BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

IOWA COUNTY PROFESSIONAL EMPLOYEES UNION, LOCAL 413, AFSCME, AFL-CIO

and

IOWA COUNTY

Case 100
No. 57522
MA-10662

Appearances:

Mr. David White, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite B, Madison, Wisconsin 53717-1903, appearing on behalf of the Union.

Bell, Metzner, Gierhart & Moore, S.C., by **Attorney Mark Hazelbaker**, 44 East Mifflin Street, P.O. Box 1807, Madison, Wisconsin 53701-1807, appearing on behalf of the County.

ARBITRATION AWARD

Iowa County Professional Employees Union, Local 413, AFSCME, AFL-CIO, hereinafter Union, and Iowa County, hereinafter County or Employer, are parties to a collective bargaining agreement that provides for the final and binding arbitration of grievances arising thereunder. The Union requested, and the County concurred, in the appointment of a Commission staff arbitrator to resolve a pending grievance. The undersigned was so designated on May 13, 1999. An arbitration hearing was held in Dodgeville, Wisconsin, on June 29, 1999. The hearing was transcribed. The record was closed on August 9, 1999, upon receipt of post-hearing written argument.

ISSUE

The parties stipulated to the following statement of the issue:

Has the Employer violated the collective bargaining agreement in the manner in which it compensated the Grievant?

If so, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

Article 1 – Recognition

1.01 Bargaining Unit: The Employer recognizes the Union as the sole and exclusive collective bargaining agent for all regular full-time and part-time professional employees of Iowa County, including social workers, juvenile court intake workers, soil conservationist, soil conservation technicians, community health nurses, programmer analyst, senior systems analyst, and sanitarian/ assistant zoning administrators, but excluding all supervisory, managerial and confidential employees, for the purposes of collective bargaining on matters concerning wages, hours and all other conditions of employment.

1.02 Regular Full-Time Employee:

a) Social Services: Regular full-time is defined as an employee who works eight (8) hours per day, forty (40) hours per week.

b) Land Conservation: Regular full-time is defined as an employee who works an average of forty (40) hours per week.

c) Community Health: Regular full-time is defined as an employee who works thirty-five (35) hours per week.

d) Juvenile Court: Regular full-time is defined as an employee who works thirty-five (35) hours per week.

e) Programmer/Analyst; Senior System Analyst: The normal work week shall be thirty-five (35) hours per week, Monday through Friday.

f) Sanitarian/Assistant Zoning Administrator: Regular full-time is defined as an employee who works forty (40) hours per week.

1.03 Regular Part-Time Employee: Regular part-time is defined as an employee who is regularly scheduled to work half time or more of the normal work day, work week. Part-time employees who work half time or more shall receive prorated fringe benefits (e.g., seniority, vacation, sick leave, county

contribution to insurance plans) based on the hours the part-time employees are regularly scheduled to work (excluding overtime) in proportion to the hours full-time employees are regularly scheduled to work (excluding overtime).

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Article 3 – Management Rights

3.01 The Union recognizes the prerogatives of the County to operate and manage its affairs in all respects in accordance with its responsibility and powers or authority which the County has not officially abridged, delegated or modified by this Agreement and such powers or authority are retained by the County. These management rights include, but are not limited to the following:

a) To direct all operations of the County.

b) To establish reasonable work rules and schedules of work.

c) To hire, reclassify, promote, transfer, schedule and assign employees in positions within the department.

d) To suspend, demote, discharge or take other disciplinary action against an employee for just cause.

e) To layoff employees subject to the requirements of Article 9.

f) To maintain efficiency of County operations.

g) To take whatever action necessary to comply with state and federal laws.

h) To determine the kinds and amounts of services to be performed as pertains to County operations, and the number and kinds of classifications to perform such services.

i) To establish reasonable uniform standards of job performance.

j) To determine the competence and qualifications of employees.

k) To contract out for goods or services.

l) To take whatever action is necessary to carry out the functions of the County in situations of emergency.

m) To determine the methods, means and personnel by which County operations are to be conducted.

All of which shall be in compliance with and subject to the provisions of this Agreement.

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Article 7 – Job Posting

7.01 Job Posting: Whenever there shall be a job opening or a new job created within the bargaining unit that the Employer intends to fill, the Employer shall post a notice on all designated bulletin boards. Such notice shall provide the job title, rate of pay and a place for each interested employee to sign their name. Such notice shall remain posted for five (5) working days before assignment of an employee is made. The Employer agrees to notify the Union in writing of job openings that will not be filled. If there are not qualified employees from within the bargaining unit, the County retains the right to advertise the position.

7.02 Selection: In filling open positions, the Employer shall make the appointment on the basis of qualifications and abilities of those persons applying for said positions. When qualifications and abilities are relatively equal, promotion shall be made on the basis of seniority.

