

BEFORE THE ARBITRATOR

In the Matter of the Arbitration  
of a Dispute Between

MILWAUKEE DEPUTY SHERIFFS'  
ASSOCIATION

and

COUNTY OF MILWAUKEE

Case 413  
No. 53076  
MA-9219

Appearances:

Mr. Franklyn M. Gimbel, with Ms. Kathryn A. Keppel on the brief, Gimbel, Reilly, Guerin & Brown, Attorneys at Law, 2400 Milwaukee Center, 111 East Kilbourn Avenue, Milwaukee, Wisconsin 53202, for Milwaukee Deputy Sheriffs' Association, referred to below as the Association.

Mr. Timothy R. Schoewe, Deputy Corporation Counsel, Milwaukee County Courthouse, Room 303, 901 North Ninth Street, Milwaukee, Wisconsin 53233, for County of Milwaukee, referred to below as the County.

ARBITRATION AWARD

The Association and the County are parties to a collective bargaining agreement which was in effect at all times relevant to this proceeding and which provides for the final and binding arbitration of certain disputes. The Association requested, and the County agreed, that the Wisconsin Employment Relations Commission appoint an Arbitrator to resolve a dispute concerning the interpretation of Section 3.01(7) of their collective bargaining agreement. The Commission appointed Richard B. McLaughlin, a member of its staff. Hearing on the matter was held on November 12, 1996, in Milwaukee, Wisconsin. The hearing was not transcribed, and the parties filed briefs and reply briefs by January 8, 1997.

ISSUES

The parties stipulated the following issue for decision:

What does the language of Section 3.01(7) mean in terms of its application?

RELEVANT CONTRACT PROVISIONS

**PART 3**

**3.01 WAGES**

...

(7) When promoted to a higher position in the bargaining unit, the Deputy Sheriff, Deputy Sheriff I, Deputy Sheriff II, and Deputy Sheriff Sergeant shall be placed in the step of the appropriate range which will result in an increase in salary not less than \$20.00 biweekly.

...

**1996 RATES  
DEPUTY SHERIFFS' ASSOCIATION  
Effective December 31, 1995**

**HOURLY                      BIWEEKLY                      ANNUAL**

...

**Pay Range 18A -- Deputy Sheriff I**

14.0219	1,121.75	29,277.68
16.7793	1,342.34	35,035.07
17.1308	1,370.46	35,769.01
17.4652	1,397.22	36,467.44
17.8159	1,425.27	37,199.55
18.3006	1,464.05	38,211.71
18.8132	1,505.06	39,282.07
19.3542	1,548.34	40,411.67
19.8692	1,589.54	41,486.99

**Pay Range 21B -- Deputy Sheriff II**

17.1515	1,372.12	35,812.33
17.4858	1,398.86	36,510.25
17.8364	1,426.91	37,242.35
18.3207	1,465.66	38,253.73
18.8388	1,507.10	39,335.31
19.3661	1,549.29	40,436.47
19.9071	1,592.57	41,566.08
20.4221	1,633.77	42,641.40

. . .

## **PART 5**

### **5.01 GRIEVANCE PROCEDURE**

(1) **APPLICATION.** The grievance procedure shall not be used to change existing wage schedules, hours of work, working conditions, fringe benefits, and position classifications established (sic) by ordinances and rules which are matters processed under other existing procedures. . . .

### **5.02 SELECTION OF ARBITRATOR**

. . .

#### **(3) INTERPRETATION OF MEMORANDUM OF AGREEMENT**

. . . The parties may stipulate to the issues submitted to such Arbitrator either orally or in writing, their respective positions with regard to the issue in dispute. The Arbitrator shall be limited in his deliberations and decision to the issues so defined. . . .

#### **(4) ARBITRATOR'S AUTHORITY**

The Arbitrator in all proceedings outlined above shall neither add to, detract from nor modify the language of any civil service rule or resolution or ordinance of the Milwaukee County Board of Supervisors, nor revise any language of this Memorandum of Agreement. The Arbitrator shall confine himself to the precise issue submitted.

