

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**PAINTERS AND ALLIED TRADES
LOCAL UNION NO. 781, AFL-CIO/MBTC**

and

MILWAUKEE COUNTY

Case 484
No. 58003
MA-10805

(Painters Local 781 Grievance)

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, by **Ms. Jill Hartley**, on behalf of Painters and Allied Trades Union Local No. 781, AFL-CIO/MBTC.

Mr. Timothy R. Schoewe, Deputy Corporation Counsel, on behalf of Milwaukee County.

ARBITRATION AWARD

The Milwaukee Building and Trades Council, AFL-CIO, of which Painters and Allied Trades Local Union No. 781, AFL-CIO/MBTC, hereinafter the Union, is a member, requested that the Wisconsin Employment Relations Commission appoint a staff arbitrator to hear and decide the instant dispute between the Union and Milwaukee County, hereinafter the County, in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. 1/ The County subsequently concurred in the request and the undersigned, David E. Shaw, of the Commission's staff, was designated to arbitrate in the dispute. A hearing was held before the undersigned on February 3, 2000, in Milwaukee, Wisconsin. There was no stenographic transcript made of the hearing and the parties submitted post-hearing briefs in the matter by March 16, 2000. Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following Award.

1/ *The parties mutually agreed to waive the time limits for issuance of an award.*

ISSUES

The parties stipulated there are no procedural issues, but were unable to agree on a statement of the substantive issues and agreed the Arbitrator will frame the issues.

The Union would state the issues as follows:

Did the County violate the parties' collective bargaining agreement when it assigned parking lot striping work in the County to members of AFSCME Local 882 instead of to members of Painters Local 781? If so, what is the appropriate remedy?

The County would state the issues as being:

Did Milwaukee County violate Sec. 2.01(4) of the labor agreement on May 25, 1999, when it assigned non-#781 employees to paint stripes on a parking lot in Hoyt Park? If so, what is the remedy?

The Arbitrator frames the issue as follows:

Did the County violate the parties' collective bargaining agreement on May 25, 1999 when it assigned non-bargaining unit employees parking lot striping work in Hoyt Park? If so, what is the appropriate remedy?

CONTRACT PROVISIONS

The following provisions of the parties' Agreement are referenced:

1.01 RECOGNITION. The County of Milwaukee agrees to recognize, and herewith does recognize, Milwaukee Building & Construction Trades Council, AFL-CIO, as the exclusive collective bargaining agent on behalf of the employees of Milwaukee County in accordance with the certification of the Wisconsin Employment Relations Commission Case LV, No. 16954, ME-960, Decision No. 12098.

...

1.04 MANAGEMENT RIGHTS The County of Milwaukee retains and reserves the sole right to manage its affairs in accordance with all applicable laws, ordinances, resolutions and executive orders. Included in this responsibility, but not limited thereto, is the right to determine the number,

structure and location of departments and divisions; the kinds and number of services to be performed; the right to determine the number of positions and the classifications thereof to perform such service; the right to direct the work force; the right to establish qualifications for hire, to test and to hire, promote and retain employes; the right to transfer and assign employes, subject to existing practices and the terms of this Agreement; the right, subject to civil service procedures and the terms of this Agreement related thereto, to suspend, discharge, demote or take other disciplinary action and the right to release employes from duties because of lack of work or lack of funds; the right to maintain efficiency of operations by determining the method, the means and the personnel by which such operations are conducted and to take whatever actions are reasonable and necessary to carry out the duties of the various departments and divisions.

In addition to the foregoing, the County reserves the right to make reasonable rules and regulations relating to personnel policy procedures and practices and matters relating to working conditions, giving due regard to the obligations imposed by this Agreement. However, the County reserves total discretion with respect to the function or mission of the various departments and divisions, the budget, organization, or the technology of performing the work. These rights shall not be abridged or modified except as specifically provided for by the terms of this Agreement, nor shall they be exercised for the purpose of frustrating or modifying the terms of this Agreement. But these rights shall not be used for the purpose of discriminating against any employe or for the purpose of discrediting or weakening the Council.

