BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between CITY OF OSHKOSH and OSHKOSH CITY EMPLOYEE UNION, LOCAL 796, AFSCME, AFL-CIO	Grievance dated 9-8-93 regarding bus driving subcontracting Case 213 No. 49934 MA-8109

Appearances:

Mr. Gregory N. Spring, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 1121 Winnebago Avenue, Oshkosh, Wisconsin 54901, appearing on behalf of the Union.

Ms. Lynn Lorenson, Assistant City Attorney, City Hall, 215 Church Avenue, Oshkosh, Wisconsin 54901, appearing on behalf of the City.

ARBITRATION AWARD

At the joint request of the Union and City noted above, the Wisconsin Employment Relations Commission designated the undersigned Marshall L. Gratz as Arbitrator to hear and decide a dispute concerning the above-noted grievance, arising under the parties' 1991-1992 Working Conditions Agreement (Agreement).

Hearings were conducted at Oshkosh City Hall on December 21, 1993 and February 1, 1995. The proceedings were not transcribed, however, the parties agreed that the Arbitrator could maintain a cassette tape recording of the testimony and arguments for the Arbitrator's exclusive use in award preparation. The procedural arbitrability of the grievance was bifurcated from the merits of the grievance. On June 15, 1994, the Arbitrator issued an award holding that the grievance was properly before the Arbitrator. Following the additional hearing noted above, both parties submitted initial briefs and neither submitted a reply brief. After expiration of the time for filing reply briefs, the Arbitrator notified the parties on April 18, 1995, that the matter was fully submitted and ready for award issuance.

STIPULATED ISSUE

At the hearing, the parties authorized the Arbitrator to decide the following issue:

1. What shall be the disposition of the September 8, 1993 grievance?

PORTIONS OF THE AGREEMENT

ARTICLE I

MANAGEMENT RIGHTS

Except to the extent expressly abridged by a specific provision of this Agreement, the City reserves and retains solely and exclusively, all of its Common Law, statutory, and inherent rights to manage its own affairs, as such rights existed prior to the execution of this or any other previous Agreement with the Union.

The Union also recognizes that the City has the right to subcontract work, provided no bargaining unit employes are laid off or have their hours reduced due to the subcontracted work. The right to subcontract work shall also not be used to undermine the Union or to discriminate against any of its members. Employees required to bump or post out of positions which have been subcontracted shall retain their seniority rights in the Department where the subcontracting occurred. The Employer agrees to bargain the impact of subcontracting on affected employees.

. . .

ARTICLE X

NORMAL WORK WEEK, NORMAL WORK DAY
AND NORMAL WORK SCHEDULE

. . .

Transit employees shall work in accordance with present mutually agreed-upon schedule. Selection of the runs shall be made semi-annually unless requested in writing by not less than seventy (70) percent of the total employees affected. Each driver shall make his/her "selection" on the order of his/her division seniority. . . .

. . .

ARTICLE XVIII

GRIEVANCE PROCEDURE

Both the Union and the City recognize that grievances and complaints

should be settled promptly and at the earliest stage and that the grievance process must be initiated within 10 work days of the incident or knowledge of the incident. A grievance shall be defined as a dispute which involves the interpretation, application or compliance of the provisions of this Agreement. All grievances which may arise shall be processed in the following manner:

Step 1. The aggrieved employee shall present the grievance orally to his steward. The steward and/or the aggrieved shall attempt to resolve the grievance with the immediate supervisor, who may call higher level supervisors into the discussion. If it is not resolved at this level within five (5) work days, the grievance shall be processed as outlined in Step 2.

. . .

Step 5. . . . The decision of the Arbitrator shall be "final and binding" on both parties, however, he shall have no right to amend, modify, ignore, add to or delete the provisions of this Agreement. The decision of the Arbitrator shall be based solely upon his interpretation of the express language of the Agreement. . . .

. . .

ARTICLE XXVI

MAINTENANCE OF BENEFITS

The City will not change any benefit or condition of employment, which is mandatorily bargainable except by mutual agreement with the Union.

