BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
GRANT COUNTY PROFESSIONAL EMPLOYEES UNION, LOCAL 3377-A, AFSCME, AFL-CIO	Case 37 No. 44592 MA-6353
and	
GRANT COUNTY	

Appearances:

Mr. Michael J. Wilson, Representative, Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.

Godfrey & Kahn, S.C., Attorneys at Law, by Mr. Jon E. Anderson, appearing on behalf of the County.

ARBITRATION AWARD

Grant County Professional Employes Union, Local 3377-A, AFSCME, AFL-CIO, hereinafter referred to as the Union, and Grant County, hereinafter referred to as the County, are parties to a collective bargaining agreement which provides for the final and binding arbitration of disputes arising thereunder. The Union made a request, with the concurrence of the County, that the Wisconsin Employment Relations Commission designate a member of its staff to act as arbitrator to hear and decide a grievance over the meaning and application of the terms of the agreement. The undersigned was so designated. Hearing was held in Lancaster, Wisconsin on March 12, 1991. The hearing was transcribed and the parties filed post-hearing briefs and reply briefs, the last of which were received on July 22, 1991.

BACKGROUND

For some period of time the County had considered changing to a different form for the delivery of services in the Social Services Department. Although this topic came up in 1989 in negotiations for the instant agreement, the County indicated it had no plans to implement a change at that time. By a memo dated June 14, 1990, the County notified the Union representative of a change in the delivery services to a family based approach as stated as follows:

> For several months we have discussed the philosophy of delivery of services and job duties in the agency. Effective June 18, 1990, the job duties for the following individuals will be changed: Jim Gay, Dave Janney, Rita Schmitz, Tom Hughey, and Lois Patterson. Attached are the new position descriptions outlining the job duties for those individuals. The respective supervisors of those individuals will meet with the team

> to outline the transition plan, training plan and office assignments. The county is willing to negotiate the impact of this reorganization.

That same day, the County informed each of the above named employes by memo that their assigned job duties would change due to the change in the delivery of services. Each memo stated:

> For several months we have discussed the philosophy of delivery of services and job duties in the agency. Effective June 18, 1990, your job duties will be changed. Attached you will find a new position description outlining those job duties. Your supervisor will meet with you to outline the transition plan, training plan, and office assignment.

Following the change in assigned duties, four separate grievances were filed. On June 27, 1990, Union President David Janney filed a group/class grievance over the assignment of substantially new duties to the five individuals noted above. On June 28, 1990, Jim Gay filed a grievance over the change in his assigned duties. On July 9, 1990, President Janney filed a group grievance over the Family Based Implementation Plan 1990. On July 12, 1990, David Janney filed an individual grievance over the change in duties assigned to him. These four grievances were processed through the grievance procedure and were consolidated for time-frame purposes in a memo dated July 30, 1990 to the County's Director of Social Services by President Janney which stated as follows:

> This written document will serve as notice of our meeting on July 25, 1990 in which the Employer and the Union agreed to "collapse" the time frames of the Union group and individual grievances on _____ (sic) violations of the current Union contract in regards to implementation of Family Based Services and reassignment of duties/responsibilities.
>
> Consolidating the grievances into one time frame is for the purpose of convenience of scheduling. However, each grievance is separate and action taken on one grievance will not affect any of the other grievances for either party.

The County heard all four grievances on September 4, 1990 and denied the grievances on September 5, 1990. On September 12, 1990, the Union sent the following memo to the County's Chairman of the Employee Relations Commission:

> RE: Appeal of Union Grievance (Reorganization)
>
> Dear Chairman Waters:
>
> Pursuant to Section 5.02 of the Agreement, AFSCME Local 3377-A hereby gives notice of its intent to appeal the Union grievance regarding the reorganization of the Social Services Department to binding arbitration.

On September 24, 1990, the Union sent the County's attorney the following letter:

RE: AFSCME Local 3377-A Reorganization Grievance

Dear Jon:

As it has been difficult to connect with you by telephone, I am taking this opportunity to clarify (if such is necessary) the appeal of the above grievance to binding arbitration. It is the position of Local 3377-A that the appeal of the Union grievance, as set forth in the September 12, 1990 letter, refers to all of the pending grievances regarding the reorganization dispute.

If the County has a different understanding with respect to the consolidation of these grievances into a single proceeding, please contact me as to the County's position.

