BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**BROWN COUNTY LIBRARY PARA-PROFESSIONALS, LOCAL 1901-D, AFSCME, AFL-CIO**

and

**BROWN COUNTY (LIBRARY)**

Case 651
No. 59465
MA-11308

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**Appearances:**

**Mr. David A. Campshure,** Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, on behalf of Brown County Library Para-Professionals, Local 1901-D, AFSCME, AFL-CIO.

**Mr. James M. Kalny,** City/County Human Resources Director, on behalf of Brown County.

## ARBITRATION AWARD

Brown County Library Para-Professionals, Local 1901-D, AFSCME, AFL-CIO, hereinafter the Union, requested that the Wisconsin Employment Relations Commission appoint a staff arbitrator to hear and decide the instant dispute between the Union and Brown County, hereinafter the County, in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. The County subsequently concurred in the request and the undersigned, David E. Shaw, of the Commission's staff, was designated to arbitrate in the dispute. A hearing was held before the undersigned on March 8, 2001 in Green Bay, Wisconsin. A stenographic transcript was made of the hearing and the parties submitted post-hearing briefs in the matter by July 5, 2001. Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following Award.

## ISSUES

The parties agreed to combine the grievances from the Unions representing the three bargaining units of Library employees. The parties were unable to agree on a statement of the issues and have agreed the Arbitrator will frame the issues.

The Union would state the issues as follows:

Did the County violate the parties' collective bargaining agreement, Article 7 in particular, when it changed the 2000 summer hours for the Library system? If so, what is the appropriate remedy?

The County would state the issues as being:

Does Article 7 of the collective bargaining agreement prohibit the County from setting Library hours of operation?

The Arbitrator concludes that the following statement more specifically frames the issues to be decided in this case:

Did the County violate Article 7 of the parties' Collective Bargaining Agreement when it changed the hours employees were scheduled to work on Saturdays in the summer of 2000, from what they had worked the past summer? If so, what is the appropriate remedy?

## CONTRACT PROVISIONS

The following provisions of the parties' Agreement are cited:

Article 1. MANAGEMENT RIGHTS RESERVED
Unless otherwise herein provided, the management of the work and the direction of the working forces, including the right to hire, promote, transfer, demote, or suspend, or otherwise discharge for proper cause, and the right to relieve employees from duty because of lack of work or other legitimate reason is vested exclusively in the Employer. If any action taken by the Employer is proven not to be justified, the employee shall receive all wages and benefits due h/er for such period of time involved in the matter.

The Employer shall adopt and publish reasonable rules which may be amended from time to time. However, such rules will be subject to the grievance procedure.

. . .

Article 6. MAINTENANCE OF BENEFITS

A. The Employer agrees to maintain existing benefits that are mandatory subjects of bargaining and are not specifically referred to in this Agreement.

B. The parties further agree that certain preexisting mandatory conditions of employment, which were previously in other parts of the Agreement shall be placed in this part of the Agreement. Said mandatory conditions of employment are not meant to affect or limit the maintenance of benefits clause noted in Section A above.

Personal effects, such as glasses, watches, etc., damaged or destroyed as a result of job duties shall be replaced by the Employer.

The above stipulations are intended to cover normal conditions that occur or exist; however, should special conditions arise on matters that are mandatory subjects of bargaining, said matters are to be taken up with the Union to arrive at a satisfactory solution. Employees shall be given a copy of all their evaluations.

Article 7. WORK DAY – WORK WEEK – NIGHT SHIFT DIFFERENTIAL 1/

The guaranteed work day and work week for fulltime employees shall be seven and one-half (7 ½) hours per day and thirty-seven and one-half (37 ½) hours per week.

The present employee work schedule and work week shall remain as presently in effect and shall not be changed except by mutual agreement by the Employer and the Union.

Employees who work after 5:00 P.M. shall receive twenty cents (.20) per hour in addition to their regular rate of pay. Night shift shall be paid on overtime hours but not included in hourly rate of pay for overtime computation.

Any deviation from the above schedule and other schedules, because of special circumstances, shall be by mutual agreement.

. . .

Article 11. OVERTIME

Time and one-half shall be paid for all hours worked in excess of seven and one-half (7 ½) hours per day or thirty-seven and one-half (37 ½) hours per week, whichever comes first. Overtime shall be worked with prior approval. There shall be no pyramiding of overtime hours under this provision.

Overtime can be paid in cash or time off at the option of the employee. Scheduling of days off shall be by mutual agreement between Employer and employee.

Overtime work shall be performed by employees in the bargaining unit who normally do the work. For work beyond the normal work week, in a week in which a holiday falls, or sick leave or vacation is used, and in which the addition of the hours of the holiday and/or sick leave or vacation would result in a total in excess of thirty-seven and one-half (37 ½) hours, s/he shall be paid at the rate of time and one-half (1 ½).