. . .

ARTICLE XXVII

13C AGREEMENT

The parties hereto recognize that they have heretofore entered into a 13C Agreement as required by the U.S. Department of Labor for transit employes and that said agreement will remain in force together with the provisions of this contract.

. . .

BACKGROUND

The City operates a municipal transit bus system as one of its municipal functions. The Union represents the bus drivers as a part of a bargaining unit consisting of non-supervisory, non-professional employes in a variety of City departments and occupations.

The grievance referred to in the STIPULATED ISSUE, above, was initiated on September 8, 1993. In it, Union President Michael O'Brien asserted, "the City sub-contracted the Industrial Park Run out to private sector." The grievance went on to assert that the City thereby violated Articles I, X, XXVI, and XXVII. The relief requested in the grievance was "to give work lost by Union employes back to transit department."

In the City's initial response to the grievance, Transportation Director Mark Huddleston stated,

> The City of Oshkosh notified the Union on July 28, 1993 that the Industrial Park Run would be sub-contracted as of August 30, 1993. A copy of this notification is attached. The Union did not initiate the grievance process within the limits established under Article XVIII of the Union's working agreement with the City of Oshkosh. Therefore, this grievance is denied.

The grievance was similarly denied at the subsequent pre-arbitral grievance steps and ultimately submitted to arbitration as noted above.

The notification referred to in Huddleston's grievance response was a memorandum from Huddleston to Union Steward Larry Gauger dated July 28, 1993, which read as follows:

> This letter is to notify you that the Industrial Park Run will be sub-contracted effective August 30, 1993. The Common Council will act on this matter at the August 19, 1993, Council meeting. If you have any questions, please feel free to contact me.

The day before Huddleston sent that memorandum to Gauger, the quarterly posting of available runs and trippers for selection by seniority by bargaining unit bus drivers went up. That posting offered employes the opportunity to select from among eleven morning runs, eleven afternoon runs and, in addition, two morning trippers and three afternoon trippers. With one minor exception not material to this dispute, each of the runs constitutes a 6.4 hour-per-day, 6 day-per-week work opportunity, which constitutes the present mutually agreed-upon schedule referred to in Article X of the Agreement. The trippers consist of extra work opportunities that

occur regularly either in the morning or in the afternoon and which consist of two hours of work each. Bargaining unit employes select the run they wish to work by seniority. At the same time an employe selects a run, the employe may also select a tripper if there is one available that does not conflict with the run the employe has selected to work during that quarter.

In addition to trippers, bargaining unit bus drivers are also offered from time to time an opportunity to work "doubles" to cover for absentees on another scheduled run occurring outside the hours of that employe's own selected run.

If and when there is extra work which all bargaining unit Transit employes opt not to perform, that work is either offered to part-time employes or involuntarily assigned to the least senior bargaining unit employe.

The "Industrial Park Run" referred to in the grievance actually consisted of an AM tripper and a PM tripper. Both runs and trippers are identified on the selection opportunity memo posted by management quarterly by numbers and letters that represent specific routes and times known to the bargaining unit generally. The selection memorandum posted on July 27, 1993, unlike previous such memoranda, did not offer the letter and number combinations representing either the morning or the afternoon Industrial Park trippers. Thus, when compared with the selection memorandum posted in November of 1992, the July 27 memorandum contained the same number of runs, but one fewer morning tripper and one fewer afternoon tripper with the Industrial Park Run trippers being those eliminated. The intervening selection memorandum which had been posted in March contained the 22 runs but only 1 morning and 1 afternoon tripper, namely the Industrial Run trippers because the other trippers are scheduled only during the school year and not during the summer months.

On August 19, 1993, the City's Common Council, acting in open and publicly noticed session, accepted a private contractor's bid to provide transportation service to the Industrial Parks and directed City officials to enter into an appropriate agreement for that purpose.

The runs selected from those posted on July 27, 1993, became effective on August 30, 1993. It was as of that date that the subcontractor's personnel began performing the Industrial Park morning and afternoon trippers previously performed by bargaining unit employes.

