BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

KENOSHA COUNTY INSTITUTIONS EMPLOYEES, LOCAL 1392, AMERICAN FEDERATION OF STATE, COUNTY AND MUNCIPAL EMPLOYEES, AFL-CIO

and

KENOSHA COUNTY (BROOKSIDE CARE CENTER)

Case 191
No. 59070
MA-11163

(Grievance #00-1392-001 — Laundry Job Posting)

Appearances:

Mr. John Maglio, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 624, Racine, WI 53401-0624, appearing on behalf of the Union.

Mr. Frank Volpintesta, Corporation Counsel, 912 - 56th Street Kenosha, WI 53142, appearing on behalf of the County.

ARBITRATION AWARD

At the joint request of the parties, the Wisconsin Employment Relations Commission designated the undersigned, Marshall L. Gratz, as arbitrator to hear and decide a dispute concerning the above-noted grievance under the parties' 1998-2000 Agreement (Agreement).

Pursuant to notice, the grievance dispute was heard at the County Administration Building in Kenosha, Wisconsin, on November 13, 2000. The proceedings were not transcribed; however, the parties authorized the Arbitrator to maintain an audio tape recording of the evidence and arguments for the Arbitrator's exclusive use in an award preparation. The parties' closing arguments were presented at the hearing.

ISSUES

At the hearing, the parties agreed to the statement of ISSUES 1 and 3, below, and agreed that the Arbitrator should frame ISSUE 2 based on the parties' presentations at the hearing. Accordingly, the ISSUES for determination in this matter are as follows:

1. Did the County violate the Agreement when it failed to maintain a 40-hour position in its laundry department?

2. Is the Union entitled to a remedy for the County's failure to offer its laundry department employees an opportunity to select work assignments by seniority following the resignation of Yvonne Klemm?

3. If either are so, what is the appropriate remedy?

PERTINENT AGREEMENT PROVISIONS

ARTICLE I - RECOGNITION

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Section 1.2. Management Rights. Except as otherwise provided in this Agreement, the County retains all the normal rights and functions of management and those that it has by law. Without limiting the generality of the foregoing, this includes the right to hire, promote, transfer, demote or suspend or otherwise discharge or discipline for proper cause; the right to decide the work to be done and location of the work; to contract for work, services or materials; to schedule overtime work; to establish or abolish a job classification; to establish qualifications for the various job classifications; however, whenever a new position is created or an existing position changed, the County shall establish the job duties and wage level for such new or revised position in a fair and equitable manner subject to the grievance and arbitration procedure of this Agreement. The County shall have the right to adopt reasonable rules and regulations. Such authority will not be applied in a discriminatory manner. The County will not contract out for work or services where such contracting out will result in the layoff of employees or the reduction of regular hours worked by bargaining unit employees.

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ARTICLE III - GRIEVANCE PROCEDURE

Section 3.1. Procedure. Any difference or misunderstanding involving the interpretation or application of this agreement or a work practice which may arise between an employee or the Union covered by this agreement and the County concerning wages, hours, working conditions or other conditions of employment shall be handled and settled in accordance with the following procedure:

. . .

Step 4. All grievances which cannot be adjusted in accord with the above procedure may be submitted for decision to an impartial arbitrator. . . .

The authority of the arbitrator shall be limited to the construction and application of the terms of this Agreement and limited to the grievance referred to him for arbitration; he shall have no power or authority to add to, subtract from, alter or modify any of the terms of this Agreement. The decision of the arbitrator shall be final and binding upon the Union and the County.

Section 3.7. Policy Grievances. The Union shall have the right to submit policy grievances regarding provisions of this agreement in matters which do not necessarily apply to any one employee.

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ARTICLE IV - SENIORITY

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Section 6.2. Seniority - Personnel Actions. The practice of following seniority in promotions, transfers, layoffs, recalls from layoffs, vacations and shift preference to fill vacancies shall be continued. Ability and efficiency shall be taken into consideration only when they substantially outweigh consideration of length of service or in cases where the employee who otherwise might be retained or promoted on the basis of such continuous service is unable to do the work required. Regular employees shall receive preference over new applicants. A transfer is the filling of a new or vacated position and shall be governed by the job posting.

