

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
**LOCAL 569, AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO**
and
JUNEAU COUNTY HIGHWAY COMMITTEE

Case 121
No. 53607
MA-9397

Appearances:

Mr. David White, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite B, Madison, Wisconsin 53717-1903, appearing on behalf of Local 569, American Federation of State, County and Municipal Employees, AFL-CIO, referred to below as the Union.

Mr. Mark B. Hazelbaker, Bell, Metzner, Gierhart & Moore, S.C., Attorneys at Law, 44 East Mifflin Street, Madison, Wisconsin 53701-1807, appearing on behalf of Juneau County Highway Committee, referred to below as the County, or as the Employer.

ARBITRATION AWARD

The Union and the County 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 waived the application of agreement provisions calling for an arbitration panel, and requested that the Wisconsin Employment Relations Commission appoint an Arbitrator to resolve a dispute reflected in a grievance filed on behalf of Local 569. The Commission appointed Richard B. McLaughlin, a member of its staff. Hearing on the matter was held on December 10, 1996, in Mauston, Wisconsin. The hearing was transcribed, and the parties filed briefs by May 21, 1997.

ISSUES

The parties stipulated the following issues for decision:

Did the Employer, Juneau County, violate the collective bargaining agreement by refusing to post and fill the position of Partsman in the Juneau County Highway Department after the position was vacated by the retirement of its last incumbent?

If the answer is yes, then what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

. . .

ARTICLE 5 - EMPLOYER'S RIGHTS

Subject to the provisions of this contract and applicable law, the County possesses the right to operate county government and all management rights repose in it. These rights include, but are not necessarily limited to the following:

. . .

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

. . .

E. To relieve employees from their duties because of lack of work or other justifiable economic reasons;

F. To maintain efficiency of county government operations;

. . .

J. To change existing methods or facilities;

K. To determine the kinds and amounts of services to be performed as pertains to county government operations; and the number and kinds of classifications to perform such services;

. . .

ARTICLE 8 - SENIORITY

. . .

G. Termination of Seniority. An employee who quits or is laid off for a period of twelve (12) months, or fails to report for work within fifteen (15) days from the postmark on the notice of recall, or is discharged, except those reinstated under Article V, Grievance Procedure, shall lose all prior seniority rights.

. . .

J. Layoff and Recall. In laying off employees, the least senior shall be laid off first, provided that the remaining employees are able to perform the remaining work. In recalling employees, the most senior laid off employee shall be recalled first, provided said employee is able to perform the work of the open position.

. . .

ARTICLE 18 - WAGES AND CLASSIFICATION

A. Classification and wages as set forth in Appendix A attached hereto and made a part hereof shall be the minimum for the life of this agreement.

B. Out of Classification Pay: Any employee working in a higher paid classification shall receive the higher rate of pay for all hours worked that day.

. . .

D. Position Roster Agreement:

1. At least four County Winter Maintenance sections will be posted in addition to the eight County regular maintenance sections. The regular maintenance patrolman for any assigned section shall be called first, and if assistance is needed, the senior signee for the winter maintenance section shall be called next.
2. If equipment is leased of a type which is not listed by class, the most senior qualified employee in the operator class will be assigned to that machine for the duration of the lease. If the assigned employee cannot operate said equipment effectively, the assignment will be offered on a seniority basis to other qualified employees.
3. Auxiliary back-up, snowplowing crew for the three interstate sections shall be posted annually. If all three positions are not filled by posting, the Highway Commissioner may assign employee to vacant positions.
4. All machines currently listed in the 92/93 Collective Bargaining Agreement shall not be lost in the conversion to the position roster

agreement. Those pieces of equipment which are listed on the bottom of the position roster shall be temporarily assigned to one of the established position rankings.

5. If overtime is scheduled for a particular project for which the amount of equipment needed exceeds the number of employees permanently assigned to any such equipment or if such equipment is not assigned to any employee, then the assignment to work particular pieces of equipment on a temporary basis shall first be made to employees of the classification needed and then out of class based upon seniority.
6. Until an employee with a current classification that does not appear in the proposed position roster signs a position listed in the proposed position roster, he shall retain this current classification.

