

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**WISCONSIN COUNCIL 40, AFSCME, AFL-CIO**

and

**COLUMBIA COUNTY**

Case 293

No. 68884

MA-14386

(Restructuring Grievance)

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**Appearances:**

**Mr. Neil Rainford**, Staff Representative, 8033 Excelsior Drive, Suite “B”, Madison, Wisconsin, appearing on behalf of Local 2698-B.

**Mr. Joseph Ruff, III**, Corporation Counsel/Human Resources Director, Columbia County, 120 West Conant Street, P.O. Box 63, Portage, Wisconsin, appearing on behalf of Columbia County.

**ARBITRATION AWARD**

Wisconsin Council 40, AFSCME, AFL-CIO, hereinafter “Union,” and Columbia County, hereinafter “County,” requested a list of arbitrators from the Wisconsin Employment Relations Commission from which to select a staff arbitrator to hear and decide the instant dispute in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. Lauri A. Millot, of the Commission's staff, was selected to arbitrate the dispute. The hearing was held before the undersigned on October 27, 2009, in Portage, Wisconsin. The hearing was transcribed. The parties submitted briefs and reply briefs and a second copy of the exhibits, the last of which was received by May 4, 2010 whereupon the record was closed. Based upon the evidence and arguments of the parties, the undersigned makes and issues the following Award.

**ISSUES**

The parties stipulated there were no procedural issues in dispute, but were unable to agree as to the substantive issues.

The Union framed the substantive issues as:

Did the Employer violate the collective bargaining agreement when it restructured several positions in the Human Services Department in the spring of 2009? If so, what is the appropriate remedy?

The County framed the substantive issues as:

Did the Employer act within its Article 15 rights in assigning a work location to the Grievant? If not, what is the appropriate remedy?

The language of the grievance supports the Union's framing of the issue. The facts adduced at hearing establish that the genesis for the grievance very well may have been the single issue which the County posits, but it is inherent in the Union's framing of the issue. Having considered the evidence and arguments of the parties, I conclude that the Union's framing of the issue is too broad and the County's too narrow. I frame the issues as:

Whether the County violated Articles 7 or 15 of the collective bargaining agreement when it restructured the work and relocated three Clerk Typist II employees and one Human Service Aide employee in the spring of 2009? If so, what is the appropriate remedy?

### **RELEVANT CONTRACT PROVISIONS**

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#### **ARTICLE 3 – WAGE RATES**

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3.3 Out of Classification Pay. Whenever an employee is assigned to perform substantially all of the duties normally performed in a higher range as set forth in that agreement for a period of one (1) week or more, the employee will be paid at the rate of pay equal to the higher range for all hours so employed.

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#### **ARTICLE 7 – SENIORITY RIGHTS**

7.1 It shall be the policy of the Employer to recognize seniority.

7.2 Seniority shall be defined as the length of time that an employee has been employed, dating from his/her most recent date of hire, and excluding any unpaid leaves of absence, except as hereinafter provided.

7.3 Regular part-time employees shall attain seniority in relationship to time worked. For the purpose of computing seniority, 162.5 hours shall be considered one (1) month.

7.4 Seniority shall apply in promotions, transfers, layoffs, recalls from layoff, and vacation selection, as herein provided.

7.5 Job Posting. All vacancies or new positions shall be immediately posted on all bulletin boards for a period of five (5) work days, and employees may apply for positions during this period by signing the job posting and by submitting a written application. Such posting shall include job title, the job location, job shift, and the rate of pay.

7.6 Selection of applicants to fill job vacancies or new positions shall be determined by the employee's skill, ability as reflected in his/her personnel file, and seniority. Where all factors are comparatively equal, the employee with the greatest seniority shall be entitled to preference. The Employer retains the right to establish necessary qualifications for all positions.

