

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

WINNEBAGO COUNTY

and

PUBLIC SAFETY PROFESSIONAL DISPATCHERS' ASSOCIATION, LOCAL 501

Case 363

No. 62727

MA-12421

(Hafemeister Grievance #A-2003-22; Remer Grievance #A-2003-23)

Appearances:

Mr. Thomas A. Bauer, Labor Consultant, Labor Association of Wisconsin, Inc., 206 South Arlington Street, Appleton, WI 54915, on behalf of Local Union 501.

Mr. John A. Bodnar, Corporation Counsel, Winnebago County, 448 Algoma Boulevard, P.O. Box 2808, Oshkosh, WI 54903-2808, on behalf of the County.

ARBITRATION AWARD

According to the terms of the 2001-03 labor agreement between Winnebago County (County) and Public Safety Professional Dispatcher' Association, Local 501 (Association), the parties jointly requested that Sharon A. Gallagher be appointed as impartial arbitrator to hear and resolve two disputes between them regarding the Hafemeister and Remer grievances concerning the County's assignment of available trainer hours to dispatch employees. Hearings in both cases were scheduled and conducted at Oshkosh, Wisconsin, on January 16, 2004. The parties agreed to exchange their briefs directly with each other, postmarked March 1, 2004, with a copy of same to the Arbitrator. The parties reserved the right to file reply briefs. The Association advised on March 19, 2004, that the parties would not file reply briefs, whereupon the record was closed.

ISSUES

The parties stipulated that the Arbitrator should resolve the following issues in each case?

Hafemeister: Did the Employer violate the terms and conditions of the collective bargaining agreement when it failed to offer available trainer hours, as has been the long-standing past practice, on August 6 and 7, 2003? If so, what is the appropriate remedy?

Remer: Did the Employer violate the terms and conditions of the collective bargaining agreement when it failed to offer available trainer hours, as has been the long-standing past practice, on August 19, 20, 21 and 26, 2003? If so, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

ARTICLE 3 – MANAGEMENT RIGHT

3.1 Except as otherwise specifically provided herein, the management of the Communications Center and the direction of the work force including, but not limited to, the right to hire, to discipline and discharge for proper cause, to decide initial job qualifications, to lay off for lack of work or funds, to abolish positions, to make reasonable rules and regulations governing conduct and safety, to determine schedules of work, to subcontract work, together with the right to determine the methods, equipment, process and manner of performing work, are vest exclusively in the Employer.

3.2 Nothing contained herein shall divest the Association of any of its rights under Wisconsin Statute 111.70.

ARTICLE 7 – OVERTIME AND COMPENSATORY TIME

7.1 Time worked in excess of the regular workday or workweek shall be compensated for in the form of pay or compensatory time off at the rate of time and one-half of overtime worked at the option of the employee, however, compensatory time may be earned for overtime hours worked in excess of the normal workday but not for hours worked in excess of forty (40) hours within the normal workweek. Such hours worked in excess of forty (40) hours within the normal workweek shall be compensated in the form of pay at the rate of time and one-half. No compensatory time off may be accumulated in excess of eighty-two and five-tenths (82.5) hours per year.

. . .

ARTICLE 25 – TRAINER PAY

25.1 Persons participating in the training of new dispatchers shall be compensated as follows:

25.2 Classroom Training: Persons providing classroom training as instructors shall be paid at the rate of time and one half their base hourly rate for all scheduled instructional hours. Time spent in the gathering of materials and the preparation of lesson plans shall not be eligible for compensation.

25.3 On-the-Job Training: Persons assigned to train one or more dispatcher trainees on the job as part of their assigned duties shall be eligible for premium pay at the rate of One Dollar (\$1.00) per hour for all hours assigned to work in such capacity.

OVERTIME CALL-IN PROCEDURE

PURPOSE: To establish a procedure for filling overtime.

PROCEDURE: When a temporary vacancy occurs on shift and the vacancy needs to be filled, the following procedure shall be followed.