At the December 21, 1993 hearing, Union Steward Larry Gauger testified that he did not submit the grievance in July because at that time no bargaining unit driver had lost any hours as a result of subcontracting. Gauger further stated that because the first loss of hours of work to bargaining unit employes occurred on the first day of school, August 30, 1993, he considered it as of that date that the City had committed a violation of the Agreement.

Also at that hearing, City Transit Coordinator Rex Cass testified that, based on his general review of pay sheets from before and after the subcontract took effect, no bargaining unit driver

has lost work on account of the Industrial Park trippers being subcontracted. In that regard, Cass noted that the bargaining unit was working the same number of regular runs such that -- with a minor exception not relevant to this proceeding -- each of the bargaining unit drivers is working a 38.4 hour schedule consistent with the mutually agreed-upon schedule referred to in Article X of the Agreement. Cass acknowledged that the selection sheet contains two fewer trippers and hence, four fewer hours of extra work than was previously available. He asserted, however, that trippers and driving doubles as a bundle of work has always varied and that, to his knowledge, the individuals who may have lost the opportunity to work a tripper could have

taken advantage of other opportunities for working overtime by driving doubles. When Cass looks generally at the pay sheets, therefore, he states that he has seen no overall reduction in hours worked as a result of the subcontracting of the Industrial Park trippers. Cass further noted in that regard that there had been at least 3 or 4 occasions since August 30 of 1993 on which all of the regular drivers had been offered and turned down a double. Cass also acknowledged that there was no occasion in his memory in which a posted tripper had not been selected when it was made available on the selection memorandum posted by management.

Cass noted that the number of trippers has varied dramatically over the years, but he acknowledged on cross-examination that to his knowledge each of the previous eliminations of trippers had resulted in the service involved not being provided at all.

At the February 1, 1995 hearing, the parties stipulated that prior to the subcontracting of the Industrial Park tripper, there were three AM trippers and four PM trippers and that immediately after the subcontracting there were two AM trippers and three PM trippers. The Union presented additional testimony by Gauger and the City presented additional testimony by Huddleston.

Gauger explained why he believed he and other employes had lost hours and money due to the subcontracting of the Industrial Park trippers. He presented his W-2s from the City for 1992, 1993 and 1994, which respectively totaled $32,894.00, $32,803.67, and $30,667.90. He presented additional documents supporting his contention that he would have been in seniority position to select and, consistent with his history, would have selected a tripper during all but the summer of 1994 and would have worked more hours and earned more money overall had the Industrial Park tripper not been subcontracted.

Huddleston testified that as of late December, 1994, the Industrial Park tripper which had been contracted out was eliminated in part and that the remainder was incorporated as part of a regular AM run and as part of a previously-existing PM tripper (E-52).

Huddleston also testified that in 1990 the City subcontracted what had been Neenah-Menasha trippers with no grievance filed in response. In that regard, Huddleston produced a January 23, 1990 memorandum that he posted to all Transit employes stating "The City of Oshkosh will no longer be operating the Neenah/Menasha route, effective February 26,

1990." Huddleston also produced a February 1, 1990, City Council Resolution that was passed authorizing a contract with Oshkosh City Cab Co. at $75.00 per day "to provide transportation service from Oshkosh to Neenah/Menasha". He testified that as a result of that 1990 subcontracting, one less AM tripper and one less PM tripper were offered to the bargaining unit.

Huddleston further testified that on four occasions in 1994 each of the regular bargaining unit drivers who were not already working both the AM and PM turned down available doubles. Huddleston was not certain whether the City offered those doubles to part-time employes or forced the least senior bargaining unit employe available to perform the work involved.

POSITION OF THE UNION

The Arbitrator should declare that the City violated Arts. I and XXVI of the Agreement by subcontracting the Industrial Park AM and PM trippers. (The Union abandons its argument that Art. XXVII - 13C Agreement was also violated.)