POSITION ROSTER

<u>CLASS</u>	<u>POSITION</u>	<u>NUMBER</u>	<u>OF</u>
<u>EMPLOYEES</u>			<u>ASSIGNED TO POSITION</u>
1	FOREMAN (WORKING)	1	
SHOP	SHOP FOREMAN	1	
SHOP	ACCOUNT CLERK	1	
SHOP	JANITOR	1	
2	MECHANIC	4	
3	OPERATOR-CAT SKINNER	1	
3	OPERATOR-MOTOR GRADER	3	
3	OPERATOR-CRUZ AIRE	1	
3	OPERATOR-FRONT ENDLOADER	1	
3	OPERATOR-ROLLER	1	
4	SIGN MAN	1	
4	TANDEM AXLE TRUCK DR.	1	
4	PATROL (STATE-9, CTY-8)	17	
5	LABORER	3	
SHOP	PARTSMAN	1	

...

BACKGROUND

The grievance form, filed on behalf of Local 569 on November 15, 1995, states the "Circumstances of Facts" thus:

Partsman position was vacated on September 29, 1995. Partsman position has not been posted. Also Janitor position is vacant and has not been posted.

The form noted the requested remedy thus: "Post and fill both Partsman and Janitor position." There is no dispute that the position of Janitor was ultimately posted, and poses no issue relevant to this matter.

On January 16, 1996, the County Board adopted Resolution number 95-88, which had been introduced and recommended for adoption by the Personnel Committee on December 19, 1995. Resolution 95-88 states its "INTENT" thus:

Eliminate positions of Partsman and Shop Foreman in the Highway Department and re-create new position of Shop Foreman.

The resolution includes a fiscal note followed by the following provisions:

WHEREAS, it has been determined that the duties of Partsman and Shop Foreman have changed significantly, and

WHEREAS, the Highway Department does not expressly require the services of both positions,

NOW, THEREFORE; BE IT HEREBY RESOLVED BY THE JUNEAU COUNTY BOARD OF SUPERVISORS MET IN REGULAR SESSION

That the job positions and Partsman and Shop Foremen (sic) be eliminated and re-created to one position -- that being Shop Foreman as per the attached job description.

The "attached job description" states:

SHOP FOREMAN

GENERAL STATEMENT OF DUTIES:

The employee in this position shall be in charge of the repair shop and parts department. Work involves directing and supervising the service and repair of Juneau County equipment and the responsibility for maintaining a continuing inventory of parts, equipment, and supplies, as well as associated record keeping. Work is performed in accordance with careful monitoring of supplies on hand and supply needs of the department. Some independent judgement is exercised in determining the need to purchase new supplies and new methods of repair. Supervision is exercised over the mechanics and any other employee performing

service and repair duties on any Juneau County vehicle. This position reports to the Highway Commissioner.

ESSENTIAL FUNCTIONS:

1. Supervises the repair, service and maintenance of Juneau County equipment.
2. Maintains records and reports involving preventive maintenance and operational costs.
3. Determines equipment and repair priorities.
4. Maintains inventory of all supplies available, maintains adequate supply of parts as required, and the need to organize and control the disposition of such supplies. Prepares monthly vouchers for payment.
5. Recommends purchase of new supplies, receives and records shipments of new supplies, checks shipments against packing slips, reports and balances variances between invoices and shipments.
6. Contacts salespeople and distributors as necessary in order to maintain proper inventory.
7. Reorders supplies as necessary as per Port Ordering Alert from CHEMS.
8. Maintains records of, and is responsible for, distribution of field tools along with hand tools to employees; records condition of field tools and hand tools when issued and when returned; keeps inventory and records of all equipment.
9. May be responsible for ordering specialized equipment, such as grader blades, tires, etc.
10. Enter parts, fuel and lubes used and received in CHEMS and verifies accuracy. Assists in producing quarterly refund and fuel tax reports.
11. May make repairs to a variety of equipment, or contact other departmental employees as to the need for repairs to equipment as they arise.
12. May be required to prepare purchase orders for parts and supplies.
13. Maintains with the use of CHEMS a perpetual inventory of parts and supplies on hand.
14. Performs related work as required by Highway Commissioner, Office Manager, and/or Patrol Superintendent.
15. Assists in answering telephones, and two-way radios.
16. Operate photocopying machine, fax machine, calculator, typewriter, and other office machines.
17. Assist in taking physical inventory.
18. May also be required to plow snow, run loader, and other tasks assigned by the Highway Commissioner.

KNOWLEDGE AND SKILLS

1. Knowledge and skill in the use of tools and equipment applicable to maintenance and repair of Juneau County equipment.
2. Knowledge of safety precautions and procedures applicable to maintenance of equipment.

