

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

MANITOWOC COUNTY

and

**MANITOWOC COUNTY HUMAN SERVICES DEPARTMENT
PROFESSIONAL EMPLOYEES, LOCAL 986-A, AFSCME**

Case 408
No. 65854
MA-13339

(Human Service Department Professionals)

and

Case 409
No. 65855
MA-13340

(Supportive Services)

Appearances:

Mr. James R. Korom, von Briesen & Roper, S.C., Attorneys at Law, P.O. Box 3262, 411 East Wisconsin Avenue, Suite 700, Milwaukee, Wisconsin 53201-3262, appearing on behalf of Manitowoc County.

Mr. Neil Rainford, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 1311 Michigan Avenue, Manitowoc, Wisconsin 54220, appearing on behalf of Manitowoc County Human Services Department Professional Employees, Local 986-A, AFSCME and Manitowoc County Supportive Services Employees, Local 986-A, AFSCME.

ARBITRATION AWARDS

On May 4, 2006 Manitowoc County and Manitowoc County Supportive Services Employees, Local No. 986, AFSCME and Manitowoc County Human Services Department Professional Employees, Local No. 986-A, AFSCME filed requests with the Wisconsin

Employment Relations Commission, seeking to have the Commission appoint William C. Houlihan, a member of the its staff to hear and decide two grievances. A hearing was conducted on July 18, 2006 in Manitowoc, Wisconsin. A transcript of the proceedings was taken and distributed by August 2, 2006. Post-hearing briefs and reply briefs were filed and exchanged by November 10, 2006.

This Award addresses the right of the County to layoff all bargaining unit employees for approximately one-half day per month.

BACKGROUND AND FACTS

The County and the two bargaining units cited in the caption are signatories to collective bargaining agreements, the relevant portions of which are set forth below. On, or about February 6, 2006 then-Manitowoc County Executive Dan Fischer sent the following layoff notice to all members of the Supportive Services collective bargaining unit:

February 6, 2006

...

NOTICE OF LAYOFF AND NOTICE OF RECALL

Manitowoc County is required to adopt an annual budget that balances expenses with revenues and is required to operate within the adopted budget. The 2006 budget that was adopted by the County Board provides for a 3% general wage increase and a 10% employee health insurance contribution.

Wages and employee health insurance contributions are both mandatory subjects of collective bargaining. Unfortunately, collective bargaining on the issue of employee health insurance contribution has reached an impasse. As a result, the County is not operating within its approved budget.

In order to eliminate this operating deficit, I have determined that temporary layoffs are necessary in those departments that are normally scheduled to be open from Monday through Friday.

This letter provides you with the notice of layoff and recall that is required by ARTICLE 2(E) of the collective bargaining agreement between the Manitowoc County Board of Supervisors and Manitowoc County Supportive Services Local 986-A, AFSCME, AFL-CIO.

You are laid off from work beginning at 1:30 p.m. on Friday, **February 24, 2006**. Recall notice: Your period of layoff ends at 4:30 p.m. on Friday, February 24, 2006.

You are laid off from work beginning at 1:30 p.m. on Friday, **March 31, 2006**. Recall notice: Your period of layoff ends at 4:30 p.m. on Friday, March 31, 2006.

Additional temporary layoffs will be required during the rest of the year for so long as the current operating deficit continues to exist.

Because wages and employee health insurance contributions are mandatory subjects of bargaining, they cannot be discussed with employees on an individual basis. Please address any questions you may have regarding this issue to your bargaining representative.

Dan Fischer /s/
Dan Fischer, County Executive

An identical notice was sent to employees in the Human Services bargaining unit, which identified the period of layoff as from 8:00 A.M. – 11:00 A.M. Thursday, February 23 and Thursday, March 30, 2006.

All members of the two bargaining units were laid off and recalled consistent with the terms of the notices. The two unions filed grievances, dated 2/23/06 (Human Services) and 2/24/06 (Supportive Services), each of which was denied on, or about, March 21, 2006.

The two grievances were consolidated for hearing and decision. The parties stipulated the following issue:

Did the County violate the Collective Bargaining agreements as alleged in those grievances, and if so, what is the appropriate remedy?

