

STATE OF WISCONSIN
BEFORE THE INTEREST ARBITRATOR

RECEIVED
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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the matter of the petition of

Daniel Nielsen, Arbitrator

**MARATHON COUNTY COURTHOUSE
EMPLOYEES, LOCAL 2492E, AFSCME,
AFL-CIO**

Decision No. 25949-A
Case 144, No 41651
INT/ARB-5160
Appointment 5/25/89
Public Hearing: 6/08/89
Hearing 6/09/89
Record Closed: 8/15/89
Date of Award. 8/27/89

To Initiate Arbitration
Between Said Petitioner and

MARATHON COUNTY (COURTHOUSE)

Appearances:

Mulcahy & Wherry, S.C., Attorneys at Law, Post Office Box 1004, Wausau, Wisconsin 54401-1004 by **Mr. Dean R. Dietrich**, Attorney and **Ms. Kari Lien**, Research Associate, appearing on behalf of Marathon County.

Wisconsin Council 40, AFSCME, AFL-CIO, N-419 Birch Lane, Hatley, Wisconsin 54440 by **Mr. Phil Salamone**, Staff Representative, appearing on behalf of Local 2492E.

AWARD

The undersigned was appointed by the Wisconsin Employment Relations Commission to serve as the arbitrator of a dispute between Marathon County Courthouse Employees, Local 2492E, AFSCME, AFL-CIO (hereinafter referred to as the Union) and Marathon County (hereinafter referred to as either the County or the Employer) concerning conditions of employment to be contained in the collective bargaining agreement between the parties for the calendar years 1989 and 1990.

On Thursday, June 8, 1989, a public hearing was held on the petition for arbitration at the Marathon County Courthouse in Wausau, Wisconsin. No members of the public appeared. On June 9th, an evidentiary hearing was held at the same location, at which time the parties were afforded full opportunity to present such testimony, exhibits, other evidence and argu-

ments as were relevant to the dispute. No stenographic record was made of the hearing. The parties submitted briefs and reply briefs, the last of which were exchanged through the undersigned on August 15, 1989, whereupon the record was closed.

Now, having considered the evidence, the arguments of the parties, the record as a whole, and the provisions of Section 111.70, Stats., the Municipal Employment Relations Act. and being fully advised in the premises, the undersigned makes the following Award.

I. The Final Offers

The Union proposes to amend the predecessor agreement by including the stipulation of tentative agreement and three other proposals:

"1. **PARKING:** The County shall provide cost-free automobile parking for all employees represented by Local 2492E within two (2) blocks of the Courthouse.

2. **ARTICLE 5D - HOURS AND OVERTIME - SHERIFF'S DEPARTMENT:** Available overtime shall be apportioned to Sheriff Department members in a classification on the basis of seniority. If the notice of an absence is received within 1/2 hour or less of the onset of the oncoming shift, the County shall have the option of selecting an officer from the outgoing shift by seniority.

3. **RECLASSIFICATIONS:**

1. Upgrade Courthouse Switchboard to Level 6
2. Upgrade Planning Technician to Level 13."

For its part, the County has submitted a final offer proposing that the predecessor agreement, as modified by the stipulation of tentative agreements, be continued for 1989 and 1990.

II. Background Of The Dispute

A. Background on the Parking Issue

The County is a municipal employer providing general governmental services to the people of Marathon County in central Wisconsin. In providing these services, the County operates a variety of facilities, including a courthouse at the county seat in Wausau. The Union is the exclusive bargaining representative for certain of the non-professional employees of the County.

Prior to 1988, the County's jail and Sheriff's Department were housed separately from the courthouse. Construction on a new jail was begun in 1985, at a site adjoining the courthouse. The new jail site occupied some land which had previously been available for employee parking. The County rented two lots for employee use during the construction. When construction was completed, the County terminated its leases on the rented lots and announced a parking policy which divided available spaces into 81 rental spaces and 52 free spaces. The former were made available on a seniority basis, with a \$10 per month charge. The latter were made available on an unreserved, "first-come, first-serve" basis. Some additional spaces were reserved for judges, County Board members and administrators, while others were dedicated to short term parking for visitors.

