

IN THE MATTER OF THE ARBITRATION BETWEEN

THE MINNESOTA TEAMSTERS)	MINNESOTA BUREAU OF
PUBLIC AND LAW ENFORCEMENT)	MEDIATION SERVICES
EMPLOYEES UNION,)	CASE NO. 10-PA-0870
LOCAL 320,)	
)	
)	
Union,)	
)	
and)	
)	
THE COUNTY OF POPE,)	DECISION AND AWARD
)	OF
Employer.)	ARBITRATOR

APPEARANCES

For the Union:

Patrick J. Kelly
Kevin M. Beck
Kelly & Lemmons, P.A.
Attorneys at Law
200 Crossroads
7300 Hudson Boulevard
St. Paul, MN 55128

For the Employer:

Justin R. Anderson
Kratochwill & Anderson, P.A.
Attorneys at Law
18 Division Street East
P.O. Box 1014
Elbow Lake, MN 56531

On March 30, 2010, in Glenwood, Minnesota, a hearing was held before Thomas P. Gallagher, Arbitrator, during which evidence was received concerning a grievance brought by the Union against the Employer. The grievance alleges that the Employer violated the labor agreement between the parties by requiring members of the Union to take "a one-hour furlough" per-week, thereby reducing the hours they were permitted to

work. Post-hearing briefs were received by the arbitrator on April 19, 2010.

FACTS

The County of Pope (the "Employer" or the "County") is located in west central Minnesota. The Union is the collective bargaining representative of employees of the Employer described as follows in Section 2.1 of the parties' current labor agreement (which is effective from January 1, 2009, through December 31, 2011):

All employees employed by Pope County, Glenwood, MN, who are public employees within the meaning of Minnesota Statute Section 179A.03, Subd. 14, excluding employees of the Highway Department, Law Enforcement, supervisory, confidential, and essential employees.

The parties refer to the employees defined by this description as the "Courthouse Unit." They work in miscellaneous non-supervisory classifications, such as Social Worker, Appraiser and Public Health Nurse. As I describe below, the labor agreement recognizes that employees working either forty hours per week or thirty-seven and one-half hours per week are "regular full-time employees." At the time of the hearing in this matter, the Courthouse Unit included fifty-six employees. Before January 1, 2010, when the Employer put into effect a mandatory furlough of one hour per week, fifty-four of the employees in the Courthouse Unit worked thirty-seven and one-half hours per week, and two of them worked forty hours per week.

The Employer negotiates with unions representing employees in three other bargaining units. One of the other

bargaining units consists of employees in the Sheriff's Department -- Deputy Sheriffs, Dispatchers and one clerical employee. This separate bargaining unit (hereafter the "Sheriff's Department Unit") is also represented by Local 320 of the Teamsters Union, the same local union that represents employees in the Courthouse Unit. Another of the four bargaining units consists of supervisory and confidential employees. They are represented by the American Federation of State, County and Municipal Employees (the "AFSCME Unit"). The fourth bargaining unit consists of non-supervisory employees who work on the County's highways (the "Highway Council Unit").

The Employer presented evidence that it has experienced a substantial shortfall in expected revenues because of the economic recession that began in 2008. The State of Minnesota, also experiencing a decline in revenues, has cut ("unallotted") state aid payments to county governments. In 2008, the County had an unallotment of \$110,000, in 2009, \$82,000, in 2010, an estimated \$167,000, and in 2011, an amount not yet known.

On July 31, 2009, Justin R. Anderson, an attorney representing the County, sent a letter to union representatives of the four bargaining units of County employees, in which he 1) summarized the financial constraints faced by the County, 2) suggested possible ways in which to cut expenses to meet a reduced budget, and 3) invited union representatives of the four bargaining units to meet with management representatives on August 14, 2009, to discuss possible ways to reduce the County's expenditures.

On August 5, 2009, Joanne D. Derby, Business Agent for the Union, sent a letter to Anderson, responding to his letter of July 31, 2009, in which she stated that the Union's Executive Board directed Business Agents that "contracts are not to be opened as they are binding agreements that have been negotiated in good faith" on behalf of employees, but that she was "willing to meet with the County on August 14th to listen and give suggestions as to how we can get through this financial difficulty."

