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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

BEFORE THE ARBITRATOR

ROSE MARIE BARON

In the Matter of the Arbitration of a Petition by

General Teamsters Union Local 662
(Rusk County Sheriff's Department)

and

Rusk County

Case No. 78
No. 50298 MIA-1864
Decision No. 28253-A

APPEARANCES

Christel Jorgensen, Business Agent, appearing on behalf of General Teamsters Union Local 662.

Stephen L. Weld, Esq., Weld, Riley, Prenn & Ricci, S.C., appearing on behalf of Rusk County.

I. BACKGROUND

The County is a municipal employer (hereinafter referred to as the "County" or the "Employer"). The General Teamsters Union Local 662 (the "Union") is the exclusive bargaining representative of certain County employees, i.e., a unit consisting of all full-time deputy sheriffs. The County and the Union have been parties to prior collective bargaining agreements, the last of which expired on December 31, 1993. The parties were unable to reach agreement on all issues after meeting on several occasions. On December 29, 1993, the Union filed a petition requesting the Wisconsin Employment Relations Commission initiate arbitration pursuant to Sec. 111.77, Wis. Stats. An investigator for the Commission met with the parties on March 15, 1994 in an effort to mediate the dispute. On November 29, 1994, the investigator closed the investigation and recommended that the Commission issue an Order requiring arbitration. The Commission thereupon issued an order of arbitration. The undersigned was selected by the parties from a panel submitted by the Commission and received the order of appointment dated January 4, 1995. Hearing in this matter was held on March 22, 1995 at the Rusk County Courthouse in Ladysmith, Wisconsin. No transcript of the proceedings

was made. At the hearing the parties had the opportunity to present documentary evidence and the sworn testimony of witness.

Briefs and subsequent corrections were submitted by the parties according to an agreed-upon schedule. The record was closed on May 11, 1994.

II. FINAL OFFERS

The parties agreed to continue certain items from the prior collective bargaining agreement and also reached a stipulation of tentative agreements. The only issues in contention involve Article 8, Work Week, Section 6, paragraphs 1 and 6.

A. The County has proposed to revise Section 6, paragraph 4 (in bold type) as follows:

> **Patrol. A straight shift rotation every three months (two months bid shift, third month shift other than bid shift).**

In addition, the County proposes the creation of two sideletters:

> **1. Current starting times for patrol shifts will continue in effect for the duration of the contract. This is a non-precedential agreement and its existence shall not be used in future litigation or bargaining.**
>
> **2. For jail shifts, hours of 7:00 a.m. to 7:00 p.m.[1] will continue in effect for the duration of the contract. This is a non-precedential agreement and its existence shall not be used in future litigation or bargaining.**

B. The Union proposes a revision of paragraphs 1 and 6 by adding a "normal work hours" provision:

1. A work schedule will be implemented for a twelve (12) hour work day, four days on and four (4) days off for Dispatch/Jailer and Patrol.

The following shall constitute the normal work hours:

Patrol:	**6:00 a.m. to 6:00 p.m.**
	6:00 p.m. to 6:00 a.m.
	2:00 p.m. to 2:00 a.m.
	3:00 p.m. to 3:00 a.m.
	4:00 p.m. to 4:00 a.m.

[1] In its final offer the County designated these hours as 8:00 a.m. to 8:00 p.m., however, at a later date the parties stipulated to the times shown here.

Jail: 6:00 a.m. to 6:00 p.m.
6:00 p.m. to 6:00 a.m.

The above hours for Patrol and Jail may be changed, at the Sheriff's discretion by one hour (later or earlier).

6. In addition, the Employer reserves the right to schedule new deputies to a 4 by 12, 3 days off, 3 by 12, 4 days off schedule. **The normal work hours shall be from 4:00 p.m. to 4:00 a.m. with a one hours change (later or earlier) at the discretion of the Sheriff.**

III. STATUTORY CRITERIA

The parties have not established a procedure for resolving an impasse over terms of a collective bargaining agreement and have agreed to binding interest arbitration pursuant to Section 111.77, Wis. Stats. (May 7, 1986). In determining which final offer to accept, the arbitrator is to consider the factors enumerated in Sec. 111.77(6):

(6) In reaching a decision 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 these costs.

