BEFORE THE ARBITRATOR

.

In the Matter of the Arbitration of a Dispute Between

FOND DU LAC COUNTY

and

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

Case 186
No. 70100
MA-14863

Appearances:

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

Michael Marx, Human Resources Director, 160 Macy Street, Fond du Lac, Wisconsin, appeared on behalf of the Employer.

ARBITRATION AWARD

Fond du Lac County Professional Social Worker Union, Local 1366K, AFSCME, AFL-CIO, herein referred to as the "Union," and Fond du Lac County, herein referred to as the "Employer," jointly selected the undersigned from a panel of arbitrators from the staff of the Wisconsin Employment Relations Commission to serve as the impartial arbitrator to hear and decide the dispute specified below. The arbitrator held a hearing in Fond du Lac, Wisconsin, on November 23, 2010. The parties agreed to file post-hearing briefs, the last of which was received January 21, 2011.

ISSUES

The parties agreed to the statement of issues as follows:

1. Did the Employer violate Article 26, when it furloughed all unit employees on May 28, 2010, without first discharging probationary, part-time and limited term employees?

2. If so, what is the appropriate remedy?[1]

RELEVANT AGREEMENT PROVISIONS

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ARTICLE III. PROBATIONARY PERIOD

3.01 All new employees shall serve a probationary period of employment to determine their suitability for the job. The duration of such probationary period shall be six (6) months for full time employees and 975 hours for regular part time employees. A probationary employee may be disciplined or discharged for any reason without recourse to the grievance procedure.

3.02 Upon completion of the probationary period the employee shall be granted seniority rights from the date of original hire in the regular full-time or regular part-time position or from the date of hire as established in Section 3.04.

3.03 Probationary employees who desire hospital and surgical insurance coverage after ninety (90) days of employment shall be entitled to coverage in accordance with the contribution schedule in Section 16.01 of this Agreement.

3.04 Part time and temporary employees who are awarded regular full time or regular part time positions in the same classification as that worked as a part time and/or temporary employee shall have their date of hire adjusted as follows:

Hours Worked as Part Time and/or Temporary Employee	Number of Months Date Of Hire Backdated
407 or more	3 Months
At least 244 but less than 407	2 Months
At least 82 but less than 244	1 month
Less than 82	No Adjustment

[1] The parties stipulated that my recordings of the hearing were for my own notes and would not be available to either party. They also stipulated that I might reserve jurisdiction over the specification of remedy if either party requested in writing that I do so, copy to opposing party, within sixty (60) calendar days of the date of this award.

The date of hire adjusted in accordance with the above procedure shall serve as the employee's original date of hire for purpose of seniority, vacation and sick leave accrual. There shall be no allowance for retroactive holiday accrual.

3.05 Probationary employees may attend seminars, meetings and training events only upon permission of their supervisors.

. . .

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.

. . .

ARTICLE VII. GRIEVANCE PROCEDURE

7. 01 Grievance. Any matter involving the interpretation, application or enforcement of the terms of this Agreement, or a claim by an employee, employees or Union, that an employee has been discriminated against or treated unfairly or arbitrarily by the by the Employer by any action taken in the exercise of its rights or powers, may become a grievance. Grievances must be presented in Step 1within ten (10) working days of: 1) the occurrences of the event causing the grievance; or 2) within ten (10) working days of the time that an employee reasonably should have known of the events causing the grievance, or else the same shall be barred as a grievance.

Step 1. If an employee has a grievance, he/she shall first present the grievance orally to his/her immediate supervisor or the Director either alone or accompanied by the Union Steward.

Step 2. If the grievance is not settled at the first step within ten (10) working days, it shall be reduced to writing and presented to the Director. If not resolved within five (5) working days, the Director shall furnish the employee a reply in writing.

