

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**EAU CLAIRE COUNTY**

and

**AFSCME LOCAL 284**

Case 235

No. 68963

MA-14427

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**Appearances:**

**Mr. Timothy Sullivan**, Assistant Corporation Counsel, Eau Claire County, 721 Oxford Avenue, Eau Claire, Wisconsin 54703, appeared on behalf of the County.

**Mr. Laurence Rodenstein**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite "B", Madison, Wisconsin 53717-1903, appeared on behalf of the Union.

**ARBITRATION AWARD**

On June 3, 2009, Eau Claire County and AFSCME Local 284 filed a request with the Wisconsin Employment Relations Commission, seeking to have the Commission appoint William C. Houlihan, a member of its staff, to hear and decide a grievance pending between the parties. Following appointment, a hearing was held on September 22, 2009, in Eau Claire, Wisconsin. No formal record was taken. Briefs were filed and exchanged by December 4, 2009.

This Award addresses the question as to whether employees who bump junior employees are entitled to the caseloads of the junior employees.

**BACKGROUND AND FACTS**

The County and the Union are signatories to a collective bargaining agreement, the relevant portions of which are set forth below. The dispute leading to this proceeding involves two employees whose positions were eliminated, and who bumped less senior employees. The dispute in this proceeding is whether or not the bumping employees were entitled to take the caseloads of the employees they displaced.

In 2008 Eau Claire County determined to contract out certain programs in its adult services unit. One consequence of this decision was that certain Social Worker positions in the AFSCME Local were eliminated. Ms. Susan O'Branovich, who had worked as a Social Worker in the Adult Services unit of the Eau Claire County Department of Human Services for approximately 10½ years, occupied a position that was scheduled for elimination. On, or about April 22, 2008, she received the following letter:

April 22, 2008

TO: Susan O'Branovich  
Social Worker I/II/III

FR: Heather M. Baker  
Human Resources Director

. . .

RE: NOTICE OF POSITION AT RISK DUE TO LONG TERM CARE  
REFORM

As has been previously announced, the Eau Claire County Department of Human Services will experience a workforce reduction due to the transfer of funding and caseloads to Community Health Partnership. The transfer of funding and caseloads is scheduled to begin on November 1, 2008. This means that a number of employees of the Eau Claire County Department of Human Services will experience layoffs within the next 12 months. This notice is being provided to you based on the best information available to Eau Claire County at this time.

The purpose of this notice is to inform you that your position is likely to be eliminated due to this reorganization within the next 12 months and to provide you with answers to some of the questions that you may have regarding the elimination of your position.

This is not a formal notice of elimination of your position. Further fiscal analysis must be performed before final determinations are made and formal notices are provided to employees. When this process begins, you will have rights under the AFSCME Collective Bargaining Agreement. Information regarding the rights you have regarding the potential elimination of your position falls within Master Agreement Article 4, Seniority. Please refer to that article of the Collective Bargaining agreement, as well as the attached document titled. "Elimination or Reduction in Hours of AFSCME Union Positions," which has been prepared to answer some commonly asked questions about this process.

We, as well as your Union representative, will be available to answer any further questions that you may have regarding this process.

Sometime in November, 2008 there was a meeting headed by Jamie Sorenson, the Direct Services Team Supervisor for the Family Unit, the Unit which was experiencing the reductions in force. A number of employees whose jobs were at risk attended the meeting. At the meeting employees were provided with an organization chart which contained the names of employees, the positions and classifications they held, and who they reported to. During the course of the meeting Mr. Sorenson described the work and caseloads of many of the people/positions within the organization. Ms. O'Branovich attended the meeting and wrote down what various people did.

On, or about December 15, 2008, Ms. O'Branovich received the following letter:

December 15, 2008

TO: Susan O'Branovich, Social Worker I/II/III  
Human Services

Dear Ms. O'Branovich:

The purpose of this notice is to inform you that your position of Social Worker I/II/III is being eliminated effective January 31, 2009, due to the transfer of funding and caseloads to Community Health Partnership. Please note the following procedure.

