

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**FOND DU LAC COUNTY**

and

**FOND DU LAC COUNTY PROFESSIONAL SOCIAL WORKERS UNION,  
LOCAL 1366K, AFSCME, AFL-CIO**

Case 184  
No. 69519  
MA-14636

(Furlough Grievance)

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**Appearances:**

**James Macy**, Davis & Kuelthau, S.C., Attorneys at Law, 219 Washington Avenue, P.O. Box 1278, Oshkosh, Wisconsin 54903-1278, appearing on behalf of the County.

**David Dorn**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 336 Doty Street, Fond du Lac, Wisconsin 54935, appearing on behalf of the Union.

**ARBITRATION AWARD**

Fond du Lac County, hereinafter County or Employer, and Fond du Lac County Professional Social Workers Union, Local 1366K, AFSCME, AFL-CIO, hereinafter Union, are parties to a collective bargaining agreement that provides for the final and binding arbitration of grievances. The Union, with the concurrence of the Employer, requested the Wisconsin Employment Relations Commission designate a member of its staff to hear and decide a dispute between them. Raleigh Jones was so designated. A hearing was held on April 20, 2010 in Fond du Lac, Wisconsin. The hearing was transcribed. Afterwards, the parties filed briefs and reply briefs, whereupon the record was closed on July 23, 2010. Having considered the evidence, the arguments of the parties, the relevant contract language and the record as a whole, the undersigned issues the following Award.

**ISSUE**

The parties were unable to stipulate to the issue to be decided in this case. The Union framed the issue as follows:

Did the County violate the collective bargaining agreement by implementing four involuntary layoff/furlough days in 2010; and if so, what is the remedy?

The County framed the issue as follows:

Did the County violate Articles I, IV, XVII, and XVIII of the collective bargaining agreement when it implemented four furlough days for 2010? If so, what is the appropriate remedy?

I have adopted the Union's wording of the issue. Thus, the Union's wording of the issue will be decided herein.

### **PERTINENT CONTRACT PROVISIONS**

The parties' 2009-10 collective bargaining agreement contains the following pertinent provisions:

#### **ARTICLE I. RECOGNITION AND UNIT OF REPRESENTATION**

1.01 The Employer recognizes the Union as the exclusive collective bargaining representative for the purpose of conferences and negotiations with the Employer, or its lawfully authorized representatives, on questions of wages, hours and other conditions of employment for the unit of representation consisting of all regular full-time and regular part-time social workers of the Fond du Lac County Social Services Department, excluding the work supervisors, the director and the deputy director.

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#### **ARTICLE IV. SENIORITY**

4.01 The employer agrees to the seniority principle.

4.02 After completion of the probationary period, an employee's seniority date shall be his/her first date as a regular full time or regular part time employee within the bargaining unit with the employer or as established pursuant to Section 3.04 of the Agreement and seniority shall not be considered terminated except upon (1) discharge for cause; (2) voluntary quit; (3) failure to return upon the expiration of a leave of absence; (4) layoff for a period exceeding two years; or (5) failure within seven days after sending notice to respond to recall from layoff after written notice by certified mail is sent to the employee at the last address appearing on the employer's records.

4.03 A seniority list shall be prepared and posted by the employer. Such list shall be prepared in order of seniority and will show the names and dates of employment for all persons in the bargaining unit. A copy of such list shall be mailed to the Union President and shall be reviewed at twelve (12) month intervals.

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#### ARTICLE V. MANAGEMENT RIGHTS

5.01 The Union recognizes the prerogative of the Employer to operate and manage its affairs in all respects in accordance with its responsibilities, and the powers or authority which Employer has not officially abridged, delegated or modified by this Agreement are retained by the Employer. The Union recognizes the prerogative of the Employer to establish reasonable work rules. The employer agrees to provide the Union with a written copy of all proposed changes to work rules not less than 30 days prior to their implementation.

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#### ARTICLE XIV. WORK SCHEDULE

14.01 The normal schedule of work shall be Monday through Friday. The normal work day shall be seven and one-half (7½) hours per day. The regularly scheduled work day will be the agency's hours of business from 8:00 A.M. to 4:30 P.M. with one (1) hour allowed for lunch subject to the following exceptions:

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14.02 The provisions of this Article shall in no way be construed as a guarantee by the Employer of any amount of work in any period or as a limitation on the hours of work in any period and the Director may require modifications of said hours under unusual or emergency conditions.

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#### ARTICLE XVII. PAY POLICY

17.01 The Classification Schedule and Pay Policy is attached to this Agreement as "Exhibit A" which shall be effective for the term of this Agreement. The first day of a pay period shall be the implementation date for all changes in rates of pay scheduled between the Sunday one week prior to the start of the pay period and the Saturday six days after the start of that pay period.