Under Art. I, the City may not subcontract if "bargaining unit employes are laid off or have their hours reduced due to the subcontracted work." While no employes were laid off in this case, bargaining unit Transit employes did have their hours reduced due to the subcontract in violation of Art. 1.

Prior to the subcontract taking effect from September 1, 1993, the AM and PM Industrial Park trippers totaled four hours of work each day (or 20 hours each week) throughout the calendar year. Those hours were posted and bargaining unit employes always bid for them. It is true that, in addition to the runs and trippers selected by bid, there was also a varying number of doubles that became available for bargaining unit employes to work. However, that was true both before and after the subcontract took effect. So, after the subcontract took effect, the same number of bargaining unit employees were being offered a pool of available work hours (including the varying numbers of doubles) that was reduced by twenty hours per week due to the subcontract.

Someone in the bargaining unit lost those 20 hours of work per week. Larry Gauger was one such employe who suffered losses as a result of the subcontracting. He testified that he rarely turned down any available additional hours of work and that his seniority would have allowed him to select an AM tripper if one more had been available. The elimination of the Industrial Park trippers due to subcontracting prevented him from getting an AM tripper. A comparison of his W-2s shows that he earned $2,200 less in 1994 than in 1992. He took no unpaid leave in 1994, and the City offered no other explanation for his significantly reduced income.

The reduction of available tripper hours due to subcontracting also violated Agreement Art. XXVI - Maintenance of Benefits as interpreted by Arbitrator Richard McLaughlin in his award affecting the instant bargaining unit dated May 7, 1987. In that award, Arbitrator McLaughlin required the City to make whole bargaining unit employes for overtime lost when the City

assigned weekend work historically assigned to bargaining unit employes to non-bargaining unit temporary employes. The Industrial Park trippers had provided hours of work including overtime to bargaining unit employes. Hours of work and overtime are benefits and conditions of employment. The assignment of available hours to bargaining unit employes is a mandatory subject of bargaining. The subcontract resulted in hours previously worked by bargaining unit employes being worked by non-unit personnel. The filing of the grievance makes it clear that the change was made without the Union's consent. Thus, all of the elements identified by Arbitrator McLaughlin as necessary for finding a violation of Art. XXVI are present in this case.

By way of remedy for those Agreement violations, the Arbitrator should order the City to make the affected employes whole for any and all losses they suffered due to the subcontracting of the Industrial Park trippers. When the grievance was originally filed, the Union asked only that the work lost by Union employes be given back to them. Had it been granted immediately, that is all that would have been necessary because the losses involved would have been de minimis. However, that remedy is no longer equitable in light of the fact that the subcontractor's personnel were assigned hours that should have been available to the bargaining unit from September 1, 1993 through December of 1994.

POSITION OF THE CITY

The City's December, 1994 termination of the disputed subcontract effectively grants the only relief requested on the face of the grievance. On that basis alone the Arbitrator should deem the grievance fully resolved and deny the make whole relief requested by the Union for the first time at the February, 1995 arbitration hearing.

In any event, the grievance should be denied because the City did not violate the Agreement by subcontracting the Industrial Park trippers. The Agreement allows the City to subcontract provided that no bargaining unit employes are laid off or have their hours reduced due to the subcontracting. No bargaining unit employe was laid off, and no bargaining unit employe had "their hours reduced" within the meaning of Art. I and the Agreement read as a whole. The hours referred to in the Art. I subcontracting language are the Transit bargaining unit employes' normal, regular hours of work defined in Art. X. Article X defines the normal work week, normal work day and normal work schedule of transit employes by reference to the "present mutually agreed upon schedule" and by reference to the mandatory periodic "[s]election of runs." The mutually agreed upon schedule undisputedly is 38.4 hours per week consisting generally of six 6.4 hour runs per week. Article X makes it clear that the "runs" constitute the normal work hours of the Transit employes. Thus it is undisputed that trippers and other extra work which may become available are variable, not considered part of the mutually agreed upon schedule, and not guaranteed. Given the foregoing, it is unreasonable to interpret "hours" in Art. I as including any hours besides the Transit employes' mutually agreed upon schedule referred to in Art. X.