1. VACANCY WITH MOPRE THEN [sic] 24 HOURS NOTICE.

A. The DIC or designee shall post the vacancy and it will be available to anyone wishing to sign for the time.

2. VACANCY WITH LESS THEN [sic] 24 HOURS NOTICE.

A. The DIC or designee shall call personnel using the "call-out" list. Prior to calling the DIC shall establish the "order list". The DIC will then start with the next person on the list who did not get called the last time the list was used.

B. If the entire list of employees has been contacted and no one accepts the offer to fill the vacancy, then the time will be offered to any employee on duty, who is not on the "call-out" list.

. . .

BACKGROUND

In the past, the dispatcher management team has selected dispatchers as classroom trainers based on their willingness to do the work, and their ability, aptitude, knowledge, experience and commitment to do the work. Seniority has not been a consideration in selecting classroom trainers. Classroom training has never been offered to employees pursuant to the Overtime/Call-In Procedure. It is undisputed that in the past, the dispatcher management team would issue a memo soliciting those interested in performing classroom training whenever one

of the County's selected trainers resigned or otherwise became permanently unavailable to teach. From the list of those interested, the management team would then select one or more new classroom trainers, based on the above-described criteria.

Classroom trainers are treated and paid differently under Article 25, than are one-on-one or on-the-job (OTJ) trainers. It is undisputed that dispatchers can be assigned by the County to act as OTJ trainers 18 months after their hire, as such dispatchers are then deemed capable of showing one new trainee the procedures and the duties they are performing on a particular day at a particular work station. No classroom teaching is involved in OTJ training. When assigned as an OTJ trainer, no notice is given to the OTJ dispatcher, as the training that is necessary for the trainee to receive changes from day to day and who does that training is dependant upon the daily work assignments of dispatchers deemed capable of doing OTJ training.

The County built a new jail building and dispatch center, which was completed in June, 2003. Approximately one year before completion, the County began installing new electronic equipment including a new telephone system which included an expanded computer aided dispatch system (CAD) which used computer monitors, headsets and programmable presets and allowed dispatchers to answer 911 calls by clicking a mouse. This technology was vastly different from that used in the old jail which utilized a traditional phone system and hard-wired push buttons. The new CAD system was originally installed in the old jail building where dispatchers were given simulated training on it. Thereafter, the new CAD was installed at the new jail and in April, 2003, the system "went live."

As part of its contract with the corporation that sold the County the CAD system, the County received "train the trainer" training directly from the CAD provider for five of its employees who then trained all remaining dispatchers on the use of the CAD system. The dispatcher management team sent out a memo prior to the commencement of this corporate training asking dispatchers to indicate their interest in receiving "train the trainer" training. The minutes of a regular meeting of the management team held on January 9, 2003, recounted the managers' discussion of this training as follows:

. . .

THINK OF ONE OR TWO PEOPLE ON YOUR SHIFT WHO WOULD BE INTERESTED IN A TRAIN THE TRAINER POSITION FOR THE NEW CAD SYSTEM. THIS WOULD MEAN 40HRS OF TRAINING FOR THEMSELVES AND ANOTHER 40HRS OF TRAINING FOR EACH GROUP THEY TRAIN. THEY WOULD ALSO BE RESPONSIBLE FOR TRAINING NEW HIRES. THIS TRAINING WOULD CURRENTLY TAKE PLACE AT NEPD, HOWEVER, CASO AND OUSO ALSO ARE TRAINING PEOPLE THERE, SO IT WILL BE DIFFICULT TO GET PEOPLE IN TO TRAIN WHEN WE WANT TO. HOPE TO HAVE TRAINING DONE BY

MARCH. AFTER YOU ARE TRAINED, YOU WILL PROBABLY BE RESPONSIBLE FOR AT LEAST 4HRS A WEEK OF TRAINING TO GET USED TO THE CAD SYSTEM. HOPE TO GO LIVE AS EARLY AS APRIL 14TH.

