BEFORE THE ARBITRATOR

In the Matter of the Petition of CITY OF WAUWATOSA To Initiate Arbitration Between Said Petitioner and OPEIU LOCAL 35, AFL-CIO-CLC	Case 126 No. 65011, INT/ARB-10500, Decision No. 31613-A

Appearances:
Ms. Beth Thorson Aldana, Assistant City Attorney, on behalf of the City.
Gillick, Wicht, Gillick & Graf, by Mr. George F. Graf, on behalf of the Union.

ARBITRATION AWARD

The above-captioned parties, herein "City" and "Union," selected the undersigned to issue a final and binding award pursuant to Section 111.70(4)(cm)6. and 7. of the Municipal Employment Relations Act, herein "MERA." A hearing was held in Wauwatosa, Wisconsin, on June 2, 2006. The hearing was transcribed and the parties subsequently filed briefs and reply briefs that were received by August 16, 2006.

Based upon the entire record and the arguments of the parties, I issue the following Award.

BACKGROUND

The Union represents for collective bargaining purposes a unit of regular full-time and regular part-time office, clerical, and administrative employees employed by the City. The parties engaged in negotiations for a successor collective bargaining agreement to replace the prior agreement which expired on December 31, 2004, and they agreed on all issues for a three-year agreement except for whether bumping should be allowed for employees who have their hours reduced.

The City filed an interest arbitration petition on August 1, 2005, with the Wisconsin Employment Relations Commission, herein "WERC." The WERC appointed Marshall L. Gratz to serve as investigator and to conduct an investigation and the investigation was closed on February 9, 2006. The WERC on March 15, 2006, issued an Order appointing the undersigned to serve as the arbitrator.

FINAL OFFERS

The City's Final Offer states:

> The parties have reached agreement on many issues. The City's offer is status quo on all other issues.

The Union's Final Offer states:

1. All provisions of the current 2002 – 2004 Collective Bargaining Agreement with the City will remain in full force and effect unless modified by the parties in the "Agreed Items" and "Memorandum of Understanding(s)" reached in the 2005 – 2007 contract negotiations with the City.

2. Amend Article VI, Section 6 as follows:
   a. In the event the City determines it is necessary **to reduce the hours of or** lay off employees, the City shall layoff temporary and initial probationary employees first in that order. If additional employees must be **affected by either a reduction in hours or** be laid off, the employee in the department and job classification affected by the **reduction in hours or** layoff with the least seniority shall be the first to be laid off, provided that the City retains employees who are qualified on the date of the layoff to perform the remaining work. The City must provide notice to the employees initially affected by the reduction in hours or layoff at least seven (7) calendar days prior to the effective date of such action.

   b. An employee **affected by either a reduction in hours** or scheduled to be laid off shall be given the opportunity to transfer to a vacant bargaining unit position in the same pay grade provided

the employee meets the qualifications for the position as determined by the City. In the event more than one employee requests placement in the vacant position, the most senior qualified employee will be granted the position.

c. If there is no vacant position in an equal pay grade for which the employee is qualified, the employee may elect to **accept the position with the reduced hours or** be laid off rather than follow the process set for the (2) below.

d. If there is no position available as described in Subsection b., above, and the employee chooses not to use the provisions of Subsection c., above, the employee may replace the least senior employee in his/her pay grade provided the employee meets the qualifications for the position as determined by the City.

e. If the employee ~~scheduled to be laid off~~ is not qualified for the least senior employee's position in the same pay grade, he/she shall be given the opportunity to transfer to a vacant bargaining unit position in **the pay grade which is immediately lower than his/her present** pay grade, provided the employee meets the qualification for the position as determined by the City. The employee placed in a position in a lower pay grade shall be paid the rate closest to his/her former rate and within that lower pay grade.

f. *New Section:* **If the employee is not able to be placed in a position by following the procedure outlined in subsections d. and e. above, the employee may replace the least senior employee in the pay grade which is immediately lower than his/her present pay grade provided the employee meets the qualifications for the position as determined by the City.**

g. *New Section:* **If the employee is not able to be placed by using the procedure outlined in subsections d., e. and f. above,** he/she shall be given the opportunity to transfer to a vacant bargaining unit position in a lower pay grade, provided the employee meets the qualifications for the position as determined by the City. The employee placed in a position in a lower pay grade shall be paid the rate closest to his/her former rate and within that lower pay grade.

h. *Current section f.* If the employee replaces the least senior employee in his/her pay grade, the replaced employee may use the above procedure.

