

-----X	
In the Matter of Arbitration	
Between	:
Local 3813 AFSCME, AFL-CIO	:
And	:
Green County	:
-----X	
	Case No. 148 60577
	Int/Arb 9447
	Dec. No. 30586-A

APPEARANCES:

For the Union:	Thomas Larsen, Staff Representative, Wisconsin Council 40
For the County:	Howard Goldberg, Esq.

The undersigned was selected by the procedures of the Wisconsin Employment Relations Commission to determine an interest arbitration affecting the Green County Courthouse employees. The arbitrator was named by the Commission on April 15, 2003 by an order of the Wisconsin Employment Relations Commission. Under the Wisconsin statute, the arbitrator is empowered to select the total final offer of either the local Union or the employer. The parties submitted their final offers and a hearing was held at Monroe, Wisconsin on June 10, 2003. At the hearing, the parties presented evidence and extensive exhibits supporting their respective positions. Thereafter, they filed post-hearing briefs and reply briefs, which were received by the arbitrator on July 2nd and 7th, 2003. After considering the positions of the parties, the undersigned makes the following opinion and award.

The final offers submitted by the parties are as follows.

Final offer of the County:

- “1. Term: Two (2) years commencing January 1, 2002, and ending December 31, 2003.

2. Adoption of all items that have been tentatively agreed upon by the parties during negotiations. See attached.

3. Modify Article 18, Section 18.01, paragraph 3 as follows:

The county agrees to pay ninety (90%) percent of the monthly premium for the health insurance single and family plan. Newly hired employees shall receive health insurance coverage the first of the month following thirty (30) days of employment. Employees working less than eighteen and three-quarters (18.75) hours per week are not eligible for health insurance. For those working eighteen and three-quarters to twenty-eight (18.75 – 28) hours per week, fifty percent (50%) of the ninety (90%) percent of the cost of the premium will be paid by the County, with the remainder to be paid by the employee. For those employees working twenty-eight to thirty-seven and one-half (28-37.5) hours per week, seventy five percent (75%) of the ninety percent (90%) of the cost of the premium will be paid by the County, with the remainder to be paid by the employee.

4. As soon as possible after the arbitration award, Article 20.01 and 20.02 will be amended as follows:

20.01 Hours of Work. The normal hours of work, except as provided below, are seven and one-half (7 ½) hours per day and thirty-seven and one-half (37 ½) hours per week for full time employees. Except as provided below, the normal hours of work are 8:00 a.m. to 5:00 4:30 p.m. with one (1) hour off, without pay and without duties, for lunch. Employees in the unit may request one-half (1/2) hour lunch hours with appropriate adjustment to the beginning or ending hours of work. The decision to grant (or rescind) such request shall be at the sole option of the Department Head, or his/her designee, which shall not be unreasonably withheld. It may be necessary for certain employees to have a regular schedule outside of the previously mentioned hours. A flexible schedule of hours, other than those set forth above, shall be mutually agreed to by the Employer and the Union on the condition that it is regular and is not used to avoid payment of overtime. The work week shall be Monday through Friday except as provided below.

Maintenance II

6:00 a.m. to 11:00 a.m. and 12:00 noon to 2:30 p.m.
Monday, Tuesday, Wednesday, Thursday and Friday.

Sheriff's Department Unit Employee – Cooks.

Full-time Cooks shall work a 40 hour work week, with two shifts, 4:00 a.m. to 12:30 p.m. and 10:30 a.m. to 6:30 p.m. Part-time cooks shall work their current schedule unchanged.

Landfill and Highway Unit Employees.

7:00 a.m. to 3:00 p.m., with a one-half (1/2) hour lunch period.
Monday, Tuesday, Wednesday, Thursday and Friday.