The County is genuinely interested in maintaining maximum employment for all employes covered by this Agreement consistent with the needs of the County.

In planning to contract or subcontract work, the County shall give due consideration to the interest of County employes by making every effort to insure that employes with seniority will not be laid off or demoted as a result of work being performed by an outside contractor.

In the event a position is to be abolished as a result of contracting or subcontracting, the County will hold advance discussions with the Council prior to letting the contract. The Council representatives will be advised of the nature, scope of work to be performed, and the reasons why the County is contemplating contracting out work.

...

2.01 WAGES Rates paid to skilled tradesmen in all classifications shall be as follows:

...

(4) **PAINTER'S WAGE RATE** - Effective the next pay period following the execution date of this Agreement, a Painter shall be paid (\$.75) seventy-five cents per hour more than the hourly wage rate when Spraying or Sandblasting. Effective the next pay period following the execution date of this agreement, a Painter shall be paid (\$.35) thirty-five cents per hour more than the hourly wage rate, for all hours when so assigned, to perform drywall, taping, and finishing.

...

BACKGROUND

Milwaukee County owns and maintains a park system consisting of approximately 130 parks located throughout the County. The parks are divided into various regions, with a regional manager in charge of those regions. There is a Landscape Services Division responsible for all forestry and asphalt maintenance in the county park system. There is a Parks Maintenance Division, headed by a manager, and all of the painters employed in the parks are in that division. Steven Murphy is the Landscape Services manager and Allen Krumsee is the manager of the Parks Maintenance Division. The Union, Local 781, represents all of the professional painters employed by Milwaukee County throughout its various departments and divisions, including the Parks Department. Local 882, AFSCME, AFL-CIO, represents employes in non-trades positions employed in various departments and divisions throughout the County, including Parks Department, Landscape Services Division, and the Highway Department.

The grievants, Timothy Hanson and Diane Hanson, are journeymen painters in the Parks Maintenance Department and are represented by Local 781. On May 25, 1999, the grievants observed employes in the Landscape Services who are members of the bargaining unit represented by AFSCME, Local 882, painting stripes in the Hoyt Park parking lot using an airless, high-pressure paint sprayer for the work. Timothy Hanson testified that prior to May 25, 1999, he had never seen anyone except Carl Clements, a painter employed in the County's Highway Department, do striping in park parking lots. He had observed Clements striping the Brown Deer parking lot in 1996. Hanson also testified that the airless sprayer used by employes of Landscape Services was of the type he uses on an everyday basis. Hanson also testified that he has never painted stripes on parking lots or athletic fields.

Carl Clements testified that he has been employed as a painter in the County's Highway Department since 1989, and that his duties include road striping and painting buildings. He testified that he has striped parking lots in the parks beginning back as far as approximately 1990 using an airless sprayer, and that he has done so every year. Clements testified that when doing the painting in the Parks Department he uses the Highway Department equipment and paint and uses either a sprayer or a sprayer truck. A highway maintenance worker assists Clements, but does not run or operate the equipment. Clements also testified that he has observed Landscape Services employees represented by Local 882 striping on more than one occasion in the past year and that he has made complaints to the Union's representative about that.

Debra Klinter, a member of the bargaining unit represented by Local 882, was a seasonal employee in Landscape Services in 1993 and 1994, and thereafter became a permanent employee in the Highway Department. Klinter testified that she never did any painting while employed in Landscape Services and never saw other employees of that division doing striping work in the parks. Klinter assisted Clements in 1996 painting a crosswalk in Brown Deer Park. Klinter also testified that she has never observed anyone doing striping in the parks.

