

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**GENERAL TEAMSTERS UNION, LOCAL 662 affiliated with the  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO**

and

**COUNTY OF CHIPPEWA, WISCONSIN**

Case 205  
No. 55784  
MA-10090

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Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by **Attorney Andrea F. Hoeschen**, 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, AFL-CIO, referred to below as the Union.

**Ms. Margaret M. McCloskey**, Chippewa County Personnel Director, 711 North Bridge Street, Room 100, Chippewa Falls, Wisconsin 54729-1876, appearing on behalf of County of Chippewa, Wisconsin, referred to below as the Employer or as the County.

**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 requested that the Wisconsin Employment Relations Commission appoint an Arbitrator to resolve a grievance filed by Delores Gund on behalf of the bargaining unit. The Commission appointed Richard B. McLaughlin, a member of its staff. Hearing on the matter was held on March 11, 1998, in Chippewa Falls, Wisconsin. The hearing was not transcribed. The parties filed briefs by May 7, 1998.

**ISSUES**

The parties stipulated the following issues for decision:

Did the County violate the contract by not posting the vacant Benefit Fraud Specialist position?

If so, what is the appropriate remedy?

### **RELEVANT CONTRACT PROVISIONS**

#### **ARTICLE 2 - MANAGEMENT RIGHTS**

Except as expressly modified by other provisions of the contract, the County possesses the sole right to operate the County and all management rights repose in it. These rights include, but are not limited to, the following:

- A. To direct all operations of the County;
- B. To hire, promote, transfer, schedule and assign employees in positions within the County;
- C. To suspend, demote, discharge and take other disciplinary action against employees;
- D. To relieve employees from their duties;
- E. To maintain efficiency of County operations;
- F. To take whatever action is necessary to comply with State or Federal law;
- G. To introduce new or improved methods or facilities;
- H. To change existing methods or facilities;
- I. To determine the kinds and amounts of services to be performed as pertains to County operations; and the number and kind of classifications to perform such services;
- J. To determine the methods, means and personnel by which County operations are to be conducted;
- K. To take whatever action is necessary to carry out the functions of the County in situations of emergency;
- L. As in the past, to contract out for goods and services.

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#### **ARTICLE 8 - SENIORITY, JOB POSTING AND PROMOTION**

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Section 2. Layoff and Recall. In reducing personnel, the least senior person in the classification in the affected department shall be laid off. That laid off employee may bump the least senior person in his/her pay grade if more senior, and if determined to be qualified by the County's Personnel Department. That

bumped

employee, or the laid off employee if bumping within pay grade did not occur, may bump the least senior person in the next lowest pay grade if more senior and if determined to be qualified by the County's Personnel Department. Similarly, until the process reaches the lowest paying pay grade, the newly bumped person (or the originally bumped person or the laid off person if bumping did not occur), may bump the least senior person in the next lowest pay grade if more senior and if determined to be qualified by the County's Personnel Department.

. . .

Section 5. Posting. All new or vacated positions which the County has determined to fill shall be posted by the responsible Department Head or Supervisor on the main bulletin board for the bargaining group involved for three (3) working days stating the job that is to be filled, on what date it is to be filled, and the rate of pay. The following factors shall be considered in filling new or vacated positions: (1) qualifications and ability to perform the work; and (2) seniority. Testing and interviewing via the posting procedure shall be at the County's expense and without loss of time to the employee.

### **BACKGROUND**

Delores Gund, a Word Processing Coordinator in the County's Economic Support Division and a Union Steward, filed the grievance form, which states the relevant background thus:

Pam Johnson assumed the duties for the position of the Benefit Recovery/Fraud Specialist when Connie Fisher terminated her employment.

Margaret McCloskey, the County's Personnel Director, responded to the grievance in a letter to Gund dated July 28, 1997, which states:

. . . The position was not posted because the duties were reassigned to another ESS Worker. This is a T-6 position in the Human Services Department. ESS workers are also at the T-6 pay level. They are inter-related jobs.

C.W. King has reassigned duties among these positions in his department as a Management Right. There has been no loss of pay and no loss of status,

simply a reassignment of job functions. There has been no violation of the contract. Ultimately, there may or may not be a vacant position which Management determines to fill as a result of these movements.

