BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

THE ASSOCIATION OF MENTAL HEALTH SPECIALISTS

and

ROCK COUNTY

Case 318
No. 57209
MA-10549

Appearances:

Mr. John S. Williamson, Jr., Attorney at Law, 103 West College Avenue, Suite 1203, Appleton, Wisconsin 54911, appeared on behalf of the Association.

Ms. Charmaine J. Klyve, Attorney at Law, Deputy Corporation Counsel, Rock County, 51 South Main Street, Janesville, Wisconsin 53545, appeared on behalf of the County.

ARBITRATION AWARD

On January 22, 1999, the Association of Mental Health Specialists and Rock County requested that the Wisconsin Employment Relations Commission appoint William C. Houlihan, a member of its staff, to hear and decide a grievance pending between the parties. Hearing on the matter was conducted on March 5, 1999, in Janesville, Wisconsin. A transcript of the proceedings was prepared and distributed by March 19, 1999. Post-hearing briefs were submitted and exchanged by May 14, 1999.

This Award addresses on call pay for certain bargaining unit employes.

BACKGROUND AND FACTS

Prior to April of 1997, Professional Human Services staff employed by Rock County were represented by three separate unions, in three separate collective bargaining units. Machinists Local 1266 represented Child Protective Services workers. The Teamsters Union represented Probation Workers, and the Association of Mental Health Specialists represented

Mental Health Counselors, Community Support Program Workers and some Nurses. There are statutory requirements that certain juvenile services be available 24 hours a day, 7 days per Week, which resulted in on-call systems being established. The County had long-standing collective bargaining agreements with the Machinists, the Teamsters, and AMHC, each of which had separate on-call provisions, including methods of payment.

The County initiated a Unit Clarification petition, which resulted in the consolidation of the three bargaining units into one. Pursuant to a Wisconsin Employment Relations Commission conducted election, AMHC was certified as the exclusive representative of all of the foregoing employes on or about April 21, 1997. The parties, AMHC and Rock County, thereafter entered into negotiations for a successor collective bargaining agreement. Those negotiations concluded on or about June 2, 1998. The term of the initial contract was January 1, 1996 through December 31, 1997. On or about August 6, 1998, the parties executed a successor agreement whose term was January 1, 1998 through December 31, 1999. The 1998-99 agreement was essentially identical to its predecessor, with the parties modifying only the salary and mileage provisions.

In the negotiations leading to a consolidated collective bargaining agreement, the Association proposed that the after-hours intake language, and payment schedule, be taken from the old Machinists' contract. That language, which is set forth below, was accepted by the Employer without modification, as follows:

. . .

ARTICLE XV – HOURS OF WORK, CLASSIFICATION, PREMIUM PAY

15.08 An after hours intake procedure for Protective Services and Juvenile Justice and all those employees whose job duties include carrying a pager is established in accordance with the following:

After hours are designated as:

Monday, 5:00 pm to Tuesday, 8:00 am	(15 hrs.)
Tuesday, 5:00 pm to Wednesday, 8:00 am	(15 hrs.)
Wednesday, 5:00 pm to Thursday, 8:00 am	(15 hrs.)
Thursday, 5:00 pm to Friday, 8:00 am	(15 hrs.)
Friday, 5:00 pm to Saturday, 5:00 pm	(24 hrs.)
Saturday, 5:00 pm to Sunday, 5:00 pm	(24 hrs.)
Sunday, 5:00 pm to Monday, 8:00 am	(15 hrs.)

A. All Non-Nursing Professionals will be trained to perform intake duties. The County will provide in-house training at no cost to the employee.

B. Pagers will be provided by the County to all employees on call during after-hours.

C. An initial schedule will be established covering a minimum three (3) month period of time. Such schedule may be lengthened to meet the needs of the employees. Using seniority, employees who have been trained may sign up for after-hours duty on a daily or weekly basis for any after-hours shifts during the schedule period. The maximum number of days scheduled in succession will not exceed seven (7) days. If no employee signs up for on-call duty, employees will be assigned on a rotating basis starting with the least senior employee.

D. In addition to the normal scheduled work hours, employees will be paid $3.41 per hour for hours they are on-call. Employees will be paid $3.41 per hour for hours they are on-call on holidays.

E. Employees required to respond to after-hours intake duties during their off hours shift will be paid at the applicable overtime or compensatory times rate, however, no less than a minimum of one (1) hour.

