

BEFORE THE ARBITRATOR

 In the Matter of the Arbitration :
 of a Dispute Between :
 LOCAL 60, AFSCME, AFL-CIO : Case 27
 : No. 44653
 : MA-6376
 and :
 THE CITY OF MIDDLETON :
 :

Appearances:

Mr. Darold O. Lowe, Staff Representative, on behalf of the Union.
Melli, Walker, Pease and Ruhly, by Mr. Jack D. Walker, on behalf of the City.

ARBITRATION AWARD

The above-entitled parties, herein the Union and City, are privy to a collective bargaining agreement providing for final and binding arbitration before a Wisconsin Employment Relations Commission staff arbitrator. Pursuant thereto, I heard this matter on December 21, 1990, in Middleton, Wisconsin. The hearing was transcribed and both parties filed briefs which were received by February 5, 1991.

Based upon the entire record, I hereby issue the following Award.

ISSUES:

1. Is the grievance arbitrable?
2. If so, did the City violate the contract when it assigned grievant David Beck to perform certain custodial duties at City Hall and, if so, what is the appropriate remedy?

DISCUSSION:

The facts here are short and simple.

For roughly 13 years or so, bargaining unit employes performed certain custodial duties in City Hall when the regular janitor was on vacation or not present. The Union throughout that time never grieved such work assignments.

On or about July 11, 1990, 1/ the regular janitor was absent from work and grievant Beck was assigned by supervisor Jerry Hady to fill in for him for approximately two weeks. Beck is classified as a Street Crewman and his job description does not expressly refer to performing any custodial duties. At the time, Beck told Hady, "No, I don't want to do it," to which Hady replied, "You've got to do it." Beck thereafter performed the custodial tasks assigned to him.

Hady for many years before had always asked Street Department employes whether they would like to fill in for the janitor whenever he was absent. July apparently marked the first time that Hady assigned such work over an employe's objection.

Beck filed the instant grievance on July 11, claiming, "A Crewman in the Street, Water or Parks Department doesn't have to perform the duties of a City Hall janitor. We feel the duties of the City Hall janitor doesn't fall under our job description." By letter dated July 19, Henry F. Simon, the then-Director of Public Works, denied the grievance and informed union officer Dennis Hatch that said assignment was consistent with past practice of where Street Department employes had performed similar work.

Hatch in fact acknowledged here that Hady in the past told Street Department employes that, "He gave us an option as to who would want to go up to the City Hall to do the work", and that it always was clear that someone in the group had to do it. He added that the voluntary nature of the work only centered upon who within the group would do it and that Beck was the first employe to flat-out refuse until expressly ordered by Hady.

Hatch also admitted that Street Department employes moved voting machines during municipal elections; moved books for the library; cleared off snow from city sidewalks if it is over two inches deep; moved materials for the Police Department; moved library tables during the annual fair; and picked up trash in City Hall.

All this shows, as the City rightly fully points out, that a well-

1/ Unless otherwise noted, all dates hereinafter refer to 1990.

developed past practice has arisen under which Street Department employes regularly perform duties which are not limited to those normally performed by Street Department employes elsewhere.

Street Crewmen such as Beck have done so in accord with that part of their job description which expressly states: "Does related work as required." Here, said work has been required for at least thirteen (13) years. Accordingly, it must be concluded that the City's assignment of janitorial duties to Beck was in accord with this well-developed past practice and that it therefore did not violate the contract when it did so. 2/

In light of the above, it is my

AWARD

That the City did not violate the contract when it assigned grievant David Beck to perform certain custodial duties at City Hall.

Dated at Madison, Wisconsin this 24th day of June, 1991.

By Amedeo Greco /s/
Amedeo Greco, Arbitrator

2/ In light of the ultimate disposition of this matter, it can be assumed, arguendo that the grievance is arbitrable.