

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

STURTEVANT PROFESSIONAL
POLICEMEN'S ASSOCIATION,

Complainant,

vs.

VILLAGE OF STURTEVANT
(POLICE DEPARTMENT),

Respondent.

Case VI
No. 29497 MP-1319
Decision No. 19543-A

Appearances:

Schwartz, Weber & Tofte, Attorneys at Law, by Mr. Robert K. Weber, 704 Park Avenue, Racine, Wisconsin 53403, appearing for the Complainant.
Thompson & Coates, Ltd., by Mr. Kenneth F. Hostak, 840 Lake Avenue, Racine, Wisconsin 53403, appearing for the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER

Sturtevant Professional Policemen's Association having on March 22, 1982, filed a complaint with the Wisconsin Employment Relations Commission, and an amended complaint on June 8, 1982, alleging that the Village of Sturtevant has committed prohibited practices within the meaning of Sec. 111.70(3)(a)1, 4, and 5 of the Municipal Employment Relations Act (MERA); and the Commission having appointed Mary Jo Schiavoni, a member of its staff, to act as Examiner and make and issue Findings of Fact, Conclusions of Law and Order pursuant to Sec. 111.07 (5), Wis. Stats.; and hearing on said complaint having been held on August 23, 1982, at Sturtevant, Wisconsin; and the parties having filed post-hearing briefs, the last of which was received on October 6, 1982; and the Examiner having considered the evidence and arguments of the parties makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Sturtevant Professional Policemen's Association, hereinafter referred to as the Association, is a labor organization having its principal offices at 2555 Wisconsin Street, Sturtevant, Wisconsin 53177, and represents for purposes of collective bargaining certain employes of the Village of Sturtevant Police Department.

2. That the Village of Sturtevant, hereinafter referred to as the Village, is a municipal employer having its principal offices at the Village of Sturtevant, Clerk's Offices, 2555 Wisconsin Street, Sturtevant, Wisconsin 53177; that the Village operates a Police Department; that at all times relevant herein, Ronald Kittel was Chief of Police; Frank Kasperek was a Village trustee; Barbara Pauls was Village Clerk; and that Kittel, Kasperek, and Pauls were at all times relevant herein agents and/or officers of the Village.

3. That at all times material herein, the Association has been the exclusive collective bargaining representative of all non-supervisory Police Department officers who are not above the rank of Patrolman; that for the period January 1, 1980 to December 31, 1982, the Association and Village were parties to a collective bargaining agreement covering wages, hours and conditions of employment; that said labor agreement contains the following pertinent provisions:

ARTICLE III. MANAGEMENT RIGHTS.

It is not the purpose of this Agreement to infringe upon or impair the rights of management of the Municipality, except as specifically abridged, modified or restrained herein, and

the Municipality shall retain all rights, powers and authorities, except as specifically abridged, modified or restrained herein.

. . .

ARTICLE V. HOURS OF WORK.

The hours of work for the Police Department Officers covered under the terms of this Agreement shall be as hereinafter set forth:

1. The normal work day shall consist of eight (8) hours.

2. The normal work week shall consist of forty (40) hours.

3. The schedule of hours shall be worked according to the schedule set forth by the Chief of Police. All officers will be given a choice as to the shift they would like to work. This will be by seniority, subject to the following requirements:

(a) After picking a shift, the officer must work that shift for a minimum of six (6) months.

(b) If an officer should request a change in shifts, he must give a written notice to the Chief of Police at least 30 days prior to the effective date of such change.

(c) The Chief of Police has the authority to take an officer off his chosen shift for a temporary period due to illness, accident or other emergency.

. . .

ARTICLE VIII. OVERTIME ALLOWANCE.

5. . . .

(c) Officers shall be allowed to switch or interchange off-days with other Officers within the bargaining unit with the approval of the Chief of Police; provided that no overtime is involved.

ARTICLE IX. WAGES.

1. The respective yearly wages for the Police Department Officers covered under the terms of this Agreement shall be as hereinafter set forth:

- | | |
|----------------------------|---|
| (a) Patrolman #1 | \$16,056.63 per year effective January 1, 1980 (\$7.72/hr.) |
| (b) Patrolman #2 | \$14,770.00 per year effective January 1, 1980 (\$7.10/hr.) |
| (c) Patrolman #3 | \$13,926.00 per year effective January 1, 1980 (\$6.70/hr.) |
| (d) Probationary Patrolman | \$13,293.00 per year effective January (sic) 1, 1980 (\$6.39/hr.) |

. . .

that the above-mentioned agreement does not contain any provision relating to the final and binding resolution of disputes concerning the agreement's interpretation, nor does it contain provisions relating to time clocks, pay periods, or the maintenance of standards existing previous to said agreement.

4. That prior to April 1, 1982, officers in the collective bargaining unit, hereinafter referred to as employees, were not required to punch a time clock; that employees sometimes worked more, sometimes less, and sometimes exactly eight hours per day; that employees sometimes worked overtime without submitting overtime slips requesting overtime pay; and that employees could, and did, at times report directly to the scene of an incident rather than first reporting to Village headquarters.