The Union had initiated grievances over the parking policy when rumors first circulated about the possibility of reduced availability of free parking. These grievances were held in abeyance until the policy was announced, and were then resurrected. They are pending in grievance arbitration, and no decision had been received at the time of the hearing in this interest dispute. The Union also brought the parking issue to the bargaining table. Voluntary agreement was not reached, and the matter was addressed in the Union's final offer

B. Jurisdictional Background

Initial proposals for a 1989-90 labor contract were exchanged on October 12, 1988. Two meetings were held for the purpose of negotiations, but overall agreement was not forthcoming. A petition for interest arbitration was filed by the Union on January 24, 1989, alleging the existence of an impasse. A staff investigator from the WERC conducted an investigation of the impasse on February 8 and March 9th. Agreement was reached on a broad range of issues, including a general wage increase of 3% for 1989 and a 2%/2% split in 1990. At the end of the investigation and mediation, the only unresolved issues were the Union's demands for a parking benefit, seniority based distribution of overtime in the Sheriff's Department, and reclassification of two bargaining unit positions. Final offers on these topics were submitted by March 15th, and the offers were certified for arbitration.

The Commission issued an Order Requiring Arbitration on March 22nd, and the parties selected the undersigned from the panel of arbitrators accompanying the Order. The Commission issued an Order Appointing Arbitrator on May 25th.

Additional facts, as necessary, will be set forth below.

III. Statutory Criteria

This dispute is governed by the terms of Section 111.70(4)(cm)7, the Municipal Employment Relations Act. MERA dictates that arbitration awards be rendered after a consideration of the following criteria:

- "7. Factors considered. In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator shall give weight to the following factors:
- a. The lawful authority of the municipal employer.
 - b. Stipulations of the parties.
 - c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
 - d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.
 - e. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities.
 - f. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes in private employment in the same community and in comparable communities.
 - g. The average consumer prices for goods and services, commonly known as the cost-of-living.
 - h. The overall compensation presently received by the municipal employes, including direct wage compensation, vacation,

holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity of employment, and all other benefits received.

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

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

Given the nature of the issues involved in this proceeding, each of the factors is not independently discussed. Each has, however, been fully considered in arriving at the Award.

IV. The Positions Of The Parties

A. The Position of the Union

1. Parking

The Union takes the position that its offer is the most reasonable reflection of the status quo on the central issue of parking, as well as being the more equitable apportionment of spaces in the new parking configuration. Prior to the parking policy unilaterally imposed by the County during the last contract's term, there was ample free parking for Courthouse employees. The number of on-site parking spaces is not appreciably different now, asserts the Union, but the \$10.00 per month charge has created an unfair financial burden on county workers. This inequity has been heightened by the fact that certain highly paid employees -- judges, department heads and the like -- have been granted cost-free reserved parking.

Cost-free parking was an assumed benefit under the former contract, argues the Union, even though it was not specifically addressed by contract language. When building the new jail, the County recognized this benefit by providing off-site parking at no cost to employees. The unilateral withdrawal of this benefit has a serious and detrimental effect on morale, as well as being a fundamentally unfair action. Plainly, the Union argues, the public interest is best served by restoration of this traditional benefit.

The Union notes that all other County facilities provide cost-free parking for employees. The courthouse employees alone are faced with the prospect of having to commit a substantial portion of their wage increase to paying for a parking space. For an employee making \$12,000 per year, the Union calculates that the annual cost of parking would equal 1% of their gross wages. Given the 3% across the board increase for 1989, courthouse employees face the prospect of paying one-third of their increase simply to maintain the parking benefit they previously enjoyed. This has the effect of reducing their wages relative to other County employees.

Courthouse employees in comparable counties all enjoy the free parking benefit sought by the Union, albeit as an unstated condition of employment. The City of Wausau does, the Union concedes, charge for parking. The City is distinguishable, however, because it has never provided free parking, has a \$5.00 cap on parking charges, and requires City employees to live within the City limits, where public transportation is available. Thus both internal and external comparables support the Union's position in terms of the reasonableness of the proposed language itself, and the unreasonableness of the effective reduction in compensation affected by the County's position.

The Union stresses that it has proposed the status quo on parking. The number of available parking spots is not materially different now than it was before. The reason for the reduction in the availability of free parking is the fee that the County has imposed for parking in two-thirds of the available spots. The only change in circumstances between the parking situation before completion of the jail and now is that the County is exacting \$810 per month from its employees in rental fees. It is the County that has changed the substance of the status quo, and it bears the burden of justifying the change. The Union merely proposes to insert language reasserting the status quo ante and remedying, with no burden on the County, the disruptions caused by the County's unilateral actions.