BE PREPARED FOR LOTS OF O.T. NEXT FEW MONTHS TIL WE ARE SETTLED IN NEW BUILDING.

. . .

Communications Manager Biggar and Captain Anderson ultimately selected five dispatchers to attend the "train the trainer" course offered by the corporation that had provided the new CAD system. Among these five dispatchers were Dave Schmitz and Brian Smith. Grievant Deb Remer was offered this training but she declined to take it for family reasons.

FACTS

Hafemeister Grievance

Grievant Michelle Hafemeister has been employed as a dispatcher by the County for 16 years. On August 6 and 7, 2003, the County scheduled "Beginning Telephone Techniques/Call-Taking" (hereafter BTT/CT) training and assigned second shift dispatcher Dave Schmitz to conduct that training for 4 hours on August 6 and 8.25 hours on August 7th. On these days, Schmitz trained two new dispatchers in BTT/CT in the classroom. On August 6th, there were two temporary vacancies created on the second shift (the same shift as Dave Schmitz worked) by employee Hopfensperger taking 2 hours of comp time and employee Berg taking 8 hours of personal holiday time. These vacancies were filled by posting them per the Overtime/Call-In Procedure. Dispatchers Kaiser and Anderson filled these vacancies, respectively.

On August 7th, Schmitz' work hours were changed from second shift so that he could train in the classroom during first shift (8:00 a.m. to 4:25 p.m.). Five vacancies occurred on August 7th, all of which were filled by posting them per the Overtime/Call-In Procedure. On August 6th, Hafemeister signed for and received 4 hours of overtime; on that day, Hafemeister was on her regular off day. 1/ On August 7th, Hafemeister was on sick leave and was unavailable for overtime work.

1/ Employees on their regular off days are limited in the amount of overtime they can work on those days pursuant to the Overtime/Call-in Procedure.

The BTT/CT training which occurred on August 6th and 7th was classroom training. The regular trainer for this subject for many years had been Gina Herdina. Herdina was assigned to teach the August 6th and 7th BTT/CT training one week before the training was to occur. Three days before the training commenced, Herdina notified Communications Manager Biggar that she was no longer interested in working as a classroom trainer. The County had to fill the two training slots on short notice. Therefore, it did not issue a memo seeking those interested in being considered for a future classroom trainer slot.

Biggar stated that Dave Schmitz had been trained in and had taught BTT/CT training under the old telephone system and that he had taught BTT/CT as a classroom trainer when Herdina was unavailable, before Herdina resigned. 2/ In addition, Schmitz had also been one of the dispatchers who had helped the County (on his off time as well as during his regular work hours) to set up the new CAD system at the new jail (for example, laying out screens and monitors, programming presets and the system).

2/ Based on this record, Schmitz alone was used as a back-up for Herdina during the years she taught BTT/CT classes.

Grievant Hafemeister has never taught a class in BTT/CT. She has acted as an OTJ trainer in the past to train one trainee at a time in call-taking procedures and techniques. Hafemeister asserted herein that she is qualified to perform the classroom training that Schmitz performed on August 6th and 7th because all dispatchers who have completed 18 months are capable of performing this training.

Remer Grievance

Grievant Deb Remer has been employed by the County as a Dispatcher for the past 13 years. She and Brian Smith worked on the second shift in August, 2003. Remer has been trained by the State of Wisconsin to read and respond to Department of Transportation (DOT) and Crime Information Bureau (CIB) communications. This state-offered training was different from the corporate CAD training Brian Smith received on the new CAD system; the training received was designed to show dispatchers how to access CIB and DOT through the new County CAD system. On August 19, 20, 21 and 26, Smith performed classroom training of dispatchers on the CAD system in "open query" as follows:

August 19	2 – 6 p.m.
August 20	2 – 6 p.m.
August 21	10 a.m. – 2 p.m.
August 26	2 – 6 p.m.

