

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
FOREST COUNTY DEPUTY SHERIFF'S ASSOCIATION

and

FOREST COUNTY

Case 83
No. 59809
MA-11415

(Cleaning Allowance Grievance)

Appearances:

Ms. Carol J. Nelson, Executive Director, Northern Tier UniServ-East, 300 East Pioneer Street, P.O. Box 9, Crandon, Wisconsin 54520-0009, for the labor organization.

Attys. Bryan Kleinmaier and Dean Dietrich, Ruder, Ware & Michler, S.C., Attorneys at Law, 500 Third Street, P.O. Box 8050, Wausau, Wisconsin 54402, for the municipal employer.

ARBITRATION AWARD

The Forest County Deputy Sheriff's Association ("the Association") and Forest County ("the County") are parties to a collective bargaining agreement which provides for final and binding arbitration of disputes arising thereunder. The Association made a request, in which the County concurred, for the Wisconsin Employment Relations Commission to appoint a member of its staff to hear and decide a grievance over the interpretation and application of the terms of the agreement relating to a cleaning allowance. The commission designated Stuart Levitan to serve as the impartial arbitrator. The parties agreed to a stipulation of facts which they submitted on July 25, 2001. The parties submitted written arguments by August 27, 2001, and on September 13, 2001, waived their right to file replies.

ISSUE

The Association did not propose a statement of the issue.

The County proposed the following statement of the issue:

Whether the County violated Section 18.02 of the collective bargaining agreement when it denied Kay White's and Bethyn Baldauf's request for a \$150.00 cleaning allowance? If so, what is the appropriate remedy?

I state the issue as follows:

Did the County violate the collective bargaining agreement when it did not pay the Deputized Clerk/Matrons a \$150 cleaning allowance? If so, what is the appropriate remedy?

RELEVANT CONTRACTUAL LANGUAGE

Article XVIII
CLOTHING AND ALLOWANCE

Section 18.01: The County shall provide a new deputy hired into the Sheriff's Department (after six months of service) with an initial uniform allowance of \$350.00 for the year and \$200.00 per year thereafter. Deputies shall receive the \$200.00 clothing allowance in January of each year.

Section 18.02: The County will allow a cleaning maintenance for each full-time deputy at the rate of \$150.00 per year, or per voucher only.

BACKGROUND

The parties stipulated to the following statement of facts:

1. The Forest County Deputy Sheriff's Association ("Association") is the exclusive bargaining agent for all the Forest County ("County") full-time Deputies, Investigators, Jailer/Dispatchers and Deputized Clerk/Matrons.

2. The 1998-99 Collective Bargaining Agreement (“Agreement”) between the Association and the County governs the instant Cleaning Allowance Grievance, Grievance No. FCDSA10301.
3. The County accreted the position of Deputized Clerk/Matron into a bargaining unit consisting of Deputy Sheriffs and Jailer/Dispatchers in 1995.
4. Kay White and Bethyn Baldauf are bargaining unit members in the Association.
5. Ms. White and Ms. Baldauf are employed in Clerk/Matron positions with the County.
6. Clerk/Matrons are deputized for the purpose of serving legal papers or assisting in the transport of prisoners to the Courtroom.
7. Clerk/Matrons are not required to wear uniforms and do not wear uniforms.
8. The County does not provide an annual \$150.00 cleaning allowance to Ms. White and Ms. Baldauf.
9. On January 3, 2001, the Association filed a Grievance alleging that the County violated the Agreement when it denied Ms. White and Ms. Baldauf \$150.00 for cleaning allowance. The remedies requested by the Association include payment of a cleaning allowance in the amount of \$150.00 per year to Ms. White and Ms. Baldauf, and any and all appropriate remedies.
10. In a letter dated March 5, 2001, Ms. Carol Nelson, Executive Director of Northern Tier UniServ – East and representative of the Association, informed Attorney Dean Dietrich, counsel for the County, that Forest County Sheriff Roger Wilson and the Association agreed to waive Step 1 of the Grievance Procedure on January 3, 2001 and proceed directly to Step 2.
11. In a letter dated March 22, 2001, Attorney Dietrich informed Ms. Nelson that the County’s Personnel Committee formally denied the instant Grievance.

