BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

LOCAL 2492 - MARATHON COUNTY ADMINISTRATIVE, TECHNICAL AND PROFESSIONAL EMPLOYEES UNION, AFSCME, AFL-CIO WISCONSIN COUNCIL 40

and

MARATHON COUNTY

Case 334
No. 70449
MA-14966

(Reduction of Work Hours Grievance)

Appearances:

John Spiegelhoff, Staff Representative, AFSCME Wisconsin Council 40, 1105 East 9th Street, Merrill, Wisconsin 54452, appearing on behalf of Local 2492 - Marathon County Administrative Technical and Professional Employees Union.

Attorney Dean R. Dietrich, Ruder Ware, L.L.S.C., 500 First Street, Suite 8000, P.O. Box 8050, Wausau, Wisconsin 54402-8050, appearing on behalf of Marathon County.

ARBITRATION AWARD

Local 2492, hereinafter referred to as the Union, and Marathon County, hereinafter referred to as the County or the Employer, are parties to a Collective Bargaining Agreement (CBA) which provides for final and binding arbitration of certain disputes, which CBA was in full force and effect at all times mentioned herein. On December 23, 2010, the Union filed a Request to Initiate Grievance Arbitration and asked the Wisconsin Employment Relations Commission to assign a staff arbitrator to hear and resolve the Union's grievance regarding the reduction in work hours of Lorraine Henkelman. The parties requested a member of the Commission's staff be assigned as Arbitrator and the undersigned was appointed as the Arbitrator to hear and decide the matter. Hearing was held on the matter on February 22, 2011 in Wausau, Wisconsin, at which time the parties were given the opportunity to present evidence and arguments. This matter is properly before the Arbitrator. The hearing was not transcribed. The parties filed initial post-hearing briefs and replies by April 11, 2011 marking the close of the record. Based upon the evidence and the arguments of the parties, I issue the following Decision and Award.

ISSUES

The parties were not able to stipulate to the issues to be decided by the Arbitrator.

The Union states the issues as:

Did the County violate the Collective Bargaining Agreement when it eliminated Lorraine Henkelman's full-time (40 hour/week) position, assigned her a part-time (20 hour/week) position, did not post the part-time position and denied her the opportunity to bump? If so, what is the appropriate remedy?

The County states the issues as:

Did the County violate the Labor Agreement when it reduced the hours of the Grievant in the Finance Department? If so, what is the appropriate remedy?

The Arbitrator selects the issue as stated by the Union.

RELEVANT CONTRACTUAL PROVISIONS

Article 1 - Recognition

The County hereby recognizes the Union as the exclusive bargaining representative for all regular full-time and regular part-time nonprofessional employees in the employ of Marathon County pursuant to the Wisconsin Employment Relations Commission Decision NO. 20999, Case LXXXIII, No. 31883, ME-2242 for the purpose of conferences on wages, hours and conditions of employment. Employees expressly excluded from representation includes all confidential, supervisory and managerial employees, elected officials and all other represented employees of Marathon County.

Article 2 - Management Rights

The County possesses the sole right to operate the departments of the County and all management rights repose in it, but such rights must be exercised with the other provisions of the contract. These rights include, but are not limited to, the following:

A. To direct all operation of the respective departments;
B. To establish reasonable work rules;
C. To hire, promote, transfer, assign and retain employees;
D. To suspend, demote, discharge, and take other disciplinary action against employees for just cause;

E. To relieve employees from their job duties because of lack of work or for legitimate reasons;
F. To maintain efficiency of department operations entrusted to it;
G. To take whatever action is necessary to comply with State and Federal laws;
H. To introduce new or improved methods or facilities;
I. To manage and direct the working force, to make assignments of jobs, to determine the size and composition of the work force, to determine the work to be performed by employees, and to determine the competence and qualifications of employees;
J. To change existing methods or facilities;
K. To determine the methods, means and personnel by which operations are to be conducted;
L. To take whatever action is necessary to carry out the functions of the departments in situations of emergency;
M. To utilize temporary or seasonal employees when deemed necessary provided such employees shall not be utilized for the purposes of eliminating existing full-time and part-time positions;
N. To contract out for goods and services so long as no employees in the department in which the subcontracting occurs are laid off or released by such action.

Any dispute with respect to the reasonableness of the application of said management rights with employees covered by this Agreement may be processed through the grievance and arbitration procedure contained herein; however, the pendency of any grievance or arbitration shall not interfere with the rights of the County to continue to exercise these management rights.

