

BEFORE THE ARBITRATOR

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

and

**MILWAUKEE COUNTY  
(SHERIFF'S DEPARTMENT)**

Case 607  
No. 66620  
MA-13577

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**Appearances:**

Eggert & Cermele, S.C., Attorneys at Law, by **Mr. Matthew L. Granitz**, 1840 North Farwell Avenue, Suite 303, Milwaukee, Wisconsin 53202, appearing on behalf of the Milwaukee Deputy Sheriffs' Association.

**Mr. Timothy R. Schoewe**, Deputy Corporation Counsel, Room 303, Courthouse, 901 North 9<sup>th</sup> Street, Milwaukee, Wisconsin 53233, appearing on behalf of Milwaukee County (Sheriff's Department).

**ARBITRATION AWARD**

Milwaukee Deputy Sheriffs' Association, hereinafter the Association, requested that the Wisconsin Employment Relations Commission appoint a member of its staff as Arbitrator to hear and decide a dispute between the Association and Milwaukee County, hereinafter the County or Employer. The Commission subsequently designated Coleen A. Burns as Arbitrator. Pursuant to the agreement of the parties, an arbitration hearing was held on April 12, 2007 in Milwaukee, Wisconsin. The hearing was not transcribed and the record was closed on July 9, 2007, following receipt of the Employer's confirmation that it would not be filing a reply brief.

**ISSUES**

The parties were unable to stipulate to a statement of the issue(s). At hearing, the County framed the issues as follows:

Did Milwaukee County violate Sec. 3.16 of the collective bargaining agreement when it issued an EAD to Deputy Adams and Meyer?

If so, what is the remedy?

The Association framed the issues as follows:

Did the Department violate the collateral agreement when it disciplined Deputies Adams and Meyer for their legitimate use of accumulated sick leave?

If so, what is the appropriate remedy?

### **CONTRACT LANGUAGE**

The parties agree that this dispute is governed by the language of the parties' 2005-2006 collective bargaining agreement and cite the following language:

#### **1.02 MANAGEMENT RIGHTS**

The County of Milwaukee retains and reserves 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 work force;
- 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 §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.

### **3.16 SICK LEAVE**

(1) Employees shall earn a leave of absence with pay because illness or other special causes at the following rates, subject to the provisions of s. 17.18 C.G.O., and based upon years of continuous service:

- (a) Less than 5 years – 4.6 hours per pay period.
- (b) After 5 years – 3.7 hours per pay period;
- (c) All employees hired on or after January 4, 1970 – 3.7 hours per pay period.

(2) In addition to other causes set forth in s. 17.18(4), C.G.O., sick leave may be taken for the purpose of enabling employees to receive non-emergency medical attention during duty hours. Such leave may be allowed for scheduled appointments for any type of medical or dental care.

This modification in the use of sick leave recognizes the current difficulty encountered in attempting to schedule non-emergency medical treatment during an employee's off duty hours. Because of the nature of the treatment or examination for which such sick leave is allowed for these purposes, such absences are predictable. In order to be excused from duty for the type of medical treatment or examination contemplated herein, the practitioner treating the employee shall provide the employee with written notice setting forth the date and time of the employee's appointment, which notice shall be filed with the employee's supervisor.

Excused time charged against sick leave for these purposes shall be limited to 3 hours per incident, including travel between the employee's work site and the place of his appointment.

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### **4.05 COLLATERAL AGREEMENTS**

This provision provides a method regarding the manner and extent of Association participation in resolving problems.

Agreements of this type will be entered into only by the President of the Association.

Since the County has no awareness of the internal mechanisms for the authorization within the constituent Association, the signature of the President, when applicable, on any document reflecting an Agreement with the County shall be binding, it being assumed that such Association officer has either received authorization from his Association to execute the document or has determined in his judgment that the matters under consideration are not such grave consequence as to require membership ratification. The same presumption shall apply to the signature of the County official with whom the understanding has been negotiated.

Management and the Association will keep each other apprised of the names of officials and administrators who may be involved in the procedure outline.

All present collateral agreements shall remain in effect for the life of this Agreement except as otherwise provided in said agreements.