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***1/ Paragraph 1 of Article 7 in the Clerks' Agreement states, "The normal work day and work week for employees shall be a portion of a seven and one-half (7 ½) hour day; the work week shall be a portion of a thirty-seven and one-half (37 ½) hour work week."***

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## BACKGROUND

This case involves grievances filed by each of the bargaining representatives 2/ who represent the three groups of employees in the Brown County Library System – Professionals, Paraprofessionals and the Clerks bargaining units, which have been consolidated in this proceeding by the agreement of the parties. Except for the Clerks' Agreement containing a reference in paragraph 1 of Article 7 recognizing that it is a unit of part-time employees, the relevant wording of Articles 1 and 7 is identical in the three agreements.

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***2/ The three Unions will be referred to hereafter collectively as "the Union", unless specifically referencing a particular union.***

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The County maintains and operates a library system that includes a central library facility and eight branches in the various communities within the County's borders. The three AFSCME local unions represent the professional, para-professional and clerk employees in the County's library system. Pat LaViolette has been the Director and chief administrator of the Library since 1987, was Head Librarian at the Central Library for seven years prior to that and has been employed in Library in various capacities before that since the early 1960's. Generally, Librarian III's in the Professionals unit head the County's branch libraries and answer to LaViolette, and are responsible for setting the work schedules of the employees at that library.

All of the employees in the Clerks Unit work part-time in either 11 hours or 19 ½ hours/week positions. There are both part-time employees and full-time (7 ½ hours/day, 37 ½ hours/week) employees in the Paraprofessionals Unit. Except for one part-time employee, all of the employees in the Professionals Unit work 7 ½ hours/day, 37 ½ hours/week. Individual employees' scheduled work hours may vary from individual to individual at the libraries and the hours of operation may vary from library to library.

On February 21, 2000, LaViolette issued the following memorandum to all Library employees:

**TO:** All Staff

**FROM:** Pat LaViolette

**DATE:** February 21, 2000

**RE:** Library Hours

In the past, system-wide, we have been open 32 hours less per week during the summer months than during the winter months; yet, staffing remains at the same level. Our output measures and our commitment to customer service make it virtually impossible to justify this reduction in hours three months of the year.

Beginning this year, system-wide, the present Monday through Saturday Fall/Winter/Spring open hours schedule will remain in effect year round. Due to budgetary constraints, Central will only be open on Sundays from labor Day to Memorial Day.

By the following letter of March 1, 2000, the then President of the Professional Library Employees Union responded to LaViolette's memorandum:

Re: Library Hours – Summer Schedule

Dear Mrs. LaViolette,

Please be advised that the Library Professional Union, AFSCME-Local 1901B objects to the proposed change in hours during the summer months as outlined in your memo dated, February 21, 2000.

Article 7 of the contract between Brown County and the Brown County Professional Library Employees states:

*"The present employee work schedule and work week shall remain as presently in effect and shall not be changed except by mutual agreement by the Employer and the Union."*

Accordingly, the Union reserves its right to file grievances as well as take other action to protect the interests of its members.

Sincerely,

Betsy Friese
President
Wisconsin Council 40
AFSCME, Local 1901B

By similar letters of March 14, 2000 and March 29, 2000, respectively, the Library Para-Professional Union and the Library Clerks Union also responded to LaViolette's February 21, 2000 memorandum.

LaViolette responded to the Library Professional Union's objections to the change in summer hours with the following letter of April 24, 2000:

Caroline Haskin, President
Wisconsin Council 40
AFSCME, Local 1901-B
380 Main Avenue
Green Bay, WI 54302

Dear Caroline:

We are in receipt of correspondence from Betsy Friese, dated march 1, 2000, objecting to the change in hours during the summer months. It is our understanding that when the contract language concerning the work schedule was negotiated, the parties' intent was to preserve the 37.5 hour weekly work schedule. We believe that management's setting of the hours within the 37.5 hour work schedule is an established past practice which has not had to be negotiated in the past. We are open to discussing the decision that has been made, at your request, but we will not be changing what we believe to be established past practice.

Additionally, the contract states that any grievance must be filed within ten days of knowledge of the occurrence. The contract does not provide for an objection and reservation of rights.

We would be happy to discuss this matter if you wish; however, we believe it is consistent with the contract to deal with these issues when they arise.

Sincerely,

Pat LaViolette
Director

Similar letters were sent to the Paraprofessional and Clerks unions.

Hours of operation of the various branches have been altered in the past, however, the parties' views as to what occurred in those instances differ. LaViolette testified to those instances as being examples of where she has in the past unilaterally changed the hours of operation without negotiating with the Unions, albeit with having first discussed such changes with the affected employees. Conversely, the Unions' witnesses testified that in those past instances changes in hours of operation occurred for the most part at the request of the staff and after discussions, and after agreement on the changes had been reached.

In this instance, LaViolette met with the Unions to discuss their concerns about not changing to the shorter Saturday summer hours of operation, but maintained the position that the County was not required to negotiate such a change. The Unions maintained their objection to the change and all filed grievances in that regard on May 5, 2000. The change to full days on Saturdays in the summer (from half days) was implemented. The parties attempted to resolve their dispute, but were unsuccessful and proceeded to arbitration before the undersigned.

