

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**MARINETTE COURTHOUSE EMPLOYEES,  
LOCAL 1752, AFSCME, AFL-CIO**

and

**MARINETTE COUNTY**

Case 200  
No. 69284  
MA-14555

(Transporter Grievance)

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**Appearances:**

**Mr. Dennis O'Brien**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 5590 Lassig Road, Rhinelander, Wisconsin, appearing on behalf of Local 1752.

**Ms. Gayle Mattison**, Corporation Counsel, Marinette County, 1926 Hall Avenue, Marinette, Wisconsin, appearing on behalf of Marinette County.

**ARBITRATION AWARD**

Marinette Courthouse Employees, Local L-1752, AFSCME, AFL-CIO hereinafter "Union" and Marinette County, hereinafter "County," requested that the Wisconsin Employment Relations Commission assign an Lauri A. Millot to hear and decide the instant dispute in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. A hearing was convened on March 22, 2010, in Marinette, Wisconsin. The hearing was not transcribed. The parties submitted post hearing briefs by May 3, 2010 and retained the right to file reply briefs. Having not received a reply brief by May 17, 2010, 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 that there were no procedural issues in dispute, but were unable to agree to the substantive issues.

The Union frames the issues as:

Did the County violate the agreement reached with the Union Officers to have corrections officers transport juveniles in custody? If so, what is the appropriate remedy?

The County frames the issues as:

Did the County violate the collective bargaining agreement at the time the grievance was filed? If so, what is the appropriate remedy?

Having considered the evidence and arguments of the parties, I frame the substantive issues as:

Did the County violate the collective bargaining agreement when it assigned to the Transporter position the duty of transporting juveniles in custody to or from a juvenile correctional facilities and the duty of transporting juveniles in custody from one juvenile correctional to another juvenile correctional facility? If so, what is the appropriate remedy?

### **RELEVANT CONTRACT LANGUAGE**

#### **ARTICLE 2 – REPRESENTATION AND MANAGEMENT RIGHTS**

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#### **2.03 Management Rights**

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

- A. To direct all operations of the County; to maintain the efficiency of County operations; to determine the table of organization; to establish and enforce reasonable work rules, conduct, safety and schedules of work;
- B. To manage and direct the work force, to make assignments of jobs; to determine the size and composition of the work force, to determine the work to be performed by Employees, and to determine the competence and qualifications of Employees;
- C. To uniformly enforce reasonable minimum standards of performance; to establish procedures and controls for the performance of work; to hire, promote, transfer, assign or to retain Employees; to suspend, discharge, or take other appropriate disciplinary action against the Employees for just cause; to determine the fact that overtime work is necessary and

the composition of the force to complete such work; to lay-off Employees in the event of lack of work or funds, or under conditions where continuation of such work would be inefficient and non-productive;

- D. To introduce new or improved methods or facilities; or to change existing methods or facilities; to terminate or modify existing positions, departments, operations or work practices and to consolidate existing positions, departments, or operations;
- E. To determine the kinds and amounts of services to be performed as pertains to County operations, and the number and kinds of classifications to perform such services; the Union recognizes that the County has the right to subcontract work that is not prohibited by law, providing no present Employee shall be laid off or suffer a reduction of hours as a result of subcontracting.
- F. To take whatever reasonable action is necessary to carry out the functions of the County in situations of emergency;
- G. Such authority shall not be exercised in a manner, which violates the provisions of this Agreement.

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## ARTICLE 16 – WAGES

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### 16.02 Classification and Compensation Plan

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- C. **Classification Process:**
  - 1. **Committee and Evaluation Instrument:** The County and the Union each shall appoint three (3) County employees to serve on a Job Evaluation Committee. The Committee shall review new positions as they are created and re-classification requests once each year using the position analysis questionnaires and job evaluation instrument used in the current job classification study. A majority vote of the committee shall decide the matter.