7.03 Trial Period: The employee who receives the position shall serve a sixty (60) working day trial period in the position. When the County determines an employee is not qualified or the employee does not desire the position, within said period, he/she shall be returned to his/her former job at his/her former rate of pay with no loss in other benefits.

7.04 Temporary Filling of Vacancies: Nothing contained in this article shall prevent the County from temporarily filling a job vacancy for up to one (1) year.

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Article 8 – Hours

8.01 Work Day, Work Week:

a) Social Services: The normal work day shall be eight (8) hours per day, 8:00 a.m. to 4:30 p.m., and the normal work week shall be forty (40) hours per week, Monday through Friday, for regular full-time employees. The Employer

may in its discretion schedule employees to begin work at 7:30 a.m., or end work at 5:00 p.m. without accrual of overtime or compensatory time provided the employee is not scheduled to work more than eight (8) hours in a given day. The lunch period for all employees shall be one-half (½) hour.

b) Land Conservation: The normal work week shall be forty (40) hours per week, Monday through Friday, for regular full-time employees. The present practice of beginning work at 7:00 a.m., depending on the needs of the workplace, shall be maintained. The lunch period for all employees shall be one-half (½) hour.

c) Community Health: The normal work week shall be thirty-five (35) hours per week, Monday through Friday. The present departmental practices regarding the starting and quitting times for each workday, as well as the length and timing of lunch periods shall be maintained.

d) Juvenile Court: The normal work week shall be thirty-five (35) hours per week, Monday through Friday. The present departmental practices regarding the starting and quitting times for each workday, as well as the length and timing of lunch periods shall be maintained.

e) Programmer/Analyst; Senior System Analyst: The normal work week shall be thirty-five (35) hours per week, Monday through Friday.

f) Sanitarian/Assistant Zoning Administrator: The normal work week shall be forty (40) hours per week, Monday through Friday.

8.02 Overtime & Compensatory Time: Employees shall have the choice of receiving either time and one-half (1½) their straight time hourly rate or compensatory time off at the rate of time and one-half (1½), for all hours worked in excess of their normal work hours. Holidays shall be considered as time worked in computing normal hours. Compensatory time shall be scheduled by mutual agreement between the employee and his/her supervisor. Any accumulated compensatory time in excess of five regular working days will be paid out semi-annually (January 1, and July 1) at a rate of time and one-half (1½) of the employee's wage rate when earned. It is understood that the five (5) working day bank is intended solely to reflect the maximum allowable carry over of compensatory hours from half-year to half-year, and shall not be interpreted as restricting the employee's right at any time to receive time and one-half (1½) pay for any or all banked hours upon request.

All paid time shall be considered as time worked in computing normal hours.

8.03 Flexible Work Schedules: Employees shall be permitted to establish a flexible work schedule, by mutual agreement between the employee and the Employer. The flexible work schedule may be proposed by either the Employer or the Employees.

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21.05 On Call Policy and Rates: Employees who are on call shall be furnished with a pager and shall be required to remain within the range of the pager (not to exceed 35 miles) while on call. On call assignments shall be rotated among Social Services and Juvenile Court Intake employees on a weekly basis. The Employer will make arrangements within the time limits required by law after hire for new employees to enroll in necessary intake training courses provided for by the State of Wisconsin. Any new employee hired with the certificate from said training shall be placed in the rotation within thirty (30) days of hire. Employees will be paid one hundred sixty dollars ($160.00) per week, in addition to their regular salaries for every week they serve on call. Employees who are called out for work outside of their normal work hours while on call shall be entitled to receive compensatory time in accordance with Article 8. On-call employees called in to work on a holiday shall be paid time and one-half for each hour worked, plus holiday pay.

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BACKGROUND

Michele Klusendorf, hereafter Grievant, initially worked for the County in the early 1980's. The Grievant left County employment for approximately two years. In 1987, the Grievant returned to County employment as a regular full-time Social Worker II.

In June of 1991, the Grievant and three other employes entered into a job-sharing agreement. Under this job-sharing agreement, three employes shared two full-time positions. The job-sharing agreement governed, inter alia, hours worked; the pro-ration of fringe benefits; and various compensation factors.

The Grievant continued to work under various job-sharing agreements involving her Social Worker II position until the fall of 1994. At that time, the Grievant left the job-sharing arrangement to take a half-time Juvenile Court Intake Worker position of 17½ hours per week.

The Grievant worked a regularly scheduled workweek of 17½ hours per week until November of 1995. At that time, the Grievant assumed the full-time position of a co-worker

who was on maternity leave. This full-time position was 35 hours per week. The Grievant continued to work in this full-time position until the end of April of 1996, at which time she returned to her half-time Juvenile Court Intake Worker position of 17½ hours per week.

