

BEFORE THE ARBITRATOR

In the Matter of the Arbitration  
of a Dispute Between

TAYLOR COUNTY COURTHOUSE  
EMPLOYEES LOCAL 617-A,  
AFSCME, AFL-CIO

and

TAYLOR COUNTY

Case 32  
No. 42051  
MA-5547

Case 34  
No. 42273  
MA-5639

Appearances:

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Mr. Philip Salamone, Staff Representative, Wisconsin Council #40, AFSCME,  
AFL-CIO, N-419 Birch Lane, Hatley, WI 54440, appearing on behalf of the  
Union.

Mr. Charles A. Rude, Personnel Coordinator, Lincoln County, 1110 East Main  
Street, Medford, WI 54452, appearing on behalf of the County.

ARBITRATION AWARD

Taylor County Courthouse Employees Local 617-A, hereinafter the Union, requested that the Wisconsin Employment Relations Commission appoint a staff arbitrator to hear and decide the instant disputes between the Union and Taylor County, hereinafter the County, in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. The County subsequently concurred in the request and the undersigned was appointed to arbitrate the dispute. A hearing on both matters was held concurrently before the undersigned on June 8, 1989, in Medford, Wisconsin. There was no stenographic transcript made of the hearing. The parties exchanged briefs, the last of which was received by July 12, 1989.

ISSUE

The parties stipulated to the following statements of the issues:

1. Did the County violate the collective bargaining agreement in its refusal to provide backpay for employees who ceased employment with Taylor County during the pendency of contract negotiations and the mediation/arbitration process?

2. Did the County violate the collective bargaining agreement in its refusal to provide sick leave benefits for part-timers during the pendency of the negotiations and mediation/arbitration process?

3. If so, what is the appropriate remedy?

## PERTINENT CONTRACT PROVISIONS

### ARTICLE I - RECOGNITION

The Employer recognizes the Union as the exclusive bargaining representative for the purpose of conferring and negotiating with the Employer and its authorized representatives on questions of wages, hours, and conditions of employment for regular full-time and regular part-time nonprofessional employees of Taylor County employed in the Courthouse, Courthouse Annex, Highway, and Human Services Departments, excluding professional, confidential, supervisory, managerial, elected officials, craft, and all other employees, including those in existing bargaining units. (Decision #24261 certified by the Wisconsin Employment Relations Commission.)

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### ARTICLE 15 - PART-TIME EMPLOYEES

Definition: A part-time employee shall be defined as an employee working less than full-time but six hundred (600) hours or more per year.

Eligibility for Benefits: Part-time employees shall receive the following prorated fringe benefits on the basis of their regularly scheduled hours per year:

1. Holidays
2. Vacation
3. Health and Life Insurance
4. Funeral Leave
5. Sick Leave

1987 - An increase in the employee's hourly wage equivalent to three percent (3%), and commencing on July 1, 1987, for all employees who did not receive at least a three percent (3%) increase from the County for 1987. For those who received an increase of less than three percent (3%), an increase which

would reflect an equivalent of three percent (3%) shall be paid. For example, if an employee received a two percent (2%) wage increase from the County, he/she shall receive an additional one percent (1%).

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#### ARTICLE 25 - DURATION

This Agreement shall take effect on March 15, 1987, and shall be in full force and effect until December 31, 1989.

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#### BACKGROUND

Taylor County Courthouse employees were organized by the Union in March, 1987. Negotiations on an initial bargaining agreement did not resolve all issues, and the Union petitioned the WERC for interest arbitration. Two meetings were conducted by a WERC mediator, after which the outstanding issues were submitted to arbitration and heard by arbitrator Dan Nielsen on September 30, 1988. Arbitrator Nielsen issued his award on January 15, 1989, at which time he selected the Union's final offer for incorporation into the parties' initial agreement. The parties subsequently signed an agreement effective March 15, 1987 to December 31, 1989.

In late February, pursuant to their understanding of the arbitration award, nine former bargaining unit members and employees of the County wrote Charles Rude, County Personnel Director, requesting any backpay due them for the period they were employed under the agreement. The County Personnel Committee denied the requests on the basis that these employees were not on the payroll as of the date of the arbitration award. 1/ On April 5, 1989, the Union filed a grievance in which it sought backpay and fringe benefits for ten former employees who had terminated employment during the negotiations and arbitration of the contract. The Union sought wages for those employees who were employed on July 1, 1987 or hired after that date.

On May 5, 1989, the Union was informed by Rude that fringe benefits for parttime employees would be credited as of January 1, 1989. 2/ On May 18, 1989, the Union filed the second grievance in this matter seeking credit for fringe benefits due part-time employees under the agreement as of March 15, 1987 rather than the County's 1989 date. Both grievances were denied by the County and proceeded to arbitration.

#### POSITIONS OF THE PARTIES

##### Union

The Union contends that the main issue to be decided is what is meant by the "effective date" of the agreement. It is the Union's position that the "effective date" is that date on which the agreement becomes

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1/ Joint Exhibit 5.