On September 28, 1990, the County's attorney responded to the September 24, 1990 letter which stated, in pertinent part, as follows:

Thank you for your letter of September 24, 1990. Please be advised that Grant County does not share your view that the four grievances heard by the Employee Relations Committee on September 4, 1990 have been consolidated for purposes of arbitration. Your letter of September 12, 1990 does not include any such reference. In fact, your letter only makes reference to the union grievance regarding reorganization and makes no reference to the three other grievances heard on September 4, 1990.

. . .

Your letter does, however, suggest such a consolidation and there may be some valid reasons for same. With your agreement, I will treat your letter as a request for consolidation with full reservation of any procedural objections which Grant County may have concerning the processing of the four (4) grievances heard on September 4, 1990. This issue will be presented to the Employee Relations Committee at its October 4, 1990 meeting. Thereafter, I will respond to you.

The Union responded by a letter dated October 1, 1990 as follows:

> I am in receipt of your letter of September 28, 1990. Given the apparent disagreement regarding consolidation of the four (4) reorganization grievances, the Union hereby notifies you of its intent to appeal all four (4) grievances to binding arbitration.
>
> Should the County's ERC agree to the consolidation of the grievance, we will proceed only on the consolidated matter.

Thereafter, the County responded as follows:

> This letter is to advise you that the Employee Relations Committee of the Grant County Board of Supervisors, at its meeting on October 4, 1990, agreed to the union's request to consolidate the four grievance (sic) which were heard by the Committee on September 4, 1990. In doing this, however, the ERC wants the union to know that the ERC does not waive any procedural issues pertaining to the processing of these grievances to arbitration by the union.
>
> We look forward to scheduling these matters for arbitration.

ISSUES

The parties were unable to agree on a statement of the issues. The Union framed the issue as follows:

> Did the Employer violate the Agreement by any of its changes made in job descriptions and/or employe assignments as a result of the family-based implementation plan?
>
> If so, what is the appropriate remedy?

The County stated the issue thusly:

1. Were the grievances, (exhibits 8, 9, and 10) appealed to arbitration in accordance with applicable labor contract requirements?

2. Did the County violate Section 2.01 of the labor contract when it reassigned the responsibilities of employes in June, 1990?

   If so, what is the appropriate remedy?

The undersigned frames the issues as follows:

1. Were the three grievances (Exs. 8, 9, and 10) timely appealed to arbitration in accordance with the applicable labor agreement requirements?

2. Did the County violate the parties' collective bargaining agreement when it changed the job duties and responsibilities of employes in June, 1990, as a result of the family based implementation plan?

If so, what is the appropriate remedy?

PERTINENT CONTRACTUAL PROVISIONS

ARTICLE 2 - MANAGEMENT RIGHTS

2.01 It is agreed that the management of the County and the direction of employees are vested exclusively in the County, and that this includes, but is not limited to the following: to direct and supervise the work of employees; to hire, promote, demote, transfer or lay-off employees; to suspend, discharge or otherwise discipline employees for just cause; to plan, direct and control operations; to determine the amount and quality of work needed, by whom it shall be performed and the location where such work shall be performed; to determine to what extent any process, service or activities of any nature whatsoever shall be added or modified; to change any existing service practices, methods and facilities; to schedule the hours of work and assignment of duties; and to make and enforce reasonable rules.

2.02 The County's exercise of the foregoing functions shall be limited only by the express provisions of this contract and the County and the Union have all the rights which they had at law except those expressly bargained away in this Agreement.

. . .

ARTICLE 5 - GRIEVANCE PROCEDURE

. . .

5.02 Procedure. Grievances shall be processed in the following manner: All times set forth in this article, unless otherwise specified, are working days and are exclusive of Saturdays, Sundays and any holiday recognized by this Agreement. All time requirements set forth in this article may be waived or extended by mutual written agreement of the parties.

. . .

Step Four. Arbitration.

A) General: If the grievance is not settled at the third step, the Union may proceed to arbitration by informing the chairperson of the County Employee Relations Committee in writing within fifteen (15) days from the date the written response of the County Employee Relations Committee was received or was due, that they intend to do so.

. . .

ARTICLE 6 - DISCIPLINE

6.01 The Employer shall not suspend, discharge or otherwise discipline any employee without just cause. When such action is taken against an employee, the employee will receive written notice of such action at the time it is taken, and a copy will be mailed to the Union within two (2) calendar days, except that written notice of oral discipline shall be given to the employee and the Union as soon as possible after the action is taken. Such notice shall include the reasons on which the Employer's action is based.

ARTICLE 9 - JOB POSTING

9.01 Job vacancies in the bargaining unit due to retirement, quits, new positions, transfers or whatever reason, that the Employer intends to fill, shall be posted in each department for a period of seven (7) working days. The posting shall provide information concerning the qualifications needed for the position, a brief description of the job duties, the salary range, starting date, and the closing date for applications. A copy of each posting shall be provided to the president of the Union.