17.02 Regular part time, part time and temporary employees shall progress through the pay ranges listed in "Exhibit A" utilizing the equivalent of actual paid hours per interval but in no case in less than the specified interval (months).

17.03 Vacation and sick leave earned on a pro rata basis for regular part time employees shall be used and paid out at the ratio of pay and hours normally scheduled for the individual employee.

17.04 Promotion/Reclassification: In the case of the promotion/reclassification of any regular part time or regular full time employee to a classification with a higher maximum salary, such employee shall be placed into the next highest pay rate that will provide at least \$25 increase in pay. The employee shall then progress to the next step in pay as outlined in the wage exhibit. In the event an employee is promoted on his/her anniversary date, he/she shall first receive any within range increase to which he/she is entitled in the lower class and then the promotion/reclassification salary adjustment as noted above.

17.05 Any employee whose status (regular full time, regular part time or temporary) changes within the same classification shall retain the step of pay in effect at the time of the change and the number of hours accrued toward the advancement to the next step in the pay scale.

#### ARTICLE XVIII. ENTIRE AGREEMENT

18.01 The foregoing constitutes an entire agreement between the parties and no verbal statement shall supersede any of its provisions.

18.02 Nothing contained herein shall be construed to limit management rights.

18.03 Within that concept it is understood that policies, working conditions and standards shall remain unchanged if any proposed change has an impact that has an extensive effect on wages, hours and conditions of employment.

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#### ARTICLE XXVI. LAY-OFFS

26.01 Purpose: This lay-off procedure is intended to give due consideration to the essential factors of length of service, performance and other factors, considered in such a way as to be fair to all employees and to retain for the County service its most effective and efficient personnel.

26.02 General Rules for Lay-off:

- a) No employee with permanent status shall be laid off from any position while any limited term, emergency or probationary employee is continued in a position of the same class in the department.
- b) An employee with permanent status whose services are terminated through lay-off in a given class has the right to induce lay-off considerations (bumping) in a lower level for which his training within the agency and experience have qualified him/her regardless of whether a vacancy exists.
- c) A laid off employee refusing a position of similar work and class from which he/she was laid off or who fails to respond to the Employer's offer to reinstatement after being given a reasonable time to respond, need not be offered any further reinstatement opportunity by the Employer.
- d) An employee who has been laid off or demoted in lieu of lay-off shall be reinstated when a vacancy for which he is qualified occurs in the department according to the inverse order of lay-off.
- e) Employees who are laid off may continue under the group hospital and surgical insurance and life insurance programs provided the employee pays the full premium (employer and employee's share). Payment will be required in accordance with the following schedule:

<b><u>Period of Lay-off</u></b>	<b><u>Payment Required</u></b>
0-15 days	none
16-45 days	1 month
46-75 days	2 months
For each additional 30 days	1 month additional payment

26.03 The employer shall provide a severance package to employees whose positions are eliminated or at risk of elimination due to budgetary reasons or operational efficiency. . . .

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26.04 **Lay-off Procedures**

a) Within the Department the Employer shall determine the class(es) to be affected and the number of positions to be vacated in each classification.

1) Terminate any limited term, emergency or probationary employees in the same class(es) or equivalent class(es) before commencing lay-off action of permanent employees.

(a) Employees serving a promotional probationary period in a class affected by the lay-off shall be restored to their former position if promoted within the department.

2) All positions in a class shall be considered as included.

(a) In laying off employees the employee with the least seniority shall be laid off first provided that those remaining are qualified to carry on the employer's usual operation. Recall shall be in reverse order of lay-off provided the employee or employees are qualified to perform the duties of the job or jobs to which recalls are made. The employer shall give affected employees at least thirty (30) day notice of layoff. This 30 day notice may not apply in instances where the circumstances prompting the layoff are unforeseen or the result of an emergency in which case, employees will be given as much notice as possible. Upon receipt of such notice the employee shall have up to seven (7) calendar days to exercise bumping rights or he/she shall forfeit his/her opportunity to bump.

Such notice shall contain:

- A. The reason for lay-off
- B. The effective date of lay-off
- C. The last day of pay status
- D. Time limitations thereof, if possible.

- (b) The lay-offs contemplated hereby and rules are applicable to lay-off or functional reorganizations.

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### FACTS

The County maintains bargaining relationships with eight different bargaining units. Two of those eight bargaining units exist within the County's Department of Social Services. One unit consists of the Paraprofessionals within the Social Services Department. The other unit consists of the Professionals within the Social Services Department (i.e. the social workers). This case involves a grievance filed by the Professionals unit, hereinafter referred to as the Union.

The County has settled collective bargaining agreements with each of the eight bargaining units, each with a duration of 2009-2010. Each was settled either late in 2008 or in early 2009. The 2009-2010 collective bargaining agreement for the Social Services Professionals unit called for a 3% wage increase in 2010.