. . .

## **PART 6**

### **6.01 ENTIRE MEMORANDUM OF AGREEMENT**

. . . All existing ordinances and resolutions of the Milwaukee County Board of Supervisors affecting wages, hours and conditions of employment not inconsistent with this Agreement are incorporated herein by reference as though fully set forth. To the

extent that the provisions of this Agreement are in conflict with existing ordinances or resolutions, such ordinances and resolutions shall be modified to reflect the agreements herein contained.

. . .

BACKGROUND

The facts underlying the grievance are undisputed. The language codified as Section 3.01(7) of the 1994-96 agreement has not been changed, in any sense relevant to this grievance, since the parties' 1987-88 agreement. Prior to the 1991-92 labor agreement, the provision did not specifically identify any classification other than "Deputy Sheriff."

It is undisputed that a Deputy Sheriff I who accepts a promotion to Deputy Sheriff II can receive a lower salary as a Deputy Sheriff II than the employe would have received by remaining a Deputy Sheriff I. A Deputy Sheriff must serve 2,080 straight time hours deemed by the County to be satisfactory or better to move from one step to another. Upon promotion to Deputy Sheriff II, an employe formerly classified as a Deputy Sheriff I moves to a step within the appropriate pay range which affords the employe at least a \$20.00 increase in salary. The promoted Deputy may, however, move to a lower step than the Deputy occupied in their former pay range. As a result of this placement and the overlap between pay ranges, a promoted Deputy may find that the salary provided in the promoted pay range may, for varying periods of time, lag that which would have been provided by the former pay range.

Testimony at hearing exemplified this through the experience of Deputy Sheriffs Steven Wolf, Darrell Fischer and Fred Rutter. Each was promoted from Deputy Sheriff I to Deputy Sheriff II. Each received, at the point of their promotion, at least a \$20.00 increase in salary. Wolf's experience can be exemplified thus:

<i>Date</i>	<i>Deputy I Biweekly Pay Rate, Based on Original Date of Hire (July 18, 1988)</i>	<i>Deputy II Biweekly Pay Rate, Based on Date of Promotion (September 15, 1991)</i>
September, 1991	\$1,216.70 (Step 4)	\$1,242.57 (Step 3)
July, 1992	\$1,291.29 (Step 5)	
September, 1992		\$1,327.87 (Step 4)
July, 1993	\$1,326.42 (Step 6)	
September, 1993		\$1,365.42 (Step 5)
July, 1994	\$1,418.66 (Step 7)	
September, 1994		\$1,460.35 (Step 6)
July, 1995	\$1,503.24 (Step 8)	
September, 1995		\$1,546.18 (Step 7)
July, 1996	\$1,589.54 (Step 9)	
September, 1996		\$1,633.77 (Step 8)

Fischer's experience can be exemplified thus:

<i>Date</i>	<i>Deputy I Biweekly Pay Rate, Based on Original Date of Hire (April, 11, 1988)</i>	<i>Deputy II Biweekly Pay Rate, Based on Date of Promotion (January 1, 1995)</i>
January, 1995	\$1,461.22 (Step 7)	\$1,504.16 (Step 6)
April, 1995	\$1,503.24 (Step 8)	
January, 1996		\$1,592.57 (Step 7)
April, 1996	\$1,589.54 (Step 9)	

Rutter's experience can be exemplified thus:

<i>Date</i>	<i>Deputy I Biweekly Pay Rate, Based on Original Date of Hire (July 19, 1988)</i>	<i>Deputy II Biweekly Pay Rate, Based on Date of Promotion (December 31, 1994)</i>
December, 1994	\$1,418.66 (Step 7)	\$1,460.35 (Step 6)
July, 1995	\$1,503.24 (Step 8)	
December, 1995		\$1,592.57 (Step 7)
July, 1996	\$1,589.54 (Step 9)	
December, 1996		\$1,633.77 (Step 8)

None of them filed a grievance concerning their salary at the time of their initial placement in the Deputy II pay range.