5. That prior to April 1, 1982, said employees did not record or account for regular hours worked but merely submitted overtime slips for overtime worked to the Chief of Police who maintained an informal work schedule and said overtime slips; that prior to April 1, 1982, employees were paid on the 15th and the last day of each month; that the Village Clerk automatically paid each employee one twenty-fourth of the employees' annual salary computed upon a forty hour work week as compensation for regular hours worked without making any attempt to ascertain actual hours worked in addition to overtime and cost of living adjustments, when applicable.

6. That in January of 1982, Village trustee Frank Kasparek undertook a study of the Police Department; that as a part of said study, Kasparek tried to ascertain who was actually working, when, and for what period of time; that as a result of this study, the Village trustees became concerned about the lack of, and accuracy of, the information that it possessed regarding actual hours worked by employees and that they also became concerned as to whether employees were actually working forty hours per week.

7. That on January 5, 1982, the Village without notifying or bargaining with the Association authorized four hundred and thirteen dollars (\$413.00) for the purchase of a time clock and time cards to be installed for the patrol officer employees; that at the January 5, 1982, Village meeting, this decision to install and require the employees to punch the time clock was contested by the Association's President at that time, Carl Gahlman, and Officer Paul Monga, the current President of the Association.

8. That following the ordering of the time clock, Kasparek submitted a proposed time clock policy to the Village Board of Trustees for consideration; that in February of 1982, Kittel provided Gahlman with a copy of the Village's proposed time clock policy (set forth below) and indicated that the Village planned to implement same in the near future.

TIME CLOCK POLICY

1. All employees with the exception of statutory offices, Police Chief and crossing guards will submit to the Village Clerk daily punched time cards as a precedent to the payment of wages. Each employee will punch his own time card.

Employees found punching the time card of another employee will be subject to discharge.

2. Time cards prepared by the Village Clerk will be kept in a rack adjacent to the time clock.

3. Employees will punch in no earlier than 10 (ten) minutes prior to their assigned starting time.

4. A record of time off, i.e., sick days, vacation, comp. time taken, etc will be submitted by the Chief to the Village Clerk at the end of each pay period and kept by the Village Clerk.

5. A work schedule will be given to the Village Clerk prior to any given work period. The Village Clerk will be notified in writing of any change in schedule.

9. That the Association, shortly thereafter, made a request in writing, which request was not introduced into evidence, to meet with the Police and Fire Committee to discuss the time clock policy and have some input into it; that Kittel, in response to the Association's request, informed Gahlman that the Police and Fire Committee did not feel it was their place to include the Association in any policy that they might draft because they felt it was a management right and declined to discuss it with the Association at that time.

10. That, thereafter, the Village's Police and Fire Committee scheduled a meeting for March 4, 1982, wherein they agreed to meet with Gahlman regarding the "proposed time clock policy"; that Gahlman met with the Police and Fire Committee and Chief Kittel on March 4 for an unspecified period of time; that it is unknown whether said meeting was public or private; that Gahlman expressed concerns on various topics regarding implementation of the time clock policy; that topics discussed by Gahlman were (a) the uniform application of the time clock policy to all employees including the Village's Street Department employees; (b) the uniform application of discipline to all employees; (c) the procedure or policy for late punching in, i.e. the docking policy; (d) the employees' desire for a monthly statement regarding down days and remaining days allowed as holidays; (e) the Village's expectations with regard to punching in when employees were going to court or on travel status; and (f) the potential for problems inasmuch as the Village's 15th and last day of the month pay periods sometimes resulted in pay to employees prior to their having actually worked eighty (80) hours, these periods not corresponding to time cards.

11. That the Village did not bargain with the Association at the March 4, 1982 meeting over the installation of the time clock, the time clock policy, or any of the concerns mentioned by Gahlman at the March 4 meeting.

12. That the Village Board met on March 16, 1982, and discussed the March 4 meeting; that it voted to hold a closed session on March 23, 1982, to discuss Police procedures and policies, including the time clock policy, which was thereafter held on March 26, 1982 instead.

13. That the original complaint was filed, thereafter, on March 22, 1982, alleging a failure to bargain over the time clock policy or impact thereof as a violation of 111.70(3)(a)4 and 5 of MERA.

14. That the Village Board met in closed session on March 26, 1982 and determined to change the distribution of paychecks from that set forth in Finding of Fact No. 5 to a bi-weekly system premised upon paying employees for actual hours worked; and that at the same meeting the Board voted to require employees to punch the time clock.

15. That the Village did not reply or respond or make any counterproposals at any time to address the Association's concerns made at the March 4, 1982, meeting except that it unilaterally changed the pay periods to correspond to the time cards as set forth in Finding of Fact No. 14.

16. That on or about March 30, 1982, Chief Kittel orally informed employees that beginning on April 1, 1982, all employees would be required to punch a time clock pursuant to instructions contained in the time clock policy set forth in subparagraph 8 above; that said policy would be in effect; and that paychecks would be issued bi-weekly.

17. That on April 1, 1982, the Village unilaterally implemented the proposed time clock policy without bargaining with the Association over said policy and without bargaining about the impact of said policy to impasse with the Association.

