

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS UNION LOCAL NO. 75, Complainant,

vs.

BROWN COUNTY, Respondent.

Case 707
No. 64474
MP-4126

Decision No. 31512-A

Appearances:

John J. Brennan, Attorney at Law, Previant, Goldberg, Uelman, Gratz, Miller & Brueggeman, 1555 North River Center Drive, Milwaukee, Wisconsin 53212, appearing on behalf of Teamsters Local No. 75.

Thomas P. Godar, Attorney at Law, Whyte Hirschboeck Dudek, One East Main Street, Suite 300, Madison, Wisconsin 53703, appearing on behalf of Brown County.

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER DISMISSING COMPLAINT**

Daniel Nielsen, Examiner: On February 7, 2005, the above-named Complainant, Teamsters Local No. 75, filed with the Commission a complaint, alleging that the above-named Respondent, Brown County, violated the provisions of Ch. 111.70, MERA, by unilaterally changing the status quo with respect to layoffs during a contract hiatus.

A hearing was held on November 28, 2005, in Green Bay, at which time the parties presented such testimony, exhibits, other evidence and arguments as were relevant. The hearing was transcribed and a transcript was received on December 16, 2005. The parties thereafter submitted briefs which were exchanged through the Examiner on February 6, 2006. The record was held open until February 14 for the parties to consider whether they wished to file replies whereupon the record was closed.

On the basis of the record evidence, the arguments of the parties, and the record as a whole, the Examiner makes and issues the following, Findings of Fact.

Dec. No. 31512-A

FINDINGS OF FACT

1. Brown County (hereinafter referred to as either the County or the Respondent) is a municipal employer, which provides general governmental services to the citizens of the County. The County's business address is 305 East Walnut Street, Green Bay, Wisconsin. At all times relevant to this complaint, John Jacques was the County's Corporation Counsel, Dennis Kocken was the County Sheriff, and Carol Kelso was the County Executive.

2. Teamsters Local No. 75 (hereinafter referred to as either the Union or the Complainant) is a labor organization and is the exclusive bargaining representative for the County's courthouse bargaining unit, encompassing a broad range of classifications, including Lead Mechanic, Garage Mechanic, GIS Specialist, Mapping Specialist, Park Ranger and Household Hazardous Waste Facility Aide. The Union's business address is 1546 Main Street, Green Bay, Wisconsin 54302. At all time relevant to this complaint, the Business Agent and chief spokesperson for the Union was Mike Williquette.

3. The County and the Union have been parties to a series of collective bargaining agreements. The last settled agreement between the parties was signed on March 17, 2003, and expired on December 31, 2003. That agreement contained, inter alia, a provision concerning seniority rights and the procedure for layoffs and bumping:

Article 25. SENIORITY

. . .

When two (2) or more persons are hired on the same date, seniority shall be determined first by the date physically reporting to work; second, when two (2) or more people involved report on the same date, names will be drawn by the Human Resources Department. The accepted rules of seniority shall apply as follows:

In the event a layoff becomes necessary, the last employee hired shall be the first employee laid off. This will be determined by bargaining unit seniority within the class specification where the employee to be laid off is compensated as well as lower class specifications (wage wise) where the employee is qualified to work. All appropriate class specifications will be considered and the least senior employee from those qualified class specifications, will be laid off. (This will prevent a secretary from bumping a mechanic). The senior employee from a department who bumps the least senior employee in all eligible lower paying class specifications will be allowed one (1) job posting to a higher paying job class specification within their first nine (9) months of assuming the position in the lower paying classification. However, after the employee has successfully moved from the initial position where they bumped, they will then remain in the

second position for the time limit specified in the contract prior to being eligible to post and move to another position. If the displaced employees are qualified to perform in a class specification where a less senior employee is presently working, after meeting minimum qualifications through testing, they will be allowed one (1) bump. In rehiring, the last employee laid off shall be the first rehired, provided such employee can qualify to do the work available. In no event shall any new help be hired until all regular employees are working or have had an opportunity to return to work. Any employee shall retain his/her seniority for a period of two (2) years upon layoff.