This is not the first time the parties have disputed the contractual significance of this overlap in pay ranges. Non-precedential settlements of disputes have been discussed in at least two similar grievances. At least one of those disputes was resolved in a non-precedential manner.

Neither party has attempted to bargain contract language which would specifically resolve the issue posed by the grievance.

Further facts will be set forth in the DISCUSSION section below.

## THE PARTIES' POSITIONS

### The Association's Initial Brief

The Association notes that the County's interpretation of Section 3.01(7) delays a promoted Deputy's eligibility for a step increase "until the anniversary of his or her promotion." The inevitable result of this view is that "many promoted deputies would earn less than they would have earned had they not been promoted." Wolf's experience illustrates the interpretive contrast between the County's and the Association's views. His experience is paralleled by Fischer's and Rutter's.

Wisconsin case law dictates that contract terms should "be given their plain and ordinary meaning," and should "be considered in context." The County's interpretation of Section 3.01(7) unpersuasively reads the reference to "an increase in salary" to create a one-time bonus.

It follows, according to the Association, that the "plain and ordinary meaning of Section 3.01(7) is that a deputy promoted to a higher position in the bargaining unit is to earn not less than \$20 bi-weekly than that deputy earned in the position from which he or she was promoted." The Association contends that this result can be effected by (1) placing the promoted deputy "in a step in the next highest classification" which maintains "the \$20 bi-weekly cushion resulting from the promotion"; (2) retaining the deputy's original anniversary date for step movement; or (3) adjusting the deputy's step any time "the assigned step upon a promotion does not maintain" the cushion. The first option is the easiest of the three to implement, and is thus the most persuasive. To adopt the County's conclusion would deny employees any incentive to accept promotions and would cause a decrease in employee morale. These implications are particularly significant in the field of law enforcement.

### The County's Initial Brief

After a review of the contract provisions governing the stipulated issue, the County contends that the terms of Section 3.01(7) are not ambiguous, and thus pose "no need for interpretation." Those terms plainly call for "an immediate raise to a promoted deputy of at least \$20.00 biweekly." The Association's "tortured construction" seeks not "contract interpretation," but "contract negotiation."

A review of the evidence establishes no more than that none of the testifying Deputies grieved "their purported contract violation." Prior grievance settlements or proposed settlements are distinguishable from, or irrelevant to, this grievance and thus afford no insight into the interpretation of Section 3.01(7). Even if an ambiguity could be found in that section, "the most reliable extrinsic source to rely upon is what has been the practice of the parties in the

implementation of this provision." Section 6.01 of the agreement underscores this point, but the Association fails to discuss practice. This omission is not surprising, the County contends, since its administration of the disputed provision is of long standing, is generally known, has never been grieved, and undercuts the Association's interpretation.

The County concludes that the Association seeks the "absurd result" that "a person who voluntarily leaves one job for another constantly (would) have his compensation reviewed on the

basis of what he would have made had he not voluntarily left his job." This view seeks through arbitration what the Association never secured in bargaining, and the County "requests that the arbitrator interpret the language as has been implemented over the years by Milwaukee County."

#### The Association's Reply Brief

The Association notes that the parties agree that Section 3.01(7) is unambiguous, that it has existed for several years and that the Arbitrator's role is solely to "determine what that provision means" without modifying it. The parties differ, however, on what the provision unambiguously demands. The County's interpretation unpersuasively adds the term "immediate" to the phrase "increase in salary," and unpersuasively reads "salary increase" as "bonus."

Contending that the "clear intent of the provision is to reward a deputy for the promotion by increasing the deputy's pay," the Association urges that the County's interpretation violates that intent by permitting a promoted deputy to earn less by accepting a promotion than by turning it down. The characterization of "tortured" or "absurd" cannot meaningfully be applied to its interpretation. Rather, the Association contends that the County's interpretation unpersuasively violates the "clear and unambiguous intent" of Section 3.01(7).