In late October of 1996, the Union and the County entered into the following:

MEMORANDUM OF UNDERSTANDING

The Parties to this Agreement, the County of Iowa (Social Services Department) (hereinafter, the "County") and Iowa County Professional Employees Union, Local 413 (hereinafter, the "Union"), hereby agree as follows:

1. SCOPE: The County agrees to implement a job sharing program for the Juvenile Court Intake Workers. Ms. Mary Jo Michek and Ms. Michele Klusendorf shall be the only employees covered by this Memorandum of Understanding and it is expressly understood that no other employee is eligible or entitled to participate in the job sharing program.

2. HOURS: The Parties agree that the employees named in paragraph one, above, shall share one and one-half full-time equivalent positions. Both employees shall work 75% of a 35 hour work week. The employees' work weeks shall be scheduled mutually by the juvenile court intake worker and the Judge. Compensated time in excess of the 75% of the thirty-five (35) hour weekly schedule, but not in excess of thirty-five (35) hours, shall be paid as compensatory time off on an hour for hour basis. Compensated time in excess of thirty-five (35) hours in a week shall be compensated as the employees' choice of pay or compensatory time off, at the rate of time and one half. It is understood that time worked while on-call shall be compensated at the time and one half rate (pay or compensatory time).

3. BENEFITS: The Parties agree that all employee benefits, including insurance, vacation, sick leave, and holiday pay shall be prorated. The aggregate cost of payment for such benefits shall be based on and in no case shall exceed the projected cost of the same benefits for one and one-half full time staff members.

4. ADJUSTMENT OF WORK HOURS:

a. If Ms. Michek resigns, Ms. Klusendorf shall return to half-time employment and this Memorandum of Understanding will be deemed terminated in its entirety, unless the Parties mutually agree to other arrangements. If Ms. Klusendorf resigns, Ms. Michek shall return to full-time employment and this Memorandum of Understanding will be deemed terminated in its entirety, unless the Parties mutually agree to other arrangements.

b. If either employee wishes to return to her previous status, Ms. Michek will return to full time employment and Ms. Klusendorf will return to half-time employment. The employee so wishing to return to her previous status shall give sixty (60) days advance notice of her intentions to the other employee covered by this Memorandum of Understanding and to the County.

5. INTENT AND PURPOSE: Conditions of employment for employees covered by this Memorandum of Understanding shall be as set forth in the parties (sic) collective bargaining agreement. However, the parties recognize the experimental nature of this program and that the collective bargaining agreement will not be controlling when incompatible with the terms of this program. The parties further recognize the need under this program to make agreed upon exceptions to the collective bargaining agreement from time to time in order to carry on the operations; however, exceptions to the collective bargaining agreement made for this purpose shall be non-precedential in any and all cases and shall not be binding on the County or the Union in interpreting the collective bargaining agreement.

6. COMPLETE AGREEMENT: The Parties agree that this is a full and complete Agreement and there are no other terms hereto.

7. VALIDITY OF AGREEMENT: The Parties agree that if this Memorandum of Understanding is declared invalid or unlawful, either on its face or in effect, by any tribunal of competent jurisdiction, this Memorandum of Understanding shall be deemed immediately terminated by the parties and shall have no further force or effect.

8. TERM OF AGREEMENT: The Memorandum of Understanding shall not be considered a part of the parties' collective bargaining agreement. The Memorandum of Understanding shall become effective on October 28, 1996, and shall expire in its entirety on October 28, 1997. All parties agree to discuss the conditions of this agreement prior to the end of this agreement. This Agreement may only be renewed thereafter on terms and for a period mutually agreeable to the parties.

WHEREFORE, the Parties have read the foregoing Memorandum of Understanding, fully understanding its terms, and agree to be bound thereto.

In October of 1997, the Union and the County entered into the following:

MEMORANDUM OF UNDERSTANDING

The Parties to this Agreement, the County of Iowa (hereinafter, the "County") and Iowa County Professional Employees Union, Local 413 (hereinafter, the "Union"), hereby agree as follows:

1. SCOPE: The County agrees to implement a job sharing program for the Juvenile Court Intake Workers. Ms. Mary Jo Michek and Ms. Michele Klusendorf shall be the only employees covered by this Memorandum of Understanding and it is expressly understood that no other employee is eligible or entitled to participate in the job sharing program.

2. HOURS: The Parties agree that the employees named in paragraph one, above, shall share one and one-half full-time equivalent positions. Both employees shall work 75% of a 35 hour work week. The employees' work weeks shall be scheduled mutually by the juvenile court intake worker and the Judge. Compensated time in excess of the 75% of the thirty-five (35) hour weekly schedule, but not in excess of thirty-five (35) hours, shall be paid as compensatory time off on an hour for hour basis. Compensated time in excess of thirty-five (35) hours in a week shall be compensated as the employees' choice of pay or compensatory time off, at the rate of one and one half. It is understood that time worked while on-call shall be compensated at the time and one half rate (pay or compensatory time).

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WHEREFORE, the Parties have read the foregoing Memorandum of Understanding, fully understanding its terms, and agree to be bound thereto.