**Disputed Scores:** If the Committee is unable to reach a majority decision, the County and the Union shall jointly request the appointment of a WERC staff member, mutually acceptable to both parties. This person will serve as an umpire and decide the issue by choosing between the recommended point scores. The umpire shall make a decision based on the record considered by the committee, and he/she shall issue a one-sentence decision without supporting rationale.

2. **Classification of New Positions:** When new jobs are created by the county (sic), the County shall provide prior to the posting, a completed position analysis questionnaire for the Committee to score.
3. **Re-Classification Requests:** An employee or supervisor may request a re-evaluation of his/her position by applying to Administration before July 15 in any year. Such request shall consist of a completed position analysis questionnaire, a current job description, and a memorandum identifying aspects of the job that have changed since the position was last evaluated. There must be a documented substantial change of duties since the last request or appeal for re-classification.

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### **BACKGROUND AND FACTS**

This grievance was filed by the Union on behalf of the membership. The Union represents the full time and part time employees of the County Courthouse including the Correctional Officers that work in the Sheriff's Department and the Transporters that work in the Health and Human Services Department.

The County provides municipal services to the public of Marinette County. At all times relevant herein, Robin Elsner was employed as the Interim Health and Human Services Director and Jim Kanikula as the Sheriff.

The County employs four Transporters in the Health and Human Services Department. All Transporters are part time; one is employed half time and the other three are employed less than .20 percent. The 2008 hourly rate for the hourly rate for the Transporter position is \$15.35 per hour. The 2008 hourly rate for Civilian Correctional Officers is \$20.24.

About seven years ago, the Union learned that the County was using part-time non-union personnel to transport Health and Human Services clients to various locations and appointments. The Union approached the County and requested the inclusion of the transporting positions in the bargaining unit. In response to the Union's request, the County created the Transporter bargaining unit position. The job description, approved in December 2004, for the Transporter position read as follows:

### **JOB ANALYSIS**

This position reports to the Community Services Manager and/or the Child and Family Services Manager. Responsibilities include transporting clients to and from County buildings, schools, hospitals, homes, group homes, foster homes, *jails or law enforcement centers, correctional facilities*, treatment facilities or other destinations as approved by their supervisors for the purpose of conducting Health Human Services business.

### **ESSENTIAL JOB FUNCTIONS**

- A) Transport clients to and from any designated location as directed by the supervisor to conduct departmental business.
- B) Record and complete paperwork on the transport for billing and quality assurance purposes.
- C) Attend crisis and program meetings to meet State Guidelines for training and continuing education purposes.

*[Emphasis added]*

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Consistent with Article 16, sub-section C, the County provided the Union a copy of the job questionnaire. The Job Evaluation Committee met and discussed the job questionnaire and scored the Transporter position. Present during the discussions were Union President Tom Bourque, Union Vice President Amber Linwood, County Administrator Corbeille, and Human Resources Director Jennifer Holtger. During the committee discussion and subsequent to scoring the Transporter position, the Union sought assurances from the County as to the use of Transporters and voiced its opposition to Transporters transporting custodial juveniles. The Union also voiced its concern for the safety of the Transporter personnel when they were transporting individuals who were "in custody." As a result of those conversations, the job description for the Transporter position changed. The new revised job description was approved in July 2006 and read as follows:

## **JOB ANALYSIS**

Responsibilities include transporting clients to and from County buildings, schools, hospitals, homes, group homes, foster homes, *juvenile correctional facilities*, treatment facilities or other destinations as approved by their supervisor for the purpose of conducting Health and Human Services business.

## **ESSENTIAL JOB FUNCTIONS**

- A. Transport clients to and from any designated location as directed by the supervisor to conduct department business.
- B. Record and complete paperwork on the transport for billing and quality assurance purposes.
- C. Attend crisis and program meetings to meet State guidelines for training and continuing education purposes.