7.7 Employees who are promoted or transferred may also be required to serve a sixty (60) day trial period in the position to which they are promoted or transferred. During such trial period, the employee may elect to return to his/her former position, or the Employer may return the Employee to his/her former position. This subsection is subject to the grievance procedure. During the trial period, the employee is not eligible to sign postings for other positions that may become available.

7.8 Upon promotion or transfer, employees shall be placed on the same step of the new job classification. Original step anniversary shall remain with an employee in promotion.

7.9 Layoff and Recall. In the event the Employer reduces its work force for lack of work or other legitimate economic reasons, the following procedures shall apply:

- A) Limited term employees shall be laid off first, before regular employees are laid off.
- B) The employee with the least seniority shall be laid off first, provided that the remaining employees are qualified to do the remaining work.

1. In the event that the position eliminated is not held by the employee with the least seniority, the employee whose position is eliminated shall be permitted to displace any junior employee, provided that the displacing employee meets the qualifications of the position held by the junior employee.

2. Any employee displaced by operation of paragraph 1, above, shall be afforded the same rights as if his/her position had been eliminated.

- C) In re-employing, employees with the greatest length of service shall be called back first, provided that they are qualified to perform the work required.
- D) Employees laid off under this section shall retain all seniority rights for a period of one (1) year provided that they respond to any request to return to work made during that time, said request to be made at their last known address.
- E) The Employer will give reasonable written notice of its intent to layoff employees, but not less than ten (10) working days notice will be given. The employee shall notify the Human Resources Director within ten (10) working days of such notice of his/her intent to exercise his/her rights under 7.9 (B).

7.10 Seniority/rosters shall be posted in the Administration Building and shall be brought up to date on July 1 each year. The roster shall list the names of all employees in the bargaining unit, their classifications, and the number of months of credited seniority.

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## **ARTICLE 15 – MANAGEMENT RIGHTS**

15.1 The County possesses the sole right to operate county government and all management rights repose in it, subject only to the provisions of this contract and applicable law. These rights include, but are not limited to the following:

- A) To direct all operations of the County;
- B) To establish work rules and schedules of work, subject to Section 8.1 of this contract;

- C) To hire, promote, transfer, schedule and assign employees to positions within the County, subject to Article 7 of this contract;
- D) To suspend, demote, discharge, and take other disciplinary action against employees for cause, and subject to the procedures of Article 5 of this contract;
- E) To relieve employees from their duties because of lack of work or any other legitimate reasons, subject to the procedure of Article 5 of this contract;
- F) To maintain efficiency of county government operations;
- G) To take whatever action is necessary to comply with state or federal law;
- H) To introduce new or terminate existing methods or facilities;
- I) To change existing methods or facilities;
- J) To determine the kinds and amounts of services to be performed as pertains to county government operations, and the number and kinds of classifications to perform such services;
- K) To subcontract out for goods or services; (In the event a position is abolished as a result of contracting out or subcontracting, the County will hold advance discussions with the Union prior to letting the contract.)
- L) To determine the methods, means, and personnel by which county operations are to be conducted;
- M) To take whatever action is necessary to carry out the functions of the County in situations of emergency.

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### **BACKGROUND AND FACTS**

The grievance was filed by Local 2698-B on behalf of several affected employees including, Cathy Smith, Stacey Parker, Kathy Mantey, and Jeanne Fuchs. Smith, Parker and Mantey hold the position of Clerk Typist II, work in the Division of Support Services, and are supervised by Gretchen Halvorsen, Division Administrator. Another Clerk Typist II, Maricelda Maldonado was affected by the County's actions, but did not participate at the

hearing. Fuchs holds the position of Human Service Aide, works in the Division of Economic Support and is supervised by Wendy Metcalf, Division Administrator.

