

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**LINCOLN COUNTY PROFESSIONAL DEPUTIES' ASSOCIATION  
LOCAL 101, LABOR ASSOCIATION OF WISCONSIN, INC.**

and

**LINCOLN COUNTY**

Case 184  
No. 57671  
MA-10717

(Terry Sukow Grievance)

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Appearances:

**Mr. Thomas A. Bauer**, Labor Consultant, Labor Association of Wisconsin, Inc., 206 South Arlington Street, Appleton, Wisconsin 54915, appearing on behalf of the Union.

**Mr. John Mulder**, Administrative Coordinator, Lincoln County, 1104 East First Street, Merrill, Wisconsin 54452-2535, appearing on behalf of the County.

**ARBITRATION AWARD**

Pursuant to a request by Lincoln County Professional Deputies' Association Local 101, Labor Association of Wisconsin, Inc., herein "Union," and the subsequent concurrence by Lincoln County, herein "County," the undersigned was appointed arbitrator by the Wisconsin Employment Relations Commission on July 20, 1999, 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 April 13, 2000, at Merrill, Wisconsin. The hearing was not transcribed. The parties completed their briefing schedule on June 20, 2000.

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

**STIPULATED ISSUE**

1. Did the Employer violate the specific provisions of Article 18 when it denied the Grievant, Terry Sukow, a request for vacation time off for April 30, 1999?

2. If so, what is the appropriate remedy?

**FACTUAL BACKGROUND**

On April 16, 1999, Deputy Terry Sukow, hereinafter referred to as the "Grievant," submitted a vacation request for one (1) vacation day for April 30, 1999, to the County.

On April 18, 1999, his shift commander denied the vacation request because the requested time off was the Friday preceding the start of the Wisconsin fishing season and as a result the County would have had to replace him with someone on overtime.

The Wisconsin fishing season increases traffic flow into the County and increases activities and incidents at local motels, taverns and campgrounds.

On April 30, 1999, the Grievant filed a grievance over the County's denial of his vacation time off request.

The grievance properly moved through the grievance procedure to arbitration without resolution.

**PERTINENT CONTRACTUAL 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;

. . .

**2.1.6** To maintain efficiency of County government operations;

...

**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;

...

**2.1.12** To determine the methods, means and personnel by which County operations are to be conducted;

...

**2.2** Any unreasonable exercise or application of the above mentioned management rights, which are mandatorily bargainable, shall be appealable through the Grievance and Arbitration process; however, the pendency of any grievance or arbitration shall not restrict the right of the County to continue to exercise these management rights until the issue is resolved.

...

## **ARTICLE 18 – VACATIONS**

**18.1 – Vacation Benefits.** All full-time employees shall receive the following vacation benefits:

<b>Vacation Benefit</b>	<b>Completed Years of Service</b>
51 Hours	1 Year
110.5 Hours	2 Years
161.5 Hours	9 Years
221 Hours	16 Years

...

**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.

...

## **POSITIONS OF THE PARTIES**

### **Association's Position**

The Association argues that the County's denial of the Grievant's vacation request was an unreasonable exercise of management rights because the start of the Wisconsin fishing season does not create "increased traffic flow as to create a scenario for cancellation of vacation requests" and because the operational needs of the County related to recreation do not outweigh the Grievant's right to the fourth day of his workweek off. (Emphasis in original)

The Association also argues that the provisions of Article 18, Section 18.6.4 are not applicable in the instant case because the County has refused to hire additional employees as requested by the Sheriff. The Association concedes that under normal circumstances said contractual provision allows the County to deny a vacation request where "to grant said request would have required the Employer to pay overtime to maintain adequate manpower." However, the Association concludes that the County's failure to adequately staff the Sheriff's Department does not allow the County an opportunity to use Section 18.6.4 to justify its violation of the agreement.

For a remedy, the Association asks for compensation for the Grievant "at his regular rate of pay for eight and one-half (8½) hours pay for being improperly denied his vacation request."

### **County's Position**

The County initially argues that the language of Section 18.6.4 is clear and directly on point: "If a vacation request falls during a period that would require overtime to maintain adequate manpower the vacation request will be denied." The County states the only question left unanswered is what constitutes "adequate manpower." The County adds that relevant language in Article 2 clearly gives management the right to determine how "adequate manpower" will be defined citing LINCOLN COUNTY, CASE 175, NO. 56605, MA-10347 (JONES, 1999) in support thereof.