Thomas Rondeau has been with the County 24 years. He has been employed in the Highway Department since 1988 and was in Parks before that as a laborer. Rondeau is also a member of the bargaining unit represented by Local 882. Rondeau testified he never saw anyone striping parking lots in the parks while he was in the Parks Department, but that he has at times assisted Clements in striping parking lots in the parks since being in the Highway Department. Rondeau also testified that he has never observed anyone other than Clements do striping in park parking lots and that he has no idea who else performs such work for the County.

Landscape Services Manager for the County, Murphy, testified he has been with the County 22 years and that Landscape Services has been responsible for striping and patching in park parking lots and that he has been responsible for assigning such work, beginning in 1982 as a supervisor. He testified that most of the time the work has been contracted out to "time and material" contractors or assigned to Local 882 members who are Parks employees assigned to a particular park, citing as an example, striping the "S" curve in the Grant Park roadway. In that latter regard, Murphy testified that in 1992 or 1993 the manager for the North Region purchased such paint spraying equipment. He further testified that Landscape Services employees started doing striping work in 1999 when that division obtained its first airless sprayer.

Allen Krumsee, who has been the Parks Maintenance Manager for approximately nine years, testified that a request will come in from a region for painting work in the form of a work order, and that he has never received a work order to do any kind of striping in parking

lots or otherwise. Parks Maintenance does not have striping equipment *per se*, and does not have walk behind sprayers and most of the division's sprayers are used for painting swimming pools. All of the painters employed in the Parks Department are employed in the Parks Maintenance Division.

James Goulee testified that he has been a Regional Manager in the Parks for approximately nine years, and has been in the Department for approximately 27 years. He testified that as to parking lot painting, most of it has been done by Local 882 members at least since 1987, although he has observed Clements doing striping or painting of parking spaces in the park system, including striping the Lincoln Memorial Parkway with the sprayer truck. Goulee testified that he submits work orders for striping to the Landscape Services, or that it is contracted out or given to the Highway Department. He further testified that he has seen Local 882 employes stripe parking lots and do center striping on the Menomonie and Grant Parkways with "aerosol cans" that fit on a four-wheel carrier and that he has not seen other park employes do striping. He has also observed outside contractors doing striping one or two times over the years.

The parties were unable to resolve the grievance regarding the May 25 striping of the parking lot at Hoyt Park and proceeded to arbitration of the dispute before the undersigned.

POSITIONS OF THE PARTIES

Union

The Union asserts that the County's assignment of parking lot striping to Local 882, AFSCME members instead of the Painters in Local 781 violates the parties' entire Agreement. Although the parties' Agreement does not contain an explicit work jurisdiction clause, the striping work constitutes "spraying" which is clearly designated as Painters' work in Section 2.01(4) of the Agreement. The Union cites arbitral authority for the view that unilateral transfers of work covered by the labor agreement violate the entire labor agreement. The testimony in this case established that the striping work in issue has normally been performed by members of this Union. Arbitrators consistently find a prohibition against transferring work that bargaining unit employes have traditionally performed.

The wage, recognition and seniority clauses of the Agreement prohibit the transfer of striping work out of the bargaining unit. Arbitrators consistently look to those clauses in the agreement, and the absence of an explicit work preservation clause does not permit the removal of bargaining unit work. An implied prohibition in removing unit work is a substantive, enforceable provision of a labor agreement. SKELLY OIL CO., 62 LA 69 (Schedler, 1974). Citing a number of additional awards, the Union asserts that arbitrators find

restrictions on removing work by the very act of entering into a collective bargaining agreement, reasoning that unless work is protected, all bargaining unit work could be removed. In the absence of explicit language giving management the right to remove work, the labor agreement itself bars the employer from removing unit work.

The parties' Agreement contains a recognition clause that requires the County to bargain with Milwaukee Building and Construction Trades Council on behalf of the bargaining unit employees, and also contains various clauses referencing seniority as well as a seniority clause itself. The combined effect of all of these clauses serves to prevent the County from transferring bargaining unit work which is within the Union's jurisdiction.

