

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
SAUK COUNTY	:	
Requesting a Declaratory Ruling	:	Case 94
Pursuant to Section 111.70(4)(b),	:	No. 44105 DR(M)-476
Wis. Stats., Involving a Dispute	:	Decision No. 26658
Between Said Petitioner and	:	
TEAMSTERS UNION LOCAL NO. 695	:	

Appearances:

Mr. Eugene R. Dumas, Corporation Counsel, 515 Oak Street, Baraboo,
Previant, Goldberg, Uelmen, Gratz, Miller and Brueggeman, S.C., by

Wisconsin 5
Ms. Marianne

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECLARATORY RULING

Sauk County having, on June 6, 1990 filed a petition with the Wisconsin Employment Relations Commission seeking a declaratory ruling pursuant to Sec. 111.70(4)(b), Stats. as to whether a proposal made by Teamsters Union Local No. 695 during collective bargaining with the County is a mandatory subject of bargaining; and Teamsters Union Local No. 695 having filed a statement in response to the County's petition on June 15, 1990; and hearing having been held in Baraboo, Wisconsin on July 31, 1990 by Examiner Peter G. Davis; and the parties having filed post-hearing argument, the last of which was received on September 6, 1990; and the Commission having reviewed the record and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Sauk County, herein the County, is a municipal employer having its principal offices at 515 Oak Street, Baraboo, Wisconsin.

2. That Teamsters Union Local No. 695, herein the Union, is a labor organization having its principal offices at 1314 North Stoughton Road, Madison, Wisconsin.

3. That during collective bargaining between the County and the Union over the wages, hours and conditions of employment of certain employes of the County's Sheriff's Department, a dispute arose as to whether a Union proposal was a mandatory subject of bargaining; and that the disputed proposal, as amended by the Union at hearing, states:

"Section 8. The Agreement in Article V, Section 3, concerning float positions, shall not diminish the ability of any deputy permanently assigned to a specific division or shift (i.e.: non-float positions) to select vacations as described in Article XV, Section C. This provision relates exclusively to mandatory subjects of bargaining and shall not be construed so as to abrogate the constitutional rights of the sheriff."

4. That the disputed proposal set forth in Finding of Fact 3 primarily relates to wages, hours and conditions of employment.

Based upon the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. That the disputed proposal set forth in Finding of Fact 3 does not limit or infringe upon the Sauk County Sheriff's constitutional authority.

2. That the disputed proposal set forth in Finding of Fact 3 is a mandatory subject of bargaining.

Based upon the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

DECLARATORY RULING 1/

That the County and the Union have a duty to bargain within the meaning of Sec. 111.70(3)(a)4 and 111.70(1)(a), Stats. as to the disputed proposal set forth in Finding of Fact 3.

Given under our hands and seal at the City of
Madison, Wisconsin this 25th day of October,
1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairman

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner

1/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025(3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefore personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after
(continued)

1/ continued

the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECLARATORY RULING

BACKGROUND:

The Union proposes to add the underlined language to the parties' existing Article VIII vacation language, which states:

ARTICLE VIII. VACATIONS

Section 1. All employees covered by this Agreement shall be entitled to one (1) week of vacation after six (6) months of service. Employees shall be entitled to an additional week after twelve (12) months and two (2) weeks after each additional year up to eight (8) years of service and three (3) weeks vacation after eight (8) years. One (1) additional day of vacation shall be granted for each year of employment after eight (8) years but not to exceed four (4) weeks. The work week under this section shall be defined as applying only to six (6) working days and two (2) days off.

Section 2. Vacation schedules must be approved by the department head.

Section 3. Temporary employees are not entitled to receive vacation pay.

Section 4. If a holiday falls during the vacation period an extra day of vacation will be granted.

Section 5. Vacations are not accumulative and should be completed during the twelve (12) month period following the anniversary date.

Section 6. Jailer and dispatcher vacation shall be paid as though time worked.

Section 7. Vacation requests must be submitted at least twenty-one (21) working days in advance of the date for which vacation is requested. At the discretion of the Sheriff, vacation requests may be considered upon less notice. Nothing contained herein shall be construed so as to abrogate the Constitutional rights of the Sheriff.

Section 8. The Agreement in Article V, Section 3, concerning float positions, shall not diminish the ability of any deputy permanently assigned to a specific division or shift (i.e.: non-float positions) to select vacations as described in Article XV, Section C. This provision relates exclusively to mandatory subjects of bargaining and shall not be construed so as to abrogate the constitutional rights of the sheriff.

The portions of the existing contract identified in the Union proposal as Article V, Section 3 and Article XV, Section 6 provide:

. . .

ARTICLE V, SECTION 3

Deputies assigned to float positions may be assigned to work temporary openings in any division on the same basis as members of that division and shall receive pay at the Patrolman rate.

. . .

ARTICLE XV, SECTION 6

In the event that two (2) or more applications for the same vacation period are submitted simultaneously, seniority shall prevail, otherwise vacation slots shall be on a first-come, first-preference basis.

. . .

