

July 19, 2006

## TO THE MEMBERS OF THE BROWN COUNTY BOARD OF SUPERVISORS

Ladies and Gentlemen:

The HUMAN SERVICES COMMITTEE met in special session on July 17, 2006, and recommends the following motions:

1. Review & discussion of whether security personnel are any longer needed at the Mental Health Center. Refer to September meeting for further review of security system.
2. Review & discussion of bumping procedures and whether changes in the Mental Health Center Table of Organization has been approved by the Human Services Committee & County Board. Direct County Board Chairman Lund to seek an outside legal opinion regarding County Board authority related to staff layoff and discontinuation of jobs relative to County Code, Chapter 4.
3. Review & discussion of Brown County policies regarding new admissions to the Mental Health Center. Suspend the current policy and direct administration to admit Brown County residents who are being referred by area nursing homes, discharge planners, and services for the aging for behavioral and safety issues to the Brown County Mental Health Center Nursing home.
4. Review & discussion of 2006 County budget regarding funding of the Mental Health Center and why funding for some units were only partially funded. Receive & place on file.
5. Request for Administration to explain in detail line-by-line projected cost increases for the Mental Health Center from 2006 to 2007. Hold this item and clarify the assumptions used to develop preliminary options.
6. Request to certify Brown County Mental Health Center for Medicare clients and to evaluate the potential fiscal impact receiving Medicare clients would have on future Brown County levy. Direct staff to come back with a detailed report regarding the Medicare certification process.
7. Review policy of out-of-county patients. Hold until beds are converted.

Approved by:

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COUNTY EXECUTIVE

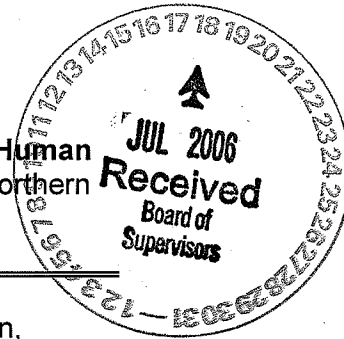
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**PROCEEDINGS OF THE BROWN COUNTY**  
**HUMAN SERVICES COMMITTEE**

Pursuant to Section 19.94 Wis. Stats., a special meeting of the **Brown County Human Services Committee** was held on Monday, July 17, 2006 in Room 200 of the Northern Building – 305 East Walnut Street, Green Bay, Wisconsin



**Present:** Patrick Evans-Chair; Steve Fewell, Mary Scray, Joe VanDeurzen, Chris Zabel, Guy Zima

**Excused:** Pat LaViolette

**Also**

**Present:** Supervisors Kaye, Fleck, Johnson, Lund, Warpinski, Dantine, DeWane, Krueger, Erickson, Corporation Counsel John Jacques, Bill Dowell, Beth Manning, Diane Pivonka, Mary Johnson  
Other Interested Parties, Media

1. **Call Meeting to Order:**  
The meeting was called to order by Chairman Patrick Evans at 7:05 p.m.

2. **Approve/Modify Agenda:**

**Motion made by Supervisor Fewell and seconded by Supervisor VanDeurzen to approve the agenda.**

**Ayes: Evans, Fewell, Scray, VanDeurzen, Zima**

**Nays: Zabel**

**MOTION APPROVED 5-1**

3. **Review and discussion of whether security personnel are any longer needed at the Mental Health Center:**

Supervisor Zima indicated that for the last couple of years there have been security personnel at the Mental Health Center. He questioned the necessity, stating they appear to be doing nothing, except at times walking staff or visitors to their vehicles in the parking lot. In his opinion, it is an unnecessary expense.

Corporation Counsel John Jacques explained that in January/February of 2005, County Judges requested there be security measures taken because of problems at the MHC. A security study was performed at that time.

Mr. Dowell reported that recommendations from that study have been and are being implemented. A security guard makes rounds every hour from 10 p.m. to 6 a.m. inside and outside, and in addition the outpatient area is monitored from 4 p.m. to 8 p.m. The study also suggested that cameras be installed, in addition to a duress alarm system. The amount of open doors has been reduced from 11 to 4, additional lighting has been added, and a security fence was installed around the court yard. By mid-August suggested cameras will be installed.

