

November 7, 1989

Mr. Frederick J. Mohr, Mohr & Beinlich, S.C.
PO Box 1098 (415 South Washington Street), Green Bay, WI 54305

Mr. Kenneth J. Bukowski, Corporation Counsel
PO Box 1600, Green Bay, WI 54305-5600

re: Brown County (Sheriff's Department),
WERC Case 372 No. 40898 MM-5218
(Union requests for additional relief)

Gentlemen:

This is in response to Mr. Mohr's letter dated September 25, 1989 and Mr. Bukowski's letter in opposition dated September 27, 1989, both of which are attached and both of which concern the grievance arbitration award I issued in the above matter on July 21, 1989. In responding to those letters, I am also considering the parties' other post-award correspondence to me regarding the award--i.e., Mr. Bukowski's letters dated August 7 and 22 and Mr. Mohr's dated August 9 and 28 and September 11--as well as my letter to the parties of August 29, 1989, the July 21 award itself, and the evidence and arguments submitted prior to issuance of the July 21 award.

I understand the Union to be requesting that I order the County to reinstate the status quo in effect prior to the County's decision at issue in the award and to order the County to bargain further with the Union about that decision after doing so. The parties' respective positions and rationales are set forth in the above-noted letters of September 25 and 27.

Unlike the prior requests for reconsideration and clarification dealt with in my August 29 letter, the Union's present request falls within the jurisdiction I expressly reserved in the July 21 award. Accordingly, I am not functus officio with respect to this request, and I will therefore rule upon it. Please consider this letter to be my supplemental award on that request.

Having considered the Union's above-noted request for additional relief, I hereby deny it.

As the County has noted, good faith bargaining does not guarantee or require that the parties involved will reach an agreement or that one party will agree to the other's proposals.

The correspondence indicates that the Union advanced proposals consistent with its broad interpretation of the scope of award and of the issues for determination submitted therein. When the County asserted a narrower view of the award and of the issues submitted for determination therein, the Union chose not to allow the County to avail itself of an arbitral clarification. Having refused to permit a clarification of the award regarding the scope of the

County's bargaining obligation under the award, the Union is in a particularly poor posture to claim that the County is solely at fault for the parties' inability to resolve the bargaining dispute by mutual agreement.

For those reasons alone, the Arbitrator denies the Union's request.

The correspondence at least suggests that all of the bargaining proposals advanced by the Union would have arguably implicated the Sheriff's constitutional rights concerning staffing decisions. Those rights were part of the basis on which the County defended its refusal to bargain. They were also the basis for the County's request for reconsideration of the award in light of recent legal developments not considered by the Arbitrator in issuing the July 21 award. And they are presumably at least part of the basis on which the County is seeking to vacate the award. If the Union's proposals all would involve a restaffing of some kind, then a further reason for denying the Union's request for additional relief would be that the requested order for reinstatement of the status quo ante would be unlikely to overcome the County's above-noted legal concerns, especially given the fact that the implications for this case of the recent legal development cited by the County have not yet been considered by any forum.

Finally, in the July 21 award, the Arbitrator noted that a prior civilianization of certain Union bargaining unit work was ultimately agreed upon between the parties on the basis of give and take on other matters. By noting that fact, the Arbitrator was suggesting that it might similarly be possible that the parties could find a mutually satisfactory compromise solution to the instant dispute about civilianization by means of an exchange on some subject area unrelated to staffing matters. If such an approach has never been seriously explored by the parties, that would be yet another reason why the Union's request for additional relief would lack merit.

As noted, then, the Union's request for additional relief in the above matter is denied.

Sincerely,

/s/ Marshall L. Gratz
Marshall L. Gratz
Arbitrator

enclosures

cc: Mr. Gerald E. Lang
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