

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

LOCAL 3024, AFSCME, AFL-CIO

and

VILLAGE OF GERMANTOWN

Case 75
No. 69571
MA-14653

(Furlough Grievance)

Appearances:

Ehlke, Gartzke, Bero-Lehmann & Lounsbury, S.C., by **Attorney Bruce F. Ehlke**, 6502 Grand Teton Plaza, Suite 202, Madison, Wisconsin 53719, on behalf of the Union.

von Briessen & Roper, S.C., by **Attorney Kyle J. Gulya**, Suite One Thousand Tenney Plaza, Three South Pinckney Street, Madison, Wisconsin 53703, on behalf of the Village.

ARBITRATION AWARD

Local 3024, AFSCME, AFL-CIO (herein the Union) represents two bargaining units of employees of the Village of Germantown, Wisconsin (herein the Village), one including the regular clerical and technical employees of the Village and the other including the regular employees of the Highway, Parks, Water and Wastewater Departments. At all pertinent times, Local 3024 and the Village were parties to collective bargaining agreements covering both units in effect between January 1, 2009 and December 31, 2011. On February 11, 2010, the Union filed a request with the Wisconsin Employment Relations Commission (WERC) to initiate grievance arbitration over the imposition of unpaid furlough days upon members of both bargaining units by the Village. The parties requested a panel of WERC arbitrators and the undersigned was selected to hear the dispute. A hearing was conducted on August 12, 2010. The proceedings were not transcribed. The Union filed its initial brief on September 24, 2010, and the Village filed its brief on November 5, 2010. The Union filed a reply brief on January 5, 2011, whereupon the record was closed.

ISSUES

The parties stipulated to the following statement of the issues:

Did the Village of Germantown violate the Collective Bargaining Agreements by implementing layoffs for twelve days in 2010 of all bargaining unit personnel in the DPW Union and Technical/Clerical Union?

If so, what is the appropriate remedy?

PERTINENT CONTRACT LANGUAGE

TECHNICAL/CLERICAL UNION CONTRACT

ARTICLE 2 MANAGEMENT RIGHTS

2.01 Rights: The Board possesses the sole right to operate the Village and all management rights repose in it, subject only to the provisions of this contract and applicable laws. These rights include, but are not limited to the following:

- A. To direct all operations of the Village;
- B. To establish work rules and schedules of work in accordance with the terms of the Agreement;
- C. To hire, promote, transfer, schedule and assign employee in positions with the Village in accordance with the terms of this Agreement;
- D. To suspend, demote, discharge, and take other disciplinary action against employees for just cause;
- E. To relieve employees from their duties because of lack of work or any other legitimate reason;
- F. To maintain efficiency of Village operations;
- G. To introduce other new or improved methods or facilities; or to change existing methods or facilities provided if such affects the wages, hours, or working conditions of the Employees, the Union will be notified in advance and permitted to bargain the impact upon the wages, hours and working conditions;
- H. To determine the kinds and amounts of services to be performed as pertains to Village operations, and the number and kinds of positions and job classifications to perform such services;

- I. To determine the methods, means and personnel by which Village operations are to be conducted;
- J. To take whatever reasonable action is necessary to carry out the functions of the Village in situations of emergency;
- K. Nothing contained in this Article shall be construed as divesting an employee of any right granted elsewhere in this Agreement or the Wisconsin Statutes.

ARTICLE 9 – SENIORITY

9.01 Definition: The date an employee is employed or re-employed in a regular full-time or regular part-time position shall become his or her seniority date. The seniority date shall be used in all computations that involve length of service in other articles of this Agreement.

9.02 Application: Seniority shall apply in promotions, layoffs, recall from layoffs, and in filling vacant positions, provided, however, that the qualifications of the employee and seniority shall be taken into consideration.

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ARTICLE 11 – LAYOFF – RECALL

11.01 Layoff: Should a reduction in departmental personnel become necessary, the least senior employee in the affected Department shall be the first person laid off, provided, however, that the Employer retains the necessary qualified employees.

11.02 Recall: The last person laid off shall be the first person reemployed, provided, such employee is qualified to do the available work. It is expressly understood that an employee has recall rights under this section for a period of two (2) years from the date of layoff. Any notice of recall shall be considered received when mailed, certified mail, return receipt requested, to the last known address of the employee in question as shown on the Employer's records. It shall be the responsibility of the employee on layoff to keep the Employer advised of his/her current whereabouts.

