BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**WISCONSIN PROFESSIONAL POLICE ASSOCIATION/
LAW ENFORCEMENT EMPLOYEE RELATIONS DIVISION**

and

COLUMBIA COUNTY (SHERIFF'S DEPARTMENT)

Case 241
No. 64757
MA-13002

(Terrence Loos Residency Grievance)

Appearances:

Gordon E. McQuillen, Director of Legal Services, and **Mary E. Glynn**, Staff Attorney (on the brief), on behalf of the Wisconsin Professional Police Association.

Joseph Ruf III, Corporation Counsel/Human Resources Director, on behalf of Columbia County.

ARBITRATION AWARD

Wisconsin Professional Police Association/Law Enforcement Employee Relations Division, hereinafter the Association, requested that the Wisconsin Employment Relations Commission provide a panel of Commissioner/staff arbitrators from which the parties could select an arbitrator to hear and decide the instant dispute. Thereafter, the Association and Columbia County, hereinafter the County, selected David E. Shaw to arbitrate in the dispute. Hearing was held before the undersigned on August 18, 2005 in Portage, Wisconsin. A stenographic transcript was made of the hearing and the parties completed the submission of post-hearing briefs by September 20, 2005.

Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following Award.

ISSUES

The parties stipulated there are no procedural issues, but were unable to agree on a statement of the substantive issues and agreed the Arbitrator will frame the issues.

The Association would state the issues as follows:

1. a. Does Columbia County's Residency Ordinance for deputy sheriffs who are members of the sworn bargaining unit conflict with the Collective Bargaining Agreement in effect between the Wisconsin Professional Police Association/Law Enforcement Employee Relations Division and the County?

   b. If it does conflict, what is the appropriate remedy for the grievance?

2. a. If the County's Residency Ordinance does not conflict with the CBA, is it an unreasonable work rule – as written or applied in the Grievant's case – contrary to the Management Rights section of the CBA?

   b. If it is unreasonable in any sense, what is the appropriate remedy?

3. a. If the Residency Ordinance does not conflict with the CBA and is not being applied unreasonably to the Grievant, has he nevertheless substantially complied with the provisions of the Ordinance?

   b. If he has substantially complied with the Ordinance, what is the appropriate remedy?

The County states the issues as follows:

Whether Loos is complying with the County residency requirement for deputy sheriffs by renting an apartment within the County while maintaining his primary residence with his family outside of the County.

The Arbitrator concludes that the issues to be decided may be stated as follows:

Does the County have just cause to discharge Deputy Loos on the basis that he is in violation of the County's residency requirement for deputy sheriffs? If not, what is the appropriate remedy?

CONTRACT PROVISIONS

The following provisions of the parties' collective bargaining agreement are cited, in relevant part:

ARTICLE III – MANAGEMENT RIGHTS

Section 1. The Employer shall have the sole and exclusive right to determine the number of employees to be employed, the duties of each of these employees, the nature and place of their work, and all other matters pertaining to the management and operation of the County, including the hiring, promoting, transferring, demoting, suspending, or discharging for cause of any employee. This shall include the right to assign and direct employees to schedule work, and to pass upon the efficiency and capabilities of the employees, and the Employer may establish and enforce reasonable policies and procedures. Further, to the extent that rights and prerogatives of the Employer are not explicitly granted to the Association or employees, such rights are retained by the Employer. However, the provisions of this section shall not be used for the purpose of undermining the Association or discriminating against any of its members.

. . .

ARTICLE VIII – DISCIPLINE AND DISCHARGE

Section 1. Employees shall not be disciplined, suspended or discharged without just cause. A suspension shall not exceed thirty (30) days, unless the employee agrees to a lengthier suspension in lieu of termination. Written notice of the suspension or discharge and the reason or reasons for the action shall be given to the employee with a copy to the Association within seventy-two (72) hours, exclusive of Saturdays, Sundays or holidays. A grievance that may result from such action shall be considered waived unless presented in writing within five (5) days of the receipt of the notice by the employee. The grievance may be started in Step 2 or Step 3. The provisions of this Agreement regarding grievances and discipline are in lieu of any provisions found in the Wisconsin Statutes on the matter. It is agreed that the right to discipline and the right to present grievances shall be governed by this Agreement and any provisions in Section 59.21 of the Wisconsin Statutes regarding the discipline of a deputy sheriff shall not apply.

. . .

ARTICLE XIII – MISCELLANEOUS

. . .

Section 6. New employees hired after January 1, 1985 shall reside in the locale as ordered by the Sheriff for the first three (3) years of employment. (Once set by the Sheriff, employees cannot be made to move again).

. . .

BACKGROUND

Deputy Loos, hereinafter the Grievant, started as a Patrol Deputy in the Columbia County Sheriff's Department in January of 1997 [1] and was promoted to Sergeant in 2000. The Grievant's work shift is from 10:30 p.m. to 7:00 a.m. on a schedule of six days on, three days off. The Grievant relinquished his Sergeant's position in August of 2004 when, due to a restructuring in the Department, he would have been placed on the day shift. The Grievant's performance has been considered to be excellent.

Deputy Loos is married with two children; boys ages nine and eleven. His wife works a flex schedule between the hours of 8:00 a.m. and 6:00 p.m., depending on the day. His children are extremely active in athletic and after-school events and the Grievant conveys them to these events. Both boys are in youth hockey and the family travels to games in Minnesota, Wisconsin and Illinois. According to the Grievant, the family does an extreme amount of traveling for the boys' athletic events.

Since at least the late 1970's, the County has had an ordinance requiring all of its sworn law enforcement personnel to reside within the County. Since 1994, that ordinance has been set forth in Section 7.26(a)(7) of the County's Personnel Policies and Procedures Manual:

> (7) All sworn deputies shall be residents of Columbia County at the time of commencement of employment and shall remain a resident while employed by the Columbia County Sheriff's Office. All sworn deputies must be a citizen of the State of Wisconsin for one (1) year prior to appointment as a Deputy Sheriff. United States citizenship is required of all regular full-time and regular part-time sworn personnel in the Sheriff's Office. An applicant for a sworn position must be a legal citizen of the United States at the time of appointment to a sworn position.

[1] The transcript indicates Deputy Loos testified he began his employment in the Department in January of 1987; however, the Arbitrator's personal notes taken at the hearing indicate Loos stated he started in January of 1997 and this is supported by evidence in the record that the Grievant is 36 years of age and would therefore have only been 17 years old in January of 1987.

The job description for a deputy sheriff in the Department also states as a "special requirement" that one must be a "resident of Columbia County. . ." The Grievant acknowledged that he was made aware of the requirement at the time of his hire.