Article 3 - Grievance Procedure

A. Definition of Procedure: A grievance shall be defined as a dispute over interpretation and application of the provisions of this collective bargaining agreement between the County and the Union. Grievances shall be handled and settled in accordance with the following procedure:

Step 1: An employee covered by this Agreement who has a grievance is urged to discuss that grievance with the immediate supervisor as soon as the employee is aware of the grievance. In the event of a grievance the employee shall continue to perform the assigned task and grieve the complaint later. Within ten (10) working days after the employee knows or should have known of the event giving rise to the grievance, the employee shall set forth the grievance in writing, dated, and signed.

The Grievance shall be submitted to the immediate supervisor if it concerns a matter over which the immediate supervisor has authority. All other grievances shall proceed directly to Step 2.

Only one subject matter shall be covered in any one grievance. A written grievance shall contain the name and position of the grievant, a clear and concise statement of the grievance, the issue involved, and relief sought, the date the incident or violation took place, the specific section of the agreement alleged to have been violated, if any, and the signature of the grievant and the date.

The immediate supervisor shall investigate the grievance and discuss the matter with the employee and the Union, and provide a written answer to the grievance within ten (10) days after receipt of the written grievance.

. . .

B. Arbitration:

. . .

5. Decision of the Arbitrator: The decision of the Arbitrator shall be limited to the subject matter of the grievance and shall be restricted solely to interpretation of the contract in the area where the alleged breach occurred. The Arbitrator shall not modify, add to or delete from the express terms of the Agreement.

. . .

Article 5 - Hours of Work and Overtime

A. Normal Hours of Work:

1. Normal Hours: Subject to the special provisions listed below, the normal hours of work for employees covered by this Agreement shall be from 8:00 a.m. to 4:30 p.m., Monday through Friday, with a one-half (½) hour unpaid lunch period.

Article 6 - Seniority

. . .

B. Layoff: In the event it becomes necessary to reduce the number of employees in a department, temporary and seasonal employees in that department shall be the first to be laid off before the employee in the classification in the department whose position is being eliminated. The employee whose position is being eliminated shall, if necessary, be allowed to replace an employee with less seniority in the same or a lower pay range provided the employee (whose position is eliminated) is qualified to perform the work of the position selected. The employee replaced under this provision shall be allowed to exercise similar rights under this provision. Employees laid off in a reduction in force shall have their seniority status continued for a period equal to their seniority at the time of layoff, but in no case shall this period be more than two (2) years. When vacancies occur in any department while any employees hold layoff seniority status, these employees shall be given the first opportunity to be recalled and placed in those jobs, provided they are qualified to perform the available work.

Reduction in Work Hours: Management and Union shall meet prior to the implementation of any reduction in work hours and attempt to find a mutually agreeable solution.

. . .

D. Loss of Seniority: An employee shall lose seniority rights for the following reasons:

1. If the employee quits;

2. If the employee has been discharged for just cause;

3. If the employee fails to notify the County within one (1) week of intentions upon recall from layoffs and/or does not report for work within three (3) weeks of recall (certified, return receipt mail);

4. If the employee has been in layoff status longer then (sic) provided above;

5. If the employee has been in a management or non-union position for more than six (6) consecutive months. Employees in a management or other non-union position for six (6) months or less who for any reason are to resume a union-covered position lose no seniority. Employees in a management position less than six (6) months who are laid off, resign, or are terminated if the termination is not for disciplinary reasons, keep their seniority and must, on or before the final date in the management or non-union position, notify the Employer of their desire to resume a union-covered position, at which time the employee in (sic) union-covered position with less seniority shall be removed in favor of the person with more seniority. Seniority for this purpose runs despite the employee's management position (but in no case for more than six (6) months). Any break in employment shall be deemed severance and the person shall lose all seniority.

Article 7 - Job Posting

A. Posting: When the employer deems it necessary to fill a vacancy created by retirement, quitting, new position, or for whatever reason, a notice shall be posted on all authorized bulletin boards for five (5) working days (to overlap two (2) consecutive weeks). The Union shall receive a copy of the posting.

. . .

Article 28 - Part-time Employees

Regular part-time employees are defined as employees in an established position who are regularly scheduled to a lesser number of hours than a full-time employee as provided for in work schedule of Article 5. Part-time employees shall receive prorated benefits as provided to other full-time employees covered by this Agreement based on the employee's regularly scheduled hours per year. The County biweekly PHEP contributions shall not be prorated. Part-time employees will be required to make a pro-rated contribution to the health and/or dental insurance programs if they opt for coverage.