. . .

The labor agreement also contains a Maintenance of Standards Clause:

Article 27. MAINTENANCE OF STANDARDS

The Employer agrees to maintain existing wages, hours, and conditions of employment which are mandatorily bargainable at not less than the highest standards in effect at the time of the signing of this agreement. It is understood that this provision will not prohibit the Employer from managing in those areas reserved solely to management.

Finally, the labor agreement contains a side letter of understanding, also executed on March 17, 2003, on the red circling of two former Leadworkers at their former rates of pay, with the understanding that their jobs would be posted as Maintenance Worker I positions when they left.

4. In the fall of 2003, the County Executive submitted a proposed 2004 budget to the Brown County Board. The proposed budget included a table of organization, showing which positions would be maintained, which would be eliminated, and which would be funded. Among the positions retained in the budget was that of Lead Mechanic in the Sheriff's Department. The Sheriff had sought a funding level \$1.2 million higher than that proposed by the County Executive. In the County Board's deliberations, \$600,000 was added to the Sheriff's 2004 budget for additional deputy positions.

5. After the budget was approved, the Sheriff implemented seventeen position cuts, including that of Lead Mechanic. The incumbent Lead Mechanic, Dave Dillenburg, received a notice of layoff, and was advised of his right under the collective bargaining agreement to bump into the lower paying job of Garage Mechanic. Dillenburg exercised his bumping rights, which displaced Jerry Smits. Smits bumped from the Garage Mechanic into a lower paying position elsewhere in the bargaining unit. No grievance was filed over the layoff or the bumping.

6. In January, Dillenburg complained to the County's Director of Administration, Jeff Landin, and to members of the County Board, that he was still performing the work of the Lead Mechanic, even though he was being paid the lower Garage Mechanic's rate. In response, the County Board's Public Safety Committee took up a proposal to direct the Sheriff to sell several squad cars in order to restore the Lead Mechanic's position. No complaints were received about the other position eliminations implemented by the Sheriff.

7. Landin requested a legal opinion from the County Corporation Counsel, John Jacques, about the propriety of the Sheriff's elimination of the Lead Mechanic's position, even though the position had not been removed from the table of organization, nor had funding for the position been removed, in the budget proposed by the County Executive and adopted by the County Board. Jacques responded with a letter on February 6, 2004:

. . .

Re: Employer's Statutory Duty to Maintain the Status Quo After Expiration
of a Labor Agreement
(Sec. 111.70 (3)(a) 4., Stats.)

Dear Jeff:

Under Sec. 111.70 (3)(a) 4., Stats., a "municipal employer" such as Brown County, has the duty to maintain the "status quo" during the period of a contract hiatus. See enclosed. Upon expiration of the courthouse labor agreement on December 31, 2003, the employer normally maintains all contractual provisions and does not change wages (a mandatory subject) without bargaining.

It is my opinion that the wages of two individuals covered by the Courthouse labor contract who were required to be placed in other positions by the Sheriff should be maintained at the status quo as of December 31, 2003. Under Sec. 59.22 (2)(c) 1., b., Stats., Brown County, not the Sheriff, is the "municipal employer" with authority to fund and establish the number of employees in all county departments. Only the governing body of the County, its Board of Supervisors, has authority to approve labor agreements which bind the County and set wages under Sec. 111.70, Stats. 52 OAG 365 (1963). Any changes proposed by the Sheriff from budgeted positions and their wage rates set forth in the Annual Budget Resolution should be submitted for approval to the County Board. See enclosed.

. . .

8. After receiving Jacques' opinion letter, Landin requested a clarification of the scope of the County's duty to maintain the status quo, and whether this set a precedent for other position eliminations. Jacques responded on February 19, clarifying that his opinion was based on the right of the County Board to establish and eliminate positions, and his belief that the County Board had never intended to have the Lead Mechanic position eliminated. He also noted that requiring Dillenburg to continue to perform the Lead Mechanic duties while receiving Garage Mechanic pay was a change in the status quo as to wages:

. . .