(d) Comparison of wages, hours and conditions of employment of the employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services and with other employes generally:

1. In public employment in comparable communities.

2. In private employment in comparable communities.

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

(f) The overall compensation presently received by the employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(h) 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.

IV. POSITION OF THE PARTIES

The following statement of the parties' positions does not purport to be a complete representation of the arguments set forth in their comprehensive briefs which were carefully considered by the arbitrator. What follows in this section is a summary of these materials. The arbitrator's analysis in light of the statutory factors noted above will be found in V. Discussion and Findings, below.

Because the selection of the appropriate communities for purposes of comparability will have a major impact on the selection of one of the parties' final offers, that matter will be addressed first.

A. The Comparables

The Union and the County agree upon the law enforcement units of six contiguous counties to serve as comparables: Barron, Chippewa, Price, Sawyer, Taylor, and Washburn. In addition, the County included the City of Ladysmith Police Department. The Union indicated in its brief that it had no objection to the inclusion of the City of Ladysmith and therefore the arbitrator will include it in her analysis of the comparables.

B. The Union's position

The Union asserts that the economics are not in the final offers, not because Rusk County is poor, as the Employer argues, but because the parties compromised and voluntarily agreed to a wage and benefit settlement in the range of the comparable counties. Therefore, the economic condition of Rusk County has no bearing on this case (Union Brief, p. 3).

The issue before the arbitrator is forced shift rotation for one month during each three-month period. Adoption of the County's final offer would force employees to forfeit seniority rights. In 1987 the employees sought to have a schedule of four days on, four days off, and 12 hour shifts, and the right to bid for shifts. In order to achieve their goal, they gave up the right to many hours of overtime as a quid pro quo. That agreement has remained in effect until this bargain when the County is attempting to deviate without offering a quid pro quo.

The Union asserts that the County's rationale for its change in bidding on shifts is not persuasive and there is no supportive evidence for the problems listed in Employer Ex. 3. The major problem, as described by the Sheriff and Deputy Sheriff, appears to be the lack of supervision for employees working other than the day shift. There are other options which the Employer could have considered, i.e., filling a Sergeant position, negotiating shift criteria for that position, or rotating supervision through the shifts. The latter possibility was rejected by the Deputy Sheriff during bargaining. The Union points out that the County Board has been unwilling to finance an additional supervisory position despite the Sheriff's acknowledgement that such a position is needed.

The County has realized large savings on overtime since 1987 when the employees gave it up to gain the 4 x 4, 12 hour day schedule. If the County's offer is selected, the employees will lose part of the rights gained as a quid pro quo in 1987 while the County will continue to realize cost savings.

The Union relies on its comparablilty data to show that where shift rotation occurs, i.e., Barron County and Washburn County, a per hour shift premium is paid; in the City of Ladysmith, the shift premium was rolled into the wage rate two years ago. In Taylor County (fixed shifts--management has right to schedule), a premium is in effect; Sawyer and Chippewa Counties (shift bidding) also have shift premiums.

Initially, the Union's final offer on shift bidding (which the County

wished to revise) was to maintain the status quo. During bargaining in January of 1994, the Sheriff notified dispatchers and jailers that he wished to make a change in the shift starting time. The Union responded with additional language (Union Ex. 11). The undated final offer before the arbitrator also proposes inclusion of "normal work hours" for patrol and jail officers.

The Union cites arbitral precedent for the proposition that in the absence of "extraordinary negotiating pressures, neither party would normally give up significant language or benefits or practices gained in past negotiations, without a so called 'quid pro quo' from the other party." The County has not offered any quid pro quo. The Sheriff's communications regarding a change in work shifts placed the Union under "extraordinary negotiating pressures" to protect employees from changes in starting times.

The Union contends that its final offer is the more reasonable and should be incorporated in the 1994-95 collective bargaining agreement.