. . .

Article 31 - Entire Memorandum of Agreement

This Agreement constitutes the Agreement between the parties and no verbal statement shall supersede any of its provisions. Any amendment supplemental thereto shall not be binding upon either party unless executed in writing by the parties hereto. The parties further acknowledge that, during negotiations which resulted in the Agreement each had the unlimited right and opportunity to make demands and proposals with respect to any items covered by the terms of this Agreement and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity is set forth in this Agreement. Waiver of any breach of this Agreement by either party shall not constitute a waiver of any future breach of this Agreement.

BACKGROUND AND FACTS

Grievant has been employed by the County for 33 years and, most recently at least, served as an Accounting Assistant I in the Finance Department. Prior to January 1, 2011, her position worked 40 hours per week.

Due to budget cuts in the 2011 fiscal year it became necessary for the County to reduce staff work hours in several areas of County Government. One of the cuts reduced by one half was that of the Grievant, the Accounting Assistant I. Thus, the Grievant's work hour were reduced from 40 hours per week to 20 hours per week. This reduction in work hours resulted in a number of changes to Grievant's benefit package including a drastic increase in the cost of her health insurance premium contribution.

On October 7, 2010 the Union and representatives of the County met to discuss the potential of options the County may employ to circumvent the cuts in the budget. As a result of this meeting the County determined to hold off on sending final notices to employees, including Grievant, until it could verify that the Finance Committee would make no changes in the budget which might alter the proposed measures. The Finance Committee failed to make any changes and the notices were sent out on October 21, 2010, stating that Grievant's work hours would be reduced by 20 hours per week to half-time.

On October 27, 2010, Grievant sent a notice to Employee Resources Director Frank Matel advising him that she wished to invoke her "bumping rights" under the CBA. Matel advised her that the CBA did not afford her that option because bumping rights only applied if a position were eliminated.

On October 27, 2010, the Union filed this grievance. On November 3, 2010, Union Vice President Lynn Meurette sent an e-mail to Matel suggesting that Grievant may perhaps be able to be reclassified as a Clerical Assistant II but the County determined that this suggestion would not save the County the required amount of money to meet the County's budgetary needs.

The grievance made its way through the grievance procedure in a timely manner and is now properly before the Arbitrator.

THE PARTIES' POSITIONS

The Union

The change in status from full-time to part-time triggers the layoff and bumping provisions of the CBA. It is clear that there is a distinct difference between full-time and part-time employment in the CBA. The language found in the CBA demonstrates this difference. Article 28, for instance, refers to "Part-time" employees and says: *Regular part-time employees are defined as employees in an established position. . .* (Union's Emphasis.) Article 5 refers to the "normal hours of work" as being 40 hours per week whereas Article 28 refers to part-time employees working "less than 40 hrs/week." The Union argues that this definition "evinces the true intent of the parties which distinguishes a complete and separate employment status between full-time and part-time employees."

The County has a process by which it creates or establishes new positions and, in Grievant's case, it failed to follow that procedure. The County eliminated her full-time position and then established a new Accounting Assistant I part-time position, in effect, laying her off of her old position and transferred her to the newly created part-time position. This should have created a new posting and, at the same time, created her right to invoke the bumping procedure. Article 7(A) requires "when the employer deems it necessary to fill a vacancy created by retirement, quitting, new position or for whatever reason, a notice shall be posted on all authorized bulletin boards for five working days." This was not done and thus the County violated the CBA. The 2010 organization chart shows the position of Accounting Assistant I classified as a 1.0 FTE in the Finance Department. The 2011 organization chart shows the Accounting Assistant I position as a .50 FTE. Clearly this demonstrates the elimination of the 1.0 FTE position and the establishment of the .50 FTE position. Elimination of her full-time position amounts to a layoff and triggers the bumping provisions of Article 6(B). A part-time position differs vastly from a full-time position and moving her to the part-time position renders the posting, full-time and part-time definition and seniority provisions meaningless and arbitrators are loathe to interpret contractual language that renders other parts of the contract meaningless.

The County would have the Arbitrator believe that he should only read the first sentence of Article 6(B) to determine the case. But the reduction from full-time to part-time dramatically impacts other conditions of employment. For example, the Grievant's annual wages will decrease from $36,410.40 to $18,205.20 and her health insurance contribution will increase by $11,629.80. It can only stand to reason that he parties contemplated a separate and distinct status *vis-a-vis* full-time and part-time employees. The parties envisioned bumping rights for employees whose employment status is changed due to the employers fiscal decisions.