2. Overtime Distribution in the Sheriff's Department

Like the parking issue, the Union's proposal on seniority based distribution of overtime in the Sheriff's Department is aimed at codifying the status quo and insuring equity. The Union asserts that several employees have been denied overtime because of favoritism and anti-union discrimination, with a very large amount of grievance activity resulting. This has contributed to the very poor labor relations climate in the Sheriff's Department, a climate worsened by the recent discharge of one of the Union's witnesses in this proceeding. The public interest, the Union maintains, lies in an equitable system of assigning overtime because it will improve the climate within the Public Safety Facility.

Overtime is assigned on the basis of seniority at other County facilities, including the Airport, Parks Department and Shelter Home. Internal comparability therefore favors the Union offer. At least one external comparable -- Wood County -- employs a neutral system of distributing overtime, through an equalized rotation. While not identical to the system proposed by the Union, this removes the possibility of arbitrary action inherent in the County's current scheme. Comparability dictates the adoption of the Union's offer on this issue.

Again, a central issue in this proceeding is whether the Union or the County stands as the proponent of the status quo. The Union asserts that on overtime distribution, as with parking, its offer can reasonably be viewed as a reflection of the current system, a mere codification of the status quo. The Union points to the testimony of the County's own witnesses, who stated under oath that overtime was already being offered out on the basis of seniority. While the Union questions the consistency with which this policy is applied, it suggests that this testimony stands as an admission of the reasonableness of the Union's offer.

3. Reclassifications

The reclassification requests are *de minimis* issues in comparison with the parking and overtime proposals. The Union asserts, however, that both requests are fully justified on the record.

The Planning Technician is the only non-professional employee in the Planning Department. He works alongside employees doing similar work, but receiving vastly more money. Thus, this request turns on considerations of internal equity.

The Union notes that the Switchboard Operator previously occupied pay grade 6, the grade which the Union seeks to restore. The position was downgraded by mutual agreement upon the retirement of the former incumbent, on the County's assertion that the duties were being substantially reduced by the introduction of an automated billing system. The addition of the jail complex to the courthouse, however, has added to the telephone traffic and public contacts of the Switchboard Operator, offsetting the duties removed by the new billing system. Equity dictates that the status quo for the bulk of the predecessor agreement -- that is, pay level 6 -- be restored, since the basis for the downgrading proved to be inaccurate.

B. The Reply Brief of the County

The county accuses the Union of attempting to obscure the real issues in this case behind appeals to sympathy, irrelevant arguments and inaccurate assertions.

A. Parking

The County defines the parking issue as a choice between the Union's proposal to add a benefit to the contract and the County's status quo position of contractual silence on the question of parking. The Union's language would represent the only contract provision on this subject in any County contract, and in the contracts of surrounding counties. Notwithstanding the Union's claim that it seeks only "free and ample" parking, the plain language of its final offer would require free parking for all bargaining unit employees, even though the Union concedes that all unit employees did not have parking before the completion of the new jail. Thus it represents a substantial break from the pattern of area contracts and past practice.

The County's parking ordinance was developed as a reasonable response to the need to balance the interests of employees, public officials and members of the public. The parking policy was developed after consultations with all parties, and the County's unions aggressively sought, and had, input in the final product.

The Union's "status quo" claims for its offer ignore reality, the County argues. The parking policy was not developed as an abstract exercise. It reflects the fact that the new jail has eliminated some former parking spots, and changed the demand for parking around the courthouse. All of the demands for parking could not be satisfied completely, and the County sought to satisfy each to the degree possible under the circumstances. Thus the status quo has changed, as the conditions underlying it have changed. The new parking policy is an accomplished fact, and as such represents the status quo. The Union's offer ignores the legitimate need of non-unit people within and without the County's work force.

B Overtime Distribution in the Sheriff's Department

The Union is incorrect in its assertion that overtime in the Sheriff's Department is currently distributed in a manner consistent with its final offer. Where a need for coverage on a shift developed, the entire eight hours has not been offered to the most senior employee in the classification. The County's witnesses stated that overtime, up to four hours, was offered to the senior employee on the preceding shift and the senior employee on the next shift, thus filling the entire eight hours. The Union's proposal would require

that the entire eight hours be offered to senior employees, regardless of whether they are scheduled to work an adjacent shift, are on vacation, have a day off, etc. This is a sharp departure from the current system.

As to the Union's allegations of "favoritism, discrimination and anti-unionism", the County notes that these are simply unproven assertions. The Union witness who made them tied them to a claim that she and another worker had been denied overtime opportunities. An analysis of their work hours, however, shows that they were both unavailable for work for substantial periods of time due to sick leave, workers compensation leave, vacation and comp time. While other employees' time records were not introduced into evidence, it is reasonable to assume that these two workers missed overtime chances simply because they weren't there.