18. That the Village's collective bargaining agreement with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union #43 regarding employees of the Villages Sewer and Water, and Street and Park Departments, another bargaining unit, contained the following provision:

ARTICLE IV. PAYDAYS

An employee shall be paid on Friday of each week. One week's pay will be held by the Employer. If any such regular payday hereunder falls upon a holiday, an employee shall receive his pay on the last scheduled work day immediately preceding such holiday. An employee shall submit to the Employer, daily work slips along with punched time cards as a condition precedent to the payment of wages. Each employee shall punch only his own time card.

19. That the installation of the time clock, the proposed time clock policy, and the impact thereof continues in effect at all times material herein and pri-

marily relates to wages, hours, and working conditions of the employes and does not primarily relate to the formulation or management of public policy by the Village.

20. That at all times material herein, the Village has refused and continues to refuse to bargain collectively with the representatives of the Association with respect to its decision to install the time clock, its decision to implement the proposed time clock policy, and the impact of the implementation of said time clock policy upon the employes of the Village employed in the collective bargaining unit represented by the Association.

21. That an amended complaint was filed on June 8, 1982, in the instant matter alleging that the change in the payroll period from bi-monthly to bi-weekly as an independent violation of Sec. 111.70(3)(a)4 and 5 of MERA.

22. That the Association did not prove that the Village's adoption of a new pay period system resulted in a "hold-back" in wages paid to employes; that the change to a bi-weekly pay period system from the system set forth in Finding of Fact No. 5 primarily relates to wages, hours, and working conditions and does not primarily relate to the formulation or management of public policy by the Village; and that the Village, by its unilateral adoption of the change, refused to bargain collectively with the Association regarding said change.

23. That the Association failed to prove that the new pay period system violated any provision of the parties' collective bargaining agreement.

24. That the Association failed to establish that the implementation of the time clock policy prevented employes from exchanging off-days in violation of Article VIII, 5(c) of the parties' collective bargaining agreement referred to in Finding of Fact No. 3 above, or that said implementation violated the agreement in any other respect.

25. That the Association failed to prove that the implementation of the time clock policy by the Village led to ridicule of the Association's members by the public and interfered with and restrained them in the exercise of their collective bargaining rights.

Upon the basis of the above and foregoing Findings of Fact, the Examiner makes and issues the following

CONCLUSIONS OF LAW

1. That inasmuch as the decision to install a time clock, the time clock policy itself, and the impact of the implementation thereof, primarily relate to wages, hours, and conditions of employment of employes in the bargaining unit represented by the Sturtevant Professional Policemen's Association, the Village's decision to install a time clock, to adopt such a policy and the impact of the implementation thereof were and are mandatory subjects of collective bargaining within the meaning of Sec. 111.70(1)(d), 111.70(2), and 111.70(3)(a)4 of the Municipal Employment Relations Act.

2. That the Village by its unilateral decision to install the time clock, by its unilateral promulgation of said time clock policy without bargaining collectively with regard thereto with the Association after said Association had requested to so bargain, and by its failure to bargain collectively over the impact of said time clock policy, has committed, and continues to commit, a prohibited practice within the meaning of Sec. 111.70(3)(a)4 and 1 of the Municipal Employment Relations Act.

3. That since the Association did not prove that the Village violated any provision of the parties' 1980-82 collective bargaining agreement, the Village, by the implementation of the time clock policy, did not commit a prohibited practice within the meaning of Sec. 111.70(3)(a)5 of the Municipal Employment Relations Act.

4. That inasmuch as the Village's decision to change the pay periods from the 15th and the last day of each month to a bi-weekly pay period system primarily relates to wages, hours, and conditions of employment of employes in the bargaining unit represented by the Association, the Village's decision to change the pay periods was and is a mandatory subject of collective bargaining within the meaning of Sec. 111.70(1)(d), 111.70(2) and 111.70(3)(a)4 of the Municipal Employment Relations Act.

5. That the Village by its unilateral adoption and implementation of the change in pay periods, without bargaining collectively with regard thereto with the Association, has committed, and continues to commit, a prohibited practice within the meaning of Sec. 111.70(3)(a)4 and 1 of the Municipal Employment Relations Act.

6. That, since the Association did not prove that the Village's implementation of the new pay period system violated any provision of the parties' 1980-82 collective bargaining agreement, the Village, by implementing said system, did not commit a prohibited practice within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

7. That since the Association did not prove that the implementation of the time clock policy led to ridicule of the Association's members and interfered with and restrained them in the exercise of their collective bargaining rights, the Village did not commit an independent prohibited practice 1/ within the meaning of Sec. 111.70(3)(a)1 of the Municipal Employment Relations Act.

Upon the basis of the foregoing Findings of Fact and Conclusions of Law, the Examiner makes and issues the following

ORDER 2/

IT IS ORDERED that the Village of Sturtevant, its officers and agents, in order to effectuate the policies of the Municipal Employment Relations Act shall immediately

1. Cease and desist from:

- (a) Promulgating and thereafter, enforcing its time clock policy.
- (b) Refusing to bargain in good faith with the Sturtevant Professional Policemen's Association with respect to its decision to adopt a time clock policy, as well as the impact thereof, affecting any employes in the collective bargaining unit represented by said Association.

1/ The Examiner, however, having found a violation of Sec. 111.70(3)(a)4 has accordingly found a corresponding violation of Sec. 111.70(3)(a)1.

2/ Any party may file a petition for review with the Commission by following the procedures set forth in Sec. 111.07(5), Stats.