According to the Grievant, in August of 2003, he had a discussion with Sheriff Rowe and Chief Deputy Babcock regarding the need to enroll his children in the Sun Prairie School District. His oldest son had been diagnosed with learning disabilities. He and his wife felt that the Portage School District, where the boys had been enrolled, was not able to provide appropriate programming for their son and that the Sun Prairie School District would do so. According to Sheriff Rowe, the Grievant and Chief Deputy Babcock were in his office in August of 2003 and the Grievant said they were selling their house and had an offer and explained his son's special education needs and the need to move into the Sun Prairie School District. The Grievant told the Sheriff he would like to move into that area in the County within the Sun Prairie School District, but his wife and children wanted to move to Sun Prairie. The Grievant asked for some leeway time, 6 months or the following Spring as the Sheriff understood it, to find a place in the County to move to. There was no date set by which this was to occur, but the Grievant said it was going to be a "short time", and the Sheriff felt there was no reason not to believe the Grievant was being upfront with him. The Sheriff testified he was surprised when the Grievant reported the Sun Prairie address to Human Resources, as he had "counselled" him about how to handle it, and that this created a problem for him. When the Grievant changed the address to that of Lieutenant Seely's, there was a "gentleman's agreement" that the Sheriff would not look into the Grievant's whereabouts on his off duty time, but he did not expect this to extend past 6 months/Spring of 2004.

The Grievant and his wife moved to a 1500 square foot, 3 bedroom townhouse in the City of Sun Prairie near his wife's place of employment. The lease on the townhouse is on a yearly basis. By an e-mail of September 9, 2003, the Grievant notified the County's Human Resources Department of his change of address to Sun Prairie. As a result of that notification, questions arose as to the Grievant's compliance with the County's residency requirement.

In response, Chief Deputy Babcock sent the Grievant the following letter of September 11, 2003:

> Re: Residency Requirement
>
> Terry:
>
> Per our telephone conversation on today's date, I have researched the Columbia County Code of Ordinances verifying that a deputy sheriff is required to live within the boundaries of Columbia County. Please find attached Wisconsin State Statute Chapter 59.26 and the Columbia County Personnel Policies & Procedures Manual Section 7.26(7). This manual has been adopted by Columbia County Code of Ordinances Title 7.

> Therefore, based upon the above state statute and the county ordinance, you are required, as a condition of your employment, to reside within the boundaries of Columbia County.
>
> If you have any questions or concerns please feel free to contact me.
>
> Sincerely,
>
> Michael E. Babcock /s/
> Michael E. Babcock
> Chief Deputy Sheriff

The Grievant's initial reporting of the Sun Prairie address had raised the issue of the application of the County's residence requirement to the members of the bargaining unit the Association represents. The Grievant had apparently asked the Association's Business Agent, Steven Urso, whether the residency requirement was valid. On September 12, 2003, Sheriff Rowe and Chief Deputy Babcock met with Urso and Local President, Peter Dodge, to discuss the issue. Urso essentially had concluded that the residency ordinance was valid and required the deputies in the bargaining unit to reside within the County, and copied the Sheriff on a letter he sent to Dodge that same date. That letter stated, in pertinent part:

> RE: Residency Issues
>
> Dear Peter:
>
> I am forwarding to you copies of two Attorney General Opinions dealing with residency issues. If, in fact, the County had in place a local residency restriction at the time of hire for personnel, that restriction is binding. The matter of how persons are to be treated after hire and if no restriction is in place is different. Usually employers who put in place a restriction after hire, bargain with their employees over the residency clause and put it into the collective bargaining agreement. The employer can also create a new rule on residency and a union can claim it is a change in conditions of employment and demand to bargain over it. The reality is the employer holds the upper hand in this area.
>
> Originally, the Attorney General said deputies had to reside within the county. In 1991, the Attorney General modified that position to say if no restriction existed, only certain persons under certain circumstances can be restricted on where they live. In short, the opinions are not favorable to the circumstances currently existing in Columbia County.

> When we spoke, I explained we have limited ability to prevail on residency issues. The letter of Chief Babcock I perceive to contain an order that Sergeant Loos move back into Columbia County.
>
> Sincerely,
>
> Steven J. Urso /s/
> Steven J. Urso
> WPPA Executive Assistant

Also on September 12, 2003, following the meeting with Urso and Deputy Dodge, Chief Deputy Babcock sent the Grievant the following letter:

> Re: Residency Requirement
>
> Terry:
>
> On today's date, the Sheriff and I met with Mr. Steve Urso, WPPA Business Agent, and Deputy Peter Dodge, President, Columbia County Deputy Sheriff's Association. The purpose of the meeting was to discuss the correspondence that you engaged in with the WPPA concerning the residency issue. Mr. Urso had a copy of the letter that I had Lt. Terry Seely hand delivered to you along with the copy of the state statute and the county ordinance.
>
> The WPPA is in agreement, with the County of Columbia, that a residency requirement does exist for deputy sheriffs. Therefore, you shall re-establish your residency, within the boundaries of Columbia County, prior to September 25, 2003.
>
> Additionally, effective immediately, you shall not take K-9 Bear outside of the County of Columbia due to liability reasons, without prior authorization.
>
> If you have any questions or concerns please feel free to contact me.
>
> Sincerely,
>
> Michael E. Babcock /s/
> Michael E. Babcock,
> Chief Deputy Sheriff

By letter of September 15, 2003, Deputy Dodge communicated Urso's conclusions to the bargaining unit members and stated that since the County did have the residency

requirement rule, the Local would have to bargain for the ability to live outside the County, but could not do so until bargaining on their next labor agreement. He also noted that a problem with doing so would be the likelihood of having to give up taking their squad cars home.

Subsequently, the Grievant followed the Sheriff's original suggestion that he get a post office box and park his squad car at another deputy's residence within the County while his family lived in Sun Prairie. The Grievant then reported Lt. Seely's address to Human Resources as his address by an e-mail of September 24, 2003. At that time, the Grievant continued to live with his family at the Sun Prairie townhouse they were renting.

By memorandum of January 30, 2004, Chief Deputy Babcock informed the Grievant that the Sheriff was requesting a written update from him on his "current residency status" and "a detailed account as to your anticipated plan on re-establishing your residency in Columbia County." By memo of February 16, 2004, the Grievant advised Sheriff Rowe that he was moving to an address in Poynette, a village within the County where Lt. Seely was building a home. He also stated,

> It is no secret that my family resides out of Columbia County. I'm mindful of the agreement that I made with you when we met back in September 2003, and I have every intention of upholding that agreement.

In March of 2004, Lt. Seely advised the Grievant that Chief Deputy Babcock had accused him of covering for the Grievant. The Grievant subsequently signed a one-year lease for a one-bedroom apartment in the City of Columbus and moved into that apartment shortly before April 1, 2004. The Grievant's family continued to live in the townhouse in Sun Prairie. This living arrangement has continued unchanged.

