STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In the Matter of the Interest Arbitration Between	
STEVENS POINT HOUSING AUTHORITY	
	Case No. 2
and	No. 67837
	INT/ARB-1140
STEVENS POINT HOUSING AUTHORITY EMPLOYEES LOCAL 209, AFSCME, AFL-CIO	[Dec. No. 32857-A]

APPEARANCES:

Ruder Ware by **Dean R. Dietrich**, appearing on behalf of the Stevens Point Housing Authority.

Houston Parrish, Staff Representative, appearing on behalf of the Stevens Point Housing Authority Employees Local 309, AFSCME, AFL-CIO.

JURISDICTION:

On July 25, 2006, the Wisconsin Employment Relations Commission, pursuant to Section 111.70 (4)(cm) (6) and (7) of the Municipal Employment Relations Act, appointed the undersigned to serve as the arbitrator in a dispute between the Stevens Point Housing Authority, hereinafter referred to as the Employer or the Authority, and the Stevens Point Housing Authority Employees Local 209, AFSCME, AFL-CIO, hereinafter referred to as the Union. A hearing was held in Stevens Point, Wisconsin on April 13, 2010. At that time, the parties, both present, were given full opportunity to present oral and written evidence and to make relevant argument. Post hearing briefs and reply briefs were filed in this dispute, the last of which was e-mailed to the arbitrator at the end of the work day on November 5, 2006.

BACKGROUND:

This is the initial collective bargaining agreement between the Stevens Point Housing Authority, hereinafter referred to as the Employer or the Authority, and the Stevens Point

Housing Authority Employees Local 209, AFSCME, AFL-CIO, hereinafter referred to as the Union. The Authority is an independent housing authority which funds its operation through federal grants received from HUD and receipts from rent and vending machine operations. The collective bargaining unit covered in this proceeding consists of all regular full-time and regular part-time employees of the Authority, excluding executive, managerial, supervisory and confidential employees. There are approximately eight employees in this bargaining unit.

The parties exchanged their initial proposals and bargained on matters to be included in this collective bargaining agreement. On March 10, 2008, a petition requesting the Commission to initiate arbitration was filed, however. Prior to that date, a member of the WERC staff conducted an investigation which reflected the parties were deadlocked and by August 20, 2009, the parties submitted their final offers to the investigator. On January 12, 2010, the Wisconsin Employment Relations Commission, pursuant to Section 111.70 (4)(cm) (6) and (7) of the Municipal Employment Relations Act, appointed the undersigned to serve as the arbitrator in this dispute. Hearing was set for March 18, 2010 but was adjourned to April 1, 2010 due to the unavailability of a hearing witness. On March 31, 2010, the arbitrator was notified that the parties had reached a tentative agreement and April 1, 2010 hearing was cancelled. On April 15, 2010, the arbitrator was notified that the tentative agreement was not ratified and hearing was ultimately rescheduled for August 13, 2010.

The hearing was held in Stevens Point, Wisconsin on August 13, 2010. At that time, the parties, both present, were given full opportunity to present oral and written evidence and to make relevant argument. Post hearing briefs and reply briefs were filed in this dispute, the last of which was received by the Arbitrator by e-mail on November 5, 2010.

THE ISSUES:

A significant number of issues remain, including a dispute over wages and disputes over language and/or benefits contained in Articles 4, 6, 7, 8, 9, 10, 11, 13, 15, 17 and 20. As a result, the issues contained in the final offers will be addressed separately in the section identified as positions of the parties and discussion below.

STATUTORY CRITERIA:

The arbitrator is directed to consider the factors cited in Wis. Stats. 111.70 (4) (cm) 7; 7g, and 7r in deciding this dispute. Accordingly, the following decision is issued having considered these factors and the evidence and arguments advanced by the parties as they relate to these factors.

POSITIONS OF THE PARTIES AND DISCUSSION:

- ***Comparables***

The Parties' Positions: Addressing what it describes as its unique funding mechanisms and limitations, the Employer asserts that the lack of unionized, independent housing authorities like it in the State makes it difficult to find an appropriate external comparable pool and proposes that unionized independent authorities in northern and western Wisconsin and bargaining units in city or county housing authorities geographically near Stevens Point as the most appropriate comparables. As support for its proposal, it cites several arbitration decisions in which arbitrators concluded that geographic proximity, similarity in size and similarity in character are appropriate actors to consider when choosing external comparables.

The Employer continues that given the difficulty in finding an appropriate set of comparables, three groups of comparables should be considered. In its first group, the Employer proposes that Ashland, Superior and Trempealeau County Housing Authorities comprise the primary set of comparables since they are unionized, independent housing authorities similar in character to it. The second group it proposes includes the Wausau and Portage County Housing Authorities since they are unionized; geographically near, and share the same labor market as the Employer. The third group it proposes consists of non-unionized housing authorities in Eau Claire, Kaukauna, La Crosse, Marshfield, Oshkosh and Rhinelander which it suggests should be used solely for gaining background information since they are not influenced by the Madison and Milwaukee labor markets.

The Union, also referring to the limited number of represented housing authorities in the State proposes all represented housing authorities, including those in the cities of Ashland, Beloit, Superior and Wausau and the counties of Dane, Eau Claire, Portage and Trempealeau, as an appropriate comparable pool. It, too, cites several arbitration decisions which it concludes

support this proposal. The Union also proposes that the parties' final offers be compared with represented employees in Stevens Point, Wisconsin Rapids, Marshfield and Wausau and with unrepresented housing authorities in Wisconsin Rapids and Marshfield based upon similar labor market factors.

The Employer objects to the including the Stevens Point bargaining units; the Beloit, Dane County, Eau Claire County and Wisconsin Rapids Housing Authorities, and the represented office and maintenance employees in the cities of Marshfield, Wausau and Wisconsin Rapids and in Portage County as comparables. As support for its position, it declares that these proposed entities are not similar in size or character and that they lack geographic proximity and/or similar funding resources.

Discussion: The undersigned agrees with the parties that finding an appropriate set of comparables based upon traditional considerations such as geographic proximity, similarity in size and similarity in character is difficult in this dispute since she also agrees that the most appropriate pool of comparables should consist of unionized, independent housing authorities due to their unique funding resources[1]. The evidence establishes, however, that none of these unionized independent housing authorities share the same labor market and that few are similar in size or character. Consequently, the value of any external comparisons, except as they reflect rates of pay and the types of benefits generally earned by employees performing similar jobs, is limited. For this purpose, the independent unionized housing authorities in the cities of Ashland and Superior and in Trempealeau County have been considered since the parties agree these three entitles should be considered as comparable and the represented authorities in City of Wausau and in Portage County have been considered since they share the same labor market with the Employer.

Further, while some consideration was given to the area labor market as it affects the reasonableness of the proposals, the Union's proposal that the City of Wisconsin Rapids be a comparable is rejected even though an arbitrator may have recently recognized it as a

[1] Although the Union correctly states that the statutory criteria addressing comparables does not mention "funding sources" as a comparables criterion, the funding source does affect the selection of comparables in this dispute since the employer's ability to pay for wage increases and benefits is dependent upon whether the authority can independently generate enough income to offset its expenses and not taxation.

comparable to the city of Stevens Point. While the factors in 111.70 (4)(cm) 7 indicate that comparisons of wages, hours and conditions of employment of those involved in the arbitration may be made with employees performing similar services and with employees generally in public employment in the same community and in comparable communities, the better comparisons, if they can be made, are with employees performing similar services in similar operations since these comparisons indicate the wages and benefits provided to employees who perform duties that are more likely to be the same type of duties.

- ***Wage Proposal***

  The Final Offers:

  The Employer submits an Appendix A which sets the wage rates as follows:

	2008	2009
Sec 42 Occupancy/Receptionist	$15.16	$15.62
Resident Services Coordinator	$16.52	$17.02
Maintenance 2	$15.29	$15.74
Maintenance 1	$16.04	$16.04
Occupancy Specialist	$15.16	$15.62

  The Union submits an Appendix A which states that between January 16, 2007 and December 31, 2007 there is no wage adjustment in addition to any that has been previously paid. It then proposes the following rates effective January 1, 2008 and January 1, 2009.

