

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**GENERAL TEAMSTERS UNION,
LOCAL 662**

and

EAU CLAIRE COUNTY

Case 196
No. 56433
MA-10284

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by **Ms. Naomi E. Soldon** and **Ms. Jill M. Hartley**, on behalf of the Union.

Ms. Michelle L. Weyda, Assistant, on behalf of the County.

ARBITRATION AWARD

The above-captioned parties, herein “Union” and “County”, are signatories to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, the parties waived a hearing and agreed that their dispute should be decided upon the factual stipulation related below. The parties filed briefs and the Union filed a reply brief that was received by August 26, 1998. Based upon the entire record and arguments of the parties, I issue the following Award.

ISSUE

The parties have agreed to the following issue:

Whether grievant Larry W. Jacobson is entitled to receive credit for years of service for sick leave payout purposes under Section 10.07 of the contract for the time he served as elected Sheriff for Eau Claire County.

FACTUAL BACKGROUND

Grievant Jacobson was employed by Eau Claire County as a Deputy Sheriff from September 1, 1971, to January 3, 1977. He was elected Sheriff in November, 1976, and served as Sheriff from January 3, 1977, through January 4, 1987.

At the time he was elected Sheriff, Jacobson was covered by the parties' 1975-76 Non-Supervisory Unit Collective Bargaining Agreement. Article 8 therein included a sick-leave provision that did not provide for payout of accumulated leave upon leaving Eau Claire County employment.

Article 9, Section 8, therein set forth the process when an employe is elected Sheriff and it provided in relevant part:

. . .

“ . . .If he successfully wins the election for any public office (except Eau Claire County Sheriff) he shall, upon assuming such an office sever his employment with the Eau Claire County Sheriff's Department. If an employee successfully wins the general election for Eau Claire County Sheriff, he shall be granted a leave of absence for the term of office, if requested. Seniority shall not accumulate during such leave while he serves as Eau Claire County Sheriff. Upon completion of his office as Eau Claire County Sheriff, he shall have thirty (30) days in which to apply and be reinstated to the Eau Claire County Sheriff's Department Personnel Roster and Seniority List. If he returns to the Eau Claire County Sheriff's Department, he shall be required to take the position of the last working employee on the Sheriff's Department Seniority List, providing his seniority standing is greater than the last employee working. He shall also be allowed to bid for all job openings from then on in line with his new reinstated seniority. Time worked for Eau Claire County while being the County Sheriff, shall count for vacation purposes after reinstatement. . . ” (Emphasis added).

. . .

At the time he became Sheriff in 1977, Jacobson was paid out accrued benefits pursuant to the terms of the contract. He requested and was granted a leave of absence to cover each time he was elected Sheriff over the subsequent years. While serving as Sheriff, he did not earn vacation or sick leave benefits and, as an elected official, he did not have to account for his time in any way.

Jacobson applied for and was reinstated as a Deputy Sheriff following his election defeat in November, 1986, effective January 5, 1987. He remained in the Non-Supervisory Bargaining Unit as a Deputy Sheriff until his retirement on January 6, 1998.

Upon his retirement on January 6, 1998, Jacobson was paid for one-third (1/3) of his unused sick-leave balance of 342 hours, i.e. 114 hours, at his ending rate of pay of \$16.97. His anniversary date was then changed from September 1, 1971 to September 13, 1981, to reflect his prior years of service within the bargaining unit. His anniversary date remains September 1, 1971.

The Non-Supervisory Unit's 1998-99 Collective Bargaining Agreement (Joint Exhibit 1) provides for sick-leave payout at Article 10, Section 10.07, as follows:

...

“Employees terminating with ten (10) or more years of creditable service with Eau Claire County shall receive one-third (1/3) of their unused sick leave in cash, except employees terminating with twenty (20) or more years of creditable employment with Eau Claire County shall convert into cash fifty percent (50%) of unused sick leave to be credited toward payment of health insurance premiums. Employees retiring, under the State Retirement System with twenty (20) or more years of service with the County will have the option to have 100 percent of their accrued sick leave converted to dollars and utilize that amount to continue to pay for health insurance premiums. Retirement means that the employee will receive payments from the Wisconsin Retirement Fund.”

...

POSITIONS OF THE PARTIES

The Union argues that Jacobson is entitled to credit for those years of service he served as Sheriff for purposes of accrued sick leave payout because his leaves of absence during that period “did not sever his County employment”; because Section 10.07 of the contract “requires conversion of one hundred percent of Jacobson’s accrued sick leave”; and because the “Sheriff is considered an employee under state statutes.” As a remedy, the Union asks that the “County be ordered to credit Jacobson’s years as Sheriff for purposes of sick leave to dollars for health insurance premiums”, along with reimbursing him “for those premiums he has personally paid since his retirement on January 6, 1998.”

The County maintains that Jacobson is not entitled to any years of service credit for sick leave payout during the time he served as Sheriff because the 1975-1976 contract conferred no such benefit and because he then severed his employment relationship with the County.

DISCUSSION

Contrary to the County's claim, Jacobson in fact never severed his employment relationship with the County during the time he served as Sheriff, as the collective bargaining contract at that time stated in Article 9, Section 8:

. . .

“If he [i.e. a political candidate] successfully wins the election for any public office (except Eau Claire County Sheriff), he shall, upon assuming such an office, sever his employment with the Eau Claire County Sheriff's Department.”

. . .

This language can only be interpreted one way: all successful political candidates – except a newly-elected Sheriff – must sever their employment with the Sheriff's Department. The Sheriff is expressly excluded from this proviso, thereby indicating that he/she does not sever his/her employment relationship with the County. Indeed, that is why the County paid Jacobson's salary and health insurance benefits during his tenure as Sheriff and that is why he remained a County employe. See, for instance, STATE EX REL. SHEETS V. FAY, 54 Wis. 2D. 642, 196 N.W. 2D 651 (1972), wherein the court ruled that a County Court Commissioner was a County employe. The Union therefore is correct in stating: “These leaves of absence [granted to the Sheriff] did not sever his employment with the Sheriff's Department; rather, they merely suspended his active duty as a deputy sheriff.”

It therefore is immaterial that Jacobson during said leaves did not accrue seniority or earn vacation or sick leave benefits because the question of what benefits must be paid to an employe under an approved leave of absence is a separate question of whether that employe remains a County employe during his/her tenure as Sheriff. See CITY OF SUNRISE, 94 LA 80, 85 (Richard, 1990), wherein Arbitrator William L. Richard ruled that an employe did not sever his employment when she was on a leave of absence because, in Arbitrator Richard's words, the “purpose of ‘leaves of absence’ is to avoid termination of the employment relationship. . .”. (Emphasis in original). While the County argues that CITY OF SUNRISE is inapplicable because it “involved a probationary employe who was not an elected official,

requesting a leave of absence during his probationary period”, the fact remains that a leave of absence, by its very definition, does not sever the employment relationship.

Since Jacobson participated in the State Retirement System for over twenty years, he thus is covered under Section 10.07 of the present contract that states:

“Employees retiring, under the State Retirement System with twenty (20) or more years of service with the County will have the option to have 100 percent of their accrued sick leave converted to dollars and utilize that amount to continue to pay for health insurance premiums.”

As correctly noted by the Union, this language “does not confine that service merely to time served as an Eau Claire County deputy sheriff.” Instead, it is much broader by providing for twenty years of credit to any County employe who has twenty years of service under the State Retirement System, which is the situation here.

Contrary to the County’s claim, it thus is immaterial that the 1975-1976 contract did not provide for the sick leave benefit that Jacobson now seeks, as this case turns on what contract terms existed at the time of his retirement in 1998, rather than what the contract provided over 20 years earlier.

Also without merit is the County’s additional claim that Jacobson is not entitled to the sick leave benefit he seeks because Wisconsin’s Attorney General ruled in 66 Op. Atty. Gen. 329 (1977), that a county cannot impose provisions relating to the number of sick days or vacation days a county-elected official may take with pay. The question of whether an elected official must account for his/her time is a separate question of whether that person’s participation in the State Retirement System should be counted for the purpose of sick leave payout under a collective bargaining agreement. Since 66 Op. Atty. Gen. 329 did not address this second question, there is no reason to believe that the County is not lawfully bound by the very contractual terms to which it has agreed.

I therefore find that Section 10.07 of the contract must be given its plain meaning and that Jacobson is entitled to be paid for one hundred percent of his accumulated sick leave that he amassed over the twenty-plus years that he served as a County employe, and as a participant in Wisconsin’s State Retirement System. Since Jacobson throughout that time provided the County with something of great value, i.e. his services, he now is entitled to receive whatever benefits are provided for in the current contract.

In light of the above, it is my

AWARD

1. That grievant Larry W. Jacobson is entitled to receive credit for years of service for sick leave payout purposes under Section 10.07 of the contract for the time he served as elected Sheriff for Eau Claire County.

2. That the County shall immediately grant him such credit and it shall increase his accrued sick leave account accordingly and it also shall reimburse him for any health insurance premiums he has paid since his January 6, 1998, retirement so that he can be made whole.

3. That to resolve any questions that may arise over application of this Award, I shall retain my jurisdiction for at least sixty (60) days.

Dated at Madison, Wisconsin this 21st day of October, 1998.

Amedeo Greco /s/

Amedeo Greco, Arbitrator

AAG/gjc

5762