All collateral agreements shall be executed by the appropriate County official and authorized and signed by the Director of Labor Relations.

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#### **COLLATERAL AGREEMENTS**

Contained in this section are two Collateral Agreements which your Association entered into with Milwaukee County. The first agreement deals with a method of resolving disciplinary suspensions. The document is self explanatory and it is our hope that it will produce a more cost effective and expeditious way to do business. As noted on the document it has a sunset clause dated December 31, 2006. The second agreement acknowledges the Sheriff's Department right to manage its own affairs but also establishes a procedure in so doing. Once again the document is self explanatory. Also included is an agreement to return to the Sick Leave/Absenteeism Policy dated June 9, 2002. This agreement also has a sunset clause dated December 31, 2006.

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The parties further agree to the following items in resolution of the Complaint filed by the Milwaukee Deputy Sheriffs' Association with the Wisconsin Employment Relations Commission, Case Number 581 No. 65231 NP-4194

- The Office of the Sheriff is directed to revert back to June 9, 2002 Sick Leave/Absenteeism Policy (see attachment).

- If the Office of the Sheriff desires a change in the Sick Leave/Absenteeism Policy, then they must comply with the language contained in this Collateral Agreement under Departmental Rules. If the parties are not able to reach an agreement on the proposed changes to the Sick Leave/Absenteeism Policy, then the Department shall implement the changes and the Association retains the right to grieve the reasonableness of the changes once an employee is impacted by the changes through all steps in the grievance process.
- The Association agrees to withdraw all prohibited practice charges, grievances filed with the Wisconsin Employment Relations Commission and/or any other litigation associated with changes to the Sick Leave/Absenteeism Policy implemented by the Office of the Sheriff.

Roy Felber /s/  
Roy Felber, President  
Milwaukee Deputy Sheriffs' Association

Troy Hamblin /s/  
Troy M. Hamblin, Director  
Labor Relations

1/4/06  
Date Signed

1/4/06  
Date Signed

### **BACKGROUND**

On July 1, 2006, the Sheriff's Department issued Policy 202.04 entitled "Sick Abuse." An "Employee Activity Documentation" (EAD), dated September 14, 2006, was issued to Deputy Christopher Adams. This EAD includes the following:

**DESCRIPTION OF ACTIVITY:** Violation of Sick Leave/Absenteeism Policy #202.04.2

Deputy Christopher Adams has accumulated two sick/absent occurrences since July 1, 2006. This has resulted in a total of 32 hours of accrued sick time being used. Per MCSO policy outlined in directive #10-06, an employee's second s/a incident in a twelve-month period will be noted in an employee activity documentation record. Deputy Adams' s/a history is as follows:

Incident #1     August 14, 2006

Incident #2     September 10, 2006  
                      September 11, 2006  
                      September 12, 2006

Deputy Adams will be further advised on the department's s/a policy and informed that a third occurrence will result in a referral to the Internal Affairs

Division for disposition. Please refer to the attached computer printout for more detailed information.

An EAD dated October 27, 2006 was issued to Deputy Richard Myer and includes the following:

**DESCRIPTION OF ACTIVITY:** Violation of Sick Leave/Absenteeism Policy #202.04.2

Deputy Richard Myer has accumulated two sick/absent occurrences since July 1, 2006. This has resulted in a total of 24 hours of accrued sick time being used. Per MCSO policy outlined in directive #10-06, an employee's second s/a incident in a twelve-month period will be noted in an employee activity documentation record. Deputy Myer's s/a history is as follows:

Incident #1    July 12, 2006  
                  July 13, 2006

Incident #2    October 26, 2006

Deputy Myer will be further advised on the department's s/a policy and informed that a third occurrence will result in a referral to the Internal Affairs Division for disposition. Please refer to the attached computer printout for more detailed information.

Subsequently, Deputy Adams and Deputy Myer each grieved the issuance of their EAD and requested, as remedy, that the EAD be removed from their personnel files. Each grievance was denied and, thereafter, a joint grievance was submitted to arbitration. In denying Deputy Myer's grievance, the County stated, *inter alia*, as follows:

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**DECISION AND BASIS FOR DECISION:** Grievance denied

Prior to scheduling a first step hearing on the above grievance, an investigation of the information as presented on the grievance was conducted. The grievant, Richard Myer, Deputy Sheriff I indicated that he called in sick twice during calendar year 2006 on July 12, 2006 for two days and a second time on October 26, 2006 for a single day. He states that he does not abuse his sick time and has received an EAD for this. The employee has requested that the EAD be removed from his personnel file.

