BEFORE THE ARBITRATOR

In the Matter of the Arbitration Between

MANITOWOC HEALTH CARE CENTER EMPLOYEES
LOCAL 1288, AFSCME, AFL-CIO

Case 329
No. 55901
and Int/Arb-8349

MANITOWOC COUNTY (HEALTH CARE CENTERS) [Dec. No. 29440]

Appearances: For the Association Gerald D. Ugland
Staff Representative

For the County James R. Korom, Esq.
von Briesen, Purtell & Roper

Before: Fredric R. Dichter, Arbitrator

DECISION AND AWARD

On October 13, 1998, the Wisconsin Employment Relations Commission, pursuant to Sec. 111.70(cm)(6) of the Municipal Employment Relations Act, appointed Fredric R. Dichter to serve as arbitrator to issue a final and binding award. The matter involves an interest dispute between AFSCME, Local 1288, hereinafter referred to as the Union and Manitowoc County, hereinafter referred to as the County. A hearing was held on February 2, 1999 at which time the parties presented testimony and exhibits. Following the hearing the parties elected to file briefs and reply briefs. The arbitrator has reviewed the exhibits and briefs filed by the parties in reaching his decision.

BACKGROUND

There are seven bargaining units in the County. Four of the units have settled their agreements for 1998 and 1999. They are the Sheriff's (sworn), Sheriff's (non-sworn), Highway and Health Department (RN's). Three, including this one, are currently in arbitration. The other two in arbitration are the Human Services Professionals and the Supportive Services.

The Health Care Center employees are in a bargaining unit, which is represented by the Union. It is considered a non-professional bargaining unit. The present contract expired on December 31, 1997. The Health Care Center itself operates 7 days a weeks, 24 hours a day. Consequently, employees work weekends and evenings. There are approximately 187 positions in this bargaining unit, consisting of full time and part-time employees. Bargaining unit members work in the housekeeping, office, maintenance, activity, and nursing departments. RN's are not in the bargaining unit, but are in a separate unit. The nursing aides are in this unit.

Any part-time positions that are vacant are posted. The notice indicates the number of hours to be worked every two weeks, however, the employee filling the position often works many more hours than are listed. Since the Center is always open, staffing is constantly required. Employees work alternating weekends and every other holiday. This includes part-time employees. Thus a

part-time employee that works 16 hours every two weeks may work nothing but the weekend.

ISSUES

The parties reached agreement on most of the terms to be included in the successor agreement. All the tentative agreements are incorporated into this Award. The final offers of the parties, while not part of a tentative agreement, do contain several of the same proposals. Both parties have proposed a 3% across the board increase effective February 1, 1998 and an additional 3% increase effective January 1, 1999. Both parties have proposed the same language for the creation of a Vision Insurance Plan funded by voluntary contributions by the employee.[1] They both also propose the same change in health insurance, although their wording is slightly different. They agree that Article 12 Section A should be changed. That Article presently reads:

> Hospital and Surgical Insurance: In the area of hospital and surgical insurance, the County agrees to pay ninety-five percent (95%) of the premium for single and family coverage. The benefit design shall provide for: $100 deductible per individual, $300 deductible per family and will pay 100% of charges (after deductible is met) for all services provided within the preferred provider network. For services provided outside of the network, the County will pay ninety percent (90%) and the employee will be assessed a ten percent (10%) co-pay of up to a maximum additional out of pocket expense of $200 for and individual, $600 for a family.

In the past, employees who met the annual deductible during the

[1] While the Plan is paid for by the employee, it still has some advantages to them. Pre-tax dollars are used for the premiums.

fourth quarter of a year did not have to meet the deductible at all the following year. The parties have agreed that the deductible must now be met annually. There would no longer be any carry-over to the next year.[2]

The County's final offer did not contain any other changes to the agreement. The Union seeks to change several provisions. Those proposals are as follows[3]:

ARTICLE 9- DEFINITION OF EMPLOYEES

B. Regular Part-Time

> Regular part-time employees hired on or after January 1, 1984, shall be eligible for all fringe benefits under this Agreement prorated, except holidays, according to the percentage of full-time worked by the employee, ...