Under AFSCME Master Agreement section 4.02, employees experiencing position elimination have the right to bump into positions held by employees with lesser seniority within their bargaining unit provided they are qualified. (Your bargaining unit is AFSCME Human Services Professional employees.) Section 4.02 also requires that employees must receive not less than two (2) weeks notice prior to the effective date. Again, the effective date of your position being eliminated is the end of the workday on January 31, 2009.

Within one week of receiving this notice the employee must notify the Human Resources Director in writing of the position to which he/she will bump. It is very important that all parties observe these time lines so successive employees may receive the requisite notice during the bumping process since several employees may be affected. Please notify the Human Resources Director in writing within seven calendar days even if you choose not to bump.

During the seven-day period, you are required to pass any exams or tests listed as required qualifications in the position description of the position you wish to bump into. Also, if medical testing is necessary or background or driving record

checks are required you must successfully complete those as well. Position descriptions may be obtained from the Human Resources Department or on-line at . . . If those requirements are not met for any reason, it will result in layoff.

If you have any questions, please contact me. Thank you for your cooperation.

Heather M. Baker  
Human Resource Director

O'Branovich responded to Baker by the following letter:

December 17, 2008

TO: Heather Baker, Director

Human Resources

Dear Ms. Baker,

On December 12, 2008, you gave me notice of the elimination of my position effective January 31, 2009. It will be necessary for me to utilize my bumping rights to maintain employment with Eau Claire County

I have chosen to bump into the position presently held by Amy Pechmann in the Coordinated Service Team. I understand the need to keep this information to myself until Amy has been informed of the bumping, but would you please let me know when she has been contacted? I would appreciate this consideration.

Sincerely,

Susan M. O'Branovich /s/  
Susan M. O'Branovich

Ms. O'Branovich decided to bump Ms. Pechmann because she believed she would be a good fit on the Coordinated Services Team (CST). The CST reflects an expansive method of working with families, which was more attractive to O'Branovich than was the approach within the Juvenile Justice Team. Pechmann was a part of the CST, and was sufficiently junior that O'Branovich believed that by displacing her it would minimize the subsequent displacement of employees. Ms. O'Branovich did not hear back in response to her December 17, 2008 letter.

The next day, December 18, 2008 Ms. Pechmann received the following letter:

December 18, 2008

TO: Amy Pechmann, Social Worker I/II/III  
Human Services

Dear Ms. Pechmann:

This is to inform you that Susan O'Branovich has elected to bump into your full time Social Worker I/II/III as a result of a workforce reduction due to the transfer of funding and caseloads to Community Health Partnership.

Under AFSCME Master Agreement section 4.02, employees laid off following position abolition or reduction in hours have the right to bump into positions held by employees with lesser seniority within their bargaining unit provided they are qualified. Your bargaining unit is AFSCME Human Services Professional. Contact the Human Resources Department or Betsy Boley for seniority list information.

Section 4.02 also requires that employees must receive not less than two (2) weeks notice prior to the effective date. Note the effective date of this position reduction is the end of the workday on January 31, 2009. Within one week of receiving this notice the employee must notify the Human Resources Director in writing of the position to which he/she will bump. It is very important that all parties observe these time lines so successive employees may receive the requisite notice during the bumping process since several employees may be affected. Please notify the Human Resources Director in writing within seven calendar days even if you choose not to bump.

During the seven-day period, you are required to pass any exams or tests listed as required qualifications in the job description of the position you wish to bump into. Also, if medical testing is necessary or background or driving record checks are required you must successfully complete those as well. If those requirements are not met for any reason, it will result in layoff. Job descriptions may be obtained from the Human Resources Department.

If you have any questions, please contact me. Thank you for your cooperation.

Heather M. Baker /s/  
Heather M. Baker  
Human Resources Director

Pechmann replied on December 19, 2008 that; "I have decided to bump Leslie Ly. Please let me know if you need a more formal letter. Thank you."

Ms. Ly was given the same letter as was Ms. Pechmann, and replied that she "...would like to bump into the full-time Social Worker I/II/III position in the Family Services Unit that was vacated by Social Worker Mary McDermid."

O'Branovich's position was eliminated on February 1, 2009. She was moved to a new office and assigned a new caseload. She was not moved to Ms. Pechmann's office, nor was she given Ms. Pechmann's cases. It was her testimony that she was not laid off, that she moved into a Social Worker I/II/III position that was vacant.