As you are aware, the members of the County Board of Supervisors voted 24 - 2 to accept the County Executive's proposed budget plus \$600,000 to be allocated for the Sheriff's Department. The \$600,000 was then allocated by the Sheriff and set forth in the 2004 Budget Book. At p. 578 of the 2004 Budget, there is an indication of a \$61,592 decrease in cost for the position deletion of "Garage Leadman". It is my opinion that the County Board did not intend that any positions placed in the proposed County Executive budget be deleted by the Sheriff, only that the Sheriff determine how the additional \$600,000 of unassigned funds should be allocated. All proposed changes in the Table of Organization should be submitted to the County Board as budget amendments or budget transfers. The intent of the County Board was for the Sheriff to utilize an additional \$600,000 in any manner relating to departmental needs.

In the November, 2002 budget deliberations for the 2003 Annual Budget Resolution, the County Board voted specifically to amend the former County Executive's proposed budget attempting to delete the same position the Sheriff has deleted. The authority the Sheriff had to utilize the \$600,000 additional funding is limited by the County Board's legislative authority over budget changes and over changes in the Table of Organization ordered by the Sheriff. It would also be inequitable to reduce pay from the status quo wage for the affected employee who is doing the same work until a new labor agreement is approved and Table of Organization changes are approved by the County Board.

. . .

9. Subsequent to Jacques' letters, Landin and the Sheriff met and negotiated a resolution to the dispute, which included the restoration of Dillenburg and Smits to their former positions. The restoration of the Lead Mechanic's position was funded by selling three squad cars.

10. A copy of Jacques' February 6 opinion letter was obtained by Teamsters Business Agent Mike Williquette, who wrote to Jacques on March 11, 2004, expressing his view of the opinion's impact on future position eliminations:

. . .

RE: Employers Duty to Maintain Wage Status Quo

Dear John:

I am in possession of a letter written by you to Jeff Landon referencing the above subject matter.

Since you are Corporation Counsel and your opinion being held in high regard as that of Brown County I am happy to hear that you will be red-circling all employees wages who were bumped through elimination of positions by Brown County. I will also be very pleased to keep your decision in our files as precedent for any and all such future employees affected thank you.

. . .

11. Jacques replied to Williquette on April 1st, advising him that no precedent had been set:

. . .

Thank you for the opportunity to comment on my February 6 correspondence to Mr. Jeff Landin.

As communicated to Mr. Landin, it is my opinion that, because of the circumstances surrounding the job changes in the Sheriff's department, the wage rates of the two individuals have been properly maintained under our "status quo" obligations.

In addition, I do not view this action as setting a "precedent" for wage determinations in future layoff actions. I do not feel the wage decision regarding these two unique positions held by two individuals meets the standard of establishing any kind of custom or practice, especially in light of our clear language in Article 25 of the Brown County Courthouse Agreement.

I trust this clarifies our position.

. . .

12. In the fall and early winter of 2004, the County Board again considered the County Executive's proposed budget. As adopted, the 2005 budget included position eliminations from the table of organization for, among others, the jobs of Geographic Information Specialist (GIS) and Mapping Specialist in the Planning and Development Department. Layoff notices were issued for the eliminated positions. The incumbent GIS, Terry VanHout, bumped into a Park Ranger position, displacing Matt Nilson. Nilson in turn bumped into a Household Hazardous Waste Facility Aide position. Both men suffered a reduction in wages in their new positions. The incumbent Mapping Specialist, John Funderberg, accepted layoff rather than bumping.

13. On December 9, 2004, Mike Williquette had a conversation with then - Human Resources Director Richard Gschwend, in which he asked that the two employees be red circled at their former rates of pay. Gschwend refused. The following day, Williquette filed a class action grievance, protesting the reduction in wages for VanHout and Nilson. He cited the Maintenance of Standards Clause, and the County's refusal to red circle the two men at their prior rates. The grievance was ultimately submitted to the WERC for production of an arbitration panel, but the County refused to concur in the request. Instead, Gschwend sent a letter to the Commission and to Williquette on January 28, stating the County's view that "the subject matter of this grievance is not substantively arbitrable and that it is not governed by the labor agreement terms of the collective bargaining unit at issue here."