According to the Grievant, he sleeps at the apartment on his duty days. After his shift, he sleeps, and then rises, showers and eats. During the school year, he transports their children to their after-school activities and when school is not in session, he transports them to athletic events and sports camps. He generally spends his time with the children until it is time for him to start his shift. Starting in February of 2005, the Grievant also took a second job as a driving instructor, working at a number of locations in Columbia, Dane and Sauk counties. When he is scheduled, he proceeds to that job upon rising and eating. He keeps his uniforms at his apartment, as well as underwear and some other clothes, and has the furniture one would expect to have in an apartment. He concedes the rest of the family's possessions, including his, are at the Sun Prairie address. He pays the utilities for the apartment and uses a cell phone as the phone for that address. He parks his squad car behind the building in which his apartment is located, and starts his shift from his squad car. The family's only personal vehicle is usually kept at the Columbus address.

The Grievant's wife and children have never spent the night at his apartment in Columbus. The Grievant estimated out of a nine-day period of 6 days on, three days off, he

sleeps at the apartment 4 to 6 times. He was unable to say how much time he spends at the Sun Prairie address, but concedes he spends his off days there or some place else and the Columbus apartment is essentially a base from which to work.

The Grievant receives mail at the Columbus address, voted in Columbus in the last election and his driver's license shows that address. The Grievant and his wife file their income tax jointly and their tax return forms indicate the Sun Prairie address. She votes in Sun Prairie and her driver's license has the Sun Prairie address.

The Grievant concedes that when he initially discussed his situation with the Sheriff, the understanding was that the family's move was to be temporary and that he would have his family back within the County within "close proximity" to the time the move was occurring. At hearing, the Grievant testified he still intended to move his family back into the County, but could not say when such a move would occur. He conceded that his wife does not wish to move back into the County and that he has indicated to people in the Department that she is not willing to do so. Only a small portion of Columbia County, approximately ¼ to 1/3 of the Town of Hampton, is within the Sun Prairie School District. According to the Grievant, he has continued to look there, but has been unable to find a home to rent or buy, or a place to build, there.

In November of 2004, the Department initiated an internal investigation of the Grievant with regard to whether he was residing within Columbia County. In conducting the investigation, Captain Kuhl spoke to the person who managed the property at the Grievant's Columbus address, who indicated he had never seen the Grievant at the address, but did receive the monthly rent from him. Captain Kuhl checked with the Columbus post office and learned the Grievant did have a mail address for the apartment. Captain Kuhl also went to the Columbus Public Works office and obtained copies of the electric, sewer and water usage/charges for the Columbus address, which showed minimal usage of those utilities for the months of April – September, 2004. Also, on January 30, 2005, Detective Lieutenant Smith observed the Grievant and his wife arrive at the Columbus address in their personal vehicle at approximately 9:55 p.m., whereupon the Grievant was dropped off by his squad car and his wife left in their vehicle. He subsequently observed the Grievant drive by in his squad car at the start of his work shift.

In preparation for hearing, Detective Smith obtained the utility usage records for the Columbus address for the period covering the months of October, 2004 – June, 2005. Those records also showed minimal usage of electric, sewer and water for most of that period. Detective Smith also utilized the Wisconsin Circuit Court Access to look up civil proceedings involving the Grievant and found a case which showed the Grievant and his wife's address at the Sun Prairie address as of September and November of 2004.

On February 9, 2005, Sheriff Rowe, Chief Deputy Babcock and Captain Kuhl met with the Grievant and Association Representative Michael Goetz, to discuss the situation. Sheriff Rowe advised the Grievant he had 6 months from that date, i.e., until August 9th, to move

himself and his family back into Columbia County or face termination. The Sheriff sent a letter of the same date to the Grievant summarizing their meeting and reiterating the instruction to move himself and his family into the County by August 9, 2005 or face termination for being in violation of the County's residency requirement for its sworn law enforcement employees.

A grievance was filed regarding the Sheriff's February 9, 2005 order. The dispute was submitted to arbitration before the undersigned. The parties agreed to hold execution of that order in abeyance pending the receipt of the award.

POSITIONS OF THE PARTIES

Association

The Association first asserts that the County's residency ordinance for deputy sheriffs who are members of the bargaining unit represented by the Association clearly conflicts with the parties' collective bargaining agreement covering those members. While the ordinance plainly applies to new hires, which is not in conflict with Article XXIII, Section 6, and to the sheriffs who are not covered by the agreement, the County is not free to adopt ordinances or policies that apply to members of the bargaining unit represented by the Association where those same issues are governed by that agreement.

The County's reliance upon Section 59.26, Stats., is misplaced, as the Grievant has never been appointed to patrol a city, village or assembly district within the County. This section of the statutes is silent as to the matter of where a county deputy may reside if he/she is not appointed to a specific governmental subdivision pursuant to that section. In that case, the parties are free to negotiate over the issue of residency, as they have done since 1985, when new hires were directed to live where the sheriff directed for the first three years of their employment. Article XXIII, Section 6 of the Agreement addresses the question of where an employee may live only within the first three years of their employment. The Grievant has been employed in Columbia County far more than three years and therefore the provision is not relevant to the issue of where he must reside. Based on the facts and the ordinary understanding of the language of the agreement, it must be found that the issue of the Grievant's residence is covered by the agreement, not by statute or ordinance.

Even if the ordinance is not found to conflict with the agreement, the ordinance is an unreasonable work rule as written or as applied to the Grievant's case, contrary to the management rights provision of the agreement. The Sheriff initially recognized that an overly literal application of the ordinance was unreasonable, and he and the Chief Deputy were sympathetic to the Grievant's concerns regarding the unique needs of his children's education. For more than a year, the Sheriff was willing to accept the Grievant's living arrangement as being in compliance with the ordinance. It was not until the Grievant informed the County that his family had moved to Sun Prairie that the Sheriff concluded that the Grievant no longer met the residency requirements. As head of the Sheriff's Department, the Sheriff presumably has

the authority to interpret county ordinances as they apply to members of his department. It is evident that the Sheriff has allowed politics to dictate how he interprets and applies the residency policy. His testimony was that he could not take exception to the County Board's interpretation of the ordinance, asserting that he had talked to the Board members regarding the Grievant's living arrangements; however, he declined to identify who those Board members were. He later conceded that he had made no effort to find out whether the Grievant was complying with the residency requirements, other than to hear from Board members regarding the issue of residency during negotiations. Further demonstrating that the Sheriff is being arbitrary and capricious regarding how he chooses to apply the residency policies to the Grievant, when asked why he would not seek the Board's approval to recognize the Grievant's living arrangements as complying with residency requirements, the Sheriff would not respond beyond indicating that he did not want to do it.

