BEFORE THE ARBITRATOR

In the Matter of the Final and Binding Interest Arbitration Dispute between

CLARK COUNTY HIGHWAY EMPLOYEES, LOCAL 546 (HIGHWAY), AFSCME, AFL-CIO

and

CLARK COUNTY (HIGHWAY DEPARTMENT)

WERC Case No. 128, Int/Arb - 10805
Decision No. 32090-A

Appearances:

Mr. Houston Parrish, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 1457 Somerset Drive, Stevens Point, WI 54481, appearing on behalf of the Union.

Weld, Riley, Prenn & Ricci, S. C., by Stephen L. Weld, Esq., 3624 Oakwood Hills Parkway, P.O. Box 1030, Eau Claire, WI 54702-1030, appearing on behalf of the County.

ARBITRATION AWARD

The Union has represented a bargaining unit of highway department employees for many years. On October 19, 2006, the Union filed a petition with the Wisconsin Employment Relations Commission requesting arbitration with respect to the replacement for the parties' collective bargaining agreement expiring December 31, 2006. Following mediation by a member of the Commission's staff, the Commission determined by order dated May 8, 2007 that arbitration was required. The undersigned was appointed as arbitrator by Commission order dated June 19, 2007.

A hearing was held in Neillsville, Wisconsin on December 14, 2007, at which time the parties were given full opportunity to present their evidence and arguments. Briefs and reply briefs were filed by both parties, and the record was closed on February 28, 2008.

Statutory Criteria to be Considered by Arbitrator
Section 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:

a. The lawful authority of the municipal Employer.

b. Stipulations of the parties.

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.

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

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

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

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

h. The overall compensation presently received by the municipal employes, 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.

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

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.

The Union's Final Offer

1. ARTICLE XVIII - DURATION -

Revise dates to reflect a two-year agreement from January 1, 2007, through December 31, 2008.

2. Contract Cleanup: ARTICLE 7 - MISCELLANEOUS PROVISIONS - # 6 -

Add the following handwritten language from the current contract to the new contract as the last sentence of that section:

> If, at any time, the employer raises the reimbursement rate for any other group of employees of the County, the employees covered under this agreement shall have the above rate raised to coincide with the rate for said group of employees.

3. Wages: 2% wage increase January 1, 2007, and 1% July 1, 2007.
2% wage increase January 1, 2008, and 1% July 1, 2008.

4. Side letters remain unchanged.

5. ARTICLE XV - INSURANCE - Include teeth cleanings in wellness care coverage.

6. APPENDIX A - LONGEVITY - Agree with County's proposal to delete last paragraph (eliminates only prorated longevity at termination).

8. (sic) ARTICLE 6 – HOURS – Add a new section, Section 8, stating:

> The shop mechanics will normally be scheduled to work at least one-half hour of overtime each day Monday through Thursday and the head mechanic will normally be scheduled to work at least one-half hour of overtime each day, Monday through Friday. Such overtime is not applicable during the time the

Highway Department is working the "Four Ten Hour Work Day Week" schedule set forth in Article 6, # 7.

[Article 6 # 7 already provides for overtime for the shop (i.e., mechanics) during the four ten-hour workday week; the intent of the new section is not to double the regularly scheduled overtime during that time].

The Employer's Final Offer

All items shall remain as in the 2004-2006 collective bargaining agreement except as modified by the following changes also found in the Union's Second Final Offer:

1. ARTICLE XVIII - DURATION -

Revise dates to reflect a two-year agreement from January 1, 2007, through December 31, 2008.

2. Contract Cleanup: ARTICLE VII - MISCELLANEOUS PROVISIONS - SECTION 6 -

Add the following handwritten language from the current contract to the new contract as the last sentence of that section:

> If, at any time, the Employer raises the reimbursement rate for any other group of employees of the County, the employees covered under this agreement shall have the above rate raised to coincide with the rate for said group of employees.

3. Wages: 2% wage increase January 1, 2007, and 1% July 1, 2007.
2% wage increase January 1, 2008, and 1% July 1, 2008.

4. Side letters remain unchanged.
   a. January 3, 2006 letter regarding terms of health insurance.
   b. January 3, 2006 letter regarding CDLs.