ARTICLE 11- HOLIDAYS

All employees shall be granted ten (10) paid unprorated holidays per year.

ARTICLE 21 - JOB POSTING

CLARIFICATION

> ... A copy of each job posting shall be submitted to the Local Union Vice-President at the closing of initial posting period. The posting shall include a statement defining qualifications of the position, the position's work shift, or floating shift status, whether a test will be administered and the required passing score, which weekend off and which holidays off the position has...
>
> Whenever any vacancy occurs, it shall be given to the employee with the greatest institutional seniority (within the department) within seven (7) work days after the vacancy date, provided the applicant is qualified for such position. (If there is no qualified applicant within the department, then the position shall be given

[2] The proposal of each party contains an effective date for the change as January 1, 1998. At the hearing and in the briefs, both sides indicated that such a change could not be made retroactively and that it would not become effective until after the issuance of this Award.

[3] Words underlined highlight new language. Words in parenthesis denote proposed deletions.

to the remaining employee with the greatest institutional seniority, regardless of the department, provided the applicant is qualified for such position. Once in a new position, institutional seniority carries... pursuant to the Agreement.)

ARTICLE 22- HOURS AND PAY RATE

1.

CLARIFICATION
(When an employee is scheduled for a weekend, the employee shall not be scheduled for more than four (4) consecutive days including that weekend unless the affected employee agrees or if the Employer is able to demonstrate institutional need and the Employer is unable to schedule the employee without exceeding four (4) consecutive days.)

DISCUSSION[4]

Statutary Criteria

Wis. Stat. 111.70(4)(b) requires an arbitrator to give the greatest weight to any state law that limits the expenditures of an Employer. It then requires the arbitrator to give greater weight to the economic conditions that exist in the jurisdiction. Neither party has argued that either of these factors is applicable in this case and I agree. The Arbitrator has considered the application of these factors to this matter and finds that they do not impact upon my Decision.

The Quid Pro Quo for Insurance Concessions

There is no question that the change in health insurance that has been agreed to by the Union is a concession on its part. While the County states that its willingness to essentially keep the

same insurance in light of increasing costs is a gain, the reality is that this benefit is already contained in the agreement. The Union, therefore, believes that its concession requires concessions by the Employer. Its proposals it argues are its quid pro quo for what it has given up. The Union in its brief cited a decision by Arbitrator Yaffe. In Delavan Darien School District, he stated:

> Though the District argues that no adequate quid pro quos have been offered by the Association in exchange for the improved benefits the Association seeks, the undersigned believes said concept is applicable where a union seeks exceptional or unusual benefits or where an employer seeks concessions from its employees in the form of take backs. It does not apply where, as here, an association is simply asking that employees be brought into the comparable mainstream.[5]

It argues that this ruling serves as precedent for adopting the proposed additions that it seeks here. The Employer agrees that the Yaffe case is relevant, but argues that the case supports its position. Who is correct? In order to answer that question, the traditional factors used in interest arbitration must be evaluated.

Internal Comparables

I shall begin with a review of the settlements in the other bargaining units in the County. The Union believes that the other bargaining units received concessions from the County in return for their agreement to accept the changes to health insurance. Specifically, it points out that several bargaining

[4] The positions of the parties will be discussed in this Section.

units added steps to the salary scale or adjusted upwardly the wage rates of classification. This was on top of the across the board wage increase. The County acknowledges that there were other monetary benefits given to some of the other units, but vehemently denies that they were a quid pro quo. Instead, it notes that several of the other bargaining units had demonstrated a need to catch-up with the wages paid for the same jobs in comparable counties. It argues that when a Union was able to show a demonstrable need for a classification or group of employees to catch-up, that the County adjusted the wages of those employees. It maintains that the adjustment had nothing to do with the health insurance change.