As you know, the merger of Social Services and Community Programs into a Human Services Department is still an ongoing process. Also, there are changes to be expected in Economic Support due to W-2.

C.W. has been working diligently to restructure and reorganize the two former departments into a cohesive, cost-effective operation, and to do this in a way that will ultimately save jobs. One of the tools he can use is to eliminate staff through attrition rather than to lay off employees. When an employee leaves the department, C.W.'s reassignment of duties among remaining individuals is a part of this process. He has assured me that, if he determines to fill a vacancy following this reassignment, he will post it.

. . .

The parties do not dispute the facts surrounding Gund's grievance.

The Benefit Fraud Specialist position, also known as the Benefit Recovery/Fraud Specialist, does not have a job description. The position has evolved over time. In 1988, it was placed within the T4 pay range. It evolved into a position known as Verification Specialist. The 1993 Verification Specialist job description placed it in the T5 pay range. The "Position Functions" of that job description state that the occupant of the position typically would devote 75% of their time to "Front-end verifications," 10% of their time to "Fraud investigations," and 15% of their time to "Collections" duties. The "Knowledge, Skills and Abilities" section of the job description is composed of nine separately stated paragraphs, and the "Desirable Training and Experience" section is composed of six separately stated paragraphs.

The 1997 job description for Economic Support Specialist II places it in the T6 pay range. The "Position Functions" portion of that job description reads thus:

1. Interview clients to determine eligibility and benefit levels for state and local programs including, but not limited to, Aid to Families with Dependent Children (AFDC), Medical Assistance (MA), Food Stamps (FS), and/or General Relief (GR).
2. Obtain, verify and document necessary information for client applications/changes/reviews.

3. Ensure that all the necessary and appropriate applications, monthly report forms, and other data entry forms are coded properly and processed correctly through the state computerized system so that the client's case is current, accurate and complete.
4. Ensure that all appropriate reports are completed and filed as necessary to maintain agency compliance with federal, state and local laws and/or regulations.
5. Keep all applicable manuals and/or handbooks up to date and maintain a current understanding of the policies contained within them.
6. Ensure that all necessary collateral checks and verifications indicated by computer cross matches, fraud referrals, or front-end investigations are completed in a timely manner. Perform recalculations to determine client over/under issuances.
7. Maintain the ability to perform duties in an independent manner while exercising good judgment.
8. Respond in a timely manner to telephone, letter, and personal contacts made by or on behalf of clients.
9. Attend and participate in required staff meetings and training sessions.
10. Perform other duties as assigned by the ES manager.

The “Knowledge, Skills and Abilities” and the “Training and Experience” portions of that job description are essentially identical to those portions of the Verification Specialist job description.

Casey Le Clair served as the County’s Verification Specialist and was succeeded in the position by Helen Hagen. In 1993, Connie Fisher succeeded Hagen. In each of these instances the County posted the position. Fisher left the Benefit Fraud Specialist position sometime in early May of 1997. Sometime after her departure, Clyde W. King, the County’s Director of its Human Services Department, assigned duties performed by Fisher to Pam Johnson, who was at the time classified as an Economic Support Worker, and had roughly one year of experience with the County. Gund learned of this assignment on May 19, 1997, when she saw a notice, which read:

Congratulations to Pam!!! She will assume the duties for the position of the Benefit Recovery/Fraud Specialist

Gund testified that the duties formerly performed by Fisher but currently performed by Johnson require roughly 90% of Johnson's time. The County has not posted Fisher's position.

It is undisputed that Johnson received training in the functions formerly performed by Fisher. For example, Johnson attended a conference in August of 1997, which was promoted as "new worker training for fraud investigators and front end verification specialists." The agenda for that conference included an offering on "the role of the economic support specialist." She also attended a conference in September of 1997 for new worker training in W-2. A notice of that seminar stated "who should attend" thus:

All employees hired after March 15, 1997, who will be performing job functions related to W-2: 1) Resource Specialists, 2) W-2 Supportive Services Planner, 3) Financial Employment Planner, 4) Job Coach/Employment Specialist, and 5) All Economic Support Specialist (sic) determining eligibility for Medical Assistance and Food Stamps.