F. A back-up pool of volunteers will be established to provide coverage if the employee scheduled cannot be available.

. . .

Tracey Mayer, a member of the Union's negotiations teams, who was formerly covered by the Machinists' agreement, testified as to how the language was administered under the Machinists' agreement. According to Ms. Mayer, Section 15.08(E) resulted in an employe being paid a minimum of one hour for any phone call received while the employe was on call. Whether the call lasted 10 minutes or 45 minutes, the employe was guaranteed one hour pay, at the applicable rate. If the call exceeded one hour, the individual was paid for actual time worked, rounded to 15 minute increments. If an employe received two phone calls, either within the same hour or at a greater interval, the one hour minimum was guaranteed for each call, regardless of duration. If an employe received two calls within an hour, and both calls related to the same family, there was no duplication of the one hour guarantee. Mayer testified that this system existed for a number of years, and was administered by a series of supervisors.

Mayer's testimony was corroborated by Sally Biddick, the Child Protection Services Division Manager. Biddick, a supervisory employe, authorized the overtime described by Mayer. Biddick confirmed that employes who submitted bills calculated on a per call basis (as described by Mayer) were so compensated. However, Biddick further testified that there were some workers who chose not to bill the County for all of their calls, but rather kept track of their hours worked and made a claim for actual hours. Mayer and Biddick were the only witnesses who testified with direct knowledge of the practice.

John Moldenhauer, another member of the Union negotiating committee, testified. Moldenhauer is a Juvenile Probation Officer, who was formerly in the bargaining unit represented by the Teamsters. It was Moldenhauer's testimony that during the course of bargaining, the parties acknowledged to one another that Section 15.08(E) would be implemented in the same manner it had been implemented under the Machinists' agreement. Moldenhauer testified that the holiday rate found in paragraph 15.08(D) was drawn from the Machinists' agreement. The rate was not increased, and for certain members of the bargaining unit was reduced. Moldenhauer testified that Victor Long, then-chief negotiator for Rock County, indicated that if the Machinists' on-call language were applied to all bargaining unit members, it would represent an increased cost to the Employer. According to Moldenhauer, the Machinists' on-call language was the *quid pro quo* basis for the $3.41 per hour holiday provision.

It was Ms. Mayer's testimony that the County never indicated it would change the administration of the Machinists' language. She further testified that there was a discussion involving Mr. Long relative to how the language was historically administered, and that there was an expectation that that administration would continue. She testified that the process then in use was discussed and clarified. Mayer acknowledged that there were inconsistencies relative to how people were paid under the Machinists' contract. Moldenhauer testified that the exchange at the bargaining table was essentially to the effect that the language would be implemented in exactly the same way as the Machinists' language had been previously implemented. Moldenhauer did not recall any examples having been given.

Donald Mulry, the Director of Human Services, was a member of the Employer bargaining team who testified as to the exchange in negotiations. According to Mulry, there was no specific discussion or examples relative to the implementation of Section 15.08(E). Mulry indicated that the Employer never indicated that it would apply 15.08(E) as it had previously been administered in the Machinists' contract.

Nancy Fennema, the Deputy Director of the Human Services Department, was also a member of the management bargaining team. Fennema testified that there were no examples

given on the administration of Section 15.08(E). Fennema could not recall the Union indicating to the County that it expected the provision to be implemented as it had been under the prior contract involving the Machinists.

From June 2 through July 21, 1998, the language in question was administered pursuant to the *status quo*, described above. That administration ended upon the issuance of a memo by Mulry, dated July 21, 1998, which provided the following:

> Based on our meeting on Monday, July 20, 1998, the following procedures will be implemented immediately to carry out the intent of 15.08 item E. "Employees required to respond to after-hours intake duties during their off hours shift will be paid at the applicable overtime or compensatory times rate, however, no less than a minimum of one (1) hour."
>
> On-call intake employees will record the actual time worked, both the start time and end time, on the prescribed forms. Payment will be based on the total aggregate time worked and not by the number of calls or times called out.
>
> Employees will be reimbursed at time and one-half for time worked, with a minimum of one (1) hour for each day assigned for on-call for the designated time on-call, e.g., Monday, 5:00 p.m. to Tuesday, 8:00 a.m. (15 hrs.) or Friday, 5:00 p.m. to Saturday, 5:00 p.m. (24 hrs.).
>
> The on-call employee shall designate the on-call time sheet whether they wish overtime payment or compensatory time.

