



4.01 The Employer shall have the sole and exclusive right to determine the number of

employees to be employed, the duties of each of these employees, the nature, hours and place of their work, and all other matters pertaining to the management and operation of Richland County and Richland County Sheriff Department, including the hiring and promotion of employees. The Employer shall have the right to demote, suspend, discharge or otherwise discipline employees for just cause.

The Employer has the exclusive right to assign and direct employees, to schedule work and to pass upon the efficiency and capabilities of the employees, and the Employer may establish and enforce reasonable work rules and regulations. Further to the extent that rights and prerogatives of the Employer are not explicitly granted to the Union or employees, such rights are retained by the Employer. However, the provisions of this article shall not be used for the use of undermining the Union or discriminating against any of its members.

#### FACTS

The facts are undisputed. Code R is a radio code utilized by the Richland County Sheriff's Department. The R in Code R stands for residence. When workload conditions permit a road officer or investigator who is on duty to go home for a lunch break at their residence, they inform the Sheriff's Department dispatcher center that they are taking a Code R. This code alerts the dispatch center that the road officer or investigator is out of their vehicle taking a lunch break at their residence so that the dispatch center knows where to reach them in case of an emergency during the break. The County does not replace road officers or investigators who go Code R.

Code R has been available to road officers and investigators for at least 20 years. 1/ Code R has never been applied or extended to dispatcher/jailers who work at the County Courthouse.

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1/ Code R was suspended briefly in 1984 but was reinstated shortly thereafter. What happened was that the then Sheriff discontinued Code R privileges from the road officers and investigators. A grievance was filed over the matter which was subsequently settled. The settlement was to reinstate Code R privileges as it had previously existed (i.e., Code R applied only to outside road officers and investigators.)

In November, 1991, the Union filed a grievance requesting that dispatcher/ jailers be allowed to utilize Code R in the same manner and under the same conditions as the road officers. The Sheriff and the Law Enforcement Committee denied the grievance. Thereafter, it was appealed to arbitration.

The record indicates that in the last round of negotiations, the dispatcher/jailers were put on the same work schedule as the road officers and investigators, to wit: A 6-3 schedule. Before this change, dispatcher/jailers were on a different work schedule from the road officers and investigators.

The record further indicates that road officers and investigators usually work outside of the County Courthouse doing patrol work in squad cars. They are subject to call at any time and being out in the community during work hours is a regular part of their job. Dispatcher/jailers work in either the jail operating it or in the dispatch center where they direct road officers via the radio. Dispatcher/jailers are required to be in the Courthouse for the duration of their shift. Removal of a dispatcher/jailer from the workplace would require a replacement. The dispatcher/jailers have different training, skills and pay rates from the road officers.

During their shift, dispatcher/jailers have access to certain amenities at the Courthouse such as a kitchen, pop machines, and a television in the dispatch center.

#### POSITIONS OF THE PARTIES

The Union's position is that the County's failure to allow dispatcher/ jailers to use Code R violates the labor contract. The Union notes in this regard that road officers, investigators and the dispatcher/jailers have the same work schedule and the same work hours, but the road officers are allowed to utilize Code R (workload permitting) while the dispatcher/jailers are not (regardless of the workload). In the Union's view, the County's refusal to provide the same Code R opportunities to dispatcher/jailers that it provides to road officers violates the labor contract. Specifically, the Union contends it violates the Management Rights clause because the Employer is providing a benefit (i.e. Code R) to one group of employes (i.e. the road officers) and denying that benefit to others (i.e. the dispatcher/jailers). According to the Union, the Employer's present application of the Code R rule unreasonably discriminates against dispatcher/jailers. In order to remedy the contractual breach, the Union requests that the grievance be upheld and that the County be ordered to cease and desist from denying the utilization of Code R to the dispatcher/jailers. Said another

way, the Union requests that the County be ordered to apply Code R to the dispatcher/jailers. The Union submits that if this were to happen, the dispatcher/jailers would be able to go to a nearby restaurant, a nearby convenience store or any number of downtown establishments and still maintain contact with the jail via a walkie-talkie.

The County's position is that its failure to allow dispatcher/jailers to use Code R does not violate the contract. The County contends that its determination that dispatcher/jailers are not entitled to the Code R privilege falls squarely within the Management Rights clause. It reads that clause as giving it the authority to regulate Code R utilization unless it has limited its authority to do so somewhere in the contract. In its view, there is no language limiting the County's authority in this regard. Next, it submits that the Union's argument that the bargaining history and equity dictate that the County should extend the Code R privilege to the dispatcher/jailers fails for three reasons. First, the County contends that the recent change in work schedule for the dispatcher/jailers has no effect on the extension of the Code R privilege to them. According to the County, the change in work schedule was not intended or designed to extend the Code R privilege to inside deputies. Second, the County asserts that the application of Code R to just the road officers and not the dispatcher/jailers is reasonable based on the differences in the jobs and their working conditions and has been consistently applied over a long term on a uniform basis. Third, the County argues that the Union's claim based on equity should fail in light of the parties' previous dealings on the Code R matter. In this regard, it notes that the parties have not taken any steps in collective bargaining or otherwise to change the operation of the Code R policy since the 1984 grievance. The County believes the Union should not be allowed in this proceeding to attack the Code R policy on an equity basis or reasonableness grounds when the issue was brought up and resolved (in 1984) consistent with the previous application and administration (i.e. Code R applied only to outside road officers and investigators and not extended to dispatcher/jailers). Given the foregoing the County contends it has not violated the labor contract by applying the Code R privilege to just the road officers. It therefore requests that the grievance be denied.