The Sheriff testified that the residency requirements exist to keep deputies close at hand for call-out and because the residents of the County like to know their deputies. Neither reason proves valid in the Grievant's situation. A look at the map shows that portions of the County are in fact closer to Sun Prairie than other towns lying within the County's borders. Further, the Sheriff could not recall the last time deputies were called out on their off hours for emergencies.

The Association also asserts that the Sheriff relies on outdated methods of determining the primary residence of an employee, including where the spouse and children of the employee reside. With today's more mobile society and blended family arrangements, the location of employees' spouse and children should not solely determine an employee's primary residence. Whether the Sheriff would not or could not explain why he previously found the Grievant's living arrangements to comply with the residency requirement, but no longer chooses to do so, demonstrates that his change in mood is arbitrary and capricious. His inability to give any reasonable explanation should result in a finding that the Sheriff's application of the residency requirement in the Grievant's case is an unreasonable application of the policy. Thus, it should be found that the County lacks just cause to terminate the Grievant.

Even if the residency ordinance is not found to conflict with the agreement and is not found to be being applied unreasonably to the Grievant, it should be found that the Grievant nevertheless substantially complied with the requirement of the ordinance. The Grievant rents an apartment in Columbus, Wisconsin, within the County borders, and maintains a presence there in his off hours. He testified that he intends to remain renting the apartment until such time as he and his family find an affordable house within the County that works for the family's situation, i.e., permits the children to attend school in the Sun Prairie School District.

"Residence" is defined in *Black's Law Dictionary* as "personal presence at some place of abode with no present intention of definite and early removal . . .Residence implies something more than mere physical presence." (Fifth Edition, 1979) at p. 1176. This is similar to a definition in any general dictionary of the English language. Hence, the plain

meaning of the term supports the conclusion that the Grievant is in compliance with the ordinance. In the absence of some special meaning set forth somewhere in an official document, the Arbitrator should apply the simplest plain meaning to the word. However, despite this, if it is necessary to look beyond that simple definition, while a person's intentions in this regard are important, there are other relevant factors that must be considered in determining residency. EASTMAN V. CITY OF MADISON, 117 Wis. 2D 106 (Court of Appeals, 1983). One factor is where the person spends a majority of his non-working time. The Grievant testified that he often travels out of town in the evenings and on his days off for his sons' sports activities. He visits his children after school and in the evenings at the Sun Prairie residence, but eats and sleeps most of the time at his Columbus apartment during his 6 days on.

The County's internal investigation regarding the Grievant's residence was summarily conducted, and did not investigate his whereabouts over any significant period of time. Hence, it did not meet its burden of proving that the Grievant is not a *bona fide* resident of the County. Before a decision may be made to terminate one's employment, a thorough investigation must be made into the officer's conduct. ENTERPRISE WIRE CO., 46 LA 359 (Daugherty, 1966). The investigation conducted by Captain Kuhl and Detective Lieutenant Smith was cursory at best. The County has not proved that the Grievant spends a greater amount of his time at his wife's Sun Prairie dwelling than at his own rented apartment in Columbus. The "investigation" was based largely on hearsay evidence and a day or two of personal observation. No one asked the Grievant where he was coming from on the dates of the investigation. Thus, the investigation should be dismissed and the County required to meet its burden of proving the Grievant does not reside primarily at his Columbus apartment. Again, the County has failed to establish just cause to terminate the Grievant's employment.

The Association concludes that the Grievant has proven to be a top-rate officer for the County, as acknowledged by the Sheriff himself. He made the decision to enroll his children in a school district outside of the County, was forthright with the Department regarding the move, and complied with initial requests as to how to maintain his residency within the County. When informed he was to re-establish his residence within the County, the Grievant incurred the additional expense of renting an apartment for himself where he could sleep and eat during his off hours and continued to maintain an active presence in his children's lives during his off-duty hours. Rather than resting on an outdated definition of "primary residence" as being where one's spouse and children reside, the Arbitrator should conclude that the County has not sufficiently proved that there is ample reason to terminate the Grievant's employment. The Grievant not only maintains his primary residence within the County, but intends to continue to do so. It should be understood that he will move his wife and children back with him permanently as soon as the family finds a house that meets their needs within the Sun Prairie School District and within their price range, however, there are currently no houses for sale within a small area of the County that would meet those needs.

The County has the burden of proving that the Grievant is in violation of relevant contractual provisions, but has failed to do so and has also failed to prove that the Grievant is

in violation of the residency requirement based on its incomplete internal investigation. It must be found that the County has failed to prove that it had just cause to terminate the Grievant's employment.

County

The County asserts that the sole issue in this case is whether the Grievant is complying with the County residency requirement for deputy sheriffs by renting an apartment within the County, while maintaining his primary residence with his family outside the County.

The County asserts that it has a well-established and long-standing residency requirement for deputy sheriffs. The basis for the residency requirement is found in Section 59.26, Stats. In addition to establishing a residency requirement, Section 59.26(8)(a), Stats., empowers the County Board to adopt ordinances to, among other things, provide for administrative regulations. One such administrative regulation authorized by that statute is found in Title 7 of the County's Code of Ordinances, which incorporates by reference the County's Personnel Policies and Procedures Manual. Section 7.26(a)(7) of that manual provides in pertinent part that, "All sworn deputies shall be residents of Columbia County at the time of commencement of employment, and shall remain a resident while employed by the Columbia County Sheriff's office." The validity of a residency requirement for deputy sheriffs has been confirmed in opinions of the Wisconsin Attorney General. In 1977, the Attorney General advised that County residency was statutorily required for deputy sheriffs. 66 Op. Atty. Gen. Wis. 315 (1977). The Attorney General went on to advise that even if residency in the County were not required by statute, the county boards could require residency by ordinance. In 1991, the Attorney General advised that not only did a statutory residency requirement exist for deputy sheriffs, but additionally that a deputy sheriff who violates such a requirement imposed by the County automatically vacates the office of deputy sheriff. 80 Op. Atty. Gen. Wis. 119 (1991). The Sheriff relies on the statutory authority and opinions of the Attorney General to support the continuing validity of the residency requirement for deputy sheriffs that is established by the County ordinance and personnel manual. The residency requirement has been in place and uniformly enforced for deputy sheriffs the entire 26 years of the Sheriff's employment in the County's Sheriff's Department. The longevity and consistent uniform application of the requirement was confirmed by Chief Deputy Babcock and Captain Kuhl.