## POSITIONS OF THE PARTIES

### Union

The Union takes the position that the County violated the parties' Agreement when it changed the work schedule from half days on Saturday during Summer months to full days on Saturday during the Summer of 2000 without the Union's agreement. In support of its position, the Union first asserts that the language of Article 7 – WORK DAY – WORK WEEK – NIGHT SHIFT DIFFERENTIAL, is clear and unambiguous, stating "the present employee work schedule and work week shall remain as presently in effect and shall not be changed except by mutual agreement by the Employer and the Union." In this case, employees had not previously been required to work a full day on Saturday during the Summer, but were required to do so in 2000 without the agreement of the Union. Thus, there can be no question that the work schedule of those employees was altered without mutual agreement. The Union asserts that it is not necessary to resort to technical rules of interpretation when the wording of the agreement is unambiguous, and that the clear meaning will ordinarily be applied. Citing, Elkouri and Elkouri, How Arbitration Works, (5th Ed.) p. 470.

If the plain wording of Article 7 is ignored, the County would have the green light to alter work schedules at its whim and the negotiated language requiring mutual agreement for schedule changes would be rendered meaningless. Further, it would be an unreasonable infringement on the Union's right to bargain over the mandatory subject of bargaining of hours of work.

The County's interpretation that the second and fourth paragraphs in Article 7 requiring mutual agreement for schedule changes only applies to the guarantee of a 7 ½ hour work day and 37 ½ hour work week in the first paragraph, is self-serving, absurd, and contradicted by the County's own evidence. On cross examination, LaViolette referred to "work schedule" as being the days and hours employees were scheduled to work, rather than the number of hours they are guaranteed per day or per week, and also admitted that the County changed employee

"work schedules", rather than the number of hours per day or per week that they were guaranteed. The letters confirming offers of employment submitted by the County also contain direct reference to a specific work schedule, clearly stating the work schedule in terms of days of the week and the hours. While those offers also contain the statement that "this schedule is subject to change", Article 7 requires that any change is subject to mutual agreement. That language being clear and unequivocal, it is not overridden by a contradictory statement in a letter offering employment.

The Union next asserts that the County's reliance on its management rights is misplaced. While the County argues that Article 1 gives it the unrestricted right to change employee work schedules, that management rights provision is prefaced by the phrase "Unless otherwise herein provided. . . ." A basic rule of contract interpretation is that general contract language is restricted by more specific provisions. In this case the wording of paragraph 2 of Article 7 specifically restricts the County's right to alter employee work schedules. The provision further restricts that right at paragraph 4 stating, "Any deviation from the above schedule and other schedules, because of special circumstances, shall be by mutual agreement." Thus, the specific provisions requiring that changes in employee work schedules be mutually agreed upon are controlling.

It is also standard arbitral practice to reject interpretations of contract language that will result in harsh, absurd or nonsensical results. How Arbitration Works, p. 495. That would be exactly the result yielded by the County's interpretation of Article 7. LaViolette testified that it is her understanding that Article 7 gives the County the right to schedule employees any time between 12:01 a.m. Sunday and 11:59 p.m. Saturday, as long as they get 7 ½ hours per day and 37 ½ hours per week. According to the Union the clear intent of paragraphs 2 and 4 of Article 7 is to maintain the current employee work schedules, absent mutual agreement to change, and not to guarantee a 7 ½ hour work day and 37 ½ hour week, as the latter is served by paragraph 1 of Article 7.

While the County contends it has an established practice for altering employee work schedules without obtaining the agreement of the Union, the instances in which the County claims to have unilaterally changed employee work schedules are not sufficient to establish a binding practice. None of the alleged unilateral changes in employee work schedules presented by the County involved the situation in this case, in which the County made a change over the objection of one or more bargaining units. In most of the instances cited, the change was not only suggested to management by the employees of one of the bargaining units, the schedule change, while altering the hours the particular branch or branches were open to the public, did not alter employee work schedules. Further, the schedule change adding summer Saturday hours at four branches in 1998 supports the Union's position in this case. In that case

management had proposed the change at two locations for 1997, the Union objected, and the parties discussed and resolved the matter by agreeing to delay the schedule change until the following summer and expanding the number of locations.

Even if the County were able to establish that a practice of unilaterally changing employee work schedules had existed, the clear contract language requiring mutual agreement for any schedule changes would take precedent. When a practice conflicts with explicit contract language, the latter is controlling. How Arbitration Works, pp. 651-652. A related rule is that a failure to grieve or protest past violations of a clear contract rule does not bar that party, after notice to the other party, from insisting upon compliance with the clear contract provision in the future. As the language of Article 7 clearly states that employee work schedules shall not be changed except by mutual agreement, the provision is unambiguous and takes precedent over any alleged practice.