In 2009, the County experienced significant financial difficulties when all of its revenue-generating sources reported in at less than was available in prior years. The State of Wisconsin provides approximately 40% of the revenues for the County's budget through state aids. The County was put on notice that this state source of revenue would be significantly less for the 2010 budget. As an example, the County was notified that its Department of Social Services would see a shortfall of approximately \$500,000 in that Department alone. The Department of Social Services also received notice that it would be receiving less revenue from the federal government.

Separate from the loss of state and federal revenues, the County is also limited by state law in its ability to raise taxes. State law limits the County's ability to increase its taxing authority by only 3% over the prior year's tax amount. Just 30% of the County's budget is attributable to revenues from the tax levy. That means that the County could only increase tax revenues 3% on 30% of its budget, an amount which does not keep pace with other rising costs such as wage increases and health insurance premium increases. Said another way, State imposed tax levy limits compounded the County's financial difficulties by preventing the County from replacing lost revenue with tax levy money.

Also separate from the loss of state and federal revenues, the County was forced to make significant financial commitments in its efforts to prevent the County's largest employer, Mercury Marine, from leaving the state.

In preparing the proposed 2010 annual budget, the County reviewed each possible area within its proposed budget, and implemented cuts where possible. It also implemented borrowing where legal to do so. It also eliminated or delayed purchases. It also developed

and implemented an early retirement incentive policy. It also continued a hiring freeze, implemented a voluntary layoff policy and imposed a wage freeze for all non-represented employees. It also considered implementing permanent layoffs, but decided that permanent layoffs were not in the best interests of the County, its employees, or the residents it serves. The County decided that permanent layoffs would have undermined its ability to provide the services mandated by the state.

After taking the cost-saving measures just noted, the County met with the various bargaining unit representatives and discussed the County's anticipated 2010 budget deficit. In that meeting, the County asked the bargaining units and their unions to make wage concessions to help reduce labor costs. It also asked each of the units to consider moving the 2010 3% wage increase back for a delayed implementation. It also asked the units to consider splitting the increase, also with delayed implementation. None of the units agreed to make any of the foregoing changes sought by the County.

Kim Mooney, the Director of Social Services, then met with all employees in the Department of Social Services and outlined the specific economic concerns facing the Department. She specifically outlined the shortfalls from the state and federal government, the inability to raise revenues through increased fees, and the need to continue to provide services due to the state mandates required by law. In response, department employees made suggestions for cost savings and the County implemented those ideas where it could. In 2009, Mooney left four vacant positions in the Department unfilled because of the risk that if she filled the positions, the new hires would be laid off as the least senior employees in the event the County Board implemented full layoffs instead of other cost saving methods.

The County's Personnel Director, Michael Marx, also discussed the potential for layoffs with the other bargaining units. Both full layoffs of specific positions as well as the concept of furloughs were discussed. In those units that ran twenty-four hours a day, seven days a week, such as at the Health Care facility and the Sheriff's Department, the County looked at and implemented specific proportional budget restrictions since neither full layoffs nor furloughs were practical because those operations could not close for a full day.

When the County finalized its 2010 budget, the County Board included a specific line item recognizing the need to gain \$850,000 through furloughs and other budget cuts. This budget was passed by the full County Board.

In further discussions with the various bargaining units, the Highway unit and the Social Services Paraprofessionals unit agreed to a furlough plan wherein five to seven furlough days would be implemented during 2010. In exchange for making the agreement, the County agreed not to implement more furloughs and not to implement layoffs in those units for 2010. The Social Services Professionals Union maintained it was not interested in an agreement that included furlough days, so no agreement was reached with that bargaining unit.



After examining the savings it realized through other cost cutting measures, such as an early retirement incentive program, the County determined that four furlough days were needed to close the budgetary gap. It subsequently decided to implement four furlough days in 2010 for all of the non-represented employees and all other County employees that did not work in a twenty-four hour, seven day a week operation. This decision was made by the full County Board per County resolution. It was anticipated that the County's furlough program would save the County about \$320,000 out of the \$850,000 line item needed to meet the 2010 budget.

On December 10, 2009, Mooney notified the employees in the Department of Social Services via an e-mail that the four 2010 furlough days in the Department would be January 29, May 28, September 3 and October 29, 2010. Mooney's e-mail also provided in pertinent part:

On-call workers covering these days will be paid at the established contract rates for non-holiday coverage. If you have to attend a court hearing on this date you will be paid straight time for the time spent. Those hours will have to be taken off (unpaid) at another time.

After the County announced the four furlough days, the Social Services Professionals Union grieved the County's imposition of the furlough days. The grievance alleged that the furlough days violated Articles I, IV, XVII and XVIII, "and any other applicable article". The County denied the grievance.