I. *Current section g.* A full time employee shall not replace a part time employee and a part time employee shall not replace a full time employee.

j. ***Revised current section h.*** **A part time employee affected by a reduction of more than four (4) hours in their scheduled work-week or who is scheduled to be laid off shall be given the opportunity to follow the procedure set forth in Subsections c., d., and e above, except the opportunity for bumping shall be limited to other part time positions. In addition to considering the part-time employee's seniority and pay grade, the City agrees that consideration for and placement of a part time employee in another position will begin with positions whose regularly scheduled hours are within the same pay grade and are closest to the number of hours the employee the employee (sic) is regularly scheduled to work in their current position.**

k. *Current section i.* If no job is available to an employee as a result of the application of this section, the employee shall be laid off.

(All of the above emphasis is in the original).

POSITIONS OF THE PARTIES

The Union contends that its Final Offer should be selected because of the "City's insistence that employees who had their hours reduced had no recourse . . ." under the prior agreement; because its Final Offer is needed to protect "full and part time employees who suffer a reduction in hours with the minimal disruption and inconvenience to the City"; and because a 1989 Legal Opinion from the City's Attorney stated that full-time employees who have their hours reduced can bump into other positions under the City's civil service rules. The Union adds that it has met all the criteria for changing the status quo; that its major concessions on health insurance and seniority represent a quid pro quo for the changes it seeks; that arbitral precedent supports its proposed change; that the City's objections are without merit; and that the comparables "are of very limited assistance" because of "the narrow scope of this case." The Union also asserts the City has failed to prove that the Union's bumping proposal would cause

serious disruption of the City's operations, and that the City's reliance on various internal and external comparables is misplaced because this case does not involve wages or fringe benefits and because it is impossible to determine how other layoff and bumping language is applied in practice.

The City counters that the Union's offer will "dramatically increase the operational disruption experienced by the City"; that the Union has not established a compelling need to alter the status quo; that the Union has failed to offer a needed quid pro quo; and that the 1989 City Attorney's Legal Opinion pre-dates the parties' first contract and thus has no bearing in an interest arbitration proceeding. The City also maintains that the Union's "fix" is "not narrowly tailored, but is overly broad and goes well beyond the 'problem' alleged by the Union" because it covers part-time employees, and that the internal and external comparables support its offer.

DISCUSSION

The Union's Final offer has two main components: One for full-time employees and one for part-time employees – i.e., those who work less than 40 hours a week.

Now, full-time employees who have their hours reduced to below 40 hours a week cannot bump into any other positions and they lose their City provided-for health insurance when they are laid off. The Union's proposal calls for extending the contractual layoff language to these employees and for allowing them to bump, if qualified, into vacant or other positions held by less senior employees.

Under the Union's proposal, full-timers could: (1), first bump the least senior full-time employee in his/her pay grade; (2), if that is not possible, than bump into a vacant full-time position in the next lowest pay grade; and (3), if there is no such vacancy, then bump the least senior full-time employee in that lower pay grade.

Part-time employees who now have their hours reduced also cannot bump into any other positions. If a part-timer's hours are reduced by four or more hours, the Union's proposal would allow such employees, if qualified, to bump other part-timers with lower seniority in the same pay grade.

Hence, full-timers could not bump part-timers and part-timers could not bump full-timers.

The City's Final Offer proposes no changes in the applicable contract language.

Turning first to the statutory criteria, the parties only have addressed internal and external comparability, as they agree that the other statutory criteria set forth in Section 111.70(4)(cm)7. of MERA have no bearing on the selection of either Final Offer.

The parties have agreed to the following four internal comparables: AFSCME Local 305 which represents the City's general employees; IBEW Local 494 which represents the City's dispatchers; the Wauwatosa Peace Officer's Association which represents the City's law enforcement personnel; and WPFA Local 1923 which represents the City's firefighting personnel.

The internal police and fire units have contracts which spell out the dismissal and re-employment rights forth in Wis. Stats. 32.13(5m), and thus do not have any contract language addressing a reduction in hours (Union Exhibit 8).