In its reply brief, the Union disputes the County's claim that Article 7 is ambiguous and that the phrase "employee work schedule" refers to the 37 ½ hour work week and a 7 ½ hour work day. The first two paragraphs of Article 7 do not support such an interpretation. The first paragraph unequivocally defines the work day as 7 ½ hours and the work week as 37 ½ hours, while the second paragraph states that "the present employee work schedule and work week shall remain as presently in effect and shall not be changed except by mutual agreement by the Employer and the Union." (emphasis added) Use of the word "and" in that sentence is significant in that it indicates that the "employee work schedule" and the "work week" are two separate and distinct things. As the phrase "employee work schedule" does not allude to the guaranteed work day or work week, it must refer to the hours and days worked.

The County also relied on LaViolette's testimony as to what was allegedly said years ago by a former Union representative, now deceased, and a former president of the Professional local, as concurring with her interpretation. The Union objected to that testimony as hearsay. The County could have called the former Union president to corroborate LaViolette's testimony, but did not do so. Because the individuals were not available for cross examination and their alleged statements were offered for the sole purpose of proving the fact stated, LaViolette's testimony in that regard should be afforded no weight. Further, when asked if she could recall the words used by the former union representative, she responded "he said that management can set the hours of operation for the library." That is significant, as the County is free to set the hours of operation for the Library, however, it is not free to alter the work schedule or hours of work for the bargaining unit.

While the County asserts that in the last five years there have been at least nine different changes to the hours of operation of different branch libraries, only the opening of the new branches in Denmark and Howard resulted in changes to work schedules. The change of

week night hours at DePere in 1995, the change of weekday opening times in Southwest in 1999 and 2000, and the change in summer Saturday hours at Southwest in 1999, while resulting in different hours those branches were open to the public, did not alter employee work schedules. Moreover, the addition of summer Saturday hours in 1998 at Ashwaubenon, DePere, East and Southwest was clearly the product of negotiations with the bargaining units.

The County's assertion that it was maintaining the status quo by not changing the Saturday hours for the summer of 2000 is ridiculous. Saturday summer hours have differed from the Saturday hours for the rest of the year since being implemented at the branches in 1998. Thus the status quo work schedule was one-half days on Saturday during the summer months and a full Saturday during the rest of the year.

Article 7 requires mutual agreement for any schedule changes and the County cannot simply discuss work schedule changes with the Union and then implement those changes absent agreement. While the County argues that the Union is using LaViolette's good working relationship with library employees against her, the converse is just as likely. Since the three bargaining units rarely objected to previous changes in the work schedule, LaViolette and the County have concluded that management can now alter work schedules unilaterally.

Contrary to the accusation that the Union is "back dooring" a construction of the agreement that would require negotiation of a decision of what hours to operate, just the opposite is true. It is the County that is arguing it has the right to set operational hours and then is attempting to circumvent Article 7 requiring mutual agreement for changes to employee work schedules. While the County has the right to establish the hours the library will be open to the public, it must reach mutual agreement with the three bargaining units prior to changing the current employee work schedule to cover those hours.

The Union concludes that by changing the work schedule to include a full day on Saturday during the Summer months in 2000, the County violated the status quo, past practice and Article 7. The Union requests that the Arbitrator sustain the grievance and order the County to reinstate the previous summer work schedule of partial Saturdays and to cease and desist from changing the work schedule in the future unless by mutual agreement. The Union also requests that the Arbitrator retain jurisdiction to verify compliance with the remedy.

**County**

The County takes the position that it has the right to change the hours of operation of the Library without the mutual consent of the Union, regardless of whether that change also changes the work hours of employees. In support of its position, the County first asserts that

nothing in the Agreement revokes the right of management to schedule Library hours of operation. Article 1 of the Agreement provides in relevant part, that, "Unless otherwise herein provided, the management of the work and direction of the working forces . . .is vested exclusively in the Employer." That is a clear expression of the intent of the parties to reserve to management the right to operate the Library unless otherwise expressly stated to the contrary. As to setting hours of operation and scheduling work, such management rights have been viewed as being particularly strong. Elkouri and Elkouri, How Arbitration Works, (5th Ed.) p. 726. While there have been some restrictions on the work week imposed by Article 7, by its plain words in the first paragraph, it guarantees a 7 ½ hour day and 37 ½ work week schedule. That language is clear on its face. The rest of the Article is, however, anything but clear. Use of the term "schedule" in paragraph 2 creates the ambiguity. The term "work week" most reasonably is viewed as referring back to 37 ½ hours per week, however, the term "schedule" is not as easily given meaning. It is not helpful to use the "plain words" definition, since the term has many meanings in labor relations and can mean the days normally worked by a group, the hours of work per day and per week for a group, as well as the hours that a particular employee is assigned to work within the day or week.