In the same vein, the Union's claims of "poor labor relations" and a "very disproportionate number" of grievances in the Sheriff's Department were not supported by any evidence. The only record evidence of grievances in the Sheriff's Department showed two grievances that were not pursued by the Union. These charges, and the Union's attempt to introduce an issue over the discharge of one of its witnesses, are irrelevant and improper. They do not bear on the real issue of which party's offer is more reasonable. Plainly, it is the status quo position of the County which is preferable under the statute.

C. Reclassifications

The Union's argument that the Planning Technician should be upgrade because he is the only non-professional in the Planning Department and is paid less than the professional employees is both incorrect and irrelevant. There are two other non-professional in the Planning Department -- a Clerical Assistant I and a Clerical Assistant II. Both makes less than the proposed wage for the Planning Assistant. The County notes that a similar position exists in Portage County, receiving \$1.26 less an hour than does this employee. The Union's proposal to upgrade a top Union official's pay is not justified by any showing of need, and should be rejected.

The Switchboard Operator was downgraded to a Level 5 by mutual agreement. That level represents the status quo. The position as currently classified ranks first in pay among its comparables. No persuasive argument has been made for changing the pay grade, and the change should not be awarded in this proceeding.

C. The Position of the County

The County takes the position that the Union bears the burden of justifying its position on each of the three disputed elements in its final offer. Each represents a fundamental change in the status quo, requiring that the Union prove a compelling need, to which the proposed language is the only workable answer. Further, they must show that their proposal is not an unreasonable or unfair burden upon the County, and that its demands, taken as a whole, are not excessive in light of the overall bargain. The Union fails, in the County's view, to meet its burden, and its offer should be rejected.

1. Parking

No compelling need exists for the Union's proposed parking language. The County's parking policy goes as far as it can within the limits of available space, to accommodate the need for employee parking without denying members of the public and public officials access to the courthouse. The number of spots open to employees is roughly the same as before the construction of the new jail. While every employee does not have a parking space now, the old configuration didn't allow a space for every employee either. The only difference is that a reasonable charge has been added for reserved underground parking.

The County, in proposing no contract language addressing parking, is conforming to the pattern of area contracts. No comparable employer has a contract clause insuring cost-free parking, or speaking to issue in any way. Although the Union presented testimony showing that cost-free parking was uniformly available for courthouse workers in surrounding counties, those county courthouses are in non-metropolitan areas, and experience far fewer demands for parking than does the County's courthouse in downtown Wausau with its four branch courts and consolidated courthouse-jail complex. Thus the circumstances in surrounding counties are not truly comparable to those prevailing in Marathon County.

Internal comparables similarly favor the County's position, since no other County contract has language guaranteeing parking to employees. The fact that County employee at other facilities have ample parking merely reflects the fact that these facilities are located outside of the downtown business district, where space is more readily available.

The County raises concerns about the future impact of the language proposed by the Union. On its face, the Union offer would require the County to foolishly provide parking spaces within two blocks of the courthouse for every member of the bargaining unit, whether they drive to work or not. This is

not only wasteful, it could require the County to acquire land for expanded parking as it expands its work force. This is plainly against the public interest. The Union's offer, whatever its intended effect, is too broadly drawn for the problem it supposedly addresses. It will impose an unfair burden on the County and should be rejected.

2. Overtime Distribution in the Sheriff's Department

The Union seeks to support its request for new seniority language by claiming favoritism and discrimination in the Sheriff's Department. There is simply no proof of this. The fact that two employees have received relatively little overtime is more likely the result of their frequent use of leave time, which reduces their opportunities for overtime. The seniority proposal made by the Union is change in very basic contract language, and the usual principles of interest arbitration call for such changes to be accomplished by voluntary collective bargaining, even where they are supported by comparables. Here there is no support among the comparables, and no evidence of a compelling need for change. Thus the County's status quo position should be favored.

3. Reclassifications

The position of Planning Technician, under the Union's offer, would receive increases of \$1040 and \$1082 per year, over and above the general wage increase for unit employees. No evidence was offered to justify the requested reclassification, and granting the Union's offer would disrupt the negotiated relationships between this job and others having similar responsibilities. The Union has failed to meet its burden of proof on this issue.

The County next addresses the request to upgrade the Switchboard Operator to the same pay level as a Clerical Assistant II. The Courthouse Switchboard Operator, as currently classified, is the most well paid position of its type in comparable counties. Internally, the position ranks second in pay out of five comparable positions. No justification exists for upgrading the job.

