

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration	:	
of a Dispute Between	:	
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GENERAL TEAMSTERS UNION, LOCAL 662,	:	
affiliated with the INTERNATIONAL	:	Case 72
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,	:	No. 48799
WAREHOUSEMEN AND HELPERS OF AMERICA	:	MA-7709
	:	
and	:	
	:	
COUNTY OF CLARK, for the CLARK COUNTY	:	
HEALTH CARE CENTER	:	
	:	

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Appearances:

- Ms. Naomi E. Eisman, Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, 1555 North Rivercenter Drive, Suite 202, P.O. Box 12993, Milwaukee, Wisconsin 53212, appearing on behalf of General Teamsters Union, Local 662, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, referred to below as the Union.
- Ms. Kathryn J. Prenn, Weld, Riley, Prenn & Ricci, S.C., Attorneys at Law, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, appearing on behalf of County of Clark for the Clark County Health Care Center, referred to below as the County or as the Employer.

ARBITRATION AWARD

The Union and the Employer are parties to a collective bargaining agreement which was in effect at all times relevant to this proceeding and which provides for the final and binding arbitration of certain disputes. The parties jointly requested that the Wisconsin Employment Relations Commission appoint an Arbitrator to resolve a dispute reflected in a grievance filed by Cheryl Broda. The Commission appointed Richard B. McLaughlin, a member of its staff. Hearing on the matter was held on May 21, 1993, in Owen, Wisconsin. The hearing was not transcribed, and the parties filed briefs and reply briefs by August 10, 1993.

ISSUES

The parties did not stipulate the issues for decision. I have determined the record poses the following issues:

Did the County violate the collective bargaining agreement by not posting the position of Maintenance Secretary?

If so, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

ARTICLE 1 - RECOGNITION

Section A. The Employer hereby recognizes the Union as the exclusive collective bargaining agent for the purpose of conferring and negotiating with the Employer, or its authorized representatives, on questions of wages, hours and conditions of employment for all regular full-time and regular part-time employees of the Clark County Health Care Center, including the Farm, excluding professional, supervisory, managerial, confidential and casual employees and LPN-Supervisors as set forth in Decision No. 26429-A . . .

ARTICLE 2 - MANAGEMENT RIGHTS

Section A. Except as otherwise specifically provided in this Agreement, the County retains all the rights and functions of management that it has by law.

Section B. Without limiting the generality of the foregoing, this includes:

1. The determination of services to be rendered, and the right to plan, direct and control operations.
- . . .
3. The determination of the equipment to be used and the providing of services; the methods and means of providing services, as well as the right to introduce new methods, jobs or classifications, or change, delete, or combine existing methods, jobs or classifications.
4. The determination of the size of the work force; the assignment of work or workers;

the determination of policies affecting the selection and training of employees and the right to hire, recall, transfer, promote, lay off, discipline, suspend or dismiss employees.

. . .

7. The scheduling of operations and starting time of shifts; the right to cease operations for any reason not in violation of this Agreement; the transfer of employee or employees from one job to another or from one department to another

. . .

12. The right to contract out for goods and services. If such subcontracting will result in the layoff or reduction in hours of bargaining unit members, the local Union will be given written notice three (3) months in advance of the proposed date of implementation. The Union will be afforded all rights to bargain available under the law.

#### ARTICLE 4 - GRIEVANCE PROCEDURE

Section A. A grievance is defined to be any matter involving an alleged violation of this Agreement by the County as a result of which aggrieved employee(s) maintains that their rights or privileges have been violated by reason of the County's interpretation or application of the provisions of this Agreement.

. . .

Section C. The County and the Union agree to the following system of presenting and adjusting grievances which must be presented or processed in accord with the following steps, time limits and conditions:

. . .

Step 4. . . . The arbitrator shall have no right to amend, modify, nullify, ignore, or add to the provisions of this

Agreement. He/she shall consider and decide only the particular issue(s) presented to him/her by the County and the Union, and his/her decision in writing shall be based solely upon his/her interpretation of the meaning or application of the terms of this Agreement to the facts of the grievance presented. If the matter sought to be arbitrated does not involve an interpretation of the terms or provisions of this Agreement, the arbitrator shall so rule in his/her award . . .