The County Health and Human Services Department provides services to the public of Columbia County. At all times relevant herein, Erik Pritzl served the Director of Health & Human Services Department. The Department is located at 2652 Murphy Street in Portage. The Murphy Street facility utilizes one main entry, Door #4, for clients and members of the public to access the building. Following entry through Door 4, there is a reception area with seating for clients and members of the public; an adjacent work area, hereinafter, "reception work area," which is separated from the reception area by a clear glass window; and at least one door that provides access to the internal offices of the facility. The internal door is locked for security and privacy. There are two work stations in the reception work area hereinafter identified as Station 1 and Station 2. The individual with primary responsibility to greet and assist foot traffic clients and members of the public is assigned to work at Station 1.

On March 9, 2009, Pritz issued the following email memorandum to the Health and Human Services Department staff:

Hello,

On Friday I sent an email to staff regarding some upcoming changes in the way the main reception area ("Door #4") operates. The message below provides the details of those changes. These are significant changes, but ones that were believed to be necessary to meet the anticipated rise in demand for services without a significant (or really any) increase in resources. I know we, as an agency, have been through a lot of changes in the past year and appreciate everyone's willingness to make those changes in a very positive way. I hope this will be another example of how we can adapt to meet the needs of the people who come to see us everyday.

Erik Pritzl, MSSW, APSW  
Director  
Columbia County Health and Human Services

Approximately one-half hour after Pritzl's email was sent to staff, Halvorsen issued the following email to Economic Support and Support Services staff:

Subject: DES & DSS Changes

Dear DES & DSS Staff:

After considerable discussion with Erik about our options involving the front desk and waiting area at Door #4, we have decided to model ourselves after Dane County's Job Center in several distinct ways. The most notable involves

the shifting around of Support Services staff and Economic Support staff. Effective immediately, both divisions will begin work on transitioning the front desk into two separate stations. Stacey Parker has been chosen to relocate to the front desk at the Support Services Station and Jeanne Fuchs has been chosen to relocate to the second station. Other personnel moves include relocating Cathy Smith to the File Room to take over ES scanning duties, filing duties and a host of other responsibilities. Mary Maldonado will assume the HSRS and OWL data inputting. Kathy Mantey will be moved to cubicle 228 (Becky's training cubicle) where she will be responsible for front end filing from accordion files, typing support and other duties.

We are also working with MIS and Building & Grounds to help implement some remodeling in the waiting room area at Door #4. The computer currently available in the waiting room for clients will be moved, a phone for client use will be installed, a host of new signage will be added to the room and again we will attempt to work through seating and foot traffic issues.

PHASE I:

- Kathy Mantey will be reassigned to cubicle #228 by Friday, Mar 13
- Cathy Smith will assume the switchboard/front desk functions
- Jeanne Fuchs will be relocated to the front desk area, station 2 (Cathy Smith's old location) by Friday, Mar 13
- Jeanne's old office will become a small unofficial meeting room, to be used on a "first come, first serve" basis

PHASE II;

- Mary Maldonado will be trained in HSRS and OWL data entry by Tuesday, March 31
- Cathy Smith will be trained in ES Scanning and other File Room assignments by March 31
- Stacey Parker will begin training at the front desk by Wed, April 1 to assume full duties by Thursday, April 30.

If cross training goals are met earlier than anticipated, the position relocations will occur sooner.

We understand that these are big changes that will effect the entire agency, and that is why we're detailing it in written form. However taking into account the increased work flow that our Department anticipates, we believe this to be the best option for quality customer service and staff utilization in these demanding times. Please bear with us through this process, and as always, positive suggestions are welcome.

Thank you in advance for your cooperation!

Wendy & Gretchen

After the March 9 email memorandum was issued, Fuchs directed an email to Metcalf on March 12 requesting that she be allowed to stay in her office until March 19 when she returned from vacation. Fuchs also questioned the reason for the transition of her position and asked if she could “stay put” until the end of April since the new programs do not start until June or July. Metcalf responded to Fuchs explaining that MIS would be at the facility on March 13 and that she should proceed with packing her office.