The Clerical Assistant II, to which the Union would compare the Switchboard Operator, is a far more complicated and demanding position. The parties recognized this when they voluntarily downgraded the Operator's position. The duties have not changed since that agreement was reached, and there is no basis for reconsidering that decision.

D. The Reply Brief of the Union

The Union strongly assails the County's claim that it the Union which seeks to alter the status quo ante. On the contrary, the Union argues that it is the County which seeks to change the status quo, and which must justify its position before the Arbitrator.

1. Parking

The availability of cost-free parking has been a silently assumed historical benefit, a part of the comprehensive labor agreement between the parties. The County cannot credibly argue that removing this benefit is beyond the scope of the contract, any more than it could replace all of the toilets in the courthouse with pay toilets and expect an arbitrator to treat that as the status quo. The Union points to this Arbitrator's recent decision in Taylor County, Dec. No. 25525-B (Nielsen, 1/89), wherein a unilateral change in the structure of the wage schedule shortly before a union organizing campaign was judged not to reflect the historic status quo when challenged in an interest arbitration. The Union here cites the historic status quo as supporting its position on all of the issues in dispute.

The County repeatedly cites "reasonableness" as supporting its positions. This, in the Union's view, underscores the fact that the statutory criteria do not support the County. "Reasonableness" is not a criterion under the statute, and is in every instance a relative term. What is "reasonable", the Union asks, about the County imposing a parking fee when it has ample parking available? What are the "reasonable" limits of the parking fee? May it be increased at will? May it be extended to every space?

The Union notes that the County attempts to justify its position by claiming that the fee is paid on "choice underground spaces." This ignores the facts that twenty three of the eighty one paid reserved spaces are above ground, and is thus an irrelevant, ans well as incorrect, argument.

The County's claim that the Union seeks more than it ever had before is merely a smokescreen. The Union has disclaimed any interest in supporting a grievance filed by any employee who would demand a parking space while not having a car. The Union merely seeks to re-establish the historical parking arrangement that existed prior to and during the construction of the jail.

As to the County's complaint that it might be forced to purchase land in the future for employee parking, the Union points to existing County property that could be converted to parking. Even if the County were forced to

acquire some land in the future, the Union argues, there is no evidence that the County lacks the wherewithal to make such purchases.

2. Overtime Distribution in the Sheriff's Department

The County's claim that deputies work under overtime language that is similar to the current language in this unit is irrelevant. There is no evidence of any problem with overtime in the deputies unit, while there is in this unit. A consistent and clear policy is the only answer to the difficulties in the Sheriff's Department.

The Union characterizes the County's argument that some employees may have missed overtime because they were on leave as irrelevant. The County's speculation cannot be confirmed or denied because the time records for all employees were not placed in the record. Even if the specific instances of favoritism cannot be proven, it does not explain the County's failure to explain why two grievances were filed, and why they were denied. Again, the Union notes that seniority is currently the basis for at least some overtime decisions in the Sheriff's Department and that this language therefore merely codifies the status quo.

V. Discussion

A. Parking

Much of the dispute over parking and, to a lesser extent, overtime distribution, turns on the question of which party's offer represents the status quo, since the party opposing the status quo bears the burden of proof in arbitration. The Union's claim to represent the status quo on parking turns on the fact that cost-free parking had always been the norm before the introduction of the reserved parking spaces. The County defines the status quo in terms of its right to regulate parking, which has never before been restricted by contract language. The question of which offer represents the status quo therefore depends upon which aspect of the status quo one chooses to focus upon -- the actual conditions which have historically prevailed, or the right to change those conditions.

The County's claim to represent the status quo ignores the fact that the charge for parking is a departure from the conditions prevailing during prior negotiations. Certainly parking has not been the subject of contract talks in the past, but it is unrealistic to go the additional step and suggest that the ready availability of employee parking is not a matter of some significance within the employment relationship. The bulk of the County's employees will never have occasion to directly employ the "just cause" or "bumping"

provisions of the contract, even though these are traditional pillars of the labor agreement. The informal parking benefit, on the other hand, touches virtually all of the employees on a daily basis, and the change to a paid reserve system directly affects the County's workers. Those who elect to pay for reserved parking will have a reduction in their disposable income. Those who take their chances on the free lot will face the prospect of not finding a space available. This does represent a substantial change in the practical, day-to-day conditions of employment for the Union's members, and in that sense the County's position is an effort to make permanent a change in the status quo prevailing at the close of the last set of negotiations. For the purpose of this proceeding, however, weight must be given to the fact that the parties have previously agreed that the County would enjoy the right to make such changes.