The County asserts that it is not clear what it is the Union reads the language to mean. The President of the Clerks Union testified that she believes an individual employee's scheduled hours of work cannot be changed without Union agreement under the provision. Haskin from the Professionals Union testified that if her individual schedule were changed, it would not necessarily require Union agreement, but that the language refers more to "a collective work schedule." According to the testimony, the Paraprofessionals believe that the reference to present schedule of work goes to the "bargaining units' schedule." Reasonable people differing on reasonable interpretations of the same language, there thus exists an ambiguity. This is further demonstrated by the wording of paragraph 4 of Article 7. Use of the singular "schedule" strongly suggests that there is only one "schedule" referred to "above", and is consistent with the County's reading that the only "schedule" in Article 7 is the 37 ½ hours work week, 7 ½ hour per day work schedule. There is no guidance in the Agreement as to what constitutes the "other schedules", "special circumstances", and who has to "mutually agree". It is clear that the meaning of these provisions is not plain from the express words alone.

It is the County's view that Article 7 provides that regardless of the hours when the library is open, full-time employees are guaranteed 7 ½ hours a day and 37 ½ hours a week. There is nothing in the agreement or in the record that describes a "collective work schedule" or a "bargaining unit work schedule." This is due to the fact that individuals work different 7 ½ hour days that total 37 ½ hours per week within the hours that the library is open to the public. The only established unit-wide work schedule in the Library, and in the record, is the 7 ½ hour day and 37 ½ hour week and that work schedule has not been changed. That being

the case, the most reasonable reading of the ambiguous language of Article 7 is that it guarantees a schedule of 7 ½ hours per day, 37 ½ hours per week, which hours can be scheduled at various times during the hours the library is open to the public. The language of Article 7 prevents changing the hours of work per day or per work week without mutual consent, however, nothing in the agreement specifically limits the ability of the County to set the hours of Library operation. Such a derogation of management prerogative should not be imposed unless there is clear and unambiguous evidence of an intent to surrender that right.

Next, the County asserts that bargaining history and past practice establishes it is the intent of the parties that Article 7 is to be read to permit management to set the hours of operation of the Library. Arbitrators seek to interpret collective bargaining agreements to reflect the intent of the parties and in determining that intent, inquiry is made as to what the language meant to the parties when the agreement was written. How Arbitration Works, pp. 479-480. LaViolette was the only person testifying who was present at the negotiations of all of the Agreements involved in this case since their inception. Her testimony is clear, uncontroverted evidence of what was intended by the language of Article 7. LaViolette testified that it was always her understanding that the only established schedule at the Library, and under the Agreement, was the 37 ½ hour week and 7 ½ hour day. She testified that her understanding is based on discussions with the long-time representative of the Unions and the long-time President of the Professionals unit, both of whom had assured LaViolette that the language was not intended to restrict her ability to alter the hours of operation. The Union could not bring forward anyone else who had been at the bargaining table to contradict LaViolette's testimony.

LaViolette's credibility is further supported by other evidence in the record. LaViolette testified that she was stunned when she received the letter from the Union telling her that they agreed with the hours she had set for the Weyers-Hilliard branch and that she immediately sent a letter telling them that their concurrence was of no consequence. It is also uncontroverted that in the last five years there have been at least nine different changes to the hours of operation of the different branch libraries. Except for the establishment of the new hours for the Weyers-Hilliard branch in 2000, there had never been a single letter agreeing to, or protesting, a change in the hours of operation. Prior to 2000 there had never been a demand to bargain or any questioning of management's right to say when service will be offered. Of note is the implementation of new Saturday hours in 1998, which LaViolette testified she did not negotiate, but imposed in the manner she thought best served the public. There is no evidence of any Union "agreement" or challenge to this change. This is because there has never been a practice or an attempt to challenge the hours of operation until recently. LaViolette had been making decisions concerning library hours for years with the apparent concurrence of Union leadership, until there was a change in that leadership in 1999. It was only after the change in

leadership that the letter agreeing to a change of hours was sent to LaViolette in an attempt to begin laying a basis for arguing a past practice in setting hours. However, the letter only serves to amplify that there had never been any correspondence of any type before this change in Union leadership.

If Article 7 is read as the Union asserts it should be, the County still should prevail. It appears that the presidents of the Professional and Paraprofessional units believe that the "schedule" referred to in paragraph 2 and paragraph 4 of Article 7 is the scheduled days of operation of the Library. If the term "schedule" is interpreted to mean the hours of operation of the Library, or even a general schedule of hours within the hours of operation, as the Union has seemed to argue, the plain wording would require "mutual agreement" for any change, i.e., both the Union and the County must agree. It is clear that there was no such agreement in this case. The Union asks as relief that the "summer hours in the future be what they were prior to the change that took place in 2000." However, summer hours have varied. The contract in effect at the time this matter was initially grieved was the 1996-1998 agreement. During the term of that contract summer hours changed, as it was not until 1998 that branch libraries were even open on Saturdays during the summer. During the present Agreement, in 1999, the hours for two of the larger branches were modified and Weyers-Hilliard was newly opened, so there were no established summer hours for that branch at all. Accepting the Union's reading of the term "schedule", and noting that there was no agreement and that the plain language of the agreement requires mutual agreement, there can then be no change. That is what occurred in this case. LaViolette did not change the hours for the summer, but maintained the schedule that was "presently in effect."