Johnson was also the only County employe from the Economic Support Department to attend a January, 1998 workshop on fraud programs. Johnson succeeded Fisher on a regional steering committee for an organization spanning public and private sector agencies addressing economic support programs, including W-2. It is undisputed that the administration of W-2 requires fraud prevention procedures, which may, under the W-2 program, be filled through County employes or may be contracted out.

King testified that the County once administered social service and community program offerings through separate departments. The overhaul of economic assistance programs referred to as W-2 altered that. The County vigorously debated whether to become involved in the administration of the program at all. King believed that the County had competent staff with valuable experience and argued for the County to become the administrator of W-2 programs. The County chose to do so, but the Board was unwilling to commit significant County-based resources to the effort. These considerations, among others, prompted the consolidation of County services into a single Human Services Department.

Knowing that the County has experienced a significant drop in economic assistance caseloads and knowing County reluctance to maintain staffing levels, King decided to reduce the workforce of the Human Services Department by attrition whenever possible. When Fisher left County employment, King decided not to fill her position, but to allocate those the Department still required to another position. That position was Johnson's position of Economic Support Specialist. The County has no employe other than Johnson working in the fraud programs formerly assigned to Fisher. King, and the County's Personnel Department,

viewed this reassignment of duties as a continuing part of a consolidation process traceable to



W-2. King noted the County has reduced its Human Services Department by 7.5 full-time equivalent positions through the process applied to Johnson. The County has not yet rewritten job descriptions to reflect these changes.

Sometime in 1995, the Union attempted to secure reclassifications covering a number of unit employes. Included in those requested reclassifications was a proposal to move the position of Economic Support Specialist and the position of Verification Specialist to pay range T6. This attempt was not, at that time, successful. King supported the effort as a group effort. Fisher, after the County's denial of the reclassification, sought to have her reclassification addressed separately. She was granted the opportunity to do so before the Personnel and Negotiations Committee on October 24, 1995. The minutes from that meeting read thus:

3.2 Verification Specialist McCloskey introduced Connie Fisher to the Committee. Fisher thanked the Committee for their time in allowing her to discuss the denial of her reclassification request. Fisher stated she had received a letter from the Personnel Department informing her that her reclassification request had been denied because it was considered to be a wage adjustment and not a reclassification. Fisher stated that she is not an Economic Support Worker. She said she has her own title and during contract negotiations she was not included in the request to move the Economic Support Workers to a T6 level. She said she presented her own reclass to the Human Services Board and to Tom Simonsen. She said she was not included in contract negotiations and she was not given the proper justification for the denial from the Personnel Department. She said she was requesting that the Personnel Committee look at her reclassification request separately and that it not be included with the Economic Support Workers. McCloskey stated it was her understanding that when King presented the reclassification requests they were all done as a group and the Verification Specialist was not presented as a separate request. Brost stated she thought this position had been part of the union request. She said she serves on the Human Services Board and it was her understanding that the Verification Specialist and Economic Support workers were presented to the Board as a group request.

As noted above, the Benefit Fraud Specialist and the Economic Support Specialist positions ultimately became part of the T6 pay range.

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

### **THE UNION'S POSITION**

The Union argues that the contract "clearly requires the County to post all vacant positions, without regard to classification or wage level." That the County filled the Benefit Fraud Specialist position with an employe from the same wage level has no contractual meaning. Economic Support Specialist and Benefit Fraud Specialist are contractually distinct positions with separate job descriptions. The posting provision makes no reference to wage levels. Neither the contract nor arbitral precedent provide any defense for the County's failure to post the Benefit Fraud Specialist position once it became vacant.

Nor can CHIPPEWA COUNTY, MA-9547 (GRECO, 1996) provide a defense for the County's conduct. Arbitrator Greco, in that decision, determined only that "the County had the right to transfer bargaining unit work to a supervisory employee." Because the County determined to fill the Benefit Fraud Specialist position, Greco's award is distinguishable.

The County's contention that it shifted work to Johnson is unpersuasive. The Union argues that "Economic Support Specialist and Benefit Fraud Specialist are different positions with different job descriptions . . . different training and different responsibilities." The evidence establishes that more than a mere shift of some work occurred when King altered Johnson's duties. The purported shift of duties cannot be seen as anything less than the filling of a vacancy.