12. In a letter dated March 23, 2001, the Association informed the County that it was filing with the Wisconsin Employment Relations Commission a request to initiate grievance arbitration in the instant matter.
13. The County employed Arthea Lamond as a Deputized Steno Clerk from July 2, 1973 until February 2, 1991. From July 2, 1973 until February 2, 1991, the County paid Ms. Lamond for the cleaning of her uniforms.
14. In her capacity as a Deputized Steno Clerk, Ms. Lamond wore a uniform and was a certified deputy with powers to arrest and the authority to carry a firearm.

POSITIONS OF THE PARTIES

In support of its position that the grievance should be sustained, the Association asserts and avers as follows:

The County accredited the position of Deputized Clerk Matron into a bargaining unit consisting of Deputy Sheriffs and Jailer Dispatchers in 1995 for the convenience of the Sheriff. The Wisconsin Employment Relations Commission recognized that position within the Deputy Sheriff's Association due to the fact that the Clerk Matrons were deputized. The Wisconsin Employment Relations Commission would not separate the Clerk Matrons and/or the Jailer/Dispatchers Unit from the Deputy Sheriff's Association as long as these positions had arresting powers. There is no distinction between the limited arresting powers and arresting powers within the Commission. As indicated from the Stipulation, in 1995, the Deputy Clerk Matrons were accepted within this union due to the fact that they were given arresting powers. The Jailer/Dispatchers who are within this unit, have arresting powers and they do not carry a firearm.

The former deputized Steno-Clerk, whose position is now titled Deputized Clerk Matron, was paid from July, 1973 until February 2, 1991, a cleaning allowance. The Collective Bargaining Agreement, Section 18.02, reads as follows: *The County will allow a cleaning maintenance for each full-time deputy at the rate of \$150.00 per year, or per voucher only.* Ms. White and Ms. Baldauf are full-time Deputies. The Collective Bargaining Agreement, Article XVIII, clearly separates the clothing and allowance. Section 18.01 reads as follows: *The*

county shall provide a new deputy hired into the Sheriff's Department (after six months of service) with an initial uniform allowance of \$350.00 for the year and \$200.00 per year thereafter. Deputies shall receive the \$200.00 clothing allowance in January of each year. That provision within the Collective Bargaining Agreement is dealing with the uniformed deputies. Section 18.02 clearly states a cleaning maintenance of \$150.00/year for full-time Deputies. There is a distinct separation, Section 18.01; Section 18.02. The past practice of eighteen years in which payment of the cleaning allowance for the person who was formally in this position, as well as the contractual language, clearly indicates that Ms. Baldauf and Ms. White have the right to the \$150.00 yearly payment for cleaning maintenance.

The contractual language and the past practice are very clear. There is a cleaning allowance for full-time Deputies. Ms. Baldauf and Ms. White are full-time Deputies. The past practice of paying a full-time Deputy who was in this position of over eighteen years shows the intent of the language and the past practice of carrying out the intent of that language.

In support of its position that the grievance should be denied, the County asserts and avers as follows:

It is a well-established arbitral principle that clear and unambiguous contract language should be given effect, and the clear and unambiguous language of section 18.02 does not require the County to provided deputized clerk/matrons with a cleaning allowance.

The collective bargaining agreement provides that the County will allow a cleaning maintenance "for each full-time deputy." It does not refer to deputized clerk/matrons, and, as the arbitrator found in an earlier case involving these same parties, deputized clerk/matrons are not full-time deputies.

The grievants are not required to wear uniforms and do not do so. This distinguishes them from full-time deputies, who are required to wear uniforms. There is no reason for the County to provide an annual cleaning allowance to employees who do not have uniforms to clean.