If the Union argues that the term "schedule" "presently in effect" somehow includes the summer hours change, then the wording of paragraph 4 must be considered under the Union's reading of the language. Changing the summer hours, is a "special circumstance" or "other schedule" that still requires mutual agreement. Thus, if Article 7 is read to prevent the County from setting hours of Library operation without Union consent, the same language requires mutuality for a change in the "schedule" "presently in effect" or in "other schedules", and there is nothing in the Agreement that requires the County to change hours without mutuality. Either way, the end result is the same. Nothing in the agreement required the County to change the hours in the summer, nor was there any agreement to change those hours.

The County also asserts that the change of hours of operation in the Library should not be subject to arbitration. The County should be allowed to determine when the Library should be in operation as a formulation of public policy, particularly where, as here, the determination was based on data and public demand. The decision as to the hours of operation is left to management as a permissive subject of bargaining. While there may be a duty to bargain the

impact of that decision, the Union has not demanded to bargain in that regard or filed a prohibited practice attacking the ability of management to unilaterally make that decision. The Union could not do so because LaViolette has always followed the practice of first discussing these changes before they are implemented and then implementing her plan without consensus only if agreement cannot be reached. It appears that the Union is arguing that because LaViolette has gone to great lengths to work with employees to address their concerns, and has been successful in that regard, there is a past practice of mutual agreement on all changes in hours, and that the agreement should therefore be interpreted to require such mutuality as to any time hours are changed. While LaViolette has not often had to force changes in the hours of operation, she is certain that she did not gain the consent to exercise her management rights either. The County concludes that by arguing that management is prohibited from making the decision to change hours of operation where that change might affect the hours of employees, the Union is "back dooring" a construction of the contract that requires the negotiation of the decision as to hours of operation, clearly an issue that is fundamentally one of formulation of public policy.

In its reply brief, the County again disputes the claim that the language of Article 7 is clear and unambiguous. The language was susceptible to at least three different interpretation by the Union's own witnesses. Further, looking at the plain words of the Article makes it clear that there are different ways that it reasonably can be interpreted. Reference to "the above schedule" in the last paragraph of Article 7 strengthens the County's interpretation. The only constant "schedule" is the 7 ½ hours per day, 37 ½ hours per week schedule referenced in Article 7. This could be the only "above schedule" to which the provision applies. "Other schedules" could refer to individual schedules which could be changed because of special circumstances by "mutual agreement." The Union reads the language to reiterate what is stated in the second paragraph, requiring a need for union confirmation any time the collective schedule of the Union's members are changed. The County questions why it would be necessary to restate exactly the same thing as is stated in the second paragraph. The County's reading is that "other schedules" refers to the individual schedules of employees and that the "mutual agreement" is the agreement between employees and their supervisors. The Library has operated that way for years. If there is a need for a change in an employee's individual schedule because of special circumstances, those changes can be made upon mutual agreement with individual members, e.g., changing schedules for vacations. Other than that, management is free to change the Library's hours of operation as long as the employees work a 37 ½ hour week and a 7 ½ hour day. It is only a change in that "work schedule" that requires the Union's consent. Such a reading takes into consideration all of the words in the paragraph and does not render any of them redundant, but instead gives them full meaning, and thus, is the more reasonable interpretation.

The Union argues that the County's construction is absurd and self-serving and states that LaViolette admitted she changed the employees' "work schedule". The testimony cited merely shows the quibble that is occurring over the meaning of that term. While the County uses the term "work schedule" in its offer letters to spell out the hours the employees will work within the 37 ½, 7 ½ hour schedule, as noted in the offer letter, the County has always been of the opinion that those hours are subject to change.

The County reiterates its position that the right to set the hours of operation has not been directly or specifically abridged by the agreement. The management rights language of the agreement merely is a statement of what is already established under common law, i.e., that unless the contract specifically abridges a management prerogative, management may exercise its discretion in regard to that right. Further, Article 7 does not say that management cannot set hours of operation, but instead speaks in terms of "work schedules." There is nothing in the agreement that references any restriction on "hours of operation" or "hours the library is open." If the decision in some ways affects a contractual provision, the impact of that change would need to be negotiated, not the decision itself. There has been no demand for such impact bargaining.

Another argument offered by the Union is that the County would be able to arbitrarily schedule work hours at any unreasonable time under the County's reading of the management rights clause. As LaViolette testified, there would be no logical reason for the Library to do so and when the issue has arisen in the past, the Union has not shown any concern over it.

The Union's argument that there has always been agreement, and that therefore there is no practice for the unilateral setting of hours, ignores the fact that on one occasion the Union thought it important to verify that it agreed with the hours that LaViolette set. The letter only raises a question as to why it was not important to agree in writing previously. The answer is that the Union is trying to cultivate a new argument that it never believed existed until new Union leadership saw ambiguous language they believed could now be interpreted in their favor. Until recently, both parties understood that the language of the contract merely guaranteed the work week and work schedule.

