BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

KEWAUNEE COUNTY PROFESSIONAL EMPLOYEES' UNION, LOCAL 2959-A, AFSCME, AFL-CIO

and

KEWAUNEE COUNTY

Case 69
No. 65868
MA-13346

Appearances:

Mr. Neil Rainford, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 1311 Michigan Avenue, Manitowoc, Wisconsin 54220, on behalf of the Union.

Ms. Elma Anderson, Columbia County Corporation Counsel, 613 Dodge Street, Kewaunee, Wisconsin 54216, on behalf of the County.

ARBITRATION AWARD

Kewaunee County Professional Employees Union, Local 2959-A, AFSCME, AFL-CIO (herein the Union) and Kewaunee County (herein the County) have been parties to a collective bargaining relationship for many years. At all times pertinent hereto, the Union and the County were parties to a collective bargaining agreement covering the period January 1, 2004 to December 31, 2006, and providing for binding arbitration of certain disputes between the parties. On May 8, 2006, the Union filed a request with the Wisconsin Employment Relations Commission (WERC) to initiate grievance arbitration over the reduction in hours of Charlene Coenen (herein the Grievant). The undersigned was appointed to hear the dispute and a hearing was conducted on July 21, 2006. The proceedings were not transcribed. The County filed its initial brief on September 21, 2006, and the Union filed its initial brief on October 9, 2006. The parties filed reply briefs on December 6, 2006, whereupon the record was closed.

ISSUES

The parties did not stipulate to a statement of the issues. The Union would frame the issues, as follows:

Did the Employer violate the collective bargaining agreement when it eliminated Charlene Coenen's full-time, 40 hour per week position, laid her off and assigned her to a part-time, 20 hour per week position and denied her the opportunity to bump?

If so, what is the appropriate remedy?

The County would frame the issues, as follows:

Does Article 16, Section C2, of the collective bargaining agreement permit an employee, whose hours of work have been reduced from full-time to half-time, to displace a junior employee?

The Arbitrator frames the issues, as follows:

Did the County violate the collective bargaining agreement when it reduced Charlene Coenen's position from full-time to part-time and denied her the opportunity to bump a junior employee?

If so, what is the appropriate remedy?

PERTINENT CONTRACT LANGUAGE

ARTICLE 2 MANAGEMENT RIGHTS RESERVED

The management and the direction of the work force is vested exclusively in the Employer, to be exercised through the Department Heads, including, but not limited to, the right to hire, promote, demote, suspend, discipline and discharge for proper cause, the right to decide job qualifications for hiring, the right to transfer or layoff because of lack of work or other legitimate reasons; to subcontract medical and psychiatric services; to subcontract client services provided by temporary employees; to determine any type, kind and quality of service to be rendered to patients and citizenry; to determine the location, operation and type of physical structures, facilities or equipment of the departments; to plan and schedule service and work; to plan and schedule any training programs; to create, promulgate and enforce reasonable work rules; to determine what constitutes good and efficient county service and all other functions of management and direction not expressly limited by the terms of this agreement.

. . .

ARTICLE 4 PROBATIONARY PERIOD AND GENERAL DEFINITIONS

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F. PART-TIME EMPLOYEE BENEFITS

Regular full-time employees are scheduled at least forty (40) hours per week. Regular full-time employees are entitled to all benefits of this agreement. Regular part-time employees work schedule is less than forty (40) hours per week. Regular part-time employees shall be entitled to all fringe benefits on a pro-rata basis.

ARTICLE 5 HOURS OF WORK

A. NORMAL OFFICE HOURS

Monday through Friday
(Except holidays set in this agreement)
8:00 a.m. to 4:30 p.m.

B. WORK WEEK

The work week shall be five (5) eight (8) hour days, Monday through Friday, except as allowed in Section D of this article.

. . .

D. OVERTIME

All hours worked outside of the scheduled hours of work shall be paid at the rate of time and one-half (1½) the employees regular rate of pay or, at the election of the employee, granted as compensatory time off at the rate of time and one-half (1½).

If both the employee and the employee's immediate supervisor agree, the employee shall be allowed to adjust his/her work hours as long as this flexible scheduling does not result in more than ten (10) paid hours per day or eighty (80) paid hours per pay period. Flexible scheduling within these limitations shall not result in payment of overtime or accrual of compensatory time.

. . .

