BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

WISCONSIN PROFESSIONAL POLICE ASSOCIATION

and

IOWA COUNTY

Case 119
No. 63915
MA-12746

Appearances:

Gordon E. McQuillen, Director of Legal Services, Wisconsin Professional Police Association, appearing on behalf of the Association.

Kirk D. Strang, Davis & Kuelthau, S.C., Attorneys at Law, appearing on behalf of the County.

ARBITRATION AWARD

The Association and the County named above are parties to a 2002-2003 collective bargaining agreement that provides for final and binding arbitration of certain disputes. The parties asked the Wisconsin Employment Relations Commission to appoint an arbitrator to hear and resolve the grievance of Roseann Rossing. The undersigned was appointed and met with the parties on December 14, 2004 in an attempt to resolve the matter. A hearing was held on March 30, 2005 at which time the parties were given the opportunity to present their evidence and arguments. The parties filed briefs and the record was closed on January 11, 2006.

ISSUE

The parties ask:

Did the County violate the collective bargaining agreement then in effect when it modified the rotation schedule of the Grievant, Roseann Rossing, as stated in the grievance, Joint Exhibit #2? If so, what is the appropriate remedy?

The County raises an issue of whether the grievance was filed in a timely manner.

BACKGROUND

The Grievant is Roseann Rossing, an employee in the Sheriff's Department since 1990. She started there as a dispatcher/jailer and became the jail sergeant in 1995. When she was first promoted to sergeant, she worked a 6-2,6-2,5-3 schedule on the third shift. About seven years ago, the former Sheriff changed her hours to Monday through Friday, 5-2,5-2 on the first shift. On April 4, 2004, her schedule went back to the 6-2,6-2,5-3 schedule. The Grievant objected for several reasons and seeks in this proceeding to have her schedule restored and be made whole for lost pay and benefits. The 6-2,6-2,5-3 schedule results in fewer hours than the 5-2,5-2 schedule (between 17 and 25 hours fewer).[1]

The Grievant was notified of the schedule change by the Chief Deputy, Jon Pepper, on March 22, 2004. The discussion between the two of them was contentious. The Grievant was angry and felt that the schedule change was some kind of discipline. The schedule change followed several issues where she and Pepper were in disagreement. One involved a swing shift person who complained to Pepper that the Grievant was harassing him, and she was told to change his schedule. Another involved the Grievant's denial of the use of compensatory time off for the Sheriff's sister, who went to Pepper over the issue. Another incident also involved the Sheriff's sister in an inmate transport situation, and the Grievant was called in by Pepper because there was a screw-up. The Grievant and Pepper discussed some of these things when he told her of the schedule change, but he did not give her a reason for the schedule change. In the past, there was some discussion about the fact that the Grievant retained a 6 day vacation week when she was working a 5-2,5-2 schedule. Pepper did not like the 5-2,5-2 schedule.

The following day, the Grievant met with Sheriff Steven Michek. He gave a couple of reasons for the change. The 6-2,6-2,5-3 schedule is consistent with the jailer/dispatcher staff that the Grievant supervises. The patrol sergeant's schedule is consistent with the patrol officers that he supervises. Some things occur on weekends and holiday where a supervisor is needed. Also, the Sheriff told the Grievant that the change was necessary to see if the Department could get some additional supervisory positions into the jail. He thought it was difficult for the Grievant to supervise 15 employees, and he was trying to get the County to authorize more supervisory staff. He told the Grievant that the schedule change was on a trial basis but couldn't promise what length of time it would last. Michek also believed that it was a benefit to the Department to have a sergeant work weekends in the jail, because there is an increase in inmates on weekends, and there are inmates who are on work release during the weekend. Also, there are transportation issues and staff who call in sick.

[1] As of January 1, 2005 and for the following six months, the Grievant and others in the Department worked a 5-2,5-3 schedule with 8.5 hour days pursuant to a side letter.

The Grievant raised questions about the efficiency of getting her duties done on the new schedule with the Sheriff. He was not as concerned as she was about things that could be done only during the weekdays. Michek and Pepper are available during the week to take care of some administrative duties and calls. The Grievant drafted a long list of her duties and the Sheriff made several changes to the list, striking items that he felt either the Grievant did not do or had little to do with the task listed. For example, he struck out supervising patrol officers, secretaries and trainees in the her first item. He also struck "Participate in Departmental Budget process" and "Schedule inmate transports, perform inmate transports, arrange extraditions."