The proposed meeting was held on August 14, 2009, with representatives of management and the four bargaining units discussing possible reductions in expenditures.

On August 17, 2009, Jaqueline A. Stevens, Human Resources Manager, sent a letter to the four primary representatives of the four bargaining units, in which Stevens provided information that had been requested by the bargaining unit representatives at the meeting of August 14, 2009. Below, I set out relevant excerpts from that letter:

. . .

1. Summary of "For 2010, Pope County estimates its operating budget, excluding wages, will increase \$500,000.00 because of inflation." [Here, Stevens describes the use of funds from reserves to balance the County's budget in recent years.]
2. Summary of "Contractual step increases and cost of living increases will result in additional increases of \$261,000.00." In 2009, as the County was anticipating state unallotments of its County Program Aid (CPA), the County started estimating cost increases and potential savings based on different scenarios. The County estimated labor costs (based on current contractual obligations) by department that included step increases, cost of living adjustments and longevity increases, for a total of

\$261,000. Since then, the County has completed a micro-analysis by employee, recognizing that not all employees receive step increases or longevity pay. Based on the analysis of each employee, based on the date of hire, membership in specific union group, years of service, etc., the estimated labor cost increase for all employees in 2010 is \$242,000. This number is approximate and is affected by which month an employee will receive a step increase or a longevity increase as well as replacement hires.

3. YTD Budget (Revenues/Expenditures Report). Attached is the July 2009 Revenues and Expenditures Report prepared by the County Auditor and reflects the most current statement.
4. Current Reserves. Reserves represent a snapshot in time and are likely to change based on expenses to be incurred. Counties use reserve funds to pay for reimbursable expenses in advance. Based on the analysis by the County Auditor, the unreserved fund balance as of December, 2008 is estimated at \$4,700,000.00.
5. Expenditure Reduction by furloughing all employees for 1 day. If the County was closed for one day and all of its employees were furloughed for that day, it is estimated that the County would realize a reduction in expenditure of \$20,462.
6. Expenditure reduction by reducing all employees weekly hours. If the County reduced the total hours per week worked by all of its employees for a period of one year or 52 weeks, the following reduction in expenditures would be realized:
 - 1 hour per week - \$161,000;
 - 1.5 hours per week - \$196,000;
 - 2 hours per week - \$289,000;
 - 2.5 hours per week - \$358,000.

The information provided herein is the best estimate and the most current information available to the County. Some information is subject to change based on a number of variables. The County hopes the information provided will be helpful. If you have any questions or need further clarification please do not hesitate to give me a call or email. Thank you.

At the meeting of August 14, 2009, management representatives asked the union representatives to gather from bargaining unit members suggestions for possible reductions in expenditures. On August 18, 2009, Derby met with employees in the Courthouse

Unit to hear their suggestions. On August 25, 2009, Derby sent a letter to Stevens describing suggestions for reductions made at that meeting by employees in the Courthouse Unit. Of the thirteen suggestions listed, the following are representative examples:

Unpaid voluntary furlough.

All employees work a 37.5 hour work week, excluding Deputies and Dispatchers.

Dissolve the HRA (Housing and Redevelopment Authority).

Stop excessive spending (examples: purchase of Blackberry cell phones, extra meetings and conferences, remodeling, etc.)

Reduce the position of County Coordinator to half time.

Increase the levy. Don't freeze the levy, causing employees to bear the whole burden of financial constraint.

Take the architect off the payroll.

Review other biennial appropriations.

On October 30, 2009, the County's Board of Commissioners (the "Board") sent a memorandum to all employees, part of which is set out below:

In response to the Board's recent request that employees help weather the budgetary shortfall, employees have suggested implementing a Voluntary Reduction in Hours (VRH) program. In addition to cost saving measures the Board has already employed, and those still to come, the Board has decided to give employees the opportunity to participate in a Voluntary Reduction in Hours program.

Since the primary driver of the program is to help balance the budget, implementation must deliver cost savings while still allowing the County to meet the needs of those we serve. While it is difficult to anticipate just how much interest there will be or how many of these arrangements

can be accommodated, the County is prepared to present this opportunity for your consideration. Once the County has an idea of the level of interest, we can begin to determine how many requests can be accommodated and just how much will be saved by implementing this program.