The Union filed a grievance on March 18 asserting a violation of “Articles 7, 15, Appendix A and all others that may apply” and describes the grievance as, “[o]n or about 3/13/09 the employer restructured several Clerk Typist, Receptionist, and Human Service Aide positions in the Human Services Department without regard to seniority and compensation.” The remedy sought was “follow the seniority and compensation provisions of the collective bargaining agreement, and, make the Employees whole.”

The County denied the grievance at all steps placing it properly before the Arbitrator.

At hearing, the following individuals testified as follows:

*Cathy Smith*

Smith has been employed by the County for greater than 20 years. On February 26, 2007, Smith posted to a Clerk Typist II position. Smith replaced Kathy Mantey and worked at Station 1 in the reception area. Smith’s duties included answering the telephone, operating the postage machine, greeting and directing clients and members of the public that approached the glass window. Smith did not receive, sort or distribute incoming mail.

Smith’s job duties changed after approximately one year. Smith indicated that a need arose for someone to “do medical mileage” and that that became her main duty. Smith continued to work at the reception counter, but moved to Station 2. Smith also served as a back-up to Kathy Mantey. In this back-up capacity, she answered the telephone and distributed mail.

Smith was assigned different duties and her work location was moved effective March 13, 2009. Smith understood the reason she was moved was because there was a “refiguring of what each of us would be doing in my division.” Smith’s new duties included pulling files for department employees and providing back up support to another file room Clerk Typist II, Maricelda Maldonado. Smith replaced Stacey Parker. Smith occasionally provides back-up coverage at the reception area counter for breaks, lunch or illness. Smith’s new work location is in the file room. Smith did not request the change in duties or work location.



*Stacey Parker*

Parker was hired by the County in January 2009 to a Clerk Typist II position and worked in the file room. Parker's duties included performing work on the computer and filing documents.

Parker exercised her posting rights and worked in the district attorney's office from September 8th, 2009 to October 9<sup>th</sup>, 2009. Parker posted for the position because she did not feel she was challenged in her Clerk Typist II position in the file room. Parker voluntarily returned to the Health and Human Services Department

Parker was moved to Station 1 at the reception counter in March 2009. Parker's duties include answering the telephone, greeting and providing assistance to customers/clients, completing computer projects, and metering mail. Parker testified she did not perform items six and 12 on the Switchboard Operator/Receptionist/Postal Clerk job description. Parker testified that she spends between 40 and 50 percent of her time greeting and assisting clients and members of the public that enter the facility, 50 percent of her time operating the telephone console and routing calls, five percent of her time metering the mail, four percent of her time handling and receiving money and less than five percent of her time operating the paging system.

*Jeanne Fuchs*

Fuchs has previously been known as Jeanne Capper and Jeanne Persike. Fuchs served as secretary and president of Local 107.

Fuchs was hired by the County in 1986 to a Clerk Typist I/Receptionist position and worked as the Human Services Department Receptionist until she posted into a Human Service Aide position in the Long Term Support Division. Fuchs held this position until she learned that its funding would be eliminated at which time she posted into a Human Service Aide position in the Economic Support Division in 2007.

Fuchs' responsibilities as a Human Service Aide include intake and pre-screening of all economic support applications and on-going economic support issues. Fuchs's assists individuals that walk in to the facility with initiating their application. Fuchs' completes an initial review of applications and schedules candidates with Economic Support Workers depending on the priority of their application. Fuchs schedules clients to meet with Economic Support Workers.

Fuchs was moved from a private office to Station 2 at the Reception area on March 13, 2009. Fuchs' duties have not changed as a result of the move, although she is subject to higher noise levels at the new work location. Fuchs was directed by the County that she was not to perform any receptionist responsibilities. Initially, clients and foot traffic interrupted Fuchs's

work at Station 2 when they asked her general agency questions. Those interruptions have been reduced as a result of the County installing a partition.

Additional facts, as relevant, are contained in the DISCUSSION, section below.