ARTICLE 12 – HOURS OF WORK

12.01 Normal Work Week: The normal work week for regular full-time employees shall consist of forty (40) hours per week, eight (8) hours per day, excluding an unpaid lunch period. The normal work week shall be Monday

through Friday. The unpaid lunch period shall normally be provided midway through the employee's shift. If a job necessitates working through the employee's normal lunch period, the employee with the approval of their direct supervisor may adjust their hours for that day. The normal start hours are between 6:30 a.m. and 8:30 a.m. The hours referenced above may be varied at the mutual agreement of the employee and their immediate supervisor.

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MUNICIPAL EMPLOYEES UNION CONTRACT

ARTICLE 2 MANAGEMENT RIGHTS

2.01 **Rights:** The Board possesses the sole right to operate the Village and all management rights repose in it, subject only to the provisions of this contract and applicable laws. These rights include, but are not limited to the following:

- A. To direct all operations of the Village;
- B. To establish reasonable work rules and schedules of work in accordance with the terms of the Agreement;
- C. To hire, promote, transfer, schedule and assign employee in positions with the Village in accordance with the terms of this Agreement;
- D. To suspend, demote, discharge, and take other disciplinary action against employees for just cause;
- E. To relieve employees from their duties because of lack of work or any other legitimate reason;
- F. To maintain efficiency of Village operations;
- G. To introduce other new or improved methods or facilities; or to change existing methods or facilities provided if such affects the wages, hours, or working conditions of the Employees, the Union will be notified in advance and permitted to bargain the impact upon the wages, hours and working conditions;
- H. To determine the kinds and amounts of services to be performed as pertains to Village operations, and the number and kinds of positions and job classifications to perform such services;

- I. To determine the methods, means and personnel by which Village operations are to be conducted;
- J. To take whatever reasonable action is necessary to carry out the functions of the Village in situations of emergency;
- K. The Union recognizes the Board has the right to contract or subcontract for goods or services, provided no unit employee shall be laid off or suffer a reduction of in hours below forty (40) hours per week as a result of said contracting or sub contracting;
- L. Nothing contained in this Article shall be construed as divesting an employee of any right granted elsewhere in this Agreement or the Wisconsin Statutes.

ARTICLE 9 – SENIORITY

9.01 Definition: The date an employee is employed or re-employed in a regular full-time or regular part-time position shall become his or her seniority date. The seniority date shall be used in all computations that involve length of service in other articles of this Agreement.

9.02 Application: Seniority shall apply in promotions, layoffs, recall from layoffs, and in filling vacant positions, provided, however, that the qualifications of the employee and seniority shall be taken into consideration. Seniority shall be applied on a bargaining unit-wide basis.

ARTICLE 11 – LAYOFF – RECALL

11.01 Layoff: Should a reduction in departmental personnel become necessary, the least senior employee in the affected Department shall be the first person laid off, provided, however, that the Employer retains the necessary qualified employees.

11.02 Recall: The last person laid off shall be the first person reemployed, provided, such employee is qualified to do the available work. It is expressly understood that an employee has recall rights under this section for a period of two (2) years from the date of layoff. Any notice of recall shall be considered received when mailed, certified mail, return receipt requested, to the last known address of the employee in question as shown on the Employer's records. It shall be the responsibility of the employee on layoff to keep the Employer advised of his/her current whereabouts.

11.03 Seniority: The layoff and recall procedures specified in this Article shall be made on the basis of an employee's seniority with the bargaining unit.

ARTICLE 12 – HOURS OF WORK

12.01 Normal Work Week: The work day shall consist of eight (8) consecutive hours per day, excluding a one-half (1/2) hour lunch period, Monday through Friday. The normal daily start time for all Departments shall be between 6:00 a.m. and 8:00 a.m. The normal work week shall consist of forty (40) hours.

BACKGROUND

Local 3024, AFSCME, represents two bargaining units of Village of Germantown employees, the Technical/Clerical employees unit and the Municipal employees unit. These two bargaining units cover all represented Village employees other than Police Officers, Dispatchers and Firefighters. The Village also employs a number of non-represented professional, supervisor, managerial confidential, temporary, casual and substitute employees. Both of these units entered into collective bargaining agreements with the Village in early 2009 covering the years 2009-2011.

