

BEFORE THE ARBITRATOR

 :
 In the Matter of the Arbitration :
 of a Dispute Between :
 :
 WINNEBAGO COUNTY HIGHWAY DEPARTMENT :
 EMPLOYEES UNION, LOCAL 1903, : Case 178
 AFSCME, AFL-CIO : No. 42234
 : MA-5618
 and :
 :
 WINNEBAGO COUNTY :
 :

Appearances:

Messeurs Jack Bernfeld and Gregory Spring, Staff Representatives,
 Wisconsin Council 40, AFSCME, AFL-CIO, on behalf of Local 1903.
Mr. John A. Bodnar, Corporation Counsel for Winnebago County, on behalf
 of the Employer.

ARBITRATION AWARD

According to the terms of the 1989-90 collective bargaining agreement between Winnebago County (hereafter Employer or County) and the Winnebago County Highway Department Employees Union, Local 1903, AFSCME, AFL-CIO (hereafter Union), the parties requested that the Wisconsin Employment Relations Commission designate a member of its staff to act as an impartial arbitrator to hear and resolve a dispute between them involving the wording of six job postings which the Union asserted violated the Article 10-Job Posting provision of the effective collective bargaining agreement. The undersigned was designated arbitrator and made full written disclosures to which no objections were raised. Hearing was held at Oshkosh, Wisconsin on May 16, 1990. No stenographic transcript of the proceedings was taken. The parties submitted initial briefs and reply briefs which were received by August 27, 1990 and thereafter exchanged by the undersigned. During the hearing, the Union withdrew without prejudice its grievances (numbers 89/12 and 89/13) regarding two additional posting disputes and the Union and County agreed to hold six additional postings grievances (89/25, 26, 27, 28, 37 and 90/1) in abeyance pending the outcome of the instant consolidated cases.

ISSUES:

The parties were unable to stipulate to the issues herein. The Union suggested that the issues be framed as follows:

Did the Employer violate the contract by the wording of the job postings at issue in this dispute?

If so, what is the appropriate remedy?

The County suggested that the issues herein be framed as follows:

Are the job postings at issue in violation of the language contained within the collective bargaining agreement?

If so, what is the appropriate remedy?

The parties agreed to allow the undersigned to frame the issues herein and upon consideration of all of the relevant evidence the undersigned finds that the issues should be framed as follows:

Did the Employer violate the contract by the wording of the six job postings at issue in this case?

If so, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS:

ARTICLE 10

JOB POSTINGS

A job vacancy is defined as a position not previously existing in the job classification plan attached to and made a part of this Agreement or a vacancy in a position in the said job classification plan due to termination of employment, promotion, demotion, or transfer, death or disability of existing personnel, and in the judgment of the County the need to fill such job vacancy continues to exist. In the event the County determines not to fill any job vacancy in the job classification plan, the County agrees to post a notice of job discontinuance for a period of five (5) working days in the department within which the vacancy occurs.

Any such vacancy aforementioned shall be posted for a minimum of five (5) working days on the Union bulletin board in each department.

Postings shall be made only on the basis of job classification and department.

The job requirements, qualifications and wage rate shall be a part of the posting, and sufficient space provided for interested persons to sign said posting. Employees desiring to apply for such vacancy shall sign the posted notice or shall arrange to have their names placed on the posting within the posting period.

The posting shall also contain the employee's primary job duties, however, this shall not prevent the County from temporarily assigning employees to vacant jobs within the classification until such time as said job is permanently filled, nor shall this prevent the County from assigning an employee to other job duties because of a lack of work in his regular job or because of unsatisfactory job performance.

The County shall determine the qualifications of the applicants and in the event that qualifications as determined by the County are relatively equal, the applicant with the greater departmental seniority shall be selected to demonstrate his ability to perform the job during a trial/training period of not more than thirty (30) days actual performance on said job. The County agrees that if a selection is to be made, it will be done within ten (10) working days after the close of the aforementioned posting period. If said employee is deemed qualified by the County, he shall be assigned to fill the vacancy. Should such employee not qualify within the aforementioned thirty (30) day period or should the employee desire to return to his former position at any time within the said thirty (30) day period, he shall be reassigned to his former position without loss of seniority. In this event, the applicant next in line of seniority with the department shall be given preference pursuant to the above procedure until the vacancy is filled. Should no employee within the department apply or qualify for the vacant position, employees in the two remaining departments who have signed the posting shall be eligible for such vacancy in accordance with the above procedures using bargaining unit-wide seniority as the determining factor should qualifications be relatively equal. Should no bargaining unit employee apply or qualify for the vacancy, the County may fill the position from outside the bargaining unit.

QUALIFICATIONS DISPUTES: If there is any difference of opinion as to the qualifications of an employee, the Union may take the matter up for adjustment through the grievance procedure.

The County reserves the right to make immediate temporary assignments to fill any vacancy in the job classification plan attached hereto and made a part

hereof until such time as said vacancy is filled pursuant to the procedures outlined herein.