The Grievant continued to work under the Juvenile Court Intake Worker job sharing agreement through the end of February, 1999. At that time, the job sharing agreement was dissolved due to the fact that the Grievant's co-worker had left her Juvenile Court Intake Worker position.

Prior to March 1, 1999, understanding that a number of people were leaving the agency, the Grievant told her supervisor that, in the absence of new people, she would be willing to take the vacant positions and work additional hours. In response to this offer, supervisor Donna Weidman advised the Grievant that, beginning March 1, 1999, the Grievant would work full time for approximately six weeks. The Grievant understood this full-time position to be a thirty-five hour per week position and began to work in this position on March 1, 1999. Following the Grievant's conversation with her supervisor, two employes left positions, creating four vacancies.

On March 1, 1999, the County posted a Social Worker II position with a work schedule of "Part-time 20 hours/wk." The Grievant posted for this position. In a letter dated March 17, 1999, County Personnel Director Jan Hollaway-Falk notified the Grievant that she had been awarded the Social Worker II position, effective March 9, 1999. This letter further stated "Good luck to you Michele as you assume your new position as a part-time (i.e., 20hrs./wk.) Social Worker II."

When the Grievant asked her supervisor when she could be reduced to twenty hours per week, the Grievant received no response. The Grievant has worked thirty-five hours per week since March 1, 1999.

On March 26, 1999, the Grievant filed a grievance alleging that, at the direction of her supervisor, she had been working 35 hours per week since March 1, 1999. The Grievant further alleged that the County had not adjusted her pro-rated benefits and that the County had violated Sec. 8.02 of the parties' collective bargaining agreement by paying her for straight time, rather than overtime, for the additional hours worked by the Grievant.

The Grievant requested compliance with the parties' collective bargaining agreement. The Grievant further requested overtime at time and one-half for (1) all hours worked in excess of 17½ hours/week from March 1, 1999 through March 8, 1999, and (2) all hours worked in excess of 20 hours/week effective March 9, 1999.

On April 5, 1999, the Personnel Director, issued the following:

> The Committee on Salary and Personnel at their March 30, 1999 meeting reviewed your grievance dated 3-25-99 received by the Personnel Department on 3-29-99. The committee reviewed your requests for overtime pay and

benefit accrual. Concerning the benefits, it is the committee's consensus that your benefits can accrue on the additional hours of work. The benefits include vacations, holidays, and sick leave.

In reviewing the Professional Employees Union agreement Article 8 – Hours sub-section 8.01 Work Day, Work Week:

a) Social Services: The normal workday shall be eight (8) hours per day, 8:00a.m. (sic) to 4:30p.m., (sic) and the normal work week shall be forty (40) hours per week, Monday through Friday, for regular full-time employees. The employer may in its discretion schedule employees to begin work at 7:30a.m., (sic) or end work at 5:00p.m. (sic) without accrual of overtime or compensatory time provided the employee is not scheduled to work more than eight (8) hours in a given day. The lunch period for all employees shall be one-half (1/2) hour.

Michele, the committee members believe that the agreement language of a normal work day, work week language is not being violated. Your request for overtime pay for workdays of 8 hours length or less is denied. If you have further questions please call 938-0302.

The grievance was denied at all steps and, thereafter, submitted to arbitration.

POSITIONS OF THE PARTIES

Union

Where, as here, contract language is clear and unambiguous, the language is to be given its plain meaning. Sec. 8.02 of the parties' labor contract clearly and unambiguously provides that employes are to receive time and one-half compensation for "all hours worked in excess of their normal work hours . . ." (Emphasis added). Unlike other contracts, overtime payment is not linked to a forty-hour workweek, or an eight-hour day.

Unquestionably, the Grievant's "normal work hours" are 17½ hours per week when she was a Juvenile Court Intake Worker and 20 hours per week when she was awarded the Social Worker II position. Inasmuch as the Grievant has been working in excess of her "normal work hours," the Grievant is entitled to Sec. 8.02 overtime.

Initially, the County's Finance Director claimed that all hours worked up to 35 hours per week were paid at straight time. In later testimony, she admitted that hours worked in response to a pager call is paid at time and one-half, regardless of the weekly hours worked, and that hours worked "late" are paid as overtime.

The Grievant's 1994, 1995, and 1996 biweekly time reports indicate that, when the Grievant worked outside of her normal work hours, she earned overtime compensation. Thus, the practices of the parties support the Union's position that part-time employes receive overtime for hours worked between the hours of their awarded position and the full-time hours applicable to that position.

For example, during the period of October 30 to November 13, 1995, the Grievant's normal work hours were 17½ hours, consisting of a full day on Monday and Tuesday and a half-day on Wednesday. The Grievant received 1.5 hours of compensatory time for work performed on Friday, November 3 and 0.5 hours of compensatory time for work performed on Sunday, November 5.

