

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 115
No. 53754
MA-9451

Appearances:

Ms. Christel Jorgensen, Business Agent, General Teamsters Union, Local 662, 119 West Madison Street, P.O. Box 86, Eau Claire, Wisconsin 54702-0086, for the Union.
Weld, Riley, Prenn & Ricci, S.C., Attorneys at Law, 4330 Golf Terrace, #205, P.O. Box 1030, Eau Claire, Wisconsin, 54702-1030, by Mr. Brian H. Wright, for the County.

ARBITRATION AWARD

General Teamsters Union Local 662 (the Union) and Pierce County (the County), are signatories to a collective bargaining agreement providing for final and binding arbitration. Pursuant to the parties' request for the appointment of an arbitrator, the Wisconsin Employment Relations Commission, on February 6, 1996, appointed Jane B. Buffett, a member of its staff, to hear and decide a dispute regarding the interpretation and application of the agreement. Hearing was held in Ellsworth, Wisconsin on March 4, 1996. No transcript was taken. The parties filed briefs, the last of which was received March 18, 1996.

ISSUE

The parties stipulated to the following statements of the issues:

1. Was the grievance timely filed?
2. Did the County provide an "equivalent" schedule when it changed the schedule stated in Article 15 of the contract from a 6-3, 8 1/2 hour per day schedule to a 7-3, 7-3, 6-2, 8 hour per day schedule and, if not, what is the appropriate remedy?

BACKGROUND

Prior to the change which is the subject of the instant dispute, the Deputies worked a schedule of eight-and-a-half hours per day, with six days of work followed by three days off work, a pattern commonly referred to as a 6-3 schedule. On January 1, 1994 the Sheriff began using a 7-3, 7-3, 6-2, 8 hour per day schedule.

At the time of this schedule change, the members of the bargaining unit met to consider whether to contest the change. They believed that the revised schedule was not equivalent to the old schedule, as required by contract language and they told the Sheriff that they objected to the new schedule. Ultimately, however, they did not grieve the change, after the Sheriff pointed out that the new schedule allowed for more squad cars to be on the road at one time. The Deputies saw this additional coverage as a safety factor which was a benefit offsetting the other disadvantages of the change.

At first there were indeed more occasions than previously when there were four squad cars on the road at the same time during afternoon and night shifts. Subsequently, however, after the County Board directed the Sheriff to reduce overtime, there were many fewer times during the month that shifts had as many as four squad cars on the road at the same time. On August 1, 1995, the Union filed the instant grievance. On December 7, 1995 the grievance was rejected by the County as untimely. The Grievance continued to be denied throughout the grievance procedure and is the subject of this arbitration award.

RELEVANT CONTRACT PROVISIONS

ARTICLE 2

RECOGNITION

Section 1. The Employer recognizes and acknowledges that the Union, its agents, representatives or successors, is the exclusive bargaining agency for all employees of the Employer, including such employees as may be presently or hereinafter represented by the Union, working on jobs in classifications as set forth in the attached Wage Schedule.

. . .

[The referenced Wage Schedule lists the following classifications: Juvenile Officer, Investigator, Patrol/Deputy Sheriff, Radio-Jail Operator, Recreational Patrol Officer, and Secretary/Deputy/Jailer.]

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ARTICLE 8

GRIEVANCE PROCEDURE AND ARBITRATION

Section 1. Definition of a Grievance.

. . .

Settlement of a Grievance: Any grievance shall be considered settled at the completion of any Step in the procedure if all parties concerned are mutually satisfied. Dissatisfaction is implied in recourse from one Step to another. Settlements shall be reduced to writing and filed.