The Arbitrator should also deny the Union's request for make whole relief because the Union has not reliably proven that any employe lost hours as a result of the subcontracting of the

Industrial Park tripper. The Union's only proof of loss was evidence that Larry Gauger's W-2 earnings were lower in 1994 than they were in the preceding two years. That evidence does not reliably establish that Gauger or any other employe suffered any loss of hours due to the subcontracting. Huddleston and Gauger testified that the number of hours of extra work available to employes varies day to day and year to year. Gauger admitted that he did not know how many additional hours were available in each of the years for other types of extra work or how many hours he worked in each of those years. Moreover, both Cass and Huddleston testified that employes had turned down available hours within the past two years.

If the Arbitrator concludes that the subcontracting violated the Agreement and that relief in addition to that requested in the grievance should be granted, the Arbitrator should retain jurisdiction to decide upon an appropriate remedy. The Union's failure to this point in the proceedings to specify which employes should be paid what make whole amounts would otherwise prejudice the City by preventing it from presenting evidence and arguments it may have concerning remedy.

DISCUSSION

The ISSUE has been broadly framed to permit consideration of all of the parties' arguments concerning the appropriate disposition of the grievance.

Effect of City's Termination of the Subcontract

The City's preliminary contention seems to be that the Arbitrator need not decide whether the Agreement has been violated because the City has, albeit belatedly, granted the only relief requested on the face of the grievance.

The grievance on its face asserts that the City violated various Agreement provisions by the Industrial Park subcontracting. At no point during the pendency of the grievance has the City agreed that its subcontracting violated the Agreement. The City was expressly unwilling to so agree at the February, 1995 arbitration hearing. While Agreement Art. XVIII provides that "grievances . . . should be settled promptly and at the earliest stage. . . ," the claim in the grievance that the City violated the Agreement remains unresolved. Therefore, given the previous determination that the grievance is procedurally arbitrable, the Union is entitled, under the terms of the Agreement Grievance Procedure, to arbitral determination of whether the City's subcontracting referred to in the grievance violated the Agreement. If a violation is found to have been committed by the City, the Union is also entitled to an arbitral determination of whether, in the circumstances of this case, the Union is limited to the remedy requested on the face of the grievance, and, if not, what the appropriate remedy is for the violation.

Claimed Violation of Art. XXVI - Maintenance of Benefits

The Arbitrator finds Art. XXVI and the McLaughlin award inapplicable to the instant

dispute. Article I specifically delineates the nature and extent of the City's right to subcontract. In comparison, Article XXVI is more general and does not specifically address subcontracting. For that reason, the specific subcontracting language Art. I controls this case to the exclusion of the more general Art. XXVI language.

Arbitrator McLaughlin applied Art. XXVI only after concluding that none of the other provisions referred to by the parties were dispositive of the dispute before him. The disputed work assignments in that case were to temporary employes of the City, not to a subcontractor. In the instant case the work was transferred to a subcontractor. Art. I specifically deals with the rights and obligations of the parties regarding subcontracting, making resort to the more general Art. XXVI unnecessary and inappropriate.

Claimed Violation of Art. I - Management Rights

The question of whether the City violated Agreement Art. I by subcontracting the Industrial Park trippers turns initially on whether bargaining unit employes were "laid off or [had] their hours reduced due to the subcontracted work" within the meaning of Art. I and, if not, on whether "[t]he right to subcontract work [has been] used to undermine the Union or to discriminate against any of its members."

It is at least plausible that the parties intended "hours" to mean the hours of the Transit employes' normal workday and workweek expressly defined in Art. X of the Agreement. The "mutually agreed schedule" referred to in that definition includes only the regular runs, not the extra/additional hours involved in trippers and doubles. Hence, a reduction of normal work schedule hours due to subcontracting would threaten to reduce hours available to Transit employes below the minimum established by Art. X; whereas a reduction of tripper hours available due to subcontracting would potentially reduce only hours in addition to the Art. X minimum.