Dale Tickler is a Social Worker in the Eau Claire County Department of Human Services who worked in the Family Services Unit for approximately 6½ years. Ms. Tickler had an experience that mirrored that of Ms. O'Branovich. Ms. Tickler attended the same November meeting and also took notes as to the positions she was interested in. She was notified by the same letter that was sent to O'Branovich, dated December 4, 2008 that her position was being eliminated. Tickler replied by letter, dated December 10, 2008 which provided; " In response to the layoff notice I received on 12/4/08, I am electing to bump Kendra Cragin, currently occupying a SW I/II/III position in the CST Unit."

On or about January 4, 2009 Ms. Tickler was informed that she would be taking Mary McDermid's caseload, which was primarily a Juvenile Justice caseload. McDermid had posted into another position and her previous position and caseload were vacant. On January 14, 2009 Tickler was assigned to a vacant office and to McDermid's caseload. Cragin kept her office and caseload.

There was testimony as to how layoffs and bumping had been handled in the past. Peggy Sheedy testified for the Union. Ms. Sheedy has been a Social Worker for the County for 30 years. It was her testimony that in 1997 she was bumped from her position and that the bump consisted of her losing her office and her caseload. She testified that she reacted by bumping a junior employee which consisted of her taking that employees office and caseload. Kay Evanson testified for the Union. Ms. Evanson has been employed as a Social Worker by the County for 26 years. It was her testimony that she was bumped in 1994 or 1995, and that as a consequence she lost her caseload. She in turn bumped a junior employee, taking that employee's caseload.

Randall Etten testified for the Union. Mr. Etten, now an AFSCME Staff Representative, was employed by the County as a Social Worker for 23 years, 12 of which he served as Union president. It was his testimony that there were 28 positions eliminated in the 1997 layoffs. He testified that employees were given seniority lists and job descriptions and that employees selected positions into which to bump. He further testified that caseloads were always attached to the target positions.

Tom Wirth testified for the County. Mr. Wirth worked as a bargaining unit Social Worker for approximately 5 years, left County employment and returned to a bargaining unit position for approximately 2 more years. Beginning in 1991 he took on a series of supervisory

roles, leading to his current position as Direct Services Manager. Mr. Wirth testified that management had always considered a number of factors in exercising its right to assign cases, including education, seniority, experience and the needs of the client. It was his testimony that it was not common for someone to just take on the caseload of another employee. He testified that continuity is critical in caseload assignment, and that Ms. Tickler could not just be automatically dropped into an open caseload.

The County produced an exhibit through the testimony of Mr. Wirth. The exhibit was titled "Employee Postings in Family Services Unit", and indicates that "When postings/bumpings occur within the Family Services unit, new workers in the position are assigned cases with like job functions and responsibilities." The exhibit tracks the years 2005-2008 and indicates positions and caseloads assigned. It totals the five years as follows:

- 4 workers received the same caseload. Please note that 3 of the 4 were specific caseloads and target populations.
- 1 worker received a blend of new cases and cases from the previous worker
- 10 workers received new cases

On cross-examination Mr. Wirth could not identify whether or not any given position was occupied through a bump, as opposed to a posting or vacancy. He ultimately conceded that he did not know if any position listed in the exhibit was filled through a bump.

Heather Baker testified for the County. Ms. Baker, the Human Resources Director, testified that the various bumps detailed in 2008-2009 occurred. It was her testimony that there exists no agreement to abrogate the right to assign work. She testified that there is no past practice which abrogates the right to assign work.

### ISSUE

The parties could not agree on an issue.

The Union believes the issue to be:

Did the County violate the Collective Bargaining Agreement when it failed to permit grievants Tickler and O'Branovich to bump/displace junior employees whose positions the grievants sought to bump?

The County believes the issue to be:

Do the grievants, following a bump, assume the caseload of the displaced employees, or is the employer entitled to modify the caseload?

This Award will address both issues posed.

**RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT**

**ARTICLE I**  
**RECOGNITION AND MANAGEMENT RIGHTS**

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1.06 The Employer shall have the right to:

- A. Carry out the statutory mandate and goals assigned to the Employer utilizing personnel methods, and means in the most appropriate and efficient manner possible.
- B. Manage the employees; to hire, promote, transfer, assign or retain employees and, in that regard, to establish reasonable work rules.
- C. Suspend, discharge, or take other appropriate disciplinary action against employees for just cause; or to layoff employees in the event of lack of work or funds, or under conditions where continuation of such work would be inefficient and non-productive.

...

**ARTICLE 4**  
**SENIORITY**

4.01 Seniority Defined. Seniority is the continuous service of the employee with the Employer compiled by time actually spent on the payroll, plus properly approved absences.

...

- B. The Employer recognizes the principle of seniority and such principles shall predominate where applicable, provided that the employees involved in any decision to which the principle of seniority is applicable, meet any necessary qualifications.

...



- 4.02 The Employer recognizes the principle of seniority and seniority shall govern in all cases of decrease or increase of the work force.
- A. For the purpose of layoffs or reduction of hours, seniority shall be determined as in Article 4.01.
  - B. Affected employees shall have the right to utilize their seniority and bump into positions held by employees with lesser seniority within their bargaining unit provided they have the necessary qualifications, except those employees as defined in Letter of Agreement No. MA-01. Bargaining units are defined in Article 5.01. Affected employees in a layoff situation are defined as follows:
    - 1. Employees whose positions are eliminated or reduced in hours by the Employer.
    - 2. Employees who are bumped from their positions by employees with greater seniority.
    - 3. Employees who are placed on layoff.
  - C. Affected employees shall be notified in writing of any impending loss of their position or reduction in hours not less than two (2) weeks prior to the date the loss or reduction shall occur. The affected employee shall notify the Human Resources Department in writing within one (1) week after notification by the Employer of the position the employee wants to bump into.
  - D. Affected employees who cannot bump because of low seniority or lack of qualifications shall be placed on layoff. They shall be offered the first available position in their bargaining unit with the same or greater full-time equivalency, that has not been filled through bargaining unit posting. If an employee declines in writing to accept the position, all rights to said position are forfeited. The employer is required to offer only one return to employment position; however, employees on layoff may post for any position while on layoff status pursuant to Article 5. Vacancies not filled according to the above will be filled subject to the countywide job posting requirements.

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**ARTICLE 5**  
**JOB POSTING**

- 5.01 A. When it becomes necessary to fill a vacancy or a new position, such vacancy or new position shall be promptly posted in all AFSCME certified bargaining units listing pay, hours of work and the date the position is to be filled. The notice of vacancy or new position shall remain posted five (5) workdays. Interested employees may apply by signing such posting within the five (5) workday period. Interested employees are defined to be those employees detailed in Section 1.01, except those employees as defined in Letter of Agreement No. MA-01.

. . .

- 5.02 A. The qualifications of employees are a matter of fact, and include physical ability, knowledge, skill, and efficiency on the job. The successful applicant shall be allowed up to one hundred seventy-six (176) working hours to qualify for the position, except as amended in Appendix E and Appendix F.

**POSITIONS OF THE PARTIES**

It is the view of the Union that the County is not free to segregate the right to bump a junior employee from the caseload of that employee. It is the view of the Union that Section 4.02(B) of the contract is clear and unambiguous in providing bumping rights to senior employees. It is the view of the Union that the County does not have the right to detach the caseload from the position in pursuit of organizational objectives.

The Union points out that the county organizational chart differentiates work, one area from another. It is not the employee who is seeking to do so. The Union points to the historic practice of the parties of assigning the caseload of the displaced employee to the bumping employee. It is the view of the Union that the County has never before asserted the right to sever the caseload from the employee being displaced. It is the view of the Union that what the County seeks is a re-negotiation of the agreement which allows it to substitute its right to reassign work for the bumping procedure. Armed with such a right the County would be free to avoid bumping altogether.

The Union cites arbitral authority for the propositions that bumping is created and defined by the contract, that under certain circumstances employees have an expectation that a bump/bid comes with the caseload attached to the identified position, and that it is not for the Arbitrator to amend contractual provisions for perceived policy reasons.