. . .

ARTICLE 6 - JOB POSTING, LAYOFF AND RECALL

. . .

Section B. In the event a permanent job vacancy occurs or a new position is created, notice of such vacancy shall be posted at all job sites, as provided in Article 5, Section D, for a period of seven (7) calendar days overlapping two (2) consecutive work weeks . .

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Section C. The position shall be awarded to the most senior qualified employee who posts for the position.

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APPENDIX A

<u>DEPARTMENT</u>	<u>JOB CLASSIFICATION</u>	<u>GRADE</u>
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Clerical	Maintenance Secretary	7
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BACKGROUND

The grievance was filed by Cheryl Broda on July 24, 1992, lists the contract provision at issue as Article 6, Section B & C, and states the "nature of the grievance" thus:

On behalf of all Union employees at CCHCC (Clark County Health Care Center, referred to below as the Center) I submit the following grievance: 1. In violation of Article 6, Section B: The position of Maintenance Secretary which became vacant due to a resignation was not posted as either a part-time or a full-time job. 2. In violation of Article 6, Section C: Management has filled the position with a non-Union person who has low seniority. They therefore have given Union work to a non-Union person and have increased her from part-time to full-time in the process.

Heidi Wold was the County's Maintenance Secretary until she resigned in July, 1992, to take another job. The County did not post her position. Darlene Bauer, the County's Confidential Secretary, was moved to the Maintenance Department, and assumed responsibility for the bulk, if not all, of the duties once performed by Wold.

The Job Description for Maintenance Secretary reads thus:

SUPERVISOR: Director of Plant Operations

POSITION SUMMARY: Duties include typing, filing, receptionist, writing up repair slips, order parts and supplies, etc.

JOB QUALIFICATIONS:

REQUIRED:

1. Ability to cooperate with other personnel.
2. Good personal hygiene and grooming.
3. Ability to read, write and follow instruction both written and verbal.
4. Good physical and mental health.
5. Must have general office skills.

DESIRABLE:

1. High school graduate or completion of the High School Equivalency Test.
2. Previous secretarial experience.

WORKING ENVIRONMENT: 1. Interact with people

- having physical, emotional, and social disabilities.
- 2. Function within the health care facility.
- 3. Function with flexibility among the various levels of personnel.

SPECIFIC DUTIES

- 1. Typing of correspondence.
- 2. Filing.
- 3. Reception and phone work.
- 4. Writing up maintenance repairs during the day shift.
- 5. Order parts and supplies for maintenance department.
- 6. Follow up on all orders.
- 7. Keep accurate records of shipping invoices, purchase orders, daily log of service contractors, recent records of maintenance work requests, boiler reports, water and lagoon reports, emergency generator logs, night watch checklist of facility, etc.
- 8. Keep accurate key files and updates accordingly.
- 9. Schedule maintenance and security men and all for replacements when necessary.
- 10. Calculate and type the monthly report on pumpage, chemical additions and water levels for the D.N.R.
- 11. Available for various typing projects, when requested, for the receiving and housekeeping departments, if time allows.
- 12. Available for typing and filing for dietary department; consisting of correspondence of supervisor, weekly menus, dietary records, resident meal cards, updating recipe files.
- 13. Demonstrate good general office skills.
- 14. Participate in Quality Assurance.
- 15. Participate in fire and disaster drills.
- 16. Maintain confidentiality of information.

17. Work cooperatively with others.
18. Establish appropriate relationship with supervisor.
19. Can be depended upon to be in attendance when scheduled.
20. Present a neat, well groomed professional appearance.
21. Meet physical requirements of the job.
22. Participate regularly in appropriate in-service education activities to maintain competence.
23. Respect residents rights.
24. Demonstrate an acceptance and concern for all residents.
25. Observe all basic infection control procedures.
26. Use proper mechanics and other safety precautions to prevent injury.

Wold worked forty hours per week as Maintenance Secretary.