Section 111.07(5), Stats.

(5) The commission may authorize a commissioner or examiner to make findings and orders. Any party in interest who is dissatisfied with the findings or order of a commissioner or examiner may file a written petition with the commission as a body to review the findings or order. If no petition is filed within 20 days from the date that a copy of the findings or order of the commissioner or examiner was mailed to the last known address of the parties in interest, such findings or order shall be considered the findings or order of the commission as a body unless set aside, reversed or modified by such commissioner or examiner within such time. If the findings or order are set aside by the commissioner or examiner the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the commissioner or examiner the time for filing petition with the commission shall run from the time that notice of such reversal or modification is mailed to the last known address of the parties in interest. Within 45 days after the filing of such petition with the commission, the commission shall either affirm, reverse, set aside or modify such findings or order, in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another 20 days for filing a petition with the commission.

- (c) Refusing to bargain in good faith with the Sturtevant Professional Policemen's Association with respect to its decision to change pay periods affecting employes in the collective bargaining unit represented by said Association.
2. Take the following affirmative action:
- (a) Rescind the time clock policy implemented on April 1, 1982, as it affects employes in the collective bargaining unit represented by the Association.
- (b) Immediately return to the status quo ante by restoring the past practice of not requiring employes to record time for regular hours worked and computing pay based upon the method previously utilized.
- (c) Immediately return to the status quo ante by restoring the past practice of paying employes on the 15th and last day of the month according to the method of pay computation previously utilized.
- (d) Upon request, collectively bargain with the Association with respect to any contemplated decision to promulgate a time clock policy, and the impact thereof, which would affect any of the employes in the collective bargaining unit represented by said Association.
- (e) Upon request, collectively bargain with the Association with respect to any contemplated decision to change pay periods which would affect any of the employes in the collective bargaining unit represented by the Association.
- (f) Notify all employes by posting in conspicuous places on their premises, where notices to all employes are usually posted, a copy of the Notice attached hereto and marked "Appendix A". Said Notice shall be signed by an official of the Village and shall be posted immediately upon receipt of a copy of this Order. Said Notice shall be posted for sixty (60) days thereafter. Reasonable steps will be taken to insure said Notice is not altered, defaced or covered by other material.
- (g) Notify the Wisconsin Employment Relations Commission in writing within twenty (20) calendar days following the date of this Order as to what steps have been taken to comply herewith.

IT IS FURTHER ORDERED that the complaint is dismissed as to all violations of MERA alleged but not found herein.

Dated at Madison, Wisconsin this 14th day of February, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Mary Jo Schiavoni
Mary Jo Schiavoni, Examiner

APPENDIX A

NOTICE TO ALL EMPLOYEES REPRESENTED
BY THE STURTEVANT PROFESSIONAL POLICEMEN'S ASSOCIATION

Pursuant to an Order of the Wisconsin Employment Relations Commission, and in order to effectuate the policies of the Municipal Employment Relations Act, we hereby notify employes that:

1. WE HAVE cancelled and withdrawn the time clock policy implemented on April 1, 1982.
2. WE WILL immediately return to the past practice of not requiring employes to record time worked for regular hours in accordance with procedures used prior to April 1 and computing pay based upon our prior methods of calculation.
3. WE WILL immediately return to the past practice of paying employes on the 15th and last day of the month pursuant to our prior methods of calculation and computation of pay.
4. WE WILL, upon request, bargain with respect to any contemplated decision to promulgate a time clock policy, and the impact thereof with the Sturtevant Professional Policemen's Association.
5. WE WILL, upon request, bargain with respect to any contemplated decision to change pay periods.
6. WE WILL NOT in any like or related manner interfere with, restrain or coerce employes in the exercise of their rights assured by the Municipal Employment Relations Act.

By _____
Village of Sturtevant

_____ Date

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER

The complaint and amended complaint allege that the Village unilaterally implemented a time clock policy and a bi-weekly payday system on April 1 without affording the Association an opportunity to bargain about these proposed changes and their impact and implementation in violation of Sec. 111.70(3)(a)1, 4 and 5.

In addition, the complaint alleges that the implementation of the time clock requirement led to the ridicule of employes by the public. While not specifically pleaded in the complaint or amended complaint, the Association at hearing alleged that the action described above interfered with and restrained employes in the exercise of their collective bargaining rights in violation of Sec. 111.70(3)(a)1 of the Municipal Employment Relations Act.

Association's Position

The Association argues that the decision to institute the time clock policy was made in bad faith inasmuch as the Village failed to prove necessity as a justification for the change. It also contends that the imposition of a time clock and time clock policy is a mandatory subject of bargaining as it relates directly to wages and conditions of employment. The Village's unilateral implementation of the time clock requirement and bi-weekly payday system without bargaining, it asserts, is violative of Sec. 111.70(3)(a)4. Moreover, the Association claims that the Village's failure to bargain the impact or implementation of the time clock policy to impasse is also violative of Sec. 111.70(3)(a)4 especially in light of the discharge provision of said policy for misuse of time cards.

In support of its allegation of a Sec. 111.70(3)(a)5 violation, the Association maintains that the discharge provision prevents employes from switching off days as provided by Article VIII, 5(c) of the parties' collective bargaining agreement. The Association also requests an award of costs and attorney fees to be assessed against the Village based upon its bad faith and the lack of justification with regard to its actions.