BACKGROUND AND FACTS

The background to this dispute is the negotiations leading to a successor agreement to the 2004-06 Collective Bargaining Agreements between the parties. On, or about December 24, 2004 AFSCME Representative Neil Rainford sent Sharon Cornils, County Personnel Director, a letter notifying the County of the unions desire to commence negotiations for successor agreements, and suggesting the parties meet during the week of August 8, 2005 to begin negotiations.

The parties did not begin negotiations in August, but rather began to meet in November, after the County had passed its budget. Historically, negotiations had begun earlier. Before negotiations began, County Executive Fischer sent all employees an information memo, dated October 5, 2005 covering a number of topics, which included the following:

To: County Board, Department Directors, County Employees

From: Dan Fischer

RE: Information

Date: October 5, 2005

The 16.88% increase in health insurance adds more to our 2006 budget than the State will allow us to increase our tax levy. That should give you some idea of how creative our staff has needed to be in order to meet the requirements of our tax limitations while, at the same time, meeting the needs and requirements of their departments.

Unfortunately, we have not been able to fund the entire 16.88% increase without including an additional employee contribution towards the health insurance premium. County employees presently pay 8% of the health insurance premium, and we are asking that number be raised to 10% in the 2006 budget. We have also included a 3% pay increase for county employees. Obviously these are both items that must be negotiated with our represented employees.

...

At an October 10 Finance Committee meeting the following explanation of the budget was presented:

Finance Committee
October 10, 2005 – Administration Building

...

Todd Reckelberg, Comptroller, stated the 2006 budget will be presented to the County Board tomorrow night and as presented is balanced. The budget requires employees to pick up 10% of the health insurance. This is a change from 8%. If by February, the Personnel Committee cannot obtain an agreement with the unions, that will be the breaking point and some other action will need

to be taken. A schedule was handed out showing by union group what one hour of labor costs the county. The budget as presented assumes two employees at the Sheriff's Department will be retiring and those positions will not be filled and it assumes that no one will be sent to Lincoln Hills through the Human Services budget. County Executive Dan Fischer explained the increased cost in health insurance is 16.88%. The Committee discussed the assumptions in the Executive's budget and realized that if they don't occur, other action will be needed.

The County did enact a budget which was premised on a 3% raise and an increase in employee contribution to the health insurance premium of 2% (i.e. the employee portion of the premium would be raised from 8% to 10%).

Beginning on, or about November 15 the Union and the County met in negotiations on two occasions, without coming to an agreement on the terms for a successor agreement. On January 11, 2006 Dan Fischer sent all County employees an information memo which contained the following:

To: County Board, Department Directors, County Employees

From: Dan Fischer

RE: Information

Date: January 11, 2006

...

The 2006 County budget included a 3% pay increase for our employees and an increase in premium contribution from 8% to 10% for health insurance. At the December County Board meeting, these changes were adopted for non represented personnel. Without going into the detail of negotiations, very little progress has been made with our unions to accept either the 2% premium contribution increase or to agree to changes in plan design that would reduce premium by 2%. The Personnel Committee has directed the Personnel Director to file for mediation. Staff is working on what actions may be necessary to meet the budget established, including the possibility of layoffs.

On January 25, 2006 there was a meeting involving Fischer, Cornils, Rainford, Todd Reckelberg, the County Comptroller, and David Nickels, president of Local 986-A. During the course of that meeting the parties discussed the budget situation confronting the County, and alternatives to save money. The parties discussed the potential for layoffs. The Union suggested not using seasonal workers, suspending supervisory promotions, voluntary layoffs,

taking money from the reserve and full layoffs. The parties discussed Unemployment Compensation consequences, service impacts and qualifications of junior staff. The Union advised the County that it did not agree that the County had the right to lay off the whole unit(s) for a portion of the day. The meeting ended with the County asking the Union to consider taking an hour off on Mondays and get back to the County Executive within a week if they were willing to consider such a plan.

The next day, January 26, 2006 County Executive Fischer sent a memo, covering a number of topics, to staff. Included in that memo was the following:

To: County Board, Department Directors, Staff

From: Dan Fischer

RE: Information

Date: January 26, 2006

...