20.02 Overtime. All hours worked in excess of an employee's normal work week as defined by 20.01 above shall be paid at the rate of one and one-half (1-1/2) their normal rate of pay. For purposes of determining overtime, employees shall receive credit for all paid hours including paid sick leave, paid holidays, and vacation days. In lieu of overtime pay, employees may receive compensatory time off at a rate of one and one-half (1-1/2) hours for each hour of overtime worked up to a maximum accumulation of sixty (60) hours of compensatory time; all overtime hours worked beyond sixty (60) hours of compensatory time shall be paid. The decision to grant compensatory time shall be subject to the approval of the Department Head or Department Head's designee and must be approved, in advance, by the Department Head or Department Head's designee. No overtime work shall be authorized unless such work is approved, in advance, by the department supervisor or shall be due to an emergency which does not reasonably permit the employee to obtain such advance approval.

5. Wages.

- A. Effective January 1, 2002, all wages will be increased by three (3%) percent across the board.
- B. Effective with the implementation of the amendments to Article 20.01 and 20.02, all wages will be increased by six and two thirds (6.667%) percent across the board except the Sheriff's full-time Cooks who will receive a three (3%) percent across the board increase effective January 1, 2003."

Final offer of the Union:

- "1. The tentative agreements of the parties.
- 2. Provide for a term of Agreement of two years, 1/1/02-12/31/03.
- 3. Provide for a wage increase effective January 1st of each year of this Agreement of three percent (3%) atb."

The parties have had extensive discussions and reached tentative agreements on most issues covering a two year period, from January 1, 2002 to December 31, 2003. The essential dispute herein concerns the work hours and pay for the second year. The employer has proposed to reduce the hours of work from 40 to 37.5 per week. The employer would proportionately increase the wage rates by 6.667% so that the employees would take home almost identical pay to that which they received the prior year, but there would be no general increase in take home pay. The Union opposes the reduction in hours because it would not increase their take home pay and they request a 3% increase for the second year. There are a small number of employees who work as cooks in the Sheriff's Office where it is impractical to reduce their hours and they will receive a 3% raise effective 1/1/03.

In evaluating the final offers, the arbitrator is obligated to consider following the provisions of the Wisconsin Statutes, 111.70(4)(cm)7:

“7. ‘Factor given greatest weight.’ In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.

7g. ‘Factor given greater weight.’ In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.

7r. ‘Other factors considered.’ In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall also give weight to the following factors:

7r.a. The lawful authority of the municipal employer.

7r.b. Stipulations of the parties.

7r.c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

7r.d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.

7r.e. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.

7r.f. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees in private employment in the same community and in comparable communities.

7r.g. The average consumer prices for goods and services, commonly known as the cost of living.

7r.h. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

7r.i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

7r.j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.”

Also relevant to these proceedings are the provisions of 59.20(3)(a) of the

Wisconsin Statutes, which provides, with respect to the offices of the County, as follows:

“(3) Offices were kept; when open.

59.20(3)(a)

(a) Every sheriff, clerk of the circuit court, register of deeds, treasurer, register of probate, clerk and county surveyor shall keep his or her office at the county seat in the offices provided by the county or by special provision of law; or if there is none, then at such place as the board directs. The board may also require any elective or appointive county official to keep his or her office at the county seat in an office to be provided by the county. All such officers shall keep their offices open during the usual business hours of any day except Sunday, as the board directs...”

POSITION OF THE PARTIES

In essence, it is the position of the County that the statute gives it the authority to determine the hours of operation of the County. While the County acknowledges that it must bargain over the impact of its decision to change the hours of work with the Union, it has no obligation to agree with the Union on what the hours should be. The County asserts that the arbitrator should not be asked to determine whether it was wise or unwise to make the decision to reduce the number of hours that the Courthouse is to be opened. The County argues that the arbitrator should determine whether the County has offered an adequate quid pro quo to the bargaining unit employees in return for reducing their hours. The reduction in hours from 40 to 37.5 amounts to a reduction of 6.25%. The hourly rates are increased 6.667% for the second year.