C. The County

It is the contention of the County that since both parties have proposed contractual changes and neither has offered a quid pro quo, the appropriate inquiry is which of the parties' final offers is the more reasonable (or least unreasonable). A three-prong test which has been relied upon by other arbitrators is suggested:

1. Does the present contract language give rise to conditions that require change?
2. Does the proposed language remedy the condition?
3. Does the proposed language impose an unreasonable burden on the other party? (Arbitrator Reynolds, citation omitted).

The Employer asserts that Rusk County is not in a financial condition to offer a monetary quid pro quo and cites data showing that Rusk County ranks among the poorest counties in the state, has the lowest equalized value among the county comparables, and has the second highest mill rate. Rusk County has the lowest adjusted gross income per capita among the 72 Wisconsin counties.

It is the County's contention that the Union has taken advantage of the

County's inability to buy its proposed change by demanding two changes of its own, i.e., placing shift hours in the contract for the first time and requiring that new deputies on the power shift work 4:00 p.m. to 4 a.m. The latter, the County argues, will ensure maximum weekend work and, therefore, minimum supervision.

The County believes that its final offer is the more reasonable and that it allows patrol deputies to maintain their seniority-based shift selection for the first two months of every three-month period. There is a legitimate business-related reasons for changing the existing system of seniority-based shift selection on a semi-annual basis. Among the reasons cited which will lead to better police protection are the need to better supervise and communicate with deputies assigned to the night shift, exposing the deputies to police needs during the day, improving ability to work with the crime lab, for trial preparation and appearances, and opportunity to interview witnesses. By rotating shifts, deputies who have had disciplinary problems would be exposed to better supervision; deputies will have the opportunity to participate in training programs which are generally available only during the day. Management must have better access to the least senior employees who work the night shift in order to ensure their proper training.

The Employer believes that in order to provide the best police protection it is necessary for deputies to be trained and have experience in all facets of the job. It is therefore necessary to have some flexibility in shift assignments, despite the fact that senior officers have earned daytime shift assignments. The County's proposal is a modest encroachment into seniority-based shift selection.

The language proposed by the county reasonably meets its needs and does not unreasonably burden the Union. Although the Sheriff has attempted to hire a supervisor for the night shift, the County Board has refused to approve the position due to the County's poor financial condition. The Sheriff and Chief Deputy must work days in order to deal with the courts, state agencies,

prisons, other county departments, the public, et al. Even if there was a night shift supervisor, the problem of exposure to the total job and access to the court system would not be solved. The County's proposal would resolve that matter.

The Union's assertion that it bought (that is provided a quid pro quo) the shift scheduling change in 1987, i.e., four twelve-hour days on, four off, is not correct. Although the deputies' hourly wage was frozen, their annual salary increased by approximately $1,000 because their hours of work increased from 2,080 to 2,190. Although the Chief Deputy complained that his access to the night shift officers was severely limited, the County Board chose to continue the 90-day trial period because the employees favored it and overtime costs were reduced.

The County has proposed changing the shift selection language in the 1994-95 contract and has attempted to minimize the impact to one month out of every three, so that shift by seniority remains in place for 8 months per year. This is not an unreasonable burden on its officers since they maintain the same number of days off they bargained in 1987.

The Union has proposed two changes in the Article 8, Work Week language, but has failed to meet its burden of proof. There has been no showing of need to include the current shift hours in the contract even with the proviso that the Sheriff has the discretion to change them by one hour later or earlier. The second change would require that the power shift be scheduled from 4 p.m. to 4 a.m. The Union's proposal was a reaction to the Sheriff's decision to change the starting times of the dispatch/jailers' shifts from 6 a.m. and 6 p.m. to 8 a.m. and 8 p.m. By including the existing shifts in its final offer, the Union eliminates management's ability to change shift start times or add shifts to meet the needs of the Department. The Union presented no reasons in either documents or at hearing as to why there was a need to maintain shift starting times. The County asserts that while the Union may desire to improve language, it must also show that there was an abuse of

discretion by management. There was none--the Sheriff's hope was that by overlapping shifts, night jailers would have an opportunity to communicate with the Jail Supervisor in order to exchange information from the night crew to administration. In fact, the Sheriff responded to employee dissatisfaction by moving the starting time of the shift changes to 7 a.m. and 7 p.m.

The County's offer also includes two sideletters stating that current starting times for patrol shifts and for jail shifts will continue for the duration of the contract.

