

BEFORE THE ARBITRATOR

In the Matter of the Arbitration :
of a Dispute Between :
ST. CROIX COUNTY : Case 104
and : No. 43396
THE LABOR ASSOCIATION OF : MA-5967
WISCONSIN, INC., LOCAL NO. 108 :

Appearances:

Mr. Dennis A. Pedersen, Business Agent, The Labor Association of Wisconsin, Inc., for the Union.
Weld, Riley, Prenn, & Ricci, Attorneys at Law, by Mr. Stephen L. Weld, for the Employer.

ARBITRATION AWARD

The Labor Association of Wisconsin, Inc., Local No. 108, herein the Union, pursuant to the terms of its collective bargaining agreement with St. Croix County, herein the Employer, requested the Wisconsin Employment Relations Commission to designate a member of its staff as an arbitrator to hear and decide a dispute between the parties. The Employer concurred with said request and the undersigned was designated as the arbitrator. Hearing was held in Hudson, Wisconsin on April 10, 1990. No transcript of the hearing was taken. The parties completed the filing of post-hearing briefs on February 15, 1991.

ISSUE:

The parties stipulated to the following issues:

Did the Employer violate the terms of the parties' 1989-90 collective bargaining agreement, specifically, Article 2-Section 2, Article 3-Section 1 (J), Article 4, and/or Article 6, Section 4, when it used a non-bargaining unit person to serve process on October 19, 20, 21 and 23, 1989? If so, what is the appropriate remedy?

BACKGROUND:

The Union is the representative of a bargaining unit of employees in the Employer's Sheriff's Department. The normal complement of bargaining unit employees is 31 with the following distribution by classification: Primary Services Deputy-15; Investigators-5; Jailers-7; Process Servers-2; Court Officer-1; and, Recreation Officer-1.

One of the Process Servers, Schafhauser, resigned effective September 30, 1989. 1/ The Sheriff asked the remaining process server, Belongia, to work overtime until the vacancy was filled. Belongia agreed to work some overtime. The Sheriff also attempted to utilize the primary services/deputies to serve papers while on patrol. In mid-October the Sheriff asked Belongia if he would work additional overtime. Belongia refused the additional overtime. The Sheriff then scheduled a non-bargaining unit individual to serve papers during seven hour shifts on each of the following dates; October 19, 20, 21 and 23.

After the instant grievance was filed on or about November 4, Belongia accepted all the overtime necessary to stay current with the process serving function.

A second process server was hired and began working on or about January 16, 1990.

POSITION OF THE UNION:

The negotiations resulting in 1987-88 contract produced the language in Article 6, Section 4 so as to meet the Union's concern that individuals were being scheduled to work partial shifts to avoid using bargaining unit employees. The Sheriff appears to have forgotten about said modification in this matter.

Process serving is a normal part of the duties of both process servers and primary services/deputies. Therefore, the overtime work should have been offered to the deputies prior to being assigned to a non-bargaining unit employee.

The Union requests a payment of seven hours of overtime pay to each of

1/ Unless specified otherwise, all other dates herein refer to 1989.

the senior deputies available for the four dates in question.

POSITION OF THE EMPLOYER:

The Sheriff did offer the available work to employes within the classification of process server. In the absence of volunteers from within the classification, the Sheriff could use non-bargaining unit employes. While the Sheriff could have utilized primary services deputies, he was not required to do so.

If the parties had intended that non-bargaining unit individuals could be used only after all bargaining unit employes were offered the work, then references to classification in Article 6, Section 4 would be unnecessary. Further, process servers and primary services deputies were established as separate classifications in the current contract, as compared to the previous contract.

The Sheriff offered the work in question to the other process server. Thus, no violation occurred.

RELEVANT CONTRACTUAL PROVISIONS:

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ARTICLE 2

PROBATIONARY PERIOD - BARGAINING UNIT WORK

. . .

Section 2. A. All work presently performed by bargaining unit employees shall continue to be performed by Union members throughout the term of this Agreement or extensions hereof. The current level of use of part-time employees is not in conflict with this Section.

B. The County solely at its option, may use bargaining unit personnel to perform work normally performed by part-time, non-bargaining unit personnel. When the County decides to use bargaining unit personnel for such work, the bargaining unit employee shall be paid at his/her normal hourly rate unless the FLSA requires higher payment. Expense reimbursement shall be in accordance with County policy. The assignment of this work to bargaining unit personnel does not under any circumstances establish the work as belonging to the bargaining unit.