### ARGUMENTS OF THE PARTIES

#### Union

The Union maintains that the County unilaterally and without reference to seniority transferred two senior employees out of Receptionist positions and unilaterally and without reference to seniority replaced those employees with two less senior employees. In doing so, the County violated Management Rights, Posting, Layoff and Displacement provisions of the collective bargaining agreement.

The labor agreement provides the County the right to “hire, promote, transfer, schedule, and assign employees to positions within the County, subject to Article 7 of the Agreement.” The parties intended to prevent the employer from moving an employee from one position to another position without utilizing seniority posting. The County failed to consider Article 7 when it moved the two senior employees in violation of the labor agreement.

Article 7 allows an employee whose position is eliminated to displace a less senior employee. When Articles 15 and 7 are read together, they negate the County’s ability to unilaterally move an employee, rather, the employee must either post into the new position or bump a less senior employee to attain the position. When the County moved Cathy Smith and Kathy Mantey out of the Receptionist positions and into Clerk Typist II positions, they did not post or bump. When the County moved Stacey Parker and Jeanne Fuchs out of Clerk Typist and Human Service Aide positions and into the Receptionist positions, they did not post or bump. The County exceeded its management rights in violation of the agreement.

The Union anticipates that the County will argue it merely transferred the four employees different work responsibilities to different work locations within their current positions. The County’s claim fails for three reasons; 1) the contract language distinguishes the positions; 2) the grievance history defines the Receptionist work and work location; and 3) the evidence establishes that the employees work changed.

The Receptionist position has not been filled since the departure of Pat Figueroa greater than four years ago. Had the County intended to eliminate the position, it had multiple opportunities to remove the position from the collective bargaining agreement, but it did not do so. As a result, the Union is free to enforce the terms of the agreement with regard to pay and the movement of employees into and out of the position.

Arbitral history establishes that the County has paid two receptionists at the main entrance to the Human Services Building. A settlement was reached that ordered the County

to pay a second person the Receptionist wages after the employee's work location was relocated to the main window and she performed much of the same work as the Receptionist. Employees sitting at the main entrance reception desk are performing the work of the Switchboard Operator/Receptionist/Postal Clerk positions and are entitled to the bargained for wage of that position.

The specific language of the job descriptions, combined with the grievants' testimony regarding the work they perform confirms that the County violated the labor agreement by transferring employees to different positions without regard to their seniority. Parker testified that she spends 90% of her day receiving people via telephone or in person. The job description of the Switchboard Operator/Receptionist/Postal Clerk includes "receiving and directing people" and "operating the telephone console and routing calls appropriately." Similarly, Fuchs testified that she received members of the public at the window and assisted them. Neither the Clerk Typist II nor the Human Services Aide job descriptions include receiving and directing the public, except for possibly in a back up capacity.

### County

This dispute arose between a single employee and her supervisor. Other employees were involuntarily drawn in to make a minor dispute appear to be a major dispute. The real issue in this case is a single employee doesn't like her supervisor's decision regarding that employee's work location, yet the collective bargaining agreement undisputedly allows the supervisor to make that decision.

The County did not violate the collective bargaining agreement when it moved Fuchs' work location. In early 2009, the County was forced to address how to serve a growing client population with a shrinking work force. Creatively and in a manner similar to other counties, it decided to place an Economic Support Division staff member at the front counter location to avail customers with services as they entered the building. Fuchs, a long time employee, was moved from a private office to the front counter location. The labor agreement, and specifically Management Rights paragraphs A, F, H, I, J, and L, provides management the authority to make this move. If management does not have the right to tell an employee where to sit and do her work, then Article 15 of the labor agreement is rendered meaningless.

The movement of Fuchs did not fill the long vacant and obsolete Switchboard Operator/Receptionist/Postal Clerk position. The last time this position was filled was in 2005 by Patricia Figueroa. Figueroa testified at hearing about what she did in the position, but that testimony is irrelevant to the current HHS operations. The major duties of that position were replaced or reduced by automated systems, transferred to other staff or changed over time.