Step 3. If the grievance is not settled at the second step and within fourteen (14) calendar days after the employee receives the reply in writing from the Director, the grievance shall be submitted to the Grievance Hearing Committee (GHC) and notice of such appeal given to the Director. The GHC shall be comprised of the Human Resources Director, the Director of Administration and an "at-large" member selected by the Human Resources Director from a rotating list of five (5) department heads. The participating "at-large" member shall not be affiliated with the grievant's department of employment. The GHC shall meet with the grievant at a time when the grievant is not scheduled to work or when scheduling arrangements can be made, allowing the grievant to attend the hearing. If the HR Director had previously been involved in the decision making process of the issue directly related to the grievance, he/she would agree to remove themselves from the GHC and be replaced with a difference department with no relationship to the grievance. If the dispute is not resolved within fifteen (15) days either party may submit the matter to Step 4 within five (5) calendar days following the expiration of the fifteen (15) days aforesaid, or the matter will be deemed waived and finally settled. Wherein the grievance pertains to a termination or disciplinary suspension of an employee, the Finance, Personnel and Economic Development Committee shall entertain the grievance pursuant to the aforementioned time frames and deadlines.

Step 4. Any grievance not settled in Step 3 above and timely noticed for appeal to Step 4 in writing served on the opposite party to include the Director by the party appealing shall be subject to arbitration. The parties shall request the Wisconsin Employment Relations Commission to appoint a Commissioner or member of the staff to serve as the Arbitrator and the Arbitrator shall make a decision on the grievance which shall be final and binding on both parties.

. . .

ARTICLE XXVI. LAY-OFFS

26.01 Purpose: This lay-off procedure is intended to give due consideration to the essential factors of length or 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:

Period of Lay-off	**Payment Required**
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. The severance will be equal to one month of the employee's elected employer sponsored health insurance plan for every 18 days of accrued sick leave. The employer agrees to pay its portion of the health insurance plan. Employees that elect to retire in lieu of layoff will be offered one month of the employer sponsored health insurance plan for every 6 days of accrued sick leave up to a maximum of 12 months. If the employee does not currently participate in the employer sponsored health insurance, they will be compensated by a cash pay-out equal to 50% of the employer's current cost of a single health plan. This option is also subject to a 12 month maximum for employees that elect to retire. If the employee elects the severance package and is later recalled from layoff their sick leave balance will not be reinstated as the employer will have considered the employee fully compensated for their accrued sick leave.

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 any lay-off action of permanent employees.

(a) Employees serving a promotional probationary period in a class affected by 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 shall 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.

After completion of probationary period, employees seniority shall date as of the date of employment with the employer and shall not be considered terminated except upon discharge for cause, voluntary quit, failure to return upon the expiration of a leave of absence, lay-off for a period exceeding two (2) years or failure within 7 days after sending of notice to respond to recall from lay-off after written notice by certified mail is sent to the employee at the last address appearing on the employer's records.

FACTS

The Employer is a Wisconsin county and employs various professional social workers. The Union is the representative of the rank and file social workers employed by the Employer. The bargaining unit represented by the Union consisted of 54 employees on the day in dispute. On December 10, 2009, the Employer notified unit employees that they would be "furloughed" on the following Fridays and the office would be closed; January 29, 2010, May 28, 2010, September 3, 2010 and October 29, 2010. On January 19, 2010, the County Board adopted a resolution adopting the foregoing furlough days and closing the offices on those days to deal with budget shortfalls.

The Employer furloughed all unit employees on January 29, 2010, which means none were allowed to work and the Employer's offices were closed. None were paid wages for the day, but did receive some non-wage benefits. The Union filed a grievance or grievances concerning that furlough which are not the subject of this arbitration.

After January 29, but prior to May 28, the Employer had 4 probationary employees and one limited term employee in the unit.

On May 28, 2010, the Employer again furloughed all unit employees. It did not discharge the probationary and limited term employee, but it did furlough them on the same terms that it furloughed all unit employees. No employee was on permanent layoff during the relevant purposes.

