BEFORE THE ARBITRATOR

In the Matter of the Arbitration of an Impasse Between	:	Case 132 No. 66385
CLARK COUNTY	:	INT/ARB-10809 Decision No. 32094-A
and	:	
CLARK COUNTY EMPLOYEES LOCAL 546D2 (SOCIAL SERVICES SOCIAL WORKERS)	:	

Appearances:

Houston Parrish, Staff Representative, for the Labor Organization.

Weld, Riley, Prenn & Ricci, Attorneys at Law, by Stephen L. Weld, for the Municipal Employer.

ARBITRATION AWARD

The above-captioned parties selected, and the Wisconsin Employment Relations Commission appointed (Dec. No. 32094-A, 6/19/07) the undersigned Arbitrator to issue a final and binding Award, pursuant to Section 111.70(4)(cm) 6 and 7 of the Municipal Employment Relations Act, resolving an impasse between those parties by selecting either the total final offer of the Municipal Employer or the total final offer of the Labor Organization.

A hearing was held in Neillsville, Wisconsin, on August 14, 2007. No transcript was made. Briefs were completed on approximately October 9, 2007.

By letter dated October 11, 2007, the Arbitrator asked the Wisconsin Employment Relations Commission to determine whether he had the authority to select the County's final offer. Thereafter, the Commission placed the matter in abeyance, solicited written argument from the parties; and, by Decision No. 32094-B, issued on December 19, 2007, ordered that the Arbitrator shall proceed to select a final offer.

The collective bargaining unit covered in this proceeding consists of all regular full-time and regular part-time social workers in the Clark County Department of Social Services, excluding Clerical and Income Economic Support Workers, Homemakers, Maintenance Supervisors, Administrative Assistants, Social Work Supervisor I's, the Deputy Director, and Director, and all other supervisory, managerial, and confidential employees. There are approximately nine employees in this bargaining unit. The parties are seeking an agreement for 2007 and 2008.

THE FINAL OFFERS

There are only two matters remaining in dispute between the parties, the County's drug and alcohol testing proposal and the Union's meal reimbursement proposal.

DISCUSSION

The parties' previous collective bargaining agreement, the relevant terms of which are to be maintained in the agreement in issue, provided, at section 2.2H, that the "determination and enforcement of reasonable rules and regulations and the right to make reasonable changes to such rules and regulations and to enforce such changes, ..." are management prerogatives. The County, reasoning that a comprehensive drug and alcohol policy such as it has proposed is both a work rule covered by those terms, and a mandatory subject of bargaining covered by the interest arbitration provisions of the Municipal Employment Relations Act, proposed the policy, in the bargaining for a new contract, as a work rule not be included in the collective bargaining agreement. It adopted this strategy because the Union did not agree to the policy as a provision of the collective bargaining agreement; and, anticipating that if the County enacted the policy as a work rule after a collective bargaining agreement was reached, the Union would file a grievance contending that it was not reasonable.

In the Arbitrator's view, the County's position raised a fundamental issue which is whether, under the terms of the Municipal Employment Relations Act, it is a proper exercise of the Arbitrator's authority to award terms that will be affected by the provisions of a collective bargaining agreement, but are not included within such an agreement. As indicated, that concern was addressed by the Commission and the Arbitrator was ordered to proceed.

The Union has a number of objections to this policy proposal. In the judgment of the Arbitrator, the Union's proposal should be selected because the County's strategy is to avoid both subjecting the policy to examination that might occur if the policy were subject to a grievance challenging its reasonableness, and negotiating out of an apparent impasse.

One of the Union's objections emphasizes the following terms of the policy:

> THIS POLICY IS SUBJECT TO CHANGE BY COUNTY ACTION WITH OR WITHOUT PRIOR NOTICE TO EMPLOYEES. MODIFICATIONS, ADDITIONS, CORRECTIONS OR OTHER POLICY CHANGES WILL BE COMMUNICATED BEFORE ENFORCEMENT BY THE COUNTY. IN ADDITION, COUNTY POLICY IS SUBJECT TO APPLICABLE STATE OR FEDERAL LAWS WHICH MAY GOVERN COUNTY ACTION. THE PROVISIONS OF THIS POLICY ARE IN ADDITION TO ESTABLISHED COUNTY PERSONNEL POLICIES.

The County asserts that, as a work rule, the reasonableness of any changes could be addressed in the grievance procedure. Indeed, the Arbitrator, unlike the Union, does not read the

above-quoted terms to prohibit such grievances. Rather, these terms merely specify the process by which the County could modify the policy. However, if the policy were adopted as proposed by the County, the reasonableness of the work rule in its present form, unchanged, would have the status of agreed upon terms. In other words, the only forum for contentions regarding the proposed rule seems to be the instant final-offer, all-disputed-items interest arbitration.

The Arbitrator is convinced that the conventional and time-honored process for resolving such contentions about the reasonableness of a work rule, which remains available under this Award, is to be preferred. The County maintains the right under the collective bargaining agreement to enact the policy as a work rule, and the Union may challenge it in the grievance procedure, in whole or in part, upon enactment or upon its application. That process focuses on the rule and allows for remedies beyond the parties' proposals.

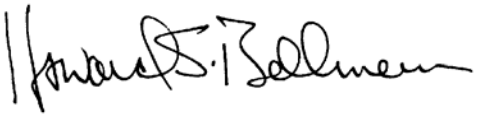
In terms of the factors specified for interest arbitration determinations at Sec. 111.70(4)(cm)(7) of the Municipal Employment Relations Act, the Arbitrator relies upon factor (j) which refers to considerations, "normally and traditionally" applied in, "voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise . . .." There is every reason to believe that in the development of "extra-contractual" work rules the prevalent strategy of employers and unions in the public and private sectors has been unilateral adoption as a management prerogative to be challenged by the union through a grievance procedure.

Respecting the remaining item in contention, the Union's proposal would merely place in the collective bargaining agreement the meal reimbursement policy that has been in effect. This is clearly not a matter of substantial controversy between the parties.

AWARD

On the basis of the foregoing, and the record as a whole, it is the decision and Award of the undersigned Arbitrator that the final offer of the Union should be, and hereby is, selected.

Signed at Madison, Wisconsin, this 28th day of December, 2007.



Howard S. Bellman
Arbitrator