	2008	2009
Maintenance Worker 1	$16.04	$16.46
Maintenance Worker 2	$15.79	$16.46
Occupancy Specialist	$15.66	$16.33
Sec 42 Occupancy/Receptionist	$15.66	$16.33
Resident Services Coordinator	$17.02	$17.73

The Parties Positions: The **Employer** states that although there are many issues in dispute between the parties only some of them are significant and that the biggest dispute between them is over wages. Continuing, it notes that independent housing authorities are unique organizations with unique funding mechanisms and limitations which make them different from other municipal organizations; declares that its unique nature makes wage

comparisons difficult and urges that job descriptions rather than job titles more appropriately define the job comparisons. It adds that these comparisons as well as comparisons made with wages paid similar private sector positions; the local economic conditions and the fact that it has retained many long-term employees show that its wage proposal is not only reasonable but more reasonable than the Union's. The Employer also argues that the fact that the parties are seeking an initial collective bargaining agreement must be considered in this dispute and arbitral precedent indicates that wage and benefit levels a union seeks cannot be gained all at once.

Characterizing its wage offer as a 3% increase in wages in both 2008 and 2009 while the Union's proposal reflects an increase between 6.1% and 6.4% in 2008 and a 4.2% to 4.3% increase in 2009 and its total package cost as 7.4% in 2008 and 2.16% in 2009 while the Union's total package cost is 13.69% in 2008 and 3.22% in 2009, the Employer asserts that the unionized external comparables proposed by both parties support its offer.[2] It also declares that the percentage increase it offers is more reasonable when compared with the increases received in similar private sector positions and when the local economic conditions are considered.

Specifically referring to the wage rates its employees would be paid under its proposal and comparing it to the wage rates paid employees among the comparables, the Employer argues that it is important to remember that, under both its proposal and the Union's, the rate increases would be paid immediately while the external comparables make employees wait significant amounts of time before reaching a maximum rate. Further, it declares that although its proposal will not make it a wage leader among the comparables with respect to maximum rates, it is a leader with respect to starting/probationary rates which means that its employees make more than those in comparable positions for some length of time. In addition, the Employer objects to the Union's wage rate comparisons, asserting that the job descriptions for

[2] Employer Exhibits 8 and 9 slightly contradict these assertions. These exhibits, actual costing summaries, indicate that the Employer's wage rate increases represent 3.0% in 2008 and 2.6% in 2009 while the Union's wage rate increases represent 6.0% in 2008 and 4.1% in 2009 and that the Employer's total package cost is 7.4% in 2008 and 2.16% in 2009 while the Union's total package cost is 13.69% in 2008 and 3.22% in 2009.

the positions the Union identifies as comparable show some are not doing the same work; are not in authorities which are comparable, and are not funded in the same manner.

Referring to the wage rate for its maintenance positions, the Employer states that even though both offers identify a maintenance I and a maintenance II position the maintenance I position is not filled so only maintenance II comparisons should be made. It also asserts that many of the tasks described in the maintenance II position are being contracted out and are no longer being performed by maintenance II staff. Further, it declares that the employees in its operation are responsible for fewer units than their counterparts in other authorities and urges that these factors be taken into account when making the wage comparisons.

In addition to arguing that its wage comparisons more accurately reflect comparable maintenance positions and that the Union's wage comparisons include positions that do additional duties not required of these maintenance employees, the Employer maintains that its proposed wage rates for its maintenance positions compare more favorably with the rates paid such positions by private sector employers and employers in other public sector entities. The Employer also declares that its proposal is more reasonable given the financial crisis that has plagued the nation for most of the term of this collective bargaining agreement. Citing the interest and welfare of the public criterion, the Employer argues that the public interest and welfare is better served by its offer since unemployment has been at a record high; since all comparables have experienced unemployment, layoffs and plant closings; since there is no evidence of employee turnover that would justify large wage increases, and since the consumer price index supports its final offer.

Stating that the record establishes that the employees are currently being paid the 3% wage increase the Employer offers since the parties agreed that the 3% increase in wages given the unrepresented employees would be the minimum the represented employees would receive, the **Union** asserts that even though its proposal is higher than the Employer's the wage rates it seeks are still considerably below the rates received by employees performing similar work in comparable labor markets and represented housing authorities. Further, the Union challenges the Employer's assertion that the maintenance workers do not perform the tasks contained in their job descriptions and declares that the Employer's position is "clearly one of

desperation" since the workers do maintain the facilities and perform the work described in their job descriptions.

Continuing, the Union declares that initial bargains, especially when a unit's wages are not comparable, are frequently higher in percentage terms than either the settlement pattern among internal or external comparables or the cost of living measures and cites several arbitration decisions in support of its assertion. Further, stating that the greatest and greater weight factors cited in 111.70 (4)(cm) 7 are not applicable to this dispute since the evidence establishes that the Employer is economically stable and has had profits in 2006 and 2007 and since its audits show not only that the Employer's revenue has exceeded its expenses but that it has a reserve fund in excess of $3,790,000, the Union asserts that the money it seeks is slight compared to the Employer's available revenue and its annual budget of $1,755,500.

Further, the Union rejects the Employer's assertion that its proposal is supported by the interest and welfare of the public criterion declaring that the Employer does not rely upon tax dollars for its operation and has failed to show how its revenue resources are remotely relevant to this criterion. It also rejects the Employer's argument that the Union is "trying to build Rome in a day" declaring that if it were trying to do anything more than seek a "modest, fair, and justified wage rate", it would have proposed far higher wage rates. In addition, charging that the Employer "completely glosses over the fact that the Union proposes no wage catch-up in 2007", the Union argues that the wage lift of $1.02 to $1.04 over three years which results in an increase of 34 cents per year is an effort to help close the wage disparity with the comparables rather than an attempt to "build Rome in a day".

The Union continues that since this is an initial collective bargaining agreement it is more appropriate to make wage rate comparisons than across the board wage increase comparisons since the employees are attempting to "catch up" and it cites a 1996 arbitration as support for its assertion. Further, it declares that the Employer's emphasis on the comparable minimum wage rates is misplaced since there is no wage progression in either offer and since the maximum wage rate paid an employee reflects where most employees spend their career.

Finally, the Union urges that the Employer's private sector comparisons relating to the maintenance staff be rejected since the comparisons focus on custodians rather than

maintenance positions and since there is no evidence establishing job comparability. It also urges it be rejected since it includes a comparison of temporary employees with permanent employees and since there is no evidence as to whether the comparisons are unionized employees.

Discussion: No argument was made that the greatest weight or greater weight criteria are factors to be considered in this dispute. Further, there was no showing that there has been any enactment which limits the expenditures that may be made or revenues that may be collected by the Employer nor that the economic conditions, either locally or nationally, seriously impacts either final offer. Consequently, neither criterion is considered a factor in this dispute. It is also concluded that the interest and welfare of the public criterion does not favor either offer even though the Employer argues that based upon the economic downturn the nation has experienced the interest and welfare of the public is better served by its offer. A review of the final offer costings indicates that the actual dollar difference between the two offers is not substantial and that any difference can be covered given the overall profits shown by the Employer's audits.

There are currently 8 employees in this bargaining unit and, during 2008 and 2009 they received the 3% wage increase the Employer has offered since both the Employer and the Union agree that the 3% increase would be the minimum the employees were likely to receive. While the Employer was not obligated to grant the employees this increase prior to reaching a final contract, granting the increase does not make the Employer's offer more reasonable. This is the initial collective bargaining agreement between the parties and its is not unreasonable to expect some catch-up to occur, particularly if the wage rates paid employees in this bargaining unit are significantly lower than rates paid employees performing similar work in similar operations. Consequently, the question to be answered is whether the 3% across-the-board wage increase established by the settlement pattern among independent unionized housing authorities and by the increases granted other employees performing similar work in the comparable labor market is sufficient to allow these employees the opportunity to catch-up. Clearly, the answer is "no".