IBEW Local 494's dispatchers' unit also does not have any contract language regarding a reduction in hours, and AFSCME Local 305's contract addresses a "reduction in the work force" and thus has no specific provision dealing with a reduction in hours (Union Exhibit 8).

None of the four internal comparables thus have contracts which expressly allow bumping for employees who have their hours reduced.

The parties have agreed to the following external comparables: The City of Brookfield's law enforcement clerical unit; the City of Brookfield's library unit; the City of Greenfield's clerical unit; the Village of Menomonee Falls' police support specialists and court personnel unit; the City of New Berlin's clerical and related unit; the City of Oak Creek's AFSCME unit; the City of South Milwaukee's general unit; the City of Waukesha's clerical, custodial and parking unit; the City of Waukesha's library unit; and the City of West Allis' clerical unit.

All of these external comparables have contract language addressing layoffs, but only one – OPEIU Local 35's contract with the City of Waukesha – has language expressly allowing for the bumping of employees who have their hours reduced (Union Exhibit 9). OPEIU Local 35's contract contains nearly the identical reduction in hours and bumping language proposed here.

The Union argues that the AFSCME unit among the internal comparables and almost all of the external comparables provide for bumping rights which far exceed those provided for in its Final Offer.

Those other bumping rights, however, only kick in during possible layoffs which are not in issue here because this case only centers on what bumping rights should apply when employees suffer a reduction in hours. The most meaningful comparables thus relate to a reduction in hours and not to the bumping which occurs during layoffs.

The Union also argues that except for Waukesha's library unit, "we have no idea whether the lay-off language is applied to encompass reduction in hours situation," and that: "Unlike comparisons regarding economic items, it is like comparing apples with oranges unless we know how the seniority layoff clauses are applied."

It is possible that this other language also covers what bumping rights employees have when their hours are reduced. But there is no proof of that in this record, which means that the bumping language must be examined on its face – an examination which reveals that but for the City of Waukesha's library unit, no comparable has the express contract language sought here.

The internal and external comparables thus support the City's Final Offer.

This dispute has its genesis in the 2004 layoffs of some bargaining unit employees who had their hours reduced because of the City's difficult financial condition and who could not bump less senior employees under that contract language.

OPEIU business manager Judy Burnick testified that the City then reduced the hours for full-timers Kathy Martens, Maija Ptaszek, Mary Ann Kopacy, Karen Melchoir and part-timers Linda Day, Claire Silverman and Amy Schmidt (Union Exhibit 9A; 9E). She also said that full-time employees Juanita Negrete and Elena Reed were laid off; that full-time employees who had their hours reduced lost their City paid-for health insurance; that part-timer Schmidt bumped a less senior employee in another department; and that other part-timers who had their hours reduced were not allowed to bump into court clerk positions even though there were probationary employees in that department. She added that the Union grieved some of the layoffs; that Martens subsequently moved to a vacant position in the Building Department; that Ptaszek was promised the next full-time Municipal Clerk opening; and that the parties are currently negotiating about finding a full-time position for Lori Murphy.

Burnick explained that a position was eliminated in the parties' first contract negotiations in 1993 – 1995; that the City's civil service rules were then in effect; and that "a number of the agreed upon items in the first contract came from the City ordinances and civil service rules . . ."

She also stated that the Union in these negotiations "agreed to significant changes in co-pays and deductibles for the health insurance plan," along with a concession relating to the layoff of grant-funded positions.

On cross-examination, Burnick testified that she was not involved in the 1993 – 1995 negotiations and that after reading the notes of those negotiations, "I did not find anything that referenced the specific reduction of hours of full-time employees." [1] She added that a City Attorney's 1989 Legal Opinion dealing with whether full-time employees could bump when their hours were reduced "was included with the Union's first contract notes and reference information."

She also stated that the two full-time employees who were laid off in 2004 have been recalled, and that the Union's proposal regarding part-timers has a typographical error and that it is not meant to provide more hours for part-timers who bump into another part-time position.

Chris Bennett is an Engineering Technician IV. He testified he is the only Engineering Technician IV in his department and that he cannot bump into the lower Technician III and II classifications if his hours are reduced under the current language.