On August 19th, Remer was ordered in to cover Dispatcher Willis' third shift sick leave for eight hours. On August 20th, Remer worked second shift; on August 21st, Remer took four hours of comp time on her regular eight-hour shift and then worked the remainder of that shift; on August 26th, Remer took time off work. Remer stated herein that she could have performed the "open query" classroom training on August 20, 21 and 26, 2003. Remer stated that all vacancies that needed to be filled which were created by Smith's performance of classroom training in August, 2003, were posted and filled pursuant to the parties' Overtime/Call-In Procedure.

The County has never posted to fill classroom training openings. Hafemeister has only been used as an OTJ trainer and has never taught a classroom training session. Remer has also done OTJ training since the move to the new jail but she has taught no classes since May, 2003.

POSITIONS OF THE PARTIES

The Association

The Association argued that the contract requires that employees be paid time and one-half whenever they work in excess of the regular workday or regular work week. Because classroom training is offered on overtime, the Association urged that the County must use the parties' Overtime Call-In Procedure to fill those overtime opportunities.

In the Association's view, the classroom training hours offered to Dave Schmitz on August 6 and 7, 2003, concerning Beginning Telephone Techniques/Call-Taking (BTT/CT) should have been offered to all dispatchers who had passed their probationary periods for several reasons. First, the County regularly uses non-probationary dispatchers to teach/demonstrate BTT/CT in one-on-one training (OTJ) sessions with new dispatchers. Second, the hours of classroom training in BTT/CT available in August, 2003, were entered in the Overtime Call-In Book and, therefore, should have been available for signing by any non-probationary dispatcher. Because Grievant Hafemeister had passed her probationary period prior to August 6th, she had done OTJ training in the past and because she was available to work on the dates in question, Hafemeister should have been given the BTT/CT classroom training overtime.

In the alternative, the Association argued that the BTT/CT overtime should have been offered to all dispatchers pursuant to the parties' Overtime Call-In Procedure because a "vacancy" was created by Dispatcher Gina Herdina's resignation from her classroom trainer position. In this regard, the Association noted that Herdina had been a classroom trainer for some time when she resigned three days prior to the August 6th training session. Contrary to its established past practice, the County did not solicit interested volunteers to fill the opening left by Herdina's resignation. Rather, the County simply offered the classroom training work

available in August, 2003, to Schmitz. The Association argued that Dispatcher Hafemeister was fully qualified to teach the BTT/CT classes and she should have been selected therefor.

In regard to the Open Query (OQ) classroom training given by Brian Smith on August 19, 20, 21 and 26, 2003, the Association argued that those classroom training hours (which were also listed in the Overtime Call-In Book) should have been offered to Remer because she was fully qualified to perform OQ training, having had training from the State DOT and from CIB which is an integral part of OQ training. Given that the County's new CAD system was not functioning properly in August, 2003, and that employees had been told to pretend to perform OQ tasks when they then used the equipment, the County's argument that Smith was better qualified to teach on the new CAD system should be discounted. In the Association's view, the County's argument that the OQ training given by Smith was intended to teach the application of the new CAD system in regard to OQ was not supported by the evidence.

Finally, the Association pointed to this Arbitrator's award in Case 351, No. 61593, MA-11996 between these parties regarding the interpretation of the parties' Overtime Call-In Procedure in the context of overtime offered during the annual EAA Fly-In. The Association urged the Arbitrator to apply the Procedure to the instant case based on this Arbitrator's finding that the language of the Procedure is broad. As the BTT/CT and OQ classroom training opportunities were available overtime, no different from other such opportunities listed in the Overtime Call-In Book, they should have been offered to all qualified employees pursuant to the Procedure.

Therefore, the Association sought an award herein ordering the County to cease and desist from violating the contract and to make Hafemeister and Remer whole by paying them 12.25 and 16.0 hours respectively of overtime pay for the overtime hours Schmitz and Smith worked as classroom instructors in August, 2003.