The County created the position of Confidential Secretary in November of 1991. Bauer was hired into the position after its approval by the County Board. At its creation, the position was set at twenty hours per week. Within three months of its creation, the position was increased to twenty-four hours per week. The Job Description for Confidential Secretary reads thus:

SUPERVISOR: Administrative  
Assistant/Director of Support  
Services

DEPARTMENT: Administration

POSITION SUMMARY: Serves in a confidential  
secretarial capacity for the  
Administrative  
Assistant/Director of Support  
Services.

JOB QUALIFICATIONS:

- REQUIRED:
1. Graduation from high school or completion of the High School Equivalency Test.
  2. Minimum two years experience in the clerical field or degree in a related field.

3. Good interpersonal skills. Works well under pressure and with numerous interruptions.

- WORKING ENVIRONMENT:
1. Interact with people having physical, emotional and social disabilities.
  2. Function within the health care facility.
  3. Function with flexibility among the various levels of personnel.

- SPECIFIC DUTIES:
1. Develop and maintain a workable filing system.
  2. Type Administrative correspondence and notices in a professional manner.
  3. Maintain policy and procedure manuals for housekeeping, maintenance, laundry and dietary.
  4. Maintain policy and procedure manuals for fire/safety.
  5. Maintain staffing schedules for feeders for the units.
  6. Demonstrate good interpersonal skills with all departments.
  7. Record minutes of meetings assigned by the Administrative Assistant and type them.
  8. Assist in typing of forms and graphs specific to the needs of the Administrative Assistant.
  9. Assist in the tabulation and record keeping of Quality Assurance.
  10. File confidential information regarding personnel issues.
  11. Type confidential information regarding personnel issues.
  12. Serve as a receptionist when needed.
  13. Learn to operate and use all office equipment provided.
  14. Preserve confidentiality of information where appropriate.
  15. Responsible for accepting and carrying through of duties that may be delegated by the supervisor.
  16. Monitor area for fire and safety hazards and participate in fire and



- safety drills.
17. Use proper body mechanics and other safety precautions.
  18. Observe all basic infection control procedures.
  19. Demonstrate an acceptance and concern for residents.
  20. Respect resident rights.
  21. Work cooperatively with co-workers.
  22. Establishes appropriate relationships with supervisors.
  23. Can be depended upon to be in attendance when scheduled.
  24. Present a neat, well groomed appearance.
  25. Meet physical requirements of the job.
  26. Participates in appropriate in-service education activities to maintain competence

After Wold's resignation, Bauer was assigned to work forty hours per week.

Jane Schmitz is the County's Administrative Assistant/Director of Support Services. She testified that after Wold resigned, she discussed with Wold whether Wold's duties warranted a full-time position. Schmitz concluded, based on her own observation and on her discussion with Wold, that the Maintenance Secretary was not a forty-hour per week position. The County was, at that time, reducing the number of positions at the Center. She recommended, and the County approved, the elimination of the position of Maintenance Secretary, and the expansion of the hours of the Confidential Secretary.

Schmitz testified that the County could not have effectively posted the Maintenance Secretary as a part-time position. Phone coverage is essential in the Maintenance Department, and must be provided on a full-time basis as Bauer now does. Bauer now works at the site formerly staffed by Wold. Schmitz would not state that it would be impossible to rotate unit employes to provide full-time phone coverage for the Maintenance Department, but did state she felt such a rotation would be cumbersome.

The County now moves certain clerical staff between worksites at the Center. Such movement is limited, if at all, by the access of a given worksite to the Center's mainframe computer.

Broda works on a part-time basis as a Secretary-Receptionist in the Center's business office. She noted she was interested in

expanding her hours of work, and stated she was qualified to assume Wold's duties.

Further facts will be set forth in the DISCUSSION section below.

#### THE PARTIES' POSITIONS

##### The Union's Initial Brief

The Union phrases the issues for decision thus:

Whether or not the employer violated the collective bargaining agreement by failing to post the maintenance secretary position when it became vacant due to a resignation; and, if so, what is an appropriate remedy?