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At the time the study was approved, the County Board requested participation from the Sheriff's Department when preparing the RFP and in selecting the consultant. Sheriff Kocken served on that committee. Captain Randy Schultz recently performed an individual evaluation and his recommendation was to continue with the security system as is.

Mr. Dowell stated it is his opinion that employees at the Center appreciate the security personnel as it provides a safety factor. Ms. Pivonka agreed with Mr. Dowell, stating it was important to staff during the 10 p.m. to 6 a.m. period especially.

Prior to the time security was hired, an employee from the maintenance department performed some of the security duties. Ms. Manning indicated that became a bargaining issue and was seen as a conflict of interest, that being the reason it was changed to a contract position.

Supervisor Jack Krueger suggested that the NWTC Police Science Program be contacted to see if they might have an intern who would perform the security duties without cost.

Supervisor Scray suggested the committee review this issue again after all security measures have been implemented, cameras installed, etc. A survey of the MHC staff was also suggested.

**Motion made by Supervisor Fewell and seconded by Supervisor Zima to refer to September meeting for further review of security system.**

**MOTION APPROVED UNANIMOUSLY**

4. **Review and discussion of bumping procedures and whether changes in the Mental Health Center Table of Organization has been approved by the Human Services Committee & County Board:**

Chairman Evans indicated there appears to be confusion over the definition of a temporary layoff vs. discontinuance of job.

Beth Manning explained the layoff situation, stating there have been layoffs due to reduction in work load and lower census than projected. There have been no changes made to the Table of Organization.

Supervisor Zima indicated it was his understanding that if layoffs went more than 90 days, it was required the County Board be informed.

Mr. Jacques distributed *Chapter 4, Personnel Rules & Regulations, Objectives & Scope, Chapter 4.04 Collective Bargaining Agreements* (attached), stating that the labor contract provides how layoffs are implemented and that the 90 days only applies to non-reps, other employees are governed by the labor contract. This labor contract comes before the County Board every two years, and is on the agenda of the next meeting on 7/19/06.

Supervisor Johnson asked how many laid off employees are on unemployment compensation. Ms. Pivonka stated there are none (or possibly one), that the employees who were laid off have been placed in other positions through the bumping process.

*Supervisor Zabel excused 7:50 p.m.*

Supervisor Fewell requested that consideration be given to getting an outside legal opinion to clarify the County Code, the definition of layoffs and discontinuance of jobs, and the requirement that there be a change in the Table of Organization after 90 days.

Supervisor Zima asked if vacancies occur, if laid off personnel are called back first. Ms. Pivonka agreed to review records and report back.

Supervisor Scray clarified that the present guidelines will continue until an outside opinion is received.

**Motion made by Supervisor Fewell and seconded by Supervisor Scray to direct County Board Chairman Lund to seek an outside legal opinion regarding County Board authority related to staff layoff and discontinuation of jobs relative to County Code, Chapter 4.**

**MOTION APPROVED UNANIMOUSLY**

**5. Review and discussion of Brown County policies regarding new admissions to the Mental Health Center:**

Chairman Evans explained that he and other supervisors have received calls from staff expressing concern that patients are not being accepted in the nursing home unit of the Mental Health Center.

Supervisor Zima asked if area hospitals and nursing homes are still making referrals, confirming there are available beds.

Ms. Pivonka stated that when calls are received requesting admission to the hospital, they are told, per the policy drafted and approved in September, 2005 at the direction of then Director Allen Parks, that "Admissions will only be considered after all community based systems of care have been eliminated as options for placement".

When asked about admissions since the September 2005 date, Ms. Pivonka stated there have been 8 admissions, 4 permanent long term. Since the downsizing agreement began in September of 2004, there have been 23 short term admissions to the nursing home. Per the downsizing agreement, the County is paid for 83 clients, even though the current census is 58.

Mary Johnson, Director of Nursing, reported there has been an overall decline, not only because of the downsizing agreement, but also that area nursing homes in general have shown a decline.

Supervisor Zima questioned why Manitowoc County, with a population that is less than Brown County, has a 150 bed facility, asking if people have been turned away from Brown County. Ms. Pivonka replied that they work carefully to determine if there are any community based systems of care, if not, admission to the MHC is discussed. Supervisor Zima questioned why Brown County appears to be actively diverting patients, why are they downsizing when the population is increasing.