The issue raised in this grievance is not a violation of Section 3.16 Sick Leave or any Collateral Agreement. The Milwaukee County Sheriff's Office Sick

Leave/Absenteeism Policy 202.04 was posted and distributed to all personnel on June 21, 2006 as Directive No. 10-06 and supercedes all preceding sick leave policies. This policy clearly states that the first incident will be recorded by the supervisor. The second incident, within a rolling year timeframe, is noted on an Employee Activity Documentation record (EAD). The 3<sup>rd</sup> and subsequent incidents will be referred to the Internal Affairs Division for appropriate disposition. Based on the disposition, appropriate disciplinary action, if necessary, will be decided by the Sheriff and may require a doctor's excuse and increment denial. The issuance of an EAD to Deputy Myer is in compliance with the Sheriff's Office Sick Leave/Absenteeism policy since grievant incurred two sick occurrences within a rolling year timeframe.

The grievance, as written, is denied.

Deputy Adams received a similar document.

### **Association**

The parties are bound by the terms of the 2005-2006 collective bargaining agreement. The plain language of Sec. 4.05 dictates that collateral agreements are executed when they contain the signature of the Association President and the Director of Labor Relations. Contrary to the assertion of the County, the Sheriff's signature is not required to effectuate the collateral agreement.

The plain language of the collateral agreement must be adhered to by both parties. Under this plain language, the Department is required to revert back to the 2002 Sick Policy; which it did not.

The collateral agreement plainly states that the Department may only implement sick policy changes if an agreement cannot be reached with the Association. Association Felber testified that the Department implemented the policy without first approaching the Association. The Department made no attempt to reach an agreement with the Association prior to implementing the sick policy changes. The Department has not acted in good faith.

The Department knowingly and voluntarily entered into the collateral agreement. The Department has disciplined the Grievants for legitimate use of sick leave. This discipline is contrary to Sec. 3.16 and public policy.

The grievances must be sustained. If the Department had adhered to the collateral agreement, the EADs would not have been issued. The Arbitrator has authority to expunge the EADs from the Grievants' personnel files.

## County

Under Sec. 1.02 of the parties' collective bargaining agreement, the County retains the right to manage its affairs in accordance with all applicable laws, ordinances, regulations and executive orders. For many years, the Department has had a formal attendance and tardiness policy in effect. (Jt. Ex. #4) This policy is not punitive, but may eventually lead to discipline.

The Association has structured this matter as a disciplinary matter. The Association never grieved the work rule as unreasonable.

Until this case, the Association never contested the issuance of an EAD, nor sought the removal of an EAD. The policy does not call for record removal or destruction of public records. Any such removal or destruction would be bad public policy.

The Association should bargain the removal of EADs, but it has not. The grievances should be denied.

## DISCUSSION

### Issue

The parties were not able to stipulate to a statement of the issue(s). Upon review of the grievances, as filed and processed through the grievance procedure, the undersigned concludes that the issues are most appropriately stated as follows:

Did the Milwaukee County Sheriff's Office violate the parties' 2005-2006 collective bargaining agreement when it issued the EAD of September 14, 2006 to Deputy Adams or the EAD of October 27, 2006 to Deputy Myer?

If so, what is the appropriate remedy?

### Merits

In arguing that the Sheriff's Department does not have a right to issue the EADs in dispute, the Association relies upon the January 4, 2006 agreement that resolves the Complaint filed by the Milwaukee Deputy Sheriffs' Association with the Wisconsin Employment Relations Commission, Case Number 581 No. 65231 NP-4194. This agreement is hereafter referred to as the Sick Leave Agreement.

Unlike the agreements that immediately precede the Sick Leave Agreement, the Sick Leave Agreement is not expressly identified as a "Collateral Agreement." Nonetheless, it is signed by Association President Felber and then County Director of Labor Relations Troy Hamblin and is attached to the parties' 2005-2006 collective bargaining agreement. Each signatory is a representative of the parties to the 2005-2006 collective bargaining agreement, *i.e.*, the County and the Association.