The Union also attempts to argue at one point that the Summer hours are part of the schedule and then at another point, to argue that there is need to "change" to Summer hours. Under the Union's plain words interpretation, there would be a need to agree to any change of the schedule and there is nothing that excepts summer hours changes. The Union should not be heard to both say that no "change" can occur unless it is mutually agreed upon, and in the same breath state that the County was required to "change" to the Summer schedule without mutual agreement.

The County requests that the grievances be denied.

## DISCUSSION

As previously noted, this case combines grievances from the three bargaining units of the County's Library employees. Except for the Clerks' Agreement containing a reference in paragraph 1 of Article 7 recognizing that it is a unit of part-time employees, the relevant wording of Article 1 and Article 7 is identical in the three agreements. For ease of reference, this discussion will refer to the language of the Para-Professional Library Employees' Agreement.

The Union takes the position that while the County may unilaterally set the hours of operation of the library facilities, it must obtain the mutual agreement of the Union to change the hours employees are scheduled to work at the facilities. Conversely, the County takes the position that it may unilaterally change the hours of operation of its library facilities, regardless of whether the change will also require a change in the hours employees work, so long as it maintains the 7 1/2 hour work day, 37 ½ hour work week. In this instance, the change in the hours of operation required a change in the hours employees are scheduled to work at the library facilities on Saturdays during the summer months from those they had been scheduled to work in the Summer of 1999.

The County relies on its rights reserved in Article 1 of the Agreement, "Unless otherwise herein provided, the management of the work and the direction of the working forces. . . . is vested exclusively in the Employer." The Union asserts that Article 7 contains a clear and unambiguous limitation on management's right to change employees' work hours.

Contrary to the Union's assertion, the wording of Article 7, paragraphs 2 and 4, is not clear and unambiguous. It is not clear on its face what "schedule" is being referenced in either paragraphs, nor is it clear what constitutes "special circumstances" or who must reach "mutual agreement" in paragraph 4. In such circumstances, it is necessary to resort to the principals of contract interpretation and probative evidence as to the past practice of the parties and the bargaining history in an attempt to discern the parties' intent. However, little guidance can be gleaned from the parties' past practice and bargaining history.

The evidence as to the parties' practice in the past with regard to changes in the hours employees at a library facility have been scheduled to work shows at most a varied response and provides little guidance as to what the parties have viewed their rights to be in situations such as in this case. In those instances cited where the actual hours employees were scheduled to work at a facility were changed – the change in evening hours at the DePere branch in 1995, the proposed change in Saturday summer hours at two branches in 1997, change in Saturday summer hours at the Southwest branch in 1999, the hours of the merged Denmark branch with the Denmark High School Library in 1999, and the opening the new Howard branch facility

(Weyers-Hilliard) in 2000, the parties responded in a variety of ways. The changes at the Denmark branch in 1995 and the Southwest branch in 1999 were requested by the staff at those facilities. Management's proposed change in Saturday summer hours at two branches for the summer of 1997 was put on hold after the Unions objected. Following further discussions with the Unions, the change was delayed to the summer of 1998 and expanded to four branches. In the case of the hours of the new Howard branch in 2000, at least the Professionals and Paraprofessionals Unions sent LaViolette written notice of their agreement to the new hours, albeit it appears this is the first time such written acknowledgement occurred. Thus, the only instance cited where the schedule of work hours was changed unilaterally by the County without objection or agreement by the Unions or at least by the affected staff, was the merged Denmark facility in 1999. As noted previously, how the parties have acted in the past in such a situation thus provides little guidance in determining their intent with regard to the application of Article 7.

The evidence submitted as to the parties' bargaining history is limited to hearsay testimony with regard to what a now deceased prior representative of the Unions and a past president of the Professionals Union had said to LaViolette. Such evidence carries little weight.

Looking to the wording and structure of Article 7 of the Agreement, however, provides some guidance. Paragraph 1 of the provision expressly guarantees a 7 ½ hour work day and 37 ½ hour work week for full-time employees. The County's interpretation that paragraph 2 provides essentially the same guarantee, in the form of a requirement that the County must first obtain the agreement of the Union before it may alter the 7 ½ hour work day and 37 ½ hour work week, would require a conclusion that the parties intended to say the same thing twice and in two different ways, in the same provision. In other words, one would have to conclude that paragraph 2 is redundant and simply restates the guarantee expressly set forth in paragraph 1. An interpretation that would render wording of a provision meaningless or mere surplussage is to be avoided if there is another reasonable meaning that can be given to those words.

As the Union asserts, another reasonable interpretation of the words "present employee work schedule and work week" in paragraph 2 of Article 7 is that it refers to the actual hours and days of the week that there are employees presently scheduled to work at the facility or facilities in question. This would be the broad schedule of hours that there are employees working and that cannot be changed except by mutual agreement of the County and the Union. Such an interpretation would not be redundant and would give effect to all of the words in paragraphs 1 and 2. In that latter regard, the County's interpretation gives no meaning to the terms "present" and "presently in effect" used in paragraph 2. Use of those terms denotes an intent to identify and lock-in a schedule that is in effect at a particular point in time, e.g., the

date on which the initial agreement was entered into or the dates on which successor agreements are reached. However, if "employee work schedule" refers to the 7 ½ hour work day, 37 ½ hour work week in paragraph 1, there would be no need to further identify it as the schedule "presently in effect."