. . .

Appendix A Continued
Hourly Rates of Pay Effective January 1, 1990

A. Position	Start	After 6 Mos.	After 12 Mos.	After 24 Mos.
Social Worker I	7.98	8.36	8.79	9.25
Social Worker II	9.25	9.59	9.92	10.26
Social Worker III	11.74	12.04	12.38	12.71

UNION'S POSITION

The Union contends that all four grievances were appealed to arbitration within the time limits. It points out that the County's Employee Relations Committee responded to each of the four grievances by separate letter on September 5, 1990 and pursuant to Article 5, Step 4, the Union had 15 work days to file an appeal to arbitration. It admits that the September 12, 1990 letter states "Union grievance" in the singular but the missing "(s)" after "grievance" is not a fatal defect. It maintains that the Union's representative made efforts to contact the County's legal representative to clarify the matter and sent a letter dated September 24, 1990 which clearly

stated that all four grievances were being appealed to arbitration. The Union asserts that the September 24, 1990 letter adequately clarified that all four grievances were being appealed by the Union and that any dispute as to consolidation or the County's September 28, 1990 letter with respect to its view as to the appeal is not tantamount to cancellation of the timely notice of appeal. It insists that the merits of all four grievances may be heard as they were timely appealed.

As to the merits, the Union contends that the County violated Article 9, Section 9.01 of the agreement by failing to post job vacancies which occurred due to the revised job descriptions which resulted from the reorganization. It submits that job posting requires a posting of job duties even though the job classification does not change. It claims that the reclassification of employes need not be posted but a change in job duties must be posted because Section 9.01 utilizes an array of terms such as "retirement" "quits," "new positions," "transfer" and "whatever reason" to cover all contingencies as to job vacancies. It alleges that Jim Gay was assigned entirely new duties going from Juvenile Court Intake to Youth and Family Emphasis. It argues that the Juvenile Court Intake position remains and was assigned to two Social Worker II's, Tom Hughey and Lois Patterson, and later, Marla Schwaab replaced Patterson. It notes that seniority was totally disregarded. It also points out that Dave Janney's and Rita Schmitz's jobs were changed dramatically. The Union contends that the agreement does not prevent the County from reorganizing or revising job descriptions but it is obligated to follow the job posting requirements when it transfers employes or changes employe assignments "for whatever reason."

The Union claims that the Social Worker II's who are now doing the Juvenile Intake work are performing the work of a higher classification, namely Social Worker III, and should be paid at the higher level. Additionally, the Union maintains that merely because Social Worker III's are paid more money does not automatically permit the assignment to them of new and different duties. The Union asks that the grievances be sustained and that appropriate remedies be ordered.

COUNTY'S POSITION

As to the timeliness of three of the grievances, the County takes the position that the Union's September 12, 1990 letter only appealed one grievance to arbitration and the Union's September 24, 1990 letter was not an appeal of any grievance to arbitration but merely a statement of the Union's position that all four grievances were appealed and this does not cure the procedural defect. It contends that the contract provides clear time limits which the Union failed to meet and the three grievances must be dismissed as untimely.

With respect to the merits, the County contends that the contractual Management Rights Clause, Article 2, is a broad expression of the rights reserved to the County, and unless the agreement expressly abrogates these rights, the County retains all rights to manage its affairs. The County notes that the language of Section 2.01 expressly reserves wide latitude to the County in determining the job duties and assignments of its employes. It insists that the County's authority in these areas must be sustained because there is no specific language in the contract restricting that authority. The County submits that bargaining history supports its position because in the negotiations for the 1989-90 contract the Union made a proposal that the County continue its then current organizational structure unless otherwise agreed upon by the Union but this proposal was never agreed to and the contract language on Management Rights was not changed. The County points out that the Union's witnesses at the hearing admitted the County has broad authority to determine the job assignments of employes. It further asserts that arbitral authority substantiates its right to determine the specific tasks and responsibilities of employes. It asserts that where the parties have not negotiated detailed descriptions of job content, arbitrators have permitted management wide authority to assign work of the same general type that is incidental to the job. It emphasizes that the parties' collective bargaining agreement does not contain any enumeration of the job content or detailed job descriptions which would serve as a limitation of the County's authority to determine job assignments. It submits that the employes job classifications have not changed. It refers to Appendix A of the agreement which sets forth the wage and classification schedule which lists Social Worker I, II and III with their respective hourly rates and does not impose any limitation on the County's right to determine work requirements or job content. The County contends that as it has the right to determine work assignments, the right to change such assignments is included in the right to determine the assignments. The County concludes that the grievance must be denied because it has merely exercised its retained rights and no express provision serves as a limitation of these rights.