In this case, the Grievant is violating the residency requirement for deputy sheriffs by renting an apartment within the County while maintaining his primary residence with his family in Dane County. The Grievant did not dispute the existence or the validity of the residency requirement and knew that the job description for his position required him to maintain such residency from the time he was hired in January of 1997. He was familiar with the requirement contained in the County's personnel manual and had received a copy of the manual. Rather than contesting the existence or validity of the residency requirement, the Grievant indicated that he and the Sheriff had an informal understanding that he could temporarily move his family to Sun Prairie for the specific purpose of enrolling his children in

the Sun Prairie school system. While the Grievant testified that it was his intent in 2003, and still is, to move his family back to the County, he admitted that after two years of temporarily residing outside the County, he still had no idea as to when he and his family might return. He also testified that his wife is not willing to move back to the County, which he knows will ultimately require him to choose between his family and his continued employment with the County.

The Grievant's situation is identical to that of a city of Madison police officer who violated that City's residency ordinance and was subsequently fired. In EASTMAN V. CITY OF MADISON, 117 Wis. 106, the Court of Appeals held that an employee cannot comply with a residency requirement by maintaining an apartment in the City while simultaneously maintaining a primary residence where his family lives outside of the City, and affirmed that termination was the proper sanction for violation of the residency requirement. At 118-119. The Court applied the criteria for evaluating residency, and applying those criteria in EASTMAN to the Grievant's situation reveals that the Grievant's primary domicile is with his family in Sun Prairie, while the primary purpose of the apartment in Columbus is a base from which he works. The Grievant's wife and children live in Sun Prairie, and the latter attend school in Sun Prairie. While the Grievant is registered to vote in the city of Columbus, for income tax purposes the Grievant and his wife file a joint return using the Sun Prairie address. The Grievant does not maintain a telephone landline at the Columbus apartment, but relies on a cell phone. The Grievant testified that he sometimes sleeps and eats at the apartment in Columbus, but he was not sure how much time he spent at the apartment, versus the family residence in Sun Prairie, but noted that it was influenced by whatever is dictated by work and family activities. While the Grievant indicated that he keeps his work clothes and some other incidental items at the apartment, the remainder of his personal belongings and all of his wife's and children's personal belongings are kept at the family home in Sun Prairie. As to whether the Grievant and his family spend most of their time within the County, the Grievant testified that while his wife and children have been to the apartment in Columbus, neither his wife nor children have ever slept there.

In EASTMAN, besides maintaining an apartment, Eastman also kept a mailing address, telephone number and automobile and voter registration in the City; however, the Court determined that "continuous personal presence and intention establish residency," but caution that far from being conclusive, declarations of intent "may be suspect because of their self-serving nature. . ." noting that such a self-serving declaration cannot be conclusive, but must yield to the intent which the acts and conduct of the person clearly indicate. The Court concluded that "the location of immediate family, and the site of the children's schooling is significant in determining residency." At 119. The Court concluded that since Eastman's wife and children lived exclusively outside the City of Madison, and his children attended school outside of the City, and Eastman spent most of his off-duty time outside of the City, that maintaining an apartment and voter registration in Madison, "in light of the totality of the circumstances, established neither the intent nor presence necessary for residence" under the City's ordinance. As in EASTMAN, the totality of the circumstances in the Grievant's situation establishes that he is in violation of a valid residency requirement and therefore subject to immediate termination.

The Seventh Circuit Court of Appeals more recently reached the same conclusion in GUSEWELLE V. CITY OF WOOD RIVER, 374 F. 3D 569 (Seventh Circuit, 2004). In that case, the Court upheld the termination of an employee, despite his maintaining a secondary residence within the City, paying taxes, registering his car and driver's license and voting using his secondary address in the City, while his family resided outside the City. The Court ruled that, "What tips the balance in favor of Gusewelle being a resident of Edwardsville as opposed to Wood River, is the fact that his wife continuously resided in Edwardsville." It is undisputed that in this case that the Grievant's wife and children have continuously resided in Sun Prairie since August of 2003 to the present. Thus, as in GUSEWELLE, the Grievant is in violation of the County residency requirement for deputy sheriffs and therefore subject to immediate termination.

The County asserts that immediate termination of the Grievant's employment is the proper remedy for his violation of the County residency requirement for deputy sheriffs. On February 9, 2005, the Sheriff provided the Grievant with a letter directing him to move back to the County by August 9, 2005 or face termination. The Sheriff testified that he did not see any movement by the Grievant of moving back into the County, that he felt that he had been more than patient with the length of time, and that his patience had worn out. The Sheriff explained the only reason he did not terminate the Grievant was that the arbitration had been scheduled after August 9th and he felt it was appropriate to withhold terminating the Grievant pending the outcome of the arbitration. It is clear that but for the pending arbitration, he would have terminated the Grievant on August 9, 2005 based on his continuing violation of the residency requirement.

On cross-examination of the Sheriff, the Union's counsel proposed alternatives to terminating the Grievant, including sponsoring a County Board resolution granting an exception to the residency requirement for the Grievant. The Sheriff rejected that suggestion, explaining that even if such a resolution would be proposed, "it would be rejected in favor of retaining the residency requirement for all sheriffs." The Sheriff testified that the County Board was not only aware of the residency requirement for deputy sheriffs, but that it was important to the Board that all deputy sheriffs reside in the County and be part of the community. The Sheriff summarized the situation leading up to this arbitration, testifying that looking back, he probably should have had something in writing, but that he believes a man by his word, and felt that he was taken advantage of. The Sheriff also displayed his understanding of the Grievant's situation, testifying that he knows the Grievant loves his family and that if push comes to shove, he will stay with his wife and children, and not move back into the County. The Sheriff testified that he has been pushed into a corner, and has no other choice but to make the decision to terminate the Grievant.

For these reasons, the County seeks an award denying the grievance and determining that the Grievant is in violation of the County residency requirement for deputy sheriffs and that immediate termination of employment is the proper remedy for that violation.

Association Reply

The Association disputes the County's reliance on EASTMAN, *supra*., arguing that both the facts and the times are different in this case. It was found in EASTMAN that appellants had spent most of their off-duty times at their homes outside of Madison. That fact has not been proven in this case and it is the County's burden to demonstrate the accuracy of its assertion. The Grievant testified that he has a part-time job as a driving instructor that takes him to various locations and that he accompanies his children to sporting events throughout the state during his off time, and that he does travel to Sun Prairie to help parent the children, but nowhere in the record does he state that most of his off-duty time is spent at the duplex in Sun Prairie. Hence, the circumstances here are markedly different from those in EASTMAN.