A unit meeting was conducted on July 31, 1998. A portion of that meeting was devoted to interpretation of the Mulry memo, and an explanation as to how it would be implemented. The official minutes summarizing that portion of the meeting provide as follows:

. . .

> 2. Contract update information;
>
> The language in the current contract has not changed from the previous contract with 1266. Compensatory time is NOT a compensation option; the compensation is $$ only. Under Section 15.08 of the current contract, Section E. the key words are PAID and RATE. Regarding the recent memo from Don

> Mulry, the AFTER HOURS SW expressed that RATE does not equal TIME and the consensus was that the interpretation of monetary compensation appears to be more in line with the contract language.
>
> Clarification was also made regarding how/what is compensated per the memo and Executive Staff decisions. All first responses in a shift would be paid at 1. hour of overtime, regardless of the time involved in processing the information (refer to 3rd paragraph of Don's memo). If it takes longer than 1 hour to complete the paperwork, additional time will be paid according to actual time worked rather than in full hour increments. Additionally, if more than one referral is received in 1 hour, the second referral is NOT billed as a NEW hour, it is included in the same hour as the first referral, unless completion of the second referral spills over into the next hour in which case the additional time is billed in actual time spent, and not rounded up into a 1 hour increment. Some SW have always billed this way, and so there is no change; for others, this is a change. Any subsequent referrals that are received in a given shift (after the first AFTER HOURS response) are billed in actual time spent. For example: if a SW initially receives an INTAKE, that takes 25 minutes to complete, including paperwork, that would be billed as 1 hour of overtime. Any referrals received after that will be billed in actual time spent, rather than in 1 full hour for each new referral (as was past practice). . .

On September 2, 1998, the Association filed a grievance which contends "Memo of 7-21-98 varies from current practice of after-hours payout. Procedures for implementation of 15.08 varies with current practice of claims made and payout of hours." The grievance seeks a return to the practice.

The grievance was appealed and ultimately denied by a January 13, 1999 letter from Richard Gruber, Assistant to the County Administrator. Gruber's letter provides the following:

> Dear Mr. Williamson:
>
> This matter was considered during our discussions on January 6, 1999, at 1:30 p.m. in the Rock County Courthouse. The subject matter of this grievance involves a dispute concerning the interpretation of *Article XV – Hours of Work, Classification, Premium Pay*, specifically at *Section 15.08, After Hours Intake Procedure*, as it relates to compensation practices. As stated by the parties, this specific issue was the subject of extensive discussion during the recently concluded collective bargaining negotiations. Based upon a conclusion of those negotiations, management implemented a compensation system for on-call after

hours intake workers in the Protective Services and Juvenile Justice divisions of the Department of Human Services which is now being contested. The remedy to this dispute proposed by the Union is to revert to the compensation practice in place prior to the ratification and execution of the current collective bargaining agreement. Management has argued that their compensation practice for after hours on-call work is structured in a manner consistent with provisions of sections 15.08(D) and 15.08(E) of the current collective bargaining agreement as negotiated. They have further argued that by virtue of those negotiations specific to these sections any past and related practices to the contrary are rendered null.

In addressing these issues, the argument of past practice will be addressed first. An impressive line of arbitral thought holds that a possible basis for upholding the refusal to continue a practice is a finding that any binding status of the practice ended through the give and take of bargaining. In this case, the parties acknowledged that extensive and hard-nosed negotiations ensued before reaching agreement on the language contained in Article XV and specifically at Sections 15.08(D) and 15.08(E). A review of the negotiation discussion notes allows a plausible argument to be made that the collateral effect of changes to the then compensation practice was revealed by the parties during the give and take process of collective bargaining. And such revelations notwithstanding, the parties ultimately agreed to the language as contained in the current agreement. On this basis, the past practice cannot be considered binding in my view, and is thus null and void.

With the matter of past practice so disposed, we address the principal question of how compensation is determined. Section 15.08 of the current agreement provides for the methods of compensating Protective Services and Juvenile Justice staff for after hours on-call service. Article XV enumerates a methodology for compensating individuals when they are servicing in a pager carrying on-call capacity in Section 15.08(D). This Section provides that those subject individuals will be paid $3.41 per call for on-call hours outside of the normal scheduled work hours. It goes on to state that they are compensated at the same rate for their on-call service when such service is rendered on holidays. Separately enumerated Section 15.08(E) provides that employees required to respond to after-hours intake duties during their off-hours shift will be paid at the applicable overtime or compensatory times rate, however, no less than a minimum of one (1) hour.