"The trigger for layoff is not by a complete elimination of the position." Article 6(B) contains no reference to the layoff triggering mechanism being related to the elimination of a

position. "It simply states 'whose position is being eliminated."' This language is not clear and when a contract term is ambiguous the law favors an interpretation which would avoid a harsh, absurd or nonsensical result. The Union argues that, in the face of this ambiguous language, the Arbitrator should interpret the term "eliminated" to mean "that when a position is so drastically changed from full-time to part-time status that it connotes an elimination of that position within the meaning of the contract."

The fact that the parties negotiated a meet and confer provision in the CBA (Article 6(B) - Reduction in Work Hours). Because of this, it is apparent that the parties were aware of the lack of clarity of the word "eliminated" and negotiated the meet and confer language to cover the event of a reduction in an employee's work hours.

The County has violated the seniority provision of the CBA. Contract interpretation cases should not be interpreted in isolation but as a whole to determine the true intent of the parties. Because seniority is calculated on an hours worked basis, and Grievant's hours will be reduced by 50%, she will gradually lose seniority as opposed to her full-time co-workers. She is now in the number two seniority slot but over a period of sixteen months will be surpassed by the next junior employee. The County has clearly violated Article 6(A) as the Grievant' seniority status will diminish over time. This, coupled with the fact that her fringe benefits will be negatively impacted, should cause the Arbitrator to consider this to be a layoff and afford her with bumping rights. Arbitrators Emery and Shaw both found a contract violation in the face of a reduction in hours which impacted bargaining unit seniority. Grievant has not experienced any of the contractual events causing a loss in seniority. Article 6(D) outlines the events which can result in the loss of seniority as quitting, discharge, lay off, in layoff status for a period more than 2 years or in a management position for more than six months. None of these situations apply to Grievant so she should not lose seniority. The only way seniority rights can be severed is through Article 6(D) and if the County wanted the right to reduce seniority rights via a reduction in hours it should have specifically bargained for it.

The Grievant should be given the right to bump a less senior employee in equal or lesser grade and be made whole.

The County

The County has the management right to reduce the Grievant's work hours. It is axiomatic that all managerial rights not expressly forbidden by statutory law are retained by management. (Citing CLEVELAND NEWSPAPER PUBLISHERS ASS'N, 51 LA 1174 (Dworkin, 1969). And "The Union argument presupposes the Employer must have contract authority to take a particular action. In fact the converse is true, and the Union must show that a particular act of management was contrary to contractual limitations placed upon management or obligations imposed upon management by the contract." (ST. LOUIS SYMPHONY SOC'Y, 70 LA 457, 482 (Roberts, 1978).

The labor agreement only contains one limitation on the County's right to reduce work hours. The reduction in work hours language states: "Management and Union shall meet prior to

the implementation of any reduction in work hours and attempt to find a mutually agreeable solution." (Article 6(B)) The County complied with this term when it met with the Union on October 7, 2010 to discuss the potential options for work hours reductions. The County had legitimate financial reasons for making the decision to reduce work hours, consequently the County did not violate the contract when it reduced the Grievant's work hours.

A reduction in work hours is not the same as a layoff. The CBA language and arbitral precedent both support the actions of the County. The CBA language relating to a reduction in work hours is broken out separately from the layoff language further evidencing the parties' intention to treat them separately. The layoff provision states that it is only applicable when a position is being eliminated and in this instance the position still exists. The Accounting Assistant I position was not eliminated, rather it was reduced to a less than full-time position. Also, a prior grievance between these same parties on the same issue was decided against the Union and this Arbitrator should give it great weight. In MARATHON COUNTY (Adult Day Care Givers Work Hours Grievance), MA-12962 (Gordon, 2005) Commissioner Gordon found that a reduction in work hours of four employees in lieu of layoffs did not violate the contract. He found that Article 5 of the CBA dealing with hours of work did not bind the County to a certain number of hours for ADRC employees and that the County retained the right to set the schedule for these employees. He also determined that the actions of the County were not arbitrary, capricious or unreasonable in taking steps to keep the ADRC program afloat.

The parties' bargaining history supports the County's position. While the ADRC matter was still pending the party's consensus bargaining teams met to discuss how department reductions in work hours should be handled. The Union's President testified that the parties discussed options and concerns about the adverse effects of reductions in work hours, including the fact that fringe benefits are impacted by a cut in hours. They decided on "Option #7" as an acceptable tentative agreement which said "Before implementing any reduction in hours, labor and management will meet to attempt to find mutually agreeable solutions." This option was incorporated into the current CBA under Article 6(B) - Reduction in Work Hours.