The County reserved the right in prior bargains to "change existing methods or facilities"¹, and it is broadly recognized that employers have the right to make decisions on the disposition of their physical assets. Thus the County is correct in its contention that it had the contractual right to introduce paid reserve parking, and that this freedom of action is the negotiated status quo.² The Union's proposal seeks to remove the County's existing right to allocate parking, and the burden rests with the Union to justify its position.

The party seeking to alter the status quo is generally required to show that a need exists for the change, and that the proposed language addresses the need, without imposing an unreasonable burden on the other party. Depending upon the circumstances, a quid pro quo may also be required. While the question of need is often addressed by uniformity among comparables, in this case comparability turns on which aspect of parking one examines. Every comparable county provides cost free parking to employees, but none have a contractual guarantee. This reflects the informal nature of the benefit, and the fact that no issue has ever arisen over parking. The pattern of surrounding counties is accordingly not particularly relevant. There has been no occasion for bargainers in those counties to confront this issue, and it makes little sense to look to them for guidance as to how the issue might most reasonably be resolved.

¹ See Article 2 - Management Rights in the collective bargaining agreement, Joint Exhibit #1.

² This analysis is not in any way intended to convey an opinion on the merits of the pending grievances, as the issues presented here are distinct from those raised by the grievances.

Despite the lack of support for either position among comparables, the undersigned is persuaded that the Union has shown a need for some language on parking. As discussed above, the effects of the new policy on county workers are very real. The policy has a financial impact on employees who choose to pay for a reserved spot, and presents a daily inconvenience to other employees who must compete for the limited number of free spaces. Furthermore, the Union raises some legitimate concerns about the future parameters of the parking regulations. In particular, the possibility of raising the fee or expanding the scope of the reserved parking to further decrease the number of free spaces are actions which employees would reasonably seek to limit through contract language. The language proposed by the Union, however, goes well beyond the identified need.

The Union's offer would require the County to provide a free parking space for each unit employee, within two blocks of the Courthouse. Contrary to the statements of the Union's representatives at the hearing, the clear meaning of this language is that each employee be provided a spot, whether the employee regularly drives to work or not. The Union's demand is excessive, in that it provides parking for those who do not necessarily need it, and since it requires more available parking than existed before the imposition of the parking policy. Moreover, while the Union points to the cost of parking as the problem, its proposal goes instead to the number of spaces available.³ While the two are related -- the shortage of free spaces flowing from the fact that some spaces have been reserved for the exclusive use of the individuals who've purchased them -- it is not necessary to dictate that a particular number of spaces be dedicated to members of this unit in order to relieve unit employees of the financial burden of paying for parking, or to limit their exposure to changes in the parking policy in the future.

The Union has identified a problem which should properly be addressed in negotiations. The proposal made in the Union's final offer, however, paints with too broad a brush, imposing an unreasonable burden on the County. Rather than limiting allowable charges for parking, or providing some reimbursement for parking costs, it requires an excessive dedication of spaces, reserving spots for employees who don't necessarily need parking, and potentially requiring the County to purchase parking beyond its own facilities. For these reasons, the final offer of the County is preferred on parking.

³ This may well reflect the Union's initial belief that the total number of parking spaces had been decreased by the construction.

B. Overtime Distribution in the Sheriff's Department

The Union proposes to introduce to the contract overtime assignment by seniority for employees in the Sheriff's Department. No other County contract provides for seniority based distribution of overtime, nor is there a pattern of such provisions among the external comparables. The Union asserts, however, that it is merely seeking to codify the informal practice followed in the Department. In the alternative, the Union asserts that there is a demonstrated need for a neutral system of apportioning overtime, because of favoritism and retaliation for Union activity.

The Union's proposal would require that senior employees within a classification be contacted when an opportunity for overtime presented itself. If the County had notice of the need less than 1/2 hour before the start of a shift, the senior employee from the preceding shift could be held over for up to four hours. Contrary to the Union's argument, this does not reflect the practice within the Department. As a general rule, the County claims it selects the senior qualified employee from the preceding shift to hold over, and the senior qualified employee from the following shift to report early. This is a significantly different approach than that urged by the Union. While each accepts the principle of seniority, the County's practice, if followed, distributes overtime more widely across the work force, and involves less administrative time by relying upon a shorter list of persons already scheduled for duty. Thus, while the introduction of seniority as a determining factor is consistent with current principles, the manner in which the Union would apply seniority is a change in the status quo, and the Union bears the burden of proving that the language is a necessary and reasonable change.