Section 6.3. Temporary Assignments. The County, in exercising its right to assign employees, agrees that an employee has seniority in a job classification, but may be temporarily assigned to another job to fill a vacancy

caused by a condition beyond the control of management. Any employee so temporarily assigned shall be returned to his regular job as soon as possible. Temporary job assignments shall not be considered job transfers.

ARTICLE VII - JOB POSTING

Section 7.1. Procedure. Notice of vacancies which are to be filled due to retirement, quitting, new positions, or for whatever reason, shall be posted on all bulletin boards with within five (5) workdays; and employees shall have a minimum of five (5) workdays (which overlap two (2) consecutive weeks) to bid on such posted job. The successful bidder shall be notified of his selection and his approximate starting date within five (5) workdays.

Section 7.2. Contents of Posting. The job requirements, qualifications, shift and rate of pay shall be part of the posting and sufficient space for interested parties to sign said posting, or they may in writing notify the department head of their application. When an employee is absent from work, his steward may sign said posting for such absent employee. The Executive Board shall be notified of any changes in job postings before they are posted.

Section 7.3. Seniority - Skill and Ability Factors. In filling a vacancy, the employee signing with the greatest institution-wide seniority in the department shall be given first consideration except as provided for in section 7.4 below. Skill, ability and efficiency shall be taken into consideration only when they substantially outweigh considerations of length of service.

Section 7.4. Employment Preference. Regular employees shall receive preference over temporary employees. Temporary employees shall receive preference over new applicants. Regular part-time employees shall have preference over temporary employees in working a regular forty (40) hour per week position.

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ARTICLE IX - OVERTIME

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Section 9.2. Daily and Weekly. Hours over eight (8) per day or forty (40) per week shall be paid at a rate equal to one and one-half (1-1/2) times the employee's regular rate of pay. Excused absences such as for sickness, vacations, holidays, etc., shall be considered hours worked in computing the forty (40) per week. Any deviation from the above shall be by mutual agreement.

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ARTICLE XIX - PART-TIME EMPLOYEE BENEFITS

Section 19.1. Part-Time Employee Defined. A part-time employee is defined as one who is regularly scheduled to a lesser number of hours (40 hour week) than a full-time employee.

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Section 19.3. Benefits. Regular part-time employees shall be eligible to receive fringe benefits after completion of their probationary period at Brookside Care Center. Part-time fringe benefits, with the exception of holiday pay, shall be as follows:

0 hours but less than 16 hours: No fringe benefits
16 hours but less than 24 hours: 50% of full time benefits
24 hours but less than 32 hours: 75% of full time benefits
32 hours but less than 40 hours: 100% of full time benefits

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ARTICLE XXI - GENERAL PROVISIONS

Section 21.1. Copies of the Contract. . . .

Section 21.2. Maintenance of Forty (40) Hour Workweek. The County shall make every reasonable effort to operate its projects so as to maintain a forty (40) hour week. There shall be a reduction in the workforce rather than a reduction in hours. Employees with the least seniority shall be laid off first.

Section 21.3. Safety Devices. . . .

Section 21.4. Use of Automobile. . . .

Section 21.5. Equal Opportunity. . . .

Section 21.6. LPN - InService Training. . . .

Section 21.7. Training Sessions - General. . . .

Section 21.8. Physical Examination. . . .

Section 21.9. Coffee Break. . . .

Section 21.10. [relating to dietary department] . . .

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BACKGROUND

Among its various functions, the County operates Brookside Care Center. The Union represents "all Brookside employees except supervisors, administrator's stenographer and registered nurses." The County and Union have been parties to a series of collective bargaining agreements, the latest of which is the Agreement.

One of the operating departments at Brookside is the laundry department. On or about May 5, 2000, the County posted a Building Maintenance Helper (BMH) position in the Brookside laundry department, specifying "Hours: 32 Hours per week Minimum, "A" Shift, Alternate Weekends." The posting identified the position as one "VACATED BY: Yvonne Klemm." Klemm had resigned from a 40-hour per week minimum position on or about April 7, 2000. Just prior to Klemm's resignation, the Brookside laundry department BMH complement had consisted of three 40-hour positions (held by Klemm, Connie Sharp and Marsha Lucas) and two 20-hour positions (held by Debra Smith and Lila Dora).