#### The County's Reply Brief

The County contends that the cushion sought by the Association "would, of necessity, require maintaining contract terms beyond the life of the existing labor agreement." Beyond this, the interpretation lacks support in the text of the labor agreement, civil service rules, or past practice. The creation or maintenance of this wage differential should be "a function of collective bargaining."

The evidence does not clarify why the aggrieved Deputies failed to grieve the County's failure to provide the cushion sought by the grievance. Beyond this, the cushion presumes that step increases are automatic, when "such movements are merit based."

The Association presumes that the only attractive feature of a promotion is money. This presumption "sells its membership short." Even ignoring non-monetary career enhancements, the County urges that "(o)ver a deputy's entire career, there is a positive pay differential in all instances under the current contract." The contention that the County's view would erode morale is, according to the County, groundless speculation.

Section 3.01(7) must, the County concludes, be limited to its negotiated scope, which is to establish the initial pay increase afforded a promoted Deputy.





## DISCUSSION

Under Section 5.02(3), the parties have submitted an interpretive issue regarding the construction of Section 3.01(7). The County contends the section should be read to afford a Deputy I promoted to Deputy II a one-time step placement at the lowest step of the Deputy II pay range which guarantees the promoted Deputy a \$20.00 salary increase over the Deputy I rate. The Association contends the section requires that the County implement one of three options which maintain a \$20.00 biweekly salary differential as the promoted employe progresses through the Deputy II pay range.

Both parties advance plausible interpretations. It follows that the language of Section 3.01(7) cannot be considered clear and unambiguous. Bargaining history and past practice are the most persuasive guides for the resolution of contractual ambiguity since each rests on the conduct of the parties whose intent is the source and the goal of contract interpretation.

In this case, however, neither of these guides is available. The language which currently appears at Section 3.01(7) has been, in all respects relevant to this grievance, constant through a number of contracts. Neither party has attempted to modify it in negotiations.

Past practice affords some support for the County's view, but that support is too tenuous to be considered meaningful. It is apparent that the County has consistently applied Section 3.01(7), and that none of the Deputies whose pay rates have been put in issue grieved their initial placement in the pay range appropriate to a Deputy II. It is, however, no less apparent that the parties have disputed the appropriate placement of promoted Deputies. At least one grievance on this general point has been resolved on a non-precedential basis. Since the essence of the binding force of a past practice is the agreement manifested by the bargaining parties' conduct, it is unconvincing to conclude the County's implementation of Section 3.01(7) represents anything more than its own view of the appropriate interpretation of the section.

This leaves the language of the disputed section standing alone. Because an examination of that language supports the County's interpretation, the grievance must be resolved in the County's favor.

Section 3.01(7) is constructed to mandate step placement. This aspect of the provision cannot be considered in doubt. The introductory reference applies the section to an employe "promoted to a higher position in the bargaining unit." The following reference delineates the classifications covered by the section. The next reference states the mandate which is the focus of the section. The mandate, applied to this grievance, is that the "promoted . . . Deputy I . . . shall be placed in the step . . ." Thus, Section 3.01(7) mandates step placement.

The dispute focuses on the terms following this mandate. Those terms specify the step placement, and the County's interpretation is better grounded in them. There is no dispute on

the "appropriate range" regarding any of the affected Deputies. This leaves the reference to "which will result in an increase in salary not less than \$20.00 biweekly" as the core of the interpretive issue.

At a minimum, the considerations noted above eliminate two of the Association's three options as persuasive readings of Section 3.01(7). The section does not address movement through the steps of any pay range. This means the second of the Association's options has no support in the language of Section 3.01(7). Similarly, anniversary date or date of hire is not mentioned in the section. This means there is no support for placing a promoted Deputy at the step of the "appropriate range" corresponding to their employment anniversary date.

Nor is there any support in the language of Section 3.01(7) for the asserted periodic adjustment of a promoted Deputy's step placement. Section 3.01(7) refers to a single step placement. The reference to "step" is singular, and nothing in the language of the section would mandate ongoing step adjustments. Rather, the "shall" of Section 3.01(7) is linked to "the step of the appropriate range."