Thereafter, the Union filed the instant grievance protesting that the Employer "laid off bargaining unit employee despite the continued employment of limited term and probationary employees in the same or equivalent class(es)" in violation of Article 26. The grievance was processed to the third step at which the Employer answered that it acknowledged that it did violate Article 26 in the manner alleged by the Union, but only offered to comply with the terms of the agreement in the way the Union had requested in the future and did not accede to the Union's requested remedy that all unit employees be paid back pay for the day in dispute. The Union did not agree with the remedy proposed by the Employer and, therefore, appealed the matter to arbitration.[2]

The Union and the Employer continued to meet with respect to issues arising under the agreement. On September 24, 2010, they entered the following Memorandum of Understanding:

> Fond du Lac County (hereinafter the "Employer") and Social Worker Union Local 1366K, AFSCME, AFL-CIO (hereinafter "Union") hereby agree to the one time change to Article III – Probationary Period.
>
> Probationary employees whose employment with the employer are terminated as a result of a short term layoff/furlough and then are reinstated after a short period of time by the employer will have their probation extended by the number of days they were terminated. Their original date of hire will also be adjusted by the same number of days. Once these employees complete their probation they will be granted seniority rights in the union based on Article 3.02.
>
> The agreement is non-precedent setting and would not be used by the union or employer as an example in future matters.

The Employer followed the terms of that agreement by discharging all of the probationary and limited term employees September 2 and then "furloughing" all remaining employees. The Employer then "rehired" the probationary and limited term employees shortly after the furlough. It followed the same procedure on the subsequent furlough day.

POSITIONS OF THE PARTIES

Union

The Employer violated the plain language Article 26 of the collective bargaining agreement when it temporarily laid off permanent employees while hiring part-time employees while they were on layoff. It then violated Article 26 when it again laid-off the entire bargaining unit while retaining the five probationary and limited-term employees. The Union

[2] The parties stipulated that the grievance was properly processed to arbitration.

requests that the arbitrator find that the Employer violated the agreement and order that the Employer pay all unit employees for all time lost.

Employer

The Employer acted in good faith and its actions were authorized to do so by the management rights clause of the parties' labor agreement. Although the parties' agreement does not mention furloughs or one day layoffs for all employees, the Employer's right to implement furloughs, the right of the Employer to do so was determined in another arbitration between the parties by Arbitrator Jones. The Employer argues that is within its rights to continue to furlough without permanently laying off LTE employees, for the following reasons:

1. Since all employees including the LTE's were furloughed, arguably they were laid off first.

2. Furloughing all employees on May 28, 2010, denied to unit employees if the LTE and probationary employees were permanently terminated that day.

3. It would be a harsh and absurd result for the LTE and probationary employees to be terminated first and then rehire them four days later.

In fact, social work union members told these employees prior to their termination that the Union would demand that they lose their seniority and that they would have to start their probation all over again. This unnecessarily caused ill will.

The Employer tried to resolve this grievance at the third step by terminating them and then rehiring them later. The Union, however, demanded that all unit employees be paid for the furlough day. It is a well-settled rule that arbitrators should avoid harsh and absurd results. Other AFSCME units entered into MOU's to deal with this issue and this unit should not be rewarded for having not done so. The Union has not presented any evidence that the language requires terminations as opposed to mere layoffs in furlough or one day layoff situations. The agreement should be viewed as silent on that subject. The management rights provision provides that the Employer has the right to determine staffing levels which is precisely what it did in this situation. Arbitrator Emery ruled in GREEN LAKE COUNTY, MA-14534 that similar provision did not have that effect. The Employer requests that the grievance be denied, or, in the alternative, that the remedy be held to a non-economic remedy.