3. Knowledge of record keeping and simple accounting procedures.
4. Ability to plan and supervise the work of others.

5. Knowledge of a variety of supplies, materials, and equipment.
6. Knowledge of the types of equipment and repair supplies used by the department.
7. Knowledge of storeroom procedures including inventory control, record keeping and purchase and requisition procedures.
8. Ability to determine conformance of goods to specifications.
9. Ability to establish and maintain effective working relationships with employees of other municipalities, other County Departments, and vendors.
10. Ability to determine current and future material and equipment needs.
11. Dependability, integrity, and physical ability to perform the work.
12. Knowledge of computer-assisted parts and/or storeroom management.
13. Ability to concentrate on tasks as assigned and to work with a limited amount of supervision.
14. Should be able to obtain a CDL during the probationary period. This CDL should include classes A, B, C, D, and H.
15. Knowledge of PC applications and data entry skills.

EXPERIENCE AND TRAINING

Some responsible clerical experience in bookkeeping, knowledge of personal computers, and experience handling the types of commodities with which the position is involved; or any combination of training and experience which provides the required knowledge, skills, and abilities.

PHYSICAL DEMANDS OF THE POSITION

Stand, walk, sit and stoop

Kneel, crouch, and crawl

Balance, bend, and twist

Far and near vision without correction or corrected by the use of glasses or contact lenses.

Color vision, peripheral vision sufficient to meet established standards of the position.

Hearing or corrected hearing under normal and adverse circumstances sufficient to meet established standards for the position.

ENVIRONMENTAL WORKING CONDITIONS

Indoor and outdoor working environment

Exposure to hot and cold temperatures

Exposure to wet and/or humid conditions

Periodic exposure to loud noises

Exposure to fumes, gases, noxious odors, dust and poor ventilation

The Shop Foreman and Partsman position descriptions combined by Resolution 95-88 state:

PARTSMAN

GENERAL STATEMENT OF DUTIES: The employee in this position shall be in charge of the parts department. Work involves responsibility for maintaining a continuing inventory of parts, equipment, and supplies, as well as associated record keeping. Work is performed in accordance with careful monitoring of supplies on hand and supply needs of the department. Some independent judgement is exercised in determining the need to purchase new supplies. Work originates as a result of the continuing need for new supplies. No supervision is exercised over other employees. This position reports to the Highway Commissioner, Office Manager, and/or the Patrol Superintendent.

DUTIES, RESPONSIBILITIES, AND WORK PERFORMED:

1. Enter parts, fuel and lubes used and received in CHEMS and verify accuracy. Produce both quarterly refund and fuel tax reports.
2. Maintains inventory of all supplies available, maintains adequate supply of parts as required, and the need to organize and control the disposition of such supplies. Prepares monthly vouchers for payment.
3. Maintains with the use of CHEMS perpetual inventory of parts and supplies on hand.
4. Recommends purchase of new supplies, receives and records shipments of new supplies, checks shipments against packing slips, reports and balances variances between invoices and shipments.
5. Contacts salespeople and distributors as necessary in order to maintain proper inventory.
6. Reorders supplies as necessary as per ordering alert from CHEMS.
7. Maintains records of, and is responsible for, distribution of field tools along with hand tools to employees; records condition of field tools and hand tools when issued and when returned; keeps inventory and records of all equipment.
8. May be responsible for ordering specialized equipment, such as grader blades, tires, etc.
9. Responsible for proper storage of supplies within the stockroom, responsible for rotating stock and maintaining adequate levels of supplies of all materials.
10. May make simple repairs to a variety of equipment, or contact other departmental employees as to the need for repairs to equipment as they arise.
11. May prepare purchase orders for parts and supplies.
12. May be responsible for delivering bills and invoices to proper departmental

employees.

13. Performs related work as required by Highway Commissioner, Office Manager, and/or Patrol Superintendent.
14. Assists in answering telephones, and two-way radios.
15. Operate photocopying machine, fax machine, calculator, typewriter, and other office machines.
16. Assist in taking physical inventory.
17. May also be required to plow snow, run loader, and other tasks assigned by the Highway Commissioner.

