

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

TEAMSTERS LOCAL NO. 75

and

CITY OF GREEN BAY (DPW)

Case 323
No. 59164
MA-11203

Appearances:

Timothy J. Kelly, Green Bay City Attorney, Room 100, 100 North Jefferson Street, Green Bay, WI 54301-5026 by **Assistant City Attorney Daniel Olson**, at the hearing and **Assistant City Attorney Lanny M. Schimmel**, on the brief, appearing on behalf of the City of Green Bay.

Previant, Goldberg, Uelman, Gratz, Miller & Brueggeman, S.C., by **Attorney Andrea Hoeschen**, P.O. Box 12993, Milwaukee, WI 53212, appearing on behalf of Teamsters Local No. 75.

ARBITRATION AWARD

Pursuant to the provisions of the collective bargaining agreement between the parties, Teamsters Local Union No. 75 (hereinafter referred to as the Union) and the City of Green Bay (hereinafter referred to as the City) requested that the Wisconsin Employment Relations Commission designate a member of its staff to serve as arbitrator of a dispute over the assignment of work. The undersigned was so designated. A hearing was held on December 14, 2000, at the City's offices in Green Bay, Wisconsin, at which time the parties were afforded full opportunity to present such testimony, exhibits, other evidence and arguments as were relevant. A stenographic record was made of the hearing and a transcript was received by the undersigned on January 11, 2001. The parties submitted post-hearing briefs, which were exchanged through the undersigned on February 12, 2001, whereupon the record was closed.

Now, having considered the testimony, exhibits, other evidence, contract language, arguments of the parties and the record as a whole, the undersigned makes the following Award.

ISSUE

The issue before the Arbitrator is stipulated to be “Does the collective bargaining agreement prohibit the City from assigning parts chasing work outside of the Teamsters bargaining unit?” There is no remedy sought if a violation is found.

PERTINENT CONTRACT LANGUAGE

ARTICLE 2

MANAGEMENT RIGHTS

(A) The City retains all rights, powers or authority that it had prior to this contract as modified by this contract, subject to any challenge by the union.

(B) The City shall have the right at all times during the existence of this contract, and subject to provisions herein, to conduct its affairs according to its best judgment and the orders of competent authority, including the power of establishing policy to hire all employees, to dismiss and discipline for just cause, to lay off subject to provisions in the contract, and to determine the methods, means and personnel by which City operations are to be conducted.

(C) The City agrees it will not use these rights to interfere with the employee’s rights established by law or by this agreement.

ARTICLE 15

SUBCONTRACTING

For the purpose of preserving work and job opportunities for the employees covered by this Agreement, the Employer agrees that work customarily and ordinarily performed by regular employees within the Bargaining Unit and that work hereafter assigned to the Bargaining Unit will not be assigned or conveyed in whole or in part to non-unit employees.

The parties to this Agreement understand that presently certain portions of the operations performed are performed through contractors to the City and it is not the intent of this Article to interfere with that relationship. The operations which have been identified as portions of work performed through contractors

are: resurfacing, joint sealing, patching, dike maintenance, sidewalk and pavement repair, mechanical and structural bridge repair, sewer repair, sewer maintenance, street/road construction and snow removal. It is understood, however, that the department may subcontract additional functions only in emergencies involving the health and welfare of the residents of the City of Green Bay, provided all employees within the Department of Public Works have been afforded the opportunity to work. In the event of a layoff the parties will meet to discuss the application of this article.

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BACKGROUND

The City is a municipal employer providing general governmental services to the people of Green Bay, in northeastern Wisconsin. Among the services provided is the operation of Department of Public Works responsible for, among other things, snow and ice removal. The Union, Teamsters Local 75, is the exclusive bargaining representative for the vast majority of the employees at the City's DPW, including those in the classifications of Parts Laborer and Shop Laborer. Employees in the classification of Parts Clerk and Assistant Parts Clerk in the DPW's Parts Shop are represented in the AFSCME bargaining unit. The Parts Clerk and the Assistant Parts Clerk are principally responsible for maintaining the inventory in the Parts Shop, and ordering needed parts. The Parts Laborer is principally responsible for chasing parts and fueling vehicles. In the course of a typical day, the Parts Laborer will make ten stops for parts, from a list prepared by the Parts Clerk. Shop Laborers, Teamster workers on light duty and non-Teamster employees are also occasionally sent to chase parts, perhaps once per month.

On January 12, 2000, a snowstorm hit the Green Bay area. The City declared a full plow operation, deploying approximately 110 vehicles on the evening of the 12th in order to clear the streets for the rush hour on the morning of the 13th. Late in the evening, a grader being used in the plow operation lost its brakes. It was returned to the shop, where mechanics determined that the master cylinder had to be replaced. No master cylinder of the right type was at hand in the Parts Shop inventory, but the Assistant Parts Clerk, who had recently been hired from Bark River, said that he believed his former employer had one on the shelf. Bark River was contacted, and confirmed that they had the part. In order to ensure that the correct part was retrieved, the Assistant Parts Clerk was dispatched to pick up the master cylinder. He did so, and the grader was repaired and returned to service just before 3:00 a.m. At the time the Assistant Parts Clerk was sent to Bark River, all Teamster represented employees were working, either on plows or in the Shop repairing equipment. Shop Laborer/Tire Man Peter Schreiner was working in the shop at the time, providing assistance to the mechanics. Schreiner has run parts in the past.