However, the Arbitrator finds the Union's contention that "hours" includes the normal work schedule and extra hours to be much better supported by the express language of the Agreement read as a whole. In Art. I the parties used the unqualified term, "hours" rather than "regular hours" or "normal hours" to describe the hours they intended to protect against reduction due to subcontracting. Their use of that unqualified term is a strong indication that they intended to include both regular and extra hours within the Art. I protection from reduction due to subcontracting. If an exception had been intended, it could readily have been included and was not. The City asks the Arbitrator to interpret Art. I as if a qualifying term such as "regular" or "normal" precedes "hours," whereas Art. XVIII expressly prohibits the Arbitrator from amending, modifying or adding to the provisions of the Agreement and emphasizes that the Arbitrator is to base his decision "solely upon his interpretation of the express language of the Agreement."

The City's contention that the hours protected by Art. I are only those protected against reduction by Art. X is unpersuasive because that would render the Art. I protection against reduction of hours due to subcontracting meaningless. Since Art. X already protects the normal

schedule of work hours therein defined from being reduced, reading Art. I as protecting only those hours from reduction due to subcontracting would give that portion of Art. I no effect whatever.

While reductions of normal work schedule hours would likely involve a more serious potential adverse economic impact on Transit employes than reductions of available tripper hours, both kinds of hours reductions, when due to subcontracting, involve the potential for the sort of harm to existing employes which Art. I appears intended to avoid.

The City's acknowledged right to periodically alter tripper hours available to Transit employes by adjusting its level of service does not necessarily include the additional right to reduce tripper hours available to Transit employes while maintaining the level of services through subcontracting. While trippers have routinely been added and eliminated periodically by the City without Union consent, there is only one prior instance of record in which the City subcontracted a tripper previously performed by bargaining unit personnel. In that instance, the City posted a January, 1990 notice to Transit employes announcing the elimination of the Neenah-Menasha tripper(s). That notice made no mention of subcontracting, leaving questions about whether the Union can be charged with knowledge of the subcontracting in the circumstances. Putting those questions aside, and assuming that the pertinent contractual provisions were the same in 1990 as in the Agreement, the Arbitrator nonetheless finds that one ungrieved instance is an inadequate basis on which to base a binding determination as to the parties' mutual understanding about the meaning of "hours" in Art. I when read as a part of the Agreement as a whole. Especially so given the Art. XVIII emphasis on the importance of the Arbitrator basing his decision on his interpretation of the express language of the Agreement, and the Arbitrator's conclusion, for reasons noted above, that the express language of the Agreement as a whole supports the Union's proposed interpretation much better than it supports the City's.

Finally, the Arbitrator finds unpersuasive the City's contention that the Union has not shown that any bargaining unit employe's hours were reduced by the subcontracting of the Industrial Park trippers. By all accounts, no tripper historically offered to bargaining unit Transit employes has ever gone unbid. It is therefore reasonable to conclude that, had the Industrial Park trippers been offered to bargaining unit Transit employes rather than subcontracted, two more bargaining unit employes would have successfully bid for and accepted trippers during the non-summer portion of the subcontract than in fact did so. On the other hand, it is also reasonable to assume that those two employes in fact worked more doubles than if they had been working an Industrial Park tripper. However, the record does not persuasively establish either that the hours of those two employes or the bargaining unit as a group were unaffected by the subcontracting of the Industrial Park trippers. The logic of the Union's arguments that the unit suffered a net loss, coupled with the relatively small number of instances in which no one in the bargaining opted to accept available doubles, outweighs Cass' conclusory testimony to the effect that his review of pay records satisfied him that the bargaining unit worked no fewer hours because of the Industrial Park subcontracting.

For the reasons noted above, the Arbitrator concludes that the City reduced the hours of bargaining unit Transit employes in violation of Art. I when it subcontracted the Industrial Park trippers.