The County 3/

The County argued that neither Article 7 nor Article 25 guarantee the selection of any particular employees to perform classroom training and that these Articles are silent on how such trainers are to be selected. Thus, the County asserted that it has reserved the management right, under Article 3, to select trainers so long as it does so in a reasonable manner. 3/

3/ *The County did not address the allegations made in the Remer grievance in its brief.*

The County argued that it had selected Schmitz to teach BTT/CT classes after Dispatcher Herdina had resigned her classroom trainer position at the last moment. The County agreed that there was a past practice whereby the County had selected classroom trainers from interested, non-probationary dispatchers; that once selected by the County, classroom trainers are offered classroom training until they were unwilling or unable to perform such training.

Here, Herdina had been the primary classroom trainer in BTT/CT, but the County had also used Dave Schmitz as a back-up trainer when Herdina was unavailable. The County also noted that Schmitz had volunteered to help set up the new CAD system, that he had helped design screens, he helped program the new system before it “went live” and he had participated in CAD training offered by the corporation that sold the County the CAD system, all of which made Schmitz uniquely qualified to provide BTT/CT classroom training on the County’s new CAD system.

In contrast, the County observed that although Hafemeister had provided classroom orientation training in the past, she had never been selected as a classroom trainer and she had not participated in the corporate training offered on the new CAD system. In any event, the County noted that the Association proffered no evidence to show that Schmitz was not better qualified for the classroom trainer position than Hafemeister.

The County contended that this Arbitrator’s “EAA Fly-In Award” was distinguishable from the instant case, as the former involved temporary vacancies on a shift which the Department needed to fill. Given the short notice of resignation given by Herdina, the County argued that Schmitz’ selection as a classroom trainer was reasonable, not arbitrary or capricious and well within the County’s Article 3 implied powers. The County, therefore, asked that the grievance be denied and dismissed in its entirety.

DISCUSSION

In Article 3 of the labor agreement, the County reserved to itself the right “to decide initial job qualifications.” It is undisputed that the County has had a practice of issuing general memoranda to all dispatchers to solicit dispatchers who might be interested in performing classroom training when a classroom training opening occurs either due to the resignation or other unavailability of a classroom trainer. It is also undisputed that the County has always selected new classroom trainers (from those who expressed interest) based on the County’s judgment who would be the best dispatcher to fill the classroom training opening. The County has never made public the factors and qualifications it has considered in deciding which dispatchers to select for classroom training openings. It is important that the parties’ labor agreement does not address the selection of classroom trainers in any way.

Article 25 — Trainer Pay, applies to this case. Significantly, Article 25 deals with classroom trainers separately from on-the-job trainers. Section 25.2 specifically requires the County to pay classroom trainers “at the rate of time and one-half their base hourly rate for all scheduled instructional hours.” It is significant that Section 25.2 does not use the terms “overtime” or “compensatory time.” This fact strongly supports a conclusion that the parties did not intend to subject trainer pay to the same provisions and/or procedures which are applied to overtime and compensatory time. Furthermore, given the fact that the County has appointed classroom trainers and it has paid them pursuant to Section 25.2, shows that there is no basis, either contractually or factually, upon which to apply the parties’ “Overtime Call-In Procedure” or Article 7 — Overtime and Compensatory Time, to classroom trainers. 4/

4/ The EAA Fly-In Award cited by the Association is not applicable to this case as the former involved the proper interpretation of the “Overtime Call-In Procedure” which is not before me in this case.

In regard to on-the-job training addressed in Section 25.3 of the contract, it is undisputed that the County has traditionally selected OTJ trainers who have completed their 18-month probationary periods to demonstrate their daily work assignments to newly hired dispatchers. The County has never required OTJ trainers to have any additional qualifications. Notably, Section 25.3 states that dispatchers “assigned” as OTJ trainers are to receive an additional \$1.00 per hour “premium pay” “for all hours assigned to work in such capacity.” Again, the parties made no reference to overtime or compensatory time in Section 25.3 and the County offered (and filled) all overtime created by Schmitz and Smith’s classroom training duties in August, 2003, in the Overtime Call-In Book.

