

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**PUBLIC SAFETY PROFESSIONAL DISPATCHERS' ASSOCIATION**

and

**WINNEBAGO COUNTY**

Case 294  
No. 55467  
MA-10022

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Appearances:

**Mr. Thomas A. Bauer**, Labor Consultant, 206 South Arlington Street, Appleton, Wisconsin 54915, for the Public Safety Professional Dispatchers' Association, referred to below as the Association.

**Mr. John A. Bodnar**, Winnebago County Corporation Counsel, 448 Algoma Boulevard, P. O. Box 2808, Oshkosh, Wisconsin 54903-2808 for Winnebago County, referred to below as the County, or as the Employer.

**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 parties jointly requested that the Wisconsin Employment Relations Commission assign an Arbitrator to resolve a dispute reflected in grievances filed on behalf of Wendy Klabunde, Kathleen Edwards, Janet Anderson, Melody Piper, Dawn Holmes, Deb Remer, and Aaron Stolfuss. The Commission appointed Richard B. McLaughlin, a member of its staff. Hearing on the matter was conducted on November 21, 1997, in Oshkosh, Wisconsin. The hearing was not transcribed, and the parties filed briefs and a waiver of a reply brief by February 2, 1998.

**ISSUES**

The parties stipulated the following issues for decision:

Did the County violate the collective bargaining agreement by not paying premium pay to the Grievants for allegedly training persons other than Dispatchers?

If so, what is the appropriate remedy?

### **RELEVANT CONTRACT PROVISIONS**

#### **ARTICLE 3** **MANAGEMENT RIGHTS**

Except as otherwise specifically provided herein, the management of the Communications Center and the direction of the work force including, but not limited to, the . . . right to determine the methods, equipment, process and manner of performing work, are vested exclusively in the Employer . . .

#### **ARTICLE 24** **TRAINER PAY**

Persons participating in the training of new dispatchers shall be compensated as follows:

Classroom Training: Persons providing classroom training as instructors shall be paid at the rate of time and one half their base hourly rate for all scheduled instructional hours. Time spent in the gathering of materials and the preparation of lesson plans shall not be eligible for compensation.

On-the-Job Training: Persons assigned to train one or more dispatcher trainees on the job as part of their assigned duties shall be eligible for premium pay at the rate of Fifty Cents (\$0.50) per hour for all hours assigned to work in such capacity.

### **BACKGROUND**

The parties stipulated that this matter poses one interpretive issue which governs a series of grievances. Factually, the grievances submitted into the record turn on two separate instances. Grievances 97-56 and 97-58 turn on the events of July 3, 1997, 1/ while Grievances 97-101, 97-102, 97-103, 97-104 and 97-105 turn on the events of October 27. The overview of the record sketched below will address these events separately, then turn to evidence which is common to all of the grievances.

#### **Grievances 97-56 & 97-58**

Wendy Klabunde has been employed by the County as a Dispatcher for roughly fourteen years. She is a certified Field Training Officer, and has trained Dispatchers and patrol officers

for many years. At roughly 2:00 a.m. on July 3, Doug Abbott reported to her and gave her a copy of a document headed: "PATROL FIELD TRAINING CHECKLIST" which is referred to below as the Checklist. Abbott was then in the process of being trained as a County Deputy Sheriff. The Checklist stated six broad functional areas: Introduction; CAD (Computer Aided Dispatch); Radio; Phones; Alarms; and D.O.T. Each of these broad areas was broken down into more specific functions. For example, the Introduction portion of the Checklist was broken down into Workstations; Weather Radar; Tornado Grid System; Amateur Radio Equipment; Deaf Terminal and Dictaphone Logging Machine. The CAD portion of the Checklist was broken down into monitor functions and CAD information. Following each listed area and its functions on the checklist were blank lines which a trainer could initial to document whether the area and function had been explained, simulated or performed by a trainer for a trainee.

Klabunde spent the balance of her shift acquainting Abbott with the Communications Center. She used the Checklist as her guide for this process, and initialled the Checklist as she explained each function of the Communications Center to Abbott. She did not offer, nor did Abbott request, hands on experience. Rather, she verbally explained to Abbott the various functions covered by the Checklist. Klabunde has explained the Communications Center to a number of law enforcement officers, including County deputies and officers from municipalities served by the Center. This was the first time any County deputy presented her with a Checklist to document a training or an orientation session. Klabunde did not evaluate Abbott's performance, and did not view him as competent to perform as a Dispatcher at the close of the July 3 shift.