The VRH program provides staff the ability to reduce their work schedule while maintaining their full-time benefits. We hope the [VRH] program will enable the County to address its budgetary needs. However, if the County does not receive enough of a response to this program, the County may choose not to implement this program in its entirety.

As you look at neighboring counties, you will see varying measures that counties have taken to balance the budget including voluntary furloughs, mandatory furloughs, COLA and step increase freezes, hiring freezes and staff reductions. These are all options that we are reviewing; however we feel, and hope you do too, the offer of the [VRH] program is a good place to start. . . .

The remaining three pages of this memorandum describe the details of the VRH program.

On December 1, 2009, the Board passed the following resolution (the "Resolution"):

. . .

WHEREAS, the Budget Committee, having received input from union and management employees and Commissioners, offers the following budget reduction measures for the Board to consider, including:

1. Freezing vacant positions in the Highway and Assessor departments for a savings of \$100,819 or 23.2 percent of the total reduction; and
2. The County would implement a 1 hour per week furlough for all full and part-time employees to be obtained by closing County facilities one hour early on Fridays for departments and employees that work a 5 and 7 day week schedule, one hour early on Thursdays for departments and employees that work a 4 day week schedule. This would account for a savings of \$163,139 or 37.6 percent of total reduction. In addition, the County Board of Commissioners will receive no Cost of Living Adjustment (COLA) for a savings of \$6,300 or 1.4 percent of total reduction; and
3. Reducing operational expenses in travel, overtime and compensatory time and other reductions in each department for a savings of \$164,682 or 37.9 percent of the total reduction; and

4. Accepting any voluntary reduction in hours (VRH) that employees may offer after seeing what action the Board may take. . .; and

WHEREAS, these measures are intended to strike a balance between keeping increases to the County's tax base at a minimum and recognizing (a) the public's ever-increasing demand for services; (b) inflationary increases in cost to deliver County services; (c) increases in unfunded mandates passed to Counties from State and Federal Governments; and (d) shortfalls in tax reimbursements provided to Counties (County Aid) from the state. In addition, these measures achieve the goal of no layoffs, while providing all employees with a COLA of 3 percent, and step and longevity increases for eligible employees.

NOW, THEREFORE BE IT RESOLVED, the Pope County Board hereby authorizes the Budget Committee to institute the budget reduction measures outlined above, effective January 1, 2010 and to end such measures on December 31, 2010.

On December 2, 2009, the Board sent a memorandum to all County employees, notifying them that it had "adopted the following measures" to take effect as of January 1, 2010:

1. Implementation of 1 hour per week furlough for all full and part-time management and union employees to be obtained by closing County facilities one hour early on Fridays for departments and employees that work a 5 and 7 days per week schedule, one hour early on Thursdays for departments and employees that work a 4 days per week schedule. This would account for a savings of \$163,139.
2. Elimination of the COLA for County Commissioners, reduce operational expenditures in all departments, and freeze current vacant positions. This would account for savings of approximately \$271,801.

On December 11, 2009, the Union brought the present grievance. It alleges that requiring a one-hour per week furlough violated two provisions of the Minnesota Public Employment Labor Relations Act ("PELRA"), namely, Minnesota Statutes, Section 179A.04, Subd. 19, and Section 179A.07, Subd. 2, and that the mandatory furlough violated Sections 3.4, 11.1, 11.6 and "any and all applicable Articles of the Labor Agreement."

DECISION

Preliminarily, I note that my authority in this proceeding is to act as a grievance arbitrator -- to decide issues raised by the parties that relate to the allegations the Union makes in the grievance. I point this out to distinguish that limited authority from the broader authority that an interest arbitrator would have -- if the parties had agreed to provide it -- to decide, in the view of an interest arbitrator, which of several measures the parties discussed might be the best way to resolve the County's budget imbalance. Thus, because that kind of determination is not within the authority the parties have given me, I will not decide about advantages, disadvantages or feasibility of other budget balancing measures that might have been taken.

Unfair Labor Practice.