The Union asserts that a neutral system for assigning overtime is necessary because, following some changes in supervision, officials of the Sheriff's Department have used overtime as a weapon of retaliation against Union activists, and as a tool of favoritism. As evidence of this, the Union cites overtime statistics showing that two senior workers have received less overtime than others in the Department, as well as two grievances filed when the issue arose in late 1988. Further, there was testimony by Union officials relating a disproportionately large number of grievances in the Sheriff's Department and a generally poor labor relations atmosphere.⁴

⁴ The Union also notes in its brief, as evidence of poor labor relations and retaliation, the post-hearing discharge of one of its witnesses. Were this record evidence, it might carry some weight, assuming that the circumstances surrounding the discharge were consistent with the Union's view of labor relations in the Department. Even then, it more properly goes to the need for a just cause standard rather than an overtime provi-

The evidence shows an apportionment of overtime among Department employees in the first four months of 1989 that is inconclusive on the claims of favoritism. Approximately one quarter of the available non-supervisory overtime was worked by the five most senior employees, and roughly two-thirds of the overtime was worked by employees in the upper half of the seniority list. This is generally consistent with the County's claim that it most often followed seniority in assigning overtime. This claim breaks down somewhat when individual overtime is examined. Wide variations exist between the amount of overtime worked by individual employees, with some very senior workers recording no overtime, and at least one employee on the bottom half of the list working in excess of one hundred hours. It is difficult, however, to determine the significance of this. Some employees had indicated that they would not accept overtime. Some were not available for overtime, as they were on vacation or leave for a relatively large portion of the year. Some undoubtedly were not the senior worker on their shift or not qualified for the available overtime

The record evidence of anti-union retaliation and favoritism is not conclusive, as it consists more of allegations than evidence of specific incidents or actions. The level of grievance activity in the Department is out of proportion to the number of employees, but only two grievances addressed overtime. Both were denied, and neither was pursued. On the other hand, the apportionment of overtime among individual employees does show a randomness that could reasonably give rise to suspicions of favoritism among employees. Adopting a neutral standard, such as equalization of overtime or codifying and standardizing the seniority system that the County claims is informally followed, would do much to allay these suspicions. The Union's proposal does more than is required to achieve that modest goal, by imposing a much stricter seniority system for overtime than currently exists within or without the County, while the County's status quo offer ignores the apparent inconsistencies in applying the informal system. In this respect, neither offer is completely reasonable.

The Union, as the moving party, bears the burden of justifying its offer. The proof of a need for some language in the area of overtime allocation exists on the record, although it is not compelling. The specific language proposed by the Union goes beyond that necessary to address even the serious problem of favoritism alleged, much less the problem of perceived unfairness that has

sion. As it stands, it is evidence outside the record and has been disregarded in arriving at the decision here

been established. Given the over-reaching of the language, and the lack of any supporting comparables, the undersigned concludes that the status quo position of the County, though flawed, is preferable to the offer of the Union.

C. Reclassifications

Interest arbitration is an awkward forum for determining individual requests for reclassification. Job evaluation is, as Arbitrator Krinsky noted, a complicated and subjective art.⁵ As a practical matter, individual requests for reclassification are generally not the primary focus of an interest dispute. The detailed information regarding job duties, skills demanded and wage relationships in the workplace and the industry will seldom be developed to the point where one can say with confidence that a particular job is placed incorrectly in the negotiated classification structure. Where a position has evolved beyond its pay grade, the parties are the ones best able to recognize and address the resulting inequity through voluntary negotiation.

On this record, there is no evidence to support the Union's bid to reclassify the Planning Technician upward by two grades. The Union premises its request on the assertion that the Planning Technician is paid at a lower rate than are the professionals in the Planning Office, even though he performs similar duties. Overlap in duties is characteristic of the relationship between many technical and professional positions, and the disparity in pay most often reflects the range of skills and duties beyond the area of overlap. The record does not establish an imbalance between the incumbent Planning Technician's duties and those of the Administrative Specialist who shares Pay Level 11, nor are there reliable points of comparison between this position and the jobs two pay grades above. Finally, there is no proof from outside the County's work force to support the request for higher pay for the Planning Technician, as the only comparable position in area counties is paid at a lower rate than that paid to the incumbent.