In 2009, the Village received an Aa3 bond rating from Moody's Investment Service, but also received a negative outlook as a result of its dwindling general fund reserve. At the same time, the Village experienced a revenue downturn due to the economic recession, which reduced tax revenues and permit applications, two of the Village's largest and most reliable revenue sources. The Village Board responded to the situation by adding an annual line item in the Village budget of \$167,774, commencing with the 2010 budget, to replenish the General Reserve Fund and also looking at ways to avoid a projected budget shortfall of \$580,000. Wages of non-represented employees and Department heads were frozen and they were directed to take six furlough days for the remainder of 2009. Likewise, the represented employees, with the exception of the police officers, communication officers and firefighters, were asked, and agreed, to take six furlough days for the remainder of 2009.

In preparing the 2010 budget, the Village considered a variety of revenue-producing and cost-saving measures in order to improve its financial position, including charging a garbage collection and recycling fee, increasing the tax levy, instituting a water and sewer rate increase, imposing wage freezes, or instituting additional layoffs and furloughs. As a result, on October 27, 2009, Village Administrator David Schornack wrote to AFSCME Staff Representative Lee Gierke informing him that "(d)ue to a shortfall in revenue the Village finds itself once again in a position of having to cut costs," and asking that the two AFSCME bargaining units agree to reopen their contracts for 2010 and forgo their previously bargained wage increases for that year. Schornack also advised Gierke that unwillingness to agree would "most certainly result in employee layoffs in this Union." On November 11, 2009, Gierke sent letters to Schornack responding to the request for both bargaining units. He indicated that the

Technical/Clerical unit would agree to the wage freeze in return for an additional week of vacation and a guarantee of no additional layoffs or furloughs for the duration of the contract. The Municipal employees unit, however, would not agree to a wage freeze. The other bargaining units, likewise, refused to accept a wage freeze for 2010.

On November 23, 2010 the Board met to consider other options for generating cost savings in light of the refusal of the bargaining unit employees to agree to wage freezes for 2010. It was determined that economies would be realized, where possible, from not filling vacant positions and reducing equipment budgets. It was also determined that the Technical/Clerical and Municipal employees would need to be furloughed 6.39 days each during 2010. At the same time, as a result of some unanticipated revenues it received, the Board decided to reduce the proposed tax levy increase for 2010 from 2.19% to 1.99% and to purchase three new police squad cars and allocate \$5000 for an awards banquet for the volunteer fire department. Ultimately, the Board voted to impose twelve furlough days on the Technical/Clerical and Municipal employees in 2010, in lieu of furloughs it chose not to impose on the police, communications officers and firefighters.

On December 1, 2009, Schornack sent out the following letter to all Local 3024 Municipal bargaining unit members:

Dear __:

The Village Board has undertaken review of its 2010 budget in light of the Union's decision to reject the Village's request for a voluntary waiver of the negotiated 2010 wage increase for your bargaining unit. The Village Board has directed me to implement alternative cost saving measures to stay within the revenue budget they have set. Our goal is to reduce labor costs with a minimum impact on critical services to Village residents, and to spread the adverse economic impact among all Village employees.

Therefore, the Village is hereby announcing a series of single day layoffs of the entire DPW unit on the same day for the 2010 budget year.

All DPW employees are hereby laid off on the following Wednesdays in 2010: April 14, April 21, May 5, May 12, June 9, July 14, August 11, September 8, October 13, October 20 and November 10 and recalled the next day. Note these days are scheduled to avoid times when snowplowing is likely, and to avoid interference with summer road projects. Further, they are scheduled to occur on Wednesdays in weeks without other holidays, so our Village residents are able to access Village services without a three consecutive day break in conjunction with the weekend.

These dates may be changed if weather or work conditions require, or if our budget changes. On the layoff days, you are reminded of your obligation to keep

the Village advised of your “current whereabouts” pursuant to Article 11.02 of your Collective Bargaining Agreement. Of course, on the weeks when layoffs occur, your normal work day and work week under Article 12 of your Collective Bargaining Agreement will be temporarily interrupted, but you will return to that normal work day and work week for the remaining weeks of the year. Please consider this letter to be your official notice of layoff and official notice of recall to work the following day pursuant to Article 11 of the applicable Collective Bargaining Agreement.