Before analyzing why each unit did what it did, and determining whether the County or Union view is correct, it is necessary to give some history of health care costs in this County. It was increases in these costs that prompted the health insurance proposals of the County. All of the employees in the County are covered by the same health insurance plan. That plan has shown several rate increases since 1996. In 1998, the County experienced a 12% increase. As a result, it requested the insurance carrier to provide it with alternatives on how it could lower its costs. It was given several options. Each option listed the percentage savings that it would generate if adopted. If the County increased the deductible and increased the co-payment

[5] WERC Decision No. 27152-A (8/31/92)

percentages for the employee for both PPO and non-PPO it could save as much as 26.3%. In addition, the change in the 4th quarter deductible would save an additional 1.5%. The County chose not to propose the more sweeping options to the unions that represented its employees.[6] Instead, it proposed the two options that gave it the smallest savings. It proposed to each Union that they agree to increase the percentage co-pay for the employee for non-PPO providers from 10% to 20%. This would save 2.2% in premiums. It also proposed the elimination of the fourth quarter carry-over. This would save an additional 1.5%

As noted, four bargaining units settled their agreements for the years in dispute here. The Sheriff's Sworn and Highway units agreed to both the health insurance changes. They also received a 3% wage increase effective 1/1/98 and a 3.25% increase effective 1/1/99. The Health Department Professional Unit also accepted both changes. They received a 3% increase 1/1/98 and a 3% increase 1/1/99. Thus, they accepted a .25% smaller increase in 1999 than did the other two that accepted both health insurance changes. The sworn Sheriff's unit only accepted the 4th quarter deductible change. They were granted a 3% increase effective 2/8/98 and a 3% increase 1/1/99. The employees of the other two bargaining units that are currently in arbitration have agreed to accept the 4th quarter deductible change, but have rejected the change in the non-PPO co-pay. The County has proposed the same increases in

[6] The Sheriff's non-sworn, highway, human services professionals and

wages to them that it has proposed here and that it agreed to in the other units that accepted just that insurance change. The HSD Professionals wage proposal is the same as the County's, but the supportive staff employees have sought to make the 1998 increase effective 1/1/98 instead of 2/8/98. There is agreement between the parties that the cost savings from the deferral of wages from January 1 to February 8 equals the amount the County would have saved had the elimination of the fourth quarter deductible been in effect for 1998. Since 1998 has passed, and those savings cannot be recouped from health insurance, they are being recouped in wages.

As the Union observed, many of the bargaining units received wage adjustments in addition to across the board increases. Several steps in the non-sworn sheriff's unit were either added or increased giving additional wage increases to some of the bargaining unit employees. Additional increases were also given in the Highway and Sheriff's Sworn and have been proposed by both sides for some in the Supportive Services Unit. Those facts are not in dispute. What is in dispute is why those additional increases were given. If they were given as a trade for health insurance, than the Union argument that it to is entitled to some quid pro quo carries some weight. If, on the other hand, these increases were unrelated to health insurance, but were given for totally separate reasons, then the quid pro quo argument would

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the supportive services units are also represented by AFSCME.

have little support.

Sharon Cornils, the County Personnel Director testified at the hearing. She participated in the negotiation of all the agreements. She indicated that in each instance that additional wage increases were granted to classifications or steps within a classification, that the Union demonstrated that the employees in question were behind their counterparts in outside Counties. She stated that at no time were those increases granted as payment for the health insurance concessions, and at no time did any Union indicate that it was agreeing to the health insurance change because it was also getting the other wage increases. In fact, the step or classification wage rates were changed before the health insurance issue was ever resolved. She testified that health insurance changes were the last items left on the table. There is no evidence that any Union ever indicated that agreement to the health insurance changes was contingent upon an agreement to change other provisions in the agreement. There is no evidence in the record that what Ms. Cornils said was inaccurate. Though the Union in its brief concludes that the reason for accepting health insurance changes in the other units was the other monetary gains, I am confined in reaching my decision to the record before me. That record does not support a finding that such a connection exists. Interestingly, a need for catch-up was an area addressed by Arbitrator Yaffe in his decision. He noted that no quid pro quo was necessary when that need could be shown. The County concedes

that the need was shown in some of the bargaining units and it agreed to make changes. No quid pro quo from the Union was necessary or required in order to obtain the gains. I find that the Yaffe case supports the Employer position in this case.