ARTICLE 16 SENIORITY

A. SENIORITY DEFINED

Seniority shall mean the continuous length of service with the county from an employee's last date of hire. Also, in the case of any part-time county employee, seniority shall be determined according to the proportion of hours worked by such part-time county employee to the hours worked by a full-time county employee.

B. LOSS OF SENIORITY

Employees shall lose their seniority only for the following reasons: Retirement, resignation, discharge for just cause, or lay off for more than two consecutive years.

C. APPLICATION

1. The principal [sic] of seniority shall prevail in the selection of vacations, promotions, layoffs and rehiring.

2. In the event that the County determines to reduce the number of employees, employees to be laid off will be notified, in writing, by the County Administrator's Office. Layoffs will be accomplished in the following order.

    a. Temporary employees will be laid off first.

    b. The employees in the bargaining unit will be laid off in reverse order of seniority.

    c. Senior employees in the bargaining unit may elect to displace a junior employee provided the senior employee is qualified to perform the work of the position selected. The County Administrator, in consultation with the Department Head of the department that the senior employee is electing to enter, shall determine whether the employee is qualified to perform the work of the position selected. If the Department Head and the County Administrator determine that an employee is not qualified, they will notify the Union and the parties may meet to discuss it. If no agreement is reached at such meeting, the dispute will be subject to the grievance procedure. The employee displaced under this provision shall be allowed to exercise similar rights. An employee making an election to displace a junior employee under the terms of

this paragraph must do so in writing on a form provided by the County Administrator's office within five (5) working days of receiving the written notice of layoff.

D. POSTING

1. The Board shall post any new or vacant position within the scope of the bargaining unit for a period of eight (8) calendar days. Any interested employee may apply for the position in writing to the County Administrator.

2. At the end of the eight (8) day positing period the applicants' qualifications shall be reviewed by the Department Head. The position will be filled by the County Administrator with the most senior of the qualified applicants.

E. TRIAL PERIOD

An employee who is promoted or transferred shall serve a 90 calendar day trial period. The trial period may be extended by mutual consent for up to an additional 30 calendar days. During the first 30 days of the trial period, the employee may return to his or her former position with seniority rights. The employee shall give notice of the desire to return in writing to the County Administrator and the President of the Union. The employer may return the employee to his or her former position during the trial period for just cause. The employer will furnish the employee and the Union with written notice and the reasons for the return. Service beyond the trial period (or extension thereof) shall be deemed evidence of satisfactory completion of the trial period. Upon promotion or transfer the employee shall move to the same pay step of the new classification as compared to the wage step received before the promotion.

BACKGROUND

Charlene Coenen, the Grievant herein, was hired by Kewaunee County as a full-time employee in the position of Community Support Program (CSP) Case Manager on December 2, 2002. As a full-time employee, she was entitled under the collective bargaining agreement to a variety of employment benefits, including vacation, paid sick leave, disability insurance, toward which she was required to the full premium, family dental insurance, toward which she was required to contribute 50% of the premium, and family health insurance, toward which she was required to contribute 10% of the premium. She held that position along with one other employee who had greater seniority than she.

In September 2005, Coenen was told by Jack Schad, the Human Services Department Director, that, due to budget cuts, the Community Support Program was being cut back by 20 hours per week and she was asked if she would voluntarily go to part-time, which she declined to do. Schad subsequently decided to reduce the CSP Case Manager position from 2.0 FTEs to 1.5 FTEs and, on November 4, 2005, he informed Coenen that she was being reduced to 20 hours per week as of January 1, 2006. She spoke with Schad about bumping options and, on November 9, 2005, submitted a Notice of Intent to Displace Junior Employee to County Administrator Ed Dorner, indicating an intention to bump a junior employee holding the position of Adult Services Coordinator. Coenen has an undergraduate degree in social work. On November 10, 2005, Dorner denied Coenen's request on the basis that the bumping language of Article 16(C)(2)c of the contract did not apply to reductions of hours, but only to reductions of employees. On November 16, 205, Coenen grieved Dorner's denial of her request to bump, which the County denied, and the matter proceeded to arbitration.

On January 1, 2006, Coenen was reduced to 20 hours per week. Pursuant to the terms of the Article 4(F) of the contract, since January 1, 2006 Coenen's employment benefits have been pro-rated due to her part-time status. Also, pursuant to Article 16(A), since that date her accrual of seniority has been proportional based on her hours worked in comparison with a full-time employee, with the result that some employees, who at one time were junior to Coenen, have now passed her in seniority. Additional facts will be referenced, as necessary, in the **DISCUSSION** section of this award.

