

BEFORE THE ARBITRATOR

In the Matter of the Arbitration  
of a Dispute Between

GENERAL TEAMSTERS UNION LOCAL 662

and

PIERCE COUNTY (SHERIFF'S DEPARTMENT)

Case 111  
No. 53035  
MA-9206

Appearances:

Ms. Christel Jorgensen, Business Agent, appearing on behalf of the Union.

Weld, Riley, Prens & Ricci, S.C., by Mr. Brian H. Wright, appearing on behalf of the County.

ARBITRATION AWARD

The Employer and Union above are parties to a 1994-95 collective bargaining agreement which provides for final and binding arbitration of certain disputes. The parties requested that the Wisconsin Employment Relations Commission appoint an arbitrator to resolve the overtime grievance of Terry DuBois.

The undersigned was appointed and held a hearing on October 31, 1995 in Ellsworth, Wisconsin, at which time the parties were given full opportunity to present their evidence and arguments. No transcript was made, both parties filed briefs, and the record was closed on November 15, 1995.

Stipulated Issues:

1. Did the Pierce County Sheriff's Department violate Article 6 of the labor contract when the Sheriff assigned a less senior deputy than the grievant to accompany him for the purpose of picking up new patrol cars in Madison and transporting a prisoner to Waupun on or about May 6, 1995?
2. If so, what is the remedy?

Relevant Contractual Provisions:

ARTICLE 3

MANAGEMENT RIGHTS

Except as expressly modified by other provisions of the contract the County possesses the sole right to operate the County and all management rights repose in it. These rights include, but are not limited to the following:

- A. To direct all operations of the County;
- B. To hire, layoff, promote, transfer, schedule and assign employees in positions within the County. When scheduling employees, the Sheriff has the right to make the decision to fill or not fill a vacancy.
- C. To maintain efficiency of County operations;
- D. To take whatever action is necessary to comply with State or Federal law;
- E. To introduce new or improved methods or facilities;
- F. To change existing methods or facilities;
- G. To determine the kinds and amounts of services to be performed as pertains to County operations; and the number and kind of classifications to perform such services;
- H. To determine the methods, means and personnel by which County operations are to be conducted;
- I. To take whatever action is necessary to carry out the functions of the County in situations of emergency.

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ARTICLE 6

SENIORITY

Section 1. Seniority rights for employees shall prevail under this Agreement and all Agreements Supplemental hereto unless it is specifically noted otherwise in any Article or Section. It is understood that should any employee leave the bargaining unit for any reason other than that which is granted in this Agreement, they shall lose all seniority accumulated to date. Seniority is a period of continuous employment of employees by the Employer in the bargaining unit commencing with the first hour and date of work and including time for vacations, Leave of Absence, military service as prescribed by law, or other mutual agreement. No benefits shall accrue if an employee in the bargaining unit is on an unpaid leave of absence (other than FMLA leaves) or on a temporary layoff for a full calendar month. Should two or more employees be employed the same date and hour, then seniority shall be determined by arranging said employees or group of employees in alphabetical order on the seniority list starting with the last name and then the first name.

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ARTICLE 15

HOURS OF WORK AND OVERTIME

The work period for Patrol Officers and Jailer/Dispatchers shall be based on a 6-3 schedule, 8 1/2 hours per day, or an equivalent hour schedule. Time and one-half (1 1/2) shall be paid for all hours in excess of regular scheduled hours. All time paid shall be considered time worked.

Discussion:

The facts are substantially undisputed. Three deputies were scheduled to work on the day shift of Tuesday, May 6, 1995: Grievant Terry DuBois, Doug Ducklow and Wade Strain. Two or three days before that Tuesday, Sheriff Jim Hines was in his office when he received a

telephone call indicating that the department's two new squad cars were ready to be picked up from a dealership in Madison. The department also needed to transport a prisoner to the state prison at Waupun, and Hines decided to make one round-trip with a van to do both jobs, taking a County Board member and one deputy along to drive the squad cars back. Hines testified

without contradiction that Deputy Wade Strain was to be assigned one of the new squad cars and happened to be in Hines' office at the time the phone call came in, and that these were the two reasons why he offered Strain the assignment. Strain accepted the assignment, which took from 6:00 a.m. to 5:00 p.m. in all, and generated three hours of overtime. DuBois grieved on the grounds that as a deputy senior to Strain, he should have been offered the overtime first.

There is no dispute that the Union does not claim that driving patrol cars back from the dealership is exclusively bargaining unit work, and no grievance was filed over the performance of this work by a County Board member. The Union presented two witnesses to testify that off duty employes are customarily given the opportunity of overtime, when they are called in to fill an open shift, in seniority order. Union Steward Diane Petricka also testified that if a shift extension arises out of work which an officer was already performing on the shift, the officer involved continues to work, regardless of seniority.