One final note concerning internal comparables. The County has objected to the manner in which the Union introduced information in this matter. The Union included many exhibits with its brief that were not part of its initial exhibit packet. Some of these charts dealt with internal comparables and the number of employees in each unit that were impacted by the changes. It is difficult to determine whether their figures are accurate. However, given my finding here, it is not necessary for me to verify their accuracy or to determine whether their introduction was appropriate. Since the adjustments were not a quid pro quo, how many employees received them is not critical. Whether it is 10% of the bargaining unit or 50% does not change the rationale for why they were given. The fact remains that they were not given as a trade-off.

It can be seen that there is a consistency in how the County has treated the different bargaining units when it came to health insurance and across the board wage increases. There is an internal pattern in place that bolsters the County's arguments. Those units that agreed to both insurance changes received a wage increase in 1998 for the entire year. All those that only agreed to the 4th quarter deductible change, with one exception, also agreed to defer the 1998 increase until February 1. This

Arbitrator is persuaded that there has been an internal pattern established. It is my further finding that the pattern has not been for the County to make other concessions in order to obtain the concessions in health insurance. If that was how any Union viewed those concessions, that fact was never conveyed to the County and there is no evidence that the County ever perceived this to be the case. To the contrary, there is evidence that the County did not see the two issues as tied together. Why would it ever have signed off on the wage adjustments before reaching a TA on the health insurance if it believed there was a connection between the two issues? Instead, the only evidence before me demonstrates that the extent of concessions in health insurance was tied strictly to the amount and timing of the wage increase.[7] That was the quid pro quo. The more the concession on health insurance, the earlier and larger the wage increase. Those were the only items tied together. The fact that the savings that would have been derived in 1998 from the 4th quarter change and the savings actually derived from the delay in the effective date of the wage increase are approximately the same amount would tend to further confirm the position of the County. One was given and tied to the other. Internals favor the County.

External Comparables

Arbitrator Kessler determined in an interest arbitration

7 The fact that the Health Department Professionals accepted an agreement to both health insurance changes but only got 3% does not invalidate that pattern.

involving this Unit that the appropriate external comparable Counties are Dodge, Calumet, Fond du Lac and Sheboygan. Both parties here have adopted those comparables. Those shall be the ones utilized by me.

Each side in their briefs discussed the ranking of this County as compared to the other counties. However, how relevant is that in this case? The parties have agreed upon a figure for a wage increase. In so doing, no catch up was sought by the Union or given by the County. There is only one wage I can choose. Having reached agreement on a wage increase, I must conclude that the significance of external comparables is far less than is usually the case. The Union has not contended that there is a need for catch up in this unit, but instead has chosen to give up that right to an increase in order to receive other benefits.[8] Under those circumstances, externals might be relevant. That is not the record before me, and no such argument has been made. Therefore, I must conclude that this factor carries little weight in this proceeding.

The Union's Holiday Proposal for Part-time Employees

Currently, part-time employees benefits are pro-rated based upon the number of hours that they are scheduled to work.[9] There are ten holidays under the agreement. The scheduling of all

[8] Even if it had argued that, a review of the rankings fails to lead one to a conclusion that these employees have such a need.
[9] Twice a year the Employer is required to review the actual number of hours an employee works. The pro-ration is than changed to reflect the actual hours.

employees is such that every employee, including part-time employees must work every other holiday. As the schedule works out, an employee will work four holidays in one year and six the next. Employees required to work on a holiday are given an alternate day during the year as their holiday, subject only to the work needs of the Employer on the day requested. The Union believes that since part-time employees work the same number of holidays as full time employees, they should be compensated for the same number of holidays as full time employees.

The Union seeks to modify the current language to add additional holidays for part-time employees. One of the reasons that it believes justifies this change is its view that it is entitled to a quid pro quo. Having found that it is not entitled to that quid pro quo, this basis for its claim must be rejected. The other basis upon which its claim rests will be addressed later.