After a review of the factual background, the Union contends that "(T)he transfer of bargaining unit work to the Confidential Secretary violates the collective bargaining agreement as a whole." The Union argues that the relevant facts which support this conclusion are undisputed, and establish that "after eliminating the bargaining unit maintenance secretary position, the County is having the maintenance secretary work done by a non-bargaining unit confidential secretary." The Union concludes that the transfer of duties "is a subterfuge to avoid" contract requirements such as job posting and seniority.

The Union denies that the County's management rights under Article 2 are applicable here. The transfer of duties is not a lay-off or the elimination of a position, the Union asserts. The issue is, according to the Union, "whether the County can eliminate the position of maintenance secretary, and at the same time assign the . . . duties . . . to a person outside the bargaining unit."

To extend the management rights clause as far as the County seeks would, the Union argues, gut the contract. The violation at issue is, then, from the Union's perspective, a violation of the entire agreement. This conclusion is, the Union notes, supported by arbitral precedent, and is applicable without regard to whether the County acted in good faith. The Union underscores the significance of this point by contending that "(w)hile in this case the County has eliminated only one bargaining unit position, logically there is no reason why it could not destroy the entire bargaining unit in the same fashion." The Union asserts that this contention is well-supported in arbitral precedent. The Union concludes that it follows that "the County should be prohibited from having any bargaining unit jobs, be it one or one-hundred,

performed by non-bargaining unit personnel."

To remedy the Employer's violation of the labor agreement, the Union requests that "the Arbitrator should order the County to comply with Article 6, Section B." More specifically, the Union requests that:

(T)he County should be required to award the maintenance secretary position to the most senior qualified bargaining unit employee who posts for the position. As a make-whole remedy, the (Employer) should be required to pay the employee for 40 hours per week at the maintenance secretary rate effective as of the time the County transferred it outside the bargaining unit.

The monetary relief is appropriate, the Union concludes, because "the party causing the damage should bear the costs of the uncertainty in the amount of damages."

#### The County's Initial Brief

The County phrases the issues for decision thus:

Did the County violate the collective bargaining agreement by eliminating the maintenance secretary position?

If so, what is the appropriate remedy?

The County initially notes that the Union is not disputing its right to evaluate the need for the Maintenance Secretary position or its right to eliminate that position. It follows, the County concludes, that the issue is "whether the County is obligated to take the remaining remnants of the position and shape a new part-time maintenance secretary position."

Arguing that the contract contains no provision prohibiting it "from transferring or assigning work out of the bargaining unit", the County concludes it could not have violated the agreement. This conclusion is, the County asserts, supported by arbitral authority. The County acknowledges that its right to transfer is not necessarily unfettered and contends that persuasive arbitral authority establishes that a "balancing of interests" approach is the most appropriate means to address this type of dispute.

The County contends that the record establishes that "its reasons were legitimate and for good cause . . . (and its) actions

were not arbitrary or capricious or done in bad faith." More specifically, the County contends that Schmitz was under a directive to cut her budget; that she had observed that Wold "was not very busy"; that Bauer's duties had grown since the Union was certified as the bargaining representative; and that Bauer could assume the Maintenance Secretary duties within the expansion of her own duties. These facts demonstrate, the County concludes, that it acted "in good faith and for sound and legitimate business reasons." It follows, the County concludes, that "the legitimate interests of the Center clearly outweigh the interest of the Union in this matter."

Noting that the "Union has conceded that the confidential secretary position is appropriately excluded from the bargaining unit", and noting that it believes "the Union is in the wrong forum", the Employer asserts that the assumption by the Confidential Secretary of certain non-confidential duties "(i)s not fatal to the County's position." More specifically, the County argues that Commission precedent establishes that "(t)he proper analysis is an analysis of the position in totality rather than an analysis and piece-mealing of specific duties." The confidential secretary position is either all in or all out of the bargaining unit, the County argues, and the presence of some non-confidential duties is no basis to warrant the inclusion of the position, or of duties within the position, within the bargaining unit.