5. ARTICLE XV - INSURANCE - Include teeth cleanings in wellness care coverage.

6. APPENDIX A - LONGEVITY - Delete last paragraph (eliminates only prorated longevity at termination).

The Union's Position

The sole issue is the Union's proposal to codify in contract language a past practice of guaranteed overtime for shop mechanics. The proposal was made only because the County gave notice at the outset of negotiations in 2006 that it intended to terminate

the past practice with the conclusion of the then current contract. It is undisputed that the practice had been in effect for at least 30 to 40 years. The Union argues that its proposal exactly tracks the past practice which the County proposed to eliminate, and therefore makes no mention of the two hours overtime per week also received by past practice by the shop stock clerk, which it says the County gave no notice of eliminating. The Union takes exception to the County's argument that the County's action had the effect of eliminating all guaranteed overtime on the grounds that the County's announcement specifically identified shop mechanics and made no mention of the stock clerk.

The Union notes that the parties agreed to the wage settlement for each year, as well as other provisions, and that the wage settlement for the Highway unit is identical to wage settlements agreed on for the four other Clark County bargaining units represented by AFSCME.[1] The Union argues that the Highway unit is the only AFSCME unit for which the County is seeking immediate monetary concessions, since a modification of the pay scale for the Paraprofessional unit is effective only prospectively. The Union argues that it is well-settled under a wide variety of circumstances that the party which proposes to change the status quo must establish a) that a legitimate problem exists, b) that the disputed proposal reasonably addresses the problem, and c) that an appropriate quid pro quo has been offered, as found by a number of arbitrators over many years. The Union argues that the past practice at issue has existed for very good reasons, one of which is that mechanics are required to provide their own tools (except for larger tools, which are provided by the County.) The Union points to testimony by two mechanics to the effect that they spend between $50 and $300 per year on tool replacement, and points to eight out of ten comparable counties on the list proposed by the Union as providing either all tools or a tool allowance. The Union notes that Clark County has not proposed providing the mechanics with either a tool allowance or with a full set of County-provided tools.

The second ground urged by the Union as the basis for the long-standing past practice is the limited opportunity for overtime which mechanics enjoy. The Union points to its calculations that the mechanics received between 127.5 and 138 hours of overtime in 2006, virtually all of which it argues were accounted for by the specified two hours of overtime per week, while all other employees received 100 to 153 hours overtime. The Union argues that the justice of this arrangement is not only of long standing, but was explicitly recognized by the parties when they negotiated a four day, ten-hour work week for the summers, in 2000. At that time, the parties incorporated as Article 6.7 (h) a provision specifically designed to preserve the mechanics' guaranteed overtime during the summer months: "The shop will be required to work one 8-hour Friday for each four weeks worked and prorated Fridays for any months not working four weeks."

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[1] None of the four is a fully settled contract, but the other contracts proceeded to arbitration solely over a drug policy issue not relevant in the Highway unit, with all other provisions settled.

The Union argues that there is strong support for its view that a past practice cannot be unilaterally terminated without an equitable quid pro quo, citing City of Stevens Point, Decision No. 30913-A (6/27/05, Arbitrator Torosian) and School District of Wausau, Decision No. 18189-A (4/82, Arbitrator Imes) as examples. The Union stresses that in Stevens Point, the arbitrator found that the employer's evidence of faltering economics was insufficient to show a compelling need when the impact of the discontinued benefit involved would have been $18,000 over a two-year period compared to a $2.5 million department budget. The Union notes that for the period covered by the past practice (i.e. other than the four-day workweek period which is covered by specific contract language), even assuming that the mechanics would have received zero overtime without the proposal, the cost of continuation of the past practice would be approximately $8,000 per year, as against the Department's total operating expenses of $4.5 million in 2006.

The Union argues for the inclusion of Marathon and Eau Claire counties in the comparable pool along with Wood, Chippewa, Polk, Pierce, Taylor, Monroe, Jackson and Lincoln Counties, noting that both are contiguous to Clark County and contending that there are no established comparables for the highway unit. The Union contends that only one comparable supports the County's position, because in the Union's calculations all of the other counties except one either have mechanics working substantial overtime (though without a guarantee except in Chippewa County), or provide all tools, or have a tool allowance. But the Union also argues that the nature of this case does not make comparables particularly significant.