The Union points to the testimony of Mr. Wirth, and notes that he stressed the value of continuity in the assignment of work. The Union points out that the concern is being used to circumvent the negotiated agreement.

It is the view of the County that it has the right to assign cases, and that there is no serious dispute as to that fact. The County disputes that any employee has a right to a specific caseload. It is the view of the County that the contract is clear and unambiguous in granting an employee the right to bump into a position and equally clear that the employer has a right to assign work to that position.

The County reads Article 4.02 as preserving the right to bump into a “position”. There is no further right to a specific caseload. It is the County’s view that all employees were permitted to bump into positions within the Social Worker I/II/III classification. That satisfies their rights under the contract.

The County asks the practical question; If the Union is right that bumping employees are entitled to take the caseload of the displaced employee, and all parties acknowledge the right of the employer to assign cases, how long must the County wait to assign/reassign the caseloads of employees who bump? Here, the County asserts that it exercised its right of assignment to minimize the disruption to the clients.

It is the view of the County that there is too little evidence and detail to establish a practice in this area. The County cites arbitral authority for the proposition that caseload is not a benefit to which an employee returning from leave can reasonably expect to receive. It is the view of the County that there exists no meaningful remedy under these circumstances.

### DISCUSSION

Article 4.02 provides that employees whose positions are eliminated or who are bumped “...have the right to utilize their seniority and bump into positions held by employees with lesser seniority...” The question presented in this proceeding is whether or not the term “position” includes the caseload held by the employee who is bumped, and if so, how is that right reconciled with the County’s Article 1.06 right to assign work?

On its face Article 4.02 permits affected employees to bump into positions held by less senior employees. The provision does not, on its face limit the bump to the least senior employee. Rather, it references employees with “lesser seniority”. It would appear that the potential bumping pool is not limited to a single position. It would appear that a bumping employee has a choice of positions to select from, provided the incumbents are junior, and certain other conditions, not relevant to this proceeding, are satisfied. The employees involved in this proceeding either had their positions eliminated or were bumped. Article 4.02 further conditions bumping on the bumping employee possessing the “necessary qualifications”, a condition not raised in this proceeding.

A review of the organization chart of the Family Services Department reveals three teams with over 30 positions combined. Additionally there are 6 positions which report directly to the Team Supervisor. It appears that all of the positions on the chart are Social Workers. From the record there appears that there is but a single position description of Social Worker with three levels: I, II, and III. <sup>1</sup>

The fact that all of the employees in the Department are identified as Social Workers should not be construed to imply that each performs functionally identical work, nor that they operate as fungible commodities. The Department oversees a wide range of programs and services, each of which demands a range of skills. This fact is acknowledged by both parties, and in fact underlies the positions advanced by both the County and the Union. The core claim of the Union is that senior employees should have a right to identify and claim work which is deemed more professionally suitable and preferable. Key to the County's position is the right to assign work to employees based on the character of the work and the skills, experience, performance of the employee.

Historically, I believe the parties reconciled these competing claims as the Union contends. At least in the 1990's I believe employees who bumped took the caseload and even the offices of those they displaced. To reach this conclusion I have credited the testimony of Sheedy, Evanson and Etten. Each testified from personal experience. Etten testified to 28 positions bumping. Such a bump involves a great deal of dislocation. It cannot be dismissed as happenstance. I have not given weight to the testimony of either Wirth or Baker on the subject of whether bumping employees took on the caseload of those they dislodged. Baker's testimony was conclusory and did not point to any specific event or transaction. She simply denied the existence of a practice. In her position as Human Resource Director she would have access to the records of layoffs. Mr. Wirth was unable to identify a single bump from the document which purported to identify how positions were filled over a five-year period.

A part of the County's objection as to the application of the practice is that the evidence of the practice is a decade old. I agree. That objection raises the question as to how parties view the process now?

The "at risk notice", sent in April of 2008 said two basic things. It indicated that there would be a transfer of funding and caseloads. It also advised the recipient that "...your position is likely to be eliminated due to this reorganization...". The letter links the position of the letter recipient to the caseload to be transferred away. O'Branovich had 10½ years service with the County, and was senior to others. Her position was being eliminated because her work was being transferred. If the employer could simply reassign work from one employee to another, it is unclear why she was at risk.

