

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between  
**WINNEBAGO COUNTY (PARKS DEPARTMENT)**

and

**WINNEBAGO COUNTY HIGHWAY DEPARTMENT EMPLOYEES UNION  
LOCAL 1903, AFSCME, AFL-CIO**

Case 288  
No. 55229  
MA-9937

*(Parks Department Layoff)*

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Appearances:

**Mr. Richard C. Badger**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 2825, Appleton, Wisconsin 54913, appearing on behalf of the Union.

**Mr. John A. Bodnar**, Corporation Counsel, Winnebago County, 448 Algoma Boulevard, P.O. Box 2808, Oshkosh, Wisconsin 54903-2808, appearing on behalf of the County.

**ARBITRATION AWARD**

Winnebago County (Parks Department), hereinafter referred to as the County, and Winnebago County Highway Department Employees Union, Local 1903, AFSCME, AFL-CIO, hereinafter referred to as the Union, are parties to a collective bargaining agreement which provides for final and binding arbitration of grievances. Pursuant to a Request to Initiate Grievance Arbitration the Wisconsin Employment Relations Commission appointed Edmond J. Bielarczyk, Jr., to arbitrate a dispute over the layoff of employees. Hearing in the matter was held in Oshkosh, Wisconsin on October 3, 1997. Post-hearing arguments were received by the undersigned by November 19, 1997. Full consideration has been given to the evidence, testimony and arguments presented in rendering this Award.

**ISSUE**

During the course of the hearing the parties were unable to agree upon the framing of the issue and agreed to leave framing of the issue to the undersigned. The undersigned frames the issue as follows:

"Did the County violate the parties' collective bargaining agreement when it laid off the grievants?"

"If so, what is the appropriate remedy?"

**PERTINENT CONTRACTUAL PROVISIONS**

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**ARTICLE 1**

**MANAGEMENT RIGHTS**

1. The management of the Winnebago County Highway (including the Landfill), Solid Waste, Airport, and Parks Departments and the direction of the employees in the bargaining unit, including, but not limited to,

the right to hire,  
the right to assign employees to jobs and equipment in accordance with the provisions of this Agreement,  
the right to assign overtime work,  
the right to relieve employees from duty because of lack of work or for other legitimate reasons,

shall be vested exclusively in the County.

2. In the event of change of equipment, the County shall have the right to reduce the working force if, in the sole judgment of the County, such reduction in the work force is required and nothing in this Agreement shall be construed to restrict the right of the County to adopt, or install, or operate new or improved equipment or methods of operation.

3. The Union recognizes the exclusive right of the County to establish work rules.

4. The Union recognizes that the County has statutory and charter rights and obligations in contracting for matters relating to some municipal operations. The right of contracting or subcontracting is vested exclusively in the County.

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ARTICLE 6

SENIORITY

The County recognizes seniority. Seniority is defined as the length of County service as it is measured from the last date the employee was hired by the County and continuing until he quits or is discharged. Persons who move from temporary or seasonal positions to permanent positions without a break in their continuous service shall have such service recognized for purposes of establishing a last date of hire.

Eligibility for benefits shall be determined in accordance with the above.

The term "departmental seniority" shall mean length of service within a specific department. For purposes of interpreting this article, the departments are the following:

1. Highway (including Highway Department employees assigned to the Landfill)
2. Parks
3. Airport
4. Solid Waste Department

Seniority shall not be diminished by temporary layoffs or leaves of absence without pay, or while receiving temporary Worker's Compensation.

The County shall provide the secretary of the Union with current department seniority rosters in December of each year.

For posting purposes, the seniority of full-time employees shall be given preferential treatment over part-time employees regardless of department.

ARTICLE 7

LAYOFF

SECTION A.

In the event of a layoff among permanent employees of more than one day's duration, all seasonal and temporary employees performing work regularly performed by employees represented by the bargaining unit, shall be laid off first. For purposes of layoff, seniority shall be established within each department.