In its reply brief, the Union argues that it is the County which erred in failing to mention the stock clerk in the first place, noting that the County specifically articulated two numbered clauses in a "preliminary final offer", one of which explicitly notified the Union that "mechanics" were to lose the practice of half an hour of overtime each day, Monday through Thursday, while the other explicitly referred to the "head mechanic" as losing the prior practice of half an hour of overtime each day, Monday through Friday. No mention was made of all shop employees or of the stock clerk. The Union characterizes its representative's response referring to "shop employees" as a less formal, e-mailed phrase which does not carry the same significance, pointing to the fact that the Union did not specify anything in relation to the stock clerk in its final offer as proof that the it did not need to, because the County had not made any change with respect to the stock clerk. The Union argues that the County is in effect attempting to change the Union's final offer to the County's advantage, and that the established law is that the final offer cannot be changed. The Union accepts that its final offer would codify the mechanics' overtime while not codifying the stock clerk's; but the Union argues that since the County did not effectively repudiate the stock clerk's overtime, the stock clerk still has that overtime per past practice.

The Union argues that the County does not deny that the guaranteed overtime existed partly in compensation for the fact that mechanics must provide their own tools, and that the County also does not deny that the overtime was partly a way to equalize overtime, but that the County has made no provision for either need to be addressed in

any other way. The Union also argues that there is no basis in the Employer's contentions about economic conditions for failure to offer any kind of quid pro quo for a change which significantly impacts certain employees and not others. The Union points to data more recent than the County's cited exhibit as to its finances, i.e. the 2006 closing financial statement, Union Exhibit 15. That document, the Union argues, shows that total net assets increased in 2006 by $4 million, while the County ended the year with fund balances of $11.7 million, an increase of $1.7 million in comparison to the prior year. The unreserved fund balance, available for spending at the county government's discretion, was over $11 million at that point, and the total general obligation debt went down by $650,000 during the fiscal year. Accordingly, the Union argues, the County is in much better financial condition then it has represented, with discretionary funds on hand at the beginning of the contract that were sufficient to pay the mechanics' scheduled overtime for more than a thousand years. The Union also argues that the County has further revenue raising opportunities if it wishes, i.e. that the County has no sales tax, and that even the agrarian economy has improved markedly since the data the County is using, with milk prices up sharply in 2007. But the Union's central argument remains that the burden is on the County to provide some kind of quid pro quo for the proposed elimination of a practice of decades' duration, and that the County simply did not do so.

The Employer's Position

The County contends first that the Union's proposal is inconsistent with the treatment of all other classifications in the bargaining unit, including the County's recent decision to discontinue guaranteed overtime for non-represented foremen. The County argues that its notification that the past practice was terminated was clearly broad enough to cover the shop stock clerk, and that the Union recognized this by replying to the notification in an e-mail in which the Union's representative confirmed his understanding that the County was discontinuing the practice of guaranteeing overtime "for the shop employees." The County therefore argues that the Union, in proposing language which makes no reference to the stock clerk, has created a situation in which the stock clerk's entitlement to overtime is unclear, setting the stage for additional litigation.

The County refers to the concept of institutionalized overtime as a historical relic, which is clearly out of date and which is not entitled to the same presumptions or status that language incorporated in a bargaining agreement has. The County argues that the personal recollections of employees regarding hiring interviews conducted 15 to 30 years ago are not enough to establish that "scheduled overtime" was a guarantee. Thus in the County's view, it is the Union which has the obligation of demonstrating a need for a change in the status quo.

The County argues that its decision to terminate the past practice was a necessary part of "belt-tightening" measures which have had many other elements. The County has reduced staffing from 35 full-time equivalents to 31 over the last three to four years;

has discontinued its crushing operation and no longer makes asphalt, compared to many years ago; has more recently eliminated scheduled overtime for nonrepresented foremen; and has been required to do these things because of reductions in the amount of mileage paved each year (from 22 miles a year in the 1990s to 9 miles planned for 2008) and because of escalation in the costs of health insurance, fuel and steel in recent years. The County argues that in this environment, scheduled overtime for shop mechanics is a luxury which the County can no longer afford. The County points to external comparables of Chippewa, Jackson, Lincoln, Monroe, Pierce, Paul, Taylor and Wood County as not providing scheduled overtime for shop mechanics. The County strongly opposes the inclusion of Marathon and Eau Claire counties in the comparable pool, arguing that numerous arbitrators addressing cases with other Clark County units have excluded those counties as being far larger and wealthier, and that the Union's characterization of those counties as having been included before is erroneous.