Based on the above contract language, the County argues it had an appropriate reason to deny the Grievant's vacation request. In this regard, the County states the record is clear that if the Grievant had been granted a vacation day, the County would have had to replace him with someone on overtime because of the need for adequate manpower on the opening weekend of the fishing season.

The County rejects the Union's argument that the County cannot rely on Section 18.6.4 for its denial of the Grievant's vacation request because the County was not adequately staffed.

The County points out that pursuant to the management rights clause it has the right to determine the number of sheriff deputies it will have and there is no provision in the contract requiring the County to fund a set number of deputies. The County adds that despite the Union's assertion the County is understaffed, the Grievant was able to take all of his vacation during the year and never lost any vacation because he was not able to take his vacation.

Finally, the County argues that the Union was unable to cite any contract language as being violated or any evidence that management's determination of adequate manpower was arbitrary, capricious or unreasonable.

Based on the evidence and the above arguments, the County requests that the grievance be denied.

### DISCUSSION

At issue is whether the Employer violated the provisions of Article 18 when it denied the Grievant's request for vacation time off for April 30, 1999. The Association contends that it did while the County takes the opposite position. Based on the discussion below, the Arbitrator finds that the vacation denial did not violate Article 18.

The Association initially argues that the County's denial of the Grievant's vacation request was an unreasonable exercise of management rights because the start of the Wisconsin fishing season does not create an adequate basis to deny vacation requests. The record, however, supports a different conclusion. Chief Deputy Soucy testified that if the Grievant had been granted vacation on the day in question, the County would have had to replace him with someone on overtime. Chief Deputy Soucy has been with the Department for over 25 years and has been a Sergeant for 20 of those years. Based upon his years of experience, Chief Deputy Soucy recognized the manpower needs and testified that the weekend of April 30, 1999, was the opening weekend of fishing season which resulted in an influx of tourists and activities on the highways, local motels, taverns and campgrounds. Chief Deputy Soucy added that there were more traffic accidents and incidents necessitating a police response on that weekend. Soucy's assessment of the Department's staffing needs for the opening of Wisconsin's fishing season has not been shown to be unreasonable.

The Association also argues that Article 18.6.4 is not applicable in the instant case because the County has refused to hire additional employees as requested by the Sheriff.

This is not the first case where the County has had to defend a denial of vacation based on the language of Article 18.6.4. In a previous case, in referring to said contractual provision, Arbitrator Raleigh Jones stated:

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.”

Case 175, No. 56605, MA-10347, p. 5 (1999).

Chief Deputy Soucy testified that there are the same number of Sheriff’s Department personnel on the road as in prior years. In addition, the record indicates that the Grievant was able to take all of his vacation during the year and did not lose any vacation because he wasn’t able to take his vacation. Testimony of Grievant on cross. Finally, there is no persuasive evidence in the record the County systematically denied vacation requests based on any shortage of Department personnel. Based on the foregoing, and the rationale articulated in the prior decision by Arbitrator Raleigh Jones on the same subject, the Arbitrator rejects this argument of the Association.

The Association concedes that the aforesaid contractual provision is applicable under normal circumstances but submits that it is not when the Department is inadequately staffed. The problem with this approach is that the contract makes no such distinction. Nor has the Association shown that the County’s determination regarding general staffing levels is arbitrary, capricious or unreasonable.

Based on all of the above, and absent any persuasive evidence or argument to the contrary, the Arbitrator finds that the answer to the issue as stipulated to by the parties is NO, the Employer did not violate Article 18 when it denied the Grievant, Terry Sukow, a request for vacation time off for April 30, 1999.

In reaching the above conclusions, the Arbitrator has addressed the major arguments of the parties related to the instant dispute. All other arguments, although not specifically discussed above, have been considered in reaching the Arbitrator's decision.

Based on the foregoing, it is my

**AWARD**

That Terry Sukow's grievance dated April 30, 1999, is hereby denied, and the matter is dismissed.

Dated at Madison, Wisconsin, this 11<sup>th</sup> day of July, 2000.

Dennis P. McGilligan /s/

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Dennis P. McGilligan, Arbitrator