POSITIONS OF THE PARTIES

The Union

The Union asserts that when the County reduced the Grievant's hours, it effected a partial layoff and was subject to the requirements of Article 16(C)(2)c. That provision permits a senior employee whose position has been eliminated to bump any junior employee in the bargaining unit whose position they are qualified to fill. By refusing to allow the Grievant to bump, the County violated that provision.

The County also violated Article 16(D), which requires any new or vacant bargaining unit positions to be posted and filled with the most qualified applicants. Under the contract, a part-time position is distinct from a full-time position. In this case, the County eliminated the Grievant's full-time position, created a new part-time position in the same classification, and placed the Grievant in it without posting it or soliciting applications. This was a violation of the contract. To hold otherwise would contravene the clear meaning of the posting provision.

Further, the County has no right under the contract to reduce an employee's hours. There is no such right listed in Article 2, the Management's Rights Clause. Its absence implies that management conceded the right to modify the schedules of the employees. Article 2 does give management the right to "transfer or layoff because of lack or work or other legitimate reasons." This, therefore, cannot have been a transfer, because a reduction of hours is a

partial layoff and the terms transfer and layoff are linked by the disjunctive "or." Thus, management had no right in this instance to unilaterally reduce the Grievant's hours.

Article 5(A) establishes "normal" office hours of Monday through Friday from 8:00 a.m. to 4:30 p.m. Arbitrators have usually interpreted similar language as providing management some latitude to modify work hours as need arises. However, Article 5(B) mandates that the work week "shall be five (5) eight (8) hours days, Monday through Friday," except as otherwise specified in Article 5(D), which allows for flexible scheduling by mutual consent of the employer and employee. The inclusion of Article 5(B) and (D) means that management may not unilaterally reduce an employee's hours, but may only increase them, and then only by mutual consent. Arbitrator Steven Briggs identified five standards applying to an employer's ability to modify work hours under language similar to that here: 1) if the contract defines a normal work week, management must have legitimate business reasons to unilaterally modify the work week, 2) if the contract defines a normal work week, management cannot make unilateral changes for indefinite periods, 3) if the language is construed as a guarantee of a specified number of hours per day or week, management cannot unilaterally tamper with it, 4) Unilateral reductions of hours do not automatically violate seniority provisions, but they cannot favor junior employees over senior employees, and 5) the employer cannot unilaterally modify hours if the agreement prohibits it. AMPCO-PITTSBURGH CORP. 80 LA 472 (Briggs, 1982). In this case, the County violated standards 2-5.

There is also nothing in the parties' past practice or bargaining history to support the County's interpretation of Article 16(C)(2). Union witnesses testified that negotiations over the recently added layoff/bumping language did not raise the issue of whether it applied to reductions of hours. Further, all parties agree that the County has never in the past unilaterally reduced the hours of employees. There is, however, a maintenance of standards clause in Article 1(B), which prevents the County from unilaterally reducing wages hours or conditions of employment.

Further, there is no support for the County's argument that the contract limits layoff to just a reduction in the number of employees. The contract also forbids reductions of hours, so the County's actions here must either be construed as a layoff or they are not provided for under the contract. Thus, the term layoff must encompass a reduction of a position from full-time to part-time. Even assuming the County's definition is correct, however, when Coenen's position was eliminated the number of employees was reduced from 2 FTE Case managers to 1 FTE Case Manager. When she was recalled, there were 1.5 FTE Case Managers. Thus, there was a reduction in the total number of employees.

Article 4 supports the Union's position because it clearly distinguishes between full-time employees, who work at least forty hours per week, and part-time employees, who work less than forty hours per week. This permits the conclusion that the parties intended to distinguish between full-time and part-time positions. Thus, a reduction in an employee's schedule from forty hours per week to twenty would constitute a change from a full-time position to a part-time position. In fact, Joint Exhibit #8 characterizes the change as a transfer from a full-time to a part-time position, which violated the agreement.

The County's action also violated Article 16 B, which prohibits loss of seniority, except by retirement, resignation, discharge for just cause, or layoff for more than two consecutive years. Coenen's seniority was prorated after her reduction, which resulted in her losing seniority vis-à-vis her junior full-time co-workers. This clearly violated the intent of the parties in drafting the seniority provision, which did not address the situation presented here. It should also be noted that the RICHLAND COUNTY award, which may be cited by the County, is distinguishable on its facts, because the contract language there gave the employer much broader powers than the language here.