Further, past practice may not overcome clear and unambiguous contract language. Arbitrators may use past practice to clarify ambiguous language, but not to amend or modify language which is already clear. The language of section 18.02 is clear and ambiguous, and past practice may not be used to override it.

Even if section 18.02 were ambiguous and the use of past practice were appropriate, the past practice alleged by the association is not applicable because it is not binding. To be binding, a past practice must be unequivocal, clearly enunciated and acted upon, readily ascertainable over a reasonable period of time and established practice accepted by both parties. The past practice alleged by the Association do not meet those terms.

From 1973 through 1991, the County employed Arthea Lamond as a Deputized Steno Clerk. In that capacity, she was a certified deputy who wore a uniform, had powers of arrest and authority to carry a firearm. She received a cleaning allowance for her uniform.

Unlike Lamond, the incumbent Deputized Clerk/Matrons are not required to wear uniforms and do not do so. Also unlike Lamond, the incumbents have only limited powers of arrest and are not authorized to carry concealed weapons. Lamond's employment thus fails to establish a binding past practice requiring the County to provide a cleaning allowance to the grievants.

No provision of the collective bargaining agreement entitles the Deputized Clerk/Matrons to a cleaning allowance. Since the incumbents are not required to wear uniforms and have no uniforms to clean, to hold that the County must provide a uniform cleaning/maintenance allowance would create an absurd result that cannot be upheld by the arbitrator.

DISCUSSION

This case is a companion case, of sorts, to an earlier dispute between these parties over a request by these same grievants for so-called "Kelly time" off. I denied that grievance earlier this year, explaining as follows:

There are several problems with the association's theory of the case. The first is the clear language of the collective bargaining agreement. Section 16.02E does not provide, as the association asserts, that all deputized personnel receive Kelly time; instead, it specifically refers to "each Deputy and Jailer/Dispatcher."

The clerk/matrons have been deputized for the specific and limited purpose of serving legal papers. As their identification badges plainly state, they have only limited powers of arrest and are not authorized to carry concealed weapons. They are neither trained nor credentialed as law enforcement personnel. *In the*

context of collective bargaining and contract administration, a "deputized clerk/matron" is not a deputy sheriff. FOREST COUNTY, (No. 59143, MA-11194, May 2001). (emphasis added)

Nothing about the grievants' status has changed. A Deputized Clerk/Matron is still not a deputy sheriff. And it is only a "full-time deputy" who receives the \$150 annual clothing allowance as provided for in section 18.02 of the collective bargaining agreement.

The Association's argument as to past practice also fails. The Deputized Steno/Clerk who served from 1973 through 1991 was a certified deputy with powers of arrest and the authority to carry a firearm. The incumbent Deputized Clerk/Matrons have only limited powers of arrest and are not authorized to carry concealed weapons. While the record does not note the bargaining unit status of Leonard's position, the record does not that the current Deputized Clerk/Matron position was only accreted into this unit in 1995. Finally, from 1973 through 1991, the Deputized Steno Clerk *wore a uniform*, while the grievants *do not wear a uniform*.

The County correctly states the test for determining whether there is a binding past practice; the significant change in facts from 1973-1991 to the current situation convincingly demonstrate no binding past practice currently exists.

The collective bargaining agreement provides an annual \$150 "cleaning maintenance for each full-time deputy...." The Deputized Clerk/Matrons are not full-time deputies, and are not included in the cleaning maintenance provided under Section 18.02 of the collective bargaining agreement. Further, the comprehensive change in circumstances between the conditions of employment of the Deputized Steno Clerk who served from 1973 through 1991 and the incumbent Deputized Clerk/Matrons nullifies and negates any practice which formerly may have existed.

Accordingly, on the basis of the collective bargaining agreement, the record evidence and the arguments of the parties, it is my

AWARD

That the grievance is denied.

Dated at Madison, Wisconsin this 13th day of September, 2001.

Stuart Levitan /s/

Stuart Levitan, Arbitrator

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