In conclusion, our taxpayers are facing layoffs, furloughs, wage freezes (or reductions), increased health insurance costs, and losses in the value of their retirement plans. Yet, in 2010, those same taxpayers are already absorbing the increase in your WRS contribution rates, paying the bulk of the increased costs in your health insurance plans, and are expected to pay for your significant wage increase in light of the decision not to voluntarily rescind that wage increase. The only remaining way for the taxpayers to achieve cost savings is to proceed in this fashion. While the Village remains available to discuss differing cost saving options, including a reexamination of the 2010 wage increase, this layoff decision will be implemented unless or until those discussions bear fruit.

Sincerely,

David R. Schornack
Village Administrator

A similar letter, announcing twelve scheduled furlough days on the same rationale, was sent out to all the Technical/Clerical unit employees. Both bargaining units grieved the Village’s action on the basis that the furloughs violated their respective contracts. The Village denied the grievances and the matter thereupon proceeded to arbitration. Additional facts will be referenced, as necessary, in the **DISCUSSION** section of this award.

POSITIONS OF THE PARTIES

The Union

The Union asserts that any exercise of management rights by the Village must meet with contractual requirements. The Village appears to base its layoff of the bargaining unit employees on its management rights. Both contracts have the identical provision regarding layoffs, which states:

- 2.01 E. To relieve employees from their duties because of lack of work or any other legitimate reason.

Neither situation existed in this case. There is no lack of work, but there is, in fact, a backlog, such that supervisor and non-represented employees have had to perform bargaining unit work on furlough days. With respect to “other legitimate reasons,” these must be consistent with the contract and other applicable laws, must reflect a fair and reasonable exercise of management rights and must not be for the purpose of undermining the Union or discriminating against its members. Management’s actions here do not meet any of these standards.

The Union negotiated a 2.5% wage increase for 2010, which would have been negated by 6.39 layoff days. Instead, the Village Board imposed 12 layoff days, which resulted in a 2.5% wage cut, thus violating the contractual agreement regarding wage increases. Further, the layoffs reduced the workweeks of the employees to 32 hours during weeks when layoffs occurred, which violated contractual language identifying the normal workweek as 8 hours per day, Monday through Friday. Also, the layoffs violated Section 11.01, which specifies that layoffs must be done according to seniority, with the least senior employees being laid off first. Section 2.01E. is subject to the other provisions of the contract, which means it is subordinate to them. Thus, the Village cannot layoff employees for any reason, legitimate or otherwise, if it does not comply with the rest of the contract. Its exercise of management rights here violated the contracts as set forth above.

The layoffs here also discriminated against the members of Local 3024 and undermined the Union. As in 2009, to only bargaining unit employees laid off were the members of Local 3024 and it appears that it was done in retaliation for their exercise of their contractual rights. All other employees, represented and non-represented, worked a full schedule in 2010 and also received their wage increases. Further, no reason, justified or not, has been given for imposing 12 layoff days instead of the 6.39 necessary to negate the 2010 wage increases. The only thing that changed between the Board determining the need for 6.39 layoff days and the imposition of 12 was the act of the units in asserting their rights to their bargained wages. This permits the presumption that the added days were punishment for asserting their contractual rights. These discriminatory and retaliatory layoffs violate the contracts and should be overturned.

The layoffs were also not “fair and reasonable.” The purported reason for the layoffs was to save money in order to improve the Village’s bond rating. The Village had, however, a number of other options available to it to improve its financial picture, such as imposing a trash pickup fee, as other communities had, or increasing the property tax levy, which was one of the lowest in the area. The Board only considered cost-cutting options, however, even though the only citizens to appear to discuss the budget argued for increasing taxes rather than laying off employees. It is also notable that no other employees of the Village were required to contribute to building up the Village’s reserve fund. All received their wages increases for 2010 and none experienced layoffs. The Board also allocated funds to purchase three patrol cars when only one was requested and another \$5000 for a banquet for the Volunteer Firefighters. Further, even after the Village’s financial picture improved at the end of 2009 and into 2010 the layoffs were not rescinded. Finally, to add insult to injury, the layoffs were all imposed on 12 separate Wednesdays, depriving the employees of the ability to file for unemployment or even the possibility of a long weekend. There was nothing fair and

reasonable about the Village's imposition of layoffs on these employees and they should, therefore, be overturned.