Given the differing purposes of each section, it is reasonable to argue that they have been enumerated separately in order to preserve the integrity of their independent application. Section 15.08(D) is intended to compensate an affected employee for the burden of carrying a pager and being available, that is, on-call. Separately, Section 15.08(E) provides a method of compensation to that on-call individual when they are actually required to ". . .*respond* to after hours intake duties during their off hours shift. . ." (emphasis added).

Given this construction, it is determined that the Department has not violated provisions of the contract and is correct in it application of these provisions. As such, the grievance is denied.

Should you disagree with this determination, certain rights of appeal exist. You may wish to consult the current collective bargaining agreement to determine the exact nature of those rights.

ISSUE

The parties were unable to stipulate as to the issue.

The Union believes the issue to be:

Did the County violate the collective bargaining agreement when it issued the Mulry memo of July 21, 1998 and made payments pursuant to it? If so, what is the appropriate remedy?

The County believes the issue to be:

Did the County violate the plain language of Section 15.08(E)? If so, what is the remedy?

The parties specifically waived any procedural or timeliness objections.

POSITIONS OF THE PARTIES

It is the position of the Association that Section 15.08(E), which governs pay for the on-call employes who perform intake duties, is not clear on its face. The Association contends that its construction of the language is truer to the words used and is consistent with how both sides understood the Article to be administered. The Association contends that the County's interpretation of 15.08(E) cannot be derived from the language of the contract because the

clause does not distinguish between the first response and subsequent responses. Nothing in the language suggests that there will be a difference in payment because there is a second response within the same hour.

The Association attacks the County's construction of the clause, contending that there is no explanation offered as to why an on-call employe should receive greater pay for the first response that may last for a period of considerably less than an hour, than for the second, third, or fourth response that may last for almost an hour. The Association attacks the County's differentiation of a second call received within the same hour as the first. A second response within the same hour as the first response is not relevantly different from one occurring outside of that hour. In contrast, the Association contends that its interpretation which treats responses equally without regard to their order is rational; for the order in which the response is made does not affect the amount of work the employe must perform or the value of that work to the County.

The Association attacks Mulry's July 21 memo. The memo provides pay guarantees: ". . .for each day assigned for on-call. . ." The Union contends that the contract requires an employe to respond to be eligible for pay. In the Association's eyes, the Employer's clarifying memo undermines the County's contention that the language in question is clear and unambiguous. The Association goes on to note that Mulry testified that he was aware of inconsistencies in the application of Section 15.08(E) prior to, and during the course of negotiations leading to the 1996-97 collective bargaining agreement. Despite this knowledge, Mulry did nothing to end these inconsistencies nor to bring their existence to the bargaining table after the 1996-97 agreement had been executed. The Union contends that no employes, either before or after the memorandum, have been paid in accordance with Mulry's memorandum.

The Association contends that County officials who administered the clause and the majority of on-call employes support the Association's interpretation of 15.08(E). Mayer testified as to how this system operates. She further testified that all of her supervisors administered the on-call provision in this fashion. Biddick, a supervisor, corroborated Mayer's understanding as to the method of payment. According to Biddick, there were individuals who chose not to bill the County for all hours possible under the terms of the contract. The Association points to the minutes of the July 31, 1998 meeting, which read:

> ". . . Any referrals received after that will be billed in actual time spent, rather than in one full hour for each new referral (as was past practice)."

The notes, written by a supervisor, confirm both the existence, and definition of the practice.

The Association contends that the bargaining history demonstrates that despite discussions about overtime pay, no County negotiator informed the Association that the County intended to reduce the rate the majority of the employes subject to the language of Section 15.08(E) had received.

The Association contends that even a successor employer and Union are bound by their predecessor's practice. Moreover, this practice continued under the 1996-97 collective bargaining agreement between the parties, which was executed on June 2, 1998. In light of that fact, any contention that a prior practice was effectively terminated is without merit.

It is the County's position that Section 15.08(E) is clear and unambiguous, and therefore not subject to interpretation by an arbitrator. It is the primary task of the arbitrator to enforce the clear meaning of the words used by the parties. It is the Employer's obligation to pay no less than one hour's pay to employes who must respond to after-hours intake. Mulry's memo accomplishes that.