14. On February 7, 2005, the instant Complaint was filed alleging that the County had violated Section 111.70(3)(a)5 by violating the collective bargaining agreement and refusing to submit to grievance arbitration. The County moved to dismiss the complaint, on the grounds that the contract was in hiatus and it had no duty to arbitrate. The Complainant then amended the complaint to assert that the County's refusal to red circle the employees was a violation of Sec. 111.70(3)(A)1 and 4 and 111.70(2).

15. Article 25 – SENIORITY of the collective bargaining agreement sets forth the parties' specific agreement that employees whose positions are eliminated, or whose position funding is eliminated, will bump into lower paying classifications and will receive the lower pay of that classification.

16. Article 27 – MAINTENANCE OF STANDARDS of the collective bargaining agreement sets forth the parties' specific agreement that the minimum standards to be maintained are those in effect "at the time of the signing of this agreement." At the time of the signing of the collective bargaining agreement on March 17, 2003, the minimum standard in effect for wages in the event of layoff and bumping was that established by Article 25 – i.e. the displaced employee would receive the lower wage of the job the employee bumped into.

17. At the time of the signing of the agreement, the minimum standard for red circling employee wages was that established by the Side Letter of Agreement – i.e. that it would be accomplished by a specific written agreement between the parties.

18. Prior to February of 2004, there had been no practice or history of red circling wages for employees forced to bump into lower paying jobs, except as described in Finding of Fact No. 17, supra.

19. The dispute over the Sheriff's elimination of the Lead Mechanic's position in 2003 and early 2004 was primarily an internal power struggle within the Brown County government, over which actor – the County Board or the department head – had the authority to eliminate positions and/or eliminate funding for positions. It did not involve any form of collective bargaining between the County and the Union, nor did its resolution reflect any negotiated agreement between the County and the Union.

20. The payment of Garage Mechanic wages for the performance of higher rated Lead Mechanic's work, as alleged by Dave Dillenburg, represented a change in the status quo ante during the contract hiatus.

21. The opinion letters issued by John Jacques in February of 2004, do not define the status quo ante as to the appropriate wage rates for employees who bump into lower paying positions, except to the extent that they accurately identify the alleged status quo violation set forth in Finding of Fact No. 19, supra.

22. As of late 2004, the status quo ante with respect to wages for employees forced to bump into lower paying jobs was payment of the lower rate associated with that job.

23. The payment of the lower rates for Park Ranger and Household Hazardous Waste Facility Aide to Terry VanHout and Matt Nilson, respectively, did not represent a unilateral change in the status quo ante.

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

CONCLUSIONS OF LAW

1. That the Complainant, Teamsters Union Local No. 75, is a labor organization within the meaning of Section 111.70(1)(h), MERA.

2. That the Respondent, Brown County, is a municipal employer, within the meaning of Section 111.70(1)(j), MERA.

3. That by the conduct described in the above Findings of Fact, the Respondent municipal employer did not violate any provision of Section 111.70, MERA.

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

ORDER

It is ORDERED that the instant complaint be, and the same hereby is, dismissed in its entirety.

Dated at Racine, Wisconsin, this 23rd day of June, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Daniel J. Nielsen /s/

Daniel J. Nielsen, Examiner

BROWN COUNTY

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

BACKGROUND

There is no material factual dispute about the events giving rise to this complaint. In the fall of 2003, the County Board established a budget for the Brown County Sheriff's Department. That budget required position eliminations. The Sheriff identified 17 positions to be eliminated, including the Lead Mechanic's job held by Dave Dillenburg. Dillenburg was given notice of the elimination, and advised of his right to bump into the lower paid Garage Mechanic's position, held by Jerry Smits. He did so, and his wage rate was reduced. Smits, in turn, bumped into a lower paid position elsewhere, and his wage rate was reduced.