*[Emphasis added]*

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A dispute arose after the Union learned that some social workers were asking Transporters to transport juveniles in custody either to a juvenile jail facility or to between juvenile correctional facilities. As a result of the dispute, the Union filed a grievance which was discussed on November 4, 2008. In response to the discussion, Human Services Interim Director Elsner sent the following memorandum to the Union on November 7, 2008:

On November 4, 2008, the managers from the Sheriff's Department, Human Resources and CO's from Local 1752 met to discuss grievance 08-02. Following the discussion, it was agreed upon that when juveniles are in secure detention and they need continued placement in a locked unit and need to be transported, a Correctional Officer will complete the transport, since the juvenile in custody of a correctional facility and need transport for placement in another locked unit.

The transport being disputed occurred on September 12, 2008, from Oconto Secure Detention to Mendota Mental Health Center. The transport was completed by a HHSD Transporter. The amount of time for the transport involved 12 hours. The Correctional Officer assigned to this transport should be compensated for the time, since the transport should have been completed by a Correctional Officer. This should resolve any further disputes related to transports of juveniles from secure detention to another secure facility.

The Union filed another grievance on December 19, 2008 explaining that “Transports Being Done out of Job Classification” and requested that the County cease and desist and make the appropriate employees whole. The language of the cease and desist request was as follows:

Mr. Elsner:

This letter serves as a CEASE and DESIST order for the purpose of using Marinette County Transporters for any or all of the following:

- #1) Taking delinquent Juveniles into custody
- #2) Transporting in custody delinquents to a locked secure facility
- #3) Transporting in custody delinquents from one locked secure facility to another locked secure facility

Your cooperation is requested

/s/

Amber Lynwood  
AFSCME Local 1752  
Vice President

In response, on January 30, 2009 Elsner sent a memorandum to the Union referencing “Grievance Step 1 & 2”. The content of the memo read as follows:

I was given a copy of the grievance related to transports being done out of job classification on December 19, 2008. I met with Amber Linwood and Tom Bourque of AFSCME 1752 on January 12, 2009, to discuss the grievance and address their concerns. The union is claiming that HHSD Transporters are transporting in custody delinquents to a locked secure facility or transporting custody delinquents from one locked secure facility to another locked secure facility. Union 1752 is requesting that management Cease and Desist action and make appropriate employees whole.

Transporters are assigned to transport individuals to and from County buildings, schools, hospitals, homes, group homes, foster homes, juvenile correctional facilities and treatment facilities. They do not take clients into custody, but transport clients per request by a social worker or designated HHSD staff person. A social worker can take a juvenile into custody per statute and place the juvenile in a secure detention facility. (See attached statute). The transporter assists the social worker by transporting the juvenile to a secure detention facility. Transports are not done by a transporter when they are in a secure detention facility and need to be admitted to another locked unit or

hospital. HHSD Transporters are completing transports within their job description and duties. Grievance is denied.

The grievance was processed through all steps of the grievance procedure placing it properly before the arbitrator.

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

### DISCUSSION

This is a work assignment dispute. The Union claims that certain work, transporting in-custody juvenile delinquents to a secure facility and transporting in-custody juvenile delinquents from one secure facility to another, is work that may only be performed by correctional officers.<sup>1</sup>

The management rights clause of the parties' labor agreement provides the County the sole right of operation including the assignment of work, modifying existing work assignments, and introducing new and more efficient methods or facilities. This language grants the County complete autonomy to create the Transporter position and to determine the job responsibilities. There is no language in the agreement that restricts management's right to reassign duties and responsibilities therefore the County had the right to reassign the work so long as it did so in a reasonable manner given the circumstances. In determining reasonableness, I look to look to the job descriptions and the parties' manner of dealing.

The County created the position of Transporter and the parties negotiated the wage via the agreed upon procedure contained in Article 16 – Wages. That procedure provides that when a new position was created by the County, the joint labor-management Job Evaluation Committee completes a “position analysis questionnaire for the Committee to score”. The Committee evaluates the position and assigns it a numeric score which is compared to existing position scores and compensation is determined.