During the two week period, October 16 - 29, 1995, the Grievant received overtime compensation for pager call duties on Friday, October 20, and Saturday, October 21. At that time, the Grievant had not worked more than seven hours on either day. Nor had she worked more than 35 hours in either week. With respect to pager duty, the contract provides that:

> Employees who are called out for work outside of their normal work hours while on call shall be entitled to receive compensatory time in accordance with Article 8.

The Grievant received the pager pay because she worked outside her normal work hours. Similar examples occur in the following payroll periods: October 2 – 15, 1995; September 4 – 17, 1995; August 21 – September 3, and nearly every other payroll period as well.

During the payroll period beginning March 20, 1995, the Grievant worked her regular two full days, Monday and Tuesday, and on Wednesday worked ½ hour more than her normal work hours and received ½ hour of overtime. When Court ran past 3.5 hours on February 9, 1995, the Grievant received 1.5 hours of overtime for working between 1:00 p.m. and 2:30 p.m. These payroll records, particularly County Exhibit 5, demonstrate a practice that is consistent with the plain language of Sec. 8.02 and the Union's stated position.

From November, 1995 through the end of April, 1996, the Grievant worked full time without overtime compensation. During that time period, the Union negotiated a specific arrangement with the County whereby the Grievant would work full time and receive full-time

health insurance benefits in lieu of receiving overtime pay. Exceptions to the overtime rule have been made by specific bilateral negotiations between the Union and the County. No such exception exists here.

The Grievant is contractually entitled to receive overtime compensation for hours worked in excess of her normal work hours. The Grievant's normal work hours were 17½ hours per week when she worked as a Juvenile Court Intake Worker and 20 hours per week when she became a Social Worker II. Since March 1, 1999, the Grievant has worked in excess of her normal work hours.

The Arbitrator should sustain the grievance. The Arbitrator should order the Grievant made whole for all losses she has suffered as a result of the County's violation of the labor agreement.

County

Under the plain language of the labor contract, the Employer may schedule part-time employes to work as needed, without incurring the obligation to pay overtime, unless the regular full-time hours are exceeded. The material labor contract provisions are Sec. 1.03; Sec. 3.01(c); Sec. 8.01(a), and Sec. 8.02.

Contrary to the argument of the Union, the collective bargaining agreement does not recognize a set of "normal" hours for part-time employes. Rather, the overtime language of Sec. 8.02 relates to the "normal" hours of regular full-time employes that are specified in Sec. 8.01. Unlike full-time employes, there is no contract language that defines "normal" work hours of part-time employes.

Sections 3.01 and 1.03 provide the County with the right to schedule employes from half time to full time. There is no contract language that states that a part-time employe's "normal" hours are those stated in the employe's job posting. Indeed, Sec. 1.03 explicitly recognizes that part-time employes work a schedule that is other than "normal" hours when it defines a part-time employe as one who is regularly scheduled to work half or more of the "normal" work hours.

The contract does not prohibit the County from abolishing the 20-hour position and posting a position with hours stated as "20 to 40" per week, or filling it as a full-time position. It makes no sense to argue that the Grievant should be paid overtime for work that the County is able to obtain at straight time from a regular full-time employe.

A past practice may not be established by showing one or two instances of a particular action or omission by an employer. Nor can it modify clear contract language.

The Union's only evidence of past practice came from the Grievant and relates to letters of agreement that are not precedential. The County's Finance Director, who reviewed the Grievant's time sheets, found no instance in which the Grievant received time and one-half for hours worked less than 35 hours per week or eight per day. The County's Finance Director also stated that her review of other professional employe payroll records failed to reveal any evidence that an employe was paid time and one-half for hours worked less than full time.

The Union has failed to establish a binding, continuing practice. The Arbitrator must apply the plain language of the agreement and may not add a new provision to the agreement. The grievance is without merit and should be denied.

DISCUSSION

The County argues that Sec. 3.01 and Sec. 1.03 of the parties' collective bargaining agreement provides the County with the right to schedule a part-time employe to work full time. The Union, however, does not contest the right of the County to schedule the Grievant to work thirty-five hours per week. Rather, the Union takes issue with the compensation paid to the Grievant for working thirty-five hours per week.

Specifically, the Union argues that the County violated Sec. 8.02 of the parties' collective bargaining agreement by compensating the Grievant at straight time, rather than overtime, for all hours worked in excess of the Grievant's "normal work hours." According to the Union, the Grievant's "normal work hours" were 17½ hours per week from March 1, through March 8, 1999, and 20 hours per week, effective March 9, 1999.

The County denies that Sec. 8.02 requires the County to compensate part-time employes for hours worked in excess of their "normal" part-time hours. According to the County, Sec. 8.02 requires that overtime be paid for hours worked in excess of the normal work hours of a regular full-time employe, as identified in Sec. 8.01.

Contract Language

Sec. 8.02 of the parties' collective bargaining agreement, in relevant part, states:

> Employees shall have the choice of receiving either time and one-half (1½) their straight time hourly rate or compensatory time off at the rate of time and one-half (1½), for all hours worked in excess of their normal work hours. . . .