ARTICLE 1

MANAGEMENT RIGHTS

1. The management of the Winnebago County Highway (including the Landfill), Airport, and Parks Departments and the direction of the employees in the bargaining unit, including, but not limited to, the right to hire, the right to assign employees to jobs and in accordance with the provisions of this Agreement, the right to assign overtime work, the right to relieve employees from duty because of lack of work or for other legitimate reasons, shall be vested exclusively in the County.

2. In the event of change of equipment, the County shall have right to reduce the working force if, in the sole judgment of the County, such reduction in the work force is required and nothing in this Agreement shall be construed to restrict the right of the County to adopt, or install, or operate new or improved equipment or methods of operation.

3. The Union recognizes the exclusive right of the County to establish work rules.

4. The Union recognizes that the County has statutory and charter rights and obligations in contracting for matters relating to some municipal operations. The right of contracting or subcontracting is vested exclusively in the County.

ARTICLE XX

Overtime

In emergencies such as snow removal, ice control and flood control, the County may vary an employee's regular basic work schedule up to three hours. ...except for valid reasons, the employees agree to work overtime in non-emergency situations when requested by the County. For purposes of this Agreement, refusal to work overtime because of the time of day or nature of work shall not be considered valid reasons. Nothing herein shall in any way effect the Management rights of the County with respect to emergency overtime work.

Hours of Work

. . .

No guarantee of any hours or days of work is implied.

BACKGROUND:

The Union presented background facts which were not disputed by the County, as follows. Local 1903 has represented the approximately 50 to 60 employes of the County Highway Department (hereafter H.D.) for more than 30 years. The description of the collective bargaining unit contained in the 1989-90 collective bargaining agreement indicates that employes covered and excluded from coverage by the terms of the agreement are:

All regular full-time and regular part-time employees of Winnebago County, employed in the Winnebago County Highway (including the Landfill) Airport, and Parks Departments, including the foreman/mechanics and the working foremen in the Highway Department, but excluding office clerical employees, seasonal employees, temporary employees, bridgetenders, the administrative assistant, garage superintendent, patrol superintendent, craft employees, and all supervisors. .

. . .

The Highway Department's three divisions (Airport, Parks and Landfill) utilize four different work sites: the Oshkosh Shop, Omro Shop, Winchester Shop and the Landfill north of Oshkosh. The job classifications/positions specifically covered by the collective current bargaining agreement between the Union and

the County are listed in appendices to the contract as follows:

CLASSIFICATION:

<u>No.</u>	<u>Position</u>
A.	Custodian I
B.	Custodian II
0	Scale Person
1	Janitor-Watchman
2	Parks Caretaker Maint. Equip. Opr. Laborer Other Misc. Small Maint. Equipment Patrolman Truck Drivers Large Roller Operators Self-propelled Chip Spreader Operators and Helpers Mower Operators Small Tractors with Bucket, Broom, etc. Wayside and Parks Maint. Man Man Heating Road Oil Cement Finisher Oil Distributor Truck Driver Large Front End Loader Opr.
3	Pusher Operator Shoulder Maint. Operator Grader Operators Crawler Type Dozer Operator Rubber-Tired Tractor and Scraper Operator Gradall Operator Night Mechanic Skreed Operator Paver Operator Landfill Heavy Equip. Opr.

- 4 Mechanic
- 5 Foreman
 Foreman/Mechanic
 Foreman/Landscape Designer

All classifications A, B, 0, 1, 2, 3, 4 and 5 are paid on a 5 step scale. But all classification 2's are paid the same step rates and all classification 3's are paid the same step rates, etc., but the classification 3's are paid higher rates than are the 2's, the 2's higher than the 1's and so forth. Night mechanics receive a night shift differential on top of their regular rates as well. Within the table of organization, and pursuant to the provisions of Article 10 - Job Postings, H.D. employes are assigned to specific jobs; the 29 class 2 operators are also distinguished by the type of equipment they are able to operate; and the 12 class 3 operators each have different specific duties and types of equipment that are regularly assigned to them.

There are seven State Patrolmen who are assigned to patrol and maintain the seven routes or beats into which the State roads in the County have been divided. It is undisputed that these State Patrolmen are the first employes called in in a snow or other emergency to service/maintain their assigned beats and that these patrolmen generally work at least the first 12 to 14 hours of available overtime work (before they are normally relieved for a rest period by the County). In addition, the County tries to utilize the assigned Patrolmen on their regular beats as much as possible because they are most familiar with the work. Also, the County has a policy of regularly assigning employes to the same equipment because it gives the County consistency of maintenance and allows the employe to maintain familiarity with the machinery he/she operates. The County has maintained equipment lists since at least 1985 on which it has listed the equipment to which each employe is to be assigned for the year. Finally, prior to 1984 (when Mr. Grigar became Highway Commissioner) the County admittedly had regularly listed the location of the jobs that were posted in its postings. Both before and after early 1984, the Highway Department has continued to list the Landfill as a location on job postings covering jobs at the Landfill.