The Union also rejects the argument that observing the seniority-based layoff and bumping system provided in the contract would be too difficult for the County and that reducing employee's without allowing them to bump should be allowed because it is more expedient. The Union bargained for the seniority rights it has and to allow the County's action puts all Union employees at risk, regardless of seniority. Other arbitrators have held that seniority provisions prevail over the convenience of the employer [See: DANE COUNTY AND AFSCME #65. 705, 720 (Bellman, 5/20/83)].

The County

The County asserts that the language of Article 16 C 2 c is clear and unambiguous and does not apply to this situation. The Union incorrectly asserts that this is a layoff, but it cannot redefine terms to suit itself. Generally, arbitrators do not equate a reduction in hours with a layoff. (citations omitted) The contract itself does not define layoff and there is no basis for giving the term meaning beyond its ordinary usage. Bargaining history also reveals that the parties have not previously discussed the mechanics of layoff prior to the current agreement. Bumping language was added to the current agreement, as proposed by the Union. If the Union had wanted to expand bumping to cover reductions in hours it could have proposed it, but did not. As it is, the language is clear and only applies to reduction of employees, not reductions of hours.

The Management Rights clause in Article 2 gives the County the right to reduce hours. It specifically vests management with the right to manage and direct the work force and to plan and schedule service and work. Many arbitrators recognized that residual powers not specifically enumerated or restricted in the agreement reside with management and nothing in the agreement restricts management's right to reduce a full-time position to part-time. If Article 5 is read to guarantee permanent full-time employment there could not be part-time employees. The existence of part-time employees is acknowledged in Article 1 A and Article 4 F of the agreement and there is no past practice regarding reduction of employees from full-time to part-time, nor is there bargaining history that would suggest that the parties intended to limit management's powers in the way suggested by the Union.

Prior to the hearing, the parties merely discussed whether an employee whose hours were reduced could bump under the provisions of Article 16 C 2 c. At the hearing, the Union for the first time raise the question of whether management could reduce an employee's hours,

reflecting its view that such a reduction is the equivalent of a layoff. The Union's portrays a convoluted process whereby the Grievant was laid off, her full-time position eliminated, then a new part-time position created, which she was recalled to fill, to describe what happened here. The record does not support this notion. The only credible evidence of how the change occurred came from Mr. Schad and Mr. Dorner, which refutes the Union's theory and was neither rebutted nor successfully impeached. Thus, the evidence and the law do not support the Union's arguments.

The Union in Reply

The County incorrectly assumes that the phrase "to reduce the number of employees" gives it the power to do what it did here. The County concedes that it proposed the language of Article 16 C 2 c without objection by the Union, but it never suggested in bargaining that it interpreted the language to give it the right to reduce employees' hours without reference to seniority. Further, the language is not clear and unambiguous, as the County suggests, but is capable of multiple interpretations, and has been interpreted elsewhere to equate reductions in hours with partial layoff. (citations omitted)

The cases cited by the County are too disparate to apply to this case. Both MARATHON COUNTY, Case 315, No. 64644, MA-12962 (Gordon, 11/30/05) and RICHLAND COUNTY, Case 149, No. 62635, MA-12254 (McGilligan, 2/24/04) involve contract language significantly different than that at issue here. Thus, these cases are not on point and cannot serve as a basis for supporting the County's actions.

The County also misreads Article 5 B by asserting that it does not restrict management's right to reduce hours of employees. If management wishes to reduce hours, it must follow contractual requirements, such as the layoff and posting provisions. Bob Mattice and Jack Schad testified that this is the first time the County unilaterally reduced the hours of an employee. All other part-time employees were hired or posted into those positions. The contract guarantees the workweek of full-time employees, so, where seniority prevails, management's options, if it chooses to reduce the workweek, are to layoff the most junior employees, either altogether, or for weeks at a time.

The Union also disputes the County's contention that it only raised the issue of the County's ability to reduce hours of employees for the first time at the hearing. This is not accurate, nor is it supported by the record. The parties discussed this issue extensively before and after the filing of the grievance. The County's claim that the Union has acted unfairly, in contrast to its own fair and open approach, should be rejected.