Further, the County may not justify transferring striping work to Local 882 on the basis of its management rights. The right to "direct the work force" or "transfer and assign employees" does not render meaningless the clauses that evidence a clear intent to restrict the performance of bargaining unit work to unit employees. Also, the management rights clause in the Agreement subjects the applications of the County's rights to "existing practices and the terms of this Agreement." Here, the parties' past practice, in combination with the wage, recognition and seniority clauses in the Agreement, explicitly prohibits the County's actions.

The County also may not defend its assignment of the striping work in this case on the basis that it was *de minimis*. The County's action in transferring the parking lot striping in Hoyt Park took away no less than 40 hours of bargaining unit work. Also, there are numerous parks in the County system and the testimony of Clements established that Hoyt Park is not the only park at which the County has assigned lot striping work to Local 882 members. While the County's action in this case has reduced the Union's work jurisdiction in the one area of lot striping, if it is permitted to do so, logically there would be no reason why it could not destroy the entire bargaining unit in the same fashion. Therefore, the County must be prohibited from eliminating any bargaining unit work, regardless of its amount or character. The fact that no bargaining unit employees were laid off as a result of the improper work transfer is not a relevant consideration. Nor is it relevant that the work removed was assigned to employees in another union. *SANGAMO ELECTRIC CO.*, 27 LA 631, 632 (Kelliher, 1956).

The Union also asserts that the clear language of the Agreement establishes that the work in issue is within the work jurisdiction of this Union. In this instance, the members of Local 882 were observed using the same type of airless sprayer unit used by members of this bargaining unit on a daily basis. While members of Local 882 had been observed in the past using Hudson sprayers or aerosol spray equipment to stripe baseball diamonds, football fields or basketball courts, they have never been observed using the type of airless sprayer they used at Hoyt Park. It is the use of the airless spray equipment to stripe the parking lot that infringed upon the Union's work jurisdiction. Section 2.01(4), of the parties' Agreement, states that: "a

Painter shall be paid (\$.75) seventy-five cents per hour more than the hourly wage rate when Spraying or Sandblasting.” Thus, there is no doubt that the parking lot striping performed by the Landscape Service employes with the airless sprayer falls squarely within the jurisdiction of this Union by virtue of that clause. Arbitrators have consistently held that such a wage clause constitutes a ban on the employer’s right to transfer work out of the bargaining unit.

Even where two unions have claimed a practice of performing the work in dispute, thus giving them the jurisdiction over the work, it has been held that where one agreement has a classification to perform that sort of work, and which defines the sort of work to be performed by that classification, and the other agreement does not, the former will prevail. *BRANIFF AIRWAYS, INC.*, 79 LA 383 (Sisk, 1982). Here, the Agreement provides that “spraying” is within the jurisdiction of the painters, and is also work for which a premium is paid. Despite the County’s claim that the work in issue also falls within Local 882’s responsibilities, it did not produce that Union’s collective bargaining agreement with the County to refute this Union’s claim that it possesses the exclusive right to the spraying work. Thus, it can be assumed that the Local 882 agreement contains no such language granting that union jurisdiction over the striping work in issue. Further, the County’s “Parks Human Resources and Procedures Manual” supports this Union’s claim. The manual distinguishes between “skilled trades painters” and “non-skilled trades Parks employees” and defines each group’s work jurisdiction, “non-skilled trades Parks employees paint Park benches, planters, metal rails within swimming pools, and do other minor touch-up painting.” Local 882 members clearly fall within the classification of “non-skilled trades Parks employees”, whose only regular painting work is that defined in the manual. Also, it cannot reasonably be argued that the striping work in issue constitutes “other minor touch-up painting.” Here, there is clearly an enunciated past practice of Local 781 members performing the work so that a clear line has been drawn so as to include parking lot striping within Local 781’s jurisdiction.