On January 29, 2010, all the employees in the Department of Social Services incurred their first of four furlough days. Everyone in the Department was furloughed that day.

On that day though, four employees in the Department of Social Services performed some work for the County. The four employees were in the Professionals bargaining unit. One employee took a phone call from a family that that employee specifically serves. No management personnel were involved in the scheduling of that work. Another social worker was called to court for one hour regarding a specific individual that employee serves. That social worker and one other unit employee discussed amongst themselves the need for the second employee to come into work and perform some intake paperwork associated with the court appearance. Each put in for one hour of time on the furlough day. No management personnel were involved in the scheduling of that work. A fourth professional employee did not come into work, but put in for call-in pay per the contract. That employee served the complete furlough. The Union did not grieve any of these limited recalls during the furlough day.

Following the first furlough day on January 29, 2010, four new employees were hired into the Professionals bargaining unit in the Department of Social Services. Mooney averred that these new hires will be subjected to future furlough days just like everyone else in the Department.

If a call-in occurs on a furlough day, it is due to an unforeseen emergency and then based upon who is qualified to handle the situation. Each bargaining unit employee will serve the same amount of mandatory unpaid leave in the 2010 calendar year, regardless of emergency call-ins. Employees that work on a furlough day due to an emergency are required to make up the time on another day. No less senior employee will serve less unpaid leave than any more senior employee.

## **POSITIONS OF THE PARTIES**

### **Union**

The Union's position is that the County violated the collective bargaining agreement by unilaterally implementing four unpaid furlough days in 2010. It elaborates on this contention as follows.

First, the Union sees the furlough days as a layoff. Building on that premise, the Union maintains that when the County decides to reduce its costs through a reduction in the workforce (i.e. a layoff), its right to do that is not unfettered. Rather, Article XXVI (which is entitled "Lay-Offs") provides specific rules and procedures for that to happen, namely that layoffs will be based on seniority. The Union contends that here, though, the County's imposition of the furlough day was done without regard to seniority. According to the Union, this violated the layoff provision, particularly Section 26.04(a)(2)(a) which provides that: "In laying off employees the employee with the least seniority shall be laid off first provided that those remaining are qualified to carry on the employer's usual operation." To support that premise, the Union notes that on the first furlough day (January 29, 2010), four members of the bargaining unit (namely Gale Lichman, Diane Burton, Dorothy Salchert and Cathi Rhinehart) performed work for the County "while more senior bargaining unit members who were qualified to perform the work remained on layoff status." The Union disputes the County's contention that these employees were not scheduled to work. The Union reads Mooney's memo announcing the furlough days to say that there was work that needed to be performed on the furlough days, and employees were to fulfill their on-call and Court-related obligations. As the Union sees it, the County should have had "qualified social workers cover cases on the basis of seniority." The Union maintains that by having those four employees perform some work on the first furlough day, the County "disregarded seniority in favor of a system of rolling layoffs for those who worked."

Second, the Union addresses the fact that the County hired four new employees in 2010. According to the Union, the intent of Article XXVI is that the County may not layoff bargaining unit employees while simultaneously "adding or employing probationary employees." The Union contends that the hiring of these four employees - while more senior employees were being laid off - "is repugnant to the spirit of Article XXVI and the agreement as a whole." The Union notes that prior to these four positions being filled with new staff in 2010, the positions were left vacant for a considerable period of time. As the Union sees it, the County's decision to hire new staff and expand the workforce is not consistent with closing

a budget shortfall. To the contrary, filling those positions did not have a “positive impact on the budget.”

Third, the Union relies on Section 18.03 which provides that “working conditions and standards shall remain unchanged if any proposed change has an impact that has an extensive effect on wages, hours and conditions of employment.” As the Union sees it, the involuntary furloughs imposed by the County on the bargaining unit had an “extensive” impact within the meaning of that provision. Here’s why. First, it notes that every single bargaining unit employee was impacted, and had their wages reduced by 1.5%. The employees at the top of the wage scale were each deprived of approximately \$879 in wages via the four unpaid furlough days. Said another way, the entire bargaining unit was deprived of about \$40,000 in wages. Second, the Union points out that the County initially approached the Union with a request to reduce or delay the wage increases contained in the collective bargaining agreement for 2010, and when the Union declined to give back what they rightfully bargained, the County took it back unilaterally. The Union argues that Section 18.03 protects the bargaining unit from precisely this type of unilateral reduction in wages imposed by the County. As part of its argument on that matter, the Union maintains that the specific protections of Section 18.03 supersede the broad language in Section 18.02 (which the County relies on). According to the Union, the phrase “within that concept it is understood” demonstrates that 18.03 does not conflict with 18.02, “but rather contemplates the general language of the preceding section, and offers specific protections to the employees.” The Union maintains that the limitations in 18.03 “officially abridge” the power and authority of the County as it relates to enacting policies that have an extensive impact on wages, hours and conditions of employment. The Union asserts that here, the County took by force what it could not obtain through bargaining. The Union asserts that this act was precluded by Section 18.03.