The undersigned is satisfied that the Sick Leave Agreement is enforceable as a term of the parties' 2005-2006 collective bargaining agreement. Thus, the Article 1.02 Management Rights relied upon by the County must be exercised in a manner that is consistent with the provisions of the Sick Leave Agreement.

The plain language of the Sick Leave Agreement, while not a model of clarity, is most reasonably construed as requiring the Office of the Sheriff to revert back to the June 9, 2002 Sick Leave/Absenteeism Policy and limiting the Office of the Sheriff's management right to implement changes to the June 9, 2002 Sick Leave/Absenteeism Policy. Specifically, prior to the implementation of any such changes, the Office of the Sheriff must first propose the changes to the parties. Given the signatories to the Sick Leave Agreement, as well as to the 2005-2006 collective bargaining agreement, the parties are most reasonably construed to be the Association and the County. Only if the Association and the County are unable to reach an agreement on the changes proposed by the Office of the Sheriff does the Sick Leave Agreement permit the Office of the Sheriff to implement its proposed changes to the June 9, 2002 policy.

Association President Felber states that Policy 202.04 made changes to the June 9, 2002 Sick Leave/Absenteeism Policy; that Association President Felber was not aware of Policy 202.04 prior to its implementation on July 1, 2006; that, under the June 9, 2002 Sick Leave/Absenteeism Policy, an employee would not receive an EAD until the "4<sup>th</sup> Absence;" and that, at the time that each Grievant received their respective disputed EAD, neither Grievant had a "4<sup>th</sup> Absence," as defined under the June 9, 2002 Sick Leave/Absenteeism Policy. According to Association President Felber, under the June 9, 2002 Sick Leave/Absenteeism Policy, neither Grievant would have received the disputed EAD. The only other hearing witness, *i.e.*, Deputy Adams, agrees that, under the June 9, 2002 Sick Leave/Absenteeism Policy, he would not have received the EAD of September 14, 2006.

### Conclusion

Association President Felber's testimony reasonably establishes that, in implementing Policy 202.04 on July 1, 2006, the Office of the Sheriff made changes to the June 9, 2002 Sick Leave/Absenteeism Policy without first following the procedures required in the Sick Leave Agreement. Accordingly, at the time that the Office of the Sheriff issued the Grievants the disputed EADs, the June 9, 2002 Sick Leave/Absenteeism Policy remained in effect. By issuing EADs to the Grievants that are inconsistent with the June 9, 2002 Sick Leave/Absenteeism Policy, the Office of the Sheriff has violated the parties' 2005-2006 collective bargaining agreement.

Consistent with the grievances that were filed in this case, the Association, at hearing, identified the appropriate remedy to be removal of the disputed EADs. The undersigned concludes that the appropriate remedy for the violation of the parties' 2005-2006 collective bargaining agreement is to direct the County, and its subdivision the Milwaukee County Sheriff's Department, to rescind the two EADs that are the subject of this dispute and to expunge all reference to these EADs from the Grievants' personnel files.

Based upon the foregoing, and the record as a whole, the undersigned makes and issues the following

**AWARD**

1) The Milwaukee County Sheriff's Office violated the parties' 2005-2006 collective bargaining agreement when it issued the EAD of September 14, 2006 to Deputy Adams and the EAD of October 27, 2006 to Deputy Myer.

2) In order to remedy the violation found in Paragraph 1, supra, the County and its subdivision the Milwaukee County Sheriff's Department are hereby directed to immediately:

- a) rescind the EAD of September 14, 2006 that was issued to Deputy Adams
- b) rescind the EAD of October 27, 2006 that was issued to Deputy Myer
- c) expunge all references to the EAD of September 14, 2006 from Deputy Adams' personnel file.
- d) expunge all references to the EAD of October 27, 2006 from Deputy Myer's personnel file.

Dated at Madison, Wisconsin, this 14<sup>th</sup> day of November, 2007.

Coleen A. Burns /s/

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Coleen A. Burns, Arbitrator