Union Reply

Until the briefing schedule, the only issue presented by the parties was the appropriate remedy. The Employer was agreeing that it had violated the agreement. It is first contending otherwise in its brief. The Union notes that the Employer presented no evidence at hearing

for what are really untrue assertions that the Union threatened probationary employees that they would have to start their probation all over again and that the Union and that it otherwise badgered and belittled them. The Employer uses the term "furlough" as if it were different than layoff. In fact, in the case before Arbitrator Jones which involves the same process, the parties agreed that the furloughs in question were "layoffs" within the meaning of the layoff provision. The Union notes that the case before Arbitrator Jones involved the first of four furloughs which occurred January 29, 2010. The facts of this case occurred in the second day of furlough and, therefore, were not before Arbitrator Jones. The Employer next argues that the Union's position has harsh and absurd results. To do so, the Employer has to ignore the fact that it planned the furloughs in question more than five months before the second day of furloughs on May 28, 2010. Thus, it could have avoided the issue. The purpose of the contractual language is to prevent the Employer from expanding the work force while at the same time laying-off part of its existing work force. The Employer had the opportunity to avoid this situation by not hiring when it needed to reduce the available work for the permanent employees. Accordingly, it is the Employer which caused this problem, not the Union. The GREEN LAKE COUNTY case cited by the Employer is inapposite. There, the contract had two competing provisions. This is not the situation here.

The Union reiterates its argument with respect to remedy. The Employer instead claims that because the employees in question were laid-off as well, the permanent employees suffered no loss. The Employer essentially acknowledges a breach of contract, yet offers nothing as a remedy. The Employer's claim that Union members suffered no loss by virtue of the Employer's violation of the contract is far from true. Union members suffered a loss in wages by virtue of a lay-off action that was clearly in conflict with the language of the agreement. As detailed in the Union's initial brief, the well-accepted remedy in such a situation is to make the employees whole, including lost wages. In addition to the quantifiable loss of earnings, the Union suffers as an organization when the plain language of the agreement is violated. The Union and its members draw their strength by being able to bargain in good faith with their employer regarding the hours, wages, terms and conditions of employment. The members of the Union have the reasonable expectation that the contract they ratify will be enforced. When faith in the collective bargaining process is harmed, so is the Union. The Employer's suggested remedy does nothing to deter future violations of the express terms of the Agreement. A breach of contract has to mean *something*.

Employer Reply

The Union's argument that the current furloughs are essentially repugnant to the agreement by reducing staff is an argument previously rejected by Arbitrator Jones regarding the current furlough process. Arbitrator Jones states at page 10 of Case MA-14636:

> 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."

Since the Union is making the same argument in both grievance cases the County would contend that it is important to determine what Arbitrator Jones stated on this same issue. Below is the portion of Arbitrator's Jones discussion taken from page 15 of case MA-14636.

> 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.

Since the Union provided no new testimony or evidence to support their claim, the County would argue that a similar determination should be made in this case as well and that the Union's claims have no merit.

The Union contends that Article 26 prohibits the Employer from laying-off any permanent employee while simultaneously employing any probationary or LTE of the same class. The Union also contends that the County violated Article 26.04 by allowing probationary and LTE employees to remain continuously employed. The agreement does not specifically contemplate a one-day layoff. The union's use of the words simultaneously and continuously leaves the impression that these LTE employees worked while union employees where furloughed. This is not the case as they were also furlough and did not take the hours from nor did they displace any union employee. It would be harsh and absurd to apply the language as the Union contemplates. This point was also addressed by Arbitrator Jones at page 16 as follows:

> "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."

The Employer would again reiterate its argument as to remedy.

DISCUSSION

This case is a supplemental award to an arbitration award issued by Arbitrator Jones relating to facts which occurred after his award was rendered.[3] Because his award involves essentially the same facts, it is given binding weight as to the issues decided therein. In that case he found that:

1. The Employer had an economic motivation to furlough the employees for all four furlough days involved in this dispute

2. The furloughs in question were layoffs within the meaning of Article 26.

3. He also construed the provision in dispute to permit the Employer to have some junior employees perform "emergency" work relating to their own clients.

