

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between  
**MILWAUKEE DEPUTY SHERIFF'S ASSOCIATION**

and

**MILWAUKEE COUNTY**

Case 595  
No. 65775  
MA-13321

(Richard Myer Grievance)

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**Appearances:**

Cermele & Associates, S.C., by **Attorney Rachel L. Pings**, 1840 North Farwell Avenue, Suite 303, Milwaukee, Wisconsin 53202, on behalf of the Union.

**Attorney Timothy R. Schoewe**, Milwaukee County Deputy Corporation Counsel, Milwaukee County Courthouse, 901 North 9<sup>th</sup> Street, Room 303, Milwaukee, Wisconsin 53233, on behalf of the County.

**ARBITRATION AWARD**

At all times pertinent hereto, Milwaukee Deputy Sheriffs' Association (herein the Union) and Milwaukee County (herein the County) were parties to a collective bargaining agreement dated January 4, 2006 and covering the period from January 1, 2005 through December 31, 2006. On April 4, 2006, the Union filed a request with the Wisconsin Employment Relations Commission (WERC) to initiate grievance arbitration over the County's refusal to permit bargaining unit member Richard Myer to use a week of vacation upon his request to do so. The undersigned was appointed to arbitrate the dispute. The parties submitted the dispute for decision upon a stipulation of facts and exhibits. The parties submitted briefs on July 27, 2006, and reply briefs on August 7, 2006, whereupon the record was closed.

**ISSUES**

The parties stipulated to the following statement of the issues:

Did Milwaukee County violate Section 3.14(4) of the Agreement (Jt.1) when it refused to grant Deputy Myer the requested week of vacation?

If so, what is the appropriate remedy?

### **PERTINENT CONTRACT LANGUAGE**

#### **1.01 RECOGNITION**

The County of Milwaukee agrees to recognize and herewith does recognize the Milwaukee Deputy Sheriffs' Association as the exclusive collective bargaining agent of all Deputy Sheriffs I, Deputy Sheriffs I (Bilingual)(Spanish), and Deputy Sheriff Sergeants in the employ of the County of Milwaukee in respect to wages, hours and conditions of employment.

Wherever the term "employees" is used in this Agreement, it shall mean and include only those employees of the County of Milwaukee within the certified bargaining unit represented by the Association.

#### **1.03 MANAGEMENT RIGHTS**

The County of Milwaukee retains the sole right to manage its affairs in accordance with all applicable laws, ordinances, regulations and executive orders. Included in this responsibility, but not limited thereto, is:

- The right to determine the number, structure and location of departments and divisions;
- the kinds and number of services to be performed;
- The right to determine the number of positions and the classifications thereof to perform such service;
- The right to direct the workforce;
- The right to establish qualifications for hire, to test and to hire, promote and retain employees;
- The right to assign employees, subject to existing practices and the terms of this Agreement;
- The right, subject to civil service procedures and Secs. 63.01 to 63.17, Stats., and the terms of this Agreement related thereto, to suspend, discharge, demote or take other disciplinary action;

- The right to maintain efficiency of operations by determining the method, the means and the personnel by which such operations are conducted and to take whatever actions are reasonable and necessary to carry out the duties of the various departments and divisions.

In addition to the foregoing, the County reserves the right to make reasonable rules and regulations relating to personnel policy, procedures and practices and matters relating to working conditions giving due regard to the obligations imposed by this Agreement. However, the County reserves total discretion with respect to the function or mission of the various departments and divisions, the budget, organization, or the technology of performing the work. These rights shall not be abridged or modified except as specifically provided for by the terms of this Agreement, nor shall they be. These rights shall not be abridged or modified except as specifically provided for by the terms of this Agreement, nor shall they be exercised for the purpose of frustrating or modifying the terms of this Agreement. But these rights shall not be used for the purpose of discriminating against any employee or for the purpose of discrediting or weakening the Association.

By the inclusion of the foregoing management rights clause, the Milwaukee Deputy Sheriffs' Association does not waive any rights set forth in s. 111.70, Stats., created by Chapter 124, Laws of 1971, relating to bargaining the impact upon wages, hours or other conditions of employment of employees affected by the elimination of jobs within the Sheriff's Department by reason of the exercise of the powers herein reserved to management.

### **3.14 VACATION**

(4) Vacation picks will be made within classification in division and within current shift assignment on the basis of the date of hire within the bargaining unit.

For purposes of this section, shift shall mean:  
First shift – Beginning at or after 6:00 a.m.  
Second shift – Beginning at or after 2:00 p.m.  
Third shift – Beginning at or after 10:00 p.m.

For purposes of this section, the term “bureau/division” shall mean those work units between which selections have been customarily approved as of January 1, 1984.