The Parks Department has long interpreted the Union’s jurisdiction to include painting work in all public areas. In 1996, Department of Parks, Recreation and Culture Director Susan Baldwin issued a letter to the Kosciuszko Advisory Board after members of that Board had painted a portion of the walls in the newly-renovated weight room in the Community Center. Because the weight room was within the public eye, Baldwin concluded that the work should have been completed by members of Local 781. Baldwin noted that “an agreement with the Parks Department painters stipulates that painting done by anyone other than the professionals will occur only in non-public areas, after consultation with the painters regarding surface preparation, product to be applied, etc.” Taking Baldwin’s letter to its logical conclusion, all painting work within the public view is work within the jurisdiction of Local 781.

While the grievants have never personally done parking lot striping work at Hoyt Park, the work is within the jurisdiction of Local 781 and therefore the grievants, as members, had the right to grieve the improper striping assignment. All painter members of Local 781 employed by the County are covered by the parties' Agreement, and because that Agreement designates "spraying" work to this union, any member of this bargaining unit is entitled to grieve the improper transfer of the work.

Next, the Union asserts that the clear and unequivocal past practice establishes that striping lots in the County parks is within the work jurisdiction of Local 781. As to the clarity and consistency of the practice, the testimony of Clements established that he had been striping County park parking lots since 1990 or 1991, and that he has never seen Landscape Services employes doing any striping work on the lots. Clements' testimony is further supported by his calendar entries for the years 1995, 1996 and 1998, noting the dates on which he striped the various County park parking lots throughout the system. While the County attempted to cloud the issue by emphasizing Clements' use of a large striping truck for portions of his work, Clements testified that in addition to the truck, he also regularly uses an airless sprayer of the type used by Landscape Services to stripe the Hoyt Park lot. The Union also presented the testimony of Tim Hanson, Debra Klintner and Tom Rondeau. Hanson, a 12-year employe of the County in the Park Maintenance department, testified that prior to the day in question, he had never seen Landscape Services striping parking lots with airless spray equipment. Klintner, a member of Local 882 and a seasonal employe of Landscape Services in the summers of 1992 and 1993, never witnessed Landscape Services employes striping parking lots. Klintner is currently employed in the Highway Department and has assisted Clements in striping in the past. Likewise, Rondeau, also a Local 882 member, has assisted Clements in striping parking lots in the past, and testified that he never witnessed anyone other than Clements striping lots in the 12 years he has been with the Parks Department.

The County was unable to substantiate its claim that Local 882 members had performed the striping work in issue in the past. County witnesses were unclear about the details of the alleged practice, and therefore failed to establish the necessary clarity and consistency required to prove a binding past practice. Landscape Services manager Murphy was unable to provide specific incidents or details of Local 882 members being assigned to stripe County park parking lots and admitted that the first airless spray equipment he purchased was in March of 1999, the same airless spray equipment used in the case in issue. While Jim Goulee, a current regional manager for Milwaukee County Parks, testified that the Central and North regions have had airless sprayers since 1994 and 1995, he had never seen a Local 882 member use an airless sprayer for striping, and could not even identify where those airless sprayers are currently housed. While he testified that he has seen Local 882 Landscape Services employes stripe various surfaces in the park, he only saw them using aerosol spray cans and has never seen any of them use airless spray equipment to do so. Goulee admitted that he has seen

Clements performing striping work in at least one County park in the past. As to the longevity and repetition of the practice, the testimony of Clements, Hanson, Klintner and Rondeau establish that Local 781 members have been consistently performing the parking lot striping in the County parks since the early 1990's, and also establish that Local 781 members previously performed parking lot striping at County Stadium when it was still a part of the Parks Department.