All disputes and grievances which arise by employees and/or their representatives, or the Employer, shall be processed in the following manner and sequence except that Employer or Union Representative grievances shall proceed immediately to the Fourth Step:

- (1) The employee originating the grievance shall discuss the matter with the supervisor under whom he/she is working or he/she may submit the grievance to the steward, who shall in the presence of the employee, discuss the matter with the supervisor. This Step (1) shall be initiated within fifteen (15) work days after the employee knew or should have known of the cause of the grievance.
- (2) If the issue is not resolved in Step (1) above, the employee shall reduce the grievance to writing and sign same, then the employee steward shall present the written grievance to the Sheriff within seven (7) work days.
- (3) Within seven (7) days from receipt of the written grievance by the Sheriff, the Steward and the employee submitting the grievance, shall meet with a designated representative of the Employer to discuss the grievance.

- (4) Any grievance remaining unsettled after having been processed through Steps (1) through (3) shall be taken up by the Union with the Personnel Committee at its next meeting.

. . .

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.

. . .

POSITIONS OF THE PARTIES

I. TIMELINESS

The Union

As to timeliness, the Union argues that the time to file the grievance did not begin to run from January, 1994, because at that time the Sheriff responded to the Deputies' objections to the new schedule by explaining that the new schedule would provide for more patrol cars on the road.

Satisfied with that response, the Deputies did not file a grievance until the County changed its policy and there were fewer patrol cars at one time, and until an arbitration award involving the jailers and dispatcher, members of the same bargaining unit, was issued. That award stated the parties' rights as to scheduling. Additionally, the Union argues both that this is a continuing violation, and that arbitrators do not apply stringent contractual time limits to facts that keep changing.

The County

The County relies on the general rule that explicit timelines for filing grievances such as in the parties' contract are strictly enforced by arbitrators and the Union clearly lost its rights when it waited until August 1, 1995 to grieve the schedule change made January 1, 1994. The County

rejects the argument that the grievance is a continuing grievance.

II. THE MERITS

The parties submitted as joint exhibits the briefs that were submitted to the arbitrator in a grievance arbitration of a related case, Case 106. No. 52299, MA-8904. which concerned a similar schedule change for the Jailer/Dispatchers.

The Union

The Union argued that the County's change in the schedule violated the contract's requirement that the schedule be either a 6-3, 8 1/2 hour-a-day schedule or an equivalent hour schedule. It insists the new schedule is not equivalent to the earlier schedule. It notes that the County was not able to achieve the schedule change at the bargaining table and if the Union were to lose the grievance, the County would win through grievance arbitration what it could not achieve at the bargaining table.

The County

The County contended that the meaning of "equivalent" in the contract is best understood in light of the briefs submitted to interest arbitrator Joseph Kerkman in the proceeding that resulted in the inclusion of the relevant Article 15 provision in the contract. It points to the Union's argument that the language was intended to "give the Sheriff flexibility in establishing a schedule as long as it does not cut or significantly increase the number of hours worked." It further argues that the 17.38 additional hours per year that are caused by the new schedule do not significantly increase the number of hours and therefore do not violate the collective bargaining agreement.

The County reiterated the arguments it made before Arbitrator Greco, underscoring the arguments that 17 additional work hours per year, which amount to approximately 20 minutes per week, are not a significant increase.

ADDITIONAL FACTS AND DISCUSSION

I. Arbitrability

The County is correct in its assertion that arbitrators strictly enforce contractual time limits for grievance filing. This policy not only carefully construes contracts, but also promotes collective bargaining by promoting the speedy resolution of grievances and avoiding the litigation of stale claims. Cases in which arbitrators conclude there is a continuing violation do not ignore this policy, but are based on the theory that the time for filing the grievance begins to run anew with each repetition of this violation, regardless of the date of the employer's initial act. For instance, if the employer improperly calculates wages, or does not pay contractual benefits, that alleged violation occurs with each paycheck. In the instant case, the alleged contract violation took place every 28 days, each time the Sheriff posted a new schedule.

Under these circumstances, the time for filing the grievance does not run from a single point in time, January 5, 1994, as argued by the County, but rather, it runs from each time the new schedule was posted.