The County has complied with the reduction in work hours provision. On September 17, 2010, a County Official met with the Grievant to discuss the budget cuts and inform the Grievant that her hours had been reduced. On October 5, 2010 a County Official sent an e-mail to the Grievant and her Union representative John Spiegelhoff requesting a meeting to discuss a mutually agreeable solution to a reduction in hours. That meeting took place on October 7, 2010 and the parties did discuss options and potential solutions to a reduction in hours but were unable to find any.

The County's reasons for a reduction in hours was legitimate. The economic problems of the past few years have affected all employees and Municipal employers have had to cut services and personnel in order to balance their budgets. In Marathon County a 0% tax levy increase and a tax rate freeze was the goal of the Finance Department. To meet that goal, the Finance Department laid off one employee and reduced the hours of Grievant's position. This move is in compliance with the Management Rights provision giving the County the right "[t]o relieve employees from

their job duties because of lack of work or for legitimate reasons." There can be no argument that the work hour reduction in this case was not for legitimate reasons.

Because a reduction in Grievant's work hours occurred, the County was not required to follow the procedure for establishing and posting a new position. Her work hours were reduced; her position was not eliminated. The County has a procedure for establishing a new position which requires an explanation as to why the position is needed, a review of that explanation by seven department heads and if they determine that the request has merit, the request is referred to the Human Resources Committee for action. Department heads have independent authority to reduce work hours and the reduction of Grievant's work hours did not go thru the Human Resources Committee. Hence, a new position was not created and the County was not required to go through the processes noted above.

The County has the management rights to reduce employee work hours and in this case the employee's position was not eliminated nor was she laid off. The County complied with the work hours provision of the CBA and had legitimate reasons to reduce them. It was not required to comply with the CBA's job posting provisions and this grievance should be dismissed in its entirety.

The Union's Reply:

The County failed to exercise its rights consistently with other provision of the contract. The meet and confer provision is not a contractual bar to the parties litigating over whether Grievant's reduction in hours equated to a layoff and whether she could bump under the terms of the contract. The definition of regular full-time and regular part-time status and the concomitant wages, hours, fringe benefits and contractual benefits (i.e. seniority) evinces the intent of the parties that they are a separate and distinct employment status.

The previous arbitration award issued by Commissioner Gordon is factually different from the instant dispute. These differences cause that case not to set precedent for this case:

- Four employees were affected in the reduction of hours unlike one employee in the instant dispute.

- The work hour reduction ranged from 4.0 hours to 9.5 hours per week for the four employees. (Grievant) had a 50% or 20 hr/week reduction in work hours.

- The award did not address whether, as a result of the reduction of hours, the County violated the CBA as a result of the employee's seniority was (sic) adversely affected. The parties bargained contractual language in the successor agreement which definitely impacted seniority of less than full-time employees. In the instant dispute, it is clear that (Grievant) will, within

a period of 16 months, lose seniority becoming junior to Buchberger who is now junior to her.

- (Grievant's) reduction of hours is permanent in nature unlike the ADRC grievance award whereas if more participants are enrolled, the hours would have increased.

The County does have a right to determine the size and composition of the workforce and temporarily (Union's emphasis) reduce work hours but such a reduction cannot be permanent in nature since this redefines the term "normal." Many arbitrators have opined that a permanent alteration in work hours violates the labor agreement. In the instant dispute the Grievant's full-time "normal" work hours have been permanently reduced by 50%. Since the weight of arbitral authority views permanent alterations of the "normal" work hours as a violation of the contract it can only then reason full-time and part-time positions are a separate and distinct employment status. As such, the County violated the CBA when it eliminated a full-time position, created a part-time position, failed to post the part-time position, essentially laid off (Grievant) and did not permit her to bump.

The County is contractually obligated to post the part-time Accounting Assistant I position due to the language found in Article 7 - Posting which refers to the phrase "for whatever reason". This language supports the Union's position that full and part-time are two distinct states of employment. The County has essentially transferred the Grievant from one employment status (full-time) to another (part-time) which is not permissible under the terms of the contract.

The County's Reply

The principal focus of the Union centers around the potential impact to the Grievant while ignoring the clear right of the County to reduce the hours of work of the position held by the Grievant. This argument tries to circumvent the real issue before the Arbitrator which is whether Marathon County had the right to reduce the hours of work of the Grievant.