The Village

The Village asserts that it did not violate the collective bargaining agreements instituting the layoffs of the Local 3024 bargaining unit members. The Union has raised four arguments in support of the grievances: 1) that the layoffs violated the contracts, 2) that they discriminated against the bargaining unit members, 3) that there was no legitimate reason for them and 4) that they were not fair and reasonable. None of these claims have merit.

In making the layoffs the Village fully complied with the contract requirements. The requirement of the least senior employee being laid off first was followed because all employees were laid off. Further, many arbitrators have held that contractual layoff language can be applied to implement unit-wide furlough days. CITY OF GREENFIELD, MA-14520 (Gordon, 2010); FOND DU LAC COUNTY, MA-14636 (Jones, 2010); LANGLADE COUNTY, MA-12587 (Bielarczyk, 2005); JACKSON COUNTY, MA-12338 (Houlihan, 2005); MARATHON COUNTY, MA-12962 (Gordon, 2005) These cases involve similar contract language to that in issue here and support the proposition that the Village may lay off all employees for specified furlough days without violating the principle of seniority. The layoffs also did not negate the 2010 wage increase, nor did they violate the normal workweek language. First, all employees received their bargained for wage increases for 2010 and were paid the agreed wage rate for all hours worked. The Union's argument that the layoffs negated the wage increases has no merit. Any layoff would have the effect of reducing the overall wage of the employees affected, so the Union's argument, if successful, would have the effect of reading the layoff language entirely out of the contract. Further, the "normal work week" language is not a guarantee of a specific work week under all circumstances and arbitrators have consistently held that the term "normal" does not guarantee a specific number of hours per week. In fact, the recognized occasional deviation from the normal work week is a two-way street, as when employees change their work week by using varied forms of paid and unpaid leave. JACKSON COUNTY, SUPRA, involved language almost identical to that contained in these contracts and the arbitrator held that the language did not mandate the workweek, but rather made it possible for modifications. Even if the language could be interpreted to mandate a 40 hour workweek, however, this must give way to the layoff language or else layoff could never occur. It should also be noted in support of the Village's position that no loss of seniority or full-time status was caused by the layoff, lending credence to the view that no contract violation occurred.

The Village also contends that the layoff decision was fair and reasonable. The Union finds fault with the fact that the Village chose not to tax its citizens at the maximum allowable rate and instead looked for economies within its budget. The Village maintains it acted prudently. The decisions of how much to tax and what services and levels of services to provide are policy choices reserved to the Village Board. Further, it is not within this arbitrator's authority to determine how much the Village must tax its citizens. It is also of little weight that four citizens came to the Board meeting to argue for higher taxes and no layoffs or

reduction in services. They do not outweigh the views of the nine citizens on the Board who voted not to increase taxes and in favor of the furloughs. Further, the Union argues that the layoffs should have been cancelled when the Village discovered it would have a surplus for 2009, but the Board made a permissible policy choice to allocate the surplus to the General Reserve. It was also not unreasonable to schedule the layoffs on Wednesdays, although the Union considered this to be a hardship. Administrator Schornack made it clear in his letter to the employees, and in his testimony, that there were valid reasons of accessibility of services to the public that resulted in the decision to hold the layoffs on Wednesdays and that retaliation against the employees was not a consideration. The fact that the employees would have preferred a long weekend does not make that the only fair and reasonable option. It is also not true that other Village employees were not asked to make sacrifices to help balance the budget. Seventeen positions were laid off and the non-represented employees have not gotten a raise since 2008. The IAFF and Dispatchers units received no raise in 2010 and the police were forced to work short staffed when two vacant positions were not.

The Village also had a legitimate reason for the layoffs. The rights to direct all operations of the Village and maintain efficiency of operations are reserved to management in both contracts. This also gives the Village the rights to decide to not offer services or assign work on given days, or at all. This is recognized by the right to reduce the hours of work of employees for lack of work or any other legitimate reason. Lack of work is both a need-based and a financially-based policy decision, which addresses both whether there is enough work to do and whether the Village has the resources to provide full-time work for all employees. The citizens, through their elected officials, have determined how much money they are willing to provide for public services and it is management's responsibility to work within those constraints. After the budget crisis in 2009 and the receipt of the Negative Outlook from Moody's, the Board prudently decided to not raid the reserve fund in 2010, but to continue to build it. Further, the Union's assertion that non-union employees did bargaining unit work on the furlough days is pure speculation unsupported by the evidence. Even if so, however, there is nothing in the contracts designating any particular work as being reserved to the bargaining unit. The Village also had substantial other legitimate reasons to justify the layoffs. The record is replete with evidence of the Village's financial crisis in 2009, the Negative Outlook it received from Moody's and the need to replenish its General Reserve. The record also reveals that the Board did not want to impose a greater tax burden on a community already distressed by the recession, but look to cut costs and institute efficiencies in all areas in a variety of ways. All bargaining units and non-represented employees were affected. The Union objects to the imposition of 12 days, when 6 were initially considered, but this was because the Village was unable to layoff employees in protected services. Likewise the Union objects to the fact that the layoffs occurred on Wednesdays, but it was within the Village's discretion to determine when the layoffs would occur.