At the close of Klabunde's shift, Abbott reported to Kathleen Edwards, who served, on July 3, as the Dispatcher-in-Charge of the Communications Center. She has worked as a Dispatcher for roughly seventeen years, and serves as a classroom trainer. She typically performs on-the-job training only in the absence of another Dispatcher. She introduced Abbott to other Dispatchers and to their workstations. At the end of her shift, Edwards initialled Abbott's Checklist for the function of "Workstations" within the major area "Introduction."

Klabunde filed Grievance 97-56, seeking Article 24 premium pay for training Abbott between 2:00 and 4:00 a.m. on January 3. Edwards filed Grievance 97-58, seeking Article 24 premium pay for training Abbott between 4:00 and 4:15 a.m. William Wagner, the County's Personnel Director and Gary Boyce, the County's Assistant Chief Deputy denied Grievance 97-56 and 97-58. Each answer notes the grievances lack any contractual basis.

#### **Grievances 97-101, 97-102, 97-103, 97-104 & 97-105**

In a memo to Janet Anderson, Melody Piper, Dawn Holmes, Deb Remer and Aaron Stollfuss dated October 22, Katherine Biggar, the County's Chief Dispatcher, stated:

Just for your info . . . On Monday, October 27th, from about 2:15 PM until approx. 4:30 PM we will have senior citizens in the Comm Center for about 1/2

hour each. They will actually be plugged in with each of you and you will need

to give them a brief overview of what happens at your position. These are members of the Citizens Police Academy and their visit has been authorized by the Sheriff . . .

The Citizens Police Academy seeks to give members of the public, typically retirees, insight into County law enforcement. On October 27, a number of members of that organization came to the Communications Center to observe the dispatching process. Each of the five Grievants assumed responsibility for instructing four citizens over a two hour period.

Remer testified that each of the Grievants assumed responsibility for an intensive two hour instruction in the dispatching process. The four citizens assigned to each Dispatcher sat with the Dispatcher at their workstation, and observed their work. Remer, as the other named Grievants, described each function performed by the Dispatcher and responded to any questions the citizens had. Prior to October 27, Remer discussed the then upcoming event with Biggar. Remer understood Biggar to be assigning work over which the Dispatchers had no choice.

Remer and the other Dispatchers noted above filed grievances seeking training pay for their work with the Citizens Police Academy on October 27. Each of the grievances, however, states that the work took place on November 4. Boyce responded to the grievances in a memo dated November 6. That memo states:

On this date, November 6, 1997, there being no contractual basis, I am denying these grievances in writing in accordance with Step 2 of the Association grievance procedure; further be advised the Employer, Winnebago County, is unaware of any such alleged training on the date of November 4, 1997.

The Association did not realize that the grievances had erroneously listed November 4 as the date of the alleged violation until the arbitration hearing.

### **Evidence of Past Practice and Bargaining History**

Wagner testified regarding the bargaining history to Article 24. The first labor agreement covering Dispatchers was negotiated in 1980 and 1981. Wagner served as the County's negotiator for that agreement. The issue of training pay was brought to the table after the negotiation of the parties' first labor agreement. The Association brought the issue because they felt the training function imposed duties on Dispatchers well in excess of the day-to-day duties of the position. The parties ultimately agreed to the following side letter, which was executed on January 1, 1983:

It is understood and agreed between the Public Safety Building Board and the Public Safety Professional Dispatchers' Association that persons participating in the training of new dispatchers shall be compensated as follows:

1. Classroom Training: Persons providing classroom training as instructors shall be paid at the rate of time and one-half their base hourly rate for all scheduled instructional hours. Time spent in the gathering of materials and the preparation of lesson plans shall not be eligible for compensation.
2. On-the-Job Training: Persons assigned to train one or more dispatcher trainees on-the-job as part of their assigned duties shall be eligible for premium pay at the rate of thirty-five cents (\$0.35) per hour for all hours assigned to work in such capacity.

Wagner understood this provision to apply only to the training of new dispatchers. He also stated that the Association had proposed, at the time of the arbitration hearing, an amendment to Article 24 which would provide a fifty cent training premium for the type of instruction posed by the grievances.

Edwards, Klabunde and Biggar noted that the County may have afforded Dispatchers training pay for instructing non-Dispatcher personnel at some point in the past. To the extent such payment occurred, it was terminated many years ago.