In negotiations for the 1984-85 agreement the parties changed the language of Article 10 to restrict postings to "job class and department and not job title." This language remained unchanged in the 1985-86 and 1986-87 contracts. In 1985, the County failed to post two job openings which resulted in a grievance, decided by Wisconsin Employment Relations Commission Arbitrator Schiavoni in 1986. Ms. Schiavoni held, among other things, that the language of Article 10 referring to "job class and department and not job title" was ambiguous. As a result of the Schiavoni award, the Union, in negotiations for the 1987-88 agreement, sought to change the language of Article 10 as it appears today, deleting the reference to "job title." At the same time, the County sought language to allow it greater flexibility in temporarily transferring employes and to reassign employes for unsatisfactory job performance. 1/ The parties agreed to this trade-off and the language of Article 10 as it now exists was the result of this trade-off.

In early 1988, the County posted two jobs, Bridge Foreman and a Classification 2 position. In the former posting, the County failed to refer to any snow removal duties as a primary Winter duty. In the latter posting, the County failed to list any primary Summer or Winter duties for the position. Notably, the prior incumbent had operated a Rubber Tire Roller in Summer and a one-way plow in Winter. The Union grieved both postings for lack of specificity. The case involving both postings was assigned to Wisconsin Employment Relations Commission Arbitrator Douglas Knudson.

In February 1989, Arbitrator Knudson issued an award (made a part of the record herein) which described the changes in the language of Article 10 - Job Postings, in labor agreements for the below-listed years, and recounted the bargaining history surrounding these language changes, as follows:

1982-83

The job requirements, qualifications and wage rate shall be a part of the posting, and sufficient space provided for interested parties to sign said posting.

The County reserves the right to make immediate temporary assignments to fill any vacancy in the job classification plan attached hereto and made a part hereof until such time as said vacancy is

1/ The County sought this language change based upon a 1987 award by WERC Arbitrator Engmann who found the County lacked the authority to issue a disciplinary transfer for unsatisfactory job performance.

filled pursuant to the procedure outlined herein.

1984-85

Postings shall be made only on the basis of job class and department and not by job title.

The job requirements, qualifications and wage rate shall be a part of the posting, and sufficient space provided for interested persons to sign said posting.

The County reserves the right to make immediate temporary assignments to fill any vacancy in the job classification plan attached hereto and made a part hereof until such time as said vacancy is filled pursuant to the procedures outlined herein.

1986

Same as 1984-85 contract.

1987-88

Postings shall be made only on the basis of job classification and department.

The job requirements, qualifications and wage rate shall be a part of the posting, and sufficient space provided for interested persons to sign said posting.

The posting shall also contain the employee's primary job duties, however, this shall not prevent the County from temporarily assigning employees to vacant jobs within the classification until such time as said job is permanently filled, nor shall this prevent the County from assigning an employee to other job duties because of a lack of work in his regular job or because of unsatisfactory job performance.

The County reserves the right to make immediate temporary assignments to fill any vacancy in the job classification plan attached hereto and made a part hereof until such time as said vacancy is filled pursuant to the procedures outlined herein.

Representatives of the Union's negotiating committee testified, without contradiction, that the revision of Article 10 in the 1984-85 contract, which specified job postings would not be made by job title, was made with the understanding by the parties that said revision from the 1982-83 contract would not change how the duties would be listed in a posting. The Union representatives further testified that the Union proposed to modify the language of Article 10, during the negotiations culminating in the 1987-88 contract, as a result of an arbitration award which concluded that the following portion of Article 10 was ambiguous: "Postings shall be made only on the basis of job class and department and not by job title." The Union advised the Employer that it was seeking the change to make the job postings more specific. The Union committee believed the Employer agreed to make the job postings more specific by the inclusion of paragraph 5 in Article 10 of the 1987-88 contract in exchange for the Union's agreement to other language in said paragraph giving the Employer the right to make temporary assignments.

It should be noted that the job postings found defective by Arbitrator Knudson did not contain any reference to snow plowing duties, even though both the Bridge Foreman position and the Classification 2 position involved in Knudson's case had required that the prior incumbents perform snow plowing

duties in the Winter months. Knudson held: "Accordingly, snow removal should have been included as a primary duty in the postings." Also, in regard to the Classification 2 job posting, Knudson held that that posting violated the agreement because it contained "a generic listing of duties encompassing multiple or all jobs within a classification" rather than listing "just the primary duties of the specific vacant position within Classification 2." Knudson therefore, ordered the County to repost the Bridge Foreman and Classification 2 jobs and ordered that those new postings list the primary job duties of each job.