Federal Law Changes-The Status Quo

The parties raised one additional point that the Arbitrator needs to briefly address. The Federal Government passed three laws that impact upon the employee's health insurance. One deals with portability of insurance, one addresses maternity leave and the third impacts on mental health benefits.[10] A municipal employer may opt out of the acts under certain circumstances. As part of the tentative agreements, the County has agreed that it will not

[10] The three acronyms for the three are HIPAA, MHPA and NHMPA.

attempt to exercise its right to opt out. The County submits that when it agreed to sign these letters of agreement, it was giving a new benefit to the employees for which it should receive credit. The Union argues that the employees are already under the new laws, and that all that the County is doing is maintaining the status quo. Though the arguments are interesting and the situation novel it is not a question that I shall answer. As I have found that the Employer needs to present no additional benefits in exchange for the fourth quarter deductible, it is not essential for me to determine whether the County is entitled to credit for its side agreement

Summary

The status quo is always presumed to be preferred. The party seeking change must demonstrate that its proposal is justified. Part of the justification argues the Union is its agreement to change the health insurance. It believes others chose to obtain a quid pro quo in the form of additional wages, and that it has chosen a different method to obtain theirs. I have found that the other units did not obtain what they did as a quid pro quo. The wage rate and effective date provide the quid pro quo. Furthermore, what the Union seeks is more than what any of the employees of the external counties received. For these reasons, this rationale for the change must fail.

Has a Need for the Union's Other proposed changes been shown

The fact that I have found that adoption of the proposals of the Union are not justified as a quid pro quo for insurance concessions does not end the inquiry. The Union also cited a decision of Arbitrator Reynolds in Adams County to support its proposals. Arbitrator Reynolds held that:

> This arbitrator has subscribed to a three prong test to be used to evaluate whether a party desiring to alter contract language has met its burden.
> 1. That the present contract language has given rise to a condition that requires amendment;
> 2. That the proposed language may reasonably be expected to remedy the situation; and
> 3. That alteration will not impose an unreasonable burden on the other party.[11]

The Union maintains that it has met this test for each and every proposal. The Employer agrees that this case is applicable, but that adherence to the holding in that case would support a denial of the Union's proposed changes. Each of the proposals of the Union will be evaluated against this test. Has the Union, the party seeking the change, met each prong of the Reynold's test?

Holidays for part-time

I have already rejected the holiday proposal of the Union as a quid pro quo. The Union, however, had a second argument to support adopting that proposal. It feels that the proposal meets the standards set forth by Arbitrator Reynolds. I find that it does not meet test three, and fails for that reason alone.

Every agreement that the County has with the other bargaining

[11] WERC Decision No. 25479-A (11/22/88)

units contains a provision similar to the one contained in the present agreement. All the County's part-time employees' holidays, and other benefits, are pro-rated. As the County pointed out, the four counties that serve as comparables also pro-rate holiday pay. In fact, some give no holiday pay unless the part-time employee works a minimum number of hours. The Union counters that most of the County's other facilities are not open all the time. Only one, the Sheriff's unit, works round the clock. It further points out that this unit is the only bargaining unit where part-time employees are required to work holidays and weekends. It believes this distinction entitles the employees to the change that it has proposed. While it is true that this is the only unit whose part-time employees are required to work on holidays, that fact is not sufficient to warrant making the proposed change. Such a change would negatively impact upon the other units and present a real problem for the County. In discussing benefits, internal comparables are the most important. These employees accepted the same wages as other County employees. To grant them this benefit when others do not have would pose too great a burden on the County. The pros for the change are outweighed by the cons.

The proposal also fails to meet the third part of the test for a second reason. The Employer calculates the cost of the additional holiday for part-time employees to be $18,000 per year. It then states that there is a replacement cost component to the proposal. The County has had to bring in a replacement for a

person 21% of the time an employee takes a holiday off. It argues this adds an additional $7700 in costs. The Union calculates the total additional cost to be just over $18,000. It argues that the costs stated by the County are inflated because they included the 3% wage increase that had already been calculated. I do not agree with the Union that the County calculations constitute "double dipping" since the payment is for new holidays not previously provided. The wage calculation should include what the actual cost is, and that cost includes the 3% increase. But even if I used the Union's figures, the Union's proposal would still fail. It is still a cost that this Employer has not incurred before and that it has not incurred in any other bargaining unit. The additional cost to the Employer from this proposal is too great a burden without a concomitant concession. The proposal, therefore, also fails for this reason.