For purposes of determining the reasonableness of the two proposals, the undersigned considered the proposed wage rate increases, rather than the percentage increases, to judge

the accuracy of the Employer's assertion that it is a wage leader when comparisons are made to the starting rates of employees performing similar work; to evaluate its argument that its employees receive a higher rate pay than others performing similar work earlier than those employees and for a longer period of time, and to determine whether there is a need for "catch-up".[3]

A comparison of the wage rate proposals for office staff with the minimum rates paid employees performing similar work among the three authorities considered comparable does not support a finding that the rate the Employer offers makes it a wage leader at this level and does show that there is a need for "catch-up". Further, when the maximum rates are compared with the rates proposed by either party, it becomes apparent that Employer's proposal does even less to address the wage rate disparity, particularly when it is considered that two of the three office employees have worked for the Employer for more than fifteen years and would be at the maximum rate paid employees at both the Superior and Trempealeau Housing Authorities. This finding is based upon the following comparisons:[4]

Office Staff	**2007**	**2008**	**2009**
Superior	16.23/17.43*	16.72/17.95	17.22/18.49
Trempealeau	13.92/16.33	14.48/16.99**	14.92/17.50
Employer' Proposal	14.72	15.16	15.62
Union's Proposal	14.72	15.66	16.33

*In its exhibits, the Employer stated that it used the probationary number as the minimum wage rate but the contract states that probationary employees receive 20 cents per hour less while on probation. This means that the starting rate would be $16.03 and not $13.60 as reflected in the exhibit.

[3] Although the Employer offers the same percentage others among the comparables received and, in fact, paid its employees that percentage increase even though it was not required to do so, a percentage increase comparison is less appropriate when considering an initial collective bargaining agreement given that the need for "catch-up" may exist.

[4] Only the Employer's exhibits were used for these comparisons since the Employer argued that the Union's comparisons inappropriately considered compared the work done by its employees with job descriptions of employees who did not perform the same duties.

**The minimum and maximum rates represent the rates after the lifts occurred in both 2008 and 2009.

The same is true when the maintenance staff rates are compared.

Maintenance Staff	**2007**	**2008**	**2009**
Ashland	14.75/16.08	15.19/16.56	15.65/17.06
Superior	14.85/21.53*	15.31/22.18	15.76/22.84
	14.86/15.58	15.31/17.02	15.76/16.53
	14.86/19.29	15.31/19.87	15.76/18.92
Trempealeau	14.21/16.62**	14.78/17.29	15.23/17.81
	14.79/17.19	15.39/17.88	15.85/18.42
Employer's Proposal	14.72	15.16	16.52
Union's Proposal	14.72	15.66	16.33

*The Employer states it used the laborer position for rate comparisons. This position is paid significantly less than the rates paid the maintenance mechanics, consequently the numbers reflected above are the maintenance mechanic rates. It is noted, however, that even if the laborer rate was used for this comparison, the Authority's maintenance workers would still earn less.

** The Employer's wage rate comparisons compare the Maintenance I position with the rate it will be paying its Maintenance II staff. The second set of comparisons reflects a comparison with the maintenance II staff at the Trempealeau Housing Authority.

In addition to finding that the wage rate offered by the Employer was less reasonable than the Union's offer based upon a comparison of minimum and maximum rates, a comparison of the offered rates with the rates the maintenance employees would be paid after three years of service and after thirteen years of service was made since three of the five maintenance employees have worked for the Employer for at least four years and two have worked for the Employer for fourteen years or more. This comparison also shows that the Employer's offer,

while reasonable as a percentage increase, failed to address the wage disparity between those who work for this Employer and those who perform similar work among the external comparables.

Given the fact that there is a significant wage rate disparity between the wages earned by the employees in this bargaining unit and employees performing similar work among the external comparables, it is concluded that the Union's wage rate proposal is more reasonable.

- ***Language Proposals***

While the parties included a substantial number of language proposals in their final offers, the Employer, consistent with its assertion that the wage dispute is the biggest issue in dispute between the parties, argued mostly that its wage proposal was more reasonable and gave only passing comment on the language disputes in its brief. In it reply brief, it more thoroughly addressed the parties differences concerning language since the Union identified several language proposals as major issues in dispute between the parties in its brief.

In its general comments, the Employer declares that a number of the language items it has proposed are designed to address the current working relationship between the parties and to clarify operational concerns it has. Identifying Articles 6, 7, 9, 10, 13, 15 and 17 as articles in which it has proposed changes, the Employer asserts that its proposals effectively address how employees are to function at the Authority and that there is nothing offensive in them. As proof of its assertion, it states that the language it proposed in Article 9 clarifies how vacation days are to be earned and selected and identifies the number of employees that can be off at a designated time and that Article 10 addresses the conditions for using sick leave; how sick leave will be administered and delineates the benefit that would exist at retirement.

Further, the Employer charges that the Union's final offer proposed many changes to the current benefits Authority employees receive and that even though this is an initial collective bargaining agreement, there is a status quo and the Union should be subject to the same test as others in attempting to change the status quo. In support of its position, it cites several arbitration decisions in which arbitrators have held that the party seeking a change from the status quo must show a legitimate problem exists that requires attention and that the disputed proposal reasonably addresses the problem. Further, it characterizes Union proposals in Article

6, 9, 13 and 15 as a change from the status quo and an improvement for the employees and declares that the Union has offered no "quid pro quo" for these changes and should not be allowed to receive these significant changes because it is a new collective bargaining agreement.

The Union, on the other hand, declares that most of the benefits the parties have agreed to codify the status quo that existed prior to representation and that the benefits sought in the final offers, with the exception of a few, are benefits that have been established by the policies and practices of the Employer. In addition, it posits that the status quo is relevant to negotiating an initial contract; cites several arbitration decisions which it asserts support its position and argues that the Employer's proposals do not clarify practices between the parties but deviate from the status quo.

Both parties agree, however, that some of the differences in their language proposals are minor and of little significance to the outcome of this dispute. Nonetheless, since they are included in the final offers they have been considered, with the exception of the proposals which simply changed the word from Employer to Housing Authority or implemented to ratified, etc., in determining the reasonableness of the final offers. Following, article by article are the changes which represent more than a simple word change and a finding regarding the proposals.

- ***Article 4***

The Final Offers: Both parties propose changes to the language already agreed to in this article. Following is the Employer's proposal:

B. Termination of Seniority: . . . .

1. An employee who is able to work fails to do so for two (2) days unless due to circumstances beyond the employee's control or is on excused absence by the Housing Authority;

F. Notice of Recall. Employees who are eligible for recall shall be given fourteen (14) days notice of recall . . . .

H. Longevity. For longevity and other benefits such as insurance, vacation, etc., part time employees shall receive such benefits on a prorated basis.

The Union proposes changes to this language as follows:

B. Termination of Seniority: . . . .

1. An employee who is able to work fails to do so for two consecutive (2) days unless due to circumstances beyond the employee's control or is on excused absence by the Housing Authority;

F. Notice of Recall. Employees who are eligible for recall shall be given fourteen (14) calendar days notice of recall . . . .

H. For longevity and other benefits such as insurance, vacation, etc., regular part time employees shall receive such benefits on a prorated basis.

Discussion: Interestingly enough neither party identified these proposed language changes nor argued in support of the changes they proposed. Since they have not, it is concluded that they believe their proposals and positions with respect to these changes to be somewhat similar and, therefore, not significant to a finding of reasonableness regarding the final offers. In analyzing their respective positions it is evident that two of the three proposals are, in fact, minor since the only difference between them is whether item 1 in paragraph B should state two (2) days or two (2) consecutive days and whether paragraph H should contain the words fourteen (14) days or fourteen (14) calendar days. The third change, however, is more problematic even though the language is the same since the Employer proposes titling the paragraph "longevity". Not only does this proposal result in two paragraphs on longevity in this article but it is apparent that the parties intend this second paragraph to refer to the proration of more benefits than just longevity. Thus, for clarity purposes the Union's proposal is more reasonable. The same is true with respect to the other two proposals as well since the language the Union proposals more clearly defines the parties' intent with respect to days. The Union's proposal is also more reasonable when it is compared with the authorities deemed comparable even though language similar to the Union's proposal is not contained in their contracts. This finding is based upon the fact that the Ashland Housing Authority contract defines the length of time as a "period of one week".