KNOWLEDGE AND SKILLS

1. Knowledge of record keeping and simple accounting procedures.
2. Knowledge of a variety of supplies, materials, and equipment.
3. Knowledge of the types of equipment and supplies used by the department.
4. Knowledge of storeroom procedures including inventory control, record keeping and purchase and requisition procedures.
5. Ability to determine conformance of goods to specifications.
6. Ability to establish and maintain effective working relationships with employees of other municipalities, other County Departments, and vendors.
7. Ability to determine current and future material and equipment needs.
8. Dependability, integrity, and physical ability to perform the work.
9. Knowledge of computer-assisted parts and/or storeroom management.
10. Ability to concentrate on tasks as assigned and to work with a limited amount of supervision.
11. Should be able to obtain a CDL during the probationary period. This CDL should include classes A, B, C, D, and H.
12. Knowledge of PC applications and data entry skills.

EXPERIENCE AND TRAINING

Some responsible clerical experience in bookkeeping, knowledge of personal computers, and experience handling the types of commodities with which the position is involved; or any combination of training and experience which provides the required knowledge, skills, and abilities.

SHOP FOREMAN

GENERAL STATEMENT OF DUTIES: Directs and participates in the service and repair of Highway Department equipment.

DISTINGUISHING FEATURES OF THE CLASS: The Shop Foreman is responsible for the proper operation of all County Highway Department vehicles and equipment. This employee plans, directs and participates in the maintenance

and general repair work on a variety of machinery. The duties involve the exercise of informed judgement and the supervision of the work of other employees. General direction is received from the Highway Commissioner.

EXAMPLES OF WORK: (Illustrative only)

Supervises the repair, service and maintenance of automotive and related motor equipment of the Highway Department;
Maintains records and reports involving preventive maintenance and operational costs;
Determines equipment maintenance and repair priorities;
Dispatches maintenance crews;
Makes cost estimates and requisitions supplies;
Repairs or overhauls gasoline and diesel engines, brake systems, transmissions and other related work;
Performs welding and machine work;
Does related work as required.

QUALIFICATIONS:

- Knowledge and skill in the use of tools and equipment applicable to maintenance and repair automotive engines, components and associated equipment;
- Knowledge of safety precautions and procedures applicable to maintenance shops and mechanical equipment;
- Ability to plan and supervise the work of others;
- Ability to keep records;
- Possession of a valid Wisconsin driver's license.

TRAINING AND EXPERIENCE: Graduation from high school supplemented by technical school courses in automotive mechanics and considerable experience in the repair of motorized equipment some of which was of a supervisory nature; or any combination of training and experience which provides the required knowledge, skills and abilities.

The parties stipulated that the Partsman position has been vacant since September 29, 1995.

The Shop Foreman is a member of the bargaining unit. It is undisputed that the Shop Foreman now spends much of his time in the office formerly occupied by the Partsman. The incumbent Shop Foreman did not testify. Three of the four incumbent Mechanics did testify. Each, in varying detail, testified that the duties of the Partsman position were not eliminated, but are now performed by the Shop Foreman. From their perspective, duties once performed by the Shop Foreman now go unperformed. This, in their view, has upset work flow within the shop,

since the demand for repairs tends to come directly from equipment operators to the

Mechanics without the intervention of the Shop Foreman to prioritize the work. Their testimony acknowledges that delivery of parts is prompt, and that the change has not directly affected the County's ability to keep roadways maintained and plowed.

The County Highway Commissioner, Steven Steensrud, also testified regarding the changes flowing from the elimination of the Partsman position. He noted that Paragraph 1 of the Partsman position description is now performed by an Account Clerk. The balance of the duties covered by the Partsman position description are now performed by the Shop Foreman. The elimination of the position of Partsman has not, in his opinion, adversely affected work flow within the shop. Equipment operators have always directly approached Mechanics in an attempt to get their equipment repaired immediately. This contradicts the current system of work assignment, which requires repair requests to be submitted on written forms, so that the Shop Foreman can prioritize the work. Glitches exist in that system, but those glitches are not traceable to the elimination of the Partsman position.

Steensrud also noted that the increasing computerization of the Partsman function made it unnecessary to keep an employee in that position on a full-time basis, and made it possible to combine the positions of Partsman and Shop Foreman.

The balance of the evidentiary background concerns bargaining history, and is best set forth as a brief overview of witness testimony.

Steven Peters

Peters is a Patrolman and currently serves as the Union's President. Peters noted that the parties have had a series of disputes focusing on posting. The first he could recall involved the use of tandem axle trucks. He noted that the Union filed a grievance because it felt the County was not filling the classification of Tandem Axle Truck Driver when a position became vacant. Rather, the County would assign the work as needed, but not to an employee classified as a Tandem Axle Truck Driver. This grievance was processed to arbitration, but the arbitrator determined it had not been timely filed, and did not address the grievance on its merit.