Next, the Union comments on the following WERC arbitration awards. First, it relies on the LINCOLN COUNTY (COURTHOUSE) award issued by Arbitrator Honeyman. As the Union sees it, that award stands for the proposition “that rolling layoffs without regard for seniority were a violation of the seniority-based layoff procedures contained in the collective bargaining agreement.” Second, the Union disputes the County’s assertion that the LANGLADE COUNTY and JACKSON COUNTY awards support the County’s position. According to the Union, those awards actually support the Union’s position because in those two cases, all the employees in the department were furloughed across the board. The Union maintains that here, though, the Social Services Department didn’t completely shut down on January 29, 2010 because four bargaining unit employees did some work that day. As the Union sees it, those four employees worked “while more senior qualified Union members were on layoff status and were later placed on layoff while less-senior Union members were at work.” Third, the Union contends that the County mischaracterizes the FOND DU LAC COUNTY award issued by Arbitrator Bauman. The Union argues that case involved a different union, a different collective bargaining agreement and a different fact pattern.

The Union therefore asks the arbitrator to sustain the grievance. As a remedy, the Union asks that the employees be made whole and that the arbitrator compel the County to cease and desist from implementing the three remaining furlough days in 2010.

### County

The County's position is that it maintained the right to implement furloughs and that there has been no violation of the collective bargaining agreement. It elaborates on these contentions as follows.

The County notes at the outset that the collective bargaining agreement is silent on the matter of furloughs. Building on that premise, it maintains that the implementation of furloughs was within its management rights. Said another way, the County contends that it has the right to implement a department-wide furlough plan under the contractual Management Rights clause. It submits that one of its managerial responsibilities as a municipal employer is "determining appropriate staffing levels consistent with the realities of decreasing municipal budgets." According to the County, that's what the County was doing when it chose to implement the four furlough days rather than permanent layoffs. The County characterizes the furlough day as "full day temporary layoffs of all employees within the bargaining unit."

Next, to the extent that the Management Rights clause does not specifically authorize the County's actions, the County maintains it has reserved its right as an employer to implement the furloughs. As the County sees it, this principle (i.e. the "reserved rights doctrine") is widely accepted by arbitrators.

Next, the County addresses each of the four articles which were referenced in the grievance, namely Articles I (Recognition and Unit of Representation); Article IV (Seniority); Article XVII (Pay Policy); and Article XVIII (Entire Agreement). The County avers that none of these provisions prevent the County from implementing short-term furloughs.

With regard to Article I, the County maintains that at no time has it refused to recognize the Union as the exclusive bargaining unit or has the County attempted to undermine the Union by engaging in individual bargaining. To the contrary, the County negotiated with the Union concerning the potential furloughs. It notes in this regard that it was able to reach agreement with its Department of Social Services Paraprofessionals and Highway Department AFSCME units regarding the implementation of the four furlough days. That being so, the County maintains it is simply inaccurate for the Union to claim that the County failed to bargain with the Union over the implementation of the furloughs.

Next, the County addresses the Union's contention that it violated Article IV (Seniority) because "there are people who worked while more senior people did not work." According to the County, the record facts show otherwise. It notes at the outset that on January 29, 2010, all the employees in the Department of Social Services were subject to their first furlough day. Second, with regard to the four employees who did work that day, here's what they did: One

employee took a phone call from a family that that employee serves. Another employee was called to court for one hour regarding a specific individual that employee serves. That employee and another employee discussed amongst themselves the need for the second employee to come into work and perform some intake paperwork associated with the court appearance. Each put in for one hour of time on the furlough day. A fourth employee did not come into work, but put in for call-in pay per the contract. That employee served the complete furlough. The County asserts that in each case, “the employee that worked was the senior most qualified employee.” The County also submits that in each case, “the employee scheduled themselves, not the County.” The County also points out that the Union did not grieve any of these limited recalls during the furlough day. The County acknowledges that it had previously informed employees that if it was necessary for them to work due to emergencies on the furlough days that they would have to makeup the time they worked by taking leave on another day within the quarter. The County avers that the net effect of the January 29, 2010 furlough day was that every bargaining unit member took 7.5 hours of mandatory unpaid leave. For the four employees that worked on the January 29, 2010 furlough day due to an emergency, the County contends that “the Union has failed to show how any benefits were conferred on less senior employees.”