- ***Article 6***

  The Final Offers:

Both parties propose amendments to the language previously agreed to in Article 6. The Employer proposes the following language:

> Union business shall be transacted outside of normal working hours, unless mutually agreed otherwise by the parties. Employees shall be paid their normal wages and benefits for time spent during normal working hours where they are required to attend grievance sessions, hearing and bargaining sessions. In the event an employee is called as a witness for a hearing which is scheduled during normal working hours, the employee shall be paid for the time required to be at the hearing. All employees, when acting in an official capacity for the Union during normal working hours, shall first obtain permission from their immediate supervisor prior to their leaving their work area or commencing any such activity. One union representative shall be paid for attending a hearing that is scheduled during normal working hours.

The Union, however, proposes the following language:

> Union business shall be transacted outside of normal working hours, unless mutually agreed otherwise by the parties. Employees shall be paid their normal wages and benefits for time spent during normal working hours attending grievance sessions, hearings and bargaining sessions. In the event an employee is called as a witness for a hearing which is scheduled during normal working hours, the employee shall be paid for the time required to be at the hearing. A grievant and steward shall be paid for the duration of the grievance or prohibited practice hearing. One union representative shall be paid for the duration of an interest hearing.

Discussion: While the parties identify the fact that they have proposed the above-stated changes, neither provides evidence or argument to support its respective position. Instead, Union identifies this dispute as a minor issue in dispute between the parties and the Employer simply characterizes the Union's proposal as a change in the status quo. In addition, a review of the comparables indicates that none of them have bargained language similar to either proposal although two of the three comparables have agreed that time spent in the conduct of grievances and negotiations shall not be deducted from the pay of at least one Union representative. Consequently, given the fact that both parties propose a union activity paragraph and allow for union activity; the fact that the Employer provided no evidence to show that the Union's proposal was a change in the status quo and the fact that there is no evidence to show that either proposal is more reasonable, it is concluded that neither offer is significant to determining the reasonableness of the final offers although the Employer's requirement that

an employee acting in an official Union capacity during normal working hours obtain permission from their immediate supervisor prior to leaving the work area is a reasonable requirement since it gives the Employer notice when an employee will be leaving the work area and allows the Employer to make adjustments as needed regarding the assignment of duties.

- ***Article 7***

The Final Offers: Both parties propose a change to the language agreed to in Article 7(E), Step 2. Following is the Employer's proposal:

> E. Steps in Procedure: . . .
>
> Step 2. If the grievance is not settled at the first step, the grievance shall (sic) submitted to the department head within ten (10) working days. A written grievance shall contain the name and position of the grievance, a clear and concise statement of the grievance, the issue involved, the relief sought, the date the incident or violation took place, the specific section of the Agreement alleged to have been violated, and the signature of the grievant or steward and the date. The department head shall meet with the employee, steward, with or without the Union representative at a mutually agreeable time and render his/her decision, in writing, within ten (10) working days after said meeting. If the Housing Authority does not render a decision in writing, the parties agree that the Housing Authority has denied the grievance and the Union may proceed to arbitration.

The Union's proposal is as follows:

> E. Steps in Procedure: . . .
>
> Step 2. If the grievance is not settled at the first step, the grievance shall be submitted to the department head within ten (10) working days. A written grievance shall contain the name and position of the grievance, a clear and concise statement of the grievance, the issue involved, the relief sought, the date the incident or violation took place, the specific article of the Agreement alleged to have been violated, if any, and the signature of the grievant or steward and the date. The department head shall meet with the employee and/or Union representative at a mutually agreeable time and render his/her decision, in writing, within ten (10) working days after said meeting.

Positions of the Parties: Identifying this as a major issue in dispute between the parties, the Union objects to the Employer's inclusion of the sentence at the end of the paragraph which states that if Employer does not render a decision in writing the parties agree that the grievance has been denied and the Union may proceed to arbitration. In support of its position, it declares

that written reply will potentially facilitate resolving a grievance if the Employer explains its position and that a written reply clearly triggers the timeline for proceeding to the next step of the grievance process and argues that the Employer's proposal simply allows it to refuse to respond to the grievance and sets up the potential for the Union to miss a filing deadline. Continuing it states that since the purpose of the grievance process is to resolve problems, allowing the Employer to remain silent ignores that purpose. Further, in its exhibits, it provides evidence that the language the Employer proposes is not included in most of the grievance procedures among the comparables.

The Employer, however, declares that its proposed sentence is not unheard of in collective bargaining agreements; that the Union's argument regarding a potentially missed deadline is an "extreme argument", and that at least one of the comparables has similar language. It also argues that this proposal should not be a defining proposal in this arbitration.

Discussion: The Arbitrator agrees with the Employer that the sentence it proposes is not unheard of since she has seen it in other collective bargaining agreements. The Arbitrator also finds, however, that the Employer provided no evidence as to why this language should be included and finds that two of the three comparable authorities and all of the contracts for the bargaining units in the City of Stevens Point do not include the sentence proposed by the Employer. Consequently, although the Arbitrator would not characterize the difference between the proposals as a major issue, the evidence in the record does not support the Employer's proposal.

- ***Article 8***

The Final Offers: Both parties propose changes to the language agreed upon in Article 8.B. The Employer proposes the following paragraph:

> B. Regular Part Time Employees: Regular part time employees shall receive holidays off with pay on a prorated basis. The proration shall be determined on the number of hours worked in the previous year as a percentage of 2080 hours on a weekly basis for employees employed less than one year.

The Union's proposal is as follows:

B. Regular Part Time Employees: Regular part time employees shall receive holidays off with pay on a prorated basis. The proration shall be determined on the number of hours worked in the previous year as a percentage of 2080 hours, or on a weekly basis for employees employed less than one year.

Discussion: Again, while the language is similar, there is potentially a difference in how the language could be administered. Since the parties do not argue their respective positions, however, perhaps there is no difference in the parties' intent and the Arbitrator is making a mountain out of a molehill. Nonetheless, after reading the two provisions, the Arbitrator finds that the Union's proposal again defines the method to be used in calculating holidays for regular part-time employees who have been employed for less than a year.

- ***Article 9***

The Final Offers: Both parties propose amendments to the agree-upon language in Article 9. The Employer proposes the following language:

A. Annual: . . . .

Regular Part Time:

Regular part time employees shall receive the above vacation with pay on a prorated basis. The proration shall be determined on the number of hours worked in the previous year as a percentage of 2080 hours. All vacation days must be used within the anniversary year or they expire.

B. Seniority. Employees may pre-select up to one week of vacation on a rotating seniority basis for the coming year by December 31 of each year. Vacation requested after that will be granted on a first come first served basis and must be made in writing. Employees shall request vacation at least three (3) weeks in advance where the employee is requesting forty (40) or more hours of vacation; two (2) weeks in advance where the employee is requesting nine (9) to thirty-nine (39) hours of vacation and one (1) week in advance where the employee is requesting eight (8) hours except in exigent circumstances.

C. Vacation will be scheduled within the following limitations:
   1. Only one (1) Maintenance worker will be authorized vacation at a time.
   2. Only one (1) Maintenance Custodian will be authorized vacation at a time.
   3. Only one (1) position assigned to work at the Briggs Ct. office will be authorized vacation at a time.

The Union's proposals are as follows:

A. Annual: . . . .

Regular Part Time
Regular part time employees shall receive the above vacation with pay on a prorated basis. The proration shall be determined on the number of hours worked in the previous year as a percentage of 2080 hours. Employees earning less than 3 weeks vacation per year may carry up to 1 week of vacation over into the following year; otherwise, any vacation not used by the end of the year shall be paid out.