It should be stated that in rejecting this proposal on this basis, I am not indicating that there is not some validity to the Union's proposal. The requirements placed upon these employees do differentiate them somewhat from the other County employees. However, it does not do it enough to warrant making this change, especially without some concession on the Union's part to obtain the change. It needs some quid pro quo beyond what it has already offered if it wants to get this proposal.

Job Posting Changes

The current agreement requires the Employer to include several items in all vacancy postings. A copy of the posting must go to the Union vice-president. The Union states that its proposed wording on this point merely seeks to clarify the practice, but not to change it. The contract further requires the posting to indicate which weekends and which holidays the employee will be off. The Union proposal seeks to add several other items on the posting that are not currently listed. It wants a statement defining the qualifications, the shift, and an indication whether a test is required with the passing score if it is required. In the tentative agreements, the Employer has agreed to add the statement defining qualifications. Therefore, all that remains is the shift notice, and the testing.

The Union filed two grievances in the past on the question of testing and the notice requirements for vacancies. A settlement agreement was signed in 1992. A joint committee was created to "determine topics to be tested." They agreed that an independent consultant would be hired to "prepare a validated test." The second grievance was also resolved. In 1998, the parties agreed to a settlement that consisted of four parts. The agreement stated the following:

1. The Employer agrees that if it uses a test for a posted position, it will state in the job posting that a test will be a administered.
2. The Employer agrees that if it uses a test for a posted position, it will state in the job posting that the minimum passing score for the test is 70 percent.
3. The Employer agrees that if it uses a test for a posted position, the test will be reasonable and job related,

and the union reserves the right to bring a grievance under the contract challenging any test by the employer.

4. The Employer agrees that the test will be reviewed and administered by the Manitowoc County Personnel Department or by a person who is not employed at the Manitowoc County Health Care Center.

The two settlements remain in effect. The County does not dispute that it is bound by those settlements or that the Union could grieve any failure by the County to meet its obligations under the settlement.

The main thrust of the Union's argument is that it is better to put that obligation within the "four corners" of the agreement. It states that it is not seeking to add anything, but only wants to clarify already existing obligation. The Employer argues that there is no need for the change. Most of the things sought by the Union it has already. There is no basis, it believes to change the language.

The first prong in Arbitrator Reynold's test requires the party seeking change to demonstrate a need for the change. There are grievance settlements that give the Union, for the most part, what it seeks here. While the Union is certainly correct that the proposed change places little burden upon the County, that fact does not completely eliminate the need to meet the requirements of the first prong of the test, although it does lessen the degree of need that must be shown. However, there has not been shown to be any compelling need to now codify the settlements within the language of the agreement itself. Accordingly, I cannot find support for this proposal.

Institutional Seniority

The current agreement requires the County to award a vacant position to the applicant "with the greatest institutional seniority within a department." The Union wants to change this provision so that a vacant position goes to the individual with the greatest institutional seniority, regardless of which Department they may presently work.

The current language has not always been in the agreement. The type of seniority that takes precedence when filling a vacancy has changed over the years. Prior to 1978, seniority was used in the same manner that the Union proposes here. In 1978, it was changed so that departmental seniority controlled. That is like it is now. This was again changed in 1981. Classification seniority took precedence before departmental or institutional seniority. In the negotiations that led to the agreement currently in effect, the County agreed to change to institutional seniority. The contract was rejected by the membership.[12]

Both sides feel that the method that they want is best. Each side gave an example of how the language then in effect impacted negatively upon a member. When there was institutional seniority, one food service employee who wished to make a career in food service had a difficult time obtaining a full time job.

[12] The parties disagree as to why it was rejected. The County believes it was because of this change. The Union disagrees. The County also believes that this demonstrated that the employees really do not want this change. The Union is the certified bargaining representative. I must assume that they speak for

Individuals who merely wanted more hours, regardless of the department outbid her for openings in the Department. Eventually, she did get a full time job. When there was departmental seniority, a longtime employee was beat out for a job by an employee who had only been in the Department for four hours. Each introduced the story to demonstrate the problems with the other side's point of view. Unquestionably there are pros and cons to the use of either type of seniority. The question is whether the Union has shown a need for the change, and whether the proposal if adopted would impose an unreasonable burden upon the County.