Director Manning explained that the Governor has an initiative to decrease nursing home bed capacity by 25% over an eight year period. The initiative is coming forward with family care and long term managed care, that there has shown to be a reduction in nursing home beds, with improved outcomes through medication, people taking care of themselves longer, and being able to save and afford other alternatives other than nursing home care. She stated it is the goal of the MHC to serve as a "safety net" in the community for those who potentially have come into an emergency detention situation and can't be returned to their home.

A lengthy discussion resulted in Supervisor Zima suggesting that a recommendation be made to the County Board that the Admission Policy established in September 2005 be abolished, and that Brown County admit patients who request admission. It was also suggested that DHFS staff be asked to address the committee at the August meeting.

Rather than abolishing the present policy, Supervisor VanDeurzen recommended that it stay in place until it can be reviewed and a new policy implemented – within 30 days.

Chairman Evans indicated that the admission policy created in September 2005, usurps the authority of the legislative power of the County Board as they are to set the policy and procedures for the County.

Additional discussion resulted in the following motion:

**Motion made by Supervisor Fewell and seconded by Supervisor Zima to suspend the current policy and direct administration to admit Brown County residents who are being referred by area nursing homes, discharge planners, and services for the aging for behavioral and safety issues to the Brown County Mental Health Center Nursing home.**

**MOTION APPROVED UNANIMOUSLY**

6. **Review and discussion of 2006 County Budget regarding funding of the Mental Health Center and why funding for some units were only partially funded:**

Chairman Evans asked if it is correct that the nursing home budget was only funded through June. Director Manning indicated that was correct, however, units 8 & 9 are in operation. She explained that the budget was developed based on projections, stating that although the ICF-MR was projected at 28 for the year, they are at 9 residents today, resulting in a rapid loss of revenue. Sixteen individuals on Unit 9 were expected to be relocated in the community

under the Community Relocation Initiative, although this did not materialize and the unit could not responsibly be closed. When asked how the unit would be funded for the rest of the year, Ms. Manning explained that as long as they are in the downsizing agreement, they continue to get paid as if there are 83 Medicaid patients. Of the present 58, 7 are planned to be relocated, rather than the 16 projected.

Chairman Evans and Supervisor Zima pointed out that a possible closing of the nursing home was something the County Board was not made aware of. Ms. Manning indicated it is the intention to involve the Human Services Committee and Board more in the future.

**Motion made by Supervisor VanDeurzen and seconded by Supervisor Fewell to receive and place on file. MOTION APPROVED UNANIMOUSLY**

7. **Request for Administration to explain in detail line-by-line projected cost increases for the Mental Health Center from 2006 to 2007:**

Human Services Director Manning explained that the 2007 projected costs are not yet available, however, the tax levy target is expected within the next week or so. At the last committee meeting, potential shortfalls in revenue were reviewed. At that time there was a \$718,000 decrease because the downsizing agreement will end at the end of August '07. It is also expected to lose \$101,500 in intergovernmental transfer funds, which are funds paid based on the number of allocated bed days. In addition, a 3% salary increase is anticipated, along with a 7.5% fringe increase.

Supervisor Fewell asked how the previously reported cost of \$3 million was calculated and how the options were developed and what assumptions were used.

**Motion made by Supervisor Zima and seconded by Supervisor Fewell to hold this item and clarify the assumptions used to develop preliminary options. MOTION APPROVED UNANIMOUSLY**

8. **Request to certify Brown County Mental Health Center for Medicare clients and to evaluate the potential fiscal impact receiving Medicare clients would have on future Brown County levy:**

Mary Johnson, Director of Nursing, explained that to receive Medicare clients, there is an application process. Beds do not have to be purchased but can be converted. Financially, rather than the base rate of \$117 per day, there is the potential with the proper rehab services to collect \$400 per day. The rate is calculated through the MDS and transmitted to the government by a well trained Medicare nurse. PT, speech, pharmacy are required services. Revenue could be enhanced with limited additions to staff.