The word "Employees" is not modified. Thus, the plain language of Sec. 8.02 supports the Union's position that all bargaining unit employes, including part-time employes, are entitled to overtime for all hours worked in excess of the employe's "normal" work hours.

Sec. 8.02, however, does not stand alone. Rather, it must be construed in a manner that is consistent with other provisions of the collective bargaining agreement.

As the County argues, Sec. 8.01 sets forth the "normal work day" and "normal work week" of regular full-time employes, but is silent with respect to part-time employes. The fact that Sec. 8.02 directly follows Sec. 8.01, gives rise to an inference that "normal work hours," as that term is used in Sec. 8.02, relates back to the "normal work day" and "normal work week" set forth in Sec. 8.01. With such an inference, the phrase "their normal work hours" would be a reference to the "normal work hours" of regular full-time employes.

As the County further argues, under Sec. 1.03, a regular part-time employe is defined as "an employee who is regularly scheduled to work half-time or more of the normal work day, work week." (Emphasis supplied). This language, which recognizes that part-time employes work a portion of the "normal work day, work week," supports the inference that a contractual reference to "normal work hours" is a reference to the "normal work hours" of regular full-time employes.

In summary, the plain language of Sec. 8.02 supports the conclusion that overtime is paid on all hours worked in excess of the individual employe's "normal work hours." Taken as a whole, however, the most reasonable construction of the contract language is that "normal work hours," as that term is used in Sec. 8.02, are the normal work hours of regular full-time employes, as identified in Sec. 8.01.

Such a construction would also be consistent with common work practices. While it may not be, as the County argues, nonsensical to pay a part-time employe overtime for working a schedule for which a regular full-time employe would be paid straight time, it would be atypical.

The relevant contract language is not clear and unambiguous. Thus, it is appropriate to review "past practices" for evidence of a mutual intent with respect to the meaning of Sec. 8.02.

Past Practices

The County introduced the Grievant's biweekly payroll records, commencing July 23, 1994, and ending on November 10, 1996. For the reasons discussed below, not all of these payroll records are relevant to the issue in dispute.

The Grievant was under a job sharing agreement that, by its terms, was effective October 28, 1996. The job sharing agreement governed various conditions of employment, including work hours, pro-ration of benefits, and overtime compensation. Such a specific agreement does not give rise to a general contract right. Especially where, as here, the job sharing agreement expressly recognizes that the agreement may be inconsistent with provisions of the collective bargaining agreement and that any exceptions to the collective bargaining agreement are non-precedential. Accordingly, the Arbitrator has limited her consideration of "past practice" to the payroll periods in which the Grievant was not subject to a job sharing agreement.

The Grievant recalls that she was not under a job sharing agreement at the time that she became a half-time Juvenile Court Intake Worker in the fall of 1994. The Grievant further recalls that she did not enter into another job sharing agreement until 1996, when she and another employe split one and one-half positions and each worked 26½ hours per week. According to the Grievant, she continued in a job sharing agreement until March 1, 1999.

The Grievant did not recall the exact date on which she accepted the half-time Juvenile Court Intake Worker position in the fall of 1994. The payroll records indicate that she began working this schedule on October 3, 1994.

The record indicates that the Grievant was not under a job sharing agreement from October 3, 1994 through October 27, 1996. Hence, the payroll records from this period have been reviewed for evidence of "past practice."

The Grievant recalls that, in November of 1995, she assumed the full-time Juvenile Court Intake Worker position of a co-worker who was on maternity leave. The Grievant further recalls that she continued in that full-time position through the end of April of 1996.

According to the Grievant, this full-time position was the subject of an agreement between the Union and the County. The Grievant recalls that she conditioned her acceptance of the full-time position upon receiving full-time health insurance benefits. Contrary to the argument of the Union, neither the Grievant's testimony, nor any other record evidence, demonstrates that the parties agreed that the Grievant would receive health insurance in lieu of overtime pay for hours worked in excess of 17½ hours per week. In fact, it is not evident that the parties had any discussion concerning overtime pay at the time that the Grievant assumed the full-time Juvenile Court Intake Worker position.

Sec. 8.01 recognizes that the "normal work hours" of regular full-time employes consist of a "normal work week" and a "normal work day." Sec. 8.01(d) defines the normal work week of a regular full-time Juvenile Court Intake Worker as "thirty-five (35) hours per week, Monday through Friday." The collective bargaining agreement does not identify the

"normal work day" of a Juvenile Court Intake Worker, except to state: "The present departmental practices regarding the starting and quitting times for each workday, as well as the length and timing of lunch periods shall be maintained."

At the time that the Grievant worked as a full-time Juvenile Court Intake Worker, her regularly scheduled hours were 8:30 a.m. to Noon and 1:00 to 4:30 p.m., Monday through Friday. One may reasonably conclude, therefore, that these hours are within the "normal work day" of a regular full-time Juvenile Court Intake Worker.