Hafemeister Grievance

The record evidence demonstrated that Dave Schmitz had been appointed and employed as a classroom trainer to serve when Classroom Trainer Gina Herdina was unavailable to teach Beginning Telephone Techniques and Call-taking Techniques (BTT/CT). Herdina was originally assigned to teach the BTT/CT classes scheduled for August 6 and 7, 2003. When Herdina suddenly resigned her classroom trainer position three days before the classes were to be taught, thus refusing to teach the BTT/CT classes, the County asked Schmitz to step in and replace Herdina as he had done in the past.

Significantly, there is no evidence in this record to show that the County’s decision to appoint Schmitz as a back-up classroom trainer was unreasonable, arbitrary, capricious or discriminatory. Indeed, the evidence herein showed that Schmitz had been heavily involved in assisting the County to set up the new CAD system. OTJ training is covered by a separate section of Article 25 and it has been treated separately consistently by the County. Therefore,

the County could conclude that Hafemeister's experience teaching Calling Techniques as an OTJ trainer was not sufficient to qualify her as a classroom trainer in BTT/CT. In addition, it is also undisputed that although Grievant Hafemeister has done OTJ training she has never taught BTT/CT in a classroom setting and she has not been selected by the County as a classroom trainer. In the circumstances of this grievance, the Association failed to prove that Hafemeister was entitled to be assigned to teach BTT/CT in a classroom setting.

The Association argued that because Schmitz' classroom training hours were paid as overtime and listed in the Overtime Call-in Book, they constituted overtime that any non-probationary dispatcher could sign for and receive. I disagree. Here, the parties created Article 25 — a separate provision using distinct language, which showed that the parties wished to exempt trainer pay from the normal contractual provisions and mutual agreements regarding overtime.

The Association also argued that the County should have followed its past practice and issued a memo soliciting interested dispatchers to fill Herdina's classroom trainer position. Certainly, the County could have done this. However, the County already had Schmitz who had filled-in in the past for Herdina as a classroom trainer. In my view, given the short notice of resignation Herdina gave the County and the fact that Schmitz had previously been appointed a classroom trainer, teaching BTT/CT classes, it was not unreasonable, arbitrary, capricious or discriminatory for the County to assign Schmitz to teach the BTT/CT classes on August 6 and 7, 2003.

Remer Grievance

In regard to the "Open Query" (OQ) classroom training done by Brian Smith on August 19-21 and 26, 2003, I note that the County selected Smith because he had volunteered for and completed the in-depth corporate training on the County's new CAD system. Grievant Remer declined to take this training. Although it is clear from this record that Remer had had training and experience teaching dispatchers how to read and respond to DOT and CIB communications in a classroom setting in the past, her training and experience was different from that gained by Smith during the corporate training he received on the County's new CAD system. In addition, the County's move to its new jail required significant changes in the technology used to perform departmental functions. In the Arbitrator's view, and given the specific facts of this grievance, the Association failed to prove that the County's decision to assign Smith to provide the OQ classroom training in August, 2003, was unreasonable, arbitrary, capricious or discriminatory. Based upon the specific facts of these grievances, I issue the following

AWARD

Hafemeister: The County did not violate the terms and conditions of the collective bargaining agreement or any relevant past practice when it failed to offer available trainer hours on August 6 and 7, 2003, to Hafemeister. The grievance is, therefore, denied and dismissed in its entirety.

Remer: The County did not violate the terms and conditions of the collective bargaining agreement or any relevant past practice when it failed to offer available trainer hours to Remer on August 19, 20, 21, and 26, 2003. The grievance is, therefore, denied and dismissed in its entirety.

Dated at Oshkosh, Wisconsin, this 19th day of April, 2004.

Sharon A. Gallagher /s/

Sharon A. Gallagher, Arbitrator