Village's Position

The Village argues that, in the absence of a provision which restricts the Village's managerial powers, the Management Rights clause in the parties' collective bargaining agreement gives the Village the right to establish reasonable work rules, including a rule that requires employes to punch a time clock and a rule which alters the employes' payday schedule.

It further contends that the "time clock policy" was never officially adopted by the Village, although on April 1 the Village implemented a requirement that employes punch in and out. The Village maintains that such requirement did not give rise to a bargaining obligation. It argues there was no change in shifts, work schedule, or hours as a result of the implementation of the time clock requirement and thus submits that its impact on employes, if any, was minimal. Moreover, according to the Village, the mere requirement of punching a time clock is not such a change in conditions of employment as to warrant the requirement to bargain with the Association.

Arguing in the alternative, the Village claims that it did not refuse to bargain regarding the proposed time clock policy. Pointing to the March 4, 1982 meeting with Gahlman, the Village asserts that it listened to Gahlman's objections to the proposed policy. It claims it was receptive to some of these objections to the extent that it did not formally adopt the time clock policy, but only adopted a requirement that the employes punch the time clock. In asserting that the Village satisfied its obligations, the Village points out that the duty to bargain does not require that parties to come to an agreement.

The Village takes the position that it had no obligation to engage in impact negotiation regarding the payday schedule change because it did not "hold-back" employe's wages nor did the change result in any significant impact. Moreover, it

asserts that statements made by Village Board trustees did not constitute an independent prohibited practice within the meaning of Sec. 111.70(3)(a)1.

Discussion

A. Refusal to Bargain

A municipal employer is obliged to bargain in good faith with the employees' bargaining representative prior to changing a condition of employment which is primarily related to employees' wages, hours, or conditions of employment or which will have an impact thereupon when implemented. 3/ In the instant case, the Association argues that both the Village's time clock policy and the impact and implementation thereof are mandatory subjects of bargaining. Conversely, the Village argues that they are not mandatory subjects of bargaining. The test of whether a policy or change in policy is a mandatory or permissive subject of bargaining is whether the policy relates primarily to wages, hours, and working conditions or whether it is primarily related to the formulation or management of public policy. 4/

Contrary to the Village's assertions that the impact upon employees has been minimal, the record reveals that the impact upon employees has been substantial. Officer Gahlman and Officer Monga both offered uncontroverted testimony that previous to the promulgation of the time clock policy, employees worked sometimes more, sometimes less, and sometimes exactly eight hours per day. Employees could and did, at times, report directly to the scene of an incident rather than reporting to the Village headquarters. At times they did not request overtime pay for small periods of overtime worked.

The employees had never been required to utilize any procedure for recording their time for regular hours worked. The Village Clerk, Barbara Pauls, automatically paid each employe one twenty-fourth of his annual salary without making any attempt to ascertain actual hours worked. Pauls also testified that she automatically credited each employe with eight hours of regular work per day for purposes of computing the cost-of-living adjustment required by the parties' collective bargaining agreement.

The Village claims that the Association is objecting to the time clock and proposed time clock policy because its members could not violate the specific terms of the agreement by falsifying the work records. This contention is rejected in light of the long standing past practices of the parties with regard to flexible working arrangements and the automatic crediting of each employe for eight hours worked per day. The Village's own agent, Chief Kittel, testified that he preferred the former flexible, informal system of shift assignments and work times and hours of work. He stated that he was happy with it and did not see any reason to change it. Moreover, he maintained the schedule and overtime records which existed. The Examiner concludes that there is no evidence to establish that employees were falsifying work records and finds that both parties acquiesced in the former more flexible system with regard to both hours worked and compensation paid.

The record indicates that the Village questioned whether employees were actually working eight hours per day and forty hours per week. It is undisputed that the Village intended to modify its payment practice to compensate employees for actual hours worked because it questioned the accuracy of the Chief's informal recordkeeping system. Exhibits C #7, Item 15 and R #10 establish that this was the Village's primary consideration. The purchase and installation of the time clock and the promulgation of the policy were designed to address this fundamen-

3/ City of Beloit, (11831) 9/74, aff'd in relevant part, nos. 144-272 and 144-406 (Dane Co. Cir. Ct.) 1/75, app'd to Wis. Sup. Ct., aff'd 74 Wis. 2d 43 (1976); Oak Creek-Franklin School District No. 1, (11827) 9/74, aff'd No. 144-473 (Dane Co. Cir. Ct. 11/75).

4/ Unified School District No. 1, Racine County, 81 Wis. 2d 89, (1977); City of Beloit, supra.

tal change in the method of compensating employes. As such, the policy itself, in this instance, relates primarily to wages, hours, and conditions of employment and is a mandatory subject of bargaining. 5/ This is not to say that a proposed time clock policy under all circumstances is a mandatory subject of bargaining. 6/

But where, as here, the policy affects primarily bargaining unit employes represented by the Association 7/ and is promulgated with the intent to change the compensation paid employes, this policy primarily affects the wages and working conditions of said employes.