I also note that the parties disagree whether I have authority to interpret and apply the provisions of PELRA, alleged by the grievance to have been violated by the unilateral requirement of a furlough of one hour per week. The Union argues that, because the furlough was required without meeting and negotiating, its imposition was an unfair labor practice. The Union cites the following provisions of PELRA in support of this argument:

Minnesota Statutes, Section 179A.03. Definitions.
Subdivision 11. Meet and Negotiate. "Meet and negotiate" means the performance of the mutual obligations of public employers and the exclusive representatives of public employees to meet at reasonable times, including where possible meeting in advance of the

budget making process, with the good faith intent of entering into an agreement on terms and conditions of employment. This obligation does not compel either party to agree to a proposal or to make a concession.

Minnesota Statutes, Section 179A.07. Rights and Obligations of Employers.

Subdivision 2. Meet and Negotiate. (a) A public employer has an obligation to meet and negotiate in good faith with the exclusive representative of public employees in an appropriate unit regarding . . . terms and conditions of employment

Minnesota Statutes, Section 179A.13. Unfair Labor Practices.

Subdivision 1. Actions. The practices specified in this section are unfair labor practices. Any employee, employer, employee or employer organization, exclusive representative, or any other person or organization aggrieved by an unfair labor practice as defined in this section may bring an action for injunctive relief and for damages caused by the unfair labor practice in the district court of the county in which the practice is alleged to have occurred. . . .

Subd. 2. Employers. Public employers, their agents and representatives are prohibited from:

. . . .

(5) refusing to meet and negotiate in good faith with the exclusive representative of its employees in an appropriate unit;

(9) refusing to comply with a valid decision of a binding arbitration panel or arbitrator;

The Union argues that the Employer's imposition of the one-hour per week furlough was done without meeting and negotiating with the Union and that PELRA makes such a unilateral change an unfair labor practice, remediable in this proceeding. The Employer makes several arguments in response. It argues, first, that the current labor agreement was formed when the parties met and negotiated, thus establishing their bargain about hours of work -- a bargain that, in the Employer's view, permits imposition of a one-hour reduction in the work week. In addition, the Employer argues that I have no

jurisdiction to decide whether it has committed an unfair labor practice because Section 179A.13, Subdivision 1, of PELRA gives exclusive jurisdiction to the district courts to make such a determination.

I rule as follows. The primary issue raised by the grievance is whether the current labor agreement allows or prohibits the Employer from requiring employees to work one hour less per week. If the provisions of the labor agreement allow the Employer to do so, there has been no unfair labor practice because the labor agreement was established in meet-and-negotiate bargaining. Similarly, if the provisions of the labor agreement prohibit the Employer from requiring employees to work one hour less per week, there has been no unfair labor practice that is immediately remediable as such. Rather, remedy for violation of such a prohibition, if found, must come through the grievance process, with an appropriate award determining that the Employer's action violated the labor agreement.

If the award in this proceeding were to determine that the Employer's furlough requirement violated the current labor agreement and if the Employer then refused to comply with an award remediating the violation, an action for injunctive enforcement of the award in the district court would then mature, based upon the unfair labor practice of refusing such compliance.

A third possibility exists -- that interpretation of the current labor agreement may determine that it neither allows nor prohibits the furlough requirement. In that third case, an

obligation to meet and negotiate would arise. Interpretation of the agreement, however, is necessary before deciding whether there has occurred a failure to meet and negotiate, thus raising unfair labor practice issues.

Interpretation of the Labor Agreement.

The parties' primary disagreement about interpretation of the labor agreement centers around the meaning of the words, "normal work week," which appear in Section 11.1, Article XI, Work Schedules and Overtime, of the labor agreement:

11.1. The normal work week for full time Employees shall consist of forty (40) hours. All employees working in full time positions that are currently thirty-seven and one-half (37 1/2) hours per week shall also be considered full time Employees.

The Union argues that this provision states an agreement about one of the terms and conditions of employment, which, with the wage-setting provisions of the contract, determines the total compensation of bargaining unit members. As such, the Union argues, the furlough the Employer would require violates the labor agreement by reducing the hours of a normal work week.