The County argues that Clark County is one of the slowest growing counties in the comparable pool, and that while the "greatest" and "greater weight" statutory criteria are not likely to be determinative given the particular issue, they are relevant to the general economic conditions of the County, in which land values are low in comparison to most of the comparables, equalized value has grown at the smallest level among the comparables, the mill rate in Clark County is higher than all but two of the comparables, and farmland covers a far greater percentage of Clark County than in any of the comparables. Similarly, the County argues that its citizens' income levels are relatively low, and that other measures such as percentage of children in households below the poverty line and percentages of County residents without health insurance coverage and/or unemployed are at or near the top of the comparison tables among the comparables for each criterion, while median home value is the lowest among the comparables. The County argues that wages in the bargaining unit are above average and that employees also receive a broad array of fringe benefits including longevity and excellent health insurance, for which the County's family premium is the highest among the comparables. The County argues also that the summary of County finances completed in August 2006 and provided to the Union at the initial exchange of bargaining proposals demonstrates that the County's total net assets decreased in 2005, and that the County has relatively limited liquid assets, while the formula for calculating County revenue limits was changed by the Wisconsin legislature for 2006 in a way which limited Clark County's maximum operating levy increase for 2007 to 2%. The County has agreed for 2007 to wage increases which exceed its operating levy increase. At the same time, the County argues that for 2007, the maximum hourly wages for mechanics and the stock clerk in Clark County will exceed four out of six comparables whose settlements are known.

With respect to the Union's argument that the comparable counties provide either more overtime for mechanics or greater compensation for tools, the County finds only Pierce County specifying any kind of guarantee of overtime, and then only for foremen who get half an hour per day "for the purpose of keeping time records." The County finds no guarantee of overtime in Chippewa County and no documentation indicating where such a guarantee might come from. Similarly, the County questions the Union's data

with respect to tool allowances, contending that the source for the Union's exhibit on this issue is a telephone survey which fails to explain whether the information contained there came from an unwritten practice, unilaterally implemented management policy, or the applicable collective bargaining agreement.

The County argues that it gave proper notice of the intent to discontinue the practice of guaranteed overtime, and that the Union acknowledged in an e-mail its understanding that the practice was going to end for all "shop employees." The County argues that this clearly demonstrates that both parties understood that the overtime guarantee was ending for all such employees. The County argues that a recent WERC decision in Dodgeland School District (Decision No. 31098-C) upheld an employer's right to renounce a practice not addressed in a contract, effective with a successor agreement. The County notes that the Commission used the phrase "We think it appropriate to permit renunciation of practice not addressed in the contract and to place the burden of securing contract language upon the party who wishes to continue the practice." The County argues that this indicates that once notice was given, the burden shifted to the Union to draft and negotiate contract language to codify the prior practice. The Union then failed to address the shop clerk, making future litigation likely if the Union is successful here. Finally, the County argues that the Union has failed to demonstrate that there is any need for guaranteed overtime or that the language of its final offer reasonably addresses that need. The County argues that overtime will not evaporate under the County's final offer, because all employees continue to have an opportunity to plow snow and to respond to other emergencies, and guaranteed overtime for the shop employees even continues, under the four-day work week in the summer. The County argues that the employee testimony about the shop falling behind when employees were pulled out to perform road work during the summer was insufficient to demonstrate any need for the continued guarantee, given that there was also testimony from the Highway Commissioner that the shop caught up quickly thereafter. The County argues that the guaranteed, scheduled overtime, if it ever made sense, simply no longer does.

In its reply brief, the County argues first that contrary to the Union's claim that Article 6.7 (h) undisputedly recognizes the mechanics' overtime agreement, that clause along with the rest of the "4 x 10" schedule can be unilaterally ended by the County at any time, pursuant to Article 6.7 (k), which specifies "if either party (Union or Management) wishes to discontinue this schedule at any time, they may do so in writing." The County argues that the Union's final offer goes beyond this because it does not have such an escape clause, thus creating contractually mandated scheduled overtime for the first time.