The County in Reply

The County contends that the issue involves whether an employee whose hours have been reduced has the right to bump and reasserts its claim that the Union did not initially question its right to reduce the hours of full-time employees. The contract clearly recognizes

that there have always been part-time employees in the unit and the Union's eleventh hour challenge to this prerogative should be ignored.

The evidence does not support the Union's version of events. There was no elimination of a full-time position and creation of a part-time position, as the Union suggests. Dorner testified as to the process necessary for doing that and also testified that here the employee was merely reduced from 40 hours per week to 20 hours per week.

The County disputes the Union's version of the bargaining history. The County did propose the language of Article 16 C 2 c in negotiations with another bargaining unit, but it was the Union that proposed adding it here and pressed for its inclusion as written. The parties did not discuss the application of the language in this context and, if the Union wanted it to have the meaning it seeks here it was the Union's responsibility to raise it. Where the term layoff is not defined in the contract the word should be given its ordinary meaning. Here, it can be argued, the parties did define the term by equating it with a reduction of the number of employees in Article 16 C 2. That definition is also consistent with the ordinary meaning given the term. (See: MID-STATE TECHNICAL COLLEGE, Case 74, No. 56695, MA-10383 (Jones, 1999) There is also no bargaining history to support the Union's interpretation of the term, only the Union's impression of what it means.

Also, in MID-STATE TECHNICAL COLLEGE, the arbitrator supported management's right to reduce the hours of employees under its residual powers to address budget constraints, which is exactly the situation here. This was also the case in RICHLAND COUNTY and several other cases (citations omitted).

The Union asserts wrongly that a reduction of hours equates to a reduction in the number of employees, by equating the number of employees with full-time equivalency positions. There is nothing in the record, or the history of the parties' relationship, that supports such a definition. In fact, many arbitrators have held that Hours of Work provisions, setting forth "normal" or "regular" hours, do not bar management from reducing employees' hours. (citations omitted) In Kewaunee County there have long been part-time employees in the bargaining unit, so an argument that the Hours of Work provision guarantees full-time employment has no merit.

DISCUSSION

As I have framed the issues in this matter, the questions presented involve both the propriety of the County's action in reducing the Grievant's hours from a full-time, 40 hour per week position to 20 hours per week and whether that action entitled the Grievant to bump a more junior employee whose position she was qualified to fill. In its briefs, the County asserts that the Union did not raise the issue of the County's asserted right to reduce the Grievant's hours outside the layoff provision prior to the hearing, but there is no evidence that is the case and the County did not make that objection at the hearing, so I am proceeding on the assumption that that question is appropriately before me. Logically, the first question is

whether the County had such a right. The answer to that question will determine whether it is necessary to address the question of bumping rights.

The Union contends that under the contract language the County cannot unilaterally reduce the hours of a full-time employee outside the layoff process. Thus, any unilateral reduction of hours must perforce constitute a partial layoff. If, therefore, such a reduction of hours is a partial layoff, it is subject to the bumping language contained in Article 16(C)(2)c. The County maintains, on the other hand, that it has the right to reduce hours under its reserved powers as set forth in the management rights clause. Further, under the contract language, the term "layoff" does not encompass a reduction of hours, but only a separation of employment and, therefore, a reduction of hours did not entitle the Grievant to bump a junior full-time employee. For the reasons set forth below, I find that the Union's view is more persuasive on the record before me.

The County points out that Article 16(C)(2) equates layoff with a reduction of employees. It argues that the number of employees was not reduced in this case and, therefore, a layoff did not occur. Further, the bumping language of Article 16(C)(2)c is only triggered in the event of a layoff, so, since the reduction of the Grievant's hours did not constitute a layoff, she was not entitled to bump. It further asserts that the Union cannot rely on the language of Article 5, regarding Hours of Work, as codifying a fixed work week for full-time employees that cannot be abridged. In support of these propositions, the County relies on a number of arbitral decisions, primarily RICHLAND COUNTY, Case 149, No. 62635, MA-12254 (McGilligan, 2/24/04), JACKSON COUNTY, Case 148, No. 62559, MA-12338 (Houlihan, 3/17/05) and MARATHON COUNTY, Case 315, No. 64644, MA-12962 (Gordon, 11/30/05). In each of these cases the arbitrator declined to find that the hours of work language in the contract prohibited a reduction of hours, or that a reduction of hours constituted a partial layoff. I believe that each is distinguishable from the case before me.

