

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**WINNEBAGO COUNTY**

and

**PUBLIC SAFETY PROFESSIONAL DISPATCHERS' ASSOCIATION**

Case 413  
No. 68856  
MA-14371

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**Appearances:**

**Anna M. Pepelnjak**, Attorney at Law, Weiss Berzowski Brady LLP, 700 North Water Street, Suite 1400, Milwaukee, Wisconsin, 53202, appearing on behalf of Winnebago County.

**Benjamin M. Barth**, Labor Consultant, Labor Association of Wisconsin, Inc., N116 W16033 Main Street, Germantown, Wisconsin, appearing on behalf of the Public Safety Professional Dispatchers' Association.

**ARBITRATION AWARD**

The Public Safety Professional Dispatchers' Association (hereafter "Association") and Winnebago County (hereafter "County") are parties to a collective bargaining agreement ("Agreement") that provides for final and binding arbitration of disputes arising thereunder. On May 1, 2009, the Association filed a request with the Wisconsin Employment Relations Commission to initiate grievance arbitration concerning the administration of Article 10(A) of the Agreement. The filing requested that the Commission provide a list of commissioners and staff members available to serve as arbitrator, from which the undersigned was selected. A hearing was held on August 26, 2009, in Oshkosh, Wisconsin, at which time the parties were afforded full opportunity to present such testimony, exhibits, and arguments as were relevant. At the parties' discretion, no transcript of the proceeding was made. On November 9, 2009, each party filed an initial post-hearing brief. On November 10, 2009, the parties indicated to the undersigned that reply briefs would not be filed, whereupon the record was closed. On February 8, 2010, the undersigned reopened the record to solicit additional relevant information from the parties. The parties each made written submissions. Subsequently, on April 19, 2010, additional hearing was held in Oshkosh, Wisconsin. At the conclusion of that supplemental proceeding, the parties agreed that additional briefs would not be filed, and the record again was closed.

Now, having considered the record as a whole, the undersigned makes and issues the following award.

**ISSUE**

The parties were unable to agree to the issue and stipulated to allow the undersigned to frame the issue based on the evidence and arguments presented. The County proposed that the issue be stated as follows:

Did the Employer violate the terms of the collective bargaining agreement by limiting Article 10(A), Section 1.1.1, to two persons off?

If so, what is the appropriate remedy?

The Association proposed the following statement of the issue:

Did the Employer violate the terms and conditions of the collective bargaining agreement when it unilaterally modified the intent and mutual understanding of how Article 10(A), Section 1.1.1 is administered?

If so, what is the correct remedy?

The undersigned adopts the following statement of the issue:

Did the County violate the Agreement by interpreting and applying Article 10(A), Section 1.1.1, to allow for a maximum of two persons to take scheduled time off during a shift?

If so, what is the appropriate remedy?

**RELEVANT PROVISIONS**

**ARTICLE 10(A) – PROCEDURES GOVERNING THE  
SCHEDULING OF VACATIONS AND OTHER TIME OFF**

**[1.] Scheduled Vacation. ...**

**1.1 Selection Process. ...**

**1.1.1** No more than two persons (equal to 16.5 hours) at any given time may be scheduled off for vacation, paid holiday, or OCC on any given straight shift. No more than one (1) person (equal to 8.25 hours) at any given

time may be scheduled off for vacation, paid holiday or OCC on any given straight shift during the period consisting of the day before the start of EAA through the last day of the convention and for County USA on days of scheduled performances.

- 2. Unscheduled Vacation and the Scheduling of Other Time Off.** Employees may schedule vacation (half days or whole days), holiday time and compensatory time throughout the year on a first-come-first-served basis. Approval of time off requests shall be governed by the following:

...

- 2.2** No more than two employees per shift (equal to 16.5 hours) shall be allowed off with pay at one time except when provision 2.4.1 applies.

**2.2.1** An employee scheduled to attend school or training as a trainee shall be counted as one of two employees scheduled off from a given shift.

**2.2.2** An employee scheduled to attend regular meetings (e.g. Domestic Abuse[,], the Police/Fire EMS subcommittee, etc.) or an employee assigned to serve as a trainer, shall not be counted as one of the two employees scheduled off from a given shift.

**2.2.3** An employee on an extended leave of fourteen consecutive days' duration or longer shall not be counted as one of the two employees scheduled off from a given shift.

### **BACKGROUND**

Winnebago County operates, as a division of its Sheriff's Department, a Communications Center ("Center") that receives 911 emergency calls. The Center is staffed on an around-the-clock basis. There are three regular shifts that are staffed by approximately five or six dispatchers each: the first shift runs from 6:00 a.m. to 3:00 p.m.; the second shift runs from 3:00 p.m. to 11:00 p.m.; and the third shift runs from 11:00 p.m. to 6:00 a.m. There are also two additional, "overlap" shifts that are staffed by two dispatchers each: the fourth shift overlaps the first and second shifts, and the fifth shift overlaps the second and third shifts. The Center's organizational chart provides for a total staff of thirty-one dispatchers. At the time of the hearing in this matter, however, the County only employed twenty-six dispatchers. The dispatchers are members of the bargaining unit represented by the Association.