#### DISCUSSION

At present, the County permits outside road officers and investigators to utilize Code R, but it does not permit dispatcher/jailers to do so. At issue here is whether this conduct violates the labor contract. The Union contends that it does while the County disputes this assertion.

A review of the labor agreement indicates it does not address the Code R matter in any way, shape or form. That being the case, the parties have not included language in their present agreement covering the matter. The Employer submits that given this contractual silence concerning Code R, it retains authority under the Management Rights clause (Article IV) to regulate Code R utilization. I agree. It is an accepted arbitral principle that management has the fundamental right to establish reasonable rules and policies which are not inconsistent with the labor contract.  
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As just noted, though, the rules and/or policies which management formulates must be reasonable and not discriminate. The Union argues that the Code R policy currently extended only to road officers should also be extended to dispatcher/jailers because to do otherwise is unreasonable and discriminatory.

The undersigned believes there are several problems with this proposition. To begin with, the fact of the matter is that for over 20 years Code R has never been extended to the dispatcher/jailers. Instead, it has been extended only to the road officers and investigators. The Union was well aware of this policy and its application only to the road officers and investigators. Insofar as the record shows, the Union did not challenge this policy at its inception, nor has it ever taken steps through the bargaining process or otherwise to change the existing application of the Code R policy. Noteworthy in this regard is that a grievance was filed in 1984 when the then Sheriff suspended the Code R policy. That grievance was resolved when Code R was reinstated. However, Code R was continued only as it had previously been applied (i.e. applied only to outside road officers and investigators -- not the dispatcher/jailers).

Next, the Union relies on the fact that in the last round of negotiations, the dispatcher/jailers were put on the same 6-3 schedule as the road officers. In the Union's view, this changed work schedule creates similarly situated employees. The Union reasons that a benefit, specifically Code R, extended to one class of employees must be extended to all employees or otherwise discrimination exists. I disagree. Discrimination occurs when similarly situated employees or groups of employees are treated differently. In the context of this case, "similarly situated" requires more than just the same work schedule. It requires similar job duties, responsibilities and working conditions. Here though, that is not the case. The road officers and the dispatcher/jailers are not similarly situated. Dispatcher/jailers work in the Courthouse where they maintain communications and

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2/ Elkouri and Elkouri, How Arbitration Works, 3rd Ed. p. 517.

operate the jail while the road officers spend most of their time outside the Courthouse enforcing the law within the County "on the road." These positions require specialized training and skills and receive different levels of pay. Given these differences, the undersigned finds that their job duties are not the same, their job responsibilities are not the same, and their working conditions are not the same. In recognition of these differences, the County provides amenities for each group. The dispatcher/jailers have access during their shift to a kitchen, pop and vending machines, and a television in the dispatcher center, while the road officers have access during their shift to Code R. While the amenities found at the Courthouse can no doubt be used by the road officers on those occasions when they are at the Courthouse, they (the road officers) cannot utilize those amenities during their shift when they are in the field in their squad cars. As a practical matter then, the road officers do not have the same access to the amenities at the Courthouse that the dispatcher/jailers have. In my view, this difference in access to the amenities at the Courthouse is sufficient to justify the County's offering Code R to the road officers but not to the dispatcher/jailers. Said another way, justification exists for distinguishing between road officers and dispatcher/jailers insofar as Code R is concerned. Given this finding, it is held that the County's offering Code R to the road officers but not to the dispatcher/jailers is not discrimination prohibited by the Management Rights clause.

Finally, the Union argues that not extending Code R to the dispatcher/ jailers is an unreasonable rule. According to the Union, the dispatcher/jailers could take Code R during their shift when the workload permitted. The problem with this approach though is that there is no way the undersigned can discern from the record when that point would be. For example, is it when the jail is empty of prisoners or is it when there are no calls coming in to be dispatched? The record is silent on the former (i.e. whether the jail is ever empty) and there is no way to anticipate the latter (i.e. when the calls will come in requiring dispatch).

While the Union suggests that Code R could be utilized by the dispatcher/jailers in the half hour overlap at the beginning or end of each shift, there is no objective basis in the record to refute the Employer's contention that the absence of a dispatcher/jailer during the overlap period would defeat the purpose of having an overlap (i.e. to allow for communication between shifts). That being so, the undersigned is hard pressed to say otherwise. Given the foregoing, it is found that the County's current application of Code R is not unreasonable.

In summary then, it is held that the County's current application of Code R to just the road officers is neither unreasonable nor discriminatory. It therefore follows that the

County's failure to extend Code R to the dispatcher/jailers is not a contractual violation.

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

AWARD

That the Employer has not violated the collective bargaining agreement when it denied the dispatcher/jailer employes the time to utilize Code R. Therefore, the grievance is denied.

Dated at Madison, Wisconsin this 2nd day of February, 1993.

By Raleigh Jones /s/  
Raleigh Jones, Arbitrator