The County views the Union's remedial request as "(s)peculative at best and impractical at worst", requiring the County to "create some sort of bargaining unit position . . . which even the Union has been unable to define." Noting that one of the duties of the Maintenance Secretary was to provide phone coverage for the department, the County questions whether the Union seeks the creation of a position whose occupant is required to sit by the phone. Such coverage could not, the County asserts, be practically provided by rotating unit employes.

The County then contends that the Union's remedy seeks a result which is both beyond the Arbitrator's authority under Step 4 of the grievance procedure, and contrary to the Employer's rights under Article 2. The County concludes that the grievance should be dismissed.

#### The Union's Reply Brief

The Union disputes the propriety of using a balancing approach, contending that such an approach "in effect sanctions the Employer's contract violations". Beyond this, the Union argues that "(e)ven if the Employer acted in good faith and for sound business reasons, it is not relieved of its contractual

obligations." There is also, the Union asserts, substantial reason to believe the Maintenance Secretary position remains as necessary as ever.

The Union then contends that it has not asserted that the Confidential Secretary cannot perform non-confidential duties. Rather, it argues "only that the Employer may not unilaterally transfer bargaining unit work out of the unit mid-contract." This issue is, the Union concludes, clearly contractual and appropriate to the grievance arbitration forum.

Beyond this, the Union contends that its requested remedy is well within an arbitrator's authority. Noting that it has not questioned the County's right to make work assignments, the Union argues that the remedy it seeks asks nothing of the County which violates its management rights. The Union specifically notes it does not seek a "make work" position. The occupant of a restored Maintenance Secretary position would have to perform the full range of duties assigned by the County, the Union notes.

The Union then notes that Step 4 of the grievance procedure refers to "the provisions of this Agreement", and is not strained by its remedial request, since the Employer's transfer of duties to the Confidential Secretary violated the provisions of the entire agreement. It follows, the Union concludes, that the grievance should be sustained and the Union's remedial request granted.

#### The County's Reply Brief

The County argues that the Union's focus on a violation of the entire agreement belies the fact that the Union cannot "identify the specific provisions of the contract alleged to have been violated". More specifically, the County argues that arbitral precedent precludes viewing the recognition clause as a source of substantive rights, or using general considerations of seniority as a basis for rights not otherwise granted by the agreement.

The County specifically denies that it eliminated the Maintenance Secretary position to move the duties of that position outside of the bargaining unit. Rather, the County contends its conduct was solely "to effectively and efficiently manage its operations while maintaining the level of service to the Center's residents." The County denies it "has launched an attack on the integrity of the bargaining unit, or that it has any intention of doing so in the future." If the Union believes the addition of non-confidential duties has made the Confidential Secretary a unit position, the County contends the Union should file a unit clarification petition.

Beyond this, the County disputes the Union's claim that the duties of the Confidential Secretary have expanded solely to reflect her performance of duties once performed by the Maintenance Secretary. The County argues that the expansion reflects primarily the increased workload accompanying the inception of collective bargaining.

The County then asserts that the Union has inconsistently argued its case, by pointing to the need for a part-time Maintenance Secretary, but requesting a monetary remedy based on a forty hour work week. The County argues that the Union's remedy, if granted as requested, would in effect award the Union punitive damages, and constitute a windfall for the employee awarded the position the Union seeks to have posted. The County asserts it follows that the remedy is beyond the authority of the Arbitrator.

The grievance should, the County concludes, be denied.

#### DISCUSSION

To frame the issue for decision, I have drawn on each party's statement of the issue but have not fully accepted either. The issue ultimately is whether the County is obligated to fill the Maintenance Secretary position under Article 6. The Union's statement of the issue begs the issue by presuming a vacancy existed. The County's statement of the issue begs the issue by presuming the Maintenance Secretary position was eliminated.

Broda's grievance cites Article 6, and this provision is the source of the strength of the Union's position. The Union has also cited several sections of the agreement including Article 1 and the Wage Appendix. The Union contends these provisions, viewed in light of the entire agreement, create positions composed of duties which must be considered bargaining unit work. This work, the Union asserts, cannot be transferred, even in part, from the unit during the term of the agreement. The County has also cited numerous agreement provisions. The strength of its case lies, however, in Article 2.