The management rights provision is clear and provides that the County has the right to make decisions regarding the workforce that provides County services. More importantly, the parties agreed to what steps the County had to take when implementing a decision to reduce the work hours of an individual employee. The County's decision was not arbitrary or capricious and a clear rationale was provided to support it.

The Union ignores the prior grievance decision between the parties and argues many of the same things. The prior grievance decision between these parties is instructive. It dealt with the same basic issues as are present here: a reduction of work hours due to budgetary reasons resulting in a reduction in fringe benefits. Also, the layoff language in both agreements are the same. In addition to the ADRC case, this matter contains an addition to the CBA - language instructing the parties as to what to do in the event of a reduction in work hours which was negotiated following the ADRC matter.

The Grievant's position was not eliminated, a new position was not established, and the Grievant was not transferred. Contrary to the Union's argument, the Grievant's position was not eliminated. *Random House Webster's Unabridged Dictionary*, 632 (2d ed. 1999) defines "eliminate" as "to remove or get rid of". In this case the Grievant's position was not gotten rid of.

Under the Union's argument, if an employee's work hours are changed from 40 hours per week to 39 hours per week, a reduction of one hour per week, the employee's original position would have been eliminated and a new position established. This is not a logical reading of the CBA as a whole. This argument was specifically rejected in the ARDC grievance. Commissioner Gordon wrote, "A reduction of hours is not a separation from employment. It is not an elimination of a position." MA-12962 at 17 (County's emphasis added).

The layoff language has been voluntarily negotiated in the past and if the Union had been concerned about the movement from full-time to part-time through reductions in work hours it could have negotiated this point. The Union was especially aware of this possibility following the ADRC grievance when those employees went from full-time to part-time.

The Union's arguments regarding seniority should not be determinative of the outcome in this matter. The seniority language is not linked to the layoff language. The Grievant will not loose seniority as a result of this situation but rather will accrue it differently based on the language that was negotiated by the parties.

The cases cited by the Union are distinguishable from this case. The language in the KEWAUNEE COUNTY, MA-13346 (Emery, 2007) case required layoffs to be done in reverse order of seniority and had different hours of work language. The layoff language in this case does not require the County to lay off employees in reverse order and does not contain specific hours of work language. The different language distinguishes the two cases:

> In MARATHON COUNTY [MA-12962 (Gordon, 2005), Arbitrator Gordon construed contract language which defined management's reserved powers to control the scheduling of work much more explicitly than that here, layoff language which equated layoff with the elimination of a position and hours of work language which defined the "normal" work week and does not match up neatly with the language here. While denying the grievance, the arbitrator noted that the decision was based on his analysis of the specific language before him as applied to that case's particular facts.

MA-13346 at 12. Thus, the arbitrator in the very case that the Union is citing in support of its position specifically distinguished the language in that case from the language in this case.

The case cited within the KEWAUNEE COUNTY case, SUPERIOR MEMORIAL HOSPITAL, A-5165 (Shaw, 1994) is also distinguishable from this case by contract language. There, the language referenced seniority and the arbitrator found that other contract language in the labor agreement showed that the parties intended to include a reduction of hours provision in the layoff language. Commissioner Gordon specifically distinguished SUPERIOR from the ADRC case:

> In SUPERIOR MEMORIAL HOSPITAL, the arbitrator did interpret layoff to include reduction in hours, even though the contract did not so specifically provide. The determination was based on contract language requiring layoff of part-time employees before full-time employees. Theoretically, if layoff did not include reductions in hours, a full-time employee could be reduced to part-time and then be completely laid off before less senior employees without reference to the seniority protections in the layoff clause. Here, the specific language in the contract in this case must be looked at…The Article does not require part-time employees to be laid off before other employees as was the case in SUPERIOR MEMORIAL HOSPITAL, *supra*.

The Union argues that the Grievant will lose seniority in violation of the CBA. The CBA refers to the total lose of seniority and in this case the Grievant is not losing total seniority.

The County has never claimed that the reduction in work hours language bars the Union from seeking redress through the grievance procedure. The County does argue that the layoff language requires that only the elimination of a position triggers bumping rights but has never argued that the reduction in work hours bars the Union from a grievance when an employees hours are reduced.

DISCUSSION

The Union's central argument is that the County is required to afford the Grievant bumping rights following a work hours decrease in her position. The Union take this position because it says that a reduction in work hours, in this case from 40 hours per week to 20 hours per week, is tantamount to the elimination of Grievant's position and the creation of a new position. Because the position has been eliminated she should get bumping rights and because the new position has been created it should have been posted. The initial question presented, then, is whether the County had the contractual right to reduce her work hours.