The Union's final offer places a burden on the County by eliminating any flexibility in scheduling officers and will adversely affect the County's ability to meet operational needs. There are officers who are on a mixed work schedule, i.e., a combination of DARE instruction in the schools and patrol duty, as well as officers on the weekend powershift and weekday afternoon shifts. There has been no evidence that employees have been inconvenienced by these mixed schedules. The Union's wish to include shift start times would create problems in the ability of the Sheriff to be flexible in responding to the law enforcement needs of the County.

The County further asserts that the external comparables support its offer, not that of the Union. Comparing contractual provisions, it is noted that all of the comparable employers have flexibility, either by express contractual authority or management right to deviate from a strict seniority selection of shifts. Of the comparables, only Chippewa County, Price County and the City of Ladysmith include shift hours in their contracts. However, the Price County agreement gives management an unlimited right to make changes in work hours. Five of the seven comparables, i.e., Barron, Price, Sawyer, Taylor, and Washburn, allow management the right to change work hours. Thus, the comparables do not support the Union offer.

The interest and welfare of the public supports the Employer's final offer. The operational need for flexibility in scheduling will be advanced by the Employer's offer which will permit the administration to properly

supervise and effectively communicate with night shift patrol deputies. By adopting the County's offer, deputies will be exposed to the duties and responsibilities of day shifts, e.g., court appearances. The Union has not only rejected the County's limited proposal on rotation one month of every three, it has proposed restricting shift start times for both patrol officers and jailer/dispatchers.

The County asks the arbitrator to select its final offer.

V. DISCUSSION AND FINDINGS

A. The Status Quo and the Quid Pro Quo

It is clear from the positions of the parties that this case differs from many interest arbitrations in that both parties are proposing a change to the status quo and neither has offered a contemporaneous quid pro quo for that change.

The Employer's final offer proposed a change in the current language of Article 8, Section 6, paragraph 4 which read: "Shift selection shall be bid by seniority semi-annually." (Employer Ex. 30; Union Ex. 10). It proposed to *revise the bidding procedure from twice a year to once every three months.* In addition, the employer proposed to modify the former seniority-based process by permitting a patrol officer to bid on his shift for the first two months, but with the shift assignment for the third month to be determined by management. The Employer has also offered two side letters which maintain current starting times for patrol and jail shifts for the life of the contract.

The Union wished to maintain the current language of Article 8, Section 6, paragraph 4. Had the matter ended at this point, it is clear that the Employer would bear the burden of proof as the proponent of a change in the status quo. However, the situation during the bargaining process was complicated by the Sheriff's issuance of a memorandum to dispatchers and jailer indicating that there was to be a change in starting times (Union Ex. 11a). Subsequent correspondence between the Union and the Sheriff in January

of 1994 resulted in the an additional proposal by the Union to its preliminary final offer (Union Ex. 11b). Thus, the final offer of the Union which is before the arbitrator no longer consists of its initial stance of wanting no change in Section 6, paragraph 4 relating to shift selection by seniority twice a year, but now includes an addition to Section 6, paragraph 1 which lists specified "normal work hours" for both patrol and jail staff. The Union also added to Section 6, paragraph 6, a sentence which provides for "normal work hours from 4:00 p.m. to 4:00 a.m." for new deputies.

The facts lead the arbitrator to conclude that since both parties are attempting to change the status quo, it is no longer possible to make the usual inquiry into whether the moving party met its burden of proof by showing a (compelling) need for the change and the offer of a quid pro quo. In this case, while it is true that the Employer initially appeared to be the party moving for a change in the status quo regarding bidding on shifts, and in fact did not offer a quid pro quo to the Union for that change, the Union's later proposed revisions of other sections of Article 8, Section 6, i.e., paragraphs 1 and 6, served to change the dynamics of the bargain.