Peters testified that posting disputes continued, including one concerning a heavy equipment position and one involving the position of Assistant Partsman. The County, Peters noted, deleted the Assistant Partsman position prior to the retirement of the incumbent, Gene Campbell. The County did not post the position when Campbell retired, and the Union responded with a grievance. In response to this grievance, the Union and the Highway Committee negotiated the Position Roster agreement. Peters noted that when a tentative agreement had been reached, the Union negotiating committee brought it back to the membership for a ratification vote. The agreement involved eliminating a number of positions the Union believed should have been posted, including the position of Assistant Partsman. The negotiating committee informed the membership that grievances regarding prior posting disputes should be abandoned because the Position Roster agreement would eliminate such disputes in the future.

Peters felt the Highway Commissioner, Steven Steensrud, had committed the County to post the positions stated on the Position Roster. Peters understood the Position Roster to reflect the County's view of the positions it needed to operate the department, and thus the positions it would commit to post when a vacancy arose.

On October 6, 1993, the negotiating committees for the Union and for the Highway Committee executed a tentative agreement which ultimately became Article 18, Section D of the 1994-95 agreement. That tentative agreement included the following paragraph which was not put into the labor agreement:

Until this agreement is ratified by the Union and approved by the Juneau County Grievance Committee it shall not be binding upon the parties. However, to indicate the agreement of the parties within scope of their authority the following affix their signatures.

Steven Steensrud

Steensrud testified that he could not recall whether the Union or the County initially proposed the Position Roster agreement as a means to resolve the grievance. He did, however, recall that the Union presented a written document at some point in the negotiations process which included the following paragraph:

SAVINGS CLAUSE Any change in total number of positions whether it is more or less, the position in question shall be negotiated through Contract negotiations.

The County did not, at any point in the negotiations, agree to include this paragraph in the Position Roster agreement. Steensrud and the then-incumbent Corporation Counsel added handwritten notations to that clause. Among those notations are the placement of "(38)" after "positions" and the deletion of "whether it is more or less, the position in question".

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

THE UNION'S POSITION

The Union notes that "(t)here has been a long history of disputes between the parties regarding the posting of positions." A detailed review of that history establishes that Article 18, Paragraph D, came about as a settlement of a grievance that was part of that history. A review of relevant bargaining history establishes that "the County and the Union specifically agreed that there would be 38 positions in the bargaining unit, and that one of the positions was to be the

partsman position."

Testimony further establishes that there continues to be a need for the Partsman position. That the Shop Foreman performs those duties shows no more than the "abandonment of shop foreman duties." The evidence of bargaining history viewed in light of current and past practice establishes that "the Union compromised on" the disputed posting of positions. If the grievance is denied, the County will have been permitted to have given nothing for the Union's abandonment of its position on posting. The Union concludes that its view that "the position roster agreement would set forth the classifications and the numbers of people in those classifications, at least for the term of the contract," must be sustained.

THE COUNTY'S POSITION

After a review of the record, the County contends that the grievance should be denied because it is without support in the plain language of Article 18, Paragraph D. That provision "does mandate a particular allocation of employees to classifications," but "does not forbid the County from reducing the workforce by attrition." Article 5 permits the County to "determine the number of employees," and the roster agreement cannot be viewed to supersede it. Rather, the "purpose of the position roster agreement" is to "assure that . . . the County does not undermine the pay scale by assigning employees to lower paying classifications to do the same work performed by other higher-paid employees."

A detailed review of the language of the Position Roster establishes that it addresses the maintenance of staffing levels only regarding "the case of transition from former classifications to the position roster." The placement of the Position Roster within the labor agreement was underscores that it not intended to operate as a guarantee of a staffing level. The provisions of Article 18, Paragraph D underscore this.

The County then contends that bargaining history supports its position. The contention that problems in the shop reflect anything beyond personality clashes is unsupported by the evidence. More significantly, the evidence establishes that the Union sought to establish a guaranteed staffing level in negotiations, but failed to do so. That the Union's account of bargaining history "failed to supply one critical element which might sustain the expansive reading of the clause advanced by the Union" is fatal to the grievance. That element is "a countervailing benefit to the County."