### **STIPULATION OF FACTS**

1. The issue to be decided by the Arbitrator is:

Did the County violate Sec. 3.14(4) of the Agreement when it refused to grant Deputy Myer the requested week of vacation? If so, what is the appropriate remedy?

2. Deputy Myer has more seniority within his bargaining unit (13 years) than the Correction Officer had in his respective bargaining unit (1 year), yet the Correction Officer was granted the requested week of vacation.
3. The Agreement covers the classification of Deputy Sheriff I, Deputy Sheriff (Bilingual), and Deputy Sheriff Sergeant. The Correction Officers are represented by a different certified collective bargaining unit and are covered by their own Agreement.
4. Primary briefs shall be postmarked by 7/21/06. Reply briefs shall be postmarked by 8/04/06. All briefs shall be exchanged through the parties.
5. The grievance packet filed on March 31, 2006 shall be considered **Joint Exhibit 1**. It includes the Grievance Initiation Form dated 1/17/06, the Grievance Disposition Form dated 2/07/06, the Labor Relations Disposition dated 3/14/06, and the 2005-2006 Agreement. This Stipulation shall be considered **Joint Exhibit 2**. **No other documents or facts shall be made a part of this record unless mutually agreed by the parties.**

### **POSITIONS OF THE PARTIES**

#### **The Union**

The union asserts that the County violated the contract by denying Deputy Myer's vacation request. The parties to this grievance are bound by the terms of the parties' 2005-06 collective bargaining agreement. Section 3.14(4) of that contract dictates that vacations within shift assignments must be based on date of hire. This is clear language which requires no additional interpretation.

The Grievant's right to vacation is defined by the contract and the County violated the clear language of the contract when it denied his vacation request because it could only be denied in the event that another more senior employee within the shift and work unit requested the same week. The employee who was granted vacation had far less seniority.

The length of service principle is the fairest means of handling vacation requests between employees on two separate, but combined, seniority lists. In this instance, fusing the two seniority lists would be the best way to reconcile vacation requests between employees in two groups working for the same employer. It would also eliminate tension between the two

contracts. There is no other more fair or uniform way to grant or deny vacation requests in this workplace. Further, public policy supports the Union's position because by respecting the principle of seniority the public is assured of having the best and most experienced employees. By ignoring seniority, the employer risks losing veteran employees, which hurts both the employer and the public.

### **The County**

Sec. 1.01 of the Agreement identifies those Deputy Sheriffs covered thereunder, which does not include Correction Officers. Further, the management rights clause gives the County the power to determine the number of positions and classifications to perform the work and the right to direct the workforce and assign employees.

In this case, the County made a determination as to its staffing needs at the County jail, which is a 24/7 operation. Sec. 3.14(4) states: "Vacation picks will be made within classification in division and within current shift assignment on the basis of the date of hire within the bargaining unit." There is no claim that the Grievant was denied vacation in favor of a less senior deputy sheriff, nor that the Sheriff can determine how many deputies can be off at any particular time. The dispute is over the notion that deputies should compete with employees in other classifications on the unspecified basis of seniority. The language is unambiguous. Vacation picks are scheduled within classification and within the bargaining unit and Deputies and Correction Officers are in both separate classifications and separate units. The Grievant and Union cannot grieve action taken under a contract to which they are not a party. Further, there is no claim or basis for awarding the unit additional vacation slots. The Sheriff retains the right to make staffing decisions and the grievance arbitration process is the wrong forum for challenging it.

### **The Union in Reply**

The County's assertion that the Sheriff was merely exercising his staffing power is a pretext. The County is actually disregarding the seniority system that exists among its employees at the County Jail. Merging the seniority lists is the only fair way to allocate vacation picks in this setting. It was not necessary when the Correction Officers worked at a different location, but became necessary when they were relocated to the same site as the Deputies.

While restricted to the membership of this bargaining unit and the language of its contract, this grievance does affect both units. There is nothing in the record showing any use of discretion by the Sheriff in making the vacation decision, thus his decision was arbitrary. Upholding the grievance would rationalize the system and would actually benefit the Correction Officers to the extent they have greater Countywide seniority.

### The County in Reply

The Union is seeking to have the Arbitrator fuse the seniority lists of the Deputies and the Correction Officers, but there is no citation of authority that would permit the Arbitrator to do this, nor is there any basis for such an action in the contract. The Union is, in effect, asking the Arbitrator to amend both this contract and that between the County and the Correction Officers represented by AFSCME District Council 48, which is barred by Sec. 5.02(4) of the contract.

The end result of the Union's proposal would be to have all County employees competing for vacation based on seniority, which would ignore the differing definitions of seniority contained in the various contract and civil service rules. The better method is to apply the applicable contract according to its terms. The contract only applies to Deputy Sheriffs and there is no claim that its language was violated as between members of the bargaining unit. The grievance should be denied.