It is well settled that an employer retains all managerial rights not expressly forbidden by statutory law unless specifically stated in the contract. In other words, the parties may remove certain rights from the employer through negotiations but, absent such specific removal language management retains all remaining rights. Arbitrator Harry J. Dworkin stated:

> It is axiomatic that an employer retains all managerial rights not expressly forbidden by statutory law in the absence of a collective bargaining agreement. When a collective bargaining agreement is entered into, these managerial rights are given up only to the extent evidenced by the agreement. CLEVELAND NEWSPAPER PUBLISHERS ASS'N, 51 LA 1174 (Dworkin, 1969).

Arbitrator Chester C. Brisco addressed this issue as follows:

> It is well recognized arbitral principle that the Collective Bargaining Agreement imposes limitations on the employer's otherwise unfettered right to manage the enterprise. Except as expressly restricted by the Agreement, the employer retains the right of management. This is known as the Reserved Rights Doctrine; it lies at the foundation of modern arbitration practice. VACAVILLE UNIFIED SCH. DIST., 71 LA 1026, 1028 (Brisco, 1978).

Arbitrator Raymond R. Roberts also addressed this issue:

> [T]he underlying premise of collective bargaining agreements is that management retains all rights of a common law employer which are not bargained away or limited by the collective bargaining agreement. The parties commenced their negotiations from a position where management enjoys all rights of a common law employer. That is, it is free to set the conditions of employment in any manner it desires without any limitation, except those imposed by law. The employee's options are to either accept or reject employment upon those terms. In collective bargaining the employees withhold or threaten to withhold acceptance of employment unless the conditions of employment are modified in the respects successfully bargained for. Where the collective bargaining agreement does not modify or limit management's prerogatives, management retains the prerogatives of a common law employer. The significance of the silence of a collective bargaining agreement upon a subject matter is that management retains its common law rights toward that subject matter which it has not bargained away. The Union argument presupposes the Employer must have contract authority to take a particular action. In fact, the converse is true, and the Union must show that a particular act of management was contrary to contractual limitations placed upon management or obligations imposed upon management by the contract. ST. LOUIS SYMPHONY SOC'Y, 70 LA 475,481-82 (Roberts, 1978).

It is also true that, entrenched in the above analysis is the inclusion of management's right to direct the work force, to determine employee work hours/schedules and to schedule work absent a restriction in the agreement so long as there is a legitimate business reason for changing the existing organization of work. Arbitrator Jeffrey W. Jacobs said:

> There is little question that the Employer's inherent managerial rights allow for it to determine what work is to be done and when. The management right clause reserves to the Employer the right to manage and direct the workforce and this right certainly extends to the right to reduce the hours of the workforce if there is not the funding to do otherwise. The Employer cited Elkouri for the proposition that management reserves all rights it otherwise has "unless it has limited its right to manage by some specific provision in the labor agreement." Elkouri and Elkouri, *How Arbitration Works*, 6th Ed. At 640. (Citing Owen Fairweather, "American and Foreign Grievance Systems", Proceedings of the 21st Meeting of the NAA BNA Books (1968)). METRO. COUNCIL, 126 LA 1537 (Jacobs, 2009).

The management rights clause in the instant contract confirms that the "County possesses the sole right to operate the departments of the county and all management rights repose in it, but such rights must be exercised consistently with the other provisions of the contract." The enumerated rights set forth in the management rights clause include the rights to direct all operations of the departments, to relieve employees from their job duties due to lack of work or for legitimate reasons, to manage and direct the work force, to assign employees to various jobs, to determine the size and the composition of the work force, to determine the work to be performed by the work force and to determine the methods, means and personnel who will provide the services required by the County. I agree with the County that the aforesaid rights give the County the ability to reduce wages for a reasonable reason. Here, the reason is financial. The County had to reduce wages in order to maintain services and, unfortunately, the County selected the Grievant's wages to be reduced by 50%. A detailed review of the contract reveals one limitation on the right of the County to reduce wages. Under Article 6(B) of the contract the parties negotiated the following important provision which, according to the record testimony, was inserted to address the very situation the parties are faced with here - a reduction in work hours - which reads as follows:

> Reduction in Work Hours: Management and Union shall meet prior to the implementation of any reduction in work hours and attempt to find a mutually agreeable solution.

Management and the Union did meet and did attempt to find a mutually agreeable alternative to the reduction of Grievant's work hours but were not able to find one. The only alternative was one which the Finance Department determined would not meet the financial requirements of the budget. Hence, the contractual requirements were complied with by both parties.