**Motion made by Supervisor Fewell and seconded by Supervisor Zima to direct staff to come back with a detailed report regarding the Medicare certification process. MOTION APPROVED UNANIMOUSLY**

9. **Review policy of out-of-county patients:**

Supervisor Zima indicated it was his understanding from administration that out-of-county patients were costing the County \$50 per day. Ms. Manning stated that the out-of-county psychiatric patients are paid for by other counties, meaning Brown County is reimbursed their rate. Brown County still accepts out-of-county patients in the psych unit. She did not know the difference between the reimbursement rate and true cost in the hospital unit. Medicaid reimbursement does not cover the full cost. If a bed is filled under the downsizing agreement, Brown County continues to get paid as if there are 83 Medicaid patients, meaning more costs are incurred. If converted ICF beds are filled separately and the State views them separately, there is a potential for more revenue.

**Motion made by Supervisor Zima and seconded by Supervisor VanDeurzen to hold until beds are converted. MOTION APPROVED UNANIMOUSLY**

10. **Such other matters as authorized by law:**

**Motion made by Supervisor Fewell and seconded by Supervisor VanDeurzen to suspend the rules and allow interested parties to speak. MOTION APPROVED UNANIMOUSLY**

**Sue Pranke – 714 South 6<sup>th</sup> Street, DePere**

Ms. Pranke noted it would be interesting to ask Governor Doyle just what his ideas are. She also asked the potential that the Brown County Mental Health Center would become a regional facility.

**Mary DeGroot - Sugarbush Road, Luxemburg**

In regard to the security issue, Ms. DeGroot informed the committee that switchboard operators are not comfortable with the gate that is being built as it does not protect them and leaves them vulnerable. As of this time, one operator has left. She said administration has been told and they have taken no action.

**Motion made by Supervisor Zima and seconded by Supervisor VanDeurzen to return to regular order of business. MOTION APPROVED UNANIMOUSLY**

**Motion made by Supervisor Zima and seconded by Supervisor Scray to adjourn at 10:10 p.m. MOTION APPROVED UNANIMOUSLY**

Respectfully submitted,

Rae G. Knippel  
Recording Secretary

**BROWN COUNTY CODE OF ORDINANCES**

**CHAPTER 4**

**PERSONNEL RULES AND REGULATIONS**

**OBJECTIVES AND SCOPE**

**4.04 COLLECTIVE BARGAINING AGREEMENTS.** This chapter applies to employees not covered by collective bargaining agreements and to employees so covered when specific labor contract provisions do not apply to the contrary.

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**BROWN COUNTY CODE OF ORDINANCES**

**CHAPTER 4**

**PERSONNEL RULES AND REGULATIONS**

**OBJECTIVES AND SCOPE**

**4.40 RESPONSIBILITY AND AUTHORITY**

**(4) Personnel Director.** The Personnel Director shall:

**(a) Administer the personnel policies and procedures and labor contracts adopted by the County Board.**

**111.61 Commission to establish rules.** The commission shall establish appropriate rules and regulations to govern the conduct of conciliation and arbitration proceedings under this subchapter.

**111.62 Strikes, work stoppages, slowdowns, lockouts, unlawful; penalty.** It shall be unlawful for any group of employees of a public utility employer acting in concert to call a strike or to go out on strike, or to cause any work stoppage or slowdown which would cause an interruption of an essential service; it also shall be unlawful for any public utility employer to lock out the employer's employees when such action would cause an interruption of essential service; and it shall be unlawful for any person or persons to instigate, to induce, to conspire with, or to encourage any other person or persons to engage in any strike or lockout or slowdown or work stoppage which would cause an interruption of an essential service. Any violation of this section by any member of a group of employees acting in concert or by any employer or by any officer of an employer acting for such employer, or by any other individual, shall constitute a misdemeanor.

History: 1993 a. 492.

**111.63 Enforcement.** The commission shall enforce compliance with this subchapter and to that end may file an action in the circuit court of the county in which any violation of this subchapter occurs to restrain and enjoin the violation and to compel the performance of the duties imposed by this subchapter. In any action described in this section, ss. 103.505 to 103.51 do not apply.

History: 1997 a. 233.