The Grievant noted that there are several duties that she can only do between Monday and Friday when other offices are open, such as Social Services, Circuit Court, the District Attorney's Office, and various state agencies, etc. If she is in the office only a couple of days between Monday through Friday, her work piles up, makes things inefficient, and causes some problems, such as work getting pushed back or deadlines not being met. She talks to a state jail inspector about once a week, and he has objected to the fact that he cannot always get a hold of the Grievant. The inspector, Bob Lee, wrote a memo stating that the most knowledgeable staff member who knows the operation of the jail should be there Monday through Friday.

The Grievant has not been disciplined for not getting things done. She has also been called at home on her off days by staff who need information on scheduling issues, transport issues, emergency issues, and inmate problems. There are three other patrol sergeants who work a 6-2,6-2,5-3 shift, except one sergeant worked a 5-2,5-2 Monday through Friday shift when assigned to investigations. Before the Grievant became the jail sergeant, there was a jail administrator that worked a 5-2,5-2 schedule and also retained a 6-day vacation week.

The Grievant also believed that she was able to see more employees on the 5-2,5-2 schedule than she did on the 6-2,6-2,5-3 schedule due to employees rotating through the schedule. When she works the same shift as the dispatcher/jailers, she sees only those people on the same rotation that she has.

When the Grievant worked on a 5-2,5-2 schedule of 8 hours a day, it generated 2,080 hours a year. The 6-2,6-2,5-3 schedule with 8 hours a day generates 2,063 hours a year. Therefore, the Grievant's annual income was reduced. Her current schedule of 5-2,5-3 with 8.5 hours a day also generates 2,063 hours a year. The dispatcher/jailers are currently working the 5-2,5-3 shift also.

Both Pepper and the Grievant took a survey via e-mail of jail sergeants and jail administrators. Pepper surveyed jail sergeants, and of the 30 responses he got back, 90 percent of them worked the same schedule as staff. While not all counties that he surveyed have jail administrators, many of them do. The Grievant surveyed jail administrators because she feels her duties match up with those positions. She received 25-30 responses from administrators who worked Monday through Friday.

In contract negotiations for the 2004-2005 collective bargaining agreement, the Union proposed a schedule of 5-2,5-3 for dispatcher/jailers and jail sergeant. During bargaining, the Union representative orally amended that proposal to have the jail sergeant work 5-2,5-2 Monday through Friday. The initial proposals were dated May 25, 2004, and the parties met at 5:30 p.m., on that day. Pepper got an e-mail from the Grievant at 5:10 p.m., on May 25th, asking that they meet to discuss her schedule. He wasn't sure if he was receiving a proposal or a grievance. During negotiations, Union Representative Paul Negast orally amended the proposal to ask for the Grievant's hours to be 5-2,5-2, Monday through Friday. That proposal was not accepted by the County.

The grievance was received on June 15, 2004, although the new schedule went into effect on April 1, 2004. The grievance form is dated June 11, 2004. On June 17, 2004, Pepper responded to the grievance and denied it. He noted in his response that the timing of the grievance was inconsistent with the labor contract, specifically Article V, Sub.5.2. He asked whether the issue was a grievance or a proposal since her work schedule was an issue in the May 25th bargaining session. The Union President, Lana Bowers, responded on June 18, 2004, stating that the Union was proceeding to Step 2 of the grievance procedure. On August 5, 2004, the County's Personnel Director, Bud Trader, wrote the Grievant and notified her that the Salary & Personnel Committee evaluated her grievance and found it without merit. Trader also noted in his letter that the Committee believed that the grievance was not submitted within the timelines in the bargaining agreement, and they wished to deny the grievance based upon timeliness.

THE PARTIES' POSITIONS

The Union

The Union states that the main thrust of this case is centered on the inability of Sgt. Rossing to carry out in an efficient manner her extensive duties as jail sergeant as a result of the unilateral change in her schedule. The loss of compensation is also of some significance. The parties agree that the County has the right to adopt reasonable work rules and schedules of work. The key word is "reasonable." The evidence shows that the assigned days of work for Sgt. Rossing were not reasonably enacted by the Department. The parties also agree that the County has the right to maintain the efficiency of its operations. The evidence does not suggest that the operations became more efficient when Sgt. Rossing's schedule was changed.