The Examiner, contrary to the Association's assertions, does not find the Village's desire to install the time clocks and implement the proposed time clock policy to be unjustified or indicative of bad faith motives. On the contrary, the Village's stated reasons for possessing more accurate records as to who is actually working at any given time in order to avoid and/or determine potential legal liability for actions involving employes and to insure accurate compensation for actual hours worked by employes appear to be valid and legitimate concerns.

In concluding that the installation of the time clock and the development of the proposed time clock policy are mandatory subjects of bargaining, the Examiner agrees that the Village does possess the managerial authority to make said changes. However, she finds that the Village must bargain to impasse over these subjects because under the circumstances outlined above they do not primarily relate to the formulation or management of public policy but rather to wages, hours, and conditions of employment.

Significantly, in its relationship with another union which represents another bargaining unit of its employes, the Village has bargained over both the installation of time clocks and a time clock policy, and pay periods as well. The language agreed to by the Village in that collective bargaining agreement merely serves to highlight how intertwined the time clock, the time clock policy and the pay period issues are with the wages, hours, and working conditions of the affected bargaining unit employes in the instant case.

Furthermore, the Examiner also finds that the impact of said policy is a mandatory subject of bargaining. The record established that the Association was concerned about the impact and implementation of the Village's time clock policy. Subjects of concern included but were not limited to: (1) the disciplinary measures to be taken against employes violating the punch requirement, as well as the provision in the policy subjecting employes found to be punching another's

5/ While the Commission has never addressed the issue of an employer unilaterally instituting a time clock policy, this issue has arisen in cases involving the National Labor Relations Act, as amended. See Nathan Littauer Hospital Assn., 229 NLRB 1122, 1125 (1977); and Rust Craft Broadcasting of New York, Inc., 225 NLRB 327 (1976). The Examiner finds that the instant case more closely resembles the facts set forth in Nathan Littauer Hospital, supra, than those of Rust Craft Broadcasting, supra, in that the employes in Nathan Littauer had never been required to record their time worked by any method or means and the Administrative Law Judge and the National Labor Relations Board concluded that the imposition of a requirement of punching a time clock amounts to a refusal to bargain about material, substantial and significant change in rules and practices which vitally affected employment conditions and employe tenure.

6/ Rust Craft Broadcasting, supra, at 327 where employes had previously recorded their time and the institution of a time clock requirement was "merely a change to a mechanical procedure for recording time" and thus not a "material, substantial, and significant change from prior practice."

7/ As distinguishable from Middleton Joint School District No. 3, 14680-A (6/76) where an Examiner held that the employer's promulgation of a no-smoking policy affected all persons present on school property and related to basic educational policy regarding the undesirability of smoking, and, therefore, was not a mandatory subject of bargaining.

time card to discharge; (2) the employees' ability to switch off days; (3) docking penalties for late or early punch-in; (4) court duty; and (5) emergency calls. The Commission has found that the discipline of employees is a mandatory subject of bargaining. 8/ Even a cursory examination of the above concerns establishes that they are primarily related to wages, hours, and working conditions of bargaining unit employees and, as such, are mandatory in nature.

The Village does not dispute the Association's contentions that it made a valid request to bargain about the proposed time clock policy and the impact thereof. Rather, it claims it had no obligation to bargain about said policy and the impact thereof and, in the alternative, that it satisfied its obligation to bargain. Further, it claims it did not implement the proposed time clock policy.

Once a demand for bargaining has been made, it is the Village's obligation to bargain over mandatory subjects of bargaining absent a waiver by the parties' bargaining conduct or by specific language in the parties' agreement. 9/ While there is no claim that the Association waived its right to bargain based upon any bargaining conduct, the Village argues that it possessed the authority to make and implement its time clock policy because of Article III, the management rights clause in the parties' agreement. Although not specifically stated as such, this is essentially a contractual waiver defense. The Commission has, however, consistently held that it will not find a waiver of the statutory right to bargain on a mandatory subject of bargaining absent clear and unmistakable language requiring that result. 10/ A review of Article III and the other provisions of the collective bargaining agreement indicates that the Village has the right to manage the Police Department which includes the establishment of reasonable work rules such as the time clock policy. The agreement, however, contains nothing in any provision which can be construed as a waiver of the Association's right to bargain over the change in work rules resulting from the promulgation of the time clock policy. Thus, the Village's waiver argument premised upon the management rights clause in the agreement is rejected.

The Village asserts that it never implemented the proposed time clock policy, contending that it did not formally adopt the policy set forth in Finding of Fact No. 7, but rather only adopted a requirement that employees punch the time clock.

The unrebutted testimony of Chief Kittel and Gahlman establishes that on or around March 30, 1982, Kittel orally informed employees that the proposed time clock policy would be implemented on April 1, 1982. Kittel's testimony is as follows:

- Q. Did you have occasion to give directives to Officers working for you with regard to a time clock?
- A. Yes.
- Q. And what directives did you give them, and approximately when?
- A. On approximately March 30th I advised them that the time clock would go into effect as of April 1st.
- Q. And did you explain to them how they were to use that, and what policies surrounded it?
- A. Yes.
- Q. What did you tell them?

8/ School District of Drummond, 17251-A, B (6/82); City of Green Bay, 12352-B, C, (1/75). See also Murphy Diesel Company, 184 NLRB 327 (1970).

9/ Nicolet High School District No. 1, (12073-B, C) 10/75.