**111.64 Construction.** (1) Nothing in this subchapter shall be construed to require any individual employee to render labor or service without the employee's consent, or to make illegal the quitting of the employee's labor or service or the withdrawal from the employee's place of employment unless done in concert or agreement with others. No court shall have power to issue any process to compel an individual employee to render labor or service or to remain at the employee's place of employment without the employee's consent. It is the intent of this subchapter only to forbid employees of a public utility employer to engage in a strike or to engage in a work slowdown or stoppage in concert, and to forbid a public utility employer to lock out the employer's employees, where such acts would cause an interruption of essential service.

(2) All laws and parts of laws in conflict herewith are to the extent of such conflict concerning the subject matter dealt with in this subchapter supplanted by the provisions of this subchapter.

History: 1993 a. 492.

#### SUBCHAPTER IV

#### MUNICIPAL EMPLOYMENT RELATIONS

**111.70 Municipal employment. (1) DEFINITIONS.** As used in this subchapter:

(a) "Collective bargaining" means the performance of the mutual obligation of a municipal employer, through its officers and agents, and the representative of its municipal employees in a collective bargaining unit, to meet and confer at reasonable times, in good faith, with the intention of reaching an agreement, or to resolve questions arising under such an agreement, with respect to wages, hours and conditions of employment, and with respect to a requirement of the municipal employer for a municipal employee to perform law enforcement and fire fighting services under s. 61.66, except as provided in sub. (4) (m) and s. 40.81 (3) and except that a municipal employer shall not meet and confer with respect to any proposal to diminish or abridge the rights guaranteed to municipal employees under ch. 164. The duty to bargain, however, does not compel either party to agree to a proposal or require the making of a concession. Collective bargaining includes the reduction of any agreement reached to a writ-

ten and signed document. The municipal employer shall not be required to bargain on subjects reserved to management and direction of the governmental unit except insofar as the manner of exercise of such functions affects the wages, hours and conditions of employment of the municipal employees in a collective bargaining unit. In creating this subchapter the legislature recognizes that the municipal employer must exercise its powers and responsibilities to act for the government and good order of the jurisdiction which it serves, its commercial benefit and the health, safety and welfare of the public to assure orderly operations and functions within its jurisdiction, subject to those rights secured to municipal employees by the constitutions of this state and of the United States and by this subchapter.

(b) "Collective bargaining unit" means a unit consisting of municipal employees who are school district professional employees or of municipal employees who are not school district professional employees that is determined by the commission to be appropriate for the purpose of collective bargaining.

(c) "Commission" means the employment relations commission.

(d) "Craft employee" means a skilled journeyman craftsman, including the skilled journeyman craftsman's apprentices and helpers, but shall not include employees not in direct line of progression in the craft.

(dm) "Economic issue" means salaries, overtime pay, sick leave, payments in lieu of sick leave usage, vacations, clothing allowances in excess of the actual cost of clothing, length-of-service credit, continuing education credit, shift premium pay, longevity pay, extra duty pay, performance bonuses, health insurance, life insurance, dental insurance, disability insurance, vision insurance, long-term care insurance, worker's compensation and unemployment insurance, social security benefits, vacation pay, holiday pay, lead worker pay, temporary assignment pay, retirement contributions, supplemental retirement benefits, severance or other separation pay, hazardous duty pay, certification or license payment, limitations on layoffs that create a new or increased financial liability on the employer and contracting or subcontracting of work that would otherwise be performed by municipal employees in the collective bargaining unit with which there is a labor dispute.

(e) "Election" means a proceeding conducted by the commission in which the employees in a collective bargaining unit cast a secret ballot for collective bargaining representatives, or for any other purpose specified in this subchapter.

(f) "Fair-share agreement" means an agreement between a municipal employer and a labor organization under which all or any of the employees in the collective bargaining unit are required to pay their proportionate share of the cost of the collective bargaining process and contract administration measured by the amount of dues uniformly required of all members. Such an agreement shall contain a provision requiring the employer to deduct the amount of dues as certified by the labor organization from the earnings of the employees affected by said agreement and to pay the amount so deducted to the labor organization.

(fm) "Fringe benefit savings" means the amount, if any, by which 1.7% of the total compensation and fringe benefit costs for all municipal employees in a collective bargaining unit for any 12-month period covered by a proposed collective bargaining agreement exceeds the increased cost required to maintain the percentage contribution by the municipal employer to the municipal employees' existing fringe benefit costs and to maintain all fringe benefits provided to the municipal employees, as determined under sub. (4) (cm) 8s.