While the County showed that the Sun Prairie duplex is larger and more comfortable than the Grievant's one-bedroom apartment in Columbus, it has not been shown that the Grievant spends more time at the former than the latter and the County has failed in its burden to prove that the Sun Prairie residence is the "primary" residence of the Grievant. The one or two-day investigation the County conducted was not sufficient to show that the Grievant's primary domicile is in Sun Prairie. A one or two-day sampling of where the Grievant spent his off-duty time is not sufficient to demonstrate this is his typical routine. To conclude that the Grievant must be at the Sun Prairie duplex rather than his apartment more often on his off-duty hours because his wife and children reside there is naïve of the complex scheduling of family activities in this modern day and of the flexibility of travel and mobility that many officers undertake during off-duty hours. For that reason, the Association asks that the Arbitrator thoughtfully consider EASTMAN in making his ruling. Twenty years ago, when that case was decided, it was perhaps the norm that an employee necessarily would spend a majority of his off-duty time where his family was, though it is not necessarily true in this day and age. The record shows that the Grievant is deeply committed to his family, to the point of maintaining his primary domicile separate from theirs in order to comply with the County's residency requirement. Times change, and conclusions derived from established facts need to change with them. It is no longer valid to presume that, unless legally separated or divorced, a man's primary domicile is necessarily the same as that of his wife and children.

While the Grievant testified that the primary purpose of his apartment in Columbus is a base from which he works, this has been misinterpreted by the County. It was necessary for the Grievant to establish his apartment as the base from which to work when the Sheriff threatened to terminate his job, should he not re-establish residency within the County. It is fair to conclude that without such a requirement, the Grievant would not need to live apart from his family and would not need to rent the Columbus apartment as a base from which to work.

While the County has proved that the Grievant's wife and children are no longer residents of the County, it has fallen short of proving that the Grievant himself is not a resident. EASTMAN should not be construed to require that an officer may not file joint tax returns with his wife and use her address, while still maintaining his own residence elsewhere.

It should not be required that an officer pay for a "landline" at his primary residence in order to show where he resides. Unlike twenty years ago, today we have cell phones. The Grievant is registered to vote in the County, and has satisfied the voting residency requirement via his rented apartment in Columbus. His personal possessions needed for daily living and for his work are maintained at that apartment. He should not be penalized for renting a small apartment and allowing his wife and children to enjoy greater personal possessions than he enjoys at the apartment.

The Association disagrees that the Arbitrator will find the "totality of the circumstances" in this situation matches that in EASTMAN, as the times and technology and societal mobility have changed greatly since the EASTMAN factors were outlined in 1983. To use the location of the Grievant's wife and children to prove his residence conclusively, would pervert the significance of the test factors. Specifically, nothing in the record demonstrates that the Grievant's statements are "self-serving" or less than the truth. While the Court in EASTMAN found that the children's schooling was indicative of "neither the intent nor presence necessary for residence", this is the opposite of the facts in this case. The Grievant testified that it is his and his wife's intent to return to the County, if and when it is possible for them to reside together in the County and for their children to maintain enrollment in the Sun Prairie School District. The location of the children's schooling is not an afterthought in this case, unlike EASTMAN. The primary reason for the Grievant's family choosing to sell their home was to pursue the educational opportunities for their children outside the County. When it became necessary for the Grievant to re-establish residency within the County, living arrangements that he was upfront about with his employer from the beginning, unlike the officer in EASTMAN, he was forced to choose the only option available to keep his job, as he and his family could no longer live in the same primary residence. If the Arbitrator considers the totality of the circumstances, he will reach exactly the opposite conclusion in this case than that reached in EASTMAN, as enough of the factors here demonstrate that the Grievant lives independently from his family, and that where his family resides is not sufficient to demonstrate that his primary domicile is not in the County, the first and most important question of the EASTMAN criteria.

The Association asserts that the GUSEWELLE decision also is not binding precedent in this case for the same reasons as EASTMAN. The facts again differ significantly. Gusewelle was secretive about his dual residency, and testified that he spent only two nights per week at the questioned residence and that he had continued this pattern for more than twenty years. There is no evidence in this case that the Grievant spends more of his time on either his on-duty or off-duty days, at the duplex in Sun Prairie, rather than the apartment in Columbus, nor is his living arrangement long-standing. The County has not conclusively demonstrated that, as in GUSEWELLE, the Grievant is maintaining a "sham" rental apartment, and will continue to do so merely to keep his job. Utility bills showing low usage have not been provided over any significant period of time in order to demonstrate non-residence. The Grievant testified that he is frugal in his utility use, and spends a good deal of his time at the apartment sleeping. There was no evidence beyond hearsay from public utility employees that would suggest conclusively that low utility usage means no one resides at the apartment. In contrast to GUSEWELLE, the

County's assertions as to the Grievant's residence have not been proven, and should not be arbitrarily concluded in this case. The County quotes that the Court in GUSEWELLE ruled that the fact that Gusewelle's wife continuously lived in resided in Edwardsville as opposed to Wood River, tipped the balance in favor of Gusewelle being a resident of Edwardsville. In that case, the Court was examining a twenty-year period and there were questions regarding the employee's honesty, unlike here. The Arbitrator should not presume from the location of the Grievant's wife and children that the Grievant must indeed reside there as well. That factor should not serve as a "tipping point" in this case, as the facts vary significantly from those in GUSEWELLE. The Grievant testified that his wife is not willing to move back into the County, unless the family finds a residence within the County's border that would allow their children to continue to attend the Sun Prairie School District. However, the Grievant intends to continue maintaining his primary residency in the County apart from his family, which is not contingent on his wife's independent decisions about where it is best for her and for her children to live.

The Grievant has made admirable sacrifices to maintain his job, and to do what he considers to be best for his family. Examining the totality of the circumstances demonstrates that the Grievant meets the residency requirement as defined, and that there is not just cause to terminate him solely because of the living arrangements of his wife and children.

County Reply

The County disputes the assertion that the residency requirement for deputy sheriffs conflicts with the parties' collective bargaining agreement. The Association asks the Arbitrator to find that a more specific residency requirement for new deputy sheriffs contained in the Agreement somehow nullifies the general County residency requirement for all deputy sheriffs. While the Association correctly observes that Article XXIII, Section 6 empowers the Sheriff to determine the locale within the County where a newly-hired deputy sheriff must live for the first three years of employment, it then argues that the language should also be read as exempting all deputies beyond the first three years of their employment from compliance with the County ordinance and Section 7.26(a)(7) of the County's Personnel Policies and Procedures Manual. The Union's argument is in direct conflict with its prior interpretation of the agreement, in which it acknowledged both the existence and the validity of the County's residency requirement for all deputy sheriffs. Since the Association has not successfully bargained for the ability of deputy sheriffs to reside outside the County, it takes the novel, but unpersuasive approach of arguing that since the agreement does not specifically contain a residency requirement for deputy sheriffs, the residency requirement is somehow superseded by what is not in the agreement. The wording of Section 7.26(a)(7) of the County's Personnel Manual is unambiguous. The argument that the language only applies to supervisory employees of the Department who are not in the bargaining unit fails, as that argument relies on a completely unreasonable reading of both the agreement and the County's residency requirement, and effectively asks the Arbitrator to add language to the agreement that is not there.