2/ Joint Exhibit 6.

operative. The Union argues that an effective date would have little meaning if implementation did not require retroactivity. Further, the Union points out that had the parties intended an effective date to be the date the award was issued, they would have so indicated. In this case, however, the parties specifically designated July 1, 1987 as the effective date for wages and March 15, 1987 for all other fringe benefits. Finally, the Union contends that the fact that the Union chose not to implement the fair share provision until after the issuance of the award is irrelevant to the issues at hand.

### County

The County points out that during the negotiations and arbitration process, ten individuals left the employ of the County. At no time during the process were there any proposals or questions raised by either party regarding the status of employees who terminated with the County prior to the issuance of the arbitration award in January, 1989. The County asserts that the agreement is applicable only to individuals in the employ of the County as of January, 1989, and that those who left the County's employ prior to that date no longer qualify for the awarded benefits. As additional support for its position, the County points out that the Union did not begin fair share deductions until April, 1989. Further, the County contends that the same rationale applies to the issue of fringe benefits for parttime employees. The County argues that the only two benefits in dispute are sick leave and funeral leave, since all other benefits are already in effect for part-time employees on a prorata basis.

### DISCUSSION

The two issues to be decided in this matter are (1) whether employees who terminated employment with the County prior to January, 1989 are entitled to backpay for the contractual period they were bargaining unit members prior to the issuance of the arbitration award, and (2) whether the County wrongfully denied sick leave benefits to part-time employees for the period of March 15, 1987 to January 1, 1989. It is the opinion of the undersigned that the County violated the collective bargaining agreement by denying both the backpay to terminated employees, and sick leave benefits to part-time employees during the period in question.

It is clear that the parties contemplated a contractual period which ran from March 15, 1987 through December 31, 1989. Article 25 - Duration specifically notes these dates as the effective dates for this initial agreement. It is also clear from the arbitration award issued by arbitrator Nielsen that the parties' final offers were based upon the same duration period. 3/ Further, it is undisputed that the final offers provided for a wage increase effective July 1, 1987. 4/ In spite of this certainty regarding the effective dates of this agreement, the County contends that it had the discretion to deny backpay to the employees who terminated prior to January, 1989, and to begin sick leave and funeral leave benefits to part-time employees in January, 1989.

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1/ Joint Exhibit 5.

2/ Joint Exhibit 6.

The County's contention regarding the issue of backpay is without merit in several respects. First, at hearing both parties acknowledged that the matter of backpay to prior employees was not discussed during the bargaining or arbitration processes. There was no evidence to suggest that it was incumbent upon the Union to raise the issue, as the County implies. Further, given the effective dates of the agreement, any bargaining unit employee of the County during that period had an accrued right to receive all appropriate benefits, including wages. 5/ Any accrued wages are a debt which must be paid by the County. 6/ Therefore, the undersigned concludes that the affected employees are entitled to backpay.

The same rationale applies to the part-time employees who were denied sick leave or other benefits. Article 15 is clear that part-time employees are entitled to sick leave and funeral leave, as well as holidays, vacation, and health and life insurance, on a prorated basis. The effective date for these benefits was March 15, 1987. Unlike the wage provision, there is nothing in the agreement which alters the date these benefits were to take effect. As with backpay, these benefits were guaranteed rights of the part-time employees. There is no basis whatsoever for the County's contention that there needed to be some discussion during bargaining regarding recalculating these benefits for them to become effective on March 15, 1987 for part-time employees.

The County infers that it had some inherent right to unilaterally choose the effective date for the part-time employees' benefits because the Union chose to delay implementation of the fair share provisions of the agreement. The evidence at hearing alluded to this fact, but no evidence was presented by either side to substantiate or refute this claim. Further, even if the Union had delayed implementation, such delay would not work to the detriment of any employee, and would only indicate that the Union chose to waive its right to the March 15, 1987 implementation date. It is clear that part-time employees did not waive their rights to any benefits, and that this argument does not support the County's action regarding the delayed implementation of benefits to part-time employees. Therefore, based upon the above findings, it is the opinion of the undersigned that the County has violated the agreement on both counts, as alleged by the Union.

As part of the requested remedy, the Union seeks the imposition of interest on any backpay which might be awarded. Although the undersigned agrees with the Union that the County's action was unjust, the evidence presented at hearing does not support a finding that such action was either arbitrary or capricious, or that the County acted in bad faith. Further, the awarding of interest in grievance arbitration cases is generally not favored unless the parties provide for such a remedy in the collective bargaining agreement. 7/ There is no such provision in the agreement between these parties, and, therefore, no interest will be ordered.

Based on the above and foregoing, the record as a whole and the arguments of the parties, the undersigned issues the following

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3/ Joint Exhibit 4.

4/ Ibid.

AWARD

The County shall make whole all affected employes with backpay as of July 1, 1987, and shall credit part-time employes with sick leave and any other benefits due them as of March 15, 1987.

Dated at Madison, Wisconsin this 26th day of September, 1989.

By \_\_\_\_\_  
Beverly M. Massing, Arbitrator

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