

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
**LINCOLN COUNTY PROFESSIONAL DEPUTIES'
ASSOCIATION, LOCAL 101, of the
LABOR ASSOCIATION OF WISCONSIN, INC.**

and

LINCOLN COUNTY (SHERIFF'S DEPARTMENT)

Case 175
No. 56605
MA-10347

(Terry Sukow Grievance)

Appearances:

Mr. Thomas Bauer, Labor Consultant, Labor Association of Wisconsin, Inc., appeared on behalf of the Association.

Mr. John Mulder, Administrative Coordinator, Lincoln County, appeared on behalf of the County.

ARBITRATION AWARD

The above-captioned parties, hereinafter the Association and the County, respectively, were parties to a collective bargaining agreement which provided for final and binding arbitration of grievances. Pursuant to a request for arbitration, the Wisconsin Employment Relations Commission appointed the undersigned to decide a grievance. A hearing, which was not transcribed, was held on September 30, 1998, in Merrill, Wisconsin. After the hearing the parties filed briefs, whereupon the record was closed December 3, 1998. Based on the entire record, the undersigned issues the following Award.

ISSUE

The parties stipulated to the following issue:

Did the Employer violate the provisions of the collective bargaining agreement when it denied the grievant's vacation request for July 4, 1998? If so, what is the appropriate remedy?

PERTINENT CONTRACT LANGUAGE

The parties' 1997-1998 collective bargaining agreement contained the following pertinent provisions:

ARTICLE 2 – MANAGEMENT RIGHTS

2.1 The County possesses the sole right to operate County government and all management rights repose in it, subject only to the provisions of this Contract and applicable law. These rights include, but are not limited to the following:

...

2.1.1 To direct all operation of the County;

2.1.2 To establish reasonable work rules and schedules of work;

...

2.1.10 To determine the kinds and amounts of services to be performed as pertains to County government operation; and the number and kinds of classifications to perform such services;

...

ARTICLE 18 – VACATIONS

...

18.6 - Scheduling. The Department Head shall schedule the vacations within his Department. Choice of vacation time within a given classification shall be by seniority.

...

- 18.6.4** If a vacation request falls during a period that would require overtime to maintain adequate manpower the vacation request will be denied.

FACTS

Terry Sukow has been a deputy with the Lincoln County Sheriff's Department for 20 years. He works the 2:00 to 10:00 p.m. shift. That shift usually consists of three people: one sergeant and two deputies.

On April 10, 1998, Sukow requested a vacation day for July 4, 1998. That day was a regularly scheduled work day for him pursuant to the Department's 4-2 work schedule. This vacation request was denied by Sukow's shift commander that same day. The basis for the denial was that Sukow had failed to request a minimum block of four consecutive vacation days. Sukow grieved the denial of his vacation request. When Chief Deputy Soucy responded to the grievance, he changed the reason for denying Sukow's vacation request. The changed reason for denying the vacation request was the Department's manpower needs for the day. Soucy's memo provided in pertinent part: "Your request for vacation on that day. . . must be denied because it falls during a period that would require overtime to maintain adequate manpower."

Since his vacation request was denied, Sukow worked his regularly-scheduled shift on Saturday, July 4, 1998. That day he patrolled in the southern half of the County and assisted the Merrill Police Department with traffic control during the evening fireworks display.

Five deputies in the department were called in to work overtime on July 4, 1998. Four of them worked at a parade in Tomahawk and one worked on patrol in the southern half of the County.

Sukow was subsequently paid eight hours at straight time for working that day and eight hours at straight time for working a holiday. The latter was holiday pay. Thus, Sukow was paid a total of 16 hours at straight time for working July 4, 1998.

POSITIONS OF THE PARTIES

The Association contends the County violated the labor agreement when it denied Sukow's vacation request for July 4, 1998. According to the Association, Sukow's request should have been granted. It makes the following arguments to support this contention. First, it submits that when the Employer initially denied Sukow's vacation request, its operational

needs three months hence were not a factor. To support this premise, it notes that when the Employer first denied the vacation request, it chose to rely on the fact that Sukow did not request a four-day block of vacation. The Association infers from this that had Sukow requested a four-day block of vacation, his vacation request would have been granted. The Association asks rhetorically why it is that a four-day block of vacation would not have affected the Department's manpower, but a one-day vacation causes an undue disruption. Second, with regard to the County's revised reason for denying Sukow's vacation request (namely, insufficient manpower), the Association avers that there was adequate manpower on July 4, 1998 for Sukow to have the day off. To support this premise, it notes that a full shift was worked that day. The Association acknowledges that five deputies also worked overtime that day, but it differentiates their overtime from the overtime that would have been needed to fill Sukow's vacancy. According to the Association, the difference is this: Sukow's absence "was related to a contractual benefit" (namely, vacation) while the other overtime "was to provide a political presence at the holiday festivities." Finally, the Association argues that the County should not be able to deny an employee's vacation request simply because it does not want to pay overtime to call in someone else to cover the absence. In the Association's view, that is not a legitimate reason for denying a vacation request. The Association contends that if the arbitrator sustains the County's position here, this will result in the outright denial of a contractual fringe benefit (namely, vacation) to employees. The Association characterizes this as an "absurd notion". In order to remedy this contractual breach, the Association asks the arbitrator to award Sukow four hours of pay at straight time. The Association believes this amount will compensate him for the "inconvenience" of being required to work on July 4, 1998.