Hines testified that normally assignments on duty go to whichever deputy is closest to the scene of the crime or accident, and that dispatchers make most of the dispatch decisions. Hines further testified that if he needs an extra employe for a prisoner transport, he will call in off duty employes by seniority, but otherwise will just use whomever is most handy, and not by seniority. Hines testified that this has historically included using office employes as well as deputies. Hines added that the County Board member present on the trip in question had been invited along because of an interest in seeing the State Prison at Waupun, thus making this trip a convenient opportunity for the Board member and a chance to economize on the cost of transporting the cars. Hines testified that ten years ago, the department picked up five patrol cars at one time from a dealership in New Brighton. He stated that on that occasion, he simply picked five employes at random to do the driving, and did not do this on a seniority basis. Hines admitted, however, that he could not recall if there was overtime involved at that time or not.

The Union introduced into evidence an arbitration award involving this department by Arbitrator Raleigh Jones, in which that arbitrator had ruled that the seniority language was broad enough to require appointment of a temporary investigator by seniority.

The Union contends that the labor agreement gives broad applicability to seniority rights and does not limit these by any reference to on duty assignments being excluded. The Union argues that the management rights clause is less specific than Article 6, where they perhaps conflict concerning the assignment of overtime, and that therefore Article 6 governs that process. The Union contends that Article 15 is silent as to how overtime is to be offered, and that the

seniority provisions of Article 6 and established practices therefore control the issue. The Union contends that given that the sheriff testified that if an officer on duty was to be used for a prisoner transport that would result in a shift extension, it would be offered to the senior available deputy, it should be clear that this type of work assignment is subject to the seniority principle. The Union contends that there is no contractual claim on the time to pick up the vehicle created on Strain's part by the fact that he was to be assigned that vehicle. The Union

notes that at no time has the Union argued, or the grievance itself claimed, that routine or emergency shift extensions must be offered by seniority or that daily work assignments must be offered by seniority, nor even that prisoner transports or the picking up of squad cars be defined as solely bargaining unit work. The Union requests that the grievance be sustained and the grievant awarded three hours backpay at overtime rate.

The County contends that this grievance represents an incursion into the management right to assign work. The County points to testimony by Sheriff Hines to the effect that requiring day-to-day duty assignments to be based on seniority would inhibit the effective operation of the department, and notes that the right to make assignments is reserved to the County in Article 3 of the Agreement. The County contends that the most effective and efficient means of completing both the prisoner transport and the patrol car retrieval was to assign Deputy Strain to the car he was to be given permanently, since that would allow him to develop a sense of "ownership" in that vehicle right away. The County contends that while the most senior on duty deputy is normally assigned to make prisoner transports, Hines is not contractually required to do this. The County distinguishes this matter from the case before Arbitrator Jones on the ground that in deciding whether the County was obligated to fill a temporary vacancy (which approached five months) on the basis of seniority, that arbitrator concluded that the past practice of filling temporary vacancies was inconclusive. The County contends that in this instance, duty assignments are routinely made without regard to seniority. The County requests that the grievance be denied.

Given that the Union has expressly disclaimed any attempt to use this case to argue that ordinary work assignments should be awarded by seniority, I find that a considerable part of the County's argument is designed to counter an argument not made. The crux of this specific case is whether the facts of this particular "work assignment" are more similar to a regular daily assignment which is concededly not subject to seniority concerns, or more similar to a call-in, in which the County concededly makes such assignments by seniority. I find that the key factor in that determination is that the length of this assignment, and the fact that it would involve overtime, was known two or three days ahead of time. This is clearly unlike the kind of last minute, constantly shifting need which often dictates how assignments are made in a uniformed service. It also places the logic of the situation as similar to situations in which deputies are called in by seniority, as opposed to by particular skill or other factors. In this instance, the sheriff did have a reason for preferring Strain for this overtime over the grievant; having a given vehicle under the

control of a single officer throughout its service life does tend to reduce the potential for arguments over maintenance and care. But the contractual language governing seniority is quite broad under this agreement, as Arbitrator Jones has noted, and there is nothing about this assignment which would nullify the effect of that language. Consequently, I conclude that the broad seniority provision of this agreement does control the assignment of such scheduled-in-advance overtime opportunities as this case represents.

For the foregoing reasons, and based on the record as a whole, it is my decision and

AWARD

1. That the County did violate the collective bargaining agreement by assigning Deputy Strain the overtime opportunity on or about May 6, 1995 rather than the grievant.
2. That as remedy, the County shall, forthwith upon receipt of a copy of this Award, pay to Deputy Terry DuBois a sum of money equal to three hours at his overtime rate.

Dated at Madison, Wisconsin, this 25th day of January, 1996.

By Christopher Honeyman /s/  
Christopher Honeyman, Arbitrator