Teamster Steward Michael DeNiel observed the Assistant Parts Laborer leave to chase down the master cylinder. He filed the instant grievance, alleging that the parts chasing work should be performed by a members of the Teamsters bargaining unit. The grievance was not resolved in the lower steps of the grievance procedure and was referred to arbitration.

Additional facts, as necessary, are set forth below.

ARGUMENTS OF THE PARTIES

The Position of the Union

The Union takes the position that parts chasing is work which has customarily and ordinarily been performed by members of the Teamsters bargaining unit. The City concedes that 70% of this work has been performed by Parts Laborers, with employees in that classification making about ten runs per day. Other members of the bargaining unit, including those on light duty, also chase parts. This duty has been listed as one of those required of the Parts Laborer's job description since at least 1993, and as one of the duties of the Shop Helper since at least 1996. Significantly, it does not appear in the listing of duties for the AFSCME represented positions of Parts Clerk and Assistant Parts Clerk, until those descriptions were revised in 1997.

The contract clearly and unambiguously prohibits the transfer of bargaining unit work to others outside of the unit. While the City seems to claim that *de minimis* amounts of part chasing by non-unit personnel have somehow eroded this protection, it is well settled that clear language cannot be trumped by an inconsistent practice, even if that practice is acknowledged by all of the parties. The alleged practice here is hotly disputed. The City claims to have assigned parts chasing to AFSCME and other non-Teamster employees, but it offered no evidence that the Teamsters were aware of the practice, much less that they acquiesced in it. Instead, the testimony of the Teamsters' steward was that the nature of parts chasing is such that he would not have any way of knowing if the City was having non-Teamsters occasionally chase parts.

The City also seems to argue that the Parts Laborer is not competent to chase parts, and that this justified the decision to have a non-unit person perform his duties. Assuming solely for the sake of argument that this argument has some factual basis, the City's remedy is to place a qualified person in the Parts Laborer job, not to abrogate the contract language protecting bargaining unit work. The Union notes that the job posting language allows the City to judge the qualifications of the persons applying for a job, and does not require the City to hire any unqualified person. Thus, if the City believes it has an unqualified person in the Parts Laborer position, that is a choice it has made, not something the Union has imposed.

Parts chasing is work which is reserved to the Teamsters bargaining unit. The contract clearly protects bargaining unit work, and there is nothing in the record of this case to show that the Union has waived this right, or in any way acquiesced in the City's attempt to

distribute parts chasing to persons outside of the Teamsters' bargaining unit. Given this, and since there is no compelling justification for the City's actions, the Arbitrator must sustain the grievance and issue a declaration of rights in favor of the Union's position.

The Position of the City

The City takes the position that there has been no violation of the contract, and that the grievance should, therefore, be dismissed in its entirety. The contract provision relied upon by the Teamsters starts out "For the purpose of preserving work and job opportunities for the employees covered by this Agreement . . ." There is a glaring lack of any evidence in this record of any Teamster represented employee who lost work opportunities, including overtime opportunities, as a result of the City's decision to have the Assistant Parts Clerk chase a part for a snowplow. To the contrary, the record affirmatively established that every member of the Teamsters bargaining unit was fully employed during the snow emergency. Indeed, one reason the Assistant Parts Clerk was sent was the unavailability of Teamster represented employees to do the work, because they were otherwise occupied.

Not only has the Union failed to show that any Teamster represented employee was affected by the use of the Assistant Parts Clerk to obtain the needed part, it has failed to show that this work is even covered by Article 15. Article 15 protects "work customarily and ordinarily performed by regular employees" in the bargaining unit. However, the work here has not historically been reserved to the Teamsters bargaining unit. Instead, it has been performed by Teamster employees, AFSCME employees, and non-represented employees, as needed when the work arises. Indeed, parts chasing is specifically mentioned in the job descriptions of the Parts Clerk and the Assistant Parts Clerk. It is well established that, when work overlaps two or more bargaining units, management retains the right to assign it as needed, to whichever of the units best fits management's needs at the time. There is no exclusive right to the work. Thus, there can have been no contract violation.

The parties here have long recognized that parts chasing is not an exclusive right of the Teamsters. The Parts Clerk and the Superintendent both testified that non-Teamster employees chase parts 10 to 12 times per year, and that this has gone on for many years. Typically it occurs in situations such as this, when everyone is working, and the whoever is available is sent to chase parts. Non-Teamster employees have delivered parts to Teamster-represented workers and indeed have chased parts at the request of Teamster-represented workers. Given this, it is impossible to believe that the Union is unaware of this practice. While the great majority of the parts chasing is performed in the Teamsters bargaining unit, it is absolutely clear that non-Teamsters have also performed the work, and that the Teamsters have acquiesced in this sharing of duties. Given this, the Teamsters cannot now challenge this practice.