The evidence shows that Sgt. Rossing is assigned to attend a variety of meetings that occur on weekdays, Monday through Friday. Her work schedule has her days off mid-week, often Tuesday through Thursday. Thus, she has to miss those activities. More significantly, she has extensive contacts with outside personnel and agencies, such as judges and court personnel, the District Attorney's office, the Corporation Counsel's office, other County

department heads and elected officials. Sgt. Rossing is frequently confronted with more than 20 telephone messages when she comes to work following her days off, and she has to return all those calls and deal with things that arose during her days off. If her first day back to work is a Saturday or Sunday, she cannot even return the calls. She found her efficiency has plummeted with this schedule change. She has to explain to her missed callers why she has not been available. She has had frequent phone calls on her days off that fall during the Monday through Friday work week from other sergeants and the command staff about how to do some of the duties she would have been performing or would have been present to explain.

The Union states that Sgt. Rossing has to oversee the other jailers and was able to over lap with every jailer on her 5-2 rotation. Under her 6-2,6-2,5-3 rotation, she is able to observe only jailers who are on her same rotation and never sees the work of some jailers. The Union points out that the grievance is valid because the parties stated that both were desirous of improving employee efficiency in the preamble of the collective bargaining agreement. Also, the management rights clause refers to maintaining efficiency, not just for the Sheriff's Department, but for the County as a whole and for members of the public. Sgt. Rossing demonstrated that it is not only her personal efficiency as jail sergeant that has been adversely affected, but also that of many other agencies in the County, including the District Attorney, the Corporation Counsel, the County Clerk, Finance, Personnel and Maintenance Directors.

Additionally, the Union submits that the unilateral change caused Sgt. Rossing to suffer adverse economic consequences. She now works fewer hours in a year and receives less pay for the work that she does. Despite those reductions, she is expected to discharge all of the duties that were expected of her before the change was made in her schedule.

The Union finds the Department's explanation for these changes less than persuasive. There is evidence in the record that both the current Sheriff and Chief Deputy Sheriff had been sergeants at the same time that she was and had been resentful of her 5-2 schedule rotation whereas they were working the 6-2,6-2,5-3 rotation. They were upset that she was the only sergeant to have all her weekends off. Once they ascended to power, they decided to fix the problem.

The County

The County first argues that the grievance should be dismissed because it is untimely. Section 5.2 of the labor agreement says that an employee has five days after knowledge of the occurrence of the event of the grievance to take it up with the Sheriff, and time limits may be extended by mutual agreement in writing. The Grievant and Pepper discussed the change in her work schedule on March 22, 2004, before the change was implemented at the beginning of April. The Department posted work schedules for the months of April and May, 2004. The Grievant asked Pepper on May 25, 2004 to discuss her new schedule, and later that evening, the parties bargained for a successor contract and the Union proposed to restore the Grievant's

Monday through Friday work schedule. A grievance was not filed until June 15, 2004. These facts reflect an acknowledgement by the Grievant that the Department was entitled to make this change in her schedule and that bargaining a change in the contract would be necessary to reverse the Sheriff's decision.

The County contends that the Grievant has waived or is estopped from asserting that she is entitled to a Monday through Friday work schedule. A contract should not be read to include a particular right or entitlement when efforts have been made in negotiations to secure that same right or entitlement but have failed. The Sheriff has the general authority under the contract to establish reasonable work rules and schedules of work. Although the normal work schedules for other Department positions have been specified in the bargaining agreement, the normal work schedule for the jail sergeant has never been included in the agreement. There have been multiple initiatives to include a work schedule for the jail sergeant, but none has resulted in an actual change in the agreement. The Grievant has acknowledged in writing that the Sheriff has the authority to change her schedule. Thus, the grievance should be dismissed on equitable grounds.

The County asserts that this grievance is more a matter of advancing a particular perspective on departmental policy choices than a position that is appropriate for rights arbitration. The Grievant does not acknowledge that there is any value in having her work the same schedule as the jail staff that she supervises. Nor does she account for the fact that her schedule coincided with the jail staff's before it was changed to Monday through Friday. The Grievant says that there are administrative functions that should be given priority in her job. She would set priorities for her position. The parties have different views on what the best work schedule might be. The Department has not maintained that it has established the only reasonable work schedule for the Grievant, and recognizes that there are tradeoffs to bear in selecting one schedule over the other. However, the County submits that it is a reasonable work schedule, and it is unnecessary under this contract language that it be the only reasonable work schedule that can be fashioned. Management has the discretion to make policy choices in establishing work schedules.

The County disputes the claim that the schedule violates the compensation article on the grounds that it reduced her hours of work. The scheduling change does nothing more than return the position to the schedule that was in place before. If the Sheriff had the contractual authority to increase the jail sergeant's work hours, he cannot lack the authority to restore the previous work schedule. The degree of change – 17 fewer hours – is permissible. The parties have negotiated a specific number of annual hours for almost all Department classifications and personnel, but they declined to include the jail sergeant in this language.