The Employer makes several responsive arguments, of which the following are primary. First, the Employer argues that the Union attributes a narrow meaning to the phrase, "normal work week," one that would make the phrase guarantee the full-time hours that are referred to as the "normal work week" in Section 11.1. The Employer argues that the meaning of the phrase should be drawn from its first appearance in the labor agreement -- in the contract's definition article, Article III. There, Sections

3.4 and 3.5 define "regular full time employee" and "regular part time employee," thus:

3.4. REGULAR FULL TIME EMPLOYEE: Any Employee hired to fill a regular full time position in the bargaining unit who has completed the initial hire probation period.

3.5. REGULAR PART TIME EMPLOYEE: Any Employee who works fourteen (14) hours or more per week or thirty-five percent (35%) of the normal work week. All benefits to be pro-rated, unless otherwise stated.

The Employer argues that the appearance of the phrase, "normal work week," in the definition of "regular part time employee," but not in the definition of "regular full time employee" is significant -- that it indicates an intention to use the phrase only as a component of the definition of a "regular part time employee," thereby conforming to the statutory definition of a "public employee," as given in Section 179A.03, Subd. 14(e), which excludes from that status "part-time employees whose service does not exceed the lesser of 14 hours per week or 35 percent of the normal work week in the employee's appropriate unit." The Employer urges that this limited usage, in apparent statutory conformance, negates the meaning claimed by the Union for use of the phrase in Section 11.1 -- that the parties intended a guarantee of a "normal work week" of either forty hours or thirty-seven and one-half hours.

The Employer's second primary argument is based on Sections 5.1 and 5.2 of the labor agreement, which are provisions of Article V, entitled, "Employer Authority":

5.1. The Employer retains the full and unrestricted right to operate and manage all manpower, facilities and

equipment; to establish functions and programs; to set and amend budgets; to determine the utilization of technology; to establish and modify the organizational structure; to select, direct and determine the number of personnel; to establish work schedules; and to perform any inherent managerial functions not specifically limited by this Agreement.

5.2. Any term or condition of employment not specifically established or modified by this Agreement shall remain solely within the discretion of the Employer to modify, establish or eliminate.

The Employer argues that its right to require a furlough of one hour per week is confirmed in Section 5.1, which explicitly reserves the management right to "establish work schedules." In addition, the Employer argues that Section 5.2 is a reservation of the right to establish terms and conditions of employment if it is determined that the provisions of the current labor agreement neither allow nor prohibit the requirement of a mandatory furlough.

In response, the Union argues that the agreement's reservation of the right to establish work schedules is nothing more than a right to set the starting and ending times of work shifts, but that the right to schedule work does not include the right to reduce the total hours of a "normal work week" by use of a mandatory furlough. The Union also argues that Section 5.2 is not relevant unless it is decided that the provisions of the labor agreement cannot be interpreted as allowing or prohibiting the imposition of the furlough.

Thus, I must decide whether Section 11.1 of the labor agreement means that the total hours in a normal work week are fixed at those established in Section 11.1 or, if not, whether the Employer has authority to reduce those hours.

I rule that, prima facia, the meaning of Section 11.1 is ambiguous -- that upon a bare reading of its language, the interpretation offered by either party is plausible. As the Union urges, the language can be interpreted as requiring a fixed length of the work week, not subject to reduction, or, as the Employer urges, it can be interpreted as a statement of the usual length of the work week, one that implies no limitation of the Employer's right to reduce its length.

The Employer argues that, in resolving this ambiguity, more is required than merely looking to the dictionary definition of "normal" -- "regular," "usual" or "standard." The Employer rightly argues that, though dictionary definitions may be relevant, interpretation of the phrase, "normal work week," should look for the parties' intent, using available tools of contract interpretation. I agree, though at least initially, an interpreter should assume that those who reach agreement about contract language understand the words used to have meanings that are in common usage.

The parties did not present evidence about the bargaining that led to their first adoption of Section 11.1, though Derby testified that its language has been the same at least since 1989. In addition, she testified that in bargaining for recent labor agreements, the Union has tried to expand the number of hours per week worked by members of the Courthouse Unit from thirty-seven and one-half hours to forty, but that the Employer has rejected the Union's proposals with the comment that such an increase in hours was "not in the budget."