Under the existing contract language quoted above, the County concluded that a deputy in a "float position" had vacation selection rights equal to those deputies permanently assigned to a division or shift. The County also concluded that under the contract language, if a deputy in a "float position" had received approval of a vacation request while assigned to one division or shift, said vacation approval would carry over to a new division or shift if that deputy were subsequently transferred. The Union became concerned that under the County's interpretation of the existing contract language, the vacation rights of deputies in the "float positions" would prevent deputies permanently assigned to a division or a shift from exercising certain vacation rights. To address this concern, the Union proposed to amend Article VIII by adding the disputed language.

POSITIONS OF THE PARTIES

The County:

The County argues that the proposal is permissive because its reference to existing Article V, Section 3 and Article XV, Section 6 contract provisions necessarily incorporates permissive limitations on the County's ability to manage the department and to meet the law enforcement needs of the citizens. The County views the proposal as establishing vacation rights which limit its ability to organize the department as it deems necessary.

The County also contends that the proposal is a prohibited subject of bargaining because inclusion in the contract would limit, if not destroy, the Sheriff's discretion when performing functions which characterized and distinguished the office of Sheriff at common law.

Given the foregoing, the County asks the Commission to declare that proposal is not a mandatory subject of bargaining.

The Union:

The Union asserts that its proposal is a mandatory subject of bargaining which addresses employe vacation rights while leaving the Sheriff free to meet law enforcement needs. The Union contends that the proposal only establishes that if the Sheriff is going to permit vacation to be taken, the request of a deputy permanently assigned to a specific division or shift shall take priority over a request of a deputy who is not permanently so assigned (i.e., a floater.)

The Union disputes the County's assertion that the reference in the proposal to other contract provisions somehow renders the proposal permissive. The Union notes that the language from the incorporated Articles has not been separately objected to by the County as permissive and that the language incorporated from said Articles is itself mandatory. Even if it could reasonably be argued that the incorporated language is permissive, the Union contends that its proposal simply addresses the "impact" on employe "hours" of the existence of the floater position. Lastly, the Union notes that the disclaimer in the proposal ensures that there can be no valid claim that the proposal will intrude upon the Sheriff's constitutional power.

Given the foregoing, the Union requests that its proposal be found to be a mandatory subject of bargaining.

DISCUSSION:

In Beloit Education Association v. WERC 73 Wis.2d 43 (1976), Unified School District No. 1 of Racine County v. WERC 81 Wis.2d 89 (1977) and City of Brookfield v. WERC 87 Wis.2d 819 (1979) the Court set forth the definition of mandatory and permissive subjects of bargaining under Sec. 111.70(1)(d), Stats., as matters which primarily relate to "wages, hours and conditions of employment" or to the "formulation or management of public policy," respectively.

Where, as here, it is alleged that a proposal is a prohibited subject of bargaining because of its impact on a Sheriff's constitutional authority, the court has held that the "principal and important duties" which characterize and distinguish the office of the Sheriff cannot be subjected to limitation or infringement through collective bargaining. Professional Police Association v. Dane County 106 Wis.2d 303 (1982), see also State ex rel Kennedy v. Brunst 26 Wis. 412 (1870); State ex rel Milwaukee County v. Buech 171 Wis. 474 (1920).

Based upon the record before us, we are satisfied that as argued by the Union, the language of the Union proposal seeks only to make the presence or absence of deputies in "float positions" on a specific shift or in a specific division irrelevant for the purposes of the vacation rights of deputies permanently assigned to a specific division or shift. Thus, the Union proposes that for vacation purposes a deputy permanently assigned to a specific division or shift has priority over those filling a float position even if the floater has already had his/her vacation request approved. Under the Union proposal, if the County concluded that its service needs could not be met by allowing both a "floater" and a "regular" deputy to take vacation, the

"floater" would be the unit employe for whom vacation approval would be rescinded. If the County allowed both vacation requests, it retains the right to call in other employes to insure that service needs are met. The Union proposal, however, does not require the County to honor both vacation requests and fill resulting manpower needs on an overtime basis. The Union acknowledges, and we agree, that in certain circumstances the Sheriff may deny all vacation requests.

The County does not dispute the Union's argument that, as a general matter, vacation rights proposals primarily relate to employe hours and as such, are mandatory subjects of bargaining. Beloit, supra. Given the last sentence of the Union's proposal, the proposal cannot be interpreted as a prohibited subject of bargaining because of intrusion into the Sheriff's constitutional power. We are left then, with the County argument that the proposal is permissive because it intrudes into management prerogatives.

We do not find that argument persuasive. The proposal only establishes vacation rights. It necessarily does so within the context of the current organizational structure of shifts and divisions and the current use of float positions. Because the focus of the proposal is to establish the priority relationship of vacation requests of deputies in "non-float positions", reference in the proposal to that portion of the parties' current agreement which addresses floater pay and status vis-a-vis non-floaters (Article V, Section C) seems only to be a sensible reference which seeks to clarify the Union's intent rather than an infringement on any management prerogative as to reorganization or creation of new positions.

Should this proposal be included in the parties' contract and should it be interpreted in some fashion which supports the County's concerns expressed herein, the County is free to ask us to reevaluate our conclusions. However, at present, we have no reasonable basis for concluding that the proposal is anything other than what the Union intends it to be.

Given the foregoing, we find the proposal is a mandatory subject of bargaining.

Dated at Madison, Wisconsin this 25th day of October, 1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairman

Herman Torosian /s/
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