There was also no discrimination against the employees in these units. The Union argues that these employees were singled out for not agreeing to a 2010 wage freeze, but offered no evidence supporting this contention. There was no retaliatory motive behind the action and, in fact, as indicated above, all Village employees have been impacted in some way.

The non-represented employees have not had a raise since 2008 and the Village is offering a 0% increase in its current negotiations with the Firefighters and Dispatchers. Further, the Village's ongoing attempts and willingness to consider various negotiated alternatives reveals its desire to resolve these issues in a way that is agreeable to all. Notwithstanding, it must take necessary action to deal with the budget problems and, short of a negotiated agreement, there is no requirement that the burdens of those measures must be equally shared.

Union Reply

The Village's arguments in support of the layoffs are superficial, technical, not supported by the evidence and, in the context of this case, they miss the mark. Apart from the specifics of any particular provision, the Union asserts that the totality of the Village's conduct makes its actions illegitimate within the meaning of Section 2.01E, and not reasonable under Section 2.02. Further, the arbitration awards cited by the Village are not on point and, if read to establish a black letter rule for furloughs, would effectively emasculate the principle of seniority. It is also notable that the public works employees' contract specifies that the normal work week for full-time employees shall be 40 hours, without any qualification.

Also, the argument that the layoff provision must trump the other provisions in the contracts because otherwise no layoffs could ever occur, overstates the case. All the Village must do is honor the principle of seniority and lay off the least senior employees before the most senior, rather than instituting a year long adjustment of the work week for all employees.

The Village's argument that its decision was fair and reasonable also mischaracterizes the evidence. It makes unsupported statements about foreclosures and a decrease in development. It complains about unbudgeted expenditures, but doesn't mention that these were actually a higher than expected contract settlement with another bargaining unit. Its statements to the effect that it increased utility rates and taxes, that it laid off some of the summer help and that non-represented employees may not receive a raise in 2010 are all unsupported in the record. Further, the Village's fairness argument is based on its demonstrating how fair it's been to the other employees, which ignores the fact that its duty of fairness is to the employees of these bargaining units.

What is clear is that the employees in these units were laid off because they would not accede to the Village's demand that they give up their 2010 wage increases. The key issue in this case is whether an employer can take back an agreed wage increase by laying off employees because it has changed its budget priorities. The Village was not faced with an unforeseen fiscal crisis. Rather, it was informed by Moody's that its gradual reduction of its general fund balance might result in a Negative Outlook, which could have been corrected by increasing its tax levy or charging fees for garbage service, as other nearby communities have done. In response, the Village Administrator prepared the 2010 budget including these revenue producing options, as well as the bargained wage increases for the Local 3024 members. At this point, the Board rejected the Administrator's recommendations and demanded that the employees surrender their wage increases, instead. The rationale given for these actions would

have been regarded as borderline frivolous in an interest arbitration case and should not be accepted now. There was no unforeseen fiscal crisis or inability to pay. Rather, the Village simply changed what it wanted to include in its budget and so decided to eliminate the agreed wage lifts by laying off the employees. If the Village's rationale for the layoffs is sustained, then there is really no reason for imposing layoffs that would not be considered legitimate and the implications for collective bargaining and the trust relationship that it implies is bleak. The Village's reasons were not legitimate, however, and the layoffs should be repudiated and reversed.