That King felt the action effected a "down-sizing" without harm to any employe cannot justify the County's conduct, since "(t)he County's reasons for violating the Agreement are immaterial." Arbitral precedent and the agreement establish that if the County chooses to down-size, it must comply with governing layoff, seniority, and posting provisions. The Union puts the point thus: "(I)n no circumstance may the County avert a layoff by violating the posting and seniority rights of the rest of the bargaining unit."

As the remedy appropriate to the County's violation of the labor agreement, the Union asks "that the position be posted and the successful bidder be made whole."

### **THE COUNTY'S POSITION**

The County contends that King's actions are a valid exercise of its authority under Article 2. King determined that the reduction in caseloads traceable to the implementation of W-2 made it possible not to fill the Benefit Recovery/Fraud Specialist position. The same reduction in caseload made it possible for Johnson to assume additional duties, thus permitting the County to shed one position without harm to any employe.

Arbitrator Greco's decision was directed to the Professional unit, but the governing language is the same as that posed here. Minor differences in detail cannot obscure that "the award for the County in one of the bargaining units with identical contract language and location, is directly on target in the current situation."

While certain functions differ between the Benefit Recovery/Fraud Specialist and ESS positions, they share the same pay range, training and prerequisites. Thus, Johnson's move was lateral, and well within the County's authority. That the Union brought a reclassification action common to both positions underscores their underlying similarity.

The radical changes within the programs administered by unit employees, coupled with major funding issues establish the need for conscientious application of its "broad powers of administration." That King has been able to reduce the size of the department without harming employees "was accomplished within the scope of management rights and without contract violation." The County concludes that the record establishes that the grievance must be denied.

### DISCUSSION

The issue is stipulated and poses the relationship of Article 2 with Article 8. More specifically, the issue is whether the County is authorized under Sections A, B, E, G, H, I and J of Article 2 to assign work formerly performed by Fisher to Johnson. The issue poses the relationship of the two articles because, standing alone, Article 2 grants rights broad enough to cover the facts posed by the grievance. The interpretive issue is whether those broad rights have been "expressly modified," within the meaning of the first paragraph of Article 2, by Sections 2 and 5 of Article 8.

Article 8, Section 5 is the contractual strength of the Union's case. That section mandates that "(a)ll . . . vacated positions . . . shall be posted." The strength of the County's view of this section is that the posting mandate is directed to "positions which the County has determined to fill." The Union persuasively argues that the County's representation that it chose not to fill Fisher's position does not dictate the conclusion that it did not, in fact, fill it. Thus, the conflict between the two parties' views of Section 5 is factual. The factual issue is whether the County reassigned duties not constituting a position or whether it effectively replaced Fisher's position.

The strength of the Union's arguments must be granted, but the record falls short of establishing that the County filled Fisher's position. Gund's testimony that Johnson spends the predominant amount of her work time performing duties once performed by Fisher is forceful. Beyond that, it is apparent that Johnson has been trained to assume fraud prevention duties once performed by Fisher. The informal notice prompting the grievance all but announces the successful bid for a position.

The significance of these points cannot be obscured, but must be balanced against other evidence. Gund's testimony on Johnson's day-to-day work activity has not been rebutted, but is less than a definitive analysis of what portion of a typical work day Johnson spends in performing duties formerly performed by Fisher. That Gund opens Johnson's mail, and controls access to files Johnson needs to document the implementation of fraud prevention measures affords her insight into Johnson's work, but is something less than a job audit. Beyond this, the training conferences Johnson attended were also geared to the work of an Economic Support Specialist. Nor is it clear who prepared the notice which prompted the grievance. The representations of the informal notice are troublesome, but the record does not establish who made those representations.

Standing alone, these qualifications cannot undercut the significance of the Union's arguments. The qualifications do not, however, stand alone. It is evident that the Benefit Fraud Specialist is something other than a long-standing position with fixed set of duties. The evidence shows the Benefit Fraud Specialist to be long standing, but a position in flux within a department in flux. There is no job description for Benefit Fraud Specialist. The most recent job description is for Verification Specialist, when the position was placed in the T5 pay range. Since the implementation of that job description, the position was renamed and upgraded a pay range. Thus, the duties composing the position of Benefit Fraud Specialist have been undergoing change. Beyond this, the changes were sufficiently significant to move the Benefit Fraud Specialist two pay ranges since 1988.

