

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration :
of a Dispute Between :
:
OCONTO COUNTY :Case 111
:
and :No. 48221
:
OCONTO COUNTY SHERIFF'S DEPARTMENT :
LABOR ASSOCIATION :
:
- - - - -

Appearances:

Mr. Michael G. Perry, Attorney at Law, appearing for the
Union.
Godfrey & Kahn, Attorneys at Law, by Mr. Dennis W. Rader,
appearing for the County.

ARBITRATION AWARD

Oconto County Sheriff's Department Labor Association, herein the Union, pursuant to the terms of its collective bargaining agreement with Oconto County, herein the County, requested the Wisconsin Employment Relations Commission to designate a member of its staff as an arbitrator to hear and decide a dispute between the parties. The County concurred with said request and the undersigned was designated as the arbitrator. The parties stipulated to a waiver of the Arbitration Board and agreed that the undersigned would be the sole arbitrator. Hearing was held in Oconto, Wisconsin, on May 6, 1993. A stenographic transcript was made of the hearing, a copy of which was received on May 21, 1993. The parties completed the filing of post-hearing briefs on July 28, 1993.

ISSUES:

The parties stipulated to the following issues:

Did the County violate the contract when it hired four non-union employees from September of 1992 through December of 1992 to alphabetize all complaint records from 1980 to 1989 and merge them with the alpha files instead of using part-time bargaining unit jailers? If so, what is the remedy?

BACKGROUND:

During the months of September through December of 1992, the County employed four temporary employees to alphabetize and file complaint records of the Sheriff's Department from the years 1980 through 1989. Paula Blazek worked 39 1/4 hours, Teresa Hyland worked 221 1/2 hours, Jennifer Rusch worked 167 1/4 hours, and Mary Vos worked 308 1/2 hours. All four individuals were paid at the hourly rate of \$6.13, which is the hourly wage rate paid to other temporary office employees who have worked at the courthouse.

In September of 1992, the County hired a permanent data entry clerk, Karen Lefevre, to enter into the computer the information from the complaint records of the Sheriff's Department for the years beginning with 1990. The work performed by Lefevre is not at issue herein.

During the relevant period of time, there were part-time jailers who were not working and would have been available to perform the contested duties. The jailers are represented by the Union. On September 17, 1992, the Union filed a grievance alleging that the County violated Article 27 (2) of the contract by hiring temporary employees to do the work, rather than recalling the three part-time jailers.

RELEVANT CONTRACTUAL PROVISIONS:

ARTICLE XIX

MANAGEMENT RIGHTS

The County possesses the sole right to operate County government and all management rights repose (sic) to it, subject only to the provision of this Contract and applicable law.

These rights include, but are not limited to the following:

A. To direct all operations of the County;

. . .

C. To hire, promote, transfer, schedule and assign employees to positions within the County;

. . .

K. To determine the methods, means and personnel by which County operations are to be conducted;

. . .

ARTICLE XXVII

PROMOTION AND LAYOFF PROCEDURES

. . .

2. In laying off employees because of reduction in force, layoff shall be by seniority in the unit, laying off first the employees with the least seniority in the unit and working up the seniority list until the necessary reduction has been achieved, provided, however, that the senior employees are able to perform the work. The last person laid off shall be the first person rehired and so on in order of seniority.

. . .

POSITION OF THE UNION:

Essentially, the Union argues that the disputed work is bargaining unit work and that said work had been performed in the past by regular part-time employees in the bargaining unit. In addition to having jailers perform some clerical tasks in the past, e.g., putting name labels on time cards and alphabetizing accident reports, while on duty in the jail, the County also has one part-time jailer serving civil process. Therefore, it is clear that the alphabetizing of complaints is within the job duties of the jailer and the work is bargaining unit work.

The Union is not aware of any past instances where the County has hired part-time non-bargaining unit employees to perform bargaining unit work while bargaining unit employees have been on layoff. The non-bargaining unit jailers previously used by the County were found to be bargaining unit employees by the WERC. The use of non-bargaining unit employees in the courthouse would be controlled by a different contract.

It is obvious that the County's decision to use temporary employees rather than the part-time jailers was simply to save money based on the difference in the hourly wage rates.

The Union asks that the part-time jailers be paid at their contractual wage rate for the hours they would have worked if they had performed the contested work.

POSITION OF THE COUNTY:

The work performed by the temporary employees was not bargaining unit work. Jailers are not hired to perform filing duties. While there are some clerical duties associated with the position of jailer, such are neither their primary function nor the reason a jailer is paid a higher wage rate than a clerk. The County has not previously called in part-time jailers to perform alphabetizing duties.

Part-time female jailers, such as the grievants, are assured of work only when female prisoners are being held in the jail or when female prisoners need to be transported.

The contract provides the County with the right to hire, schedule and assign employees. The work performed by the temporary employees was not bargaining unit work and, therefore, the County did not need to assign the work to the jailers.

There is not a past practice of using part-time jailers for clerical work on a regular basis. The County has used non-bargaining unit employees to work as jailers without a grievance from the Union in the past.

The grievance should be dismissed.

DISCUSSION:

Jailers do perform some clerical duties as part of their regular duties. Those duties include activities such as filling out a master index card and a meal/photo card when a prisoner is admitted to the jail. On infrequent occasions in the past, jailers have also done some miscellaneous clerical tasks while on duty at the jail, such as placing name labels on time cards and alphabetizing accident reports. However, jailers have never been scheduled to work solely for the purpose of performing clerical tasks, as would have been the case herein if jailers, rather than temporary employees, had been assigned the disputed work. While the County certainly has the authority to assign clerical duties to jailers, such an assignment is not required by the contract. If the County had chosen to offer the disputed work to the part-time jailers, it could have specified that it would only pay the temporary clerical wage rate of \$6.13 per hour to the jailers, rather than their normal wage rate, since the work would not be the normal duties for which jailers receive a higher rate. Payment of the temporary clerical rate was consistent with the work to be performed. The fact that a part-time jailer is used for serving civil process does not establish a practice which requires that all work, regardless of the nature of the work, in the Sheriff's Department be offered to bargaining unit employees.

Based on the foregoing and the record as a whole, the undersigned enters the following

AWARD

That the County did not violate the contract when it hired four non-union employes from September of 1992 through December of 1992 to alphabetize all complaint records from 1980 to 1989 and merge them with the alpha files instead of using part-time bargaining unit jailers; and, that the grievance is denied and dismissed.

Dated at Madison, Wisconsin, this 12th day of October, 1993.

By Douglas V. Knudson /s/
Douglas V. Knudson, Arbitrator