DISCUSSION

The Union has asserted that the Village abused its management rights and violated the collective bargaining agreements in the way that it instituted layoffs within the two bargaining units that comprise Local 3024. The Union points to contract language that permits layoffs in the event of lack of work or other legitimate reasons and asserts that neither criterion existed here. It also particularly objects to the facts that no layoffs were instituted in the Village's other bargaining units, that twelve layoff days were imposed when the Village originally indicated that only six or seven would be necessary and that the layoffs were all scheduled on Wednesdays, which was most inconvenient for the employees. The Union believes that the Village's actions were in retaliation for the refusal of the Municipal Employees bargaining unit to agree to forgo its 2010 wage increase and the decision of the Technical/Clerical bargaining unit to bargain a quid pro quo in return for forgoing the increase. The Union believes that the Village's actions also violate other sections of the collective bargaining agreements, specifically those addressing layoff and recall, hours of work and the appendices containing the wage lifts for 2010. I disagree.

The contracts give the Village broad authority to manage its affairs, including the rights:

- A. To direct all operations of the Village;
- B. To establish reasonable work rules and schedules of work in accordance with the terms of the Agreement;
- . . .
- D. To suspend, demote, discharge, and take other disciplinary action against employees for just cause;
- E. To relieve employees from their duties because of lack of work or any other legitimate reason;
- F. To maintain efficiency of Village operations;

- G. To determine the kinds and amounts of services to be performed as pertains to Village operations, and the number and kinds of positions and job classifications to perform such services;

...

- I. To determine the methods, means and personnel by which Village operations are to be conducted;

To be sure, these rights are subject to other provisions in the contracts and applicable law, but it is nonetheless clear that, unless other rights of the employees are impermissibly impaired, policy decisions regarding Village operations and services, to what extent they are provided and how they are funded, are the purview of the Village Board.

In 2009, the Village was concerned about the low balance in its General Reserve Fund, which had resulted in a negative outlook from Moody's Investment Service. If not addressed this could have ultimately lowered the Village's bond rating. In response, the Board took a number of actions to address the problem, including laying off some employees, not filling some vacant positions and not giving raises to non-represented employees. It also negotiated with Local 3024, which agreed to six furlough days for the balance of 2009. The Board also decided to include an ongoing line item in the Village budget to replenish the General Reserve. In late 2009, the Board concluded that in order to balance its 2010 budget it would either need to increase its revenues by raising taxes and fees, or it would need to cut items in the budget. The Board did not want to raise taxes and fees because it felt that it would place too great a burden on the citizens during a time of economic recession and high unemployment. It determined, therefore, that it needed to reduce the Village payroll in order to balance the budget. The Village Administrator, thus, approached all the bargaining units and asked them to forgo their 2010 wage increases. None agreed to do so. This led the Board to conclude that layoffs were necessary to obtain the necessary budget reductions. It chose, therefore, to impose 12 layoff days on the Local 3024 bargaining unit employees. It did not layoff the employees in the Police, Dispatchers, or Firefighters bargaining units because it did not feel the Village could compromise its emergency services. The layoff days were scheduled for twelve Wednesdays throughout the year because the Board thought this would be less disruptive for the citizens of the Village than having the Village offices closed on long weekends.

It should be first noted that the Village's decision to impose the layoffs was clearly not due to lack of work, but for "other legitimate reasons," as provided in the management rights clause. Part of the Unions' argument is that the Village's reasons were not legitimate. In fact, the Union asserts that what actually occurred was a form of buyer's remorse whereby the Board regretted the wage lifts it had agreed to in the current contracts and wanted to take them back. Failing an agreement to waive them by the Unions, it did the only other thing it could do, it laid off the employees. The record does not support this theory. There is no evidence that the Board was motivated by a desire to take away wage increases from the employees. Rather, the evidence indicates that the Board's motivation was to build the General Reserve

Fund and balance the Village's budget without raising taxes and fees. The Union argues that the Village could have raised taxes and fees with little impact on the citizens, and could have elected to cut other items from its budget. This is true. Nevertheless, these are policy choices the Village is entitled to make, and the fact that the Union did not agree with those choices does not make them illegitimate. LANGLADE COUNTY, MA-12597 (Bielarczyk, 3/05).

I also do not believe the layoff provisions were violated. Those sections provided that in the event of layoffs the least senior employees in the affected departments must be laid off first, and that the last employee laid off must be the first to be recalled. It is not clear from the briefs what, exactly, the Union contends was amiss with how the layoff language was applied other than the claimed absence of a lack of work or other legitimate reason. The Union asserts a violation of Sec. 11.01, the Layoff provision, which states that layoffs must be conducted in reverse order of seniority. Arbitrators have held, however, that such language does not operate to forbid the employer from laying off the entire workforce at once. JACKSON COUNTY, MA-12338 (Houlihan, 3/05); LANGLADE COUNTY, SUPRA. Since no junior member of the bargaining units was working while more senior members were laid off, I find there was no violation of the layoff language.