The AMHS Human Services bargaining unit is a newly-created unit. It is the County's contention that there can be no past practice between this newly-created bargaining unit and the County. Nothing from the record allows for the importing of a practice from one bargaining unit to another. The past practice in the Machinists unit became defunct with the recognition of the newly-created unit. The County cites a prohibited practice decision including these same parties (ROCK COUNTY, Case 304, No. 55533, MP-3345, DEC. NO. 29211-A, Crowley, 4/98) for the following:

> "It is undisputed that the parties are negotiating the initial contract for the Human Services Department bargaining unit so there is no agreement nor past practice with respect to this unit."

Finally, the County argues that whatever past practice may have existed was neither well established nor consistently applied. To be recognized as binding on both parties, a practice must be (1) unequivocal; (2) clearly enunciated and acted upon and (3) readily ascertainable over a period of time as a fixed and established practice accepted by both parties. Here, notes the Employer, the parties were negotiating their initial contract. Furthermore, the County points to testimony that payments under the Machinist agreement were inconsistent.

DISCUSSION

The initial question presented for decision is whether Section 15.08(E) is ambiguous. The clause provides that ". . .no less than a minimum of one (1) hour. . ." will be paid, a guaranteed minimum payment. The question presented is whether that minimum constitutes a

per response, or a per off-hours shift, minimum. I believe the provision to be ambiguous in this respect. The guarantee is contained in the same sentence that establishes the after-hours intake duty compensation. The compensation is what is guaranteed. There is no dispute that Section 15.08(E) directs payment for after-hours intake duties on a per call basis. That is, an employe who receives one call is paid for that call; an employe who receives three calls is paid for each of those calls. It is a logical reading of the sentence that the guarantee be expressed on the same basis as is the compensation to which it refers. However, the employer contends that the guarantee is for the composite of all calls taken. The final clause is sufficiently ambiguous to tolerate such a construction. This ambiguity suggests an examination into how the parties have applied the words.

The parties dispute the existence of a practice. I believe there exists a practice which provides a definition as to how these parties construed the words of Section 15.08(E). Only two witnesses, one from the bargaining unit and one supervisor, with direct knowledge of how these calls were compensated, testified. Both witnesses testified that employes who requested per call compensation were so paid. Each testified that not all employes did so. Thus, a mixed compensation history exists. However, that does not negate the fact that employes who sought to be paid per call were so paid. This practice extended over a number of years, and with the direct knowledge and approval of several supervisors. There is no evidence in the record that such a compensation request was ever denied.

The Employer prepared minutes from the unit meeting of July 31, 1998 refer to the prior compensation system as a "past practice". I do not suggest that by characterizing this phenomena as a practice the Employer has acknowledged and/or acquiesced to its status as such. I merely observe that employes and supervisors alike understood the phenomena to constitute a past practice. Gruber's memo, denying the grievance, acknowledges the existence of a past practice.

It appears that certain employes believed it to be inappropriate to bill short calls on a per call basis, and chose not to do so. That does not negate the right of other bargaining unit members to insist upon compensation pursuant to the terms of the collective bargaining agreement, as construed.

There is a dispute between the parties as to whether a practice which existed in a collective bargaining agreement between the Machinists and the County can be transported, along with its parent language, to an entirely different collective bargaining agreement, where one of the signatories is not common. It is noteworthy that the objecting party, the Employer, is common to the two agreements. Rock County was a signatory to the contract with the Machinists that contained the language and its practice. AMHS, the party seeking enforcement, was not such a signatory.

The County opposes the importation of such a practice. It cites a very current prohibited practice decision rendered between these same parties, authored by Examiner Crowley, for the proposition that such a practice may not be transported. I do not believe the Crowley decision to be applicable. The case arose following certification of AMHS as the bargaining agent for the consolidated bargaining units. The time frame was the hiatus following expiration of the prior contracts, but prior to the negotiation of the initial consolidated unit agreement between AMHS and the County. The Association claimed that the County's refusal to permit employes from the Health Care Center (previously a separate and distinct bargaining unit) to take off work in pay status to represent Human Services Department employes constituted a violation of the County's obligation to maintain the *status quo* pending the successor agreement. Dismissing the Association's claim, Examiner Crowley found as follows:

> Section 111.70(3)(a)4, Stats., requires the County to bargain in good faith with the Association and such obligation includes the duty to maintain the *status quo* and not make any changes in wages, hours or conditions of employment of employes after a unit has been certified. The Association claims that by refusing time off and pay to Association representatives, the County is not bargaining in good faith. The obligation of the County to pay representatives time spent for negotiations or in grievance handling is a mandatory subject of bargaining. It is undisputed that the parties are negotiating the initial contract for the Human Services Department bargaining unit so there is no agreement nor past practice with respect to this unit. The Association is relying on the language of the Health Care Center contract which is not applicable to the Human Services Department bargaining unit. The Association is advocating the language of a collective bargaining agreement to provide benefits to an entirely different bargaining unit.