Sharon, Todd and I have met with the AFSCME Staff Representative as well as representation from three of the Locals to discuss the budget deficit related to the difference between the 10% employee contribution to health insurance which was budgeted and the present 8% employee contribution. Bargaining on this issue has apparently reached an impasse. Sharon will be filing the necessary paperwork with the Wisconsin Employment Relations Commission to begin the mediation process. In the meantime, the budget deficit has to be addressed. The Unions have been informed that so long as this budget deficit exists, it will be necessary to layoff all employees in the Supportive Services and Human Services bargaining units for three hours per month, tentatively beginning February 24th from 1:30 pm. – 4:30 p.m. Prior to deciding what day to implement the layoffs, we met with the Circuit Court Judges to determine what would be least disruptive to the Courts.

The Union did not get back to the County relative to an hour off on Monday. The layoffs scheduled to begin on February 24 went forward as described.

On March 23, 2006 the Human Services Board met and reviewed the initial round of layoffs. The official minutes of that meeting included the following:

...

STAFF LAYOFFS – Dan Fischer:

County Executive Fischer explained the reasoning behind his decision to lay off represented staff three hours per month. The 2005 County budget was passed and contains a provision for health insurance contributions to increase from 8% to 10% by all county employees. Non-represented staff are already paying the 2% increase, however, represented staff are in disagreement. The health insurance portion of the union contracts is now in arbitration. Because a deficit of \$161,000 would exist by year's end, various options were considered. Through the monthly three hour layoff, a savings of \$12,000 would be realized from the Human Services Department. The Highway Department chose not to fill two positions until May in order to avoid layoffs. The Sheriff's Department and the Health Care Center, because of their 24 hour 7 day per week direct service provision, were exempted from having layoffs.

Personnel Director Sharon Cornils stated that following the traditional procedure of last person hired/first person laid off, would jeopardize the receipt of benefits for citizens of Manitowoc County since the least senior employees were in the Economic Support Division. Cornils Sharon stated other benefits to the three hour layoffs included staff health insurance coverage not being jeopardized, and the County not having to pay Unemployment Compensation benefits. Cornils added that the next layoffs are scheduled for March 30 and 31st and no additional layoff dates have been scheduled.

Comptroller Todd Reckelberg stated that no savings were realized from the first layoff at the Human Services Department due to the increased amount of approved overtime during the month. Mr. Fischer commented that revenues have not been applied which may cover part of this.

Every bargaining unit employee was sent a notice of layoff. Active operations were suspended for the period of layoff, with supervisors providing a skeletal presence. The layoff had varying impacts on employees. The norm was for a full time employee to lose 3 hours of pay. However, some full time employees had shifts that did not include some or all of the hours designated as layoff. They suffered a diminished or no economic loss. There were part-time employees not scheduled to work the designated hours, who felt no economic consequences of the layoff. Other part-time employees were scheduled to work the entire period of shut down, and they suffered a disproportionate economic loss.

The County has subcontracted certain social services work. Contracted employees were not subject to the layoff. The record supports a finding that the County has never utilized this type of layoff in the past.

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENTS

Supportive Services Employees

...

**ARTICLE 2
SENIORITY**

- A. Seniority: It shall be the policy of the Employer and the Union to recognize seniority.
- B. Definition: Seniority shall be defined for the purposes of this Agreement as the net credited service of the employee.

...

- E. Layoffs: In reducing employee personnel, the last person hired shall be the first person laid off, and the last person laid off shall be the first person rehired. All temporary employees shall be laid off before regular employees are laid off.

In reducing employee personnel, that employee may bump any other employee in their Employment Group of an equal or lower classification to the position they hold now or previously held provided they have more bargaining unit seniority than the person they are bumping and can do the available work. Employment Group and Departments are defined in Appendix "F". If there are no positions in the employee's Employment Group that the employee is eligible for the employee can then bump into the least senior position in the other Employment Group, provided that position is of an equal or lower classification to the position the employee holds or previously held, and provided that the employee has more bargaining unit seniority than the person they are bumping and can do the available work. Employees bumping into the other Employment Group shall retain the rate of pay they were earning at the time of layoff for a period not to exceed six (6) months from the day they bumped into the least senior position in the other Employment Group. After six (6) months have elapsed, the rate of pay shall be the rate associated with the position bumped into.