Additionally, the County contends that the work schedule is reasonable. It does not have to be the best possible schedule or give one person her preference. The contract language, past practice, and the parties' negotiations history show that the schedule is a reasonable one. No grievance was filed when the jail sergeant's schedule was originally

changed from the same as the jail staff to a Monday through Friday schedule. There was the same contract language in place. Also, in 2002, the former Sheriff suggested that the County add language to have the jail sergeant work Monday through Friday, but the County declined to introduce such a proposal in negotiations. Then, two months after the Department changed the Grievant's schedule, the Association proposed a Monday through Friday schedule, but the County refused to modify the contract. Further, the parties have temporarily agreed through a Side Letter of Agreement that a 5-2,5-3 work schedule is reasonable.

The County asserts that it is reasonable to have the jail sergeant work the same schedule as the remaining jail staff. It personally involves the jail sergeant with a broader range of jail related matters. Most of the Grievant's work time falls during the regular work week, and she will also be involved in issues arising on weekends. The central component of her job is supervising the jail staff. On weekends, there is an increase in the inmate population, sentencing hearings, certain types of arrests and other activities.

In replying to the Union's brief, the County believes that the Union has focused on only the jail administration portions of the job, which is a battle over policy choices, not a rights arbitration matter. The Sheriff does not have to make efficiency in one area of an employee's overall duties the only consideration in scheduling. He is not obligated to view jail administration as the sole or even central function of the jail sergeant's job. He can reasonably determine that a greater supervisory presence is required on weekends. The Grievant acknowledged that the Sheriff could change her schedule back at any time. There is little evidence to support that argument that the work of other agencies has been compromised.

DISCUSSION

The first matter to be considered is whether the grievance is timely. Under Article 5, an employee has five days in which to bring the grievance at the first step. The grievance, dated June 11, 2004 and received on June 15, 2004, is beyond the five day limit of any time frame that might trigger the clock to start running. Even if the Grievant held out hope that the Union would be able to negotiate her preference for a schedule in late May of 2004, she still missed the filing period for step one. This issue was raised by the County previously (see Jt.Ex.#5) in denying the grievance. However, it is better to treat this grievance as an ongoing or continuing grievance, capable of repetition every time a schedule is posted. If there were to be a remedy, it would have to be prospective because one cannot go back to change a schedule already worked, although a remedy for the loss of a number of hours a year could be fashioned.

As to the merits, the contract is silent about the jail sergeant's schedule, unlike other positions. The issue of the jail sergeant's schedule has been considered in negotiations, but the parties have not put it into the contract. The parties agree that the relevant contract language is Article III, Section 3.1(b), which gives the County the right to establish reasonable work rules and schedules of work. The Union further cites Article III, Section 3.1(f), the right to maintain efficiency of County operations, as relevant to this dispute.

The County has offered sound rationale for the change in schedule. First of all, the 6-2,6-2,5-3 schedule is consistent with the jailer/dispatcher staff that the Grievant supervises. It is reasonable for the County to ask that the supervisor work on the same schedule as the people she supervises. While the Grievant claims that she would see more of the people she supervises on a 5-2,5-2 shift, she would never see employees on a weekend under that shift. The County has pointed out that there are some things occurring on weekends and holiday where a supervisor is needed. There are more inmates on weekends, there are inmates who are on work release during the weekend, there are transportation issues, and problems when staff call in sick. Other sergeants who supervise patrol officers work the same shifts as the patrol officers.

While the Grievant argues that her administrative duties need to be done between Monday and Friday, the County may discount the value of her administrative duties in favor of supervisory duties. There is no evidence that the Grievant cannot function in her administrative capacity or that County operations have been rendered hopelessly inefficient. While the Grievant believes that her schedule is retaliation – either for crossing the top brass or for their resentment of her prior schedule – there is no proof of retaliation, bad faith, ill motive, or unfair dealing.

Accordingly, the County has established a reasonable schedule. It is not arbitrary or capricious but has some rationale behind it. The County agrees that it is not the only reasonable schedule. The County does not have to establish the most reasonable schedule either, as the parties may differ on what's the best or most reasonable schedule. As long as the schedule is reasonable, it does not violate the collective bargaining agreement.

AWARD

The grievance is denied and dismissed.

Dated at Elkhorn, Wisconsin this 31st day of March, 2006.

Karen J. Mawhinney /s/
Karen J. Mawhinney, Arbitrator

dag
6968