ARTICLE 3

MANAGEMENT RIGHTS

Section 1. The County possesses the sole right to operate County government and all management rights repose in it. The County agrees that in exercising any of these rights it shall not violate any provisions of this Agreement. These rights include but are not limited to, the following:

. . .

J. To contract out for goods and services, provided, however, that enforcement of this right shall not result in any reduction of normal bargaining unit work nor in layoff of bargaining unit personnel.

. . .

ARTICLE 4

MAINTENANCE OF STANDARDS

Except as provided by this Agreement, the County agrees that all reasonable conditions of employment in existence at the signing of this Agreement shall be maintained at not less than the highest minimum standards and the conditions of employment shall be improved wherever specific provisions for changes are made elsewhere in this Agreement.

The parties unqualifiedly agree to bargain regarding

any changes which occur in the wage, hours or conditions of employment which may arise out of application of this Article during the term of this Agreement. If Agreement cannot be reached, the issue may be submitted by either party to arbitration in accordance with the procedure as outlined in Article 8 Paragraph E.

ARTICLE 5

SENIORITY

Section 2. - Job Classifications Seniority lists shall be maintained for each job classification and shall be used for purposes of layoff, recall, vacation scheduling or resolution of any other such dispute between equally qualified employees. Separate job classifications currently existing within the bargaining unit are as follows:

Investigators
Court Officer
Recreation Officer
Process Server
Primary Services/Deputy
Jailer

. . .

ARTICLE 6

. . .

Section 4. For the duration of this contract, the County agrees to utilize bargaining unit members when filling vacancies for entire regular, full-time shifts. If the County chooses to fill a vacant shift or part thereof, it shall utilize people in the classification in which the vacancy occurs. This shall be done on a rotating seniority basis for employees who are available. The County shall make a good faith effort to reach employees to offer the assignment; this shall constitute a telephone call to the residence of the employee. If the County cannot find an employee within the classification who volunteers for the assignment, it may go outside the bargaining unit to fill the position. Nothing in this Section abrogates (sic) the County's prerogative to determine whether or not to fill the shift. Nothing contained herein shall preclude the County from calling an employee early or extending an employee's shift to cover a vacant regular full-time shift or part thereof.

DISCUSSION:

Article 5, Section 2 explicitly establishes process servers and primary services deputies as separate classifications. While the job description of the deputy includes the statement "May assist in the service of papers and warrants", it is clear from the description that such work is not a primary duty of the deputies. Conversely, the job description for process server leaves no doubt that serving papers is a primary, if not the primary, duty for the process servers. Although there is some overlap of duties between the classifications of process server and primary services deputy, as evidenced by the fact that on occasion deputies have served papers in the past, the undersigned is not persuaded that the language in Article 6, Section 4 refers to such overlap of duties. Rather, the language very specifically refers to the utilization of people in the classification in which the vacant shift occurs. The vacant shift was in the classification of process server.

The language of Article 6, Section 4 further provides the Employer with the ability to go outside the bargaining unit if no employe within the classification volunteers for the assignment. The Sheriff did offer the work to the other process server, who refused the work for the dates in question. After the available work was refused by the remaining process server, the Sheriff had the option, per the contract, either to offer the work to bargaining unit employes in other classifications or to utilize non-bargaining unit employes. Clearly, the Sheriff acted in accordance with that contractual language in assigning process serving duties to a non-bargaining unit employe on the dates in question.

The addition of the phrase "or part thereof" to the clause which became Article 6, Section 4 of the 1987-88 contract does not alter the foregoing conclusions, since it is not material to the instant matter whether the work was a full or a partial shift.

Based on the foregoing and the record as a whole, the undersigned enters the following

AWARD

That the Employer did not violate the terms of the parties' 1989-90 collective bargaining agreement, specifically Article 2-Section 2, Article 3-Section 1(J), Article 4, or Article 6-Section 4, when it used a non-bargaining unit person to serve process on October 19, 20, 21 and 23, 1989; and that the grievance is denied and dismissed.

Dated at Madison, Wisconsin this 2nd day of May, 1991.

By _____
Douglas V. Knudson, Arbitrator