Remedy

The first question regarding remedy is whether the Arbitrator's remedial authority is limited to granting the relief requested on the face of the grievance, to wit, "to give work lost by Union employes back to transit department." The City's contention to that effect finds some support in the portion of the Art. XVIII-Grievance Procedure language which reads, "All grievances and solution [sic] shall be put in writing and presented to the personnel office." While the Union first clearly requested make whole relief when the merits of the grievance were heard in February of 1995, technically speaking, the grievance contained the only "solution" that the Union had put in writing to the personnel office until the Union's initial brief regarding the merits of the grievance was forwarded to Department of Administration Director Norbert Svatos and Assistant City Attorney Lynn Lorenson on March 28, 1995. However, because the Agreement does not expressly prohibit the Union from amending the grievance at any time during its processing, the Union's relief request in its brief can, technically speaking, be viewed as an amendment of the relief request set forth in the grievance.

Such technicalities are not the proper focus of this analysis, however. The instant grievance has been previously determined to be properly before the Arbitrator for disposition. A grievance arbitrator's remedial authority is broad enough to include granting make whole relief unless it is limited by the underlying collective bargaining agreement or by the statement of the issues submitted by the parties. Simply stated, neither the Agreement nor the Stipulated Issue limits the Arbitrator's remedial authority by mandating that he accept the relief requested on the face of the grievance or the relief subsequently requested by the Union or the relief proposed by the City.

There remains the question of whether the circumstances of the development of this case make it inequitable to grant relief in addition to that initially requested in the grievance. On balance the Arbitrator concludes that they do not. In the context of the ungrieved subcontracting of the Neenah-Menasha tripper in 1990, the absence of an immediate Union response to Huddleston's July 28, 1993 memorandum makes this a close question. However, the City has not been shown to have continued the subcontract in reliance on the limited relief requested in the grievance. Nor would such reliance have been reasonable in the circumstances. Make whole relief is a conventional remedial element in a case of this kind; the grievance itself refers to "work lost" by Union employes; the Union's December, 1993, arguments about arbitrability stressed that the grievance was timely filed in relation to the date when the Union knew bargaining unit employes were experiencing reduced hours due to the subcontracting; and there is no contention or showing that the Union ever assured the City that it would not amend its relief request to include make whole relief if the "work lost" was not promptly returned to the bargaining unit as requested in the grievance. If the City had terminated the subcontract within a reasonable period of time following the filing of the grievance, the City's case would have been strong for limiting the relief to the action already taken by the City. After continuing the subcontract in effect for some 16 months, the City's case in that regard is less persuasive for the reasons noted above.

For those reasons, the Arbitrator rejects the City's contention that the remedy in this case must or should be limited to the relief requested by the Union.

The Arbitrator finds it appropriate to grant make whole relief to the affected bargaining unit employes who experienced a reduction of hours due to the Industrial Park subcontracting. Because the subcontract in question has been terminated, there is no need for a remedial element specifically addressing that aspect of the case.

Consistent with the expressed preference of both parties, the Arbitrator leaves it to the parties in the first instance to work out which employes lost what in the circumstances, and the Arbitrator has reserved jurisdiction to resolve any disputes that the parties are unable to resolve regarding the meaning and application of the remedy.

DECISION AND AWARD

For the foregoing reasons and based on the record as a whole, it is the decision and award of the Arbitrator on the STIPULATED ISSUE noted above that

> The disposition of the September 8, 1993, grievance shall be as follows:
>
> A. The City violated Agreement Art. I by reducing bargaining unit Transit employes' hours due to its subcontracting work consisting of the Industrial Park trippers from September 1, 1993 through December of 1994.
>
> B. By way of remedy for that violation, the City, its officers and agents, shall immediately make the affected bargaining unit Transit employes whole, without interest, for the pay they lost due to the violation noted in A, above.
>
> C. The Arbitrator retains jurisdiction for the sole purpose of resolving, at the request of either party, any dispute(s) that may arise concerning the meaning and application of the remedy set forth in B, above.

Dated at Shorewood, Wisconsin this 18th day of July, 1995.

By Marshall L. Gratz /s/
Marshall L. Gratz, Arbitrator