It is in this context that Crowley's remark that "there is no agreement nor past practice with respect to this unit" was made. Examiner Crowley ruled that the Union could not claim that its contractual provision in the Health Care Center bargaining unit had become the *status quo*, or past practice, applicable to the overall Human Services Department bargaining unit. That conclusion is clearly distinguishable from the situation presented in this proceeding. This dispute does not involve the *status quo* during a hiatus, nor does it involve an attempt to apply the provisions of a collective bargaining agreement to a group of employes not covered by that agreement.

In this dispute, the County and the Association took the words of the Machinists' contract verbatim. The Association, which had a former member of the Machinists unit who had worked under the system, on its bargaining team, was the moving party. The Employer, which was a

signatory to the same provision under its prior agreement with the Machinists, was the recipient of the proposal. The Employer had no one with direct knowledge of the operation of the system on its team. However, it had access to its supervisors, and team member Mulry knew that there were inconsistencies in the pay application under the clause. Under these circumstances, the parties agreed to incorporate those same provisions into their successor contract.

There is a dispute as to the bargaining table exchange that led to the parties' adoption of this provision. Common to the Association witnesses' testimony is that there was a significant exchange where the Association let it be known that it expected the practice to accompany the proposed language. Association witnesses testified to a conscious exchange and discussion specific to the issue in dispute, and sufficient to secure the Association's urged construction of the language. The upshot of the Employer-called witnesses testimony was to downplay the scope and extent of bargaining table discussion. Common to the Employer witnesses was the claim that there were no examples discussed as to how the language was to be administered.

I believe there was sufficient bargaining table discussion to put the Employer fairly on notice that the language brought with it its prior administrative practice. Moldenhauer testified that a part of the *quid pro quo* exchange for the Machinists' language was an actual reduction in the level of holiday pay. According to Moldenhauer, there was an Employer acknowledgement that the Machinists' language, applied across the board, would be expensive. No Employer witness contradicted or excepted to Moldenhauer's testimony. If anything, the Gruber memo denying the Association's grievance, lends support to the Association claim that there was a healthy give and take at the bargaining table.

The language in question became an effective part of a successor agreement on June 2, 1998. Between June 2 and July 21, 1998, the language was administered as it had been previously. The context of this administration was that the parties were in the midst of negotiations for yet another contract. If the Employer believed that there was no practice under the prior agreement, or that whatever practice existed had been terminated by the change in bargaining units, change in identity of the Union, or in the negotiations, its behavior in continuing to implement the practice post-ratification and during the period of negotiation of a successor agreement sent a deceptive and misleading message.

Mulry's memo was issued on July 21, 1998. Its issuance fell between the June 2 execution of the 1996-1997 agreement and the August 6 execution of the 1998-1999 collective bargaining agreement. The record is unclear as to the number of bargaining sessions that occurred during the summer of 1998, and whether they fell before and/or after July 21. Nothing in the record suggests that Mulry's memo was brought to the Association during the pendency of negotiations and presented to the Association for reaction.

By July 21, 1998, the parties had transported the Machinists' language into their new collective bargaining agreement. There was a *quid pro quo* exchange for its benefits. The provision had continued to be administered as in the past. The administration constitutes an interpretation of a written provision of the agreement. There is no indication the Mulry memo was the subject of negotiations between the parties. Under these circumstances, the County is not free to unilaterally terminate the interpretative practice, and alter the construction of the collective bargaining agreement.

AWARD

The grievance is sustained.

REMEDY

The County is directed to reimburse employes for the wages, and any other compensation lost as a result of the change in administration of Section 15.08(E).

JURISDICTION

Pursuant to the agreement of the parties' the undersigned will retain jurisdiction of this matter for purposes of resolving any dispute as to remedy.

Dated at Madison, Wisconsin this 27th day of September, 1999.

William C. Houlihan /s/
William C. Houlihan, Arbitrator

WCH/gjc
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