The County also disputes that the residency requirement for deputy sheriff is unreasonable and in violation of the parties' agreement. The Association again seeks to expand the agreement to reach the conclusion that the Sheriff's uniform application of the residency requirement to all deputies, including the Grievant, is somehow unreasonable. The Association concedes that the Sheriff granted the Grievant additional consideration not granted to other deputies, when he entered into an informal understanding with the Grievant that allowed him to make arrangements to enroll his children in the Sun Prairie School District. While the Sheriff's trust that the Grievant would honor their agreement turned out to be misplaced, the County's residency requirement was not invalidated because the Sheriff failed to immediately enforce that rule and terminate the Grievant in September of 2003. The Association has spent an inordinate amount of time focusing on why the Sheriff could not or would not change the residency requirement or at least ask the County Board to do so, and seeks to characterize the Sheriff's decision not to change the residency requirement, either for all deputies or just for the Grievant, as unreasonable. However, under Article III, Management Rights, the Sheriff has clearly applied the residency requirement to all deputy sheriffs and if he acted unreasonably, it was only in granting temporary special consideration to the Grievant.

The Association also argues that the residency requirement is unreasonable because it is an antiquated rule that is inconsistent with the realities of how Americans live and work in the 21st century. However, the Arbitrator is not ruling on whether or not the Sheriff and County Board should change the residency requirement; rather, he must determine whether the Sheriff may immediately terminate the Grievant based on his continuing violation of the current valid residency requirement.

The County reasserts that the Grievant has not substantially complied with the residency requirement for deputy sheriffs. As was shown in its initial brief, the Grievant's failed attempt to create the appearance of compliance with the residency requirement follows the model that has previously been rejected in both EASTMAN, *supra* and GUSEWELLE, *supra*. As stated, an employee cannot comply with a valid residency requirement by renting an apartment and doing a few things to make it appear the employee has a residence in the jurisdiction, when in fact the employee's primary residence, where the employee's wife and children reside, is outside of the jurisdiction.

Finally, while the just cause standard does not apply here, as the Grievant has not been subject to any discipline, the County has met or exceeded all of the requirements of the seven-part test set forth in ENTERPRISE WIRE, 46 LA 359. Application of that test reveals that the Sheriff gave the Grievant forewarning of the possible consequences of his violation of the residency requirement. In addition to the Grievant's personal knowledge that the County's residency requirement for deputy sheriffs was a condition of his employment, he was provided with multiple documents confirming the validity of the residency requirement and directly warning him that the consequence for non-compliance was termination of employment. The residency requirement is also reasonably related to the orderly, efficient and safe operation of the Sheriff's Department. The residency requirement is the result of legislative action by the

County Board. The Sheriff testified that the residency rule served multiple County interests, including keeping the deputies close at hand for emergencies, and providing a personal touch to law enforcement by having deputies involved as members of the communities they serve.

The Sheriff also made an effort to discover whether the Grievant was in fact in violation of the residency requirement before administering discipline. Since the Grievant's violation of the residency requirement began in August or September of 2003, and the Sheriff's letter directing him to move back into the County with his family or be terminated was not issued until February of 2005 and contained an August, 2005 compliance date, the Sheriff can hardly be accused of rushing to judgment. Further, the record shows that the Sheriff went to great lengths, involving all of the senior members of the Sheriff's Department management, in determining that the Grievant was in violation of the residency requirement. The internal investigations conducted by Captain Kuhl and Detective Lieutenant Smith show that those investigations were conducted thoroughly, professionally, and without improper influence from the Sheriff or bias on the part of investigators. The investigation was thoroughly and objectively conducted and it was independently concluded that the Grievant was and is violating the residency requirement for deputy sheriffs.

It is also demonstrated that the Sheriff has applied the residency requirement even-handedly and without discrimination to all employees of the Department. The testimony of the Sheriff, Chief Deputy Babcock, Captain Kuhl and Detective Lieutenant Smith conclusively prove that the residency requirement has been continuously and consistently applied and enforced for all sworn deputy sheriffs over a period of many years.

Last, the degree of discipline administered is reasonably related to the seriousness of the Grievant's proven violation of the residency requirement and the Grievant's record of service as a deputy sheriff. As noted previously, the Sheriff has not yet imposed any discipline on the Grievant. It is undisputed that the Grievant is a qualified deputy sheriff who has performed his duties well; however, based on his violation of the residency requirement for deputy sheriffs, the only possible resolutions are that the Grievant move back into the County with his family, which he refuses to do, or for the Sheriff to immediately terminate his employment. Thus, the Arbitrator must determine whether the Grievant violated and continues to violate the County's residency requirement for deputy sheriffs, and whether immediate termination of his employment is the proper remedy for this continuing violation. The record clearly shows that immediate termination of the Grievant's employment is the only adequate remedy for his violation of the residency requirement. The County therefore asks that the grievance be denied and an award entered in the County's favor.

DISCUSSION

Although the Arbitrator has not adopted the Association's statement of the issues, that statement does provide an analytical framework for deciding the primary issue in this case, i.e., whether the County has just cause to terminate the Grievant on the basis of his being in violation of the County's residency requirement for deputy sheriffs.

The Association first asserts that the County's ordinance conflicts with Article XIII, Sec. 6, of the parties' agreement and, therefore, may not be applied to members of the bargaining unit. The argument is not persuasive for the following reasons.

Article XIII, Sec. 6 clearly authorizes the Sheriff to require new hires to reside in a specific part of the County, but that after three years, he may not require them to move from that area. This does not necessarily imply that after three years a deputy may move outside of the County; rather, the provision is silent with regard to the issue of whether all deputies may be required to reside within the County. However, the unrebutted testimony of the County's witnesses establishes that the County has required all of its deputies to reside within the County's borders for many years. Nothing in the record indicates that heretofore, the Association has challenged this requirement. To the contrary, when the issue of the application of the residency requirement to the bargaining unit and its validity first arose in this case, the Association representatives reviewed the situation and concluded that if the ordinance was in effect at the time of hire, it validly applied to members of the unit. Neither Urso's September 12, 2003 letter to Local President Peter Dodge, nor Dodge's September 15, 2003 letter to the Local's members contend there is any conflict between the ordinance and the agreement and the latter's letter advises members, "If we want to be able to live outside the Columbia County, we have to bargain for it."