Assistant City Attorney Beth Aldana also serves as the City's Personnel Administrator. She testified that she was involved with the prior 2004 layoffs and reductions in hours; that the City then "maintained the position that layoff did not contemplate reduction in hours in the contract"; and that she and others worked "very hard to minimize any impact that either a full layoff, or reduction in hours might have on any employees and did things even though we thought we weren't contractually obligated to do them." [2]

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[1] Transcript of June 2, 2006, hearing, p. 72, herein "Transcript."

[2] Id., p. 86.

She also stated that the Clerk's Office and Health Department then experienced disruptions and an "extreme hardship" because of bumping, and that various department heads since then have refused to reconsider their opposition to bumping because of such disruption. She also stated that the Union rejected the City's proposal to protect more specialized departments from bumping, and that one employee was not allowed to bump into another position because she did not score high enough on the eligibility test.

On cross-examination, Aldana testified that employees must be qualified to get positions they are trying to bump into and that even if they are qualified as that term is used in the contract, "there's still operational disruption because they don't know the new office" and because "there's a learning curve that causes disruption in the office." [3] She added that "no matter how qualified they are in the position, they can't come in day one and operate at the same level that somebody that was, who previously held that position." She also said "there's a lot of apprehension and nervousness in the department" from employees who will be bumped, and that the employee who initially did not score high enough on an eligibility test eventually passed a test and bumped to another job.

Pointing to the testimony in the record, the Union contends that it has met its burden of proving that the current contract language gives "rise to conditions that require a change"; that its proposed language remedies that situation; and that its proposal does not impose an unreasonable burden on the City. The Union cites Woodruff Arbor-Vitae Joint School District, Dec. No. 26268-A (Reynolds, 1990), and Winnebago County, Dec. No. 26037-A (Miller, 1989) in support of its claim that this three-part test should be followed.

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[3] Id., p. 95.

The City asserts that the Union has not demonstrated the need for change; that its proposal is too broad for the Union's claimed need and that it will lead to excessive disruption; and that the Union has failed to offer a necessary quid pro quo.

The City thus claims that the Union has failed to meet the test set forth in Washington County (Social Services), Dec. No. 29363-A (1998), where Arbitrator Herman Torosian stated:

. . .

> The arbitrator in the instant case, like so many before him, is firmly convinced that in cases where one party is seeking to make significant changes in existing language or benefits (status quo), the interests of the parties and the public is best served by imposing on the moving party the burden of establishing (1) a compelling need for the change, (2) that the proposal reasonably addresses the need for the change, and (3) that a sufficient quid pro quo has been offered. In each case the sufficiency and weight to be given to each element must be balanced.

. . .

As for whether there is a need to change the current contract language, the City argues that while there is "always hardship due to layoffs and reductions in hours," that alone does not "create a need to change the status quo."

That is true. For in order to change the status quo, a party in this kind of situation must prove a change is needed because of policy and/or equitable considerations, rather than hardship alone, because hardship almost always will occur in any layoff or reduction in hours situation and because more objective criteria must be used in determining whether the status quo should be changed.

Here, though, the current language is inadequate because it does not provide any job protection for full-time employees who have their hours reduced below 40 hours a week, and

because the current language allows less senior employees, including even temporary or probationary employees, to retain their positions and hours over qualified, more senior employees.

Engineering Technician IV Bennett thus testified that he under the current language can have his hours reduced but that he cannot bump the other Technician III's and II's in his office because he is the only Technician IV in that classification. That also is true for all other full-time employees who do not share their classifications with anyone else.

Hence, senior employees like Bennett may end up with fewer hours than probationary or temporary employees even though there is no sound policy reason why the latter should be accorded greater job security than more senior, qualified employees.

The City states that the Union's proposal is not limited to employees in these kind of specialized positions because the Union seeks to "expand the number of positions into which any member of the bargaining unit can bump and not just those in the unique positions." (Emphasis in original).

That is true because the Union's proposal also covers the 27 or so Municipal Clerks who also would be able to bump, along with all other employees who do not hold highly specialized positions.

Nevertheless, the same principle applies to these other employees as to the more specialized employees like Bennett – i.e., the need to provide greater job security for more senior qualified employees over their more junior counterparts regardless of what work they do.

