BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
TEAMSTERS LOCAL 75	Case 22 No. 46673 MA-7040
and	
THE VILLAGE OF HOWARD	

Appearances:
Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by Mr. John J.
Duffy, Holman, Peterson, Wieting & Calewarts, by Mr. Dennis M. Duffy, on behalf

ARBITRATION AWARD

The above-entitled parties, herein the Union and Village, are privy to a collective bargaining agreement providing for final and binding arbitration. Hearing was held on February 27, 1992, in Howard, Wisconsin, where it was not transcribed. Briefs were filed by April 13, 1992.

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

ISSUE

Since the parties were unable to jointly agree upon the issue, I have framed it as follows:

> Did the Village violate Section 7.05 of the contract by using seasonal non-bargaining unit employes to perform groundskeeping duties on the Village's athletic field and, if so, what is the appropriate remedy?

DISCUSSION

The Village operates several recreational parks, some of which have athletic fields.

For a number of years, the Village has used seasonal employes who are outside the bargaining unit to work in the parks from about May 15 to September 15. In addition, and with the Union's consent, seasonal employe Roy Evans and his successor for some time worked past September 15 on the athletic field in Howard Memorial Park.

In September-October, 1991, the Village used three seasonal employes to work on one of the athletic fields. Said work - which consisted of moving dirt, aeration, general cleanup, replacing turf, striping, etc. - is normally performed by bargaining unit park and maintenance employes.

The instant grievance was filed on October 7, 1991, and asserted that said work was bargaining unit work and that the Village's assignment to the seasonal employes violated Article 7 of the contract.

In support thereof, the Union primarily asserts that the parties expressly negotiated over this issue and that they then agreed that the work here could only be performed by bargaining unit employes. As a remedy, the Union requests that the Village be ordered to cease and desist from making similar work assignments in the future.

The Village, in turn, contends that the contract language on its face is

clear and unambiguous in providing that non-bargaining unit personnel can perform the work in dispute and that, furthermore, a past practice supports its assignment.

The resolution of this issue primarily turns upon Section 7.05 of the contract which provides:

> 7.05 The Employer may employ seasonal personnel to perform work assignments, consistent with the needs of the Employer between May 15th and September 15th of each year. Furthermore, the Union recognizes the right of the Employer to employ personnel for the purpose of **working** on athletic fields and ice rinks. In the Street, Water, Sanitation and Mechanic Departments, the employer may hire seasonal employees in a number not to exceed 40% of the total bargaining unit employees. The Park Department is specifically excluded from the "40%" restriction and may hire the number of seasonals it deems necessary. (Emphasis added). 1/

The key words in dispute here involve the underlined sentence above. Thus, the Union contends that it only relates to Howard Memorial Park and the work performed there by Roy Evans and his successor. But for that one exception, the Union maintains that no seasonal employes under this language can work on athletic fields after September 15, as the reference to "athletic fields" only means umpires, referees, scorers and coaches. The Village, however, asserts that its "right to hire for athletic field work is expressly qualified by 'furthermore' or in addition to the limits on seasonal personnel."

Part of the problem here centers on the use of the word "working" in this second sentence: does it refer to coaches, referees, umpires and scorers, as the Union asserts, or to physically working and/or repairing the fields, as the Village contends.

The record shows that Evans and his successor regularly worked past September 15, and that, except for them, only several other employes worked 7 1/2 hours after September 15. One of the latter, though, only worked 7 1/2 hours; another worked at Howard Memorial Park; another was the subject of an arbitration which resulted in the Village agreeing to settle by paying a certain sum of money to the grievants; and another is the subject of a pending grievance. This hardly represents a binding past practice.

The Union's claim is buttressed by the testimony of Union Steward and Street Foreman Kenneth R. Pamperin who testified on behalf of the Union that he sat in on the negotiations leading up to Section 7.05 and that the parties then agreed that the second sentence only referred to Evans and the work he performed at Howard Memorial Park. Pamperin added that the Union "wanted a handle on this" - i.e. limits on how long seasonals could work - and that as far as he knew, no seasonals other than Evans and his successor had ever before worked past September 15 doing the kind of routine maintenance work here in dispute.

Union Representative Danny McGowan, who also sat in on the negotiations leading up to this language, testified that the City at that time expressly

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1/ This language tracks a March, 1988 Memorandum of Understanding the parties agreed to dealing with this general subject.

agreed that seasonals other than Evans would not be permitted to perform bargaining unit work after September 15.

The only Village witness testifying to the contrary was Parks and Recreation Director Marianne Pigeon who said that, as far as she knew, the Village never made that commitment at any of the bargaining sessions she attended. The problem, however, is that Pigeon herself admitted that she missed several of the meetings where this issue was discussed, thereby indicating that an agreement on this issue could have been reached in her absence.

Accordingly, Pamperin and McGowan's bargaining history testimony was uncontradicted. Their testimony is therefore dispositive of this matter, since the contract itself is ambiguous on this score 2/ and since there is no well-defined past practice supporting the Village's position. 3/

In light of the above, it therefore is my

AWARD

That, but for Howard Memorial Park, the Village henceforth is precluded from using non-bargaining unit seasonal employes to perform any bargaining unit work after September 15.

Dated at Madison, Wisconsin this 24th day of July, 1992.

By Amedeo Greco /s/
Amedeo Greco, Arbitrator

2/ Contrary to the Village's claim, I find that Article 7 is not clear and unambiguous and that, as a result, it is proper to consider parol evidence.

3/ It hence is immaterial that the Union in 1990 sought to better clarify this language to reflect the parties' earlier understanding of what it meant.

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