B. Employees on Sick Leave. Any employee carried on the payroll while ill (i.e., using sick leave or FMLA) shall be entitled to use the same vacation with pay to which the employee would be entitled if not ill.

Seniority. Employees may pre-select up to one week of vacation for the coming year by December 31 of each year based on seniority. Vacation requested after that will be granted on a first come first served basis. Employees shall give reasonable notice for vacation requests. Except in exigent circumstances, at least two weeks notice will be given for a vacation request of 5 or more working days.

Positions of the Parties: The Employer states that both proposals contain different language regarding vacation carryover and/or payout for part-time employees; scheduling limitations, and notice requirements and argues that its proposals address current concerns it has with vacation scheduling and notice requirements which will allow it to run more efficiently. Addressing its proposal regarding scheduling limitations, the Employer declares that its proposal is reasonable and justified since it is a small employer with only a few people in each type of job classification and since having more than one employee in any type of classification on vacation at the same time can lead to problems for the Authority. As support for its position, it cites testimony from the Executive Director in which he indicated the Authority has run into problems when an employee has been on vacation and another has called in sick.

It continues that given this problem it has shown that there is a need for this proposal. Further, responding to the Union's assertion that its proposed language is neither standard nor required, the Employer declares that not only does it need to effectively manage its workforce but that its proposal is supported by similar language among the external comparables. As proof, it cites the fact that the Ashland Housing Authority contract provides that not more than one employee can be on vacation at any time; that the Trempealeau County Housing Authority

agreement states that the "number of employees on vacation at any time shall be determined by the executive director," and that the collective bargaining agreements in the City of Stevens Point limit the number of employees who can be on vacation at any one time.

The Employer also argues that its proposal regarding notice requirements is more reasonable and declares that requiring employees to give different lengths of notice for different lengths of vacation requests gives it adequate notice when an employee is going to be on vacation so that it can schedule around that employee being gone. Further, it denies that its proposal is "unreasonable and arbitrary" as asserted by the Union and maintains that there is a valid operational need for its proposal. It also denies the Union's charge that its proposal has no flexibility and cites the language "except in exigent circumstances" as proof that there is latitude in the notice requirement proposal. In addition, it asserts that its proposal is supported by the external comparables in that the Ashland Housing Authority requires 2 week, 2 day and 1 day notices and that the Transit collective bargaining agreement with the City of Stevens Point requires employees to provide a five day notice if they wish to use 10 days of their vacation allotment in periods of less than one full week.

Further, addressing the Union's proposal regarding the carry over of vacation time for regular part-time employees and that any vacation not used by the end of the year be paid out, the Employer declares that the Union's proposal is a change in the status quo and is not supported by the external comparables. It continues that the Union's argument that without carryover, part-time employees are barred from ever taking a two week vacation ignores the fact that part-time employees already have time off during each week and that a person not working full-time is not entitled to the same benefits as a full-time employee.

The Employer also argues that the Union's proposal does not have overwhelming support among the external comparables. As proof, it states that the Ashland Housing Authority only allows regular full-time employees to carry over vacation and its agreement is silent as to payout for vacation not used in a given year and that the Superior Housing Authority does not allow for payout of leave not taken in a given year. It also states that the clerical, DPW and transit agreements with the City of Stevens Point only allow employees who are eligible for at least two

weeks of vacation to carry over any vacation into the subsequent year and that it can only be done with prior management approval.

The Union, however, argues that its carryover proposal is a significant issue since an employee who works part-time is barred from ever taking a two-week vacation without a carryover provision and cites the fact that an employee who works 50% time could work for twelve years and still only earn 7.5 days vacation per year as support for its proposal.

Continuing, it charges that the Employer's proposal regarding a notice requirement is arbitrary and that its proposal regarding the scheduling of vacations is neither standard nor required. Specifically referring to the Employer's notice requirement the Union declares that the Employer's proposal allows for no flexibility and ambiguously states that pre-December 31 vacation selection shall be on a "rotating seniority basis" and declares that selection is either by seniority or is on a rotating basis. It adds that if the Employer means that selection shall initially be by seniority and junior employees will first selection in the years to come under its proposed language the proposal is "patently unfair to senior employees."

Addressing the Employer's vacation scheduling provision, the Union states that this proposal deviates from the current policy. Further, it objects to the Employer's proposal stating that if the employer is able to allow multiple employees off on vacation without adversely affecting operations there is no reason to not do so and that since the language could easily become obsolete if there is a growth in the number of employees the Union would be faced with having to offer a *quid pro quo* for reasonable use of an earned benefit when they want the limit increased.

Finally, referring to its proposal regarding the use of vacation while on sick leave, the Union posits that its proposal "is more a superfluous language difference" since there is nothing in the Employer's proposal that would prohibit an employee from using a vacation day in lieu of a sick day.

Discussion: As the Employer states, the parties' proposals differ with respect to vacation carryover and/or payout for part-time employees; scheduling limitations, and notice requirements. The method of selecting vacation time is also in dispute, however.

While both parties argue that the opposing party is seeking a change in the current practice between the parties and represent their proposals as generally reflecting the current practice, each party proposes a change from the current practice in their respective proposal. The Employer seeks to require employees to give substantial notice when requesting vacation time and seeks to contractually limit the number of employees that may be on vacation in any given classification, both of these proposals differ from the current practice. The Union, on the other hand, seeks to grant regular part-time employees the right to carryover a week of vacation and to pay them for any vacation not used by the end of the year if the vacation time is not carried over. This, too, differs from the current practice.

Neither party, however, provides evidence to support the need for their proposed changes. Further, while the Employer states that its proposals are supported by the external comparables, their evidence of that either. The Ashland Housing Authority's agreement allows regular part-time employees to earn vacation on a prorated basis; allows no more than one employee to be on vacation at any one time; requires employees wishing to take two weeks or more of vacation to make their request at least two weeks before the requested date and at least two days before requesting a vacation period of less than thirty-five hours, and allows regular full-time employees to carry over forty hours of vacation. The Trempealeau County Housing Authority agreement grants all employees, both regular full-time and regular part-time the same paid vacation time; restricts the number of employees who may be on vacation at one time to approval by the executive director; allows a carry over of forty days, and provides a cash pay out when an employee is retiring or terminating. The Superior Housing Authority grants all regular full-time and regular part-time employees the same vacation time; provides that employees may accumulate vacation credit of up to 240 hours; provides a pay out of accumulated vacation credits when an employee is separated unless it is for just cause and requires notice for vacation requests of five days or more to be made fourteen days in advance. Based upon a comparison of these three provisions, it is concluded that only one of the three comparables prorates the number of days vacation an employee may earn which means there is a time when regular part-time employees in the other two comparables are eligible for more than one week of vacation; that only one of the comparables actually limits the number of

employees who may be on vacation at one time although the other two allow the employer the right to reasonably decide how many may be on vacation at one time; that the concept of carryover is not foreign to at least two of the comparables; that all employees receive a cash payout for vacation time not used, and that two of the comparables require a two week notice for vacation requests of any length in time. Based upon the provisions in these contracts it is concluded that the Union's proposal is more reasonable than the Employer's even if it seeks benefits which are not the Employer's current practice. While the Employer argues that the Union should offer a *quid pro quo* to achieve these benefits, it is not uncommon for initial collective bargaining agreements to gain some benefits which differ from the preceding practice when those benefits are common to the comparables and the evidence does not present a strong need to maintain the current practice.

- ***Article 10***

The Final Offers: Both parties propose amendments to Article 10. The Employer proposes the following language:

A. Annual Accumulation: Each full time employee shall be allowed one (1) day of sick leave for each full month of employment accumulative to 125 days for illness. Each regular part time employee shall be allowed sick leave on a prorated basis. The proration shall be determined on the number of hours worked in the previous year as a percentage of 2080 hours. In the event an employee retires, they may use their accrued sick leave time to be applied to pay for continuation of health insurance, or may receive 75% of the accrued sick leave case value up to the accumulated maximum of 125 days.

. . .

C. Physician's Statement . An employee off work on sick leave for more than three (3) days shall provide the Housing Authority with a physician's certificate or other satisfactory proof of illness.