The Employer presented in evidence the labor agreements that cover the other three bargaining units of County employees. The Employer argues that its position is supported by the fact that none of the other three bargaining units grieved the imposition of the mandatory furlough. According to the Employer, the absence of a similar grievance from the other bargaining units shows an implied interpretation of the similar language in their labor agreements that is consistent with its reading of the labor agreement with the Courthouse Unit, i.e., that those other labor agreements permit the imposition of the one-hour per week furlough.

In response, the Union argues that the other labor agreements are not relevant to interpretation of the agreement with the Courthouse Unit, urging that some of the relevant language is different and that a common intention of the Employer in bargaining with the other three unions cannot be presumed as one that was accepted by the Union.

The Union also argues that a significant difference in circumstance affects Courthouse Unit employees -- that they are predominantly thirty-seven and one-half hour per week employees and not forty hour per week employees, as are most of the other County employees. According to the Union, that difference has given their representatives an interest during bargaining that is different from the interest of the representatives of the other three bargaining units. Derby testified that, of the County employees who were working a thirty-seven and one-half hour per week schedule, almost all were in the Courthouse Unit,

and that those fifty-four Courthouse Unit employees have suffered a greater loss of income than the County's forty hour per week employees. Derby testified that Courthouse Unit employees, who had been working only thirty-seven and one-half hours per week before the reduction, had their work week further reduced to thirty-six and one half hours -- a reduction that affected them disproportionately. The furlough reduced their hours from an already lower work-week base, whereas the furlough reduced the work week of most other County employees, from forty hours to thirty-nine. The loss per year was the equivalent of 6.93 days of pay -- an annual reduction in hours to 1,898 for employees in the Courthouse Unit, compared to an annual reduction to 2,028 hours for other employees.

Other contract provisions may be relevant in interpreting Section 11.1, as I describe below. The following two additional definitions appear in Article III:

3.9. Proration: Will be calculated on hours, i.e., two thousand eighty (2,080) or one thousand nine hundred and fifty (1,950), depending on the number of regularly scheduled hours for that work unit.

3.11. Anniversary Date: Also known as the start date, this date shall be the first date of employment with the Employer and shall be used in determining benefits. The new Anniversary Date following an unpaid leave of absence of more than thirty (30) days shall be determined upon completion of one thousand nine hundred and fifty (1,950) working hours from the last Anniversary Date (for those employees scheduled to work thirty-seven and one-half (37.5) hours per week); or two thousand and eighty (2,080) working hours from the last Anniversary Date (for those employees scheduled to work forty (40) hours per week). . . . The Anniversary Date for a Regular Part Time Employee shall be the completion of one thousand nine hundred and fifty (1,950) working hours from the last Anniversary Date (for those employees in a department

whose Regular Full Time Employees are scheduled to work thirty-seven and one-half (37.5) hours per week); or two thousand and eighty (2,080) working hours from the last Anniversary Date (for those employees in a department whose Regular Full Time Employees are scheduled to work forty (40) hours per week). The calculation of these hours does not include overtime.

The phrase, "normal work week" appears not only in Sections 3.5 and 11.1 of the labor agreement, as I have described above, but also in the following provisions:

11.6. Employees whose normal work week is thirty-seven and one-half (37.5) hours per week who perform work beyond thirty-seven and one-half (37.5) hours per week and through forty (40) hours per week shall be compensated on an "hour for hour" basis. Employees may choose to either bank these hours as compensatory time off or receive monetary compensation.

11.7. At the Employee's discretion, Employees may choose to bank compensatory time off at the appropriate rate for hours worked in excess of their normal work week in lieu of monetary compensation. There is no limit to the amount of compensatory time that an Employee may accrue, but all compensatory time in excess of forty (40) hours as of December 31 of each year will be paid to the employee as additional compensation at the Employee's year-end rate of pay, including longevity pay. . . .

The following two sections, also from Article XI of the labor agreement, may be relevant:

11.3. If it is necessary to implement permanent changes in work schedules (other than for reasons beyond the Employer's control), the Employer shall notify the affected Employees at least ten (10) calendar days prior to implementation.