10/ City of Appleton, (14615-A, C) 1/78; City of Milwaukee, (13495) 4/75; City of Menomonie, (23674-A, B) 10/74; City of Brookfield, (11406-A, B) Aff'd Waukesha County Cir. Ct. 6/74.

A. I told them they had to punch in beginning of each shift, end of each shift, had to punch in for Court, had to punch out for Court, and they weren't to punch in more than ten minutes early.

Q. Did you tell them anything with regard to punching in for another person?

A. Yes. That they were not to punch cards for anybody else.

Q. May I see C-3 for a moment? (shows proposed time clock policy)

(Short pause.)

Q. Chief, showing you what has been marked as C-3, for identification, I'd ask you if the basic instructions that you gave to the Officers on March 30th of 1982 corresponded to the policies or statements enumerated on that document.

A. Yes.

Q. And upon whose direction were you acting when you told the Officers about the time clock and what to do?

A. On March, I think, it was March 26th -- I'm not really positive of the date -- I had a meeting, along with my Sargeant (sic) and the people that were in on this time policy, or the time clock, and that's when they advised me as of April 1st they'd be going into the system of punching the clock. And I had this -- this policy was given to me not at that time -- I had had it a long time before that. And I assume that that's the policy that they were going to enact. That's the instructions I gave to my Patrolmen.

Q. All right. So, whether or not the Village of Sturtevant Board ever did enact this policy or some other one, this policy contains the guidelines that you instructed your Officers to follow.

A. Yes.

Q. And you did that, or ordered that policy to be followed based upon directions from the Village Board or members thereof; is that correct?

A. Yes. I assumed that that would be the policy that they'd be putting into effect.

Q. And you are aware, are you not, that the Association has always been opposed to that time clock policy and the time clock, itself.

A. Yes.

. . .

At no time has Kittel or any other agent of the Village ever indicated to employes that the policy was rescinded or would not be implemented either in whole or in part. Thus, the Examiner concludes that although the time clock policy may never have been formally adopted by the Village, said policy was implemented by the Village and has not been rescinded to date. Having communicated its intent to implement said policy to employes, the Village cannot now claim as a defense to its failure to bargain that various aspects of said policy are inoperative. This is especially true where, as here, it has never informed employes that said policy is not in effect. 11/

11/ Kittel testified that no action has been taken regarding employes punching in earlier than ten minutes. There is, however, no evidence that employes were informed that this would be the Village's position regarding early punch in.

Having concluded that the time clock policy and the impact thereof are both mandatory subjects of bargaining, that the Association has not waived its right to bargain on the policy or impact thereof, and that the Village by Kittel implemented said policy, the Examiner now turns to the question of whether the Village by its actions refused to bargain over the policy and the impact thereof.

The record established that the Association initiated a request to bargain shortly after Police Chief Kittel provided a copy of the proposed time clock policy to Gahlman in February. Moreover, Kittel, in response to the Association's request, informed Gahlman that the "Village did not care to talk to us (referring to the Association) at this time." Once the demand for bargaining has been made, it is the Village's obligation to bargain over mandatory subjects of bargaining, in this instance, both the proposed time clock policy and the impact thereof. It is clear from the record, especially the admissions of Kasperek, that the Village was aware that the Association vociferously opposed employees being required to punch a time clock under any circumstances. It is also clear that from the beginning of January, the Village intended to require employees to punch the time clock and that the Village never intended to negotiate the time clock purchase, installation, or punching requirement with the Association at any time. Kasperek's testimony in this regard speaks for itself.

Q. Were you involved in the purchase of the time clock, originally?

A. Yes, sir.

Q. And you intended to put employees in the Police Department on that time clock, at the time the clock was purchased, did you not?

A. Yes.

Q. And there was never any hesitation or second thought about that in your mind, was there?

A. No.

Q. And, so, whatever meeting you had with Officer Gahlman, relating to that, you still intended to put in the time clock and make the Officers punch in.

A. Sure.

Q. And you considered that a better business practice because of your industrial experience.

A. Right.

Q. So that when you met with the Officer, you were not there for the purpose of negotiating whether or not you would put the time clock in; is that correct? In March.

MR. HOSTAK: I'm going to object to the question, unless it's in reference to the Committee, rather than him, personally.

MR. WEBER: All right.

Q. Committee.

A. That's correct.

Q. All right. And you're not indicating to the Examiner that the Association ever agreed to the time clock policy.

A. That is correct. I am not.

Q. In fact, you knew that they were opposed to it.

A. That's correct.

The Village's authorization of over four hundred dollars for the purchase of the time clock when coupled with Kasperek's admission irrefutably establishes its failure to bargain over the installation of the time clock and promulgation of the time clock policy.