Next, with regard to the Union’s contention that the furloughs violated Section 17.05, the County calls this contention “pure conjecture.” As the County sees it, there is no evidence that any employee’s advancement on the pay scale will be affected by the furlough days. The County also submits that the furloughs do not change any employee’s status as full-time, part-time, or temporary. The County maintains that the Union’s claim that Article XVII has been violated is a red herring and should be rejected by the arbitrator.

Next, in response to the Union’s argument that the furlough plan is prohibited by Article XVIII, the County first asserts that although not expressly stated in its brief, the Union’s argument concerning Article XVIII can only apply if the arbitrator finds that the furloughs are not covered by the layoff clause of the parties’ collective bargaining agreement. Second, the County contends that the Union’s interpretation of Article XVIII should be rejected because it would read Section 18.02 out of the contract and take complete precedent over Section 18.01 of that same article. With regard to the Union’s contention that Section 18.03 prevents the County from implementing the furloughs because they have an “extensive” effect on wages, hours, and conditions of employment, the County argues this interpretation ignores the clear language of Section 18.01 setting forth the complete agreement and Section 18.02 which states Article XVIII does not limit management rights. The County further maintains that the furlough situation is not a policy, working condition or standard within the meaning of Section 18.03. The County submits that if Section 18.03 were interpreted as broadly as the Union suggests, there could be no layoff and there would be a quarantine of hours. According to the County, such a result is directly contrary to Arbitrator Bauman’s earlier FOND DU LAC COUNTY furlough decision interpreting similar language wherein she readily acknowledged the County’s right to implement layoffs and furloughs.

Next, the County argues that if the arbitrator finds that the furlough was a short-term layoff covered by the contractual layoff provision, it complied with that provision when it imposed the furloughs. To support that contention, the County relies on three WERC arbitration awards which have addressed furloughs, to wit: JACKSON COUNTY, Dec. No. MA-12338 (Houlihan, 2005); LANGLADE COUNTY, Dec. No. MA-12597 (Bielarczyk, 2005); and FOND DU LAC COUNTY, Dec. No. MA-13502 (Bauman, 2007). In JACKSON COUNTY, the county implemented a furlough program requiring mandatory unpaid leave on three days in one month. The county maintained that the case concerned its management right to assign work while the union claimed that the labor agreement's layoff clause applied. Arbitrator Houlihan held that regardless of how the case was classified there was not a violation of the labor agreement. In LANGLADE COUNTY, a county ordered shutdown directed all non-essential operations to be closed and employees not to report to work on two separate furlough days. The union grieved the decision claiming that the county was required to layoff the least senior employee rather than all employees. The arbitrator held that while the shutdown days were governed by the layoff clause of the labor agreement, the county had met its obligations under that section of the agreement. He also rejected the union's contention that the furloughs violated seniority. As the County sees it, the case before this arbitrator is the same as those presented in JACKSON COUNTY and LANGLADE COUNTY. Like those counties, this county faced difficult budgetary cuts and determined that the best way to handle those cuts was by implementing an across-the-board, County-wide furlough of all non-essential personnel. Finally, the County addresses the Bauman FOND DU LAC COUNTY award. The County notes that in that case, the County attempted to address a budget shortfall by reducing the employee work week by one hour per week from May to December in 2006. There the Union argued the County should layoff instead of modify hours. There the arbitrator agreed with the Union because the change was for too long a period resulting in a change in "normal hours" as a violation XIV, the Hours of Work provision. While finding a violation, the arbitrator essentially directed the County to utilize the layoff provision to the extent it needed to address budget shortfalls. The County avers that's what it did here (i.e. used the layoff procedure). The County chastises the Union for its attempt "to make a game out of serious budget problems and good faith negotiations."

Finally, the County emphasizes that before it imposed the furloughs, it weighed all of its options and the interests of all parties. It notes that it implemented numerous other cost saving methods before determining that furloughs would be necessary. It points out that several other AFSCME units within the County recognized these interests and agreed not to challenge the furlough plan in exchange for assurances that the County would not implement additional furloughs or permanently layoff any members of their bargaining unit.

As part of its argument on the foregoing, the County addresses the fact that it filled four vacant positions in 2010. First, to the extent the Union is attempting to arbitrate whether the decision to fill four vacant positions was a violation of the contract, the County maintains that the arbitrator should reject it as untimely and inappropriate for this arbitration. As the County sees it, that claim is not only factually incorrect and without merit, but also beyond the scope of the grievance. Second, the County asserts that there is no evidence in the record to

support the Union's claim that the County used the furlough as a way to save the money required to fill the vacant positions, and such speculation (by the Union) completely misstates the testimony in this case. The County disputes the Union's assertion that Director Mooney "admitted" she used the savings from the furloughs to fill the vacancies. The County maintains that, in reality, Mooney's testimony was that she did not fill the vacancies until it was determined there would be furloughs because she did not want to hire a new person and then be forced to permanently lay them off as the least senior employee if, in fact, the County Board decided to use permanent layoffs instead of furloughs. Once it was determined that permanent, full layoffs would not be instituted, then the County filled the positions. With regard to the Union's speculation that these four revenue-generating positions must not have generated enough revenue to pay for themselves because otherwise the County would have filled the positions to help alleviate its budgetary problems, the County argues that this reasoning ignores Mooney's testimony that she was concerned about permanent, full layoffs that would end the new employees' employment shortly after they were hired.