When work locations were moved in the spring of 2009, Fuchs was the only employee to complain. Fuchs is the sole Grievant in this case. The other Union witnesses' either testified concerning their own historical or current job duties and/or they testified that they did not have a past or current dispute or grievance concerning their duties. Fuchs' own testimony

made it clear that she thought her office move was a bad idea and that her supervisor was wrong. Fuchs tried to reverse and delay the move by going over her supervisor's head to HHS Director Pritzl and when that did not work, she filed the grievance.

There is only one issue in this case – Fuchs' disagreement with her supervisor to move Fuchs out of a private office. Not only does the County have the management right to make the move, but it has achieved the desired result - the Department is now more efficient.

### **Union in Reply**

The Union reasserts its initial arguments, but seeks to reply to the County's arguments.

The County's view of management rights is extreme and inconsistent with the clear and specific language of the collective bargaining agreement. The County argues, "[n]othing that the Union presented at the October 27, 2009, hearing changes the fact that if Management Rights do not extend to telling an employee where she will sit and do her work, then Article 15 of the CBA would effectively be rendered meaningless." This assertion obliterates a long-standing compromise through which employees have exercised Article 7 rights to determine what work they will do and where they will do. Posting rights are a reasonable system that provides for a happier and more productive workforce. The County's attempt to eviscerate the clear language of Article 7 cannot be permitted.

The County's claims with regard to Article 15 misses the mark. Absent from the enumerated discussion of rights is the recognition that there are specific contract provisions relevant to this dispute. Paragraph C of Article 15 strikes a balance between management rights and employee rights where promotion, transfer, scheduling and assignment are concerned. The County moved four employees. The County is not arguing that it did not promote or transfer or schedule or assign the four affected employees. Article 7 is a more specific provision of the labor agreement than is Article 15 and it is well acknowledged that specific terms are given more interpretive weight than general provisions.

The County inaccurately characterizes Fuchs role in the dispute. There are a host of practical problems with the placement of Fuchs behind the makeshift window all of which the County ignores. The County's decision to move Fuchs compromised the quality of service to those in need. Fuchs is not the sole grievant, rather the grievance references all job titles and asks for all employees to be made whole.

With regard to remedy, the Union asks that the Arbitrator order the County to return the two senior employees to their receptionist positions. Should the Arbitrator find that the County was within its rights to restructure the positions, then the Union maintains that the employees should be allowed to exercise their posting and bumping rights. Employees should be made whole for wages not appropriately paid during the interim.

### County in Reply

The County disagrees with the Union's dizzying array of contract violations and version of the facts.

The County has not resurrected the Switchboard Operator/Receptionist/Postal Clerk position. The fact that an employee is physically sitting where that position previously performed work does not make it so. A receptionist position does not exist and therefore no County employee was transferred, assigned, relocated, asked, forced or otherwise made to do work in a nonexistent position. Tasks like greeting customers, answering the phone and handling mail items are routinely performed by County employees.

Article 7 seniority rights are not relevant to this case. Fuchs was moved to make her more accessible to the public. The County is not obligated to apply seniority rights to every decision it makes.

The County did not violate Article 7 when it relocated Fuchs and assigned different duties and work locations to several Clerk Typist IIs. Fuchs' status as a Pay Range 2 Human Services Aid was never diminished and so assigning her to perform lower range work does not violate the labor agreement. As to the Clerk Typist IIs, the County is not obligated to post every time there is a change in a job assignment. Clerk Typist IIs perform varying tasks at different locations. If a task goes well beyond those of a Clerk Typist II for an extended period of time, then the individual is paid for out of class work. If a task is of a lower classification, the employee continues to receive the higher wage.

This grievance is the result of Fuchs being moved from a private office to the reception work area. Beyond Fuchs, no one else complained or filed a grievance. The County had the contractual right to make a job location change that resulted in better and more efficient operation using only limited existing staff.

The County seeks a denial of the grievance.