It is undisputed that Deputies and Police Officers have been given orientation instruction regarding the Communications Center for at least 15 years. This orientation was created, at least in part, to demonstrate to law enforcement personnel the demands placed on Dispatchers. Dispatchers and managerial personnel who started the orientation shared a belief that, prior to such training, law enforcement personnel often failed to appreciate the burdens shouldered by Dispatchers.

It is also undisputed that the training questioned by the grievances did not qualify any of the "trainees" to serve as a Dispatcher. A Dispatcher Trainee undergoes three to six months of training, rotating through each shift every two weeks. The classroom and on-the-job component of that training will cover the same topics noted in the Checklist. A Dispatcher Trainee must, however, be worked into the Communications Center, and will be plugged into a workstation under the constant oversight of a Dispatcher. The Dispatcher Trainee will assume solo operation of the workstation only when the overseeing Dispatcher is convinced the trainee can handle it. While training Dispatchers, trainers will formally evaluate the performance of the trainee.

Further facts will be stated in the DISCUSSION section below.

## **THE PARTIES' POSITIONS**

### **The Association's Initial Brief**

After a review of the evidence, the Association argues that Klabunde trained Abbott in the same fashion she has trained Dispatcher trainees. Abbott provided her with the type of Checklist required to be completed by trainers in the formal training of Dispatcher trainees. Klabunde testified "that she did not do anything different in training Deputy Abbott than she would have if she had been training another dispatcher" with the exception of "hands-on" work. Since she performed the same type of work she has performed when she has received the premium pay in the past, she should receive that pay in this case.

The "obvious intent" of Article 24 is "to provide premium compensation to those eligible employees who are assigned to train other employees as part of their assigned duties." Since the County assigned Klabunde, who serves as a trainer, to train Abbott; since she is eligible to receive the trainer premium; since the County controls whom it wishes to train; and since the work performed by Klabunde meets the commonly understood meaning of "training," the Association concludes the Article 24 premium must be granted to Klabunde and to similarly situated Dispatcher-trainers.

The Association then contends that the County's procedural objections to Grievances 97-101, 97-102, 97-103, 97-104 and 97-105 result from a proof-reading error on the Association's part. The typographical error of listing the alleged training as November 4 instead of October 27 "should not be used as the basis of a timeliness argument." Since the County was aware of the facts underlying the grievances and seeks only "to avoid having the Arbitrator address these grievances," its timeliness argument should be rejected.

The Association concludes that the grievances should be granted, and that the County should be ordered to pay the Grievants "fifty cents . . . per hour for all hours" in which they were assigned to train "persons other than dispatchers."

### **The County's Brief**

After a review of the evidence, the County notes that the "majority of the facts in this case are not disputed. Those facts, the County contends, will not support a finding that it violated the labor agreement.

Article 24 originated as a side bar to the 1983 labor agreement. This agreement, as clarified by consistent practice, distinguishes between training "in a formal classroom-type setting" and "orientation-type functions." Since Abbott's training is of the latter type, the premium pay of Article 24 cannot be considered applicable. That Dispatchers testified that they may have received pay in the past for orientation-type functions cannot obscure that "none of the grievants could remember any specific instances when a person received premium pay for



doing so." It follows, according to the County, that it has demonstrated a long history of not affording premium pay for the orientation-type functions posed by the grievances. That the Association has attempted to modify the provisions of Article 24 to compel such payment underscores the evidence of past practice. That undisputed testimony establishes that the purpose of orienting non-Dispatchers to the Dispatch Center "was originally commenced at the request of the dispatchers to provide those persons with a better understanding of the dispatcher's function" further underscores the inapplicability of Article 24 premium pay to the grievances.

That Klabunde was required to complete the Checklist for Abbott's orientation establishes no more "than to record the fact that the officer has actually completed the orientation." It fails to prove any deviation from past practice.

It follows, according to the County, that the grievances must be dismissed.

### DISCUSSION

The stipulated issue focuses on Article 24, and governs each grievance. The County asserted a procedural issue at the hearing, but that issue is not posed regarding Grievances 97-56 and 97-58. Those grievances concern on-the-job training, and thus the interpretive issue concerns the introductory clause and the second paragraph of Article 24.

The introductory clause and the second paragraph mandate that, to be eligible for premium pay, a "person" must be "assigned to train one or more dispatcher trainees as part of their assigned duties." That each grievant is a "person" under the agreement who is eligible to qualify for Article 24 premium pay is apparent. It is also apparent that Klabunde and Edwards were "assigned" by the County to play a role in Abbott's training. Beyond this, the orientation they gave Abbott can be considered training without stretching the term "train" beyond its commonly understood meaning.