The County contends it did not violate the labor agreement when it denied Sukow's vacation request for July 4, 1998. In its view, its denial of the vacation request is expressly allowed by the contract, specifically Article 18.6.4. According to the County, that provision is "right on point in this case." It avers that section provides that vacation requests will be denied if granting it (the vacation request) would require overtime to maintain adequate manpower. The Employer submits that is exactly what would have happened here if it had granted Sukow's vacation request for July 4, 1998 (namely, that it would have had to replace him with someone else on overtime.) In the Employer's view, that makes no sense. Elaborating further on this point, the County disputes the Association's assertion that "adequate manpower" existed on July 4, 1998. To support the premise that the Department's regular manpower on that date was not adequate, the County calls attention to the fact that the Department called in five employees to work overtime that day. The County asks rhetorically how the Association can argue there was adequate manpower on that day when the County had to call in additional employees and pay them overtime. The County argues that if there had been adequate manpower on that day, there would not have been any need to call in additional people to work and pay them overtime. The County therefore requests that the grievance be denied.

DISCUSSION

At issue here is whether the Employer violated the labor agreement when it denied the grievant's vacation request for July 4, 1998. The Association contends that it did while the Employer disputes that assertion. Based on the rationale which follows, I find that the vacation denial did not violate the labor agreement.

My analysis begins with a review of the basis for the denial of the vacation request. The vacation request was initially denied on the grounds that employees had to take vacation in four-day blocks and that Sukow had not requested a four-day block of days. The Employer later changed their position and rescinded the requirement that employees take vacation in four-day blocks. Such was their right. Nothing in the grievance procedure prohibits the Employer from changing their position or repudiating the basis for a position. That being so, it is implicit they can do so. The Employer subsequently did just that and denied the vacation request on different grounds. The revised basis for denying the vacation request was that there was inadequate manpower for Sukow to be gone on the requested day off (July 4, 1998). In their brief, the Association essentially bootstraps together the basis for the initial denial (namely, the four-day block requirement) with the basis for the subsequent denial (namely, inadequate manpower). In other words, it connects them. In my view though, there is no connection whatsoever between the two. They are completely separate grounds. The first denial was based on a then-existing departmental policy and the second denial was based on Chief Deputy Soucy's view of the department's operational manpower needs for that holiday. The record indicates that the departmental policy just referenced was subsequently eliminated. Since it no longer exists, it follows that it has no bearing on this case. That being so, it is the second basis for the denial of the vacation request (namely, inadequate manpower) that will be reviewed to determine if it passes muster. Attention is now turned to making that call.

The language applicable here is Article 18. 6.4. It provides thus: "If a vacation request falls during a period that would require overtime to maintain adequate manpower the vacation request will be denied." An overview of this language follows. Many collective bargaining agreements do not contain language dealing with denial of vacation requests. This agreement is different though. It does contain language which deals with the denial of vacation requests. Specifically, the sentence just referenced creates a criteria for denying vacation requests. It specifies in plain terms that a vacation request will be denied if granting it (the vacation) would require overtime to maintain "adequate manpower". The phrase "adequate manpower" is not defined in that section or anywhere else in the contract. Thus, the contract is silent concerning how "adequate manpower" is determined. Since the contract is silent concerning how "adequate manpower" is determined, the Employer has the inherent right to make that determination so long as its decision is not arbitrary, capricious or unreasonable. Lest there be any question about it, it is specifically noted that the Management Rights clause gives the Employer the right "to direct all operation of the County"; "to establish schedules of work" and "to determine the amounts of services to be performed."

Chief Deputy Soucy decided that the Department's staffing needs for the 2:00 to 10:00 p.m. shift on the July 4 holiday would not be met with the standard shift of three people. He further decided that since additional staff was needed in order to have adequate manpower for the July 4 holiday, this would be accomplished by having employees work overtime. Soucy testified that he based his conclusion about the Department's staffing needs on his 20 years experience as a supervisor with the department. He also testified that July 4 is historically busy and understaffed.

Soucy's assessment of the Department's staffing needs for the July 4 holiday has not been shown to be arbitrary, capricious or unreasonable. That day, all the employees on the 2:00 to 10:00 p.m. shift worked as scheduled. In addition, five employees worked overtime that day. The fact that five employees worked overtime that day conclusively establishes that even without any absences on the 2:00 to 10:00 p.m. shift, there was not "adequate manpower" that day with the normal contingent of staff working. Under these circumstances, Sukow's vacation request for July 4, 1998 fell "during a period that would require overtime to maintain adequate manpower." Since it did, Article 18.6.4 expressly allowed the Employer to deny Sukow's July 4, 1998 vacation request. If the Employer had granted Sukow's vacation request for July 4, 1998, it obviously would have had to replace him with someone else on overtime.

In so finding, I am not persuaded by the Association's attempt to differentiate between the underlying reasons for the July 4 overtime. The Association argues in this regard that the overtime of the employees who worked in Tomahawk "was to provide a political presence at the holiday festivities" while the overtime that would have been needed to fill Sukow's vacancy "was related to a contractual benefit" (namely, vacation). I find that even if the distinction just noted is true, that does not affect the outcome herein. Article 18.6.4 does not delve into the underlying reasons for the overtime, so the undersigned will not do so either.

Finally, attention is turned to the Association argument that the County should not be able to deny an employee's vacation request simply because it does not want to pay overtime to call in someone else to cover the absence. The problem with this contention is that, as noted earlier, Article 18.6.4 expressly says otherwise. That being the case, the place for the Association to address its concern with same is at the bargaining table.

In light of the above, I issue the following

AWARD

That the Employer did not violate the provisions of the collective bargaining agreement when it denied the grievant's vacation request for July 4, 1998. Therefore, the grievance is denied.

Dated at Madison, Wisconsin this 3rd day of February, 1999.

Raleigh Jones /s/

Raleigh Jones, Arbitrator