No grievance was filed over the elimination of the Lead Mechanic's job, nor over the bumps of Dillenburg and Smits. However, the Lead Mechanic's position had not been identified for elimination from the County's table of organization in the County Executive's version of the budget, which is what had been adopted by the County Board. In that document, the position had been retained and funded. The County's Director of Administration, Jeff Landin, was advised by Dillenburg that he was doing the same job he had prior to the layoff, but at a lower rate of pay. In January, 2004, the County Board became involved in the issue, when members proposed that the Sheriff sell some squad cars to pay for restoring the Lead Mechanic's position.

Landin requested a legal opinion on the dispute from the County Corporation Counsel, John Jacques. The Corporation Counsel issued an opinion on February 6th that the Sheriff did not have the right to, in effect, reduce the wages of Dillenburg and Smits, on the grounds that to do so would violate the status quo ante under the expired labor agreement, and impinge on the County Board's right to set wages and decide matters related to labor agreements. Landin requested clarification of the opinion's scope, and on February 19, Jacques issued a second letter, stating his opinion that the Sheriff's elimination of the Garage Leadman position was contrary to the County Board's right to determine and modify the County's table of organization, and that the County Board had not intended to allow the elimination of the position. He further opined that it was inequitable to require Dillenburg to perform the same duties as before the layoff for a lower rate of pay, as that amounted to a unilateral change in the status quo on wages. As a result of these opinions, the Sheriff restored the Lead Mechanic's position and Dillenburg and Smits were returned to their former jobs.

A copy of the Corporation Counsel's February 6th letter was obtained by Mike Williquette, the Business Agent for Teamsters Local No. 75. He wrote to Jacques on March 11, praising his opinion and stating that it established a precedent for red circling the wages of all workers who were forced to bump into lower rated positions. Jacques responded that the opinion was limited to the specific facts of the situation, and did not establish any precedent.

In December 2004, the County Board again engaged in the budget process, and the County Board voted to eliminate a GIS Specialist and a Mapping Specialist from the County's table of organization. Terry VanHout was the incumbent GIS Specialist, and John Funderburg was the incumbent Mapping Specialist. Funderburg accepted layoff, rather than bumping. VanHout bumped Matt Nilson, a Park Ranger, who in turn bumped into a Household Hazardous Waste position. Both VanHout and Nilson took wage reductions as a result of the bumps. The Union filed a grievance, contending that the employees should have been red circled at their former rates of pay, per Jacques' February 6, 2004 opinion letter and the Maintenance of Standards Clause. The grievance was denied on the grounds that the bumps and lower wage rates were consistent with the collective bargaining agreement, and the Union sought arbitration. The County refused to proceed to arbitration, because the contract had expired, and because it viewed the matter as not substantively arbitrable. The instant Complaint was then filed.

ARGUMENTS OF THE PARTIES

The Complainant asserts that the County has violated Secs. 111.70(2) and 111.70(3)(a)1 and 4 by refusing to red circle the wages of employees Matt Nilson, Terry VanHout and John Funderburg. In early 2004, the Corporation Counsel expressed his legal opinion that imposing a wage loss on employees who were bumped into lower classifications constituted a violation of the status quo ante, which must be maintained during a contract hiatus. As a result, two bumped Mechanics were restored to their former wage rates. Even though the collective bargaining agreement contemplated wage reductions in the event of a bump, the Corporation Counsel advised the County that state law trumped those provisions. Less than a year later, though, the County refused to apply the same standard to other employees who suffered losses through bumping. The County does not have the right to interpret the status quo differently – even if the original opinion was incorrect, it is the interpretation given the contract and the law by the County and the County cannot unilaterally abandon it once it is established and accepted by the Union.

The County's attempt to characterize the Sheriff's Department layoffs as unique or different from the subsequent Courthouse layoffs is not persuasive. The County claims that the elimination of the garage positions was not authorized by the County Board, and thus had to be restored. This ignores the fact that the Sheriff eliminated 17 positions, and there was no restoration of the other jobs. Thus the elimination of the positions by the Sheriff rather than the County Board cannot be a critical factor.

The effect of layoffs is a mandatory subject of bargaining. The County is obligated to maintain the status quo as to mandatory topics. The County interpreted the existing status quo as requiring that employee wages be maintained in the face of layoffs and bumping. It cannot set the standard in one case, and simply abandon it later. The Union only seeks that the County be held to its own standard, and that these three employees be treated in the same way as the two mechanics were treated.