It should also be noted that in 1987, WERC Arbitrator Engmann had before him the issue whether Winnebago County could disciplinarily transfer an employe who was not satisfactorily performing his job. The Union herein and the County specifically argued whether the County had the right to transfer employes for disciplinary reasons, pursuant to the Article 1 - Management Rights, and what, if any, affect Article 10 - Job Posting and past practice might have upon the County's transfer rights. Arbitrator Engmann refused to determine and rule upon these arguments, holding instead that the contract did not give the County the right to transfer an employe as a disciplinary measure in the circumstances of the case.

The Job Postings and the Positions of the Parties

This case involves six separate grievances, as follows. Grievance number 89-01 2/ involved a posting for a "Classification 5 Foreman" position and listed the "Position Purpose" as follows:

Performs and supervises bridge repair, snow removal and various highway related projects.

Major Duties for the position were listed as follows:

1. Supervises operation of equipment and employees when repairing bridges and roads.
2. Performs snow removal as may be needed during Winter months.
3. Makes out records and reports.
4. Performs bridge repairs, concrete work and welding as needed.
5. Supervises other road crews for highway related projects.
6. Performs other related duties as assigned.

It is undisputed that this posting was the re-posting of the Bridge Foreman position, ordered to be reposted by Arbitrator Knudson in his 1989 Award.

Grievance number 89-02 involved a job posting for a "Classification 2" and listed the "Position Purpose" as follows:

Operates a rubber tire roller and a variety of equipment such as trucks, mowers, plows, end loaders, spreaders, etc. During (sic) Summer and Winter maintenance of highways. Performs general unskilled and semi-skilled labor.

The Major Duties for the position were listed as follows:

1. Operates rollers, trucks and mowers along with other Highway equipment.
2. Services, fuels, greases, and makes minor repairs.
3. Performs general unskilled and semi-skilled labor for the operation of the Highway equipment.
4. Records the time, machinery, and materials used.
5. May oversee the work of a small crew of unskilled and semi-skilled workers.
6. Performs other related duties as assigned.

Grievance number 89-18 involved a posting for a "Classification 3 (Grader Operator)" and listed the "Position Purpose" as follows:

Operates heavy equipment in blading roads, snow plowing, cutting slopes, shoulder work, along with other heavy equipment operations.

2/ The job postings that became the basis for the hearing in this case shall be referred to by the grievance file numbers ascribed to them by the Union, as the Union filed only one request for arbitration herein and there are no separate WERC case file numbers for each of the job posting grievances involved in this dispute.

The Major Duties for the position were listed as follows:

1. Operates heavy equipment as listed in Classification #3 Operator in union contract.
2. Services, fuels, greases, and makes minor repairs.
3. Performs general unskilled and semi-skilled labor for the operation of the Highway Department.
4. Records the time, machinery, and materials used.
5. May oversee the work of a small crew of unskilled and semi-skilled workers.
6. Performs other related duties as assigned.

Grievance number 89-20 involved a posting for a "Classification 2" position and listed the "Position Purpose" as follows:

Operates a variety of equipment such as trucks, mowers, plows, end loaders, spreaders, etc. During (sic) Summer and Winter maintenance of highways. Performs general unskilled and semi-skilled labor.

The Major Duties listed for the position were as follows:

1. Operates rollers, trucks and mowers along with other Highway equipment.
2. Services, fuels, greases, and makes minor repairs.
3. Performs general unskilled and semi-skilled labor for the operation of the Highway equipment.
4. Records the time, machinery, and materials used.
5. May oversee the work of a small crew of unskilled and semi-skilled workers.
6. Performs other related duties as assigned.

Grievance number 89-22 involved a posting for a "Class #2 Operator" and listed the Position Purpose, as follows:

Operates roller on blacktop and a variety of equipment such as trucks, mowers, plows, end loaders, spreaders, etc. During (sic) Summer and Winter maintenance of highways. Performs general unskilled and semi-skilled labor.

The Major Duties for the position were listed as follows on the posting:

1. Operates rollers, trucks and mowers along with other Highway equipment.
2. Services, fuels, greases, and makes minor repairs.
3. Performs general unskilled and semi-skilled labor for the operation of the Highway Department.
4. Records the time, machinery, and materials used.
5. May oversee the work of a small crew of unskilled and semi-skilled workers.
6. Performs other related duties as assigned.

Grievance number 89-23 involved a job posting for a Classification 5 "Foreman" and listed the Position Purpose, as follows:

Performs and supervises bridge repair, snow removal and various highway related projects.

The Major Duties for the position were also listed on the posting as follows:

1. Supervises operation of equipment and employees when repairing bridges and roads.
2. Performs snow removal as may be needed during Winter months.
3. Makes out records and reports.
4. Performs bridge repairs, concrete work and welding as needed.
5. Supervises other road crews for highway related projects.
6. Performs other related duties as assigned.

It should be noted that the above-described posting was a third posting for the same Bridge Foreman position originally involved in Arbitrator Knudson's case.