Any employee bumped by a more senior employee has bumping rights identical to the employee who bumped them.

The County shall give employees two (2) weeks notice prior to layoffs. Employees must utilize their bumping rights within two (2) working days after the employer gives the employee the seniority list.

Employees shall be recalled in order of Bargaining Unit seniority provided they can do the available work. Laid off employees shall be recalled before any new employees are hired, provided that the laid off employees can do the available work. Employees will be given one (1) week notice of recall.

. . .

ARTICLE 3 MANAGEMENT RIGHTS RESERVED

Unless otherwise herein provided, management of the work and direction of the working force, including the right to hire, promote, transfer, demote, or suspend, or otherwise discharge for just 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 him or her for such period of time involved in the matter.

Manitowoc County shall have the sole right to contract for any work and to direct its employees to perform such work wherever located subject only to the restrictions imposed by this Agreement and the Wisconsin Statutes.

Manitowoc County shall have the sole right to subcontract for any work so long as the subcontracting does not cause the layoff of an employee to the street or reduce an employee's hours to less than the number of hours budgeted for the employee in the previous year's budget. Budgeted hours, as used herein, means the number of hours that an employee is authorized to work and that an employee typically works. Budgeted hours shall not be modified to facilitate subcontracting that would otherwise be prohibited by this provision.

Unless otherwise herein provided, the Employer shall have the explicit right to determine the specific hours of employment and the length of work week and to make such changes in the details of employment of the various employees as it from time to time deems necessary for the effective operation of its department. The Employer may adopt reasonable work rules except as otherwise provided in this agreement.

The Employer agrees that all amenities and practices in effect for a minimum period of twelve (12) months or more, but not specifically referred to in this Agreement, shall continue for the duration of this agreement.

...

ARTICLE 10 DEFINITIONS OF EMPLOYEES

- A. Regular Full-Time: A regular full-time employee is a person hired to fill a regular full-time position. Full-time employees are eligible to receive all benefits in this Agreement.
- B. Regular Part-Time: A regular part-time employee is a person hired to fill a regular part-time position. Regular part-time employees shall not be used to replace, reduce or displace regular full-time employment.

...

- C. Seasonal: A seasonal employee is a person on the active payroll only during the season during which his or her services are required. Seasonal employees are not entitled to any of the fringe benefits under this Agreement. Seasonal employees shall not be used to replace, reduce or displace regular employment.
- D. Temporary: A temporary employee is a person hired for a specified period of time (not to exceed six (6) months) and who will be separated from the payroll at the end of period. When temporary employees are hired as a result of an extended leave due to illness or disability of an employee, as guaranteed in ARTICLE 25, the temporary employee shall remain employed for no more than either the need for the temporary employee's services, the length of the leave of the employee, or twelve (12) months, whichever of these conditions is shortest. Temporary employees receive none of the benefits contained in this Agreement. Temporary employees shall not be used to replace, reduce or displace regular employment.

...

ARTICLE 23 GUARANTEED HOURS

- A. The guaranteed normal work day shall be Monday 8:30 a.m. to 5:00 p.m. with one-half (1/2) hour for lunch; and Tuesday through Friday shall be from 8:30 a.m. to 4:30 p.m. with one-half (1/2) hour for lunch, unless specified otherwise below.

1. Clinical Services Division

The Clinical Services Division work week shall be Monday through Friday and shall consist of one eight (8) consecutive hour day and four seven and one-half (7-1/2) consecutive hour days. Three positions are considered to be included in the Clinical Services Division. These positions are Clerk Typist, Clerk Typist, and Administrative Assistant.

Monday through Wednesday of each week the work day shall commence on or after 8:00 a.m. and conclude on or before 9:00 p.m. with a one (1) hour unpaid lunch period. Tuesday and Wednesday shall consist of a seven and one-half (7-1/2) work day with a one (1) hour unpaid lunch period.

Thursday and Friday work hours shall commence at 8:00 a.m. and conclude at 4:30 p.m. with a one (1) hour unpaid lunch period.