The County concludes that the grievance must be denied. To adopt any other conclusion is to afford the Union a benefit through arbitration which it never secured in negotiation.

DISCUSSION

At first glance and arguably after a full look, the stipulated issue poses what appears to be an irreconcilable dilemma. The Union contends that Article 18, Section D guarantees a staffing level. This view poses a series of difficulties. There is no express statement of this guarantee. Rather, it must be implied from the Position Roster. This implication demands ignoring language

in Articles 5 and 8 which grants the County the authority to, among other

things, lay off employes. That the parties would guarantee employment without directly stating it and without expressly amending potentially conflicting agreement provisions presents an unusual result.

The County's view poses no less considerable a series of difficulties. The Position Roster has no apparent meaning if the County did not obligate itself to post the Partsman position. If, as the County contends, the purpose of the roster is to assure that the County "does not undermine the pay scale," it is not apparent what the roster accomplished which the wage appendix or Article 18, Section B failed to address. Beyond this, it is not apparent why the parties would, having negotiated a provision of little apparent significance, go to the trouble of expressly reserving a ratification vote for each negotiating committee.

Analysis of the stipulated issue must start, then, with the ambiguity of the Position Roster complicated by its ambiguous relationship to other agreement provisions. The most persuasive guides to the resolution of contractual ambiguity are bargaining history and past practice. Each reflects the conduct of the bargaining parties whose agreement is the source and the goal of contract interpretation.

Past practice is not available here. The Position Roster reflects settlement discussions flowing from a grievance filed under the predecessor to the agreement governing this grievance. The October, 1993 settlement agreement became part of the 1994-95 agreement and has not been clarified by any demonstrated practice. Bargaining history thus assumes determinative significance, and the evidence on that point favors the Union's view.

The broad outline and significance of the problems which led to the October, 1993 settlement agreement are not in dispute. For some time, the County has been reducing the number of employe classifications and employes within those classifications. Conflict has resulted. As Peters' testimony demonstrates, the Union has been concerned with the loss of positions and with the County's assignment of work to avoid permanently filling higher rated classifications. Peters' testimony, Steensrud's testimony as supplemented by Employer Exhibit 1 and the provisions of Article 18, Section D, 1, establish the parties' negotiations touched on the total number of positions needed to run the Highway Department. This and the parties' express desire to submit the agreement to a ratification process underscore that they were mutually addressing significant issues affecting staffing.

Against this background, it is unpersuasive to conclude that the Union did not acquire some assurance regarding the posting and filling of the positions on the Position Roster. The Union, through the settlement agreement, gave up any claim regarding the posting of the Assistant Partsman position. The County secured this and focused any posting claims onto the Position Roster. The provisions of Article 18, Section D, 4, indicate that the parties acted to preclude posting claims to a specific piece of equipment. That the parties mutually and expressly sought a ratification establishes that they viewed this exchange to stretch the limits of their authority.

The assurance secured by the Union, however, poses the interpretive dilemma noted above. It is unpersuasive to conclude the Union, by waiving one or a number of arguable posting claims, secured a guarantee of employment at 1993 staffing levels.

This dilemma can be addressed only by addressing the grievance narrowly and restricting it to its facts. Significantly, the County's right to eliminate positions through attrition or through layoff is not posed by the facts of this grievance.

The evidence will not support the assertion that the County eliminated the Partsman position. Rather, the County combined its duties with those of another position. Resolution 95-88 notes that the "duties of Partsman and Shop Foreman have changed significantly." The record offers no persuasive support for this assertion. The Position Roster was put into the labor agreement effective January 1, 1994. According to the resolution, radical changes to the positions of Shop Foreman and Partsman occurred between that date and the first action toward the adoption of Resolution 95-88 taken by the Personnel Committee in December of 1995. The County thus asserts that the structure reflected in the Position Roster was not stable for a single labor agreement.

The record will support the assertion that changes within the Highway Department are continuous and ongoing. The settlement underlying the Position Roster, for example, confirmed the deletion of the Assistant Partsman position. However, there is no persuasive evidence that radical change in the Partsman position took place during the term of the 1994-95 labor agreement.

