or campus locations.

The general function of the BSW II is stated in reference to the cleaning and maintenance of "school buildings, grounds and equipment." Clearly, "grounds" is a more direct and unambiguous reference to the outdoors than is "campus areas." Since the employer choose to cite the "grounds" in the BSW II but not the BSW I, one could conclude that the use of "campus areas" was intentional on the employer's part, evidencing a deliberate decision to create some ambiguity as to the nature of this assignment. However, it can also be argued that "grounds" has a more specific reference than "campus area" to a particular aspect of the outdoors, a reference consistent with the BSW II duty relating to grass, shrubs and garden areas.

There is a BSW II reference, however, which does create lasting ambiguity. Where the BSW I has the duty to "collect and dispose of waste paper and debris," the BSW II to "assist in the removal of snow, ice, and debris from walkways and parking areas." Here again, the greater specificity of the BSW II position description casts confusion on what the employer meant in that of the BSW I. The BSW I gave no location on where the waste paper and debris were to be collected; but the BSW II specifies that the tasks relate to "walkways and parking areas." Again, the employer knew how to specify outdoors locations for the BSW II; again, the lack of corresponding specificity for the BSW I creates ambiguity therein.

What we are left with, then, is language in the respective position descriptions which supports the employer's position, but not without some lingering ambiguity and doubt; prior experience which supports the Union, but in a manner neither binding nor dispositive.

The Union contends that the position descriptions establish that outdoors work is the province of BSW II and above, and that the adverse weather conditions under which the outdoors trash pickup must be undertaken justify the higher pay of those positions. It is true that the BSW II, in contrast to the BSW I, does make specific reference to outdoors duties (e.g., assisting in snow removal, occasionally operating mowing machines, trimming and weeding). However, it is also true that the level of skills, qualifications and responsibilities grow exponentially with the progression from BSW I to II to

III and IV. Picking up outdoor trash is just as related to collecting and disposing of waste paper and other debris (a BSW I task) as it is to assisting in the removal of snow, ice, and debris from walkways and parking areas (a BSW II task) -- and it is certainly more related to the BSW I task cited than it is to such other BSW II tasks as assisting in the maintenance and minor repair of motors, valves, pumps and related equipment or driving light duty school vehicles. Given the increasing levels of skill and responsibility associated with the positions of BSW III and IV, outdoor trash pickup 1/ is even less related to those classifications than it is to BSW II.

Because the pickup of outdoor trash is "generally related" to the overall duties of a BSW I, it is not a violation of the contract for such assignment to be made. Accordingly, on the basis of the record evidence and the arguments of the parties, it is my

AWARD

That this grievance is denied.

Dated at Madison, Wisconsin this 28th day of November, 1990.

By _____
Stuart Levitan, Arbitrator

1/ The issue as stated by the Union referred to both picking up waste paper and cleaning outside walks and lawns. However, both parties explicitly focused their testimony and arguments only on the issue of picking up waste paper, and that is the way I defined the issue. This award does not address whether or not cleaning outside walks and lawns is a duty different in scope and nature than outdoor litter collection, nor whether such duty is appropriately assigned to a BSW I.