Work performed after 5:00 p.m. on Monday and after 4:30 p.m. on Tuesday and Wednesday will be limited to the functioning of the Clinical Services Division.

The work cycle shall be a standard designation of days except employees may trade days provided the trade is approved by the Department Head.

2. Aging Resource Center

Site Managers/Community Supervisors shall work no more than eight (8) hours between 8:30 a.m. and 7:00 p.m. Monday through Friday.

3. Human Services East

The guaranteed work day for clerical and paraprofessional employees shall be eight (8) hours (8:00 a.m. to 5:00 p.m.) on Monday, and the guaranteed work day shall be seven and one-

half (7-1/2) hours (8:00 a.m. to 4:30 p.m.) Tuesday through Friday. Each employee shall have one (1) hour for a lunch break to be taken on a staggered basis.

4. Custodial and Maintenance Staff

For the Custodial staff at the Courthouse, County Office Building and County Safety Building the guaranteed work day shall be eight (8) hours. The guaranteed work week is five days, Monday through Friday.

B. Flex-time:

Flex-time shall be permitted by mutual written agreement of the employee and the Department Director or the Department Director's designee. Said flex-time shall be defined as straight time scheduling revisions of starting-quitting times, lunch periods and their duration, number of days per week and number of hours per day. Up to seventy-six (76) hours per pay period may be scheduled on a straight time basis.

...

ARTICLE 26
OVERTIME – COMPENSATORY TIME

A. All Bargaining Unit Employees:

All hours worked outside of the guaranteed hours shall be compensated at the rate of time and one-half (1-1/2) for the following conditions:

1. All scheduled overtime must have the prior approval of the Director or his or her designee.
2. Employees working outside the guaranteed hours shall be paid or credited for a minimum of two (2) hours overtime.
3. Employees may elect to take compensatory time off at the rate of one and one-half (1-1/2) in lieu of overtime pay.

...

Human Service Department Professionals

...

**ARTICLE 2
SENIORITY**

- A. Seniority: It shall be the policy of the Human Services Department to recognize seniority.

- B. Definition: Seniority shall be defined for the purposes of this Agreement as the net credited service of the employee. Net credited service shall mean continuous employment in the County beginning with the date and hour on which the employee began to work after last being hired. . . .

- C. Layoffs: In reducing employee personnel, the last person hired within the affected group shall be the first person laid off, and the last person laid off within the affected group shall be the first person rehired.

Layoff and recall shall be within the following groups of employees:

- 1. Psychologists (shall be allowed to bump in to group 3 too)
- 2. Registered Nurses
- 3. All other Human Services Department positions

Layoff and recall within the above groups shall be in accordance with the employee's bargaining unit seniority.

...

**ARTICLE 3
MANAGEMENT RIGHTS RESERVED**

Unless otherwise herein provided, management of the work and direction of the working force, including the right to hire, promote, transfer, demote, or suspend, or otherwise discharge for just 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 him or her for such period of time involved in the matter.

Manitowoc County shall have the sole right to contract for any work and to direct its employees to perform such work wherever located subject only to the restrictions imposed by this Agreement and the Wisconsin Statutes.

Manitowoc County shall have the sole right to subcontract for any work so long as the subcontracting does not cause the layoff of an employee to the street or reduce an employee's hours to less than the number of hours budgeted for the employee in the previous year's budget. Budgeted hours, as used herein, means the number of hours that an employee is authorized to work and that an employee typically works. Budgeted hours shall not be modified to facilitate subcontracting that would otherwise be prohibited by this provision.

Unless otherwise herein provided, the Employer shall have the explicit right to determine the specific hours of employment and the length of work week and to make such changes in the details of employment of the various employees as it from time to time deems necessary for the effective operation of its department. The Employer may adopt reasonable work rules except as otherwise provided in this agreement.

The Employer agrees that all amenities and practices in effect for a minimum period of twelve (12) months or more, but not specifically referred to in this Agreement, shall continue for the duration of this Agreement.

...

ARTICLE 10 DEFINITIONS OF EMPLOYEES

- A. Regular Full-Time: A regular full-time employee is a person hired to fill a regular full-time position. Full-time employees are eligible to receive all benefits in this Agreement.
- B. Regular Part-Time: A regular part-time employee is a person hired to fill a regular part-time position. Regular part-time employees shall not be used to replace, reduce or displace regular full-time employment.