The 32-hour position posted on May 4 was filled by the selection of Dorn. Under the definition of "part-time employee" in Agreement Sec. 19.1, that position was "part-time" in nature; however, the holder of that position would be entitled to 100% of full-time fringe benefits under Sec. 19.3.

On May 16, 2000, the Union filed the subject grievance as a "policy" grievance, asserting that the County had violated Agreement sections including 1.2, 7.1 and 21.2 by reducing the position formerly held by Klemm from a 40-hour to a 32-hour position; and that the County violated a past practice described in the grievance as, "[w]hen a job is vacated in a department, an internal shifting by seniority takes place and then the job left unfilled is filled by an employee by their seniority."

On May 31, 2000, the County posted another 32-hour BMH position in the Brookside laundry department, in response to Dorn's having vacated her former 20-hour position.

On June 16, 2000, the County posted a 16-hour BMH position in the Brookside laundry department, in response to Smith's having vacated her former 20-hour position.

As a result of those developments, the BMH laundry complement was two 40-hour positions, two 32-hour positions and one 16-hour position.

The grievance remained unresolved in the grievance procedure, and it was ultimately submitted for arbitration as noted above. At the arbitration hearing, the Union presented testimony by Local 1392 Vice President Kathy Million and laundry department BMH Connie Sharp. The County presented testimony by Laundry Housekeeping & Maintenance Supervisor Dana Osinga.

Sharp testified that she has worked in the Brookside laundry for 15 years. Immediately before Klemm's resignation, the well-established work assignments of the laundry employees were that Klemm and one other 40-hour employee did linen folding, the third 40-hour employee did personal clothes, and the two part-time employees operated the washing machines and floated to other work assignments. Each employee knew what her work assignment was when she came to work each day. When Klemm's job was vacated, Sharp expected the County to follow the practice that had always previously been followed whenever a laundry vacancy occurred: before a replacement employee was selected, the employees were offered an opportunity, in order of their seniority, to move to the work assignment vacated by the departed employee or to the work assignment vacated by a senior employee moving to another work assignment earlier in that process. Sharp anticipated that that would have resulted in one of the part-time employees moving onto the folding opening created by Klemm's departure. However, supervision offered no such opportunity for the remaining laundry employees to move to the vacated linen folding work assignment following Klemm's departure.

Osinga testified that, prior to Klemm's departure, the County was experiencing a problem with the amounts of overtime premiums (an average of 70 hours at overtime rates per quarter) that it was paying for coverage for absences of laundry employees. The laundry is operated only on weekdays, and maintaining its full output on those days is critical to Brookside's operations. Accordingly, when a laundry employee is absent, it is frequently necessary to assign or call in replacement employees from among the laundry employees first and then from elsewhere, to work extra hours in the laundry.

Because employee acceptance of extra hours is not mandatory, the more laundry employees working less than 40 hours per week there are, the greater the likelihood that supervision will be able to find one who is willing to work extra hours when needed to cover for an absent co-worker. Because the County pays a weekly overtime premium for hours worked by an employee in excess of 40, the more hours below 40 per week that the laundry employees must be minimally assigned, the greater the likelihood that supervision will be able to find one who is both willing to work extra hours and entitled only to the straight-time rate for doing so. In addition, Osinga explained that she finds that she encounters fewer "hassles" — in the form of employee resistance, arguments and questions — when she moves part-time laundry employees from one work assignment to another to meet operational needs than when she moves full-time employees for that purpose.

Osinga testified that it was for all of those reasons that when Klemm resigned, the County posted a position at "32 hours per week Minimum" rather than at 40 hours per week minimum. By doing so, Osinga testified that she assured herself the flexibility of having three part-time laundry department employees with a total of 40 potential straight-time extra hours compared with the previous situation of having only two part-time employees with a total of 40 potential straight-time extra hours.