The County argues that contrary to the Union's contention that the Stevens Point case is applicable, the Stevens Point union proposed continuation of a benefit that was also available to three other bargaining units of the employer involved, and the proposal there actually limited the benefit compared to what it had been, while here, the Union proposes to perpetuate the past practice in its entirety. The County argues that therefore, unlike in Stevens Point, there are no internal comparables supporting the Union's final offer. At the same time, no comparable county has been shown to have a

contractual guarantee of scheduled overtime for shop employees, so there are no supporting comparables externally either. The County also objects to the Twin Lakes case cited by the Union, arguing that in that matter, Arbitrator Petrie adopted the union's final offer because it was supported by the comparables, not because of an issue over unilateral change in a practice.

The County's central argument, however, is that there is a compelling need to make a change in a practice which has become an unaffordable luxury. The financial condition of the County simply is not what it was when that practice began, and it is more efficient and effective to have a single overtime system for all highway employees, in which overtime is triggered by specific circumstances instead of being prescheduled. Following reduction in staffing, significantly reduced quantities of work, and eliminations of entire functions such as the asphalt plant, it is simply inappropriate to mandate overtime, especially because the logic of the situation is that shop employees will in fact continue to be offered overtime, when overtime is needed. The County finally notes that the tools issue, much discussed by the Union in its brief, was never mentioned by the Union in bargaining.

Discussion

The first question which has to be addressed is what the impact is, if any, as a result of the absence of the stock clerk from the Union's proposal. Each party implies that the other in effect made a decision to draw a distinction between the stock clerk and the mechanics, but it is not within my authority to determine whether the County properly placed the Union on notice that the County's intention was to terminate the guaranteed overtime practice for all those receiving it. I note, however, that the Union's proposal tracked the written specifications in management's preliminary final offer, the only evidence in the record that addresses notification. Accordingly, I do not find it appropriate to penalize the perceived reasonableness of the Union's final offer merely because it makes no mention of the stock clerk.

As discussed further below, this is an unusual case in that ordinary measures of internal or external comparables have relatively little to do with the matter, But since the parties contest the external comparables and the comparables do have some weight, it is necessary to address them at least briefly. I do not find the Union's argument for including Marathon or Eau Claire County persuasive. Both are far larger in population and far more prosperous than Clark County, but more to the point, even though there is no single list of comparables which arbitrators addressing Clark County cases in the past have all settled upon, the County makes a strong case to the effect that out of a number of arbitrators who have addressed interest arbitration proceedings involving a variety of Clark County bargaining units, there is no previous record of any arbitrator actually adopting a comparable list explicitly including either Marathon or Eau Claire, and that at most, there are references in one or two awards that erroneously described *other* arbitrators as having done so. With that said, it is clear that there is little support among any version of the external comparables for guaranteed overtime. The Union's

fundamental argument, however, is that there is an equivalency to other terms of employment in the external comparables. This is discussed further below.

With respect to internal comparables, there is again no parallel situation (except arguably for the stock clerk, if the apparent drafting error, in not specifically including the stock clerk in the notification in the preliminary final offer, were interpreted from a legalistic point of view.) Certainly, there is no reason in the record to suppose that management intended the stock clerk to continue to work an extra half-hour when there would be no mechanics there to supply parts to. The lack of any other employee classification (in any bargaining unit) with a similar benefit is a point in favor of the Employer's case, but there is another way to look at internal comparability, i.e. whether any other job classification is being expected by management in effect to *surrender* an equivalent benefit. The record is persuasive that there is no such situation in the present round of bargaining in any of the bargaining units.

In the context of this matter, most of the remaining statutory criteria overlap with the traditional assessment applied when one party proposes to change the status quo. Here, even though it is the Union which has proposed new contract language, its proposal exists only because of management's unilateral change in a long-standing past practice. Accordingly, for essentially the reasons given by Arbitrator Torosian in Stevens Point, I believe it is fair to regard the County as the agent of change here, incurring the traditional obligation to justify its effects. At the same time, there is a difference between past practice and contract language, and the County has a point in arguing that the burden of the status quo should not be as high. I believe that the appropriate balance (and the balance observed in practice in countless changes made by parties in general, in bargains which never required arbitration) is to require the County to make the same kind of three-part showing (need for the change, effectiveness of the proposal, quid pro quo) as has been required by many arbitrators in situations where the proposed change is to explicit contract language, but not necessarily to the same degree.