...

- C. Seasonal: A seasonal employee is a person on the active payroll only during the season during which his or her services are required. Seasonal employees are not entitled to any of the fringe benefits under this Agreement. Seasonal employees shall not be used to replace, reduce or displace regular employment.
- D. Limited-Term Employee: A limited-term employee (LTE) is one hired for a specified period of time (not to exceed six (6) months) and who will be separated from the payroll at the end of such period. If the LTE is

being hired as a temporary replacement for a bargaining unit member exercising his/her rights under ARTICLE 25, A., the specified period of time may extend up to twelve (12) months. Limited term employees (LTE's) shall receive none of the benefits contained in this agreement. Limited term employees (LTE's) shall not be used to replace, reduce or displace regular employment.

...

**ARTICLE 23 – OVERTIME – COMPENSATORY TIME OFF –
GUARANTEED HOURS – STAND-BY**

- A. All hours worked outside of the guaranteed hours shall be compensated at the rate of time and one-half (1-1/2) under the following terms and conditions:
1. All scheduled overtime must have the prior approval of the Director or his or her designee.
 2. Employees working outside the guaranteed hours shall be paid or credited for a minimum of two (2) hours of overtime.
 3. Employees may elect to take compensatory time off at the rate of time and one-half (1-1/2) in lieu of overtime pay.

...

B. Guaranteed Hours:

1. Professional Employees: The guaranteed normal work day for professional employees shall be one eight (8) hour day and four (4) seven and one-half (7-1/2) hour days Monday through Friday.
2. Flex-Time: Flex-time shall be permitted by mutual written agreement of the employee and the Department Head or the Department Head's designee. Said flex-time shall be defined as straight time scheduling revisions of starting-quitting times, lunch periods and their duration, number of days per week and number of hours per day. Up to thirty-eight (38) hours per work week may be scheduled on a straight time basis.

C. Stand-By:

1. Crisis Intervention Team: Crisis Intervention shall be performed by assigned employees (Crisis Team). When a vacancy occurs, these positions shall be posted. Employees who are assigned stand-by duty on a full-time basis shall work the equivalent of one seven (7) day week and have the next seven (7) day week off. The work cycle shall normally include seven (7) consecutive days of one hundred twenty-eight (128) hours on-call duty and up to ten (10) additional hours at Crisis Team tasks in a two (2) week period. These employees shall be paid the equivalent of seventy-six (76) hours pay for each pay period. Time worked in addition to one hundred thirty-eight (138) hours described above shall be paid at the rate of time and one-half (1-1/2) the employee's scheduled rate of pay.

...

POSITIONS OF THE PARTIES

It is the view of the County that the various claims advanced by the Union relative to who did and did not work during the layoff are unsupported by the record. Specifically, no part-time employee, seasonal employee, or temporary employee worked during the layoff. It is the view of the County that a simultaneous layoff of all unit employees satisfies the last hired, first laid off provision. The County regards the bumping provision as inoperative in that there were no services being provided during the period of layoff, and thus, no place to bump. It is the view of the County that there was a budget shortfall, necessitating cuts. The layoff was a legitimate response. The County subcontracts work. Nothing in the record suggests that there is any connection between the subcontracting and the layoffs. The County notes that it has no control over employees of the subcontractor, and is in no position to initiate layoffs of subcontracted employees.

The County points to Article 3, "Managements Rights", and contends that its actions in laying off employees is specifically authorized. It is the burden of the Union to demonstrate that another provision of the agreement has been violated. The County claims that the Union has failed to meet this burden. The County contends that Article 23 is not a no layoff guarantee, but rather a clock pattern provision. It is the view of the County that Article 23 sets forth the hours employees will be scheduled to work if they are scheduled to work at all. The County notes that there are part-time employees. If Article 23 is to be read as a guarantee of hours for all, how could part-time employees exist? Article 23 (B) allows for flexing up to 76 hours. If all employees are guaranteed to work all the hours described in Article 23 why would the words "up to" appear in Article 23 (B)? Similarly, why would the number of hours budgeted appear in an Article that has guaranteed the right to work hours.