As to the Switchboard Operator, the evidence is not quite as clear-cut. The position had formerly been a Clerical II at Pay Level 6, and was downgraded to a Pay Level 5 because of the automation of billing responsibilities. This downgrade took effect upon the retirement of the incumbent Operator. The Union agreed to the downgrading with the caveat that an upgrade would be sought in bargaining if the change in responsibilities did not take place. The Union's request in this proceeding is premised upon their belief that the billing duties are substantially unchanged. The current incumbent testified that the job still entails billing.

⁵ Sheboygan County (Courthouse), Dec. No. 19799-A (Krinsky, 2/83).

The Union's line of argument in this proceeding is somewhat at odds with the incumbent Switchboard Operator's own request for reclassification, made after the final offers were certified. Her request cited an increased volume of telephone calls and public contacts because of the consolidation of the courthouse and the new jail. In other words, she seeks a reclassification because of added duties, without mention of the retention of billing responsibilities, while the Union focuses on the latter point. Neither line of argument is persuasive. The volume of work performed in a job is certainly one factor in arriving at a pay grade. However, the record shows that the new phone system allows for more direct dialing, so that the addition of new lines does not yield a proportionate increase in work. Moreover, the complexity of the position appears to be unchanged from the point at which the incumbent posted into it, at Pay Level 5. Thus, it is difficult to say that the increased work load cited by the incumbent Operator would justify the requested reclassification.

Turning to the Union's assertion that the billing responsibilities have not materially changed, the evidence in support of this claim is, at best, mixed. There is no doubt that some billing still takes place, and the incumbent testified that it was unchanged in character from that performed by the previous Operator. On this latter point, however, the incumbent did not appear to have great familiarity with the actual duties under the former system. The billing performed entails the transfer of predetermined numbers from one sheet to another, and forwarding the bills to the appropriate departments. This is fairly simple work when compared with the manual calculations performed by the previous Operator, and was envisioned in the original posting of the job:

Examples of Work Performed

Charges appropriate departments and accounts for monthly telephone services such as long distance calls, services charges, etc.

Knowledge, Skills, and Abilities

Ability to perform simple arithmetic calculations."

The mere fact that some billing work is still performed by the Operator does not violate the understanding reached between the County and the Union when the position was originally reclassified. While it isn't clear that the Union's expectations were completely met by the change in billing duties, it is clear that the duties were substantially simplified, and this was the

premise of the original agreement. Thus the record does not support the demand for a reclassification of the Switchboard Operator.

On the issue of reclassifications, the final offer of the County is preferred.

VI. Conclusion and Award

On the issues of parking and overtime distribution, the Union has established some reasonable basis for contract language. The specific proposals of the Union in each area, however, go beyond the proven need. In the area of parking, the identified problem is one of cost, while the Union's offer focuses more on the provision of spaces. The number of spaces required is excessive, and gives the members of the bargaining unit a benefit superior to that which they previously enjoyed. The record evidence on distribution of overtime does not prove favoritism, much less anti-union discrimination. It does, however, show significant disparities in the amount of overtime worked by individual employees, giving rise to a reasonable concern over the inconsistent application of the informal seniority system that allegedly governs overtime distribution. Again, the Union's proposal goes well beyond imposing consistency on the current system, by putting in place a more rigid seniority based system than exists in the County or among its comparables.

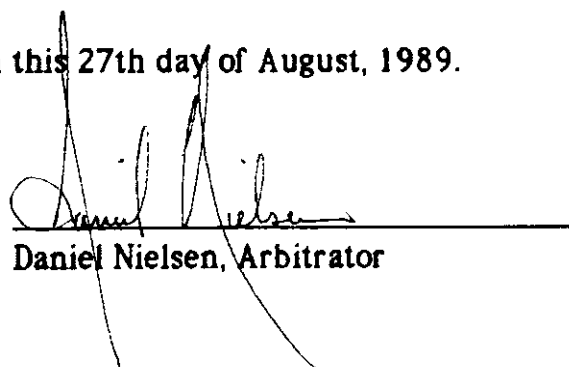
On the reclassification requests, the Union has failed to establish that the Switchboard Operator or the Planning Technician are not properly placed in the negotiated wage structure on the basis of their duties and skills.

Having reviewed the evidence, the arguments of the parties, the statutory criteria and the record as a whole, the undersigned makes the following

AWARD

The 1989-90 collective bargaining agreement shall incorporate the stipulations of the parties, together with the Final Offer of Marathon County.

Signed and dated at Racine, Wisconsin this 27th day of August, 1989.



Daniel Nielsen, Arbitrator