As to the alleged of the normal workweek provisions and negation of the 2010 wage increases, I also find these claims are not valid. Arbitrator Houlihan, in JACKSON COUNTY, SUPRA, discussed the concept of the normal workweek in the context of temporary layoffs, or furloughs, where a similar claim was made. Therein, he stated:

The use of the term "regular" (or normal, standard, etc) has almost universally been held not to guarantee the hours set forth in the defined week. The term "regular" modifies the phrase that follows; i.e. "workweek shall consist of five (5) consecutive eight (8) hour days, ..." Had the parties not inserted the term "regular", the provision would have mandated the workweek and work day. By inserting the term "regular" the clause achieves something less.

Id, at 4

I note further, that if the Union's argument were to prevail any temporary layoff or furlough would be impossible because it would, by definition, violate the normal work week provision. Further, while the layoffs, of course, had the effect of reducing the employees' wages, that fact does not mean that the 2010 wage lifts were negated. The wage rates were increased for all bargaining unit members as specified in the contracts and will establish the base rate upon which benefits are calculated and any future wage lifts will be based.

Finally, the Union asserts that the layoffs violated the contracts because they were not carried out in a fair and reasonable manner and because they served the purpose of undermining the Union and discriminating against its members. I note at the outset that this language appears in Sec. 2.02 of the Municipal contract, but is not included in the Technical/Clerical contract. To the extent that a violation is claimed based on this specific

language, therefore, I find that it applies only to the members of the Municipal Employees bargaining unit. In any event, however, onerous as the circumstances no doubt are for these employees, I do not find that the Village's action in this case was used for the purpose of undermining the Union or discriminating against its members, as that language is used here. To be sure, the members of these bargaining units were treated differently than the members of the other bargaining units, who were not laid off, but I do not find, based on this record, that the purpose of the layoffs was either to undermine the Union or discriminate against its members. The purpose of the layoffs is well documented. The Village Board felt it needed to reduce its budget in light of dwindling reserves, a poor economy and a threatened reduction in its bond rating. The Board determined that temporarily laying off employees was the most effective means of achieving the necessary savings, but that layoffs among the protective employees would not serve the Village's interests or achieve the desired savings due to minimum staffing requirements and potential emergency needs. The layoffs were, therefore, restricted to the members of Local 3024 and the non-represented employees. It was noted by the City Administrator, however, that the Fire Fighters and Dispatchers had not settled their 2010 contracts at the time of the hearing and so did not get a scheduled wage increase for 2010, as the members of Local 3024 did, and that the Village was not offering a wage increase in its bargaining proposals. Notwithstanding, it is clear to me that the purpose of the layoffs was to save money, not undermine the Union or discriminate against its members.

The other question posed by the language is whether the Board's exercise of its authority was fair and reasonable under the circumstances and I find that it was. Here, again, it is not enough to say that the Village might have made other choices that would have made the layoffs unnecessary, or that it might have spread the pain among all its employees more equitably. Both of these assertions are clearly true, but that doesn't make the Village's choices *per se* unfair or unreasonable. The Board is tasked with making policy choices about how and to what extent it will raise revenue, what services it will provide to its citizens and the kinds and numbers of employees it requires to provide those services. Like it or not, under a particular set of circumstances, the Board may, and has authority to, decide that increasing taxes and fees is not feasible and that certain services and employees are of more immediate need than others. This will often mean that some employees will be treated differently than others. The Board and Village Administration engaged in such an analysis here and, whether I or someone else would have chosen differently, there clearly was considerable research, debate and deliberation in the process such that I cannot find that its decision was unreasonable on its face.

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

AWARD

The Village of Germantown did not violate the Collective Bargaining Agreements by implementing layoffs for twelve days in 2010 of all bargaining unit personnel in the DPW Union and Technical/Clerical Union. The grievances are denied.

Dated at Fond du Lac, Wisconsin, this 5th day of April, 2011.

John R. Emery /s/

John R. Emery, Arbitrator

JRE/gjc
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