

BEFORE THE ARBITRATOR

In the Matter of the Arbitration  
of a Dispute Between

LOCAL 2717-C, AFSCME, AFL-CIO

and

JACKSON COUNTY (HIGHWAY DEPARTMENT)

Case 103  
No. 52057  
MA-8826

Appearances:

Mr. Daniel Pfeifer, Staff Representative, Wisconsin Council 40, appearing on behalf of the Union.

Mr. James Michael DeGracie, Corporation Counsel/Personnel Director, Jackson County, appearing on behalf of the County.

ARBITRATION AWARD

The Union and the County named above jointly requested that the Wisconsin Employment Relations Commission appoint the undersigned to hear a grievance regarding the savings deductions. After a hearing was held on April 4, 1995, in Black River Falls, Wisconsin, the parties agreed that the undersigned should issue an expedited award.

The issue is whether the County violated the collective bargaining agreement by unilaterally discontinuing its past practice of making a savings deduction on payroll checks for employees. Since 1978, a few employees (currently five) have had the County deduct a certain amount of money from their payroll checks and deposit that money into their savings accounts at the Jackson County Bank. The account clerk in the Highway office, Avis Hoff, made out separate vouchers for the deposit of each savings account, and the County gave one check to the Bank, which then disbursed the money into each account as directed.

With the exception of employees at the Pine View Nursing Home, no other County employees have had this savings deduction service provided by the County. Computer systems operator Kyle Deno recalled that before the County got a computer in 1986, other employees had this savings deduction, but it was stopped for everyone except the five employees in the Highway Department. Pine View does its payroll separately from the rest of the County payroll, and uses a different system than Hoff did to deposit the savings amounts.

On March 17, 1994, the Union notified the County that it had ratified the 1994-1995 labor

contract, but that it did not agree to a four-day work week, an item that was separated from the labor contract. The County was unhappy that the Union did not want to further negotiate the four-day work week. By the end of March, the County decided that it would no longer deposit savings for Highway Department employees. It still does so for Pine View employees.

The Union believes that this past practice is related to wages, hours, and conditions of employment and should not have been eliminated without negotiations. The Union also thinks that there is an element of retaliation against it for not agreeing to a four-day work week. The County calls the past practice a gratuity limited to a small number of employees. It says it stopped the practice as a result of potential administrative costs, and feels it may do so under its management rights.

The past practice here is one that meets the common definition of a past practice -- that it was unequivocal, clearly enunciated and acted upon, and readily ascertainable over a reasonable period of time as an established practice accepted by both parties. However, the question is whether this is the type of past practice that attains the status of contractual rights when the contract does not address the matter.

Contrary to the Union's assertions, I do not find that the practice relates to wages, hours, or conditions of employment. It has nothing to do with wages -- it is a special service that does some bookkeeping or errands on behalf of employees who wish to divert some of their wages to their own savings accounts. The practice is also not a working condition. Clearly, this is a mere gratuity. It is not a service enjoyed by to all bargaining unit members, but only a few who used it. Also, the evidence falls short of showing that the County was retaliating against the Union when it stopped the savings deductions.

The County was entitled to determine that this is one service it need not provide to employees. They can make their own arrangements with the banks to handle their savings deposits. Employees are no worse off without the County handling it, and no better off with the County handling it. However, the County bears the administrative costs and the time of its personnel to perform the task.

#### AWARD

The grievance is denied.

Dated at Elkhorn, Wisconsin this 14th day of April, 1995.

By Karen J. Mawhinney /s/  
Karen J. Mawhinney, Arbitrator