The Respondent argues that it followed the clear language of the collective bargaining agreement in laying off VanHout, and subsequently paying him and Nilson at the lower wage rates for the jobs they bumped into.¹ The contract expressly provides for this result, and the result sought by the Union would violate the contract. Williquette admitted as much when he failed to grieve the Dillenburg layoff, and confirmed this at hearing when he conceded that he would not have had a sustainable grievance for Dillenburg, given the clear contract language. Neither can the Maintenance of Standards Clause come into play here, since that contract provision uses the date of signing the agreement as the benchmark for defining what standards must be maintained. The Dillenburg situation arose well after the agreement was signed.

The contract does not establish a status quo that supports the Complainant. Nor does the County's action with respect to the Dillenburg layoff in late 2003. The dispute over the elimination of the Lead Mechanic position was a dispute between County officials over who had the authority to eliminate or defund positions in the County's table of organization. The Union played no part in this dispute. While Jacques' original letter spoke in terms of maintaining the status quo ante, he specifically wrote about the right of the County Board, rather than the Sheriff, to exercise "authority to fund and establish the number of employees in all county departments." He subsequently clarified his opinion, making it plain that he was concerned with the distribution of powers between the Sheriff and the County Board in position eliminations. He also opined that requiring Dillenburg to perform the duties of a Lead Mechanic for a Garage Mechanic's pay was not equitable, and represented a change in the status quo. None of this could lead a reasonable person to conclude that the resolution of the Dillenburg dispute somehow created a new, broad status quo for all bumped employees. Jacques made that clear in his response to Williquette's self-serving letter claiming that the status quo had been redefined. He advised Williquette that this was a unique circumstance, calling for a unique resolution, and that it did not establish any type of precedent.

The basic obligation of the Complainant in this case is to prove what the status quo ante is. It has utterly failed to do so, and accordingly the Complaint should be dismissed in its entirety.

DISCUSSION

It is axiomatic that the parties are under an obligation, during a contract hiatus, to maintain the status quo ante with respect to mandatory topics of bargaining. Wages are the classic example of a mandatory topic of bargaining. "Unilateral changes are tantamount to an outright refusal to bargain about a mandatory subject of bargaining because each of those actions undercuts the integrity of the collective bargaining process in a manner inherently inconsistent with the statutory mandate to bargain in good faith. In addition, an employer unilateral change evinces a disregard for the role and status of the majority representative which disregard is inherently inconsistent with good faith bargaining."²

¹ The Respondent notes that Funderburg, who accepted layoff and neither bumped nor accepted lower paying work, is not at issue in this proceeding.

² WISCONSIN RAPIDS SCHOOL DISTRICT, DEC. NO. 19084-C (WERC, 3/22/85), at page 14 (footnote omitted).

The complaint here alleges that the status quo with respect to wages in Brown County includes an obligation to red circle the wage rate of any displaced employee who bumps into a lower paying job. This allegation is not based on any contract provision, nor any history of red circling prior to February of 2004.³ It is based solely on a letter authored by Corporation Counsel John Jacques on February 6, 2004.

In his letter Jacques recited the obligation of employers to maintain the status quo with respect to wages during the contract hiatus. He then went on to say:

It is my opinion that the wages of two individuals covered by the Courthouse labor contract who were required to be placed in other positions by the Sheriff should be maintained at the status quo as of December 31, 2003. Under Sec. 59.22 (2)(c) 1., b., Stats., Brown County, not the Sheriff, is the "municipal employer" with authority to fund and establish the number of employees in all county departments. Only the governing body of the County, its Board of Supervisors, has authority to approve labor agreements which bind the County and set wages under Sec. 111.70, Stats. 52 OAG 365 (1963). Any changes proposed by the Sheriff from budgeted positions and their wage rates set forth in the Annual Budget Resolution should be submitted for approval to the County Board. See enclosed.