The December letter, advising O'Branovich that her position has been eliminated proceeds in much the same fashion. Her position is being eliminated due to the transfer of

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<sup>1</sup> The organization chart lists 2 SW IV positions which are otherwise unexplained nor referenced.

funding and caseload. Once again the position and caseload are linked. O'Branovich is advised of her right to bump"... into positions held by employees with lesser seniority...". She is told to notify the Human Resource Director as to the position to which she will bump. She is advised that she must be qualified for the "...position you wish to bump into..." This letter invites her to select a position and exercise her right to bump. It further cautions her that she must be qualified for the position she selects.

O'Branovich's response reflects her understanding that she is to select a position. She receives no comment back. If the employer felt that O'Branovich misunderstood the process it would seem a courtesy response would be in order.

There was no response to O'Branovich because her understanding was consistent with that of the employer. The next day Pechmann was advised that she was being bumped, and that she has one week to identify the position into which she will bump. The letter to Pechmann confirms the third paragraph of the December 15 letter to O'Branovich which urges timely compliance, in that successive employees may be affected.

Pechmann went on to bump Ly, who was also advised that she was bumped and that she had a right to bump. Ly elected to fill a vacant position.

If the County is free to simply assign O'Branovich to a vacant position, what was the purpose of this process? A number of people were advised that they were being bumped. Each was advised that they might face layoff if they could not identify a position, held by a junior employee, for which they could qualify. This sequence of notices support the claim advanced by the Union that a component of the "positions" referenced in the contract was the caseload.

There was a meeting in November, convened for those employees potentially adversely impacted by the contracting out of work. Employees were provided an organization chart which is laid out by team and by employee name. The employer described the work performed by each position/person in the unit. Two employees testified that they understood the purpose of the meeting was to identify the kind and nature of work various people performed. It was the understanding of those employees that the nature of the work, the philosophy of the work units, and caseload makeups were presented in order to permit potential bumpers to select positions that would fit their own skills and needs. To that end the participants took notes as to the advantages and disadvantages of the respective positions. I think the employees reactions to the meeting was logical. Why else would such a meeting be held? If the County was simply going to reassign caseloads what purpose did it serve to convene a general meeting of this nature.

I believe that through December of 2008 the County believed that employees were entitled to bump less senior employees and to take their caseloads. I believe that the County believed that such bumps could lead to a chain reaction series of bumps. Both parties construed the term "position" to include the caseloads held by the incumbents of the positions for

purpose of bumping. The interpretive practice of the 1990's was still the prevailing view of the parties in 2008.

The County contends that it exercised its right to assign cases so as to minimize the disruption to service recipients. Nothing in this Award calls into question that motive. This Award is confined to an analysis of who has rights under the contract.

The County poses the question: If the Union is right, when is the County free to exercise its right to assign work. The question is well put. All cases are assigned, and over time, caseloads change. In this relatively large organization, the assignment of cases is no doubt a process filled with judgments and nuances. In the context of this dispute it is sufficient for me to say that the right cannot be exercised to circumvent the bumping process. Any other answer requires that I formulate and address a series of facts that do not constitute a part of this record. I think such an approach is both speculative and beyond the scope of either of the issue(s) submitted for decision.

#### **AWARD**

The grievance is sustained.

#### **REMEDY**

The County is directed to permit bumping employees to assume the caseloads of the positions into which they bump. As to the bumps that led to this proceeding, employees O'Branovich and Tickler are to be offered the opportunity to assume the caseloads of the employees they identified to bump (Pechmann and Cragin). If either or both of them elect to take the caseloads of the less senior employees, the impacted employee(s) shall be afforded the option to bump less senior employees, including taking on those employees' caseloads. This process shall continue to its conclusion.

#### **JURISDICTION**

I will retain jurisdiction over this matter, for a period of 60 days from the date of this Award, for the purpose of resolving disputes that arise over the relief granted in this matter. Jurisdiction may thereafter be extended by mutual agreement of the parties.

Dated at Madison, Wisconsin, this 22nd day of December, 2009.

William C. Houlihan /s/  
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William C. Houlihan, Arbitrator

WCH/gjc  
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