The parties' interpretive dispute thus contrasts the County's focus on step placement against the Association's focus on the maintenance of a salary differential of "\$20.00 biweekly." The terms of the section, as noted above, favor the County's view. The Association's interpretation takes a reference which is meant to clarify step placement and grants it independent meaning. This strains the sentence construction of Section 3.01(7). The Association's interpretation effectively renders the terms "placed in the step of the appropriate range" meaningless. Under the Association's view, the section reads: "When promoted to a higher position in the bargaining unit, the . . . Deputy Sheriff I . . . shall be . . . (granted) an increase in salary not less than \$20.00 biweekly." This obscures that the emphasis of Section 3.01(7) is on step placement.

The reference to an "increase in . . . biweekly . . . salary" can be read, as the Association forcefully asserts, to indicate payment of money over a period of time. This assertion is well rooted in the normal meaning of the quoted terms. It ignores, however, that "biweekly" is one of the columns used in Part 3 to state pay rates. The other two columns are "hourly" and "annual." Two of these columns connote salary, one connotes an hourly rate. The reference to "biweekly" and "salary" in Section 3.01(7) need be read as nothing more than a reference to the appropriate rate of pay column specified in the pay rate tables of Part 3. This reading, which reflects the County's view, does not strain the normal meaning of the quoted terms and more persuasively ties them to the section's emphasis on step placement.

The County's interpretation more persuasively reads the reference to "an increase in salary not less than \$20.00 biweekly," as a clarification of the appropriate step on which a promoted deputy "shall be placed." This reads "biweekly" and "salary" to hone in on the precise step on which the promoted deputy is to be placed. The section does not address movement through the

pay range, and the County's view reflects this by restricting its mandate to a single, initial, step placement.

In sum, the County's interpretation is more firmly rooted in the grammatical construction of Section 3.01(7). Accordingly, its interpretation is adopted in the Award stated below.

Before closing, it is appropriate to touch on certain points raised by the parties. The County contends its application of County ordinances can assist in the interpretation of Section 3.01(7). The final sentence of Section 6.01 establishes that the labor agreement governs "to the extent" its provisions "are in conflict with existing ordinances or resolutions." Section 5.02(4) cautions against arbitral modification of "any civil service rule or resolution or ordinance." However, the record on the County's implementation of its ordinances is not sufficiently detailed to know whether any conflicts exist between those ordinances and the agreement. Against this background, recourse to the County's interpretation of ordinances is unhelpful.

The Association forcefully points out that it makes little labor relations sense for a promoted employe to earn less than the employe would have earned by declining the promotion. This poses a fundamental policy issue regarding the movement of a promoted employe through the pay range appropriate to the promotion. The persuasive force of this policy argument must be acknowledged.

The issue here, however, is not whether I agree with either party's view of promotional pay policy. An arbitrator's authority extends no farther than the bargaining parties' agreement. This fundamental point is underscored by Section 5.01(1) and by Subsections (3) and (4) of Section 5.02. The interpretive issue posed here is whether the parties agreed, in Section 3.01(7), to address the policy issue posed by the Association. An examination of the terms of that provision and its grammatical construction demonstrate that the parties addressed no more than the initial step placement of a promoted employe. This says nothing about the persuasive force of the Association's policy argument. Rather, it underscores that the pay anomaly it points to remains to be addressed in collective bargaining.

#### AWARD

The language of Section 3.01(7) means, in terms of its application, that a Deputy I promoted to Deputy II shall be placed in the step of the range appropriate to a Deputy II which produces an increase in salary of not less than \$20.00 biweekly. As the County asserts, this initial step placement does not guarantee the maintenance of the \$20.00 biweekly salary differential as the promoted employe moves through the steps of the pay range appropriate to the promotion. Any pay anomaly resulting from that movement must be addressed, if at all, in other agreement provisions or through collective bargaining.

Dated at Madison, Wisconsin, this 8th day of May, 1997.

By Richard B. McLaughlin /s/  
Richard B. McLaughlin, Arbitrator