The Union argues that in order to prevail on the 12-hour work day, four days on and four days off, in 1987, the employees gave management a quid pro quo by giving up overtime opportunities and thus saving money for the County. The County asserts that the Union did not "buy" that shift scheduling change and despite an hourly wage freeze in 1987, the patrol deputies' annual salary increased because their hours of work increased; at the same time, the dispatch/jailers received a $.56 per hour increase to bring their wages into parity with the patrol deputies. The arbitrator concedes that there were radical changes made in 1987 and the Union's work schedule and bidding process prevailed. However, it is the 1994-95 bargain that is before this arbitrator and the matter of a quid pro quo some seven years earlier, while acknowledged, is not entitled to significant weight in a decision on the instant final offers.

The arbitrator believes that since both parties have proposed diverse contractual changes which reflect their own special needs, the issue of the *quid pro quo* is moot.

B. The Statutory Factors

The arbitrator believes that the appropriate analysis of the final offers of the parties is based upon the statutory factors to determine which of the offers is the more reasonable. The factors enumerated in Section 111.77(6) Wis. Stats. which appear to have the most relevance, and will therefore be given the greatest weight, in this case are sections (c) and (d).

1. *Section (c) considers the interests and welfare of the public and the* financial ability of the unit of government to meet these costs. The Union states at one point in its brief that economics are not in the final offer because the parties compromised and agreed to a wage settlement within the range of the comparables (Union brief, pp. 2-3). Nonetheless, it later asserts that "In a nutshell, it all boils down to economics and the unwillingness of the County Board to sufficiently fund its law enforcement." (Union brief, p. 5). The arbitrator agrees with the latter statement but notes for the record that what the Union characterizes as "unwillingness" also reflects the Board's lack of financial ability to pay.

There is no question that the Sheriff's department recognizes the need for greater supervision of long-term law enforcement employees on the night shift and for new deputies who, by virtue of their lack of seniority, are assigned to the night shift. However, the record reflects that despite numerous appeals to the County Board for funding for such a position, the Board has declined to do so based upon the economic conditions of the county. Data supplied by the Employer show that Rusk County ranks among the poorest in the state, has the second highest mill rate and the lowest adjusted gross income per capita among the 72 Wisconsin counties. Thus the administration is faced with a very serious problem: how to provide effective protection of the citizens of Rusk County with limited funds. The reality that the Sheriff must

deal with is the that certain problem employees chose to work on the night shift to avoid supervision altogether and that the least senior employees, who are most in need of supervision and training, must necessarily work at night when supervision in unavailable. The Employer's proposal to introduce a different shift-bidding procedure which would allow management the flexibility to assign shifts one month out of every three obviously has a considerable effect on the seniority system. The Union suggests other options to solve the problem, e.g., fill a sergeant position and negotiate shift criteria for that position or rotate supervision through the shifts. As noted, filling the position has been deemed by the Board to be impossible. As to the latter suggestion, the evidence is persuasive that it is necessary for both the Sheriff and the Chief Deputy to work during the day.

Thus, the arbitrator is faced with the extremely difficult task of balancing the Union's wish to retain seniority rights in the bidding process and the Employer's need to provide adequate law enforcement services to the community. The interests and welfare of the public are at the basis of the Employer's offer--how to improve service to the community with the present complement of law enforcement personnel. There is no evidence that the refusal of the County Board to fund an additional supervisory position is based upon anything other than the economic status of the County, i.e., that it lacks the financial ability to meet these costs. Therefore it is necessary to weigh the seniority rights of the bargaining unit members in relation to the operational needs of the Sheriff's department. This is not an easy task since the arbitrator acknowledges the importance to the Union of seniority in its day to day dealings with management and is reluctant to disturb that benefit. Arbitrator Reynolds three-prong test for reasonableness cited in the Employer's brief (p. 5) may be helpful in the present analysis. As we review the language proposed by the proponent of the change in this case, i.e., the Employer, the first question is, "Does the present contract language give rise to conditions that require change?" Based upon the facts of this case, the

answer is deemed to be "yes." Second, "Does the proposed language remedy the condition." To the extent that the County's proposal will permit it to reassign night-shift employees one month of three, it appears that the problems complained of will be diminished, if not completely resolved; the answer then is "yes." Finally, "Does the proposed language impose an unreasonable burden on the other party?" This is the question which most concerns the arbitrator. There is no question that the proposed language is an incursion into the seniority rights of the bargaining unit members. However, when the lack of supervision of night shift law enforcement officers and the inability of management to involve both new and long-time night shift employees in on-going training programs is considered, the matter of public safety must be given that modicum of weight that tips the scales in the direction of the Employer. The answer to question 3 must therefore be "no" since the burden imposed upon the bargaining unit members is not unreasonable under the particular circumstances of the case.