The County maintains that just because employes have had certain duties assigned them for a period of time does not negate the County's prerogative to change these duties especially where the duties are not outlined in the four corners of the contract. It asserts that any claim of past practice must be rejected as this cannot negate clear contract language.

The County requests that the Union's emotional appeals be rejected. It notes that no claim has been made that the employes' workload is excessive or that the work performed does not relate to the job classification of the employe. It asserts that the employes are performing professional social work and the change in duties flows from the reorganization and restructure of the department. The County maintains that in making changes in job content due to the change in the method of the delivery of services, it assigned leadership responsibilities to the most logical candidates, namely the highest rated employes, Social Worker III's.

The County contends that job posting under Article 9, Section 9.01, was not required as no job vacancies were created which triggered the obligation to post. It argues that there were no job vacancies as no one quit or retired and no positions were created, i.e., no increase in head count. It claims that no job was created as spelled out in the contract, so posting was not required. The County takes the position that it is not required to post modifications to jobs when it acts in accordance with its management rights, so Article 9 does not apply.

The County asserts that the Union's raising the issue of pay for two social workers is not properly before the undersigned because an attempt was made to amend the grievance to include this allegation on September 4, 1990, which was rejected in the County's responsive letter dated September 5, 1990. The County claims that it acted within the authority reserved to it under the express terms of the contract and no express provision limited its conduct in making the reassignment of duties and it asks that the grievance be denied.

DISCUSSION

Timeliness

The first issue to be decided is whether the Union timely appealed three of the four grievances to arbitration. It is undisputed that one grievance, designated the Union Grievance (Reorganization), was timely appealed and is properly before the undersigned. Article 5, Section 5.02, Step 4, A. provides that the Union may proceed to arbitration by informing the County's Employee Relations Committee's chairperson that it intends to appeal a grievance 15 days after denial of the grievance by the Committee. Section 5.02 specifies that days means work days. The four grievances were all denied by a letter dated September 5, 1990. 1/ The Union had until September 26, 1990 to give the County notice of its intent to proceed to arbitration. By a letter dated September 12, 1990, the Union notified Chairman Waters of its intent to appeal the Union grievance regarding reorganization to arbitration. 2/ This was clearly within the time limits set forth in the agreement. Counsel for the County was sent a copy of this notice. 3/ It is noted that in the September 12, 1990 letter the word grievance was used in the singular. There apparently was some misunderstanding about what the September 12, 1990 letter referred to. A letter dated September 24, 1990 was sent to the County's counsel indicating that the September 12, 1990 letter referred to all four grievances. 4/ The County contends that this letter merely states a position on consolidation and is not an appeal and is not properly directed to the Committee Chairman. Even if the letter merely states a position, that is enough to satisfy the requirement of giving the County notice of the Union's intent to proceed to arbitration on all four grievances. The letter of September 24, 1990, however states more than a mere position, it clarifies and relates back to the September 12, 1990 letter indicating that the Union's intent is to appeal all grievances. All of this occurred within the 15-day period required for an appeal. Section 5.02 only requires notice of the Union's intent to proceed to arbitration. A review of the letter leads to the conclusion that the County had been given notice of the Union's intent to

1/ Exs. 8, 9, 10 and 11.

2/ Ex.-12.

3/ Id.

4/ Id.

appeal all of the grievances to arbitration within the proper time limits. Although the second letter was not sent to the Chairman of the Committee, this is not fatal as the second letter relates back to the initial letter making clear the Union's intent in the initial letter was to appeal all grievances. Inasmuch as the Union gave notice of its intent to appeal all grievances within the 15-day time period, it is concluded that all the grievances are timely and the County's objection to the three on the basis of timeliness is rejected. Therefore, all four grievances are properly before the undersigned.