It is the view of the County that common rules of contract construction, past practice and bargaining history support the County's position. The County has laid employees off in the past, without challenge that the guaranteed hours provision of the agreement has been violated. Similarly, employees have been terminated from employment for disciplinary reasons. The County has employed part-time employees without a claim that they are entitled to work the "guaranteed" hours set forth in Article 23.

The County relies on the decision and analysis set forth in a decision I authored in JACKSON COUNTY, Case 148, No. 62559, MA-12338 (Houlihan, 3/05). In JACKSON COUNTY, the County laid off the entire Highway bargaining unit for 1 day a week for 3 consecutive weeks in April, 2003. I found no contract violation under circumstances where the contract provided "The regular workweek shall consist of five (5) consecutive eight (8) hour days, Monday through Friday, 7:00 a.m. to 3:00 p.m.", among a number of other provisions.

It is the view of the Union that the 3 hour layoffs violate the Guaranteed work day. The Union also contends that the layoffs violate Article 2, "Seniority", in that the last person hired was not the first laid off. The parties have contractually committed to a policy to recognize seniority, and so any ambiguity should be resolved in favor of seniority.

The Union claims that part-time employees not scheduled to work the shutdown hours were not actually laid off.

The Union cites arbitral authority for the proposition that the County may not ignore the seniority and last hired first laid off seniority provision to spread the work out equally among all employees. The Union believes that JACKSON COUNTY, cited above, is irrelevant to this dispute, in that it is distinguishable in a number of ways.

The Union notes that much of the rationale of the County in spreading the loss of hours around centered on a concern over laying off junior employees and compromising the delivery of service as well as creating retention problems. It is the view of the Union that the parties bargained the layoff system to protect senior employees and that difficulty in administering the seniority based system is no basis for modifying the agreement. The Union argues that this Arbitrator lacks the authority to so modify the provisions of the Agreement.

The Union takes issue with the contention that the use of the term "normal" lends ambiguity to the contract. The term "guaranteed" is not ambiguous, and whatever ambiguity might otherwise be implied is inappropriate in this context. It is the view of the Union that the contract has never been interpreted in the way the County now asserts. Never has the County attempted to effect a partial layoff of all employees simultaneously.

It is the view of the Union that the employer lacked legitimate reason to relieve employees from duty. The Union believes the County used the layoffs as a bargaining ploy to attempt to secure health insurance concessions.

DISCUSSION

This dispute turns on what the terms “Guaranteed Hours” and “guaranteed normal work day” mean. I do not believe the outcome of this dispute rests on whether part-time employees suffered disparate consequences due to the layoff. No one appears to have worked during the period of layoff. I do not believe that the record supports a conclusion that temporary or LTE employees actually worked during the period of layoff. I do not believe that subcontracting caused the layoff or reduction in hours.

I agree with the County contention that the level of work to be performed is for the County, and not the Arbitrator, to determine. The County contends that under Article 3, “Management Rights”, subject to other provisions of the Agreement, it possesses the right to determine the hours of employment and length of the work week, and to make changes therein. It follows that it is the Union’s burden to demonstrate that some other provision of the Agreement narrows that right. I agree.

Article 23 is such a provision. The title of Article 23 is “Guaranteed Hours”. Typically the title of a clause provides an overview of the content or subject matter of that provision. It is the view of the County that the clause is a clock pattern clause, which sets forth the hours an employee is to work, if they are scheduled to work at all. This contention does little to explain what is guaranteed in the clause. It also glosses over the fact that employees were scheduled to work during the defined day, but not for the hours defined. In the County’s view, the clause does no more than set a standard against which straight time and overtime are measured. This also ignores the relationship between the term guaranteed and the term hours.

I believe that a review of the clause reconciles any ambiguities that may appear to exist. Par. A begins with “The guaranteed normal work day...”. The County describes the use of guaranteed normal as schizophrenic. Guaranteed implies some assurance, and normal at least inferentially suggests the possibility of a deviation from the norm. Read in the full context, I do not find that to be the case. All terms can be harmonized to give each full meaning. I read Article 23 (A) to guarantee the work day/work week as described, with certain contractually identified exceptions.