With regard to grievance numbers 89-01, 89-02, 89-22 and 89-23, the Union asserted that the underlying postings lacked sufficient specificity concerning those positions' primary Winter duties. With regard to grievance number 89-18, Union Representative Spring stated that he did not know why this posting was grieved. The grievance form filed in case 89-18 indicated, however, that the Union grieved the underlying posting because it did not list all of the primary job duties for the Classification 3 Grader Operator opening posted. With regard to grievance number 89-20, the Union asserted this was a "generic" job posting which listed all jobs a Classification 2 could perform, thus lacking sufficient specificity regarding both Summer and Winter duties.

In contrast, the County asserted that with regard to grievance numbers 89-20, 89-22 and 89-23, none of these jobs had a specific Winter route attached to them either before or after they were posted. None of the six grievances that were the subject of the instant hearing had ever had any specific Summer routes assigned to them either before or after the disputed postings. With regard to grievance number 89-02, the County asserted that this position was never assigned a specific Winter route but the past incumbents of the job have served as Winter relief men. With regard to grievance number 89-18, 89-01 and 89-23, these positions have been assigned particular Winter snow removal routes both before and after the disputed postings. The County therefore asserted that the disputed postings were specific enough to satisfy the collective bargaining agreement.

Testimony Regarding Bargaining History and the
Proper Interpretation of Article 10

Union Representative Spring testified that his interpretation of the use of the term "primary job duties" placed in the 1987-88 agreement, required the County to list the duties which would distinguish one Class 2 job from another as well as any changes made in the job duties. For example, Spring stated that the beat, route and/or roadway boundaries to which a patrolman would be assigned, the specific Winter snow removal route or relief duties to be assigned and the specific equipment, route or relief duties to be performed in the Summer. Spring admitted that the County has the right to change the duties of a position but, he stated, that once changed, those changed primary duties must be listed on the posting for the job. In fact, Spring stated that in his view, if the County substantially changed a job's primary duties, the County would have to re-post the position and include in the posting a listing of the "new" position's primary duties.

Spring further stated that it was never a Union goal, by bringing this case, to equalize overtime but that the Union is aware that depending upon primary Winter duties and work location of a particular State patrolman job, employes in these jobs would receive different amounts of overtime for example, between 29.0 and 228.5 hours in 1988-89. Therefore, Spring testified, a primary factor in an employe's decision whether to post for a position is the location of the job. Spring stated that although employes are not entitled to operate a specific piece or pieces of equipment, the County has had a practice of regularly assigning employes to particular pieces of equipment. Although Spring stated that job postings need not contain the vehicle numbers of the equipment to be operated in the position, he believed that the employes have a right to know, on the posting, the type of equipment which will be regularly operated in the job.

Finally, Spring stated that during the negotiations for the 1987-88 contract, he did not recall any Union proposal to change Articles 1 or 6 of the agreement and the Union did not propose to insert references to routes and machinery into Article 10, although at one point the Union proposed to delete Article 10 so that the County would be tied to specifically identifying all jobs.

In regard to the 1987-88 negotiations bargaining history surrounding Article 10, the County's evidence was at slight variance with the Union's. Highway Commissioner Grigar stated that the Union did not propose to add any references to routes or equipment in Article 10 and it made no proposal to change the Article 1 - Management Rights clause. Commissioner Grigar stated that in his view, all of the postings disputed herein met the requirements of the contract as well as those of Arbitrator Knudson's award. In this regard, Grigar stated that many of the disputed positions (grievance numbers 89-02, 89-18, 89-20 and 89-22 were never regularly assigned to a specific Summer route so that no Summer routes had to be listed on those postings. In regard to Winter duties, Grigar stated that the postings underlying all of the grievances (89-01, 89-02, 89-18, 89-20, 89-22 and 89-23) were sufficiently specific as same listed "snow plowing" or "snow removal", while others listed "summer and winter maintenance of highways." In regard to the job involved in grievance number 89-02, Grigar stated that this position normally performed Winter snow plowing relief duties but no specific route was assigned to the job either before or after the disputed posting. With regard to the jobs involved in grievance numbers 89-02, 89-23, 89-18, these jobs had all been assigned specific Winter routes although those routes may have changed somewhat both before and/or after the disputed postings were made.

With regard to whether the location of the jobs should have been listed on the postings, Grigar stated that the County has always listed the location of jobs at the Landfill but that it has not consistently listed job locations on all postings and that there is no requirement that the County do this or that the County list any other descriptions on its postings other than those used thereon. Grigar noted that the Union never grieved the lack of a job site location on a job posting prior to Arbitrator Knudson's decision; that overtime has not been assigned by seniority in the County and no grievances have been filed thereon. Finally, Grigar stated that the County cannot guarantee that an employe will work at the same site and on the same equipment, although the County does try to assign employes to the same route and equipment for consistency of maintenance and so that there will be familiarity with the route/machinery. But to guarantee these things to all employes based on job postings would mean that employes might not be fully employed at times and/or that the County could not get its work done, Grigar asserted.