Osinga acknowledged that unlike all previous instances during her 12 years supervising the laundry, she did not offer the laundry employees the opportunity to opt by seniority to move to the linen folding work assignment following Klemm's departure. Osinga stated that she considered work assignments to be within her supervisory discretion to change or maintain, noting that all BMH postings are generic as to work assignment, and specific only as to shift and department. She further asserted that although she has, over the years, been willing to allow employees to move to preferred work by seniority when vacancies have occurred, she has also moved employees on other occasions to better meet the needs of the laundry operation.

Additional factual background is set forth in the summaries of the parties' positions and the discussion, below.

POSITIONS OF THE PARTIES

The Union

With regard to ISSUE 1, the County violated Agreement Sec. 21.2 by posting a 32-hour position when Klemm vacated her 40-hour position. The County did not make the required "every reasonable effort to . . . maintain a forty (40) hour week" in all of the circumstances of this case. The County could have provided itself the scheduling flexibility it was seeking without either adding regular hours to the existing level of 160 per week or reducing the number of 40-hour laundry positions below the existing level of three. Specifically, it could have done so by posting a third 40-hour position following Klemm's resignation, presumably filling it with one of the part-time laundry employees, and then posting the remainder of the 160 available hours of work per week as two part-time positions, perhaps including one at an 8-hour per week level. The County's failure to do so adversely affected the successful bidder for the 32-hour position by denying that person 8 hours of regularly scheduled work per week. The evidence presented by the County does not show that making the effort outlined by the Union above would not have been reasonable and sufficient to meet the County's needs. The Union has done much over the years to help save Brookside, but the County is not entitled to the additional financial relief at issue in this case because it is not provided for or permitted by the Agreement.

The non-filing of a grievance when the number of laundry 40-hour positions was reduced in connection with the move to the new building has no bearing on this case. The move to the new building involved a substantial reduction in the number of residents served, and hence a reduction in the amount of laundry processed each week for the facility. The instant circumstances involve no such reduction in available laundry work.

By way of remedy for the County's violation of Sec. 21.2, the Arbitrator should order the County to post and fill a third 40-hour BMH position in the laundry to make the successful bidder whole for any loss that employee experienced by reason of the County's failure to post the 40-hour position on April 7, 2000.

With regard to ISSUE 2, the evidence shows that there are well-established laundry work assignments, consisting of folding linens, folding personal items and operating the washing machines; that the County always permitted the employees in the laundry to select open work assignments by seniority whenever a laundry vacancy occurred in the past; and that each of the laundry employees therefore knows what work assignment she is ordinarily expected to do when she comes to work. The evidence also shows that the work assignment selection process has been done with the knowledge and approval of the laundry supervisor each time a laundry vacancy has occurred. In the instant circumstances, the employees have not been afforded the opportunity to select from among the available work assignments by seniority, violating the parties' long-standing established practice.

By way of remedy for that violation, the Arbitrator should order the County to follow its past practice of offering laundry employees the opportunity to select work assignments whenever a laundry vacancy occurs.

The County

Both Union claims lack merit and should be denied.

Regarding ISSUE 1, Agreement Sec. 1.2 reserves management rights to the County including the right to eliminate full-time positions and to create part-time positions, and hence to post a 32-hour vacancy following the resignation of a 40-hour employee, "except as otherwise provided in this Agreement." Section 21.2 is not an applicable exception because it applies by its terms only to situations in which the amount of work to be performed is reduced. Here, the amount of work regularly scheduled in the laundry department has remained constant at 160 hours per week. The County's interpretation of Sec. 21.2 is further supported by the undisputed fact that the Union did not grieve when the number of 40-hour laundry positions was reduced at about the time the Nursing Home moved to its new building.

Even if Sec. 21.2 is deemed applicable to situations beyond work reductions, it requires only that the County make "every reasonable effort to . . . maintain a forty (40) hour week."

The record establishes that the County acted as it did in this case to improve the County's work assignment flexibility and so that it would be better able to cover for laundry department absences without paying overtime premiums. Section 21.2 does not require the County to forego its pursuit of those legitimate and reasonable operational objectives. Especially so in light of the essential nature of the functions performed by the laundry department, the particular importance of avoiding the sorts of financial difficulties experienced by Brookside in the past, and the fact that under Agreement Sec. 19.3 a 32-hour employee is entitled to the same fringe benefits as a 40-hour employee.