SECTION B.

Layoffs of less than one day's duration need not be in accordance with the inverse order of seniority.

SECTION C.

One day layoffs caused by adverse weather conditions shall be rotated within each department separately. In the Highway Department such rotation shall not include the positions of janitor-watchman and mechanic. Such rotation shall begin with the least senior employees being laid off first. No employee shall be laid off for a second day until each employee shall have taken his turn.

SECTION D.

In the event of a layoff of more than a day's duration, the County shall lay off employees in the inverse order of their seniority in the department affected by layoff. A senior employee may induce layoff (bump) into an equal or lower ranking position occupied by an employee having less departmental seniority than himself provided that he is fully qualified to perform the duties of the position. In the Highway Department, persons bumping into janitor-watchman positions shall be compensated and scheduled in accordance with the terms and conditions in effect for janitor-watchman positions. In the Airport, persons bumping into custodian positions shall be compensated and scheduled in accordance with the terms and conditions in effect for custodian positions.

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### **BACKGROUND**

The County and the Union have been parties to a series of collective bargaining agreements. Local 1903 was originally established as a Highway Department union. Over the years other departments were added and by the 1980's the County's Parks, Airport and Solid Waste Departments had been added to the bargaining unit represented by the Union. Language was added to cover the seniority and layoff status of employees in the four departments. However, there is no record that the County has ever laid off an employee for more than one day since the inception of the language. On September 25, 1996 the County hired Robert Way as Winnebago County Parks Director. In March 1997, Way determined there was insufficient work in the Parks Department to warrant full staffing. At that time the Parks Department consisted of the following represented employees and their seniority dates:

#### **Parks Caretaker**

Robert Kinderman	12/26/78
Paul Miller	2/6/80
Chris Christensen	5/13/91

#### **Foreman/Landscape Designer**

Gregory Rasske	12/3/86
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#### **Foreman/Mechanic**

Robert Vaughan	10/2/90
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#### **Foreman/Expo Center**

Melvin Tebo	1/18/78
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On March 7, 1997 Way notified Parks Caretaker Paul Miller, Parks Caretaker Chris Christensen and Foreman/Landscape Designer Gregory Rasske they would be laid off effective 3:00 p.m. that day. Thereafter the instant grievance was filed alleging that the layoff of Miller and Rasske violated the collective bargaining agreement. The Union did not dispute the layoff of Christensen as he was the least senior employee in the Department.

### **Union's Position**

The Union argues that the manner in which the County interpreted departmental seniority and conducted the layoff clearly violated the parties' collective bargaining agreement. The Union points out it is undisputed that the number of parks and equipment maintained by the County has remained constant for many years. The Union also points out that Miller and Christensen have filed more grievances than any other employe and that they successfully arbitrated their respective discharges and suspensions in 1996. The Union does not dispute the County's right to layoff employes for lack of work.

The Union argues that it is commonly understood that contract language is ambiguous if plausible contentions may be made for conflicting interpretations. The Union asserts its contention that layoffs should be by strict departmental seniority is at least as plausible as the County assertion that departmental seniority is limited by some unwritten, implied practice of seniority within classification. The Union also argues that the County argument requires a double standard, that the County interpretation of Section D of Article 7 does not require the inclusion of the term "by classification" but the Union interpretation would require the inclusion of the term "only" by departmental seniority.

The Union acknowledges its argument is moot if it cannot be harmonized with the second sentence of Section D. The Union asserts the seniority of the second sentence can be exercised when employes have seniority in more than one department. Thus, Christensen, who had ten (10) years of seniority in the Highway Department could of exercised this seniority to bump less senior Highway Department employe when he was laid off from the Parks Department. The Union also argues that if there is more than one interpretation to the language arbitrators often construe the ambiguous language against the party who proposed or drafted it. The Union stresses it was the County who proposed the language and they should bear the brunt of any ambiguity.