In RICHLAND COUNTY, Arbitrator McGilligan was asked to construe contract language that referred to layoff as a reduction in the number of jobs in a situation where, as here, the Grievant had her hours unilaterally cut from full-time to part-time. There, the arbitrator concluded that, although the Grievant had fewer hours, her job was not eliminated and, therefore, the layoff language did not apply. Because the bumping language also only applied to layoff situations, he further held that the Grievant was not entitled to bump. Significantly, in his award, Arbitrator McGilligan distinguished his case from WAYNE STATE UNIVERSITY, 76 LA 368 (Cole, 1981), wherein the arbitrator upheld a grievance on similar facts. Key to his distinction between the cases was the fact that in WAYNE STATE UNIVERSITY, the contract language equated layoff with a reduction in the number of employees, as does Article 16(C)(2) here, rather than a reduction in the number of jobs. One could infer that, given this language, Arbitrator McGilligan might have reached a different result, or, at least that the clauses are sufficiently different as to require different treatment.

In JACKSON COUNTY, Arbitrator Houlihan analyzed hours of work language that defined a "regular" work week as "five (5) consecutive eight (8) hour days, Monday through

Friday, 7:00 a.m. to 3:00 p.m." He noted that many arbitrators hold that the use of the term "regular, " "normal, " "standard," or something of the like in defining a work week implies that the work week is not fixed and that management may modify it under certain circumstances. He, therefore, found that under such language management could legitimately reduce the hours of work of bargaining unit employees on three days during a one month period, due to budget constraints. The hours of work language in JACKSON COUNTY was different in some significant ways from that here, as will be discussed below, however, the arbitrator did note: "The Article does guarantee that the normal or typical workweek will be as described. Some variation is tolerated. And so, the County would not be free to establish a permanent 32 hour work week." In this case, the County did, in fact, permanently reduce the Grievant's work week from 40 hours to 20 hours.

In MARATHON COUNTY, Arbitrator Gordon construed contract language which defined management's reserved powers to control the scheduling of work much more explicitly than that here, layoff language which equated layoff with the elimination of a position and hours of work language which defined the "normal" work week and does not match up neatly with the language here. While denying the grievance, the arbitrator noted that the decision was based on his analysis of the specific language before him as applied to that case's particular facts.

I also note, in passing, that the County cites a decision by this arbitrator in ATHENS SCHOOL DISTRICT, Case 13, No. 61756, MA-12056 (Emery, 10/9/03), in support of its position that the term layoff does not include a reduction in hours. In that case, however, the award was again based on the specific language of that contract, which was significantly different from that here. As I stated there, "…layoff, as the authorities cited by both parties agree, generally refers to a separation from employment and that is the meaning I attribute to it here. I do so because there is nothing elsewhere in the contract to suggest a broader meaning was intended." (emphasis added) I further stated, "I agree with Arbitrator Shaw [in SUPERIOR MEMORIAL HOSPITAL, Case 21, No. 50301, A-5165 (Shaw, 9/6/94)] that whether the concept of layoff includes a reduction in hours requires reading it in the context of the contract as a whole." Applying that principle here leads me to conclude that the reduction in the Grievant's hours did constitute a partial layoff, subject to the provisions of Article 16(C)(2).

Article 16(C)(1) mandates that "…seniority shall prevail in the selection of vacations, promotions, layoffs and rehiring." This language is shortly thereafter followed by Article 16(C)(2)(b), which provides that, "…employees in the bargaining unit will be laid off in reverse order of seniority," and by Article 16(C)(2)(c), which provides that in the event of layoff, "(s)enior employees in the bargaining unit may elect to displace a junior employee provided the senior employee is qualified to perform the work of the position selected." These provisions underscore one of the fundamental purposes of the concept of seniority, the favored position enjoyed by employees vis-à-vis those hired after them, which is job protection. More senior employees get laid off later than less senior, qualified senior employees who are subject to layoff may bump junior employees in other positions and more senior employees on layoff get recalled before less senior employees. Because seniority is so important, under Article 16(B) it may only be lost for a limited number of reasons – essentially, either complete

separation from employment or a layoff that extends for more than two years. An arbitrator must, therefore, give appropriate weight to that language, which purports to guard and guarantee the seniority rights of bargaining unit members, to effectuate its purpose.