Paragraph 4 of Article 7 is somewhat more problematic in that it refers to "the above schedule and any other schedule". Under this second interpretation, "above schedule" could refer to the "present employee work schedule" referenced in paragraph 2. The wording of paragraph 4 appears to connote a temporary alteration in the present schedule of work hours due to "special circumstances." This meaning is not inconsistent with the wording of paragraphs 1 and 2. Both parties appear to conclude that the words "and other schedules" in paragraph 4 refers to individual employee work schedules, in which case, "mutual agreement" could be between the supervisor and the individual employee in such instances. This would explain the lack of explicit reference to the "Employer and the Union" as to who must reach such mutual agreement, as it could vary with which schedules are in question. As the County suggests, "special circumstances" could mean staffing needs due to employee absences for vacations, illness, etc., or special projects or special events, e.g., the program at the Central Library to teach people how to use the internet.

It is not necessary, however, to completely define the application of paragraph 4, as it is sufficient to determine whether it applies to the instant situation. It does not appear to apply, as this situation involved a change in the hours that there are employees in general scheduled to work on Saturdays in the Summer, and that the change was not to be temporary and was not based on the "special circumstances", referred to in paragraph 4.

The County correctly asserts that the right to set hours of the enterprise's operation is an important management right that should not be disturbed absent substantial evidence of an intent to cede the right. However, it also may equally be said that the right to bargain over the hours employees work, both in terms of the number of hours and when they will work, is recognized as an important right of labor unions and ostensibly, one that should not be lightly considered to be ceded to management. The points are thus offsetting. Moreover, contrary to the County's continued assertion that this case involves management's right to set the Library's hours of operation, the issue is not as broad as the County claims. While that right is impacted as a practical matter, a change in the hours of operation that does not affect the hours that employees currently work is not within the scope of this case. The hours employees are scheduled to work having been changed as a result of the change in the hours the libraries were to be open on Saturdays in the summer months, the issue in this case therefore is limited to whether management may change the hours employees are scheduled to work at a library facility.

The County's claim that the Union's case must fail because a decision setting the hours of operation is not a mandatory subject of bargaining, and that it therefore only has a legal duty to bargain the impact of its decision, is beside the point. The crux of the issue in this case is whether Article 7 contractually obligates the County to obtain the agreement of the Union before it may change the hours employees are scheduled to work. It is also noted in passing that the hours of the day or days of the week that employees are scheduled to work is also a mandatory subject of bargaining. See, e.g., CITY OF BROOKFIELD, DEC. NO. 17947 (WERC, 7/80).

Last, the County asserts that as a factual matter, there was no "change" in hours that needed the Union's agreement even under the Union's interpretation of Article 7. According to the County, the decision was to not change the hours the libraries were to be open on Saturdays in the Summer from what they had been open in the Fall, Winter and Spring. The argument is clever, but not persuasive. The evidence indicates that the parties recognize an established period as "summer" for purposes of setting the libraries' schedules, i.e., that at approximately the same time each year the libraries will change to their "summer hours." As shown by the parties' correspondence in this instance and by their responses in the case of management's proposal to change those summer hours at two branches in 1997 to be open on Saturdays, the parties have viewed a change from the prior summer's schedule to be a "change" from the status quo.

For the foregoing reasons, it is concluded that the terms "present employee work schedule and work week" in paragraph 2 of Article 7 of the parties' agreements refers to the hours of the day and days of the week that employees are presently scheduled to work at a library facility or facilities, constituting a limitation on management's rights, and that any change in that overall "employee work schedule," such as occurred here, requires the mutual agreement of the parties. As the County unilaterally imposed the change in Saturday summer hours from the prior summer's hours over the Unions' objections, it is concluded that the County violated Article 7, paragraph 2 of the parties' Agreement in doing so.

As relief, a return to the *status quo ante* is the usual remedy where a party has improperly made a unilateral change and it is deemed to be appropriate in this case, absent the mutual agreement of the parties to a different summer work schedule. While the Union has requested that the undersigned retain jurisdiction to ensure compliance with the remedy, it does not appear that is necessary. The remedy is to return to the summer library work schedule that was in force at each of the County's various library facilities in 1999 during the next summer period, absent agreement otherwise.

Based upon the above and foregoing, the evidence, and the arguments of the parties the undersigned makes and issues the following

## AWARD

The grievances are sustained. The County is directed to return to the summer work schedule that existed at each of its library facilities for the employees in each of the bargaining units for the summer period of 1999, for the next summer hours period, absent mutual agreement of the parties otherwise.

Dated at Madison, Wisconsin this 29th day of October, 2001.

David E. Shaw /s/
David E. Shaw, Arbitrator

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