The evidence adduced at the hearing indicated that many employees were able to transfer from one department to another in the last two years even with the current language. Close to one-half of all vacancies were filled by interdepartmental transfers. Thus, the current language has not precluded an employee from moving from one department to another. It is true that the example that was cited by the Union concerning an employee with four hours seniority was unfair to the more senior employee. However, that one example, which occurred years ago, does not demonstrate that "the present contract language has given rise to a condition that requires amendment."[13] The example of an inequity raised by the County is as compelling. Employees on a career path would have to take a back seat to an employee who makes the change simply to gain more hours, with full knowledge that they will return to the

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their members.

original department when the first opportunity arises. The County also presented testimony that this change could impact recruiting for the same reason.

The Union argues that the internal comparables favor its proposal. It notes that all other bargaining units in the County, but one use bargaining unit seniority for filling vacancies. The one exception is the Courthouse and Human Services Unit. That unit is divided along the same lines as the title of the unit. The two groups are distinct with different administrators. The County argues that the exception proves its case. The distinctiveness of the two separate groups in that unit is akin to the distinctive quality of the various departments within this bargaining unit. Nursing is distinct from food service, which is distinct from housekeeping. While there is some validity to the Union's contention that this bargaining unit is being singled out, the impact of this argument is tempered by the Employer's response. Even more importantly, the argument loses luster given the bargaining history of the parties on this issue. Given this history, I am hesitant to do that which the parties have had such a difficult time deciding how to do. Perhaps, the Union is right and there is a better way to reward longtime employees. The parties should explore that possibility. My choices, however, are limited. I must decide whether the equities of the proposal warrant changing existing language. I must conclude that they do

[13] Adams County, supra

not. This issue is best left to the parties to resolve themselves, rather than the Arbitrator doing it by fiat.

Proposal for maximum of four consecutive days of work

The Union seeks to add a new section to Article 21. It wants the contract to mandate that any employee that works on a weekend cannot be required to work more than four consecutive days unless the County "is able to demonstrate institutional need and the Employer is unable to schedule the employee without exceeding four consecutive days." Like with the posting provision, this issue has been the subject of an earlier grievance. In 1997, the Union grieved the Employer's decision to work employees that were working a weekend for more than four consecutive days. The grievance was settled. That settlement stated:

> Management will endeavor to not schedule housekeepers for more than four consecutive days. However, based upon staff availability due to unforeseen circumstances such as a housekeeper being away on Worker's Compensation, Family Medical Leave, or approved leave of absence; a trend, such as scheduling a housekeeper for not more than four consecutive days may not be possible to continue. Management reserves the right to schedule and direct its work force to meet the operational requirements of the Center.

The settlement of the earlier grievance is still in effect. The parties are bound to it. Grievances or other legal action can be taken to remedy noncompliance. The testimony was also clear that when an employee has been scheduled to work more than four consecutive days and this was brought to the attention of management that the situation was corrected. A witness for the Union testified that she was not aware of any instance when the

County did not make a change in schedule when the Union pointed out to them that an employee was being required to work more than four consecutive days. The Union indicated that the reason that it has made this proposal is its concern that new management might not be as accommodating. On the other end of the spectrum, the Employer voiced its fear that adoption of the Union proposal could subject it to constant arbitration over whether the County had an operational need to vary from the four consecutive day schedule. The fact of the matter is that both sides have endeavored to follow the format laid out in their grievance resolution. The County has forthrightly dealt with problems that were brought to its attention. Where then is the need? Speculation on what might happen if new people come in is merely that. Speculation cannot give rise to a need. A need is created by real problems, not potential ones. The parties have adequately addressed the problems to which this proposal speaks. I can find no basis to support the Union's proposal. If things change, this proposal may be viewed differently, but that simply is not the situation presented to me.

CONCLUSION

The Union is the party that has sought to change the current language. It based its request on its belief that it was entitled to a quid pro quo and that it had a proven need. I have found that neither of those arguments are supported by the evidence. Therefore, I must reject the Union's proposals.

AWARD

The County's proposal together with the tentative agreement is adopted as the agreement of the parties.

Dated: June 11, 1999

_____
Fredric R. Dichter.
Arbitrator