(g) "Labor dispute" means any controversy concerning wages, hours and conditions of employment, or concerning the representation of persons in negotiating, maintaining, changing or seeking to arrange wages, hours and conditions of employment.

(h) "Labor organization" means any employee organization in which employees participate and which exists for the purpose, in

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reason other than short term illness, FMLA, and/or any authorized leave of absence, will subject the employee to loss of rights under the provision of this article.

## 2. Displacement of Staff (bumping)

- a. Displaced employees will be allowed one "bump" (per each Work Force Reduction) of a less senior employee in the same classification or selection from the pool of vacant/open posting(s) within the same classification which he/she currently holds. There will be no 14-calendar day trial period in the "bump" process.
- b. Displaced employees can bump into posting(s) within other classification(s) of the bargaining group only after all posting(s) within the displaced employee's classification are held by senior employees. The employee must prove his/her qualifications as determined by the testing process within 14 days of the bump. Upon the employee(s) meeting the minimum passing test score of 75 points, he/she will be afforded a 14 calendar day trial period in the posting. If the employee does not retain the posting (for any reason) for the 14 calendar day trial period, he/she will go to layoff status with no further bumping rights. The employee who held the posting prior to the bump will then return to the said posting.
- c. On the date of the actual Work Force Reduction, all employees who have been displaced or may be bumped by a more senior employee, must make themselves available by telephone or in person. No more than two (2) telephone calls will be placed to each employee, and if said employee cannot be reached by telephone or in person, the employee's name will be moved to the bottom of the list to be called. Should an employee realize that he/she will not be available to receive a telephone call or will not be available in person on said date, it will be his/her responsibility to indicate his/her preference(s) for posting selection(s) to a member of the Local 1901 Executive Board prior to the date of the Work Force Reduction. Thereafter, the Executive Board member will act as the employee's representative and shall be available by telephone or in person to indicate the employee's posting selection(s).
- d. The senior displaced employee will be contacted first, and whomever he/she "bumps" will move into the sequence according to seniority of other displaced employees in order to exercise his/her "bumping" right. Employee(s) neither "bumped" nor displaced by this process will not be affected by WFR.
- e. No employee will be allowed to "bump" into a posting(s) that will increase his/her current benefit according to his/her posting(s) status; i.e., part-time cannot "bump" into a fulltime posting. However, it is possible for the employee to make a selection from the pool vacant/open posting(s) even if such posting(s) has a greater number of posted hours than his/her current posting(s). Such selection will result in an increase of his/her benefit status.

## 3. Lay-Off of Staff

- a. Laid-off employees will go to on-call status within his/her classification prior to the lay-off and subject to recall by Brown County. He/she will be ranked by seniority above current on-call employees, but below any full/part-time employees. Fill-in hours will be awarded according to the current scheduling guidelines. Refusal or rejection of recall by the employee for any reason other than short term illness, Family Medical Leave, and/or any authorized leave of absence, will subject the employee to loss of rights under the provision of this article.

BROWN COUNTY MENTAL HEALTH CENTER  
AGREEMENT

This Agreement, made and entered into and to be effective January 1, 2003 by and between Brown County, Wisconsin, hereinafter referred to as the "Employer", and the Brown County Employees Local 1901 of the American Federation of State, County and Municipal Employees, AFL-CIO, hereinafter referred to as the "Union", for the purpose of maintaining harmonious labor relations, and to maintain a uniform minimum scale of wages, working conditions, and hours among the employees, members of the Union, and to facilitate a peaceful adjustment of all grievances and disputes which may arise between the Employer and the employees.

ARTICLE 1. MANAGEMENT RIGHTS RESERVED

Unless otherwise herein provided, the management of the work and the direction of the working forces, including the right to hire, promote, transfer demote or suspend, or otherwise discharge for proper cause, and the right to relieve employees from duty because of lack of work or other legitimate reason is vested exclusively in the Employer. If any action taken by the Employer is proven not to be justified, the employee shall receive all wages and benefits due him/her for such period of time involved in the matter.