The Union would have the undersigned sustain the grievance and to make the grievants whole for the entire time they were laid off.

### **County's Position**

The County contends its actions did not violate the collective bargaining agreement and asserts it was well within its authority in laying off three (3) employes. The County points to Way's testimony that during Winter months it became apparent to him there was a lack of work. Consequently he believed it was prudent and advisable to layoff the three (3) employes until the weather warmed and more usage of the parks occurred. The County points out there was no evidence presented to refute Way's conclusions.

The County acknowledges there is no dispute Rasske and Miller had more seniority than Foreman/Mechanic Vaughan. The County points out Miller's Parks Caretaker position is classified as a #2 classification and Rasske's Foreman/Landscape Designer position as well as the Foreman/Mechanic position are classified as a #5 classification. The County argues Section D of Article 7 allows an employe to bump a less senior employe who is in a equal or lower ranking position provided the employe is fully qualified to perform the position's duties. In support of its position the County points to Personnel Director William Wagner's testimony that it was the intent of the parties to layoff employes by classification. Thus Miller could not bump into Vaughan's position because Vaughan is in a higher classification. The County also asserts Miller was not qualified to do the Mechanic's duties. The County acknowledges that Vaughan and Rasske are in the same classification, #5, but asserts that Rasske is also not qualified to perform the Mechanic's duties.

The County concludes that as neither grievant provided any evidence which would demonstrate that they could fully perform the Mechanic's duties that the County acted in accord with the collective bargaining agreement. The County would therefore have the undersigned deny the grievance.

### DISCUSSION

The record demonstrates that the instant matter is the first time there has been a layoff of more than one day's duration. The record also demonstrates the County contention there was a lack of work was unrefuted by the Union. The Union does not dispute the right of the County to layoff employes because of lack of work but argues that when the County determined to layoff employes it violated strict departmental seniority when it laid off employes by seniority by job classification. The undersigned finds the Union assertion that layoff must be by strict seniority would lead to an absurd conclusion resulting in employes who are qualified to perform the remaining work would be laid off and employes who are unqualified would have to be assigned to perform functions for which they are not qualified or the work would not be done. Herein, the only less senior employe than either grievant is the foreman/mechanic. The Union has not demonstrated that either grievant could fully perform the foreman/mechanic's duties. Thus the Union's position would lead to a conclusion that work would have to be left undone because neither grievant could not perform it, or, the County would have to also have laid off the foreman/mechanic in order to have laid off either grievant because of lack of work in their classification. However, because there was not a lack of work for the foreman/mechanic the County would have violated the collective bargaining agreement if it laid off the foreman/mechanic.

The Union has also argued that the second sentence of Article 7, Section D, is harmonized with the theory that it allows employes who have gained seniority in more than one department to exercise bumping rights in another department if faced with a layoff from the

department the employe is currently working in. The undersigned finds that in addition to the absurd result of the Union's contention, there is no merit in this position for two reasons. First, the Union did not present any persuasive evidence that this was the parties intent when they originally drafted the language. Second, if this was the intent of the parties, the departmental seniority rosters which are required by Article 6 to be given to the Union each year would have the employes departmental seniority identified for each department they had worked in. No evidence was introduced at the hearing to demonstrate that the parties even keep records of an employe's seniority in other departments. Thus the undersigned finds the County contention that the second sentence of Section D implies lay off by classification to be a more logical harmonization of this sentence with the entire collective bargaining agreement.

Therefore based upon the above and foregoing and the arguments, testimony and evidence presented by the parties the undersigned concludes the County did not violate the collective bargaining agreement when it laid off the grievants. The grievance is therefore denied.

**AWARD**

The County did not violate the collective bargaining agreement when it laid off the grievants on March 7, 1997.

Dated at Madison, Wisconsin, this 26th day of February, 1998.

Edmond J. Bielarczyk, Jr. /s/  
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Edmond J. Bielarczyk, Jr., Arbitrator