2. Section (d) compares the wages, hours and conditions of employment of the employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services. The law enforcement departments of the comparable communities have been agreed to by the parties (see p. 4).

a. Comparison of shift-bidding procedure

Rusk County has proposed rotating shifts for its patrol officers in which two months are chosen by seniority and the third by assignment. The Union wishes to maintain the present contract language which has fixed shifts which are chosen semi-annually by seniority. Of the seven comparable communities, three have rotation of shifts: Barron County, Washburn County, and the City of Ladysmith. Of the four comparables with fixed shifts and contractual language, Chippewa County reserves the right to assign 10% of non-probationary employees to shifts for training or disciplinary purposes and Price County retains the right to determine work schedules and make changes in

work hours. Taylor County, which has a fixed shift by practice has retained the right to schedule the work week; Washburn County merely notes that the current practice is to be continued.

The evidence reflects a great deal of disparity in how shifts are selected and grant varying degrees of reserved management rights in some cases which affect even those designated as fixed. Although both parties assert that the comparables support their positions, the arbitrator finds that the evidence is insufficient to support either of their arguments. Therefore, no weight can be given to this factor in the analysis of which party's offer is the more reasonable.

b. Comparison of inclusion of hours of work

The Union has included in its final offer an addition to Article 8, Section 6, paragraphs 1 and 6. The first section sets forth the "normal work hours" for both Patrol and Jail along with a provision permitting a one-hour deviation in either direction at the discretion of the Sheriff. Also proposed is an addition to paragraph 6 which adds a "normal work hour" provision for new deputies. The Employer opposes the inclusion of work hours in the contract and proposes two side letters guaranteeing current starting times for patrol and jail shifts for the duration of the contract.

A review of the comparable communities shows that four of the seven comparables do not include shift starting and ending times in their contracts, i.e., Barron, Sawyer, Taylor, and Washburn. Three comparables include work hours in their contracts, i.e., Chippewa, Ladysmith, and Price County. The latter contract gives management an unlimited right to make changes in the work hours. It appears to the arbitrator that the comparables favor non-inclusion of work hours by a by a 4 to 3 margin. One might interpret the data to come up with a 5 to 2 decision since the unlimited management right permitted the employer in Price County virtually makes the hours of work provision a nullity. However, it is not this arbitrator's preference to determine the weight of this data based upon such a mechanical application.

Rather, it is more equitable to look to the reasonableness of the language. There is no compelling evidence to support the proposition that the present contract language on shift schedules (paragraph 1: 12 hour work day, four days on and four days off for Dispatch/Jail and Patrol) and for new deputies (paragraph 6) has given rise to conditions that require change nor that the proposed language will serve to remedy any condition. The Union has not shown compelling need for its language changes. It is the arbitrator's opinion that the proposed language will create an unreasonable burden on the Employer's ability to manage its operation in a flexible matter and to develop mixed work schedules. It is important to note that as part of the County's offer, there are two side letters which guarantee no change in current starting times for patrol shifts; for jail shifts, the hours of 7:00 a.m. to 7:00 p.m. will continue for the duration of the contract. It is held, therefore, that on the matter of the inclusion of work hours in the contract, the position of the County is preferable.

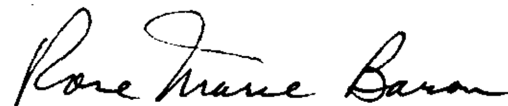
VI. CONCLUSIONS

Based upon the discussion above, the final offer of Rusk County is deemed to be the more reasonable and shall, therefore, be adopted.

VII. AWARD

The final offer of Rusk County, along with the stipulations of the parties, shall be incorporated in the parties' Collective Bargaining Agreement for 1994 and 1995.

Dated this 1st day of July at Milwaukee, Wisconsin.



Rose Marie Baron, Arbitrator