That the Human Services Department is in flux is apparent. The changes prompting the consolidation of the Department have resulted in the reduction of 7.5 full-time equivalent positions. Beyond this, the implementation of the W-2 program has altered the interaction between Human Services Department employees and their clients.

Significantly, the positions of Economic Support Specialist and Benefit Fraud Specialist have considerable overlap. The 1997 job description for Economic Support Specialist II lists essentially the same "Knowledge Skills and Abilities" and "Training and Experience" requirements as the 1993 job description for Verification Specialist, even though, by the terms of the job descriptions, it is rated one pay range higher. Training, as noted above, can be geared to both positions.

Against this background, King's actions after Fisher's departure manifest more a continuing realignment of duties than the replacement of employees within a single position. That Johnson has assumed fraud prevention based duties formerly performed by Fisher is apparent. Less apparent is whether a Benefit Fraud Specialist must perform those duties. If that position has been clearly defined, it is not apparent how it moved two pay ranges. That it shares the same pay range as Economic Support Specialist cannot establish that the positions are identical, but does establish a qualitative equivalence of duties. That the positions have considerable overlap makes the

assignment of duties between them appear predictable. On balance, King's actions look more like the ongoing response of a department in flux than a refusal to post a clearly defined set of duties established as a discrete position.

The line between assigning duties and posting a position can be fine, and it is thus necessary to tie the conclusion stated above more closely to the parties' arguments. The award of Arbitrator Greco does highlight that the provisions of Article 8, Section 5 must be reconciled with the authority stated at Article 2. It also underscores that Article 8, Section 5 does not apply unless the County determines to fill a position. These points must, however, be given meaning by their application to fact. The facts underlying the Greco decision have little bearing on the facts posed here. That the County chooses to characterize its decision as something other than filling a position cannot render Article 8, Section 5 meaningless. If anything, the Greco decision underscores the need for caution in applying rights under Article 2. Those rights must not be applied in a fashion to defeat the rights stated in Article 8. The award, if applicable here, underscores that the conclusion stated above must be restricted to the facts posed by this grievance.

The Union's contention that the County's conduct can undercut Article 8 rights is forceful, but is ultimately not supported by the facts. The Union is correct that the County cannot "avert a layoff by violating the posting and seniority rights" of Article 8. However, the evidence forms less than a seamless fit with Article 8. The first sentence of Section 2 of Article 8 mandates that "the least senior person in the classification in the affected department shall be laid off ... (i) reducing personnel." This reference points to situations where an individual must be removed from employment status. This does not, in itself, mean King can avoid the rights granted in Section 5, but does indicate that he has some latitude in relying on attrition to effect personnel changes. At a minimum, this establishes that Section 2 did not somehow mandate a layoff when Fisher left.

This underscores that the focus of this dispute is Section 5 of Article 8, and underscores the difficulty of the Union's application of that section to these facts. The effect of the Union's position is that Fisher's departure mandated a layoff. The difficulty with this position is that it is not apparent, on this evidence, what contract provision mandates that layoff. That the Benefit Fraud Specialist position is closely related to that of Economic Support Specialist and has undergone considerable change over time makes it difficult to conclude that King did anything other than reassign duties between similar positions to permit the loss of a position by attrition. If the lost position could clearly be identified as that of Benefit Fraud Specialist, then the mandate for the layoff could be rooted in Section 5 of Article 8. The record establishes, however, only that in a continuing realignment of duties, the positions of Economic Support Specialist, Benefit Fraud Specialist and perhaps others have ceded duties to permit the loss of an entire position through attrition. Against this background, mandating a layoff would work greater damage to Article 2 than to Article 8.

**AWARD**

The County did not violate the contract by not posting the vacant Benefit Fraud Specialist position.

The grievance is, therefore, denied.

Dated at Madison, Wisconsin, this 7<sup>th</sup> day of July, 1998

Richard B. McLaughlin /s/

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Richard B. McLaughlin, Arbitrator