The Union reads this as a statement of the status quo requiring the maintenance of existing wages for all employees during the contract hiatus, even though the employee's position may be eliminated and the employee forced into a lower paying job. The Union, however, reads only the first sentence of the paragraph, and makes no connection between it and the remainder of the letter. The rationale for Jacques' opinion that the status quo on wages should be restored is not that there is some existing agreement or practice that bumped employees are red circled. It is that the Sheriff did not have the authority to change the number of positions and/or funding of positions from that established by the County Board. If the Union in fact believed that this letter defined the labor relations status quo, it would be acceding to the notion that the Sheriff could propose, and the County Board could approve, changes in wage rates, since that is the ultimate conclusion of the letter. Plainly that may describe the procedural end of the equation for the County, but it does not describe the status quo for purposes of labor relations.

The Union's reliance on this one sentence also ignores the clarification Jacques provided two weeks later. In his second letter to Landin, Jacques made it clear that the thrust of his opinion was aimed at the respective powers of the Sheriff and the County Board in deciding what positions would be eliminated or defunded once a budget was approved. In that letter, Jacques did again discuss the status quo obligations of the County in the area of

³ Aside from the specific side letter of agreement, red circling two former Leadworkers in the Facilities Department, as described in Finding of Fact No. 3.

Dillenburg's wages. There it was clear that the status quo problem was not that Dillenburg was paid at the Garage Mechanic's rate as a result of bumping. It was that Dillenburg was being paid that lower rate while still performing the higher rated duties of the Lead Mechanic. That represents a clear violation of the status quo, since the parties had specifically agreed on the appropriate wage rate for the bundle of duties and responsibilities associated with the work of a Lead Mechanic, and paying a different rate for that work would be a unilateral change. This second, clarifying letter was issued before Williquette decided to respond to the first letter. I therefore take it to be more than just an effort to back away from the somewhat confusing verbiage of the first letter, and accept that it was Jacques' effort to restate his opinion in clearer terms. By focusing on one portion of the first letter, and completely ignoring the second clarifying letter, the Union seeks to hold Jacques to an agreement he never made, defining a status quo he had no power to unilaterally define.

This last point bears repeating. The status quo is maintained because each party has the duty to respect the other party's status, and to bargain with the other before altering wages, hours or terms and conditions of employment from that which they had previously agreed on. There is no allegation here that the opinion letters of Jacques were the result of discussions, much less agreements, with the Union. The Union's interpretation of the letters – that bumped employees must be red circled – is directly contrary to the practices of the parties, and the express terms of the collective bargaining agreement they had signed some ten months earlier. To the extent that the letters could be interpreted as an effort to define the status quo, it would have been a unilateral change in the existing system. Williquette's effort in March to change that to a bi-lateral agreement by purporting to accept selected portions of the opinion letters does not change what actually occurred.

Finally, I note that the Union's interpretation of Jacques' letters is contrary to what actually happened with Dillenburg. Dillenburg was not red circled at his former rate. He was restored to the position of Lead Mechanic, and paid at the rate for that job. It is not entirely clear from the record, but there is a strong inference that he was also made whole for the period of time between the layoff and the restoration of the position, and that Smits was made whole when he returned to the Garage Mechanic position. In the case of Dillenburg, it would stand to reason that he would be made whole, since his claim was that he was actually performing the higher rated work all along. In the case of Smits, a make whole resolution would have been consistent with the notion that the original layoff and resulting bumping process were not legitimate, and were the result of an abuse of authority by the Sheriff. There is no suggestion that the December 2004 position eliminations affecting VanHout, Funderburg and Nilson were procedurally improper.

The Complainant bears the burden of proving that the status quo for bumped employees is that they are red circled at their prior wages rates. The record evidence does not support that claim. Instead, it appears that the status quo is payment of the lower wage rate for the positions the employees bump into. It follows that the Respondent did not unilaterally alter the status quo ante when it refused to red circle VanHout and Nilson following their bumps into lower paying jobs.

Dated at Racine, Wisconsin, this 23rd day of June, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Daniel J. Nielsen /s/

Daniel J. Nielsen, Examiner