The payroll records indicate that, during the time that the Grievant was a full-time employe, the Grievant received overtime for hours worked on Saturday and, on weekdays, for hours worked in excess of her normal work day. Given the fact that the Grievant's "normal work hours" were also the "normal work hours" of a regular full-time employe, the evidence of these overtime payments is consistent with either party's interpretation of Sec. 8.02.

When the Grievant was a part-time Juvenile Court Intake Worker, she held a half-time position of 17½ hours per week and was regularly scheduled to work 17½ hours per week. It is reasonable to conclude, therefore, that the Grievant's "normal work hours" were 17½ hours per week.

The payroll records indicate that, as a part-time employe, the Grievant received overtime for work performed on a Saturday or Sunday, including work performed in response to pager calls. On the weekdays in which the Grievant worked a "normal work day" of a regular full-time employe, the Grievant received overtime for hours worked outside of this "normal work day." The hours that generated these overtime payments were in excess of the Grievant's "normal work hours." These overtime payments were also in excess of the "normal work day" and "normal work week" of a regular full-time Juvenile Court Intake Worker. Inasmuch as the evidence of these overtime payments is consistent with either party's interpretation of Sec. 8.02, it is inconclusive.

During the period that the Grievant was a part-time employe, she received overtime for other work performed Monday through Friday, including pager call work. The payroll records establish that this overtime was for hours worked in excess of the Grievant's "normal work hours." However, unlike the work discussed above, the payroll records do not establish whether this work was performed within, or without, the "normal work day" of a regular full-time employe. The evidence of these overtime payments is consistent with the Union's interpretation of Sec. 8.02, but does not disprove the County's interpretation of Sec. 8.02.

On Thursday, February 9, 1995, the Grievant worked five hours between 8:30 a.m. and 2:30 p.m. and received overtime for 1½ of these hours. On Thursday, March 23, 1995, the Grievant received ½ hour of overtime for work performed between 10:45 and 11:15 a.m. On Wednesday, April 26, 1995, the Grievant received 2 hours of overtime for work performed between 9:30 a.m. and 4:00 p.m. On Thursday, September 19, 1996, the Grievant received

7 hours of overtime for work performed between 8:30 a.m. and 4:30 p.m. On Thursday, October 17, 1996, the Grievant received 4½ hours of overtime for work performed between 8:30 a.m. and 5:30 p.m. On Friday, October 18, 1996, the Grievant received 7½ hours of overtime for work performed between 8:30 a.m. and 5:00 p.m.

Each of the above overtime payments include time worked in excess of the Grievant's "normal work hours," but within the "normal work week" and the "normal work day" of a regular full-time employe. Accordingly, the evidence of these overtime payments rebuts the County Finance Director's testimony that regular part-time employes, including the Grievant, do not receive overtime for work performed within the normal work hours of regular full-time employes. The evidence of these overtime payments is consistent with the Union's interpretation of Sec. 8.02 and is inconsistent with the County's interpretation of Sec. 8.02.

The payroll period beginning April 29, 1996, marks the return of the Grievant from full-time employment to her half-time employment of 17½ hours per week. In the second week of this payroll period, the Grievant worked 41½ hours, Monday through Friday. On each weekday, the Grievant received 7 hours of straight time for work performed between 8:30 a.m. and Noon and 1:00 p.m. to 4:30 p.m.

The above straight time payments include time worked in excess of the Grievant's "normal work hours," but within the "normal work hours" of a regular full-time employe. The evidence of these payments is consistent with the County's interpretation of Sec. 8.02 and is inconsistent with the Union's interpretation of Sec. 8.02.

In summary, during the period of time in which the Grievant was not subject to a job sharing agreement, the Grievant had "normal work hours" of 17½ hours per week for approximately twenty months. It is not evident that, within this twenty-month period, there were more than a dozen occasions on which the Grievant worked in excess of her "normal work hours," but within the "normal work hours" of a regular full-time Juvenile Court Intake Worker. When the Grievant did perform such work, she did not consistently receive overtime for this work. With respect to the question of whether or not the term "normal work hours," as used in Sec. 8.02, refers to an individual employe's normal work hours, or to the normal work hours of a regular full-time employe, the evidence of past practice is inconclusive.

Conclusion

As discussed above, the plain language of Sec. 8.02 supports the Union's position that overtime is paid on all hours worked in excess of the individual employe's "normal work hours." Taken as a whole, however, the contract language supports the County's position that "normal work hours," as that term is used in Sec. 8.02, are the normal work hours of regular full-time employes, as identified in Sec. 8.01.

Contrary to the argument of the Union, the evidence of past practice does not demonstrate that the term "normal work hours" refers to the normal work hours of the individual employe. Rather, as discussed above, the evidence of past practice is inconclusive.