### DISCUSSION

The Union takes the position that the denial of the Grievant's vacation request was a violation of Sec. 3.14(4) of the contract. It is the Union's assertion that according to the contract the only way a vacation request can be denied is if an employee within the same shift and work unit with greater seniority requests the same week off. That did not occur, but a less senior Correction Officer, who belonged to a different bargaining unit, was granted the same week off instead, which the Union alleges was improper. It is the Union's contention that in such circumstances the County should merge seniority lists between the units and grant vacation requests on the basis of seniority within the merged group. For the reasons set forth below, I disagree.

In the first place, it is clear that the contract only purports to establish and govern the wages, hours and conditions of employment of Deputy Sheriffs. The recognition clause makes it clear that the only employees covered by this contract are Deputy Sheriffs I, Deputy Sheriffs I (Bilingual)(Spanish), and Deputy Sheriff Sergeants. Correctional Officers are members of a separate bargaining unit and are covered by the terms of a separate collective bargaining agreement. Further, the clause specifies that the term "employee" as used in this contract only refers to members of this bargaining unit. Section 3.14 explicitly refers to vacation benefits accruing to "employees" and paragraph 3.14(4) makes it clear that preference in vacation picks shall be based on "date of hire within the bargaining unit." Thus, the vacation selection provisions of the Deputy Sheriffs' contract stands alone and has no inherent impact on, nor is it impacted by, the vacation language contained in the Correctional Officers' contract.

The Union apparently argues, however, that the Arbitrator should act to merge the seniority lists of the two units on a theory of good public policy, arguing that to not do so would undercut the principle of seniority, which undergirds many of the rights bargained for

and enjoyed buy Union members. The concern is advanced that trained veteran employees will not choose to remain working for the County if they lose seniority protections, which would be a detriment to the County and its citizens. Be that as it may, an arbitrator's authority is conferred by the terms of the contract and the mutual agreement of the parties to submit their grievances to arbitration for resolution. Thus, beyond the express agreement of the parties to the contract, I have no extra-contractual authority to confer or restrict rights with respect to bargaining unit members other than what the contract provides, nor have I the power to interpret or adjudicate the rights of employees outside the bargaining unit. Further, it states in Sec. 5.02(4): "The Arbitrator in all proceedings outlined above shall neither add to, detract from nor modify the language of any civil service rule or resolution of the Milwaukee County Board of Supervisors, nor revise any language of this agreement." In my view, the language of the contract is clear on the point that it applies only to members of this bargaining unit. For me to incorporate the seniority list of another bargaining unit for the purposes of allocating seniority rights between members of the respective units would, in my view, require a revision of the language of this contract, which I am not permitted to do.

Finally, the argument is advanced that, under the contract language, vacation picks cannot be denied unless the same dates are requested by a more senior bargaining unit member. I find this to be an unreasonable interpretation of the contract. The operative language of paragraph 3.14(4) states: "Vacation picks will be made within classification in division and within current shift assignment on the basis of the date of hire within the bargaining unit." To me, this is not a guarantee of receiving the selected vacation dates in all events except that of being co-opted by a more senior employee. Rather, it is an assertion that, as between competing bargaining unit members, vacation picks will be allotted on the basis of seniority, rather than by some other method, such as "first come, first served." The County points out that there are reserved powers in the management rights clause in Section 1.02, such as, "(t)he right to maintain efficiency of operations by determining the method, the means and the personnel by which such operations are conducted and to take whatever actions are reasonable and necessary to carry out the duties of the various departments and divisions," that would be impaired by an overbroad reading of Section 3.14. The Sheriff has responsibility for maintaining adequate staffing levels for the operation of the Department and the protection of the public, which could supersede the obligation to grant a bargaining unit member's vacation preference if he deemed that the public interest or the Department's staffing needs required it. This does not protect a decision to deny a vacation request that is arbitrary, capricious, or discriminatory, but there is no evidence in this record that such was the case with respect to the denial of the Grievant's request. Rather, it would appear that the decision was based on a concern for adequate staffing due to the absence of the other employee, which is a rational and permissible consideration and so, based upon my interpretation of the interplay between the management rights clause and the vacation provision, it is my opinion that the grievance must be denied.

For the reasons set forth above, and based upon the record as a whole, I hereby enter the following

**AWARD**

Milwaukee County did not violate Section 3.14(4) of the Agreement when it refused to grant Deputy Myer the requested week of vacation. The grievance is denied.

Dated at Fond du Lac, Wisconsin, this 9th day of November, 2006.

John R. Emery /s/

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John R. Emery, Arbitrator