The Union's general arguments have persuasive force, but cannot be persuasively rooted in the specific contract language or facts posed here. That Article 6 does not state any discretionary act on the County's part in determining a vacancy does support the implication the Union seeks. This is ultimately the strength of its position. The presence of the position of Maintenance Secretary in Appendix A, and its inclusion within the scope of Article 1 also support the inference the Union seeks.

The silence of Article 6 and the peripheral mention of the

Maintenance Secretary in other provisions must, however, be contrasted to Article 2. Article 2 is not silent on the issue posed here and speaks directly to it. Subsection 3 of Article 2, Section B, authorizes the County to "change, delete, or combine existing . . . jobs, or classifications." The County retains, under Subsection 4 of Article 2, Section B, authority over "the assignment of work or workers". These provisions authorize the elimination of the Maintenance Secretary position and the reassignment of duties once performed by Wold.

A citation of the relevant provisions of Article 2 is not sufficient, in itself, to dismiss the force of the Union's general arguments. Arguably, Article 2 is not fully on point here, or if applied indiscriminately could be read to gut other agreement provisions. The duties once performed by Wold and now being performed by Bauer serve to cast doubt on whether the Maintenance Secretary position was "deleted". Beyond this, not even the County contends Article 2 creates unfettered authority to effect transfers of duties which erode the integrity of the bargaining unit. It is, then, necessary to determine if the County's exercise of its authority under Article 2 has undermined other agreement provisions.

The record will not persuasively support a conclusion that the County has failed to delete the position of Maintenance Secretary. That position was a forty hour per week position. Even assuming, as the Union asserts, that Bauer performs all of Wold's duties, Bauer's position has only expanded by sixteen hours per week. If Wold's position was not deleted, it has been effectively gutted. More to point here, this assumption ignores that the record indicates that Bauer's duties as Confidential Secretary have been increasing without regard to Wold's resignation. The evidence indicates that the primary responsibility Bauer has assumed from Wold is phone coverage for the Maintenance Department. This does generate hours of work, but only tenuously can be said to constitute a significant transfer of duties. In sum, that Bauer has assumed duties once assumed by Wold does serve to afford a basis for the Union's general concerns about the integrity of the unit. It is not, however, a sufficient factual basis to conclude the County has somehow failed to eliminate the position of Maintenance Secretary.

The force of the Union's arguments ultimately center on its desire to maintain the integrity of the unit described in Article 1. That the facts posed here do not impact the integrity of the unit is ultimately what addresses the force of the Union's general arguments.

As noted above, the Union seeks an implication that duties performed by Wold are bargaining unit work, not transferable out

of the unit in spite of the provisions of Article 2. This implication is not well rooted in the contract or the facts. The contract does not expressly define bargaining unit work. Nor does Article 1, standing alone, afford a solid basis to make the implication. The unit definition of Article 1 is meant to be flexible. There is no question that the clause permits the unit to expand if and when positions within the scope of the definition of the unit are added or when employees are added to unit positions. That the County can lay employees off, and delete jobs or classifications under Article 2 establishes that the unit can also shrink. Article 1 thus must be read to permit change in the size and potentially the composition of the unit. It cannot be assumed that work vests with certain positions simply through the recognition clause of Article 1.

Defining the duties once performed by Wold as unit work is also difficult as a factual matter. The parties' bargaining relationship has just started. There is, then, no history or practice to define the separation of unit from non-unit work. Beyond this, Article 1 excludes confidential positions from the unit. It is undisputed that the position of Confidential Secretary, at its inception at least, was appropriately excluded from the unit. The job description for Confidential Secretary establishes that clerical and receptionist duties fall within the position. Clerical and receptionist duties have, then, been performed by non-unit personnel. The issue thus posed by the Union's general arguments is not whether unit work can be performed by non-unit personnel, but whether certain work, once performed by a unit employe, but performable by either a unit or a non-unit employe, can be transferred from the unit. The definition of Wold's work as exclusively unit work is not, then, as clear as the Union has contended.