Even if the work of parts chasing was the "exclusive" province of the Teamsters, the City retains the ability to respond to emergencies, and the work here was part of the City's response to an emergency. The major snowfall triggered a full plow operation, with all City

units working through the night to clear the streets for the morning rush hour. A needed grader was out of operation, and the City reasonably judged that the Assistant Parts Clerks, who was familiar with the equipment, the needed part and the vendor, was the appropriate person to send on the job. Using a Teamster represented employee would have required pulling a plow out of operation, or taking a mechanic away from his work, and running a risk that the wrong part would be retrieved. Given the existence of an emergency, the City is entitled to great latitude, and cannot be held to a bright line test in assigning work. For all of these reasons, the City urges that the grievance be denied in its entirety.

DISCUSSION

Article 15 of the contract promises that work “customarily and ordinarily performed” by members of the Teamsters bargaining unit “will not be assigned or conveyed in whole or in part” to employees outside of the bargaining unit. This language is clear and comprehensive, and leaves little room for doubt about its intent or its scope. The relevant questions are whether (1) the work at issue is customarily and ordinarily performed by members of the unit; and, if so, (2) whether the work was assigned or conveyed to someone outside of the unit; and, if so (3) whether the circumstances of the assignment or conveyance were such that the apparent violation may be excused. There is no dispute as to the second question. The Assistant Parts Clerk from the AFSCME unit was dispatched to pick up a replacement master cylinder during the January 12th snowstorm. There is a dispute as to the first question, with the Union claiming exclusive control of parts chasing, and the City claiming that others have done the work in the past, without protest.

The record is clear that the overwhelming majority of parts chasing is work which is customarily and ordinarily performed by members of the Teamsters bargaining unit. Management’s own witnesses estimated that non-unit members may chase parts once a month or so, while the Parts Laborer goes on approximately ten runs per day. Allowing for the fact that these are estimations, it appears that well over 99% of the parts chasing work is performed by members of the Teamsters bargaining unit.

It is also clear that a tiny portion of the parts chasing work is done by non-unit personnel, in unusual circumstances. As described by the witnesses at the hearing, an AFSCME employee or a supervisor may chase parts, for example, when no one else is available and the part is urgently needed, or if there is a need to consult with the supplier about a part that falls within the expertise of a non-unit worker. Without attempting to exhaustively catalog the circumstances under which non-Teamster employees have performed parts chasing, it is clear that it happens, and that it is a rare occurrence.

The Union contends that it has been unaware of any parts chasing by non-unit personnel. Superintendent T. J. Sorenson, however, testified credibly that the practice has been long-standing, and that unit mechanics have taken delivery of parts from the Parts Clerk, and from him, when he has transported parts to them. Certainly the Business Agent may have been unaware of this practice, but his personal knowledge is not a prerequisite to imputing

knowledge to the Union where it appears likely that a substantial number of bargaining unit members were aware of the practice. Moreover, parts chasing is not technical or highly specialized work. While it may be reserved to the bargaining unit, as a practical matter it is hard to believe that anyone expects that there would never be an occasion when someone else might transport a needed part from one location to another. Given the nature of the task and the size of the organization, such *de minimis* crossing of work lines is virtually inevitable.

This latter comment is more than simply an observation about the parties' practice with respect to parts chasing. Instead, it is the essence of the parties' practice. From the record, the practice has not been to liberally allow whomever is convenient to chase parts. Instead, the practice has been to respect the contract language, by reserving this work to the Teamsters unit, while also allowing a workable application of the language, by not strictly enforcing the provisions of Article 15 against the occasional, *de minimis* performance of the work by others. This realistic approach is consistent with the general rule of *de minimis non curat lex*. The City's actions in this case, sending a specific person to pick up an urgently needed part he was familiar with, from a location he was peculiarly familiar with, in the midst of a snow emergency when management believed in good faith that no unit member was available as a practical matter, is perfectly consistent with this practice. It does not threaten the integrity of the Teamster bargaining unit, nor the job opportunities of the unit's members. Neither is it an expansion of what has been permitted in the past. Accordingly, I conclude that it is not a cognizable violation of the collective bargaining agreement.

On the basis of the foregoing, and the record as a whole, I have made the following

AWARD

The collective bargaining agreement prohibits the City from assigning parts chasing work outside of the Teamsters bargaining unit on more than a *de minimis* basis. The assignment of an AFSCME-represented employee to pick up a master cylinder from Bark River on the night of January 12, 2000 was a *de minimis* assignment of parts chasing work. The grievance is denied.

Dated at Racine, Wisconsin, this 30th day of April, 2001.

Daniel Nielsen /s/

Daniel Nielsen, Arbitrator