For the reasons discussed below, the undersigned has rejected the Union's argument that the Grievant's "normal work hours" were 17½ hours per week, effective March 1, 1999, and 20 hours per week, effective March 9, 1999. Rather, the undersigned has concluded that, effective March 1, 1999, the Grievant's "normal work hours" were 35 hours per week. Given this conclusion, either party's interpretation of Sec. 8.02 would yield the same results. Accordingly, the Arbitrator need not decide, and does not decide, which interpretation of Sec. 8.02 was mutually intended by the parties.

Prior to March 1, 1999, the Grievant was subject to a job sharing agreement setting forth, inter alia, that the Grievant would work "75% of a 35 hour work week." By the terms of this agreement, the Grievant's right to this work week terminated at the end of February, 1999, when her job share partner left her position. The Grievant ceased working this schedule on the last working day of February, 1999, when the Grievant's job share partner left her position. Thus, prior to March 1, 1999, the Grievant did not occupy a 17½ hour per week position; was not regularly scheduled to work 17½ hours per week; and did not work 17½ hours per week.

Prior to the expiration of the job sharing agreement, the Grievant became aware of the fact that a number of people were leaving the agency and told her supervisor that she "would be willing in the absence of new people to take those positions." (T at 22) In response to this offer, the Grievant's supervisor advised the Grievant that, effective March 1, 1999, the Grievant would work full time for approximately six weeks.

The Grievant understood that this full-time employment consisted of 35 hours per week, which under Sec. 8.01(d), is the normal work week of a regular full-time Juvenile Court Intake Worker. Effective March 1, 1999, the Grievant assumed this temporary full-time position.

By the terms of the Grievant's job sharing agreement, the departure of her job share partner entitled the Grievant to return to half-time employment, i.e., 17½ hours per week. The Grievant, however, did not return to half-time employment upon the expiration of her job sharing agreement. Rather, the Grievant assumed a temporary full-time position of 35 hours per week. Thus, effective March 1, 1999, the Grievant did not occupy a 17½ hour per week position; was not regularly scheduled to work 17½ hours per week and did not work 17½ hours per week.

On March 1, 1999, the Grievant posted for a 20-hour per week Social Worker II position and, on March 17, 1999, the Grievant was awarded this 20-hour per week Social

Worker II position, effective March 9, 1999. While the record is not entirely clear on this issue, it appears that, effective March 9, 1999, the Grievant was reclassified from a Juvenile Court Intake Worker to a Social Worker II.

It is not evident that this reclassification from Juvenile Court Intake Worker to Social Worker II resulted in any change in the Grievant's job duties. It is evident that the Grievant was not scheduled to work 20 hours per week and did not work 20 hours per week.

When the Grievant asked her supervisor when her hours would be reduced to 20 hours per week, the Grievant received no response. The undersigned notes that, at the time the Grievant offered to work additional hours, there were two vacancies in her agency. Subsequently, two more positions became vacant.

As discussed above, the Union does not contest the County's right to schedule the Grievant to work 35 hours per week. While the Union would have the Arbitrator conclude that, effective March 9, 1999, the Grievant's "normal work hours" are those set forth in the job posting, the language of Sec. 8.02 does not mandate such a conclusion.

Nor does the evidence of past practice. Rather, the evidence of past practice indicates that when the Grievant had "normal work hours" of 17½ hours per week, her posted position was 17½ hours per week and the Grievant's regular work schedule was 17½ hours per week.

Moreover, to accept the Union's argument that "normal work hours" are the work hours of an employe's posted position would be to ignore the language of Sec. 7.04. This language expressly recognizes that the rights granted to employes under Article 7-Job Posting shall not "prevent the County from temporarily filling a job vacancy for up to one (1) year."

The Grievant recalls that, when she previously assumed a temporary full-time position, she did so pursuant to a specific agreement between the Union and the County. Sec. 7.04, however, does not limit the County's right to temporarily fill a job vacancy to those instances in which there is a specific agreement between the Union and the County. Nor is one instance of a specific agreement sufficient to demonstrate a binding past practice.

In summary, effective March 1, 1999, the Grievant was placed in a temporary full-time position of thirty-five hours per week and has consistently worked thirty-five hours per week. The undersigned is persuaded, therefore, that, effective March 1, 1999, the Grievant's "normal work hours" were 35 hours per week. Neither party's interpretation of Sec. 8.02 entitles the Grievant to receive overtime for hours worked in excess of 17½ hours per week from March 1, 1999 through March 8, 1999, or for hours worked in excess 20 hours per week, effective March 9, 1999.

Based upon the above and foregoing, and the record as a whole, the undersigned issues the following

AWARD

1. The Employer has not violated the collective bargaining agreement in the manner in which it compensated the Grievant.

2. The grievance is denied and dismissed.

Dated at Madison, Wisconsin, this 17th day of September, 1999.

Coleen A. Burns /s/
Coleen A. Burns, Arbitrator

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