However, a fundamental difficulty precludes the application of Article 24 to these grievances. Abbott cannot be persuasively considered a "new dispatcher" or a "dispatcher trainee." Neither Klabunde nor Edwards considered Abbott competent to perform as a Dispatcher at the conclusion of his July 3 training. Against this background, it is impossible to conclude Abbott was anything other than a Deputy Sheriff trainee. No view of the facts could qualify Abbott as a "new dispatcher" within the meaning of the first clause of Article 24.

To the extent the references to "new dispatchers" or to "dispatcher trainees" can be considered ambiguous, evidence of bargaining history and past practice favors the County. It is undisputed that the orientation type of training afforded Abbott was originally intended not as training to perform dispatch duties, but as a means to educate non-dispatchers on the difficulty and value of the dispatch function. Wagner's testimony on the creation of the side letter which evolved into Article 24 stands un rebutted, and establishes that the provision was, at its inception, a means to reward Dispatchers for the added burdens of training future Dispatchers. Those

burdens should not be underestimated. An on-the-job trainer is expected to formally evaluate a trainee, and to work the trainee into the ongoing operation of a workstation. This is not the type of burden imposed on Klabunde and Edwards on July 3.

Evidence regarding past practice is less than consistent, but favors the County's interpretation of Article 24. There is some evidence that Dispatchers may once have been paid for the type of orientation training posed here. No witness could, however, isolate the occurrence or frequency of any such payment. It is apparent that any past payment was terminated long ago. The source of the persuasive force of past practice is the agreement manifested by bargaining parties' conduct. In the absence of some indication of a mutual understanding, however, evidence of past conduct loses its force as an interpretive guide. At most, the evidence of practice indicates that the parties may, at some point, have agreed orientation type of training afforded non-dispatchers may have qualified for Article 24 premium pay. That this understanding was not shared at the time of the creation of what has become Article 24, and was, without apparent objection, terminated years ago precludes finding a binding past practice. Periods of non-payment have predominated over whatever periods of payment exist. This affords no persuasive basis to conclude practice can warrant the premium payment sought here.

The Association contends that the Checklist establishes something more than orientation occurred on July 3, and that the County has unilaterally extended the training requirement. The existence of the Checklist does underscore the force of the Association's contention that the orientation performed on July 3 can be considered training. It does not, however, make Abbott a "new dispatcher" or a "dispatcher trainee" as Article 24 requires. That the County may have added to the on-the-job duties of its dispatchers must be granted. The duties added cannot, however, be considered those accompanying the training of a new dispatcher. That the same functions noted in the Checklist are covered in on-the-job and classroom Dispatcher training cannot obscure that Abbott spent a few hours viewing what a Dispatcher trainee must take three to six months to learn.

The difficulty with the Association's position is not that affording premium pay for the orientation training of non-Dispatchers is inherently unreasonable. The difficulty with its position is that arbitration is designed to afford bargaining parties the benefit of their agreement. Article 24 cannot be extended to the duties posed by Grievances 97-56 and 97-58 without reading the references to "new dispatchers" and to "dispatcher trainees" out of existence. For premium pay to be afforded for the type of training posed here, the parties must first have agreed to do so. That agreement has yet to be made. Until it has been made it is not enforceable in arbitration. To grant the grievances would afford the Association a benefit through arbitration it has yet to secure in negotiation.

The balance of the grievances turn on the orientation training afforded the Citizens' Police Academy. At hearing, the County lodged a procedural objection to the processing of those grievances. That objection is technical in nature, but poses no interpretive issue here.

Even if considered arbitrable, those grievances manifest the same flaw posed by Grievances 97-56 and 97-58. The citizens trained on October 27 cannot be persuasively considered "new dispatchers" or "dispatcher trainees." Those grievances, even if separately considered, do not pose any interpretive issue beyond that addressed regarding Grievances 97-56 and 97-58.

**AWARD**

The County did not violate the collective bargaining agreement by not paying premium pay to the Grievants for allegedly training persons other than Dispatchers.

The grievances are, therefore, denied.

Dated at Madison, Wisconsin, this 3rd day of March, 1998.

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

**ENDNOTES**

1/ References to dates are to 1997, unless otherwise noted.

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