11.4. Employees will be compensated at a rate of one and one-half (1 1/2) times the Employee's current rate of pay, including longevity pay, for hours worked in excess of the forty (40) hour work week. Hours worked in excess of an Employee's regular work week must have prior approval of the Employee's supervisor, except in extenuating circumstances

Section 14.3 establishes an annual sick leave benefit, as follows:

14.3. Annual Sick Leave Benefit. Effective January 1, 2009, one hundred twelve [and one-half] (112.5) hours, for those employees scheduled to work thirty-seven and one half (37.5) hours per week, and one hundred twenty (120) hours, for those employees scheduled to work forty (40) hours per week, will be deposited into the Employee's annual sick leave benefit account. . . .

Section 16.1 of the labor agreement establishes the rate at which employees are credited with days of vacation, thus:

<u>Years Of Employment</u>	<u>Hours Per Month 37.5 Or 40 Hour Week</u>	<u>Hours per Year 1950 or 2080 Per Year</u>
0-4	7.5 or 8	90 or 96
5-9	9.38 or 10	112.56 or 120
10-14	11.25 or 12	135 or 144
15-19	13.13 or 14	157.56 or 168
20 or More	15 or 16	180 or 192

Article VIII of the labor agreement has fourteen sections, the first five of which are primarily about layoff and the next three of which are primarily about recall from layoff. Section 8.1 establishes two seniority lists -- one of them, a "total current service list," and the other, a "classification seniority list." Sections 8.3, 8.4 and 8.5 are set out below:

8.3. Any Employee who is covered by this Agreement and who is subsequently promoted or transferred to any position within a department shall retain seniority in the prior classification. A reduction in work force will be accomplished on the basis of classification seniority within each department.

8.4. Except in those instances where senior Employees are not qualified to perform remaining duties, departmental seniority by classification shall determine the order of layoff and recall from layoff. Layoff shall be in inverse order of departmental class seniority, provided that any Employee who is to be laid off and has previously served in a lower or equal pay grade or in another department may request to exercise seniority rights in such lower classification or such prior department. In the event of a layoff or recall, seniority as determined by number of hours worked in the classification shall govern.

8.5. The Employer shall notify affected Employees of a pending layoff and the reasons for the layoff thirty (30) calendar days prior to said layoff whenever possible.

For the following reasons, I interpret Section 11.1 as an agreement to fix the work week at either thirty-seven and one-half hours or forty hours. First, the Union argues that the twice-occurring use of the mandatory auxiliary verb, "shall," in Section 11.1, which I repeat below, supports its position that the hours there stated as the "normal work week" cannot be reduced:

The normal work week for full time Employees shall consist of forty (40) hours. All employees working in full time positions that are currently thirty-seven and one-half (37 1/2) hours per week shall also be considered full time Employees.

The subject of the first sentence, with all its modifiers, is "the normal work week for full time employees." It is that subject that "shall" "consist of forty (40) hours." The second sentence appears to describe the same concept for "all employees working in full time positions that are currently thirty-seven and one-half (37 1/2) hours per week." Because they "shall also be considered full time employees," they are to be considered as having a "normal work week" of thirty-seven and one-half hours, even though the phrase, "normal work week," does not appear in the second sentence. Clearly, Section 11.1 means that the normal work week for full time employees is either forty hours or thirty-seven and one-half hours. That definition is not modified in any other provision of the labor agreement.

I agree with the Employer that, as used in the definition of a part-time employee in Section 3.5, the phrase "normal work week," appears to be a reference to the statute that defines a

public employee. Nevertheless, Section 11.1 creates its own different definition, clearly defining "the normal work week of a full time employees as either forty hours or thirty-seven and one-half hours.

Thus, it appears that the parties intended that an employee, to have full time status, must work either a forty hour week or a thirty-seven and one-half hour week, as a "normal" work week, perhaps changeable occasionally. Because the mandatory furlough reduced the hours of bargaining unit employees below the hours defined as the normal work week for full time employees, the furlough had the effect of changing their status to that of part-time employees.

Though the Employer has the right to establish work schedules (under Section 5.1) and to change work schedules (under Section 11.3), I do not read those sections as providing authority to reduce the hours of all full-time employees, changing them to part-time employees. Rather, these provisions, reasonably read, provide the authority to set the starting and ending times of the total work week of employees, which for full-time employees must be either forty hours or thirty-seven and one-half hours. Sections 5.1 and 11.3 do not imply a right to change all full-time employees into part-time employees, with, if such a right were read into those provisions, the accompanying right to reduce the benefits that other sections of the labor agreement secure to full-time employees.