As to whether the practice has been accepted by the parties, Murphy testified he was aware the parking lot striping was being assigned to a Local 781 painter, and Goulee also testified that he had observed Clements striping parking lots in the past. Neither Murphy nor Goulee did anything to change this practice, and there was no evidence presented that Local 882 ever grieved Local 781's past performance of the work. Thus, all elements of a binding past practice have been met, establishing this Union's right to the work in dispute. As relief, the Union asserts that it is entitled to a cease and desist order prohibiting the County from assigning the parking lot striping out of this bargaining unit, and requests that those bargaining unit members who should have performed the striping work at issue be made whole for all wages and benefits lost as a result of the County's contract violation.

County

The County asserts that while the Union seeks to extend this grievance into a huge jurisdictional dispute, this is a single grievance regarding an event that took place on a single day in a single park, and involves approximately eight hours of work with a maximum exposure of 75 cents per hour. Further, while grievant Tim Hanson observed a Local 882 member painting stripes on a parking lot, this does not explain how that single observation harmed both he and the other grievant for a total of 40 hours. In fact, no harm occurred, since both grievants were and are fully employed, and there is no documentation of any harm to them or anyone else. Nor is it explained why, if any painter was to paint stripes, it would be the grievants.

The County asserts that in the past the County has sometimes used a Highway painter, sometimes a non-union "time and material" painting contractor, or sometimes a member of the bargaining unit represented by Local 882 to paint stripes in Parks parking lots. That practice is decades old. The record establishes that no Parks painter has painted parking lots in at least 27 years. A regional manager in Parks might place a work order with the Highway Department and whoever was assigned to the work did the painting. Landscape Services might contract with a non-union time and material painting contractor, or parks managers might assign Local 882 members to spray lines, but never has a Park Department painter been so assigned. This is further supported by the testimony of the Union witnesses. Tim Hanson testified he saw Clements paint lots once in 1996. He further stated that Clements' equipment

was the same as that utilized by Landscape Services' 882 members. Hanson conceded that he has never in his 11 years striped fields, courts, ball diamonds or parking lots. Hanson asserted that there was no problem with Local 882 members painting such things as pools, tables, buildings, athletic fields, courts, etc., however he viewed spraying as "painter's work." He premised this upon the language of the Agreement that provided premium pay for spraying. However, that provision only provides for premium pay when it is assigned. In this case, the grievant was not assigned, and there was no evidence of the grievant or any other painter not getting the premium when they were assigned. Nor was there a showing the painters were paid the premium when Local 882 workers painted in the past.

Clements testified that he sporadically painted in the parks, and that he personally had observed Local 882 members spraying, but after consulting with his local union representative, did not grieve it. Clements also manufactured a heretofore unknown calendar which the County would describe as a "fugitive document." Clements' testimony and calendar, however, do not establish a practice of exclusivity of this type of work. The testimony of Union representative Jorgensen has no import as he has no knowledge of the facts in the case, except to document that in the past, the Union, despite actual knowledge, did not pursue grievances on similar actions. As to the testimony of Kliner and Rondeau, Kliner testified that she did no painting when employed in the Parks, and never paid attention to who did parking lot striping. Except for one job she did with Clements in Brown Deer in 1996, she never observed anyone striping parking lots. While Rondeau occasionally worked with Clements, he never saw anyone stripe lots, but did observe Local 882 workers using a Hudson airless sprayer. Conversely, the County's witnesses established both a long-standing practice and a lack of foundation for the Union's position.

Murphy's un rebutted testimony was that laborers, seasonal help and park maintenance workers have done lots and parkways for more than a decade. As early as 1992, Local 882 members were using airless sprayers on parking lots, ball fields, basketball and tennis courts, footpaths and parkways. He testified that either Local 882 people were used or the work was contracted out to a non-union time and material contractor. Krumsee, the Parks Maintenance Manager, testified without contradiction that airless sprayers had been used by Local 882 people in the parks for seven to 10 years. He also testified that in that time Parks painters had never been assigned to do striping. Goulee, a regional manager who has 27 years in the Department, underscored that practice. He testified that Local 882 staff had done painting all of his years in the Department, and that since 1992 they have employed airless sprayers. In his experience, Local 781 painters, e.g., Clements, have done striping jobs on a sporadic basis.