This finding of timeliness is buttressed by the fact that the County knew that the Deputies objected to the change of schedule but did not press a challenge when the Sheriff explained that the new schedule would allow for more frequent occasions when four squad cars would be on the road at one time. Thus the County had adequate notice that the Union found the change unacceptable in itself, and was only conditionally acceptable. That condition changed significantly with the County Board's directive regarding overtime affected the number of squad cars on the road.

The grievance, therefore, is not time-barred and is arbitrable.

II. The Merits

On July 17, 1995, Arbitrator Amedeo Greco issued an award involving the same contract at issue here and a similar dispute: the County's unilateral change from the 6-3, 8 1/2 hour per day schedule to a 7-2, 7-2, 6-3 8 hour per day schedule. That award covered the Jailer/Dispatcher classification of the contract, rather than the Patrol Deputies involved in the current dispute. Furthermore, the two fact situations differed inasmuch as the change for the patrol officer first took place on January 1, 1994, whereas the change for the Jailers/Dispatchers first took place January 1, 1995.

Those factual distinctions, however, are not relevant to the crux of the decision addressed by Arbitrator Greco, for the award was based on an analysis of the meaning of "equivalent" in Article 15. Similarly, the meaning of "equivalent" is the contractual question in the instant dispute. In fact, by placing in evidence, as joint exhibits, both the award of Arbitrator Greco, in the case involving the same dispute for the Jailer/Dispatchers, and their briefs submitted in that case, the parties acknowledged the importance of that case to the resolution of this case. Arbitrator Greco examined the contractual requirement that any change in the schedule must involve "equivalent" hours. He concluded that requirement had the effect of prohibiting the County from making a change that caused the employees to work an extra 17.39 additional hours a year. He gave the following reasoning:

The resolution of this issue turns on the construction of the word "equivalent" which is found in Article 15 of the contract, entitled "Hours of Work and Overtime," and which states:

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.

As the Union correctly points out, Black's Law Dictionary, p. 636 (4th Edition), defines the word "equivalent" as "Equal in value, force, measure, volume, power, and effect, or having equal or corresponding import, meaning or significance; alike, identical."

Here, the new 7-3, 7-3, 6-2 schedule is hardly "equal" since it requires Jailer/Dispatchers to work an additional 17.39 hours a year with no extra pay. "Equal" or "equivalent" in this context means that the Sheriff can unilaterally change schedules, provided that employees not be disadvantaged when he does so. Measured by this contract standard, the County therefore violated Article 15 when it required Jailer/Dispatchers to perform additional work with no additional pay. [Footnote omitted].

It is true that the Union's brief to Arbitrator Kerkman stated that the County could change the schedule if it did not "significantly increase" hours. The phrase "significantly increase", of course, differs from the contract phrase "equivalent." But, it is the latter term which controls here since that is what is in the contract. Moreover, while the phrase "significantly increase" allows for some increase of hours, that is a separate question of whether the County can require Jailer/Dispatchers to work such extra hours without added compensation. As to that, there is nothing whatsoever in the record to establish that it can.

Inasmuch as Arbitrator Greco's award interpreted the same contract as is at issue here, and the factual differences between the earlier dispute and the instant dispute are not relevant to the outcome, this Arbitrator concludes the Greco award governs this award. Therefore the undersigned concludes that the County violated the collective bargaining agreement by its change in the schedule from the 6-3, 8 1/2 hour day schedule to a 7-3, 7-3, 6-2, 8 hour per day schedule.

In light of the record and the above discussion the Arbitrator issues the following

AWARD

1. The grievance was timely filed.
2. The County did not provide an "equivalent" schedule when it changed the schedule

stated in Article 15 of the contract from a 6-3, 8 1/2 hour per day schedule to a 7-3, 7-3, 6-2, 8 hour per day schedule.

3. The County shall revert to the 6-3, 8 1/2 hour per day schedule.

Dated at Madison, Wisconsin, this 18th day of October, 1996.

By Jane B. Buffett /s/
Jane B. Buffett, Arbitrator