D. In the event of serious illness in a (sic) employee's immediate family (spouse, parent or dependent children), absence of up to and include three (3) days will be allowed without loss of pay and will be charged to accumulated sick leave. Serious illness shall be defined as an illness requiring the employee's presence and substantiation in writing by the attending physician if requested. If the employee has a day or days off during the period of serious illness, the Housing Authority will not be obligated to pay any wages or salary for those days.

. . .

H. Use. Upon a physician's statement that an employee is able to return to work, the employee shall return to the employee's regular employment with the Housing Authority. The Housing Authority reserves the right to hire a temp or contract out the work until the employee returns. The employee must notify his supervisor the day before he returns to work.

. . .

J. Medical Appointments: Employees shall be allowed necessary time off during working hours for physician, ophthalmologist, or dental appointments. Such time shall be deducted from sick leave if available, unpaid if not. Such appointments shall be made during non working hours whenever possible. An appointment form provided by the Housing Authority and appropriately signed, must be submitted by the employee upon return from the appointment. Requests for leave for a medical appointment need to be made and approved when known by the employee and with reasonable advance notice, except in exigent circumstances.

The Union's proposals with respect to these issues are as follows:

A. Annual Accumulation: Each full time employee shall be allowed one (1) day of sick leave for each full month of employment accumulative to 125 days for illness. Each regular part time employee shall be allowed sick leave on a prorated basis. The proration shall be determined on the number of hours worked in the previous year as a percentage of 2080 hours or on a weekly basis for employees employed less than one year.

. . .

C. Physician's Statement . An employee off work on sick leave for more than three (3) consecutive days shall provide the Housing Authority with a physician's certificate or other satisfactory proof of illness.

D. In the event of serious illness in a (sic) employee's immediate family (spouse, parent or dependent children), absence of up to and include three (3) days will be allowed without loss of pay and will be charged to accumulated sick leave. Serious illness shall be defined as an illness requiring the employee's presence and substantiation in writing by the attending physician if requested. If the employee has an unpaid day or days off during the period of serious illness, the Housing Authority will not be obligated to pay any wages or salary for those days.

. . .

I. Medical Appointments: Employees shall be allowed necessary time off during working hours for physician, ophthalmologist, or dental appointments. Such time shall be

deducted from sick leave if available, unpaid if not. Such appointments shall be made during non working hours whenever possible. Upon request, an appointment form provided by the Housing Authority and appropriately signed, must be submitted by the employee upon return from the appointment.

Positions of the Parties: The Union states that the Employer's proposal allows the Employer to hire its own "independent" medical examiner when an employee is on sick leave is "entirely unnecessary and will result in unfair treatment to employees and lead to litigation." Continuing the Union declares that the Employer has made no case as to why such an "unusual, and oppressive, deviation from the status quo is mandated" and asserts that this proposal, like other Employer proposals, is an "over-the-top bid for control" over the employees.

The Employer, however, posits that the Union has misstated its proposal and that it has not proposed that it have the right to have an employee on sick leave examined by a physician of its own choosing, and that, consequently, the Union's argument against this proposal is moot. Continuing, the Employer states that its proposal "simply protects" its right to have employees return to work when cleared to do so by a physician and gives it the "needed latitude to carry out the employee's work in his or her absence."

Discussion: The Employer correctly states that the Union has misstated the difference in their proposals. The language proposed in the final offers indicates that the Employer seeks, instead, the authority to require a physician to present a physician's statement indicating the employee is able to return to work and the right to hire a temporary employee or to contract out the work done by the employee on leave until the employee returns. While the Union has not addressed this Employer proposal, it appears that the proposal is a deviation from the Employer's current practice, a deviation, which grants the Employer the right to contract out bargaining unit work solely because an employee is on sick leave, a right which unions generally oppose. Given this deviation, without evidence of the need for the proposed language or evidence that it exists among the comparables, it cannot be concluded that this Employer proposal is reasonable.

Except for the proposal discussed above, neither party has provided evidence or argued for adoption of the proposed language changes. Given this fact, it is concluded that neither party's

proposal, with the exception of the "use" proposal, is significant enough to affect a finding of "reasonableness" with respect to either final offer.

- ***Article 11***

The Final Offers: Both parties propose amendments to the tentative agreement reached in Article 11. The Employer proposes the following language:

A. Immediate Family. Time off with pay, not to exceed three (3) days shall be allowed in the event of death in the employee's immediate family. Immediate family shall include spouse, parent, step-parent, child, brother, step-brother, sister, step-sister of the employee or grandchild.

B. Other. Employees shall be allowed one (1) day off with pay to attend the funeral of parents of the employees (sic) spouse, grandparents, aunt, uncle, nephew, niece, brother in law (sic), sister in law (sic) or grandchild of the employee.

The Union's proposal is as follows:

A. Immediate Family. Time off with pay, not to exceed three (3) days shall be allowed in the event of death in the employee's immediate family. Immediate family shall include spouse, parent, step-parent, child, brother, step-brother, sister, step-sister of the employee or grandchild.

B. Other. Employees shall be allowed one (1) day off with pay to attend the funeral of parents of the employees (sic) spouse, grandparents, aunt, uncle, nephew, niece, brother in law (sic) or sister in law (sic) of the employee.

Discussion: The Employer indicated at hearing that its inclusion of "grandchild" in paragraph B. was an error and, therefore, not relevant to this dispute. Nonetheless, since the parties did not stipulate to an agreement regarding this proposal it remains an item in dispute in the final offers. Since the Employer's proposal is unclear the Union's proposal is deemed more reasonable.

- ***Article 13***

The Final Offers: Both parties propose changes in the language agreed upon in Article 13. The Employer proposes the following:

B. Health Insurance. The Housing Authority agrees to make a contribution of ninety percent (90%) to the medical and hospitalization program for employees seeking the family and single plan coverage. The Housing Authority must comply with the Department of Employee Trust Funds (DETF) rules and policies.

C. Insurance Carrier. The Housing Authority may from time to time change the insurance carrier and/or self fund if it elects to do so, as long as the levels of benefits are equivalent to the lowest cost qualified health insurance plan provided by the State of Wisconsin.

. . .

F. Income Continuation Insurance. The Employer shall offer a Disability Income Protection Policy. The Employer shall pay the premium for the base coverage.

The Union's proposal is as follows:

B. Health Insurance. The Housing Authority will pay ninety percent (90%) to the medical and hospitalization insurance plan.

C. Insurance Carrier. The Housing Authority may from time to time change the insurance carrier and/or self fund if it elects to do so and permitted to do so by law, as long as substantially equal or better benefits are maintained and employees are provided with at least 90 days notice and a copy of any proposed change.

. . .

F. Income Continuation Insurance. The Employer shall offer a Disability Income Protection Policy through the State of Wisconsin. The Employer shall pay the statutorily required premium for the base coverage.

Positions of the Parties: Both parties indicated they would address their differences with respect to the proposals pertaining to this article but they did not except as it related to the 90 day notice the Union proposes. In that respect, the Union argued that the notice was necessary in order to give employees time make health care changes which might be required by a change in carriers while the Employer argues that the Union's proposal changes the status quo and places a burden on the Authority. There are some exhibits pertaining to cost comparisons for health insurance coverage but none supporting the need for the language proposals.

Discussion: While both parties raise concern over the 90 day notice requirement, the undersigned does not find this the most significant difference in the two proposals. The most

significant difference in these two proposals is the Employer's proposal regarding the insurance carrier provision. In that provision, the Employer proposes that it may change the insurance carrier and/or self fund as long as the level of benefits it provides is equivalent to the lowest cost qualified health insurance plan provided by the State of Wisconsin. In contrast, the Union proposes that the Employer may change carriers and/or self fund as long as the policy provides substantially equal or better benefits. Even if the parties are participating in a health insurance plan provided by the State of Wisconsin there is a significant difference between being allowed to change carriers as long as the level of benefits is equivalent to the lowest cost qualified health insurance plan and being allowed to change carriers as long as the new insurance plan maintains a level of benefits substantially equal to or better than the current plan. Not only does an Employer not gain such a right freely but a review of the three comparable contracts indicates that one of the three employers considered comparable has the authority to change carriers and that right is conditioned upon maintaining substantially equivalent benefits and that one has the authority to provide the same health insurance plan as that provided by the city although there is no evidence as to what conditions, if any, the city must meet in order to change carriers. Given these facts, it is concluded that the Union's proposal is more reasonable.