The County introduced extensive exhibits showing the hours of operation of courthouses throughout the State of Wisconsin and particularly focusing on the counties in the southwestern part of the state. The majority of those Counties hours were open from 8:00 to 4:30 with the majority working less than 8 hours per day.

The Union introduced a series of exhibits, which were letters addressed to the Chairman of the Personnel Committee of the County, Arthur Carter, and William

Morgan, the Green County Corporation Counsel. The letters were from the various department heads who work in the Green County Courthouse. For example, the Clerk of Circuit Court, Carol Thompson, wrote that the proposed changing of hours to close at 4:30 p.m. would cause an undue hardship on her staff. She also suggested that the heavy Court load meant that there were be more overtime for the staff. She stated that she realized the financial difficulties the County is experiencing, but she believed the proposal is only a short-term fix.

The Circuit Judge James R. Beer, wrote the same parties strongly opposing the proposed change, pointing out that the Court is often open on evenings beyond 5:00 because of its heavy calendar.

Vickie Miller Share, Administrator of the Green County Child Support office also wrote to Carter and Morgan expressing opposition and saying that she could not provide the services required in the shorter time period.

Diane K. Urdike, Zoning Administrator, also wrote to Morgan expressing opposition to the proposed change in hours.

Another letter was received by Vickie Evenson, Director/Health Officer for the Green County Health Department, opposing the change.

Lastly, M. J. Grinell, the Maintenance Supervisor, also wrote expressing opposition.

Similar oral testimony was presented at the hearing.

On the issue of comparability, the County insists that the majority of County offices in southwestern Wisconsin are opened from 8:00 to 4:30. The County also notes that the hours for City of Monroe City Hall are from 8:00 to 4:30.

As for the non-represented employees who were given a 3% wage increase for 2003, the employer points out that most of those employees work in the Courthouse and their hours would be reduced from 8 to 7-1/2 hours per day whenever the change is implemented. The County states that they will have the same reduction in working hours as the members of the bargaining unit, but they have been actually offered a smaller wage increase.

As for the factor of the cost of living, both parties introduced reports from the Bureau of Labor Statistics. The employer noted that the unadjusted increase as of the end of April 2003 for the previous 12 months was only 2.2%.

The Union strongly argues that as the employer acknowledges that the employees' workload will not be reduced. Furthermore, the County has in place a hiring freeze and also the County's stated goal of reducing costs would not be met if employees are required to work overtime or additional employees have to be hired to accomplish their required work.

The Union also charges that the County is not in any type of financial difficulties. The County had a surplus in 2002 of \$1,262,436. For the year 2003, the reduced amount of property tax levied is almost half a million dollars. The County also anticipates the potential of receiving more than \$1.3 million in the new sales tax revenue during 2003 which was not included in the budget.

The Union argues that the real reason for the change is a way for the employer to impose a wage freeze on most members of this bargaining unit. The Union argues that the employer has failed to show any compelling need to change the status quo that relates to a change in work hours.

The Union also points to the department heads who have expressed their concerns over the impact that the change will have on employees and on their work product. In short, the Union states there is no justification for imposing a wage freeze on most members of this bargain unit while other employees, including some in this unit, continue to have their earnings increased to reflect the increase in cost of living.

The County argues that there is no dispute that Green County, like all other municipalities in this state, is facing an on-going economic crisis due to the budgetary deficits facing the State of Wisconsin. Approximately one-third of the County's income comes in the form of state grants/aids and inter-governmental contracts. Shared revenues, human services grants, and inter-governmental funds for the operation of the County's nursing home, have been or will be drastically cut. Interest income relied on the County to help pay its expenses is at an all time low. Health insurance costs continue to rise. The County insists that its decision to cut the work hours was not intended to be harmful to the employees who work in the building, rather it was intended to address an economic need.

The employer stresses the provisions of Section 111.70(4)(cm)7, which mandates that the arbitrator must give greater weight to the employer's position because of the adverse economic climate for the County. If Green County does not cut the hours as proposed, then they will have no choice but to raise the local tax limit, if permitted by law to do so, and there is some doubt about that, and cut back many of the services that are not mandated.