The position descriptions underlying the Partsman and Shop Foreman positions, viewed with the position description for Shop Foreman prompted by Resolution 95-88, show no evidence of significant changes. The bulk of the "duties" section of the Partsman position description was simply transferred to the revised Shop Foreman position description. Item 1 of the Partsman position description became Item 10 of the Shop Foreman position description, and did establish that the Shop Foreman "assists in producing" reports he formerly was expected to "produce." Item 12 of the Partsman position description is not included in the revised Shop Foreman position description. Steensrud's testimony would indicate these duties were moved to an Account Clerk. Beyond this, there are no significant changes between the Partsman and the revised Shop Foreman positions. What evidence there is of change between the old and the revised Shop Foreman position descriptions is muted by Steensrud's acknowledgement that only one duty on the old Shop Foreman position description is not currently performed by the Shop Foreman. In sum, the position descriptions and relevant testimony fail to demonstrate significant change in the duties formerly split between the Partsman and the Shop Foreman positions.

Nor does it appear technological changes can account for the asserted change. Steensrud noted that technological improvements had supplanted much of the need for a Partsman position. It is not, however, apparent what technological change occurred between the deletion of the Assistant Partsman position and the retirement of the last Partsman. Nor is it apparent why the old Partsman position description demanded computer related duties and the revised Shop Foreman

position description did not add appreciably to them.

Testimony of shop employees is difficult to evaluate, but falls short of demonstrating significant changes which eliminated duties formerly performed by the Partsman position. The Mechanics who testified felt the Shop Foreman had essentially become a Partsman, thus abandoning his Shop Foreman duties. The absence of any testimony from the Shop Foreman makes it impossible to draw a definitive conclusion on this point. This cannot, however, obscure that Steensrud acknowledged the Shop Foreman spends the bulk of his time in the office formerly occupied by the Partsman. The only significant administrative change pointed to by Steensrud involved the creation of work orders to prioritize repair work. It is not apparent how this would significantly alter the duties performed by either a Partsman or a Shop Foreman.

It is undisputed that the County did not act to lay off the Partsman, either in whole or in part. The Position Roster addresses the "number of employees assigned to position," but is silent on whether those employees occupy a full or a part-time position. Whatever the County's authority to lay off may be, it is apparent it did not respond to the asserted changes to the Partsman position by laying any employee off, in whole or in part.

Against this background, the action taken under Resolution 95-88 cannot be viewed as anything other than the combining of duties formerly performed by the Partsman and the Shop Foreman. This is, essentially, the action which had prompted prior disputes, including the dispute which led to the October, 1993 settlement agreement which became Article 18, Section D. The County did not delete a position, except in title. Nor did the County lay off any employee in whole or in part. Rather, it spread desired Partsman duties between the Account Clerk and the Shop Foreman. All this did was circumvent the posting of the Partsman position. To sustain this would deny any meaning to Article 18, Section D.

The remedy set forth below states the parties' stipulation on the point and requires no discussion. Before closing, however, it is appropriate to tie the conclusion stated above more closely to the parties' arguments.

The County's contention that the Position Roster cannot persuasively be read as an indefinite agreement to a specific table of organization is persuasive. As noted above, the language of Article 18, standing alone or read in conjunction with Articles 5 and 8, will not support this result. Nor will the evidence of bargaining history. Whatever power the County has to delete a position or to lay an employee off must, however, be based in fact. In this case, the Partsman was not subject to a layoff and the duties comprising that position were not eliminated. This conclusion cuts, however, two ways. The Union has not, through the Position Roster, permanently eliminated staffing or posting disputes. County action viewed by the Union to undercut the Position Roster must be assessed on a case-by-case basis.

At hearing, the parties adduced conflicting evidence regarding whether strife within the shop was traceable to the elimination of the Partsman position. Steensrud's testimony that he called a meeting among Mechanics to address personality clashes between them rather than to address work flow issues traceable to the elimination of the Partsman position stands un rebutted. This does not, however, alter the conclusion stated above. Rather, the meeting testified to by

Steensrud and the Mechanics fails to offer evidence helpful in the resolution of the stipulated issue.

AWARD

The Employer, Juneau County, did violate the collective bargaining agreement by refusing to post and fill the position of Partsman in the Juneau County Highway Department after the position was vacated by the retirement of its last incumbent.

As the remedy appropriate to the County's violation of Article 18, Section D, the County shall:

- A. Post the Partsman position.
- B. Award the position to the senior qualified applicant.
- C. Pay the person awarded the position any pay differential retroactive to the date the position was vacated by its last incumbent.

Dated at Madison, Wisconsin, this 8th day of October, 1997.

Richard B. McLaughlin /s/

Richard B. McLaughlin, Arbitrator

RBM/mb
5561.WP1