There thus is only one basis for finding no need for the Union's language and that centers on the laudable efforts Attorney Aldana and other City personnel expended in trying to ameliorate the effects of the 2004 reduction in hours. They did everything possible to help those

employees even though the contract itself did not require such efforts. The City more recently also joined together two different part-time jobs in order to avoid laying off an employee whose full time job was eliminated in the Assessor's Office.

If there were some sort of guarantee that such efforts would be repeated if employees again have their hours reduced, I would agree with the City that the Union's language is not needed.

However, there is no guarantee of that when future reduction in hours may occur because other City personnel may be on the scene who do not feel obligated to do more than what the current agreement provides. Hence, changed contract language represents the only means of guaranteeing that senior, qualified employees will be protected if their hours are reduced in the future.

I therefore find that the Union has established a compelling need for its full-time bumping proposal.

The City claims that the Union's proposal is too disruptive and unreasonable because "the overall number of bumps will increase dramatically" or, in order to prevent such bumping, the City instead may lay off employees, thereby creating the similar operational disruption "under either scenario." The City thus points out that now there are about 11 full-time Municipal Clerk I's, 9 full-time Municipal Clerk II's, and 7 full-time Municipal Clerk III's, all of who can exercise bumping rights under the Union's proposal. The City adds that bumping also will be disruptive because one employee in 2004 was not qualified for the job she bumped into and because bumping involves a "learning curve" which makes bumping disruptive.

The employee in 2004 was a full-time employee who was slated for layoff and who was allowed to bump a junior employee. Her situation was not related to any reduction in hours and

it would have occurred regardless of whether the Union's proposed language was in effect. In addition, that was the only specific example offered by the City to show that bumping has been disruptive.

As for a "learning curve," the Union's proposal probably will cause some disruption because almost all employees moving into a new job will experience some loss of productivity and because the City will have to expend some efforts to bring them up to full speed.

But, the Union correctly points out: "In hard times, both the employer and the employee must accept minor inconveniences." Thus, while employee hardship alone is not enough to establish the need for the Union's proposal, it also is true that some minor inconvenience to the City is not enough to defeat the need for bumping. Moreover, the Union's proposal is narrowly drawn and is aimed at reducing disruption because it specifies that employees who want to bump must be qualified, as determined by the City, for their new jobs and because such employees can only bump the least senior employee in either the same or next lowest pay grade who then can only bump another employee, thereby providing for only two total bumps.

Furthermore, there will be little or no burden when senior, qualified employees bump into a vacant position in the next lower pay grade because no employees will be displaced in that process.

The prior August 16, 1989, Legal Opinion issued by then-City Attorney Harold D. Gehrke to then-City Administrator Gary J. Hamburg (Union Exhibit 11(d)) bears on this matter. Gehrke responded to Hamburg's prior inquiry of whether a tenured employee under the civil service law "has a right to be transferred into the newly created position rather than accepting a reduction in hours in her present position."

The Legal Opinion cites and quotes a number of court cases and legal authorities and finds: "a reduction in hours is a reduction in pay and that a civil service employee is entitled to protection based upon seniority." It concludes:

> When a layoff or reduction in hours occurs, the existing civil service employee adversely affected is entitled to preference, if qualified. This may result in giving the position in this instance, or in similar cases, to a qualified existing employee rather than the best qualified person. As stated at the outset, there are essentially two purposes to the civil service system. It was designed to obtain the best qualified people to fill positions based on merit and fitness. Secondly, it is designed to provide a reasonable amount of employment security to a person who has successfully attained tenured status in the service. This is a method of balancing these two interests. It assures that the person with seniority in the civil service status will be given preference when layoff occurs while at the same time assuring that the person is qualified to perform the duties.
> Id., pp. 4-5. (Emphasis added).

The Legal Opinion thus addresses what rights employees had under the civil service system which existed before the employees herein were first represented by the Union in about 1992. However, since this case centers on what rights employees should have under the new agreement and which Final Offer must be selected under Section 111.70(4)(cm)7. of MERA, the Legal Opinion obviously is not controlling.

The Legal Opinion nevertheless shows that the City then allowed employees to bump when their hours were reduced and there is no evidence in this record that such bumping in any way disrupted the City's operations.