Regarding ISSUE 2, Agreement Sec. 1.2 also reserves to management the right to assign the available tasks to the laundry BMHs, "except as otherwise provided in this Agreement." Consistent with Agreement Sec. 7.2, the BMH postings specify the "job requirements, qualifications, shift and rate of pay," but they contain only a common generic description of the nature of the work involved, without a specification of a particular work assignment such as folding linen, doing personal items, or operating the washing machines. There is no Agreement provision that requires the County to offer work assignments to the laundry employees by seniority on the occasion of a laundry position vacancy or at any other time. Nor is there any Agreement provision that requires the County to continue any practice of doing so that it may have had. In any event, the fact that the laundry supervisor granted approval of the employees' job selections on the occasion of past vacancies implies that the supervisor also had the discretion to deny approval of such job selections. Neither the historical willingness of the supervisor to approve prior reassignments of laundry work by seniority nor the fact that each laundry employee comes to work knowing what job to perform unless otherwise directed are sufficient to bind the County to offer reassignments of the available work in the laundry by seniority on the occasion of laundry vacancies or at any other time.

For those reasons, the grievance should be denied in all respects.

DISCUSSION

ISSUE 1 — Posting Other Than a 40-Hour Position Following Klemm's Resignation

ISSUE 1 turns on the applicability of Agreement Sec. 21.2 to the facts of this case. That section, which is a part of "ARTICLE XXI - GENERAL PROVISIONS," reads as follows:

> Section 21.2 Maintenance of Forty (40) Hour Workweek. The County shall make every reasonable effort to operate its projects so as to maintain a forty (40) hour week. There shall be a reduction in the workforce rather than a reduction in hours. Employees with the least seniority shall be laid off first.

The language of the second and third sentences of Sec. 21.2 lends support, at least by implication, to the County's contention that the section was intended to apply only to a work reduction situations. However, that implication is overcome by other interpretive guidance provided by the language of the Agreement. First, the parties chose to place Sec. 21.2 in the "GENERAL PROVISIONS" article of their Agreement with such other provisions of general application as Section 21.3 Safety Devices, Section 21.5 Equal Opportunity, and Section 21.9 Coffee Break. Thus, the parties chose not to place it in the "SENIORITY" Article VI, which has various sections referring to "layoff" including Sec. 6.4 specifically entitled "Layoff" and dealing with that subject. Second, the parties titled Sec. 21.2 generally, i.e., "Maintenance of Forty (40) Hour Workweek" rather than with any specific reference to work reductions. And finally, the language of the first sentence at issue in this case is also general; it contains no limiting reference to work reductions or to layoffs.

For those reasons, the Arbitrator concludes, that, on balance, the language of Sec. 21.2, read in the context of its Article XXI and of the Agreement as a whole, commits the County to "Make every reasonable effort to operate its projects so as to maintain a forty (40) hour week" generally, and not only in connection with work reductions or layoffs. The second and third sentences of that section provide specific guidance as to how the parties intend the first sentence to apply as regards the important subject of work reductions and layoffs, but those sentences do not persuasively establish that the parties intended the first sentence to apply only to those situations.

The past practice evidence does not warrant a different interpretation. That evidence shows that prior to moving to the new building, the laundry complement consisted of five, and at earlier times, six 40-hour positions; that immediately after the move there were initially four 40-hour positions and shortly thereafter only three, with the balance of the work performed by part-time positions. It is undisputed that the Union did not grieve those reductions in numbers of 40-hour positions. However, it is also undisputed that the resident population was substantially reduced in anticipation of the move to the new building. Substantially fewer residents meant substantially less laundry work to be done. The Union may well have viewed the reduction in the number of 40-hour positions as a reasonable and appropriate adjustment to the reduction in overall laundry work that needed to be done to support the smaller resident population to be served in the new building. The fact that the Union did not grieve those reductions is, therefore, not a persuasive basis on which to conclude that the Union understood that Sec. 21.2 would not be applicable where, as here, the County reduced the number of 40-hour positions in a work area whose workload was constant.

The disposition of ISSUE 1, therefore, turns on whether, in the circumstances of this case, the County made "every reasonable effort to operate its projects so as to maintain a forty (40) hour week." As the County correctly points out, that language does not constitute an absolute requirement that a 40-hour week be maintained. Rather, it requires only that the County make "every reasonable effort" to do so.