The Employer shall adopt and publish reasonable rules which may be amended from time to time. Except for rules, regulations and directives from the State of Wisconsin, approving agencies such as the Joint Committee on Accreditation of Hospitals, or other governmental agencies having jurisdiction over the institutions; however, such rules shall be subject to the grievance procedure.

It is the duty and responsibility of management to determine if "qualified help is available" wherever stated in the labor agreement; however, the Union has the right to challenge such determination.

ARTICLE 2. RECOGNITION AND BARGAINING UNIT

The Employer recognizes the Union as the exclusive bargaining agent in a collective bargaining unit consisting of all regular fulltime and all regular part-time employees as certified by the Wisconsin Employment Relations Board on April 17, 1967, pursuant to an election conducted by the Board on April 6, 1967, and pursuant to subsequent W.E.R.C. rulings.

The parties agree that at all times during the period in which the Union is certified as the bargaining agent for employees described above, the parties shall not:

- (a) Refuse to bargain in good faith with each other regarding mandatory subjects of bargaining during the period the union is certified nor change nor threaten to change any wages, benefits, or terms or conditions of employment which are mandatory subjects of bargaining at any time during the period the union is certified.
- (b) The provisions of this article which are mandatory subjects of bargaining shall remain in effect at all times this Agreement is in effect and during any period of negotiations whether or not this Agreement has been terminated.

(OVER)

## EMPLOYMENT RELATIONS

### Discipline, subject for collective bargaining

Police association's proposal to allow police officers to obtain arbitration of suspensions imposed by city police chief and city police and commission was prohibited subject of bargaining, though association's proposal was primarily related to wages, hours and conditions of employment, where commission had ultimate authority to suspend employees and exclusive authority to reduce in rank and remove subordinates; it was inconsistent with that statutory scheme to permit subordinate dissatisfied with commission decision to seek arbitration of essentially same issues decided by commission. *City of Janesville v. Wisconsin Employment Relations Com'n* (App. 1995) 535 N.W.2d 34, 193 Wis.2d 492, review denied 540 N.W.2d 201.

Police association's proposal allowing officer suspended by police chief to obtain arbitration suspension rather than hearing before police and fire commission was not mandatory subject of bargaining; hearing before commission was required for suspensions imposed by police chief upon charges. *City of Janesville v. Wisconsin Employment Relations Com'n* (App. 1995) 535 N.W.2d 34, 193 Wis.2d 492, review denied 540 N.W.2d 201.

Proposals regarding the "just cause standard" or disciplinary action against teachers related primarily to wages, hours and conditions of employment and were thus mandatorily bargainable. *City of Beloit v. Beloit City School Bd. v. Wisconsin Employment Relations Commission* (1976) 242 N.W.2d 231, 73 Wis.2d 43.

### Layoffs, subject for collective bargaining

Dispute over school board's refusal to bargain for legal replacement for provision in collective bargaining agreement that all layoffs shall be based on inverse order of seniority "provided that the ratio balance of schools is not disturbed" was ripe for declaratory ruling; there was both hardship and actual injury in that on more than one occasion nonblacks with more seniority were laid off instead of blacks so as to not reduce overall percentage. *Milwaukee Bd. of School Directors v. Wisconsin Employment Relations Com'n* (App. 1991) 472 N.W.2d 553, 163 Wis.2d 739.

School board's refusal to bargain over replacement for layoff clause in collective bargaining agreement providing that layoffs shall be based on inverse order of seniority provided that racial balance of schools is not disturbed involved "labor dispute" and Employment Relations Commission did not violate separation of powers doctrine by deciding constitutionality of the clause. *Milwaukee Bd. of School Directors v. Wisconsin Employment Relations Com'n* (App. 1991) 472 N.W.2d 553, 163 Wis.2d 739.

## MUNICIPAL EMPLOYMENT RELATIONS

111.  
Note

County's unquestioned right to lay off employees for "legitimate reasons," as stated in management rights clause of collective bargaining agreement, and restated in management prerogatives guaranteed by this subchapter, did not give county right to avoid mandatory bargaining over decision to replace public employees by subcontracting its youth home services, a decision relating primarily to wages, hours, or conditions of employment, and thus existence of management right clause was immaterial, and motion of county to introduce additional evidence of management rights clause in collective bargaining agreement was properly denied. *Brown County v. Wisconsin Employment Relations Com'n* (App. 1987) 405 N.W.2d 752, 138 Wis.2d 234, review denied 416 N.W.2d 66, 140 Wis.2d 873.