Merits

It is generally held that in the absence of an express limitation in the parties' collective bargaining agreement, the employer has the discretion to change the individual duties and job content of employes. 5/ The Management Rights clause of the parties' contract grants the County broad authority "to plan, direct and control operations; to determine the amount and quality of work needed, by whom it shall be performed....". The right to change job content and duties is supported by the above language. Even so, the Management Rights Clause specifically allows the County "to schedule the hours of work and assignment of duties".... (Emphasis added) The right to change duties may be restricted where the contract contains detailed descriptions of job content which have been negotiated by the parties. Here, however, the agreement does not contain detailed descriptions of job content and the majority rule is that the mere listing of classifications without detailed job content descriptions does not limit an employer's discretion to change job content. 6/ The County, absent any express restrictions, may abolish job classifications, establish new ones or combine jobs. 7/ As noted above, the mere listing of job classifications does not freeze jobs or preclude the County from making changes in job content. 8/ Thus, a review of the collective bargaining agreement indicates that the County has specifically retained the right to change job content without restrictions and especially where it has changed duties in response to a change in delivery of services. 9/

The main thrust of the Union's argument is that the County violated Article 9 of the parties' agreement by not posting the positions or jobs after the specific job duties were changed. The first sentence of Section 9.01 states as follows: "Job vacancies in the bargaining unit due to retirements, quits, new positions or whatever reason, that the Employer intends to fill, shall be posted...". (Emphasis added) The Union has asserted that a vacancy

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5/ See Elkouri & Elkouri, How Arbitration Works, (4th Ed., 1985), at 500; Hill & Sinicropi, Management Rights, (BNA, 1986), at 393.

6/ Hennepin Paper Co., 83 LA 217 (Gallagher, 1984).

7/ Square D. Co., 46 LA 39 (Larkin, 1966); Sealright Company, Inc., 82-2 ARB para 8533 Yarowsky, 1982).

8/ Magic Chef, Inc., 84 LA 15 (Craver, 1984). For a thorough discussion of the rationale for the majority position, see Omaha Cold Storage Terminal, 48 LA 24 (Doyle, 1967), where numerous cases are cited and discussed.

9/ The undersigned's decision is based only on the language of the agreement which should not be construed as any limitation on the right of the Union to negotiate the impact of a change in job duties for any classification under the Chapter 111.70, Stats. See Sewerage Commission, Dec. No. 17025 (WERC, 5/79).

was created by the reassignment of duties which falls within the term "whatever reason." The Union has misplaced its emphasis on "whatever reason" rather than on "vacancy." The mere change in assignments does not create a vacancy. For example, a small change in job duties would not create a vacancy so that the job would have to be posted. Article 9 refers to vacancy and a vacancy is a position that the County intends to fill with a new hire. The cause of the vacancy might be a quit, retirement, new position or some other reason which causes the position to be vacant. Where the County intends to fill it, it must be posted first so interested employes can post for it. No vacancy is created simply by a change in job duties of the position, otherwise new employes could bump incumbents. In summary, there were no vacancies created by reassignment of duties as there were no positions created that the County intended to fill by a new hire as all the positions were filled. As no job vacancy occurred, the County did not have to post anything and Section 9.01 did not apply and has not been violated.

Similarly, the argument that a change in job duties constituted a transfer is not persuasive. A transfer involves a movement from one job to another. Here, the reassignment of duties was limited to the same job performed by the same incumbent and no posting is required by the Agreement.

Although Jim Gay asserted his job was still being performed by the County, it would be more accurate to state that the collection of duties formerly performed by him were now being performed in part by other employes, namely two Social Worker II's. Gay's old job as formerly constituted did not exist after the change in the County's method of delivery of services. Nothing in the Agreement required the County to maintain the Juvenile Intake duties in the same position as before the change in its operations. So Gay's "job" or "collection of duties" did not exist and this argument is not persuasive.

The Union raised the issue of pay for the Social Worker II's as they were performing at the Social Worker III level. As noted above, the Social Worker II's jobs were reconstituted and the Union has the right to negotiate the appropriate wage for the performance of their respective duties. 10/ Here, the evidence failed to establish that any Social worker II was performing the same work as a Social Worker III, and therefore, no violation of the parties' Agreement has been established.

In summary, based on the general principle, reinforced by the Management Rights clause, that the County may change the duties assigned to a position, especially in the absence of an express prohibition in the contract, it is concluded that the County may change the duties assigned to employes as part of its change in the method of delivering services and such change in assignment does not constitute a vacancy and posting is not required and thus, the County did not violate the parties' collective bargaining agreement.

Based on the above and foregoing, the record as a whole and the arguments of the parties, the undersigned issues the following

AWARD

1. The grievances were timely appealed to arbitration in accordance with the applicable labor agreement requirements.

2. The County did not violate the parties' collective bargaining agreement when it changed the job duties and responsibilities of employes in June, 1990, as a result of the family based

10/ Id.

implementation plan, and therefore all the grievances are denied.

Dated at Madison, Wisconsin this 21st day of August, 1991.

By _____
Lionel L. Crowley, Arbitrator