The Association's assertion that the residency requirement is an unreasonable work rule is similarly unpersuasive. Aside from being implicitly authorized by State Statute, Sec. 17.03(4)(d), Stats., cited in the 1991 Attorney General's opinion, again, the evidence establishes that the County's residency requirement has been in force in some form for years without any challenge from the Association that it is unreasonable. Sheriff Rowe also explained that the bases for the requirement are to have deputies available for emergency callouts and to maintain a perception by the citizens that the County's law enforcement personnel are part of their community. Neither basis is unreasonable on its face. Further, the fact that a need for an emergency response callout has not recently occurred proves only that, and does not establish that the precaution of having personnel available in the event of such an emergency is unnecessary or unwise. To be prepared for such an emergency is to be expected and is not unreasonable. That part of the County is closer to Sun Prairie than to some communities within the County's borders demonstrates a weakness of residency requirements, but the point necessarily applies only when the emergency occurs in such an area and is not a sufficient basis upon which to find the requirement unreasonable.

The Association also asserts that if the residency requirement is not found to be unreasonable, it should nevertheless be found to have been unreasonably applied in the Grievant's case. The Association relies for the most part on the Sheriff's unwillingness to continue to grant the Grievant an exception to the requirement because he did not wish to do so, claiming the Sheriff's actions are arbitrary and capricious. The Association's argument ignores the fact that the Grievant was aware of the requirement when he was hired and that the exception granted to him in 2003 has been the only exception anyone can recall. It appears the Sheriff granted the Grievant the exception because of the situation with his child, and with the

understanding that the Grievant would keep it quiet and the situation of he and his family living in Sun Prairie would not continue beyond the Spring of 2004. The Grievant then proceeded to violate both of those understandings. The understanding as to keeping the exception from being known is perhaps questionable; however, that is not the case as to the understanding as to the temporary nature of the exception. It is clear this was the understanding of both the Sheriff and the Grievant. There is also no evidence that the Sheriff agreed that the present situation of the Grievant having an apartment within the County, while his family lives in Sun Prairie, meets the residency requirement; rather it was an exception to the requirement that was temporarily granted to the Grievant.

The Grievant also informed personnel in the Department that his wife would not move from Sun Prairie. The Grievant gave the Sheriff no indication his present arrangement was going to change any time soon. It was the Grievant who was attempting to change the rules regarding the understanding of the temporary nature of the exception, not the Sheriff. By February of 2005, a year and a half after the exception was granted, it was obvious the situation was not going to voluntarily change. It was then that the Sheriff notified the Grievant that he must move himself and his family back into the County within six months, or face termination. Having made it more or less clear to the Sheriff that the situation would not be changing in the foreseeable future, it was not unreasonable for the Sheriff to rescind the exception he had made for the Grievant.

Last, the Association contends that the Grievant's renting of the apartment in Columbus, while his family resides in Sun Prairie, complies with the County's residency requirement. This contention also fails. Both parties cite the Wisconsin Court of Appeals decision in EASTMAN V. CITY OF MADISON, 117 Wis. 2D 106 (Ct.App., 1983), although the Association asks that the Arbitrator consider that decision in the context of changed times since 1983. The Arbitrator finds the Court of Appeals' decision, as well as the Seventh Circuit's decision in GUSEWELLE, instructive in this case. Contrary to the Association's assertions, the pertinent facts in this case are not substantially different from those in EASTMAN, with the exception that the Grievant was more or less open about his living arrangements.

The record establishes that the Grievant's time at the Columbus apartment was essentially limited to sleeping there and showering and eating upon arising. Even at that, he testified that out of a nine-day cycle of six days on, three days off, he would only sleep at the apartment four to six of the nine days. It would appear from this that he sleeps at the Sun Prairie address three to five days out of the nine, unless the family is on an overnight trip for the boys' sports activities. The evidence as to the utility usage at the Columbus apartment (County Exhibits 8 and 10) shows usage has been minimal during the months he has been there. The Grievant's testimony was that upon arising, eating and showering, unless he goes to work at his second job, he spends the time with his family and then returns to Columbus in time to start his shift. While he spends nights at the Sun Prairie residence, neither his wife nor his children have spent the night at the Columbus apartment. He also testified that the clothes he keeps at the Columbus apartment are limited for the most part to his uniforms and underwear. He also acknowledges that other than the furniture and necessary housekeeping

utensils at the apartment, the family's possessions, including his, are at the Sun Prairie residence. He has no landline telephone at the apartment and instead relies on his cell phone in that regard. The income tax returns he files jointly with his wife shows their address as Sun Prairie. His wife and children reside in Sun Prairie and his children go to school there. His testimony was that his wife is not willing to change that and move back into the County. (Tr. 68).

This is not a situation of a child being away at school or of one spouse living and working in one area of the country, while the other lives and works in another. This is instead a case where the husband's claimed residence is less than 20 miles from where his wife and family reside and his children attend school. The Grievant's apartment in Columbus is, as he conceded on cross-examination, a base from which he works.

While the Association attacks the Department's investigation of the Grievant's living arrangements as cursory and insufficient, the investigations by Captain Kuhl in late 2004 included the records of the utility usage and charges for the first six months the Grievant rented the apartment and most of the salient facts were admitted by the Grievant and were not in dispute, rather, the disagreement has been in regard to what those facts establish.

In sum, the only indicia of residency to support the contention that the Columbus apartment are the Grievant's primary residence is that he sleeps and eats at the apartment on most of his duty days, voted in the City of Columbus in the last election, has a mailing address there, and has that address on his driver's license. As the Court found in EASTMAN, that is not sufficient in light of the location of the Grievant's immediate family, where the children attend school, where the family's possessions are located, and where the Grievant spends most of his off time. Contrary to the Association's assertions, not that much has changed in the 20 or so years since the Court's decision that would justify a different conclusion.

The Arbitrator cannot help but conclude that this decision results in a loss for all those involved. The Grievant, Deputy Loos, has suffered both financially and in his family life in trying to serve two masters – his family and his employer, and now will lose his employment, which has obviously meant a lot to him. The County will lose, by the Sheriff's own admission, an exemplary employee and law enforcement officer. Regardless of those consequences, for the reasons discussed above, it is concluded that the Grievant's present living arrangements do not meet the County's residency requirement for its sworn law enforcement personnel, which applies to members of this bargaining unit, and that, therefore, the County has just cause to terminate his employment for failing to comply with that requirement. When the County will enforce the decision to terminate the Grievant's employment is left to the County and the Sheriff to decide.

Based upon the foregoing, the evidence, and the arguments of the parties, the undersigned makes and issues the following

AWARD

The grievance is denied. The County has just cause to terminate the Grievant's employment.

Dated at Madison, Wisconsin, this 9th day of December, 2005.

David E. Shaw /s/
David E. Shaw, Arbitrator

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