4. It did not violate the scheme of Article 26 to layoff employees while hiring LTE's and hiring an employee

I conclude from a reading of Arbitrator Jones award that he concluded that the layoff provisions of Article 26 contemplated a permanent or significantly long term layoff of employees and that the provision had to be construed with some liberality to deal with the very short term "furloughs" in question. I agree with that conclusion and supplement it herein.

The dispute in question involves the fact that the Employer did not discharge the four limited term employees and one probationary employee. The Union's position is derived from the language of Section 26.01 and the meaning of the word "terminate."

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

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

The essence of the Union's position is that the word "terminate" is clear and unambiguous and the arbitrator should apply it as it is written without variation. It uses the term in the common parlance of being discharged without an expectancy of re-employment. The Union's use of the term is incorrect.

[3] FOND DU LAC COUNTY, MA-14636

Arbitrators are responsible to apply the terms of a collective bargaining agreement as it is written. If, and only, if language is ambiguous the arbitrator must determine which meaning is to be ascribed to the ambiguous language. Language is ambiguous if it is fairly susceptible to more than one meaning. Where the definition of a term is involved it is given its ordinary meaning taken from an ordinary dictionary. However, if a term is a technical term it is given its technical meaning. It is the technical meaning of the word "terminate" used in this context which is determinative herein. I note that the word "terminate" is used in industrial parlance to mean discharge from employment with no expectancy of recall, but could be used to mean separation from employment which could include some circumstances when the employee might be recalled. As noted, the Union assumes the term means "discharge" in the first sense.

Roberts Dictionary of Industrial Relations, defines a "layoff" as a "temporary or indefinite separation from employment initiated by the employer . . . ."[4] The definition goes on to state:

> Employees in layoff status usually retain certain seniority rights and other protection under contract or company practice. The term occasionally is confused with "discharge."

The reason for the use of the word "terminate" rather than "layoff" under Article IV, Section 4.02, is that probationary employees do not accrue seniority. Thus, the Employer has sole authority to determine whether or not it wants to recall probationary employees. The same is true for limited term employees. Thus, the word "terminate" is used in this context to denote that it is within the sole discretion of the Employer to recall probationary and limited term employees and not to require that they be denied recall entirely when the layoff off regular employees ends. Thus, the agreement only requires that probationary or limited term employees be laid-off first, but it does not require that they be discharged without an expectation of recall. Instead, it leaves their recall solely to the discretion of the Employer provided no regular employee is on layoff at the time they are recalled.

The Employer has never had a layoff and the language of the layoff provision has been in the parties' agreement for a long time. Nonetheless, the language itself, while confusing, recognizes that a probationary person can be recalled if he or she is "promoted." Thus, the term "terminate" does not require a discharge but merely a layoff where re-employment is solely in the discretion of the Employer.

I next address the Union's contention that the Employer violated the intent of the layoff provision by using funds for hiring new employees and limited term employee rather retaining them to avoid furloughs. Arbitrator Jones addressed this same issue at page 15 of his award as follows:

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[4] *Roberts' Dictionary of Industrial Relations*, (BNA, 4th Ed.) p. 417. The word "terminate" and "dismiss" are often used synonymously. See, a similar issue in a different context CITY OF GREEN BAY (POLICE DEPARTMENT), MA-13075 (Michelstetter), p. 29 and Sec. 62.13(5)(m) where the word "dismiss" is used in to mean "layoff."

> 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.

I conclude that the Union is precluded from re-litigating the same issue herein by the doctrine of collateral estoppel. Accordingly, I conclude that the Employer did not violate the agreement when it merely furloughed employees rather than discharging them.[5]

AWARD

The Employer did not violate the agreement when it merely furloughed rather than discharging the probationary and limited term employees at the times in dispute.

Dated at Madison, Wisconsin, this 18th day of March, 2011.

Stanley H. Michelstetter II /s/
Stanley H. Michelstetter II, Arbitrator

[5] While parties' agreements are often accorded heavy weight, the parties' agreement to discharge probationary and limited term employees was an attempt at a resolution which failed. It is, therefore, given no weight.

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