Second. Other provisions of the labor agreement confirm that the status of a full time employee requires working either forty hours per week or thirty-seven and one-half hours per

week. Thus, "proration" and "anniversary date" calculations are to be done by using a work week of forty hours or of thirty-seven and one-half hours (Sections 3.9 and 3.11). Similarly, the agreement provides for sick leave and vacation benefits that are based on a work week of forty hours or of thirty-seven and one-half hours (Sections 14.3 and 16.1).

The Employer presented evidence that, notwithstanding the reduction in the hours employees are permitted to work, the Employer has maintained benefits at the same level specified in the labor agreement for working with full time status -- either forty hours per week or thirty-seven and one-half hours per week. Nevertheless, the continuation of full time benefits with the imposition of a mandatory furlough still places employees in part-time status with respect to their total compensation -- an across-the-board change that is inconsistent with Section 11.1 and, as I describe below, with the layoff provisions of the labor agreement.

Third. In Article VIII of the labor agreement, the parties have established a detailed system for reducing the hours worked by employees in the Courthouse Unit -- by the use of layoff, with protection against reduction provided to employees by their seniority ranking and their qualifications. Nothing in Article VIII can be interpreted as permitting an across-the-board furlough reducing the hours of all employees as an exception to the parties' agreement in Article VIII that they will use layoff by seniority to accomplish reductions in hours. The expression in Article VIII of a system for making large

reductions in hours by the use of layoff implies the exclusion of the use of other means to do so.

I conclude that the requirement that full-time bargaining unit employees work one hour less per week violated Section 11.1 of the labor agreement. As I have discussed above, the determination that the current labor agreement includes the parties' bargain prohibiting such a reduction makes moot the Union's allegations that the Employer failed in its obligation to meet and negotiate about that subject and thereby committed an unfair labor practice.

Remedy. The Union seeks an award concluding that the Employer violated the labor agreement by mandating the one hour per week furlough and, in addition, requiring the Employer to make whole bargaining unit employees affected by the furlough. The Employer asks that the award be applied prospectively, arguing that its decision to require the furlough was based upon a colorable, good faith interpretation of the labor agreement.

The award declares that the Employer violated the labor agreement by mandating the one hour per week furlough for employees who had been working either thirty-seven and one-half hours per week or forty hours per week. It also directs the Employer, as soon as practicable, to restore the hours in the work week of each bargaining unit employee who, before implementation of the furlough, was working either thirty-seven and one-half hours per week or forty hours per a week.

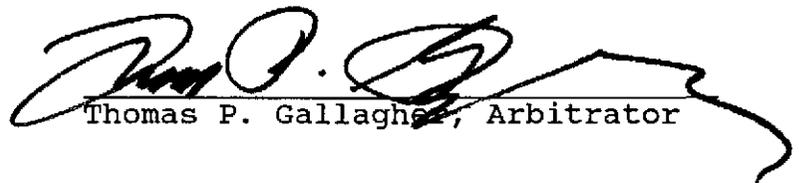
In addition, the award directs the parties to calculate, for each bargaining unit employee, the total wages that would

have been earned if the employee had not been subject to the furlough, and it directs the Employer to pay one-half of such amount to the employee. This reduction in back pay is justified partly by the the good faith of the Employer and partly by the fact that, though the furlough caused employees to lose an hour of work each Friday, that loss was partially offset by their ability not to work during that hour.

AWARD

The grievance is sustained. The Employer violated the labor agreement by mandating the one hour per week furlough for bargaining unit employees who had been working either thirty-seven and one-half hours per week or forty hours per week. As soon as practicable, the Employer shall restore the hours in the work week of each bargaining unit employee who, before imposition of the furlough, was working either thirty-seven and one-half hours per week or forty hours per week. In addition, the parties shall calculate, for each bargaining unit employee, the total wages that would have been earned if the employee had not been subject to the furlough, and the Employer shall pay one-half of such amount to the employee. I retain jurisdiction to resolve any issues that may arise in the implementation of this award.

July 20, 2010


Thomas P. Gallagher, Arbitrator