### DISCUSSION

The Union and County view this case from vastly different hemispheres. The Union frames this as a full scale abridgment of seniority and posting rights while the County points to one employee's dissatisfaction with being moved from a private office to the front desk area. I therefore start with the facts.

The facts establish that the County made significant changes to the job duties of Smith, Mantey and Parker. Maldonado's job duties changed, but it is unclear from the record the extent to those changes.<sup>1</sup> The changes were introduced in two phases. Phase one resulted in

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<sup>1</sup> Maricelda Maldonado did not testify at hearing.

Smith taking on the switchboard/front desk functions and Mantey and Fuchs moving to a new work location. Phase two included Smith, Maldonado, and Parker taking on different duties. The Union argues that the County did not have the authority to make these changes and that it was contractually obligated to post the job changes and allow seniority to dictate who did what job and where.

It is well settled that management retains the right, absent specific limitations, to operate its business efficiently. When job combinations or eliminations are for legitimate business purposes, including improved methods of operations, as a result of new equipment or technological changes, the changes are generally upheld. St. Antoine, *Common Law of the Workplace*, National Academy of Arbitrators, p. 118 (1998) Combinations or eliminations of classifications may not be upheld if the job action has an antiunion purpose, the change will result in a safety hazard, or the employer is asking the employee to perform the same work for lesser pay. Id. at 118. Where not restricted by the labor agreement, management may eliminate job classifications and relocate remaining duties when done in good faith and for a justifiable purpose. HYATT CHERRY HILL, 103 LA 99, 103 (DiLauro, 1994) citing Elkouri & Elkouri, *How Arbitration Works*, 4<sup>th</sup> Ed. (1985).

Article 15 of the collective bargaining agreement is the management rights clause and it provides the County the right to direct and operate the County through the use of efficient means. It further delineates that the County has the specific right

- H) To introduce new or terminate existing methods or facilities;
- I) To change existing methods or facilities;
- J) To determine the kinds and amounts of services to be performed as pertains to county government operations, and the number and kinds of classifications to perform such services;
- . . .
- L) determine the methods, means, and personnel by which county operations are to be conducted;

This language is vast and affords the County great latitude. Thus, unless there is specific language limiting the County's authority, its employment actions are consistent with its rights.

The Union argues that Article 7 and specifically, 7.4 limits the County's right to unilaterally move employees. Looking to 7.4, it provides that

Seniority shall apply in promotions, transfers, layoffs, recalls from layoff, and vacation selection, as herein provided.

There is no explanation as to how seniority shall “apply”, but the section goes on to describe in 7.5 - Job Posting, the posting process that must be followed when there is a “vacancy or new position.” Promotion and transfer are the only two employment actions relevant to this case, but an employee cannot promote or transfer unless there is a “vacancy or new position.” The parties have not argued nor does the evidence support a finding that a vacancy or new position was created. There were no unfilled positions on March 9 when Clerk Typist II responsibilities then being performed by Smith, Maldonado, Mantey, Parker were reassigned.

Not only does the absence of a “vacancy or new position” make the posting language irrelevant, but posting would not have changed the status quo. Article 7, subsection 5 provides that the posting will include the job title, Clerk Typist II; the job location, HHS; the job shift, day or first however the parties characterize it; and finally the rate of pay which is the bargained for range 2 pay that Smith, Maldonado, Mantey, and Parker are currently receiving.<sup>2</sup>

This conclusion is supported by the language of 7.8 which states:

Upon promotion or transfer, employees shall be placed on the same step of the new job classification. Original step anniversary shall remain with an employee in promotion.

Prior to March 9, Smith, Maldonado, Mantey, and Parker held the Clerk Typist II job classification and Fuchs held the Human Services Aide job classification. Post March 13, they retained their job classifications and the pay did not change. Had any of the affected employees been promoted or transferred, their job classification and hourly wage would have changed. None of the affected employees were promoted or transferred.