The norm, from which tolerances have been negotiated, is set forth in par. A. Par. A 1., applicable to Clinical Services division, is the first exception to the normal work day. Par.’s 2, 3, and 4 are further exceptions. Such a reading treats literally the words used by the parties. It is consistent with the structure of the clause. It is also consistent with the title of the Article. It provides “guaranteed hours”. It is further compatible with each of the enumerated exceptions the follow. The work day/week descriptions set forth in Par.’s 1, 3, and 4 are articulated in mandatory terms. These paragraphs lack the term “normal”, and whatever ambiguity that word suggests. To construe the term ‘normal’ as authorizing employer discretion over the length of the work week and work day for employees covered by Par.’s 1,3, and 4, would create an internal ambiguity within the Article.

The contract has other deviations from the “guaranteed normal work day”. Article 5 allows for discipline for just cause. Time off discipline and discharge are specifically addressed by contract. Article 10 creates a category of regular part-time employees, seasonal employees and temporary employees. The contract addresses the conditions of their employment.

I believe that Article 23 guarantees the hours of work, except as otherwise provided by contract. The County contention that it is free to determine whether or not employees will be scheduled to work is at odds with the expressed guarantees.

I regard the structure of the Professional contract as the same. There is a guaranteed normal work day, with certain contractually authorized exceptions.

The County is free to lay off, consistent with Article 2, Seniority. Par. E provides for a process to reduce employee personnel. The “...last person hired shall be the first person laid off,...”. This provision anticipates “persons” being laid off, and as such is consistent with Article 23. The employer’s right to layoff is subject to Article 2, Par. E and also the guarantees expressed in Article 23. Layoffs must be done in the inverse order of seniority while honoring the guarantees provided by Article 23. The contract requires that “persons” be laid off. Here, all employees suffered a reduction in their work week/work day.

The point of the layoffs was to save money. For a variety of reasons, the County decided to spread the pain to all. Whatever the merit of those reasons, these parties have bargained a clause to address reductions in staff. Their competing interests are reflected in the words of the agreement. The County’s concern about the ability of the remaining employees to provide required services is specifically addressed by Article 2, par. E of the Supportive Services agreement. It is for me to interpret the contract. It is not for me to evaluate the relative desirability of a procedure not allowed by the Agreement.

JACKSON COUNTY is distinguishable. In JACKSON COUNTY, there was no guaranteed work day/work week. In JACKSON COUNTY, I indicated that if the term “regular” had been absent from the description of the work week, “...the provision would have mandated the work week and work day...” Here, the paragraphs describing the hours of the Clinical Services Division, Human Services East, and Custodial and Maintenance Staff are absolute, i.e. they have no reference to “regular”, “normal”, or “standard”.

The substance of the contract in JACKSON COUNTY is different from the contract under review here. In JACKSON COUNTY, I concluded that the use of the term “regular” implied some tolerance from the norm. I also observed “The contract does not specifically define just how much variation is permitted”. The contract in this proceeding defines the alternatives to the normal work week and day.

The layoff clause in JACKSON COUNTY provided “The County shall have the sole right to determine the position or positions to be eliminated or reduced”. In this dispute the layoff clause makes no reference to reductions in position(s). To the contrary, it specifies that “person(s)” are to be laid off. A part of the reasoning of JACKSON COUNTY is that the County had exercised discretion relative to the number of positions to be reduced, under a contractual provision that permitted County discretion relative to reductions in positions.

AWARD

The grievances are sustained.

REMEDY

The County is directed to pay all employees, who are subject to the guaranteed hours provisions of the respective collective bargaining agreements, all wages and benefits, if any, due him or her for the period of layoff.

JURISDICTION

I will retain jurisdiction for a period of 60 days from the date of this Award, for purposes of resolving any dispute relative to the remedy directed. This jurisdiction will expire automatically, unless I am contacted and advised that a dispute exists. If so advised, I will extend jurisdiction for so long as is necessary to resolve the dispute.

Dated at Madison, Wisconsin, this 23rd day of May, 2007.

William C. Houlihan /s/

William C. Houlihan, Arbitrator