- ***Article 15***

The Final Offers: Both parties propose amendments to the language agreed to in Article 15. The Employer proposes the following language:

B. Normal Work Day. The normal work day, except when special operational needs exist, shall begin at 7:00 a.m. and end at 3:30 p.m., with two (2) fifteen minute breaks. Breaks should be taken at approximately 10 (sic) a.m. and 2:00 p.m. and may not be combined or banked in order to leave early or take longer lunch hours. Schedules may be modified or flexed by mutual consent.

C. Overtime: Employees working in excess of forty (40) hours per week shall be paid at the rate of time and one half (1 1/2) for all excess hours worked. Overtime must have prior approval. In the event the Housing Authority requires employees to work overtime in that specific job assignment, the Housing Authority will offer work to the person(s) on duty and assigned that specific job. If the Housing Authority does not require all employees assigned to the specific job to work the overtime hours, the Housing Authority will offer overtime work on a seniority basis at that specific job assignment.

D. Call-In Pay: An employee who is called in to perform work while on-call will be paid for their actual time worked at a rate of 1 1/2 per hour worked time with a minimum of one (1) hour per response. In the event the Housing Authority needs to call in an employee, the Authority will call the least senior and qualified employee to respond to the call. If called, the employee is required to respond to the call. The Authority agrees to call only in emergency situations.

E. Special Needs. When special operational needs exist, the normal schedule may be altered by the Housing Authority, as long as a total of forty (40) hours in the work week are scheduled. The Housing Authority may send employees home after the work is completed. The Housing Authority will pay overtime after an employee has worked in excess of forty (40) hours in a week. Examples of "special needs" include, but are not limited to, snow removal, unloading trucks on weekends, or any other reasonable work, that in the discretion of the Housing Authority, cannot wait to be completed during the normally scheduled work week. In the event employees are sent home due to a special operational need, the Housing Authority agrees that the employees will have the right to work the regularly scheduled hours on the day the special operational need was scheduled.

The Union's proposal is as follows:

A. Hours/Week. . . .

Normal Work Day. The normal 8-hour work day shall be between 7:00 a.m. and 5:00 p.m. (7:00 a.m. - 3:30 p.m. with 1/2 hour unpaid lunch for maintenance and 7:30 a.m. - 5:00 p.m. with a one hour unpaid lunch for office staff (e.g., the current shifts are either 7:30-4:30 or 8:00-5:00, which is what this clause reflects), with two (2) fifteen (15) minute paid breaks.

Schedules may be modified or flexed by mutual consent.

Breaks should be taken at approximately 10 (sic) a.m. and 2:30 p.m. and may not be continued or banked in order to leave early or take longer lunch hours.

B. Overtime: Employees working in excess of 8 hours per day or forty (40) hours per week shall be paid at the rate of time and one half (1 1/2) for all excess hours worked, or compensatory time at time and one half if mutually agreed by the employer and the employee. Unused compensatory time that has not been used by December 31 will be paid at the overtime rate. Overtime must have prior approval. All time paid (sick leave, vacation, holidays, funeral leave) shall be considered time worked for computing overtime.

In the event the Housing Authority requires employees to work overtime in that specific job assignment, the Housing Authority will offer work to the person(s) on duty and assigned that specific job. If the Housing Authority does not require all employees assigned to the specific job to work the overtime hours, the Housing Authority will offer overtime work on a seniority basis.

C. Call-In Pay: An employee who is called in to work outside his/her normal schedule (which does not include when the employee is held over to work overtime immediately after his/her normal shift) shall receive the greater of two (2) hours call pay at the straight time rate, or time and one half for all time worked (e.g., an employee with a regular wage of $15 would receive $30 if sent home after only one hour because two hours of straight time is greater than one hour at time and one half, but if he worked 2 full hours he would receive a total $45 as a result of two hours of time and one half.) In the event the Housing Authority needs to call in an employee, the Authority will call the least senior and qualified employee to respond to the call. The Authority agrees to call only in emergency situations.

D. Captive Pay: An employee in the Maintenance Department who is required to carry a cell phone or pager and remain on call (otherwise known as being on "stand by") to be able to respond to service calls during non-working hours will receive 2.5 hours pay per day (e.g. during the work week, from the end of a work day to the next working day equals one day of being on call and thus that employee is entitled to 2.5 hours captive pay. The end of work Friday through until the start of work Monday morning equals three days captive pay, i.e., 2.5 hours captive pay for each night the employee is on call.), plus call-in pay for reporting to work in response to a call/page.

Position of the Parties: Contending the Employer's proposal regarding special operational needs is outrageous, the Union posits that the sole purpose of this proposal is to allow the Employer to unilaterally manipulate an employee's schedule in order to avoid paying overtime. It continues that the provision also gives the Employer "carte blanche over the employees' off duty schedule" in direct conflict with the fact that unions were formed to release employees from such servitude and is contrary to the status quo. Further, the Union declares that the Employer has provided no evidence to justify the need for this provision.

Continuing, the Union states that overtime serves a very valid purpose in that it serves as a check on an employer's willingness to unnecessarily monopolize the lives of its employees and declares that the Employer, in this instance, wants to remove that check as completely as possible and to make sure it will never pay overtime. Further, the Union charges that the Employer's overtime provision is overly broad in that while it identifies loading trucks and snow

removal as reason for such action it also allows the Employer to unilaterally alter employees' schedules under the guise of determining what constitutes "any other reasonable work". The Union also objects to the fact that the proposal contains no notice provision which it contends would allow the Employer to change an employee's schedule whenever it wishes without giving employees any notice regarding those changes.

Referring to their respective overtime proposals, the Union asserts that there are three key differences between the two proposals. According to the Union, the first difference is that its proposal would require overtime after eight hours while the Employer's proposal would not and that the second difference is that its proposal allows for employees to take compensatory time in lieu of overtime pay if the parties mutually agree while the Employer's proposal does not. The Union continues that the third difference is that its offer expressly considers time paid in the payment of overtime while the Employer's proposal does not. In support of its proposal, the Union states there is no justification for an employee to be required to work overtime without adequate compensation and argues that the comparables overwhelmingly support its proposal. As proof, it cites the practice in the City of Stevens Point and the fact that even one of the comparables which doesn't pay overtime after eight hours, the Trempealeau County Housing Authority, pays overtime for all required Saturday and Sunday work.

The Union also asserts that its proposal to consider paid time as time worked for calculating overtime should be favored since there is no justification to overwork an employee who justifiably used an earned benefit. And, finally, the Union declares that the Employer who actually pays very little overtime even under the current system has failed to show that it needs to make such a substantial change to the status quo.

Addressing its normal work day proposal, the Union declares that its proposal accommodates the Employer's assertion that it wants to change the employee's work schedule to make sure employees have some quiet time where they can work without being interrupted by the public but also have employees there when the public walks in. Further, arguing against the Employer's proposal, the Union charges that the Employer's proposal is contrary to its website and current practice and severely limits public access to the agency. The Union also asserts that the Employer's proposal is ambiguous in that it calls for two fifteen minute breaks

and references lunch but fails to indicate how long the lunch period is and whether either the breaks or lunch time are paid or unpaid.

With respect to call-in pay, the Union declares that its proposal is strongly supported by the comparables and that none of the comparables has a minimum call in of 1.5 hours as proposed by the Employer. In addition, it maintains that the Employer's offer is confusing in that it does not state who will be on call while it indicates that only an employee who is "on call" will receive call-in pay but then states that the least senior qualified person will be called in. The Union also objects to the fact that the Employer proposes that only the "on call" employee will receive the minimum call-in pay and that the junior qualified employee is required to respond without exception if called.