The County's reasons for posting a 32-hour rather than a 40-hour position in this case are those referred to in the summary of Osinga's testimony on that subject under BACKGROUND above. It is undisputed that the County was paying overtime rates an average of 70 hours per quarter to cover for absent laundry employees; and that posting a 32-hour rather than 40-hour position would increase by one the number of employees with available extra straight-time hours for possible work covering for laundry absentees and thereby somewhat improve the chances that the supervisor would be able to cover for laundry absentees with laundry employees and at straight-time rather than overtime premium rates. However, the record also suggests that the County could have achieved the same benefit without failing to maintain three 40-hour laundry BMH positions. Specifically, the County could have: posted the position vacated by Klemm at 40 hours; reasonably expected that at least one of the part-time laundry employees would have applied for and been selected for that position; and either posted the newly vacated 20 hours of work as a combination of an 8-hour position and a 12-hour position or explored (with the Union if necessary) the elimination of the other 20-hour position and the creation of some other combination of part-time positions such as a combination of an 8-hour and a 32-hour position. The Arbitrator therefore finds that the County could in that way have addressed its absentee coverage and overtime pay concerns just as well without failing to maintain a third 40-hour position in the laundry. The County's failure to utilize such an alternative violates the County's Sec. 21.2 obligation to "every reasonable effort to operate its projects so as to maintain a forty (40) hour week."

It was also undisputed that the laundry supervisor has found it easier to move part-time laundry employees from one work assignment to another to meet operational needs than it was to move full-time employees for that purpose. Osinga testified that she found it easier in the sense that she encountered fewer "hassles" such as employee resistance, arguments and questions. However, the Arbitrator finds that living with the potential for such additional hassles from a third 40-hour employee falls well within the "every reasonable effort" required of the County by Sec. 21.2.

For those reasons, the Arbitrator concludes that, in all of the circumstances of this case, the County violated Sec. 21.2 by failing to make every reasonable effort to maintain a third 40-hour laundry position following Yvonne Klemm's resignation.

ISSUE 2 — Failure to Allow Seniority-Based Work Assignment Selections Following Klemm's Resignation

It is undisputed that for many years and with the knowledge and approval of the laundry supervisor, laundry employees have been uniformly afforded the opportunity, in seniority order, to move to a work assignment (e.g., folding linen, personal items, operating washing machines) vacated by the departure of a laundry co-worker, prior to the selection of an employee to fill any position posted as a result of that departure.

In dispute in this case is whether the Arbitrator should order the County to maintain that practice in cases where, as here, the laundry supervisor decides not to do so.

Agreement Sec. 3.1 makes the Agreement grievance procedure applicable to "[a]ny difference or misunderstanding involving the interpretation or application of this agreement" or concerning "a work practice . . . concerning wages, hours and working conditions. . . ." However, the Sec. 3.7 language authorizing "Policy Grievances" authorizes the Union to "submit policy grievances regarding provisions of this agreement in matters which do not necessarily apply to any one employee." (Emphasis added.) Moreover, the grievance arbitration language in Step 4 of that section limits "[t]he authority of the arbitrator . . . to the construction and application of the terms of this agreement . . ." It goes on to provide that the arbitrator "shall have no power or authority to add to, subtract from, alter or modify any of the terms of this Agreement."

In light of those express limitations on the nature of policy grievances and on the authority of the Arbitrator, a past practice or "work practice" must be meaningfully related to a provision of the Agreement in order to be a proper basis for an arbitrator's remedial order.

In this case, the past practice relied upon by the Union is not meaningfully related to any provision of the Agreement. On the contrary, Agreement Sec. 6.3 recognizes the existence of "the County's right to assign employees." Moreover, the management rights language in Sec. 1.2 expressly reserves to the County "all the normal rights and functions of management and those it has by law" except as "otherwise provided in this Agreement," and the Arbitrator has found no Agreement provision that supports the limitation on the County's right to assign work to laundry employees in the manner requested in this case by the Union. In addition, Agreement Sec. 6.2 expressly provides that "[t]he practice of following seniority in promotions, transfers, layoffs, recalls from layoffs, vacations and shift preference to fill vacancies shall be continued"; but it makes no similar provision for continuation of the practice of following seniority in work assignments, and a move from one laundry BMH work assignment to another is not a "transfer" within the meaning of the Sec. 6.2 definition of that term. Finally, Agreement Secs. 7.1 and 7.2, read together, require that the County post vacancies by specifying the job requirements, qualifications, shift and rate of pay, but those provisions make no similar provision for a posting of work assignments or for the specification on a posting of the particular work assignment involved.