The parties followed this procedure with the Transporter position twice. The first time the numeric score was 427 and the job analysis included transportation duties to “..jails or law enforcement centers, correctional facilities...” The second time, the numeric score went down to 414, “jails or law enforcement centers” was removed from the job description and “correctional facilities” was modified to “juvenile correctional facilities.” Thus, the parties discussed and modified the job description as a result of those discussions.

There is no question that the parties fully discussed the issue of Transporters transporting custodial juveniles. While I find both Linwood and Bourque to be credible, the fact that they left the conversation believing Transporters would not transport custodial

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<sup>1</sup> The Union does not contest the transporting of custodial juveniles by social workers.



juveniles does not make it so. The Job Evaluation Committee utilized the newly revised job description when it re-evaluated the job dimensions and assessed the position a new, lower rating. The new job description contains language that the Transporter will transport clients “to and from ... juvenile correctional facilities.” Neither the consultations nor any informal agreement between the Union and the County were binding on the County and given the revised language contained in the job description, I cannot conclude that there was an intent on either side’s part to exclude transports to and from juvenile correctional facilities.

Moving to the parties’ manner of dealing, the evidence establishes that there is an inconsistent use of Transporter when transporting juveniles in custody. Bourque testified that some social workers use Transporters to transport juveniles and that there is at least one social worker that refuses to use Transporters to transport the juveniles on his/her caseload. The County did not dispute this and therefore, there is no consistent pattern of behavior to rely upon or consider.

Linwood testified that the “to and from [in the job description] are not intended to mean to each place. It wasn’t that they take them in custody.” “To and from” is different than “between.” The County in its grievance response stated it was not disputing that correctional officers transport in-custody juveniles from one secure facility to another secure facility. This is further supported by the Sheriff’s testimony that correctional officers normally transport custodial juveniles from one secure facility to another secure facility.<sup>2</sup> The County’s brief does not specify its position on this issue. I therefore accept that the County’s grievance response, specifically the admission that correctional officers will perform the transporting of in-custody juveniles from one secure facility to another secure facility, constitutes a settlement and is not in dispute.

The Union next points out that even though the parties reduced to writing what they viewed as the job duties of the Transporter position, the Union was at a disadvantage because its representatives during the negotiations were not attorneys and were not capable of drafting language that spelled out what they understood the parties agreement to be. As a result, the Union leadership relied on the County’s drafting of the language and it was only well-after the agreement was reached that the Union realized their lack of legal training negatively affected the membership. I do not accept the Union’s argument. The language in question is clear and unambiguous and the plain meaning is readily ascertainable. There are no legal terms involved requiring the knowledge or training of an attorney. The Union members that reviewed the job description either did not read the job description or did not believe that the County intended to use Transporters for transports “to and from ... juvenile correctional facilities.” Either way, it does not change the result.

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<sup>2</sup> Sheriff Kanikula testified that the courtroom is not a secure facility therefore he did not view a transport from the courtroom to a juvenile facility to be a transport requiring the assignment of a correctional officers since it was not transporting from a secure facility to another facility.

This record does not explore the possibility that the assignment of in-custody juvenile transports is a job function that justifies a higher wage for the Transporter position. That issue is the Union's to raise consistent with the language of Article 16 since it goes not to the County's right to change the job functions, but rather to the consequences of the change.

**AWARD**

1. No, the County did not violate the collective bargaining agreement when it assigned to the Transporter position the duty of transporting juveniles in custody to and from juvenile correctional facilities.

2. The County agreed that it would use Civilian Correctional Officers to perform the duty of transporting juveniles in custody from one juvenile correctional to another juvenile correctional facility.

3. The grievance is dismissed.

Dated at Rhinelander, Wisconsin, this 19th day of August, 2010.

Lauri A. Millot /s/

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Lauri A. Millot, Arbitrator