

BEFORE THE ARBITRATOR

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 In the Matter of the Arbitration :
 of a Dispute Between :
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 MANITOWOC COUNTY SHERIFF'S DEPARTMENT :
 EMPLOYEES, LOCAL 986-B, AFSCME, AFL-CIO : Case 279
 : No. 49681
 and : MA-8028
 :
 MANITOWOC COUNTY (SHERIFF'S DEPARTMENT) :
 :

Appearances:

Mr. Gerald D. Uglund, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.
Mr. Robert J. Zeman, Corporation Counsel, appearing on behalf of the County

ARBITRATION AWARD

Pursuant to a request by Manitowoc County Sheriff's Department Employees, Local 986-B, AFSCME, AFL-CIO, herein the Union, and the subsequent concurrence by Manitowoc County (Sheriff's Department), herein the County, the undersigned was appointed arbitrator by the Wisconsin Employment Relations Commission on September 2, 1993 pursuant to the procedure contained in the grievance-arbitration provisions of the parties' collective bargaining agreement, to hear and decide a dispute as specified below. A hearing was conducted by the undersigned on September 24, 1993 at Manitowoc, Wisconsin. During the course of the hearing, the County moved to dismiss the grievance for failure to comply with the contractual grievance procedure. The hearing was completed with respect to procedural issues. The hearing was transcribed. The parties completed their briefing schedule on the motion on November 3, 1993.

After considering the entire record, I issue the following decision and Award.

ISSUE:

The parties stipulated to the following procedural issue:

1. Is this a timely grievance under Article 8 of the collective bargaining agreement?

DISCUSSION:

On March 30, 1993, the County notified the grievant, Lori Klosterman, that she had been overpaid shift premiums for the period January 1, 1989 to March 30, 1993.

By letter dated April 13, 1993, the County wrote to the grievant as follows:

. . .

In order to recover the overpayment of \$520.61, the County will deduct \$25 from each of your paychecks until the full amount is recovered. This will take approximately one year to recover, and is the least amount that can be deducted in accordance with the County policy you were previously given.

A Step 1 grievance meeting took place on or before April 29, 1993 in Inspector Kenneth Petersen's office. At the conclusion of this meeting, Petersen informed the grievant and Union steward Shelly Braun that there wasn't anything he could do, and that they should proceed with the grievance.

On June 1, 1993, Braun submitted a written grievance to Inspector Petersen as required by Step 2. The grievance stated that the date of the alleged infraction was March 30 1993. The grievance also described the facts leading up to the grievance:

Dispatcher Klosterman informed by D. L. Beck, Insp. Petersen, & Personnel Coordinator Schmidt that her shift premium is being changed to a lesser amt. and that she has been overpaid for several years and this overpayment will be deducted from future payroll checks.

For a remedy, the grievant requested that the shift premium be reinstated, that she be paid back all monies withheld from her paycheck which the County had considered to be an overpayment of her shift premium, and that the County "cease further withholding of monies."

Also on June 1, 1993, Inspector Petersen responded in writing, in material part, as follows: "First and foremost I find the grievance has not been filed in a timely fashion as outlined in the union contract. In checking you have ten (10) days to put your complaint in writing after orally stating it in step #1."

On June 11, 1993, Braun requested a Step 3 hearing. The Step 3 meeting between the County and the Union took place on July 1, 1993. At said meeting, Union representative Gerald D. Uglund filed an amendment to the grievance which provided, in regard to the date of the alleged infraction, as follows:

Date of alleged infraction:

In addition to the date listed, add: "and at every deduction from the employee's pay."

Article 8, Section C., Step 2 requires that if a grievance "is not settled in Step 1, the Union shall reduce the grievance to writing and present it to the Department Head or the Sheriff's designee within ten (10) calendar days of the Department Head's oral response." (Emphasis supplied) The record is clear that the grievant missed this deadline. The Union's argument that its failure to file a timely appeal of the County's denial at Step 1 because the Union was expecting a "written" response later is unpersuasive because it runs counter to the union steward's own testimony that she understood at the Step 1 meeting the County was denying the grievance, and that she should proceed with processing the grievance, Tr. p. 25; because Article 8, Section C clearly provides for an oral response on the part of the County at Step 1 and for a written appeal of a County denial within ten (10) days at Step 2; and because Braun, based on her experience as a union steward and member of the grievance committee, knew or should have known what was required of her to process a grievance through Steps 1 and 2 of the parties' contractual grievance

procedure.

Likewise, the Arbitrator rejects the Union's argument that the grievance is still timely based on its grievance amendment alleging a reoccurring violation for every County deduction from the grievant's paycheck. Such an argument might have some merit if it pertained to the initial filing of the grievance. However, the County's letter informing the grievant it would initiate deductions in order to recover the overpayment was a one time occasion. In addition, the original grievance filed by Braun in response to this action raised the issue of the "deductions"; asked that they be stopped; and asked that the grievant be made whole for the County's action. Consequently, the Arbitrator interprets the grievance as applying to all the County deductions and in the nature of a one time event. Having initiated a grievance on the subject, both the Union and the Arbitrator are bound by the clear language of Article 8, Section B which provides that the "failure of a party to appeal a grievance in a timely fashion will be treated as a settlement to that particular grievance, without prejudice."

The Union's argument that deadlines could be extended by mutual agreement, as was often done at Step 3, is also without merit since there was no such agreement in the instant case. Nor is there any evidence that the parties unilaterally ignored deadlines as a matter of practice at either Step 1 or 2 of the grievance procedure.

In view of the above and foregoing analysis, the Arbitrator has concluded that the Union failed to process the grievance to the second step of the grievance procedure in a timely manner and, therefore, based on all of the above, and absent any persuasive evidence or argument to the contrary, the Arbitrator finds that the answer to the issue as stipulated to by the parties is NO, this is not a timely grievance under Article 8 of the collective bargaining agreement which precludes the Arbitrator from considering the merits of the instant grievance, and it is my

AWARD

That the grievance dated June 1, 1993 is hereby denied and the matter is dismissed.

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

By Dennis P. McGilligan /s/
Dennis P. McGilligan, Arbitrator