It is quite understandable, given the longstanding and uniform practice in evidence in this case, that Sharp and her laundry co-workers would have expected to have an opportunity in seniority order to move to a folding linen work assignment following Klemm's departure. However, despite its historical uniformity, the practice at issue involves a manner of exercise of the right reserved to the County under the Agreement to direct the work force. The County's exercise of that right in the manner it has over the years does not defeat the County's right to exercise that right differently as Osinga did in this case. The laundry supervisor is free under the Agreement to decide, from time to time, how to exercise the County's right to

determine what laundry BMH work to assign to which of the laundry BMH employees. In exercising that management right, the laundry supervisor is free to give whatever weight she deems appropriate, if any, to a variety of legitimate operational and other factors — including but not limited to seniority, employee preferences, employee aptitudes, historical work assignment patterns and practices and the needs of the laundry operation.

Accordingly, the Agreement does not entitle the Union to a remedy where, as here, the supervisor chose not to offer its laundry department employees an opportunity to select work assignments by seniority following the resignation of Yvonne Klemm.

ISSUE 3 — Remedy

By way of remedy for the violation found regarding ISSUE 1, the Arbitrator agrees with the Union that it is appropriate to require the County to re-post and fill as a 40-hour position the position improperly posted as a 32-hour position on May 4, 2000. The Arbitrator has specifically noted that the County is required to implement that remedy "[u]nless the parties agree otherwise" and that "[i]n implementing that remedy the County shall have the right to eliminate and re-post one or two part-time laundry positions as necessary to adjust the hours of the part-time laundry positions to the available hours of laundry work."

With regard to the Union's further request for back pay relief payable to the person ultimately selected, the Arbitrator finds it appropriate to retain jurisdiction with respect to whether and to what extent any such relief should be granted in this case. The Arbitrator has chosen that approach in order to afford the parties an opportunity to settle that issue informally between themselves once they know the results of the re-posting ordered above.

If the parties are unable to resolve that remaining issue between themselves, the Arbitrator will then receive additional evidence and argument concerning that aspect of the case before ruling on it.

DECISION AND AWARD

For the foregoing reasons and based on the record as a whole, it is the decision and award of the Arbitrator on the ISSUES noted above that:

1. The County did violate the Agreement when it failed to maintain a 40-hour position in its laundry department.

2. The Union is not entitled to a remedy for the County's failure to offer its laundry department employees an opportunity to select work assignments by seniority following the resignation of Yvonne Klemm.

3. The remedy for the violation noted in 1, above, shall be as follows:

a. Unless the parties agree otherwise, Kenosha County, its officers and agents, shall, in accordance with Agreement Article VII - Job Posting, promptly post and fill a third 40-hour Building Maintenance Helper position in the Brookside laundry department, to replace the 32-hour position that was posted on May 4, 2000. In implementing that remedy, the County shall have the right to eliminate and re-post one or two part-time laundry positions as necessary to adjust the hours of the part-time laundry positions to the available hours of laundry work.

b. The Arbitrator retains jurisdiction for at least 60 calendar days from the date of this Award to resolve, at the request of either party, any dispute that may arise as to the meaning and application of 3.a. above and/or any dispute that may arise regarding any claim for back pay relief for the employee selected to fill the 40-hour position referred to in 3.a., above. If any such back pay claim is made by the Union, and if the parties are unable to resolve it between themselves, the Arbitrator will receive evidence and argument and render a supplemental award concerning whether and to what extent such relief shall be ordered in this case.

Dated at Shorewood, Wisconsin, this 20th day of December, 2000.

Marshall L. Gratz /s/

Marshall L. Gratz, Arbitrator

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