In sum then, the County maintains that the furlough program was within the County's rights under the collective bargaining agreement. The County therefore asks that the grievance be denied.

### DISCUSSION

Because of its financial difficulties, the County Board decided to impose four unpaid furlough days in 2010 on all non-essential County employees. One of the bargaining units impacted by this decision was the Professionals unit in the Department of Social Services. Their union grieved, contending the furloughs violated their collective bargaining agreement. Based on the rationale which follows, I find the furloughs did not violate the collective bargaining agreement.

Since this is a contract interpretation case, the main part of my discussion will involve the contract language itself. Before I address the contract language though, I'm first going to address something that does not involve the contract language *per se*, but rather something that occurred after the first furlough day.

What I'm referring to is this. Following the first furlough day on January 29, 2010, the County hired four new employees in the Professionals bargaining unit in the Department of Social Services. The Union avers that the County's decision to hire four new employees did not have a "positive impact on the budget." That's true. Hiring employees usually has a negative impact on the budget because the employer's labor costs increase. Notwithstanding the County's contention though, I don't read the Union's briefs to expressly challenge the Employer's decision to fill those four positions. Rather, the Union simply uses the filling of the vacancies as a way to indirectly challenge the furloughs. It does this by implying that the County used the furloughs as a way to save the money required to fill the vacant positions. I find that contention lacks a basis in the record. Here's why. First, there is no evidence that keeping those four positions open and unfilled would have stopped the furloughs from

occurring. Second, contrary to the Union's assertion, Mooney did not "admit" that she used the savings from the furloughs to fill the vacancies. Instead, she testified that she did not fill the vacancies until it was determined that there would be furloughs because she did not want to fill the vacancies with new hires and then be forced to turn around and lay them off (since they would be the least senior employees) if the County Board decided to permanently lay off employees. This persuades me that it was the specter of future, permanent layoffs that kept the County from filling the four vacant positions – not the need to save money from the furloughs. Once it was known that permanent layoffs were not going to be instituted, then the County filled the positions.

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The focus now turns to the contract provisions referenced by the parties.

Since this is a furlough case, I've decided to note at the outset that the word "furlough" is not mentioned in the collective bargaining agreement. As a result, there is no contract provision that specifically allows the County to furlough employees. Conversely, there is no contract provision that specifically prevents it either.

Both sides characterize the furloughs as a temporary lay-off. Given their concurrence on that point, it makes sense to start by reviewing the contractual lay-off provision (namely Article XXVI).

The lay-off provision gives the County the right to lay-off employees. Nothing in that provision requires the County to fully lay-off an employee rather than partially lay-off some or all of its employees. That being so, nothing in that provision precludes the County from laying off all its employees for a single day. That, of course, is exactly what the County did here. On January 29, 2010, the County implemented the first of four furlough days for all non-essential personnel. On that day, everyone in the Department of Social Services, including everyone in the Professionals bargaining unit, was subjected to their first furlough day. They all took 7.5 hours of mandatory unpaid leave for that day. (Note: Some exceptions to this statement will be addressed in the following paragraph). Since there was a temporary lay-off on the furlough day, the contractual lay-off provision required the County to follow certain "rules". I find that the County followed those "rules", and complied with its obligations under that contractual provision, when it took the following actions: 1) timely sent notice to all the affected employees at the same time that they were going to be furloughed for four days in 2010; 2) laid off everyone in the Professionals bargaining unit, as well as the Department of Social Services, across the board on January 29, 2010; and 3) required all employees in the Professionals bargaining unit, as well as the Department of Social Services, to serve the same amount of mandatory unpaid leave.