The Union argues that the reduction in work hours amounts to the elimination of Grievant's position and that, therefore, the successor position at one-half time is a new position and requires a new posting. Embraced in this argument is the issue of bumping rights of the Grievant. If the Grievant's position is eliminated, and a new position is created, the Union argues, then the Grievant must be afforded bumping rights, and because those rights were denied to her the County has violated the CBA. In order to find this to be true one would have to ignore the ordinary meaning of the word 'eliminate' and I cannot do that. It is well settled that words used in contracts must be given their ordinary and usual meaning. The word 'eliminate' is defined as: "**1.** To expel; get rid of." See *New International Dictionary of the English Language*, Comprehensive Ed., 409 (Funk & Wagnalls, 1984) The word eliminate as it is used in this CBA is tantamount to the idea of a reduction in force or personnel which normally means that there will be fewer employees after the event than before. The same may not be said of a reduction in hours of work. In that case the employee still has a job and the position still exists as is the case here. The Grievant still has a job, although at a reduced number of work hours. Due to the foregoing I conclude that the Grievant's position was not eliminated in favor of a new position; the County was not required to post for a "new" position; the Grievant was not entitled to invoke the bumping provisions of the CBA; and the County did not violate the CBA as a result of Grievant's reduction in work hours.

The Union argues that "The parties envisioned bumping rights for employees whose employment status is changed due to the employer's fiscal decision." I find no authority or basis for this conclusion in the parties' CBA. I am mindful that the reduction in the Grievant's work hours resulted in "crushing financial changes in wages and health insurance, (and) other fringe benefits" and I agree with the Union that this result is harsh, especially in light of the fact that she is nearing retirement. I cannot, though, agree with the Union's conclusion that the reduction from full-time to part-time in conjunction with the adverse effects on her fringe benefits and working conditions equate to a violation of the CBA on the basis that her full-time position had been eliminated.

The Union says that the County "appears to rely solely on Article 6(B) and the language contained within that a layoff is triggered by a complete elimination of a position." The Union argues that "Article 6(B) contains no reference to that the layoff (sic) triggering mechanism is due to a complete elimination of a position. It simply states 'whose position is eliminated.'" It goes on to argue that as a result of the foregoing the language is ambiguous and calls for an interpretation. I do not agree. The language in article 6 (B) is completely clear and requires the complete elimination of a position before bumping may occur.

The Union also argues that the meet and confer language found under Article 6 (B) (Reduction in Work Hours) makes it apparent that the parties were aware of the lack of clarity of the word "eliminated" and negotiated the meet and confer provision to cover a situation when an employee's work hours are reduced. Testimony concerning the bargaining history of this particular provision was adduced at hearing and had nothing to do with confusion over the use of the word "elimination." As mentioned above, this provision was inserted to address a reduction in work hours, not the elimination of a position. The Union also seems to argue that the County believes this provision bars the parties from litigating the issue relating to Grievant's reduction in work hours. The undersigned does not believe this is an argument advanced by the County but, to the extent the County may harbor such a view, the undersigned does not agree. The Reduction in Work Hours provision does not bar the litigation over the reduction in work hours of the Grievant.

The Union further argues that the County's actions have resulted in a modification in the Grievant's seniority status and that this modification amounts to a violation of the CBA. She will be surpassed by a junior employee in roughly six months by virtue of the fact that her seniority will now be computed differently as a part-time employee that it would have been as a full-time employee. The Grievant's seniority status is a separate and distinct issue apart from the issue relating to the reduction in Grievant's work hours. The reduction in work hours caused the Grievant to become a part-time employee and the CBA sets forth distinct rules as to how seniority is determined for part-time personnel. The County did not violate the CBA by enforcing the provisions relating to Grievant as a part-time employee. That is a consequence of the reduction in work hours just as is the modification in her fringe benefits and does not change the fact that the County had the right to modify her work hours in the first place. The cases cited by the Union are not persuasive in this regard.

Based on the above and foregoing and the record as a whole, the undersigned issues the following

AWARD

The County did not violate the Collective Bargaining Agreement when it eliminated Lorraine Henkelman's full-time (40 hour/week) position, assigned her a part-time (20 hour/week) position, did not post the part-time position and denied her the opportunity to bump.

The Grievance is denied and dismissed in its entirety.

Dated at Wausau, Wisconsin, this 29th day of April, 2011.

Steve Morrison /s/
Steve Morrison, Arbitrator

SM/gjc
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