Given the above, it is notable that the definition of seniority in Article 16(A) equates it with continuous length of service with the County, but also metes out accrual of seniority to part-time employees on a *pro rata* basis. For example, if two employees were hired on the same date, one full-time and one for 20 hours per week, after one year the 20 hour employee would have accrued one half the seniority of the full-time employee. More to the point, if the 20 hour employee were hired 6 months before the full-time employee, after 6 months they would be equal in seniority and thereafter the full-time employee would pass the 20 hour employee on the seniority list and be increasingly more senior. Clearly that is what the parties purposed in including that language and it is understood by newly hired part-time employees when they accept their positions. When it is applied to this situation, however, the Grievant, due to the application of Article 16(A), is now losing seniority vis-à-vis other full-time employees hired later than she, because they are still accruing seniority as full-time employees and she is not. In effect, therefore, she is losing her seniority in comparison to the other full-time employees although she has not experienced any of the events set forth in Article 16(B) that are supposedly the only conditions under which seniority may be lost.

In SUPERIOR MEMORIAL HOSPITAL, Arbitrator Shaw was confronted with an analogous situation. In that case, the contract language provided that seniority prevailed as to layoffs, but that part-time employees were to be laid off before qualified full-time employees. The arbitrator reasoned that a reduction of hours of a full-time employee to part-time status was, in effect, a partial layoff, because otherwise an employer could reduce a full-time employee to part-time and then lay him or her off before less senior full-time employees, which would undermine the seniority-based layoff language. That is akin to the situation here. By being reduced to part-time status, over time the Grievant will become less senior than other full-time employees to whom she is now senior. At some point she will be less senior than all full-time employees, at which point she may be laid off and not have the option of bumping. In effect, she will lose her seniority as to the full-time employees purely due to the change in her status from full-time to part-time. Since this would contradict the language of Article 16(B) and undermine the purpose of Article 16(C)(2), I find this cannot have been the intent of the parties in adding that language. On the other hand, interpreting a reduction in hours as a partial layoff gives effect to all the contract language and avoids an unintended and unreasonable result.

I disagree with the County's contention that its right to adjust an employee's work hours is subsumed within its reserved rights under the Management Rights Clause, and that the contract's definition of "normal" office hours provides flexibility to permanently reduce a full-time employee's schedule to something less. In the first place, under the Management Rights Clause, Article 2, management does not have the specifically enumerated right to unilaterally reduce an employee's hours and its residual rights exist only insofar as they are not limited elsewhere in the contract. As I have already noted, because such an implied right would conflict with the provisions of the layoff language and seniority clause, it must be considered

subordinate to them. Secondly, while Article 5(A) sets forth normal office hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, Article 5(B) states that the work week shall be five eight hour days, Monday through Friday, and uses no modifiers such as "normal" or "regular." Other sections of Article 5 refer to such matters as breaks, overtime, call-in, standby and compensatory time. Placing the office hours and work week language in separate sections suggests that the County may not avail itself of the flexibility in scheduling that other arbitrators have read into the terms "normal" and "regular." Further, as Arbitrator Houlihan noted in JACKSON COUNTY, even where such language applies, it does not allow employers to alter the work week permanently for full-time employees, because the definition or "normal, " and the definition of "full-time," remains the same.

I also disagree with the County's argument that sustaining the grievance would be inconsistent with the County's right under the contract to create and fill part-time positions. The County may still create part-time positions and fill them with part-time employees according to the posting language in Article 16(D). The County may also, via the layoff process, reduce full-time positions to part-time, and thereby create part-time employees. What it cannot do is reduce full-time employees to part-time status without providing them the opportunity to bump into other positions for which they are qualified and which are held by employees with less seniority.

For the reasons set forth above, therefore, and based upon the record as a whole, I hereby enter the following

AWARD

The County violated the collective bargaining agreement when it reduced Charlene Coenen's position from full-time to part-time and denied her the opportunity to bump a junior employee. The County shall, therefore, at its option, forthwith either restore Ms. Coenen's position to full-time or permit her to bump into any position for which she is qualified and which is held by an employee who had less seniority than she at the time of her reduction. Further, the County shall make her whole by paying her the difference in wages between what she was paid and would have been paid as a full-time employee since January 1, 2006 and shall reimburse her for additional costs she incurred for health and other insurance premiums as a result of her reduction in hours.

Dated at Fond du Lac, Wisconsin, this 30th day of May, 2007.

John R. Emery /s/
John R. Emery, Arbitrator

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