As to the need for the change, the County has made a showing that, other economies having reduced the scope of the department's work, it is logical to expect that the continuing need for year-round steady overtime in the maintenance shop would be lower. The County has also demonstrated a significant degree of economic hardship for the Highway Department. The County has not, however, presented a case demonstrating that eliminating the overtime guarantee is a particularly effective way of addressing these concerns, simply because there are not major savings to be had when the Union has demonstrated that the maximum *possible* overtime expense of these employees each year, during the applicable months, is in the range of $8,000, a minuscule fraction of the overall budget, especially when the County itself anticipates that much of the overtime in question would be worked anyway. For the same reasons, I find that the "greatest weight" and "greater weight" factors do not materially impact this case. Where the County's proposal really falls down, however, is in the total lack of any quid pro quo.

Many arbitrators have noted that where the situation is provably dire, a quid pro quo may not be required for a change in the status quo. Here, adverse as Clark County's economics are from some points of view, "dire" would be an overstatement, both because changes to the County's general economics are, in the main, shared by other counties that have been found comparable in the past, and because, as the Union points out, some economic indicators have improved as a result of rising farm prices since the data relied on by the County were compiled.

But more significantly, the County has targeted a benefit which affects relatively few people, but affects each of them to a significant degree. No related sacrifice is proposed for anyone else. It is not necessary to accept entirely the Union's argument that a tool allowance would be the obvious quid pro quo (since the Union never made this proposal during bargaining) to recognize that there is at least some logic in the Union's argument, both with respect to the tools and with respect to overtime equalization, based on the numbers placed in evidence. Both elements exist as part of a larger and traditionally recognized expectation, that where a certain pattern of wages and benefits has endured by mutual agreement over a long time, there is a presumption that this pattern reflects a kind of summing up of economic reality and fairness in that situation. This goes to the heart of the expectation of a quid pro quo, when one party proposes unilaterally to change the status quo. Here, the County has abrogated the status quo for the mechanics when there is no basis in the record to regard them as overcompensated compared to other employees, and has offered nothing to make up for it.

That is not the same thing as saying that the Union has made a solid case that the guaranteed overtime should be preserved indefinitely. If the County had proposed some reasonable level of alternate benefit, whether in the form of a tool allowance or something else (not necessarily dollar for dollar in impact), this case might well have resulted in an award in favor of the County. But in stressing the argument that the mechanics' guaranteed overtime was largely in compensation for not having a tool allowance, the Union has in effect put up a signpost as to what the County might offer in the next round of bargaining, should it choose to try again.

The Statute's Weighing:

The "greatest weight" and "greater weight" statutory factors do not materially impact final offers which are apart by so little in comparison to the overall budget. The lawful authority of the municipal employer was not argued; the stipulations of the parties include equity in wage and benefit changes across all employees, leaving the mechanics as the only ones adversely affected by the net effect of the Employer's position, a factor in favor of the Union's final offer. The interests and welfare of the public and the financial ability of the County to meet the costs are of minimal impact here, for the same reasons as the "greater weight" factor. External comparables favor the County with respect to the specific language at issue, but are not so clear with respect to the overall balance of mechanics working conditions. For internal comparables the situation is essentially the same, with the Union's proposal being unique, but in a context where

it replaces a practice which was an accepted part of a long-term balance. Comparisons to private employment were not argued, and the CPI is not significantly at issue under these circumstances. The overall compensation factor favors the Union's proposal because without the Union's proposal, the overall compensation for a small group of employees stood to be significantly and unilaterally reduced by the County's action, under circumstances where the County was not in dire straits and no quid pro quo at all was offered.

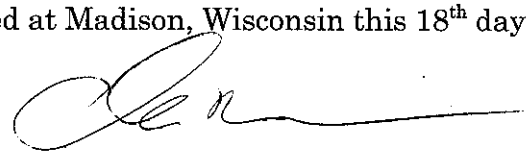
Summary:

If the County had offered a quid pro quo of reasonable proportions and type, its proposal would likely have been found more reasonable, because changes in economics and work practices do occur over time, and guaranteed overtime, in the present era, is an unusual way of ensuring an equitable balance between employees. But in the absence of any quid pro quo, several of the factors customarily applied indicate an unfairness in targeting a benefit which has been so long relied on, and whose elimination is not so significant to the Department's finances as to amount to a "rescue." Accordingly, I find the Union's proposal more reasonable overall under the circumstances.

AWARD

That the final offer of the Union shall be included in the 2007-2008 collective bargaining agreement.

Dated at Madison, Wisconsin this 18th day of April, 2008



By_____
Christopher Honeyman, Arbitrator