Finally, Article 15.1.C states that the County has the right to “promote, transfer, schedule and assign” subject to Article 7 provisions. Notably absent from Article 7 – Seniority Rights, is any reference to seniority being a consideration in assignments. The parties’ negotiated language which obligates the County to consider seniority when making some employment decisions and they specifically listed those actions. The absence of “assign” from that list invokes the legal maxim, *expressio unius est exclusio alterius*, and it can reasonably be concluded that they intended to exclude assignments for seniority consideration.

Moving to the County’s decision to relocate Fuchs from a private office to the reception counter, there are no specific provisions in the parties’ labor agreement that limit the County authority to determine where an employee will work. In this instance, Metcalf and Halvorsen testified that members of the County Health and Human Services management team investigated different service delivery methods at various counties and determined that it would be more efficient if the Human Service Aide - Economic Support Division’s work location

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<sup>2</sup> The parties did not offer a job posting for the record.

would be where there was direct access to members of the public. The County reasoned that by moving Fuchs to the front area, it reduced the amount of time spent delivering clients to Fuchs and made her more accessible to the public. These are legitimate business reasons.

The Union challenges the efficiency and wisdom of management's decision as it relates to Fuchs' relocation. The Union points out that Fuchs' presence in the reception area is less private than a separate office and that the client's right to confidentiality is in jeopardy. There is also the issue of an increase level of noise and the inevitable interruptions. Even if I were to find validity in the Union's argument and therefore conclude that management's decision was a bad one, management has the prerogative to make it, however flawed it may or may not be, if done in good faith and for justifiable reasons. There is no evidence which supports a finding that management's decision to relocate Fuchs was improperly motivated.

As to the Union's assertions that the Switchboard Operator/Receptionist/Postal Clerk positions exist and were being performed by Smith and Mantey immediately prior to March 9 and now by Parker, the facts do not support such a pronouncement. Patricia Figueroa was the last person to hold this position in late 2005, early 2006. The Union was aware that the County did not fill the position when Figueroa posted to Veterans Services and did not grieve or challenge the County's actions. Moreover, the Clerk Typist II job description encompasses the duties that Smith, Mantey and now Parker perform. The relevant essential duties include

1. Sharing responsibilities of the day-to-day operations of an office  
...
3. Filing, typing, assisting public  
...
5. Distribute materials to appropriate staff
6. Provide back-up support for the switchboard, processing of mail and other areas as assigned
7. Assists with in-house and outlying clinics, registering clients, collecting fees when appropriate for immunizations, flue, and pneumonia clinics
8. Answering the telephone, forwarding calls and/or taking messages
9. Assisting individuals who come into the office

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Parker testified that the majority of her time is spent greeting clients and members of the public and answering the telephone. These duties are contained in the Clerk Typist II job description. The County eliminated the Switchboard Operator/Receptionist/Postal Clerk position, installed a voice mail system and modified the telephone system to allow direct access to HHS employees. Further, it reassigned mail receipt, sorting and distribution duties. While it may be true that Parker is performing some of the functions that Figueroa previously performed, she is not performing all of them, the technology has changed and she has new duties which Figueroa never performed.

The evidence establishes that the County decided to restructure four Clerk Typist II positions and one Human Service Aide position in the wake of a complete reorganization of the service delivery model for Economic Support and Support Services. These changes followed visits to other counties to compare and contrast methodology. This decision was not impetuous, but instead was investigated and evaluated. Moreover, the changes were initiated in anticipation of an influx of clients negatively impacted by the poor economy. The County's actions were well within the parameters of the management rights clause and were done in good faith and for justifiable business reasons

#### AWARD

1. No, the County did not violate Articles 7 or 15 of the collective bargaining agreement when it restructured the work and relocated three Clerk Typist II employees and one Human Service Aide employee in the spring of 2009.

2. The grievance is dismissed.

Dated at Rhinelander, Wisconsin, this 11th day of May, 2010.

Lauri A. Millot /s/

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Lauri A. Millot, Arbitrator