POSITIONS OF THE PARTIES

Union

The Union contended that prior to the appointment of the present Highway Commissioner, Mr. Grigar, it was generally understood that when a job vacancy was posted, the work that the successful posting employe would perform would be the duties of the prior incumbent of the position at the worksite where that

incumbent had regularly worked in the job. In this regard, the Union pointed to the testimony of Chris Christiansen and the posting he signed in 1978 in support for the Union's argument. However, the Union asserted that after Grigar was made Commissioner in early 1984, job postings became "generic," not specifying the primary seasonal duties of job openings. The Union noted that the County had posted jobs with specificity during the terms of the 1982-83 and 1983-84 labor agreements but not thereafter and that his lack of specificity led to the filing of the cases decided by Arbitrators Schiavoni, Engmann and Knudson.

The Union argued herein that based upon the prior arbitration decisions as well as the bargaining history surrounding the interpretation and application of Article 10 as it was and as it now is, the undersigned would merely be reaffirming Arbitrator Knudson's decision if she required the County to re-post all six disputed positions, listing specifically "the types of work, including the type of equipment to be used and the location" of the work. The Union contended, as well, that the Engmann decision made clear that it would also be appropriate for the undersigned to order the County to pay employes who should have received the jobs, the overtime payments made to those who (improperly) received the jobs. Also, the Union pointed out that the implication of Engmann's award is that the location (which determines the potential overtime that accompanies a job) is of primary importance to the employe's decision whether to sign a posting and therefore it should have been disclosed on each of the disputed postings. This is especially true, according to the Union, where a difference in the location of Winter snow removal duties has meant (1987-88) from 89.5 to 260.5 overtime hours and in 1988-89 from 29.5 to 228.5 (overtime hours) were worked by State patrolmen on their beats.

Contrary to the County, the Union specifically asserted that Arbitrator Knudson's award requires that the County list more than "snow removal," "snow plowing" or "Winter and Summer highway maintenance" for primary Winter duties for the Bridge Foreman job posting grieved in grievance number 89-23. With regard to the job posting which was the subject of grievance number 89-2 (Classification 2 position) re-posted pursuant to Knudson's decision, the Union asserted that the posting involved herein lacked "a specific Winter route assignment," although the past two incumbents had been assigned the same Winter snow route. With regard to grievance number 89-18, a Classification 3 Grader Operator position posting, the Union again asserted that the County's posting of this position failed to live up to the contract and Knudson's award, because the posting did not list "a specific Winter route" assignment as a primary duty even though the past two incumbents were assigned to the same Winter route. With regard to grievance number 89-20, involving a Classification 2 position, the Union asserted that this posting failed to list any primary seasonal duties -- no "specific Winter assignment" and no Summer equipment or duty assignment -- although the past two incumbents have had the same Winter and Summer assignments. With regard to the posting that led to grievance number 89-22, the Union claimed that although the County listed operation of a roller machine on blacktop as a primary duty, the County failed to list any primary Winter assignment, despite the fact that the last two incumbents have had the same Winter route assigned to them.

In conclusion, the Union contended that the County's actions herein show that the County is attempting to subvert the parties' agreement and to shop for an arbitrator that will accept arguments rejected in previous arbitration cases

concerning the same contract language despite the arbitral principle that arbitrator's should give great weight to prior awards construing the same contractual language.

County

The County initially contended that with regard to the Union's request for overtime pay for affected employes, the County was given no notice in the grievances that assignment of overtime was being put in issue. Further, the County asserted that the Union had the burden of proof herein to show that the County had actually failed to list all of the primary job duties in each of the disputed postings, and that the Union failed to meet this burden of proof. The County contended that the arbitrator must apply the common or approved meaning to the words of Article 10 so that "primary job duty" should be held to mean the basic or fundamental and obligatory tasks that arise from one's position, as stated in Webster's New World Collegiate Dictionary. The County pointed out that the Union's evidence in this case revealed that the Union was contending that the disputed postings allegedly violated the agreement because they failed to list the assigned snow removal route since overtime paid for snow removal would therefore vary greatly from route to route and that the postings also failed to contain the specific pieces of equipment that the person who received the job would be assigned to. The County contended that Article 10 does not specifically require it to list machinery and routes on its job postings. Further, the County asserted that since Article 21 - Hours of Work and Article 20 - Overtime do not guarantee hours or days of work or overtime and since Article 1 - Management Rights vests in the County the "right to assign employes to jobs and equipment...to assign overtime work," to read Article 10 as the Union suggests would render these other contractual provisions meaningless.

The County noted that it has traditionally made snow route assignments in the Fall of each year and that this assignment process has never been grieved by the Union. The County emphasized that the Highway Commissioner stated without contradiction that it has never been the County's practice to list the snow removal route assignment on its postings. Since snow removal is deemed an "emergency" within Article 20 - Overtime of the agreement, the County has retained the exclusive right to assign overtime unfettered by the Union's contentions herein regarding the proper interpretation of Article 10.