The County concludes that the Agreement is silent as to what work is exclusively assigned to painters generally and to Parks painters specifically. The testimony of the Union's own witnesses reflects there is no exclusivity as to the assignment of painting. The record

establishes that managers have used Local 882 employes, a single highway painter, or outside non-union contractors, and the grievant specifically testified to the practice of Local 882 employes painting a variety of surfaces. There is no evidence to support the contention of a practice of assigning striping solely to Local 781 members. The evidence is, in fact, to the contrary. Consistent with the Agreement, managers determine the work to be done, how it should be done, and who should do it. While Local 781 painters paint in the Parks, it is undeniable that Local 781 painters are not the only painters in the Parks. Thus, the Union has failed to prove either a contract violation or any documentation of harm, even if a violation was shown to have occurred. Thus, the grievance should be denied.

DISCUSSION

As the County asserts, this case involves one assignment on one day in one location. While the award in this case may be viewed by one or more of the parties as having wider application, the issue here is limited to the one instance on May 25, 1999.

The Union cites the parties' Agreement as a whole, the wages, recognition and seniority provisions in general, and specifically, Section 2.01, (4) Painter's Wage Rate, which provides a 75 cent per hour premium "when Spraying or Sandblasting." In the latter regard, the Union claims that provision essentially confines work involving the use of a high pressure, airless paint sprayer to painters represented by Local 781. That argument would be more persuasive if it had been established that only the painters have used such equipment in the past. However, the testimony of Murphy and Goulee was that such work has also been contracted out in the past or assigned to Local 882 members, albeit the latter have not always used airless sprayers in doing such work.

As to the cases cited by the Union as holding that the agreement as a whole and its recognition, classification, wage or seniority provisions preclude the assignment of bargaining work to non-unit members, most all of those cases involved the total and permanent transfer of work out of the unit that had been exclusively performed by bargaining unit members in the past. Those are not the facts presented in this case. As noted above, the testimony of long-time management employes established that for over a decade the striping work in the Parks has not been exclusively assigned to Local 781 painters; rather, it has been contracted out (pursuant to the County's express contractual management's right to do so) or assigned to Local 882 members, as well as assigned to a Local 781 member. Even the Union's evidence would indicate that Clements has been the only Local 781 member assigned such work since approximately 1990, and his "calendar" (Union Exhibit 3) noted his being assigned to do such work only four to eight times in a year in a total of only seven different parks since 1995 (none in 1997) out of the County's approximately 130 parks. That being the case, it would seem highly doubtful that the Union or its painter members were not aware of the County's having non-unit employes or outside contractors perform such work as well.

It is also noted that, unlike the cases cited by the Union, the County has neither totally, nor permanently, assigned the work outside of this bargaining unit. Further, there have been no layoffs of painters or decrease in their work hours as a result of the County's actions.

Finally, with regard to the County's "Parks Human Resources Policy and Procedure Manual" (Union Exhibit No. 1), the cited provision describes the painting non-skilled trades employes do and states that, "when it is not possible to draw a definite line between work to be done by the painters or other employes, the affected Regional Manager or Service Division Head is expected to place a call to the Parks Painter Supervisor. . . for guidance." This is perhaps the strongest point the Union makes in this case; however, once again the County's practice of assigning Local 882 members or contracting out such work cuts against the Union's position.

For the foregoing reasons, it is concluded that the County did not violate the parties' Agreement on May 25, 1999 when it assigned non-bargaining unit employes to paint stripes in the Hoyt Park parking lot.

Based upon the foregoing, the evidence, and the arguments of the parties, the undersigned makes and issues the following

AWARD

The grievance is denied.

Dated at Madison, Wisconsin this 5th day of July, 2000.

David E. Shaw /s/

David E. Shaw, Arbitrator

DES/gjc
6093