While maintaining that it had no obligation to bargain because it never implemented the proposed time clock policy, the Village takes a position inconsistent with this argument, i.e., that it did bargain in good faith over the policy and the impact of the implementation thereof at the March 4 meeting. Based upon the admissions of Kasperek, the Examiner finds this argument to be without merit as it relates to the promulgation of the punching requirement. With regard to whether or not the Village bargained the impact of the time clock policy on March 4, the most that can be said in favor of the Village's actions is that trustees of the Village sat and listened to various Association objections before taking the actions they intended to take all along. While this action on the Village's part might be characterized as meeting and conferring with the Association, it falls far short of bargaining, let alone bargaining to impasse which is the standard applied by the Commission. 12/

The parties only met one time, on March 4, 1982, and the Village representative did nothing in response to the Association's objections other than to unilaterally change the pay period and pay day system. While it is true that MERA does not require a municipal employe to accede to a union's proposals relating to mandatory subjects 13/, absent from the Village's actions is any evidence of reconsideration or flexibility with regard to the time clock policy itself, or any response to the numerous issues raised by the Association during the March 4, 1982, meeting except as noted above.

Even assuming for the sake of argument, that the March 4 meeting could be construed as a bargaining session, as the Village asserts, it is clear that the parties did not bargain to impasse on the implementation of the time clock policy. In determining whether an impasse exists it is appropriate to look at a variety of factors such as the good faith of the parties in negotiations, the length of the negotiations, the importance of the issues to which there is disagreement, and the contemporaneous understanding of the parties as to the state of negotiations. 14/ Here the parties met only once. In view of the importance which both parties attached to the time clock issue and the fact that the Village made no effort to reply or address the issues raised at the March 4 meeting, the Examiner must conclude that the parties were not at impasse when the Village unilaterally promulgated the time clock policy on April 1, 1982. Accordingly, by taking said unilateral action, the Village did refuse to bargain collectively with the Association and thereby did commit and is committing a prohibited practice within the meaning of Sec. 111.70(3)(a)1 and 4 of MERA.

With regard to the Association's allegation that the Village unilaterally changed the payday and pay period system, the record did not establish that the new payday system resulted in a "hold back" in employe pay. 15/ To the contrary, it showed that employes are paid every fourteen days rather than every fifteen or sixteen days as under the previous payday schedule and receive greater portions of their annual salary earlier. In at least two Examiner decisions which were

12/ Greenfield School District No. 6, 14026-A (10/76); School District of Winter No. 1, 14482-B (3/77); City of Appleton, 18171-A (10/80);

13/ School District of Drummond, 17251-B (6/82); Sewerage Commission of the City of Milwaukee, 11228-A (10/72).

14/ School District of Winter No. 1, supral Taft Broadcasting Co., 163 NLRB 475 (1967).

15/ In this respect is somewhat distinguishable from Town of Caledonia, 16237-A, 16238-A (9/78) wherein the employer held back a week's pay in changing the pay periods and Racine Co., 17779-A, B (11/80) where there was an increase in the hold back period resulting in the loss of one or two days pay for all affected employes.

affirmed by the Commission, a municipal employer's altered method of paying employes has been found to constitute a condition of employment, and, therefore, is a mandatory subject of bargaining. 16/

This change in pay periods directly and primarily affects wages and conditions of employment, even where, as here, the change results in a benefit to affected employes. Here, by failing to bargain over said change, the Village again violated the bargaining duty proscribed in Sections 111.70(3)(a)4 and 1 of MERA.

B. Breach of Contract

The Association, in its amended complaint, claims that the Village violated the parties' collective bargaining agreement by promulgating the time clock policy and changing the pay period. The agreement, however, does not contain any reference to either time clocks or specific pay periods. It is silent on both issues. The agreement does contain Article VIII, 5(c) which permits employes to switch off days. The Association failed to adduce any evidence to establish that the Village by the above actions violated this provision or any other provision of the agreement. Nor is there any evidence to suggest that the time clock policy is or will be applied to render Article VIII, 5(c) inoperative. Accordingly, these breach of contract allegations are dismissed in their entirety.

C. Interference

The Association also argues that the Village's action in implementing the time clock policy led to ridicule of employes by the public and interfered with and restrained employes in the exercise of their collective bargaining rights as an independent violation of Sec. 111.70(3)(a)(1) of MERA. It, however, failed to present any evidence to support this allegation. Accordingly, it is also dismissed.

Remedy

Having found that the Village violated Sec. 111.70(3)(a)4 by the unilateral installation of the time clock and the unilateral promulgation of the time clock policy without bargaining said policy or the impact thereof to impasse, the Examiner orders the Village to return to the status quo ante by rescinding the time clock policy, by restoring the past practices of not requiring employes to record time for regular hours worked, by computing pay pursuant to the method previously utilized prior to April 1, 1982, and by returning to the pay period system in effect prior to April 1, 1982. The Village is also ordered to bargain at the request of the Association any contemplated decision to promulgate a time clock policy and the impact thereof and/or change in pay periods.

With regard to the Association's request for attorneys fees and costs, the Examiner does not find the circumstances in the case at bar to be so extraordinary as to warrant relief in the form of an award of attorney's fees and costs. The Commission has held that it will not grant attorney's fees or costs unless the parties have specifically agreed otherwise, or unless it is required to do so by specific statutory language or unless an employe has been denied fair representation. 17/ As none of these circumstances apply to the instant case, the Association's request is denied.

Dated at Madison, Wisconsin this 14th day of February, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Mary Jo Schiavoni
Mary Jo Schiavoni, Examiner

16/ Town of Caledonia, supra; Racine County, supra.

17/ Madison Metropolitan School District, 16471-D, 5/81; aff'd Dane Co. Cir. Ct., 1/82.