The focus now turns to the Union's contention that the County violated the seniority provision (Article IV) by its actions on the furlough day. What the Union is referencing is this: On that date, four employees in the Professionals bargaining unit in the Department of



Social Services who were furloughed nonetheless did some emergency work. Here's what they did. One employee took a phone call from a family that that employee specifically serves. Another social worker was called to court for one hour regarding a specific individual that employee serves. That social worker and another employee discussed amongst themselves the need for the second employee to come into work and perform some intake paperwork associated with the court appearance. Each put in for one hour of time on the furlough day. A fourth professional employee did not come into work, but put in for call-in pay per the contract. That employee served the complete furlough. The employees who performed the emergency call-in work just referenced were not the most senior employees. The Union objects to that and contends that the emergency call-in work should have been assigned to the most senior employees. I find no violation of the seniority provision occurred in this instance because each employee in the Professionals bargaining unit in the Department of Social Services is going to serve the same amount of mandatory unpaid leave in the 2010 calendar year regardless of emergency call-ins. The record indicates that the four employees who worked on the January 29, 2010 furlough day due to emergency call-ins will be required to make up the time they worked by taking unpaid leave on another day within the quarter. Said another way, the employees that were called into work while they were on their furlough day will have to make up that portion of their furlough day on another day. While their unpaid leave will be taken over the course of two days rather than one day, they will not end up having more unpaid leave than anyone else. Everyone in the bargaining unit has to serve four full days of furlough in 2010 – no more, no less.

As part of its argument on this point, the Union asserts that LINCOLN COUNTY (COURTHOUSE) is an analogous case in which the arbitrator held “that rolling layoffs without regard for seniority were a violation of the seniority-based layoff procedures contained in the collective bargaining agreement.” WERC Case 70, No. 37514, MA-4329 (Honeyman, 1987). I find that LINCOLN COUNTY (COURTHOUSE) is distinguishable from the case at hand. In that case, there were “rolling” layoffs. In this case though, there are no “rolling” furloughs. As previously noted, all the Department of Social Services employees are furloughed on each furlough day. While call-ins may occur on the furlough day, that is due to emergencies. Even then, each employee receives the same amount of furlough time off. That being so, the Union's reliance on LINCOLN COUNTY (COURTHOUSE) to support its case here misses the mark because here, the furloughs apply equally to all bargaining unit employees (meaning they all receive the same amount of furlough time off).

Also as part of its argument on this point, the Union avers that the most senior employees could have covered the emergencies as they do when a colleague is out sick or on vacation. However, coverage of sick leave or vacation is not the same as an emergency call-in situation. On the furlough days, the County provided the best services it could with the most effective and efficient personnel, as is the stated purpose of Article XXVI, while equalizing time off for all employees. It cannot be seriously contended that a social worker who is unfamiliar with a case provides the same or better services than one that is familiar with the case in an emergency situation. By this contention, the Union is essentially challenging a managerial decision to assign work. That is beyond the scope of the furlough grievance in this case.

Next, the focus turns to Art. XVIII (the Entire Agreement provision). The Union relies on Section 18.03 and contends that it prevents the County from implementing the furloughs because they have an “extensive” effect on wages, hours, and conditions of employment. The problem with this interpretation is that it ignores the language of Section 18.01 which sets forth the complete agreement and Section 18.02, which states that “nothing contained herein shall be construed to limit management rights” (such as the Employer’s right to lay-off employees). Additionally, I find that the furlough situation is not a policy, working condition or standard within the meaning of Section 18.03. Instead, it is intended to be a limited-term response to the County’s budget deficit. It is a widely accepted tenet of contract interpretation that when an arbitrator is faced with two possible interpretations of a contract, they should choose the interpretation that gives meaning to all terms of the contract. In this case, the Union’s interpretation of Section 18.03 does not give meaning to all of the sections in Article XVIII. If Section 18.03 were interpreted as broadly as the Union suggests, there could be no layoffs at all because of its “extensive” effect on the employee’s wages and hours. Such a result is directly contrary to Arbitrator Bauman’s earlier furlough decision interpreting similar contract language in the Social Worker Paraprofessionals bargaining unit wherein she acknowledged the County’s right to implement layoffs and furloughs. FOND DU LAC COUNTY, WERC Case 176, No. 66362, MA-13502 (2007).

Having held that Articles XXVI, IV and XVIII were not violated herein, the final question is whether any other contract provision precluded the County from implementing four one day furloughs in the Department of Social Services in 2010. That question is answered in the negative. That being so, the contractual Management Rights clause controls. The County avers that one of its managerial responsibilities as a municipal employer is “determining appropriate staffing levels consistent with the realities of decreasing municipal budgets.” That’s what the County did when it chose to implement the four furlough days rather than permanent layoffs. The contractual Management Rights clause gave the County the right to do that.

Accordingly, it is held that the County’s furlough program was within its rights under the collective bargaining agreement. It therefore follows then that the County’s furlough program did not violate the parties’ collective bargaining agreement.

In light of the above, it is my

**AWARD**

That the County did not violate the collective bargaining agreement by implementing four involuntary layoff/furlough days in 2010. Therefore, the grievance is denied.

Dated at Madison, Wisconsin, this 13th day of September, 2010.

Raleigh Jones /s/

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Raleigh Jones, Arbitrator