In its reply brief, the Union charges the employer's offer as a wage freeze. The employer denies that and states that it is offering an increase in hourly wages of 6.667% in order to make the same take home wage for employees.

As for the Union's argument about the employer's difficulty in getting the work done in fewer hours, the County, in its reply brief, states that is their problem, not the Union's. The County states that, if the supervisors determine that the work is not being done as required, then it can authorize the hiring of additional employees or by granting overtime.

The employer strongly rejects the Union's argument that reductions in state funds will have no affect on the employees of the bargaining unit. These funds are IGT funds and IM funds and W2 allocations. The funds received go directly into the County's general fund and are used to pay the County's expenses, including the wages of the employees in this bargaining unit. Therefore, reduction in the level of revenues that go into the general fund has a direct impact on all the employees of the County.

The employer rejects the Union's argument that there are no financial difficulties facing the County. In addition to the capital expenditures, which need to be done and which have been deferred, the further increases in health insurance costs are likely. Furthermore, the County's Finance Director was advised by the director of the County's nursing home that a reduction in revenue will be \$337,408.00 for this year.

The employer also rejects the Union's argument that Dane and Rock should be considered as comparable counties citing prior arbitration decisions. The employer maintaining that Dane and Rock Counties are much larger.

In its reply brief, the Union notes that the County has claimed that its proposal is justified on economic concerns but it does not explain why the members of this bargaining unit are the only County employees who are asked to suffer a freeze in their level of compensation for 2003. Every other employee of the county received an increase in their annual earnings of at least 3%. The Union insists that the County's proposal is for employees to do the same amount of work in less time for the same pay. The Union cites the testimony of its Department Heads that this reduction will have an adverse affect on productivity.

The Union also mentions that the employees will have to share in the increased cost of health insurance, citing that for part-time employees it would mean an increase of \$124.00 per month. The Union denies the employer's argument that its offer is an adequate quid pro quo. Since the employer acknowledges that the employees will continue to do the same amount of work, if not more, due to the hiring freeze, yet their compensation will remain the same. That is hardly a quid pro quo. The Union has pointed out that the County's other employees received a quid pro quo of ½ of a percent for the health plan changes. The Union argues that employees of the bargaining unit should receive the same benefit.

DISCUSSION

It must be pointed out that the arbitrator has to choose either the position of the Union or the position of the employer. He does not have any discretion to offer a compromise. Under these circumstances, I have concluded that the County's position must be upheld.

First of all, there is no question that there is a statewide economic crisis, which has impacted Green County. It is also clear that the employer has the authority to change the hours of operation without any bargaining with the Union as to the wisdom of its decision. However, the County must bargain about the impact of its decision and its answer has been that the equivalent of wages is a quid pro quo for the reduction in hours. While one can argue about the adequacy of the quid pro quo, there is no argument that the offer allows the employees to maintain the same monies that they had for less work time.

Whether the reduced hours will result in the hiring of additional employees or overtime, remains to be seen. The prediction of Department Heads and the Circuit Court is that they cannot get the work done. The Circuit Judge strongly proposed the proposed change, as did other Department Heads. Whether those predictions will prove true and that additional employees will have to be hired or that overtime will be constantly worked, remains to be seen. In the meantime, the employer, without question, has the right to change the hours of operation.

Again, it is undisputed that reduction in State aid will have a direct impact on the County and it is uncertain as to what the new sales tax will yield. The balance of the fiscal year 2003 will determine the answer. But in the meantime, I have determined that the employer's offer must be accepted. The statutory guidelines are quite compelling, particularly paragraph 7g, which provides, "In making any decision under the arbitration procedures,... the arbitrator or panel shall consider and give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors..." This I have done.

According, for the reasons stated above, it is my

A W A R D

That the employer's final offer shall be adopted.

July 21, 2003
Madison, Wisconsin

Arvid Anderson