And, finally, referencing its captive pay proposal, the Union states that at the time the proposal was submitted as part of the final offers it was necessary since the Employer had required employees to carry its cell phone on a rotating basis in order to respond to emergencies for which it paid employees 60 cents per hour but has since discontinued the practice. It adds, however, that while it is no longer needed, the proposal still allows captive pay to be implemented if the need for stand-by status occurs in the future.

Referring to its special needs proposal, the Employer argues that the Union is overly dramatic and ignores the simple fact that the Employer's proposal allows it to change employee's work schedules in limited instances - only when operational needs exist. The Employer also asserts that there is support for its proposal among the external comparables and cites the DPW contract in the City of Stevens Point as proof of its assertion.

Further, the Employer rejects the Union's assertion that its overtime proposal which only pays employees overtime for over 40 hours worked in a week is overworking employees without adequate compensation. As proof that it is not, the Employer states that even some of the Union's comparables have similar language and cites the Trempealeau County and Dane County Housing Authority agreements and the Transit agreement in the City of Stevens Point and the clerical agreement in the City of Marshfield as proof. Further, the Employer declares that the Union's argument ignores the fact that the Federal Labor Standards Act dictates overtime payment provisions and that the Employer's proposal complies with that law.

And, finally, the Employer declares that since it has discontinued the practice of paying employees captive pay for carrying a cell phone, the issue is moot and that the Union's proposal regarding captive pay should not be included in the agreement. It continues that if the Authority decides to reinstate paying employees captive pay, new language should be negotiated at that time. Further, it maintains that the Union's proposal is not supported by the external comparables.

Discussion: While there is no evidence that the Employer is attempting to avoid paying overtime, its special needs proposal is a departure from the current practices and a change in status quo without evidence of any need for the proposal or evidence that it is supported by the comparables. There is no similar provision in any of the collective bargaining agreements for those authorities considered comparable. Further, although the City of Stevens Point has the right in its DPW contract to alter an employee's normal schedule when special operations needs exist, an example the Employer cites as support for its proposal, the provision in that contract grants the employer that right only if eight consecutive hours are scheduled. That makes the provision quite different from this Employer's proposal since it seeks the right to send employees home after the work is completed and grants the Employer sole discretion in determining whether it acted reasonably in deciding to reschedule an employee. In addition, the Employer provided no evidence of the need for this proposal and the decline in overtime pay over the last three years suggests the need is less now than it has been in the past.

There is also evidence among the comparables to support the Employer's proposals with respect to the normal work day; overtime compensation or call in pay. In essence, the Employer seeks to define the normal work day as eight and one-half hours with two fifteen minute breaks; seeks to pay overtime at the rate of one and one-half times for all hours worked in excess of forty hours per week; seeks to compensate employees for call in pay at the rate of one and one half times per hour with a minimum of one hour call-in and seeks to make it mandatory that the least senior employee must respond to the being called in. In contrast, each of the comparables defines the normal work day as seven and one-half or eight hours per day and thirty-seven and one-half or forty hours per week which includes two fifteen minute paid breaks and one-half or one hour lunch unpaid lunch period. In addition, employees in two of the three comparables

receive overtime compensation at the rate of one and one-half times the regular rate for any time work over eight hours or over forty hours while employees in the third comparable receive overtime for any time worked in excess of forty hours and one and one-half times the regular rate for work performed on Saturdays, Sundays and holidays and employees in two of the three comparables receive a minimum of two hours compensation at the rate of one and one-half times. Further, one of the three comparables allows non-maintenance employees to take compensatory time in lieu of compensation for overtime hours worked and do not make it mandatory for employees who are called in to report for work. Since these provisions more closely align with the Union's proposal, it is concluded that the Union's proposal is more reasonable.

- ***Article 17***

The Final Offers: Both parties propose amendments to the agreed-upon language in Article 17. The Employer proposes the following language:

C. Leaving the job site is prohibited during normal working hours without supervisor authorization and only for activities covered in the agreement or as assigned.

D. Employees may not make or accept personal phone calls except during break and/or lunch periods or in the case of emergency. Employees must adhere to the Housing Authority phone policy.

E. Maintenance employees must wear uniforms at all times. Office staff must not wear inappropriate attire such as open toed shoes, sleeveless tops, etc.

The Union makes the following proposal:

L. Employees required to use a personal vehicle for work-related activities (excluding the normal commute to and from work) shall be reimbursed at 37.5 cents per mile.

Positions of the Parties: Responding to the Employer's proposals, the Union declares that the Employer's proposal to prohibit employees from leaving the job site during normal working hours appears to prohibit an employee from leaving the job site even if on a lunch break if it is during normal working hours and maintains that the proposal is ambiguous and will be grieved if the Employer attempts to restrict what an employee may do while on unpaid time. It also

asserts that the Employer's proposal regarding personal phone calls is unnecessary and since such provisions are normally a matter of policy and not a contract provision it is an inappropriate proposal for the collective bargaining agreement. Further, it declares that the Employer's proposal regarding office staff attire arbitrarily deviates from the status quo without proof of any need for such a provision. Lastly, it argues that its mileage proposal reflects the Employer's current policy and is the same amount employees who work for the City of Stevens Point are paid.

The Employer, however, declares that the evidence shows that employees seldom use their personal vehicles for Employer's business and that there are Authority vehicles available for employees to use so there is no need for the Union's proposal regarding mileage. Further, it states that the "normal working hours" it refers to in its proposal regarding leaving the job site does not refer to the normal work hours listed in its Article 15 B. proposal and that when employees are on their unpaid lunch break, they are allowed to leave the job site. It adds that this proposal provides accountability for maintenance employees who often work at different job sites and are unsupervised. Referring to its phone call proposal, the Employer declares that the proposal only clarifies operational issues and referring to its dress code proposal the Employer asserts that dress codes are an appropriate operational concern especially when employees are interacting with the public and, therefore, both of its proposals are reasonable.

Discussion: The Union's proposal regarding mileage is reasonable even though the Employer asserts there is little need for the proposal. The record establishes that mileage reimbursement has not only been the current policy with this Employer but that it is the policy for employees using personal vehicles in the City of Stevens Point and is supported by the external comparables as well. There is less support for the Employer's proposals, however, and that is probably due to the fact that the proposals the Employer makes are generally stated as work rules rather than contractual provisions. Neither party's proposal, however, significant affects any finding regarding the reasonableness of the final offers.

- ***Article 20***

The Final Offers: The Employer proposes the following change to the tentative agreement in Article 20:

A. This Agreement constitutes the entire Agreement between the parties and no verbal statement shall supersede any of its provisions. Any amendment or Agreement supplemental hereto shall not be binding upon either party unless executed in writing by the parties hereto. The Housing Authority recognizes the right of the Union to discuss and/or negotiate changes in working conditions affecting the bargaining unit.

. . .

C. All side letters and practices predating this agreement shall be considered terminated unless pursuant to A above.

The Union's proposal is as follows:

A. This agreement constitutes the entire agreement between the Employer and the Union. Amendments or addendums to this agreement shall not be binding unless such changes are in writing, executed by the Employer and the Union, and attached to this agreement. The Housing Authority recognizes the right of the Union to discuss and/or negotiate changes in working conditions affected the bargaining unit.

Discussion: Neither party argues the need for their proposal. Consequently, it is concluded that neither proposal significantly affects the finding as to which of the final offers is more reasonable.

AWARD:

Having considered the statutory criteria set forth in Wis. Stats. 111.70(4) (cm) (7) and, particularly, that cited by the parties; having considered the arguments and evidence advanced by both parties, and having reached the above findings, it is determined that the final offer of the Union, together with the stipulations of the parties and those terms of the tentative collective bargaining agreement which the parties have agreed to throughout the course of bargaining shall be incorporated into the 2007-2010 collective bargaining agreement.

Dated December 16, 2010 at La Crosse, Wisconsin.

Sharon K. Imes, Arbitrator

SKI: