

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
MILWAUKEE DEPUTY SHERIFFS' ASSOCIATION
and
MILWAUKEE COUNTY (SHERIFF'S DEPARTMENT)

Case 452
No. 56362
MA-10253

Appearances:

Gimbel, Reilly, Guerin & Brown, by **Attorney Franklyn M. Gimbel** and **Aaron M. Hurvitz**, 2400 Milwaukee Center, 111 East Kilbourn Avenue, Milwaukee, Wisconsin 53202, appearing on behalf of the Association.

Mr. Timothy R. Schoewe, Deputy Corporation Counsel, Milwaukee County, Milwaukee County Courthouse, Room 303, 901 North Ninth Street, Milwaukee, Wisconsin 53233, appearing on behalf of the County.

ARBITRATION AWARD

Pursuant to a request by Milwaukee Deputy Sheriffs' Association, herein "Association," and the subsequent concurrence by Milwaukee County, herein "County," the undersigned was appointed arbitrator by the Wisconsin Employment Relations Commission on July 17, 1998, pursuant to the procedure contained in the grievance-arbitration provisions of the parties' collective bargaining agreement, to hear and decide a dispute as specified below. A hearing was conducted by the undersigned on September 16, 1998, at Milwaukee, Wisconsin. The hearing was not transcribed. The parties completed their briefing schedule on October 30, 1998.

After considering the entire record, I issue the following decision and Award.

ISSUES

The Association frames the issue as follows:

Should the County have granted Deputy Zidek's request for eight hours of compensatory time off and did the County violate the FLSA by not doing so?

The County frames the issues in the following manner:

1. Did Milwaukee County and the Sheriff violate the Memorandum of Agreement [Sec. 3.02(4)] when the liquidation of compensatory time was denied?
2. If so, what remedy?

Based on the entire record, and the discussion in the **DISCUSSION** section of this Award, the Arbitrator finds that the County's framing of the issues is appropriate to decide the instant dispute.

PERTINENT CONTRACTUAL PROVISIONS

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PART 3

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3.02 OVERTIME.

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(4) Employees shall have the option of accumulating 120 hours of compensatory time, exclusive of holidays, in lieu of cash, within 26 pay periods, provided that such compensatory time may be liquidated only with the consent of the department head and if the County determines staffing is adequate and if no overtime assignment will result employees will be allowed to liquidate their accrued compensatory time. If, because of the needs of the department, such compensatory time is not liquidated within the time limited, the unliquidated balance shall be compensated in cash.

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PART 5

5.01 GRIEVANCE PROCEDURE.

. . .

(11) At each successive step of the grievance procedure, the subject matter treated and the grievance disposition shall be limited to those precise issues arising out of the original grievance as filed.

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DISCUSSION

The facts are not in dispute. On November 19, 1997, Deputy Mark Zidek, the grievant, submitted a request to use eight hours of compensatory time on December 1, 1997. Sergeant Charles Zwicky denied his request that same day based on “staff shortages.”

Zidek filed the instant grievance also on the same day. The grievance states: “Grievant made request to use compensatory time off within a reasonable time period that would allow management ample time to provide coverage without unduly disrupting operations.” No allegation of a violation of any rule, regulation or contract provision was alleged. For relief, the grievant requested that he be allowed to use the requested compensatory time off.

The Association basically argues that the County violated the Fair Labor Standards Act (FLSA), 29 U.S.C. s. 201 *et seq*, when it denied the grievant’s request to use compensatory time because “its ‘overtime’ reason does not meet the FLSA’s ‘undue disruption’ standard.” However, as pointed out by the Association, the “FLSA requires public employers to provide compensatory time off and further provides that collective bargaining agreements, if one exists, cover the issue. 29 U.S.C. s. 207(o)(2)(A)(I).” (Emphasis added) The parties have such an agreement which addresses the issue. Therefore, it would be inappropriate, in the opinion of the Arbitrator, to go beyond the agreement to determine the outcome of the grievance.

In addition, as pointed out by the County, Section 5.01(11) states: “At each successive step of the grievance procedure, the subject matter treated and the grievance disposition shall be limited to those precise issues arising out of the original grievance as filed.” The grievance as written makes no reference to either the FLSA or discrimination on the basis of assignment (an issue raised by the Association at hearing). Based on same, the Arbitrator is of the opinion that it would be improper to address the aforesaid issue.

The Association does not cite, nor can the Arbitrator find, any contract provision which expressly permits the undersigned to determine if the County violated the FLSA by its actions herein. In addition, Section 5.02(4) expressly prohibits the undersigned from adding to, detracting from or modifying the language of the instant agreement in deciding the issue in dispute. Finally, the Association does not cite any other persuasive authority in support of its position that the Arbitrator may consider the FLSA in deciding this case. Based on same, and all of the foregoing, and the record as a whole, the Arbitrator rejects the Association's first main argument noted above.

The clear language of Section 3.02(4) provides that employes may accumulate 120 hours of compensatory time within certain guidelines and may liquidate such compensatory time "*only with the consent of the department head and if the County determines staffing is adequate and if no overtime assignment will result* employees will be allowed to liquidate their accrued compensatory time." (Emphasis in original) It is undisputed that the Sheriff's representative denied the grievant's request to use compensatory time based on "staff shortages." Based on same and the aforesaid clear contract language, the Arbitrator finds it reasonable to conclude that the County acted within its contractual authority to deny Deputy Zidek's request for use of compensatory time based on a lack of adequate staffing.

The Association argues, however, that the grievant gave the County plenty of lead time to plan for his absence. That may be. Nevertheless, the contract provides that bargaining unit employes may use compensatory time only if the department head approves, staffing is adequate and if no overtime assignment will result. The record indicates that grievant gave timely notice of his desire to use accrued compensatory time. The contract, however, does not require that the County consider same in approving liquidation of accrued compensatory time. Therefore, the Arbitrator also rejects this argument of the Association.

This is not a case where the Department acted in an arbitrary manner. In this regard, the Arbitrator points out that the grievant testified that he was, from time to time, granted compensatory time off. Further, earlier denials, also based on staffing, were not grieved by the grievant. Deputy Banyard also spoke of the relative ease with which he was granted time off.

Based on all of the above, the Arbitrator finds that the answer to the issue as framed by the County is NO, Milwaukee County and the Sheriff did not violate the Memorandum of Agreement [Section 3.02(4)] when the grievant's request to liquidate compensatory time was denied.

In reaching the above conclusion, the Arbitrator has addressed the major arguments of the Association relating to the disputed issue. All other arguments, although not specifically discussed above, have been considered in reaching the Arbitrator's decision.

In light of all of the foregoing, it is my

AWARD

That the grievance is hereby denied and the matter is dismissed.

Dated at Madison, Wisconsin, this 19th day of November, 1998.

Dennis P. McGilligan /s/

Dennis P. McGilligan, Arbitrator