Given all of the above, I find that the City has failed to prove that bumping for full-timers will cause unreasonable disruption of its operations.

I also find that the Union's proposed language for full-time employees reasonably remedies the flaws in the current contract language because it, in part, is aimed at keeping employees at the 40-hour a week mark if at all possible, thereby enabling them to maintain the

City's paid health insurance coverage. Moreover, even if they are not guaranteed 40 hours a week, the Union's proposal represents a reasonable measure of job security by providing them with as many hours of work that they are qualified to perform.

The Union was aware of the 1989 Legal Opinion when the parties negotiated their initial agreement in 1993 – 1995 because Burnick found it among the bargaining notes and reference materials for that agreement. She also testified: "I did not find anything that referenced the specific reduction of hours of full-time employees."

Hence, there is no basis for finding that the parties in those negotiations ever specifically addressed that issue. There also is no basis, though, for finding that the City then told the Union it no longer was bound to that Legal Opinion.

All this goes to what effect should now be given to the parties' initial agreement and whether the Union is required to offer a quid pro quo for the change it seeks.

The Union claims that it is not required to offer a quid pro quo because the issue here does not involve wages or fringe benefits, and that it in any event did make "major concessions in the area of health insurance and seniority" which constituted any quid pro quo that might be required. The City disagrees and maintains that a quid pro quo is needed under well-established arbitral case law.

The Union relies upon Berlin Area School District, Decision No. 31161-A (2005), where Arbitrator Jay E. Grenig ruled that a union's bumping proposal relating to a reductions of hours should be adopted because: "Given the exclusion of reductions of hours from the definition of layoff and the restrictions on bumping in the Employer's final offer, the Association's final offer with respect to layoffs is more reasonable than the Employer's." Id., p. 21.

Arbitrator Grenig selected the union's offer after finding that no comparable "had a two-bump rule similar to that proposed by the Association," and that the comparables were mixed in treating a reduction of hours as a layoff. Id., p. 15.

Arbitrator Grenig also stated:

. . .

D. Layoffs

> Arbitrators generally interpret the term "layoff" to include any reduction in the normal workweek that results in loss of work. Elkouri & Elkouri, HOW ARBITRATION WORKS 786 (6th ed. 2003). Exempting reduction in hours from a layoff clause would permit an employer to reducing (sic) the hours of senior employees in order to avoid laying off junior employees. One Wisconsin arbitrator addressed a proposal to include reduction of hours in the definition of layoff, writing:
>
> > The parties' present contractual language provides that full layoffs will be by seniority within job categories. The Association's proposal extends the same seniority rights to employees in the event of reduction in hours, a 14-day notice of same, and the Association's right to a seniority list upon request. The District proposes to keep the language as is.
> >
> > The Arbitrator notes that the Association's proposal is mainstream and typical in bargaining units of this type. Internally, the teachers have a seniority based layoff provision, including reduction in hours by department. The instant proposal by the Association requires reduction of hours by seniority within a job category. If anything, in the opinion of the Arbitrator, reduction in hours by seniority in the teaching unit would be more problematic for the District than the instant support staff unit. Furthermore, the Arbitrator finds nothing onerous for the Employer.
>
> *Rio Community School Dist.*, Dec. No. 30092-A (Torosian 2001).

. . .

Id., p. 20.

The City maintains that the Union's reliance on the Grenig Award is misplaced because it centered on an initial contract and because Arbitrator Grenig stated that the importance of a quid pro quo is "not as important here, where the contract is the parties' first, than in situations where the status quo is the result of agreement between a bargaining representative and an employer." Id., p. 18.

The City thus asserts that "Here, the parties previously negotiated bumping rights which did not include bumping for employees whose hours are reduced"; that "when this contract was negotiated, the parties came to terms on bumping rights"; that the Union now "wants to significantly" change the status quo; and that the proposal here is more "expansive" than in the one in Berlin Area School District.

I agree with Arbitrator Grenig that first time contracts may not need a quid pro quo, and I also agree with the City's view that once the initial agreement was reached between the parties in 1995, that principle no longer applies if, in fact, the parties then bargained over this issue.

But did they? There simply is no evidence that the parties ever did so because it is entirely possible that the parties only discussed bumping for employees slated for layoff and that they thus never discussed bumping for employees who have their hours reduced because the 1989 Legal Opinion may have been in effect.