Thus, the County urged, neither Knudson's decision nor the language of Article 10 requires that snow routes and machines be listed on job postings as "primary" job duties. The County asserted that the Union was herein attempting to gain what it failed to gain through successive labor negotiations and the County stated that it believed that the filing of the instant grievances was an abuse of the grievance procedure contained in Article 9 of the agreement.

The County sought denial and dismissal of the grievances herein. However, in the event that the undersigned found in favor of the Union on the merits of these grievances, the County asserted that no backpay for overtime should be granted. In this regard, the County noted that it was not put on proper notice of this potential remedy through the grievance process. Furthermore, the County asserted that the undersigned should at most order a reposting of the job vacancies as a prospective remedy especially where, as here, the Union has failed to prove that any individual Union member suffered any specific loss as a result of these postings.

Reply Briefs

Union

The Union took issue with the County's dictionary definition of "primary job duties" in that the County quoted a less commonly used meaning for these terms. The Union pointed out the inconsistencies in the County's arguments. For example, although the County chose to list use of certain specific (Summer) machinery, it refused to list specific Winter machinery used by the employes who receive the jobs and the specific locations of operation for either Summer or Winter duties which (the Union contended) is required by the contract: Snow plowing, snow removal and Winter maintenance are simply insufficient descriptions, the Union asserted.

The Union contended that the County's assertions regarding the discretion to assign duties and jobs to employes was completely overstated. The Union asserted that the County is bound to list on the posting, the operation of specific equipment or a specific or routine route if such is a primary duty of the position and that the County's management or other rights under the agreement do not conflict with this assertion. In this regard, the Union noted that the County's traditional annual list of routes and equipment assigned to each employe changes very little from year to year and "duties" as above are not reassigned outside of the posting procedure.

The Union further argued that the County's claims regarding guaranteed overtime are not relevant. In fact, the undisputed evidence showed that the County's unchanged practice has been to regularly assign overtime to patrolmen on their specific routes, proving that the County's rights therein have not

been unfettered. The Union, in sum, opposed the County's suggestion that the remedy herein should be prospective only especially in this case where the County is seeking to be "rewarded for their egregious conduct."

County

The County, in its reply brief repeated and emphasized the arguments raised in its initial brief. Beyond this, the County noted that the Union had failed to indicate why deference should not be paid to the County's undisputed practice of assigning snow removal routes to employees in the Fall of each year, as such practice has never been grieved by the Union. The County further asserted that the Union had failed to show a casual or logical connection between the assignment of employees to certain snow removal routes and any level of overtime work since the Union never attempted to take into account in assessing levels of overtime, such factors as sick leaves, vacations, and employees being otherwise unavailable for overtime work.

The County also contended that the decision of Arbitrator Engmann is irrelevant to the instant case. Further, the County asserted that the Union misinterpreted Arbitrator Knudson's decision. In sum, the County again urged that the Union is hereby attempting to subvert the grievance process, to gain in this case what it failed to bargain into the labor agreement, and that the undersigned should reject these actions out of hand.

DISCUSSION

The pivotal issue in this case is whether the labor agreement and/or any prior arbitration award requires the County to list such things as job location, equipment to be used, and any Summer and Winter routes, beats or relief work in its job postings pursuant to the requirement in Article 10 that the County include the "primary job duties" of the job in its job postings. I note that the Knudson award did not address this fundamental issue and, in my view, Knudson's ruling is not dispositive of the issue in this case. In this regard, I note that Knudson specifically held only that "snow removal" should have been listed on the Bridge Foreman posting as a primary Winter duty and that the County should have listed "the primary duties of the vacant position within Classification 2" rather than using a "generic" list of duties on that posting. Beyond this, Knudson did not specify what the actual content of the two postings at issue in that case should have been.

Nor do the Schiavoni and Engmann awards control any portion of the determination of this case, as both the facts and the issues in those cases are clearly distinguishable from those underlying this case. In addition, I note that following the issuance of the Schiavoni and Engmann awards, the parties negotiated changes in the language of Article 10, the interpretation which is before me in this case.

In analyzing this case then, it is first necessary to determine what the parties may have meant by the term "primary job duties." I note that Webster's New Collegiate Dictionary (1976, G & C Merriam Co.), defines "primary" as used in the context of this case, as:

...of first rank, importance or value: principal. . .
basic, fundamental....

The same volume defines "duties" as used in the context of this case as:

...obligatory tasks, conduct, service or functions that arise from one's position (as in life or in a group).....

As noted by the County herein, the ordinary meaning of language, as reflected in volumes such as Webster's, should be applied where contractual interpretation is called for. In my view, the application of the definitions above indicate that the parties likely intended that the County's job postings should list the major tasks and functions anticipated to be performed by the incumbents of the jobs.