Municipal Employment Relations Act (this section), in the absence of § 62.13, regulating police and fire departments, could be interpreted to permit a collective bargaining agreement between city and nonsupervisory police officers that provided layoffs by bargaining unit seniority, since if the Act stood alone the statutes would be silent on the matter; however, since § 62.13, specifically prohibits layoff in such departments on any other basis than length of service in the department, the legislature expressly prohibited bargaining any contract provision which violates that statute. *Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Local No. 695 v. Wisconsin Employment Relations Com'n* (App. 1984) 359 N.W.2d 174, 121 Wis.2d 291.

Trial court erred when it gave no weight to Employment Relations Commission's interpretation of § 62.13, governing order of layoff and recall of police officers, and the Municipal Employment Relations Act (this section), on issue of whether city had duty to bargain with union representing nonsupervisory police officers on layoff provisions of its labor agreement with the city. *Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Local No. 695 v. Wisconsin Employment Relations Com'n* (App. 1984) 359 N.W.2d 174, 121 Wis.2d 291.

Proposals by association representing school teachers relating to timing and effective date of layoffs had greater impact on wages and conditions of employment than on school district's interests, since proposals would not significantly abridge district's powers relating to reduction of teaching staff beyond abridgement set forth in § 118.22, requiring school district to give teachers notice of nonrenewal of contract by July 15 of preceding school year and since statute gives teachers an acute interest in timing of notice of layoff and implementation of decision by its effect of limiting teachers'

flexibility in seeking and obtaining employment after contract renewal; therefore, proposals were subject to mandatory collective bargaining. *West Bend Educ. Ass'n v. Wisconsin Employment Relations Com'n* (1984) 357 N.W.2d 534, 121 Wis.2d 1.

It was legally permissible for a union representing school district employees and school district to reach agreement on proposals relating to timing and effective date of layoffs. *West Bend Educ. Ass'n v. Wisconsin Employment Relations Com'n* (1984) 357 N.W.2d 534, 121 Wis.2d 1.

Since layoff provision in teachers' collective bargaining agreement was directly authorized by public employee bargaining law, St. 1977, § 111.70, and was a mandatory subject of bargaining, it was incumbent on the courts to give effect to both the bargaining agreement and St. 1977, § 118.22 governing refusal to renew teacher contracts, if such could be done. *Milwaukee Joint School Dist. No. 3, Village of Hal Corners, Cities of Greenfield and Franklin, Milwaukee County* (1979) 285 N.W.2d 604, 121 Wis.2d 476.

Provision of teachers' bargaining agreement governing layoffs in case of declining enrollment, with teachers selected for layoff to be notified on or before March 15 and with teachers laid off having specified rights, violates express statutory command or public policy. *Milwaukee Joint School Dist. No. 3, Village of Hal Corners, Cities of Greenfield and Franklin, Milwaukee County* (1979) 285 N.W.2d 604, 121 Wis.2d 476.

Statutes conferring municipal powers do not expressly prohibit topic of economically motivated layoffs from becoming permissive subject of collective bargaining, but decision to discuss topic at bargaining table is choice to be made by electorate as expressed through its designated representatives and department heads, an economically motivated decision to lay off firefighters as means to implement fire department budget reduction is not mandatory subject of collective bargaining. *City of Brookfield v. Wisconsin Employment Relations Commission* (1979) 275 N.W.2d 723, 87 Wis.2d 819.

Though economically motivated decision to lay off fire fighters as means to implement fire department budget reduction was not mandatory subject of collective bargaining, issue as to effects of layoffs was mandatory subject of bargaining. *City of Brookfield v. Wisconsin Employment Relations Commission* (1979) 275 N.W.2d 723, 87 Wis.2d 819.

Proposals concerning order of teacher layoff as interpreted so as not to require a more senior fourth grade athletic teacher to displace a less senior 12th grade physics teacher in all cases layoff, related to wages, hours and conditions of employment and were thus mandatorily bargainable.