More significantly, the Union seeks to create a right by arbitral inference which is arguably broader than negotiated rights. In Subsection 12 of Article 2, Section B, the parties have created certain limits on the County's right to subcontract. That provision is not at issue, and cannot be interpreted here. It is, however, relevant to note that the parties negotiated to require bargaining in cases covered by that subsection. In this case, the Union seeks to compel the posting of a position, not bargaining, based on an arbitral inference. This would compel, through arbitral inference, a stronger job security provision regarding job reorganization within the Center than the parties negotiated regarding sub-contracting. This is not necessarily indefensible, but does preface the difficulty of reaching the inference the Union seeks.

The difficulty of squaring the implication the Union seeks with the provisions of Article 2 prefaces the significance of the



factual background to the grievance. Ultimately, the Union seeks to defend the integrity of the unit. Because of the problematic application of the contract provisions the Union cites, the actual or potential erosion of the unit and the agreement provisions which create and defend it becomes a significant point. In this case, what erosion there arguably has been is at most limited, and the prospect of potential erosion is negligible. The County acted only after Wold had determined to resign. No unit member has been displaced. At most, the unit has suffered the denial of an opportunity for Broda or another unit employe to expand their hours. The denial of such an opportunity cannot be dismissed as insignificant. The issue here, however, is whether such an opportunity has been secured in bargaining. There is no persuasive basis to conclude the parties have so bargained. Beyond this, there is no persuasive evidence of bad faith on the County's part in transferring the duties out of the unit. Thus, there is no basis to consider the opportunity to post for such duties as a means to remedy a County attempt to evade the contract.

Nor does the County's conduct constitute, on this record, a pattern which could be repeated to undermine the unit. The clerical/receptionist duties transferred to Bauer are of a type performed by unit and by non-unit employes. The duties involved constitute at most a portion of a position, and the transfer was effected without displacement, even in part, of any unit employe.

This action does not persuasively set precedent for a wholesale transfer of duties outside of the unit. Beyond this, there are readily available means to address this or future transfers of duties outside the unit. If the transfer of non-confidential work minimizes Bauer's confidential duties, then the County has risked making Bauer's position a unit position. This point is addressable through arbitration or through a unit clarification.

If a case of this type arises again, the Union is not without recourse. If the County acts in bad faith, it exposes itself to a complaint of prohibited practice or a grievance. If the County acts in good faith, but transfers unit based duties to non-unit positions, then it exposes itself to a unit clarification. The County's conduct here is not an effective means to eviscerate the unit.

In sum, the grievance cites Article 6 as the source of the County's violation of the contract. The Union has expanded that reference, but its case rests on an arbitral inference that the County failed to delete Wold's position, and wrongfully transferred her duties out of the unit. The wrongful nature of the transfer is based on the implication that the contract precludes an extra-unit transfer of unit work. Such an implication must be made in spite of the provisions of Article 2 which expressly grant the County the right to delete positions, combine existing methods of performing work and assign workers. The implication is, on that basis alone, unpersuasive. Since, however, the provisions of Article 2 cannot be read so expansively as to threaten the integrity of the unit, it is necessary to examine the factual and contractual background of the grievance to determine if the County's actions did have the effect of gutting contractual provisions beyond Article 2. On this record, no such effect is apparent.

It should be noted that the propriety of Bauer's status as a confidential employe has not been specifically litigated, and has not been addressed. I will stress, in light of the precedent cited by the Union, that I do not believe it is an appropriate analysis to determine a tolerable level of unit erosion or contract violation. Whether the contract authorizes the actions taken by the County is the necessary first step of the analysis. In this case, Article 2 does. Issues of good faith and the actual or potential erosion of the unit were addressed as a necessary second step. That step is necessary not to determine a level of erosion which is permissible, but to determine if the application of Article 2 would result in the violation of other agreement provisions. The second step is necessary to assure that the contract is read as a whole, with conflicts harmonized wherever possible.

AWARD

The County did not violate the collective bargaining agreement by not posting the position of Maintenance Secretary.

The grievance is, therefore, denied.

Dated at Madison, Wisconsin, this 20th day of September, 1993.

By Richard B. McLaughlin /s/  
Richard B. McLaughlin, Arbitrator