To determine what the major tasks and functions of the jobs in question here are, I believe we must look, in part, to the appendices of contract. In this regard, it is significant that the parties have listed the specific "positions" that are included in each "classification" in the appendices to the agreement. Notably, the positions listed in the contract describe not only operators of specific types of equipment, such as rubber tired tractors and large rollers, graders, gradalls, chip spreaders, pushers, crawler type dozers etc., but also these appendices list what would normally be considered specific work tasks such as "man heating road oil," "cement finisher" etc. The appendices also list what would normally be considered true positions, such as mechanic, foreman, custodian, laborer, etc. The fact that these various items are all listed under the term "position" in the contractual appendices and the fact that operators of different equipment appear in different classifications and are therefore paid at different rates, support the Union's argument that some listing in job postings of the equipment or functions that the County anticipates will be regularly operated by the incumbent of the position should be listed, in the same fashion as such operators are listed in the contractual appendices.

However, the Union goes too far when it asserts that as a part of the "primary job duties" the County must list equipment numbers and the location of the job. The specific numbers of specific vehicles do not themselves constitute primary job tasks or functions, 3/ nor does the location of a job normally constitute a primary function, task, conduct or service of a position. 4/ In this regard, I note that although it is no doubt true that the amount of overtime connected with a job is an important consideration to those who may potentially post for a job, neither overtime nor job location can be said to be a primary job task or function.

Finally, in regard to whether the County must list the specific Summer and Winter beats or relief work on job postings, I believe that it would be sufficient for the County to list snow removal or snow plowing, and snow plow relief work or snow removal relief work to meet contractual requirements. I do not believe that Article 10 requires the County to list the actual beat described by its roadway boundaries for each job, since the routes can be and have been changed by the County, and, as described above, the actual beat location does not constitute a primary job duty. It should go without saying that if there is a primary Summer job duty (such as bridge repair), the primary Summer job duty or duties should be listed on each posting just as the primary Winter duties (such as snow removal or snow removal relief work) should be listed on each posting.

In sum, I conclude that with regard to grievance number 89-01 and 89-23, the County's postings were sufficiently specific regarding primary Winter duties (the only point complained of by the Union on these grievances), and the County should not have to re-post these openings. In regard to grievance number 89-02, the County must repost this opening and list as a primary, duty snow removal relief work, which the County admitted was and is regularly performed by the incumbent. Since the Union had no quarrel with the primary Summer duties listed on the posting, those need not be fleshed out further on the new posting. In regard to grievance number 89-18, I am satisfied that this posting was sufficiently specific regarding all primary job duties and this opening need not be re-posted. 5/ With regard to grievance number 89-20, this posting did not list the specific primary duties connected with the job.

3/ In addition, the evidence also clearly showed that the County has had a past practice of assigning specific equipment annually to employes which practice the Union has never grieved.

4/ The fact that the County has made it a practice of listing the Landfill as a job location on all Landfill opening postings does not require the County to list job locations for all other jobs. It is clear that the County (properly) perceives that the duties performed at the Landfill are significantly different from those performed at any other County work sites.

5/ I note that Union Representative Spring could find nothing wrong with this posting when he was questioned regarding it and he admitted that he did not know why the posting had been grieved.

Rather, this posting appears to be a "generic" type of posting and it must therefore be re-posted and list any snow removal or snow removal relief work connected with the position, if any, as well as list the primary types of equipment regularly operated in the Summer, if any, as listed in the contractual appendices. With regard to grievance number 89-22, the Union complained only that the primary Winter duties were not listed on the posting. The posting stated "during (sic) Summer and Winter maintenance of highways." In my view, this language is insufficient to indicate that the incumbent would be expected to perform snow removal or snow removal relief work and the job should therefore be re-posted to clearly reflect that the incumbent will be expected to perform snow removal or snow removal relief work, whichever is applicable. 6/

I turn now to the monetary relief the Union seeks in this case. The Union has failed to prove here that any specific employe was injured and to what extent the injury went by the County's failure to post the jobs in question with sufficient specificity. The Union merely placed in evidence a list of overtime hours worked by eight H.D. employes for the years 1986 through 1989. As properly noted by the County, the Union's overtime figures did not take into account any other variables which would affect each employe's ability to earn overtime such as sick leave, vacation and other employe unavailability. In these circumstances, the Union has failed to prove that any monetary relief is due and appropriate in this case. Therefore, no such monetary relief shall be ordered here.

Based upon all of the relevant evidence and arguments herein and my analysis thereof, I issue the following

AWARD

The Employer violated the contract by the wording of the job postings connected with grievance numbers 89-02, 89-20 and 89-22 and the County must repost those job openings (as described above). The grievances thereon are therefore sustained.

The Employer did not violate the contract by the wording of the job postings connected with grievance numbers 89-01, 89-18 and 89-23. The grievances thereon are therefore denied and dismissed in their entirety.

Dated at Madison, Wisconsin this 7th day of December, 1990.

By _____
Sharon Gallagher Dobish, Arbitrator

6/ I need not and do not herein address the meaning of the remainder of the language of Article 10 not specifically put in issue here. In addition, regarding Union Exhibits 9, 9A and 14 I can find no basis on this record upon which these documents could be found relevant. Therefore, these documents have not been considered herein.