Because of this murky record, it is entirely possible that this is the first time the parties have ever expressly negotiated over this issue.

In addition, the Union states that it made a quid pro quo when it agreed in negotiations to concessions relating to health insurance and seniority. The City does not dispute that such concessions were made, but argues they did not represent a quid pro quo for the changes the Union now proposes.

The problem here is that no Union witness ever testified that the Union's concessions were meant to be a quid pro quo for its proposal. Nevertheless, those concessions relating to increased co-pays and higher deductibles do represent the kind of quid pro quo needed for the Union's proposal.

Given this record, it is impossible to determine whether a quid pro quo was required in light of the 1989 Legal Opinion or whether the Union made such a quid pro quo through its health insurance concessions.

That being so, I find that the Union's proposal should be considered without regard to the traditional quid pro quo requirement.

As for the Union's proposal for part-time employees – i.e., those working 39 hours or less a week - the City asserts that since part-timers do not receive City-paid health insurance and that since the Union is claiming full-timers should be allowed to bump in part to maintain such insurance, the Union's proposal for part-timers "goes way beyond even what it alleges to be the 'problem.'"

That is only partly true. The Union also advances another reason for its part-timers' proposal – i.e., the need to provide them with the same job security it is seeking for full-timers.

The City also states that only two part-timers had their hours reduced in 2004, thereby showing another lack of need; that bumping for these employees will be excessive and too disruptive; and that the Union's proposal could allow a part-timer to "bump into a position for more hours than what they started with." (Emphasis added).

The Union contends that its part-timer proposal is needed; that it will not cause excessive disruption; and that its proposal contains a typographical error because part-timers will not be allowed to bump into positions with more hours.

There are about 28 part-timers in the City's library and about 12 part-timers employed elsewhere, thereby showing that the Union's part-timers' proposal mainly covers library employees (City Exhibit 1). There is no evidence in this record, let alone proof, showing that the Union's proposal will lead to unnecessary disruption in the library.

In addition, the City retains its right to determine whether part-time employees wanting to bump are qualified to do so, thereby preventing unqualified employees from bumping. Furthermore, the Union's proposal does not kick in unless the City cuts a part-timer's hours by four or more hours, thereby allowing the City to cut a part-timer's hours by less than four hours without incurring any bumping.

I agree that a part-timer should not be allowed to bump another part-timer who has more hours because that would create additional bumping and because bumping only should be used to maintain an employee's current hours at most.

Here, though, Union representative Burnick credibly testified that the Union's offer contains a typographical error and that part-timers under the Union's proposal will not be allowed to bump for more hours.

Given that representation, I find that the Union's proposal is to be interpreted in that manner and that once that is done, the Union has proven that its proposal is needed and that it reasonably addresses the lack of job security which now exists for part-timers.

The City also argues that the Union's Final Offer is contrary to the policy "set forth in well established arbitral authority," as it cites Monroe County where Arbitrator Neil Gunderman stated: [4]

[4] Decision Nos. 23807-A, 23808-A, (Gunderman, 1986.)

. . .

> It is well settled that arbitrators have held the position that language modifications regarding layoff and bumping procedures should be non-controversial, conceptually sound, administratively efficient, minimize disruption, limit the effect of multiple bumping, and interest arbitration should not be used as a procedure for changing basic working conditions at issue unless they are unfair.

. . .

This is true for successor contracts after parties have bargained over such issues. However, it is not true for initial contracts and it is not always true for the kind of unique situation found here where a City Attorney's Legal Opinion expressly adopted the position the Union advances here. In addition, the Union's narrow proposal here is conceptually sound, is administratively efficient, and does try to limit the effects of multiple bumping.

Based upon all of the above, I conclude that the Union's Final Offer is more reasonable than the City's Final Offer because it provides for needed job security for full-timers and part-timers who are qualified to bump to other positions with little disruption to the City and that it thus should be selected.

It therefore is my

AWARD

That the Union's Final Offer, along with all of the tentative agreements of the parties, is to be included in the parties' 2005-2007 agreement.

Dated at Madison, Wisconsin, this 11th day of September, 2006.

Amedeo Greco /s/
Amedeo Greco, Arbitrator