

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

---

**MILWAUKEE DEPUTY SHERIFFS' ASSOCIATION**, Complainant,

vs.

**MILWAUKEE COUNTY**, Respondent.

Case 671  
No. 68270  
MP-4453

**Decision No. 32590-B**

---

**Appearances:**

**Graham P. Wiemer**, Vanden Heuvel & Dineen, S.C., W175 N11086 Stonewood Drive, P.O. Box 550, Germantown, Wisconsin 53022-0550, appearing on behalf of the Milwaukee Deputy Sheriffs' Association.

**Timothy R. Schoewe**, Deputy Corporation Counsel, Milwaukee County, Room 303, 901 North Ninth Street, Milwaukee, Wisconsin 53233, appearing on behalf of Milwaukee County.

**ORDER ON REVIEW OF EXAMINER'S DECISION**

On July 3, 2009, Examiner Raleigh Jones issued Findings of Fact, Conclusion of Law and Order with Accompanying Memorandum in the above-entitled matter, wherein he concluded that he would not assert the Wisconsin Employment Relations Commission's jurisdiction over the Complainant Milwaukee Deputy Sheriffs' Association's (Union) allegation that Respondent Milwaukee County (County) had committed a prohibited practice within the meaning of Sec. 111.70(3)(a) 5, Stats., by acting contrary to a grievance arbitration award and/or the parties' collective bargaining agreement. Based on this conclusion, the Examiner dismissed the complaint.

On July 20, 2009, the Union timely filed a petition with the Wisconsin Employment Relations Commission seeking review of the Examiner's decision pursuant to Secs. 111.07(5) and 111.70(4)(a), Stats. The parties thereafter filed written argument in support of and in opposition to the petition, the last of which was received October 26, 2009.

For the reasons set forth in the Memorandum that follows, we conclude, contrary to the Examiner, that it is appropriate to assert jurisdiction over the merits of the allegations in the complaint. However, having asserted such jurisdiction, we conclude that the County did not violate the Emery award or the pertinent language in the parties' bargaining agreement.

No. 32590-B

Having reviewed the record and being fully advised in the premises, we make and issue the following

**ORDER**

- A. The Examiner's Findings of Fact are affirmed.
- B. The Examiner's Conclusion of Law is set aside and the following Conclusion of Law is issued:

Through issuance of Sheriff Clarke's July 15, 2008 Directive No. 13-08, Milwaukee County has not violated a collective bargaining agreement or refused to accept the terms of the November 10, 2006 Emery arbitration award and thus has not committed a prohibited practice within the meaning of Sec. 111.70(3)(a) 5, Stats.

- C. The Examiner's Order dismissing the complaint is affirmed.

Given under our hands and seal at the City of Madison, Wisconsin, this 11th day of November, 2009.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

---

Judith Neumann, Chair

Paul Gordon /s/

---

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

---

Susan J. M. Bauman, Commissioner

**MILWAUKEE COUNTY**

**MEMORANDUM ACCOMPANYING ORDER**  
**ON REVIEW OF EXAMINER'S DECISION**

As reflected in the Examiner's Findings of Fact, Arbitrator Emery issued an award in November 2006 that resolved a contractual dispute between the Union and the County as to how overtime should be assigned. In July, 2008, the County (through Sheriff Clarke) issued Directive No. 13-08 on the subject of overtime assignments. The Union alleges that by issuing the directive, the County "disregarded a prior final and binding . . . arbitration award" and "unlawfully attempts to alter the collective bargaining agreement." thereby committing a prohibited practice within the meaning of Sec. 111.70(3)(a) 5, Stats.

The Examiner concluded that the issues raised by the complaint were appropriate for a grievance arbitrator to resolve and declined to assert the Commission's Sec. 111.70(3)(a) 5, Stats. jurisdiction. We disagree. As the Examiner recognized, the essence of the complaint is that "... the Sheriff failed to abide by the Emery Arbitration Award when he issued Directive 13.08." Where it is alleged that a party has failed to comply with a grievance arbitration award, it is appropriate for the Commission to exercise its Sec. 111.70(3)(a) 5, Stats. jurisdiction.<sup>1</sup> We have done so on several recent occasions. MADISON SCHOOLS, DEC. NO. 32419 -B (WERC, 8/09); STATE OF WISCONSIN, DEC. NO. 32019-B (WERC, 1/09). See also STATE OF WISCONSIN, DEC. NO. 31865-D (WERC, 11/07); STATE OF WISCONSIN, DEC. NO. 31240-B (WERC, 5/06). This is because, once a contractual issue has been resolved by a grievance arbitration award, both parties are entitled to rely on that award and need not litigate the matter again if the contractual language and material circumstances remain unchanged.<sup>2</sup>

In the instant case, the Union does not contend that the County has actually assigned overtime on any occasion in a manner contrary to the Emery award. Rather, the Union's focus is exclusively upon the language of Directive 13-08 and specifically the portion thereof which references and defines "Unanticipated Overtime." According to the Union, this language in the directive demonstrates an intent to act contrary to the Emery award. The Union reasons that the Emery award essentially concluded that there is no such thing as "Unanticipated Overtime" in the context of the collective bargaining agreement between the Union and the County.

---

<sup>1</sup> In pertinent part, Sec. 111.70(3)(a) 5, Stats. makes it a prohibited practice for municipal employer to violate an agreement or "... to accept the terms of such arbitration award, where previously the parties have agreed to accept such award as final and binding upon them."

<sup>2</sup> As the Court appropriately stated in DANE COUNTY V. DANE COUNTY UNION LOCAL 65, 210 Wis. 2D 267 (Ct.App. 1997) at 279:

Arbitration is also designed to bring an end to controversy. Employees, unions and employers all rely on the finality of arbitration decisions in ordering their affairs. If identical claims, or identical issues which the arbitrator necessarily decides, can become the subject of repetitive arbitrations between the same parties simply by resubmitting the controversy to a new arbitrator, a "final and binding" arbitration will never occur.

Hence, according to the Union, the County's use of that phrase and definition in the Directive is contrary to the Emery award. We disagree.

While it may be that a category of "Unanticipated Overtime" is not relevant to the Union and the County in the context of the Emery award,<sup>3</sup> the critical question is whether that portion of Directive 13-08 will actually lead to assignment of overtime in manner that is at odds with the Emery award. Contrary to the Union, we see nothing in Directive 13-08 that demonstrates an intention on the part of the County to assign overtime in a manner that conflicts with the collective bargaining agreement as interpreted by the Emery award. Indeed, the Directive expressly states at 202.08.2 that overtime "will be assigned in accordance with applicable labor agreements" and at 202.08.5 that the assignment procedures described therein are not applicable if "other procedures are outlined in a contractual agreement with a specific group of employees." Thus, while the reference to "Unanticipated Overtime" in Directive 13-08 may be irrelevant to the contractual relationship between the Union and the County, it does not in and of itself constitute a refusal to accept the terms of the Emery award.

Therefore, we have affirmed the Examiner's dismissal of the complaint, albeit on different grounds.

Dated at Madison, Wisconsin, this 11th day of November, 2009.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

---

Judith Neumann, Chair

Paul Gordon /s/

---

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

---

Susan J. M. Bauman, Commissioner

---

<sup>3</sup> Directive 13-08 applies to multiple bargaining units of Sheriff's Department employees as well as unrepresented Department employees and thus the definition of "Unanticipated Overtime" may well be directly applicable and appropriate as to employees not represented by Complainant.