The general operation of the Center is overseen by Sheriff's Department Administrative Captain Cheryl Eischen. One of the Captain Eischen's main duties is to monitor the Center's budget. In 2008, the Center had been excessively over budget, at least in part due to overtime costs. In early 2009, Captain Eischen reviewed the Agreement between the County and the Association, with an eye toward reducing the overtime costs at the Center. Because the Center operates with minimum staffing requirements and with a relatively small pool of dispatchers from which to schedule, any time off, whether it be scheduled or unscheduled, can and often does result in overtime costs for the County.

Article 10(A), Section 1.1.1 of the Agreement places certain limits on how many employees may take scheduled time off. In the course of her review of the Agreement for budgetary purposes, Captain Eischen reviewed that provision, and she interpreted it to provide that only two employees could take scheduled time off per shift at the Center. She noted from scheduling records maintained at the Center, however, that more than two employees had taken scheduled time off during some shifts in the past. Indeed, in January of 2004, there appear to have been several instances in which more than two dispatchers were allowed to take scheduled time off during a single shift. For example, on January 1, 2009, four employees took personal holiday time: Guenther took 1.25 hours, Smith took .25 hours, Hertel took .25 hours, and Bricco took 4 hours.

On February 4, 2009, Captain Eischen issued the following memorandum:

**MEMORANDUM**

**TO:** All Dispatchers  
**FROM:** Capt. C. Eischen  
**DATE:** 02/04/09  
**RE:** Contract Violations & Overtime

A review of the overtime fill book found violations of the Agreement between Winnebago County and the Public Safety Professional Dispatchers' Association are occurring. There is also excessive overtime.

**CONTRACT VIOLATIONS**

The following changes are effective immediately:

- No more than two (2) people shall be permitted off on any given shift.

- *Article 10.1.1.1 No more than two persons (equal to 16.5 hours) at any time may be scheduled off for vacation, paid holiday, or OCC on any given straight shift.*
- Compensatory time shall not be used in segments less than 30 minutes.
  - *Article 7.4 . . . and compensatory time shall be in segments of thirty (30) minutes.*

### **EXCESSIVE OVERTIME**

To control and minimize overtime the following shall occur:

- No compensatory time shall be granted if it creates overtime even if only one other person on the shift is off.
  - *Article 7.2 Utilization of compensatory time off by any employee shall be subject to the staffing needs of the Employer.*
- Those on overtime shall not work the fifteen (15) minute “resume time”.

### **ON NOTICE**

Starting February 5, 2009 all sick time use shall be monitored monthly regarding individual sick time use and sick time use in the division as a whole.

- This sick time (excluding extended sick leave) contributed to excessive overtime.
- If there is not a significant change in sick time use, overtime shall be controlled by limiting the use of compensatory time off. (Article 7.2)

To further remedy, the staffing issues no time off shall be granted in 15-minute segments.

- This practice limits the resources needed to fill necessary overtime
- This is a 24/7 emergency service agency

**It is up to each individual to access sick time use and be prudent in decisions, as these actions shall affect the entire division.**

Capt. Cherilyn Eischen

This memorandum was distributed at a dispatcher meeting on February 5, 2009. During the meeting, the Association grieved the “contract violations” portion of the memorandum that indicated that no more than two people would be permitted to take time off on any given shift. That grievance led to the present case.

Approval for scheduled time off for dispatchers is granted by Communications Manager Kathy Biggar. Permission for short periods of scheduled time off taken at short notice, however, can also be granted by the Dispatcher in Charge (“DIC”) at the Center. The DICs are working dispatchers who are also members of the bargaining unit represented by the Association. No DIC ever has been disciplined for allowing more than two individuals to take time off per shift. According to Captain Eischen this is because she did not know that such accommodations were being made. Two witnesses for the Association testified at hearing that, until the memorandum was issued by Captain Eischen in February of 2009, more than two employees had been allowed to take scheduled time off during a single shift for approximately fourteen years, going back to 1996.

The 1996-1998 collective bargaining agreement between the County and the Association included a Memorandum of Understanding that contained the following provision:

1. Two employees per shift will be allowed to schedule paid time off concurrently.

A modified version of that provision subsequently became incorporated into the 1998-2000 collective bargaining agreement between the parties, as Section 1.1.1 of Appendix A. It read as follows:

- 1.1.1 No more than two persons (equal to 16.5 hours) may be scheduled off for vacation on any given shift. Only one person per shift may be scheduled off for vacation during the period consisting of the day before the start of EAA through the last day of the convention.

That provision continued to appear in the parties’ collective bargaining agreements under Appendix A until the 2007-2009 Agreement that is the focus of this case.

During the negotiations that led to the 2007-2009 Agreement, the parties exchanged a series of proposals regarding Section 1.1.1. The County wanted to limit the amount of overtime generated at the Center by limiting the number of employees who could take

scheduled time off. To that end, the County first proposed that only five employees would be allowed to take scheduled time off in a single day. The Association rejected this proposal and proposed, alternatively, that Section 1.1.1 would be amended as follows, adding the bolded and underscored language:

- 1.1.1 No more than two persons (equal to 16.5 hours) **at any given time** may be scheduled off for vacation, **paid holiday or OCC** on any given shift. Only one person per shift may be scheduled off for vacation, **paid holiday or OCC** during the period consisting of the day before the start of EAA through the last day of the convention **and for Country USA on days of scheduled performances.**

Subsequently, the County proposed to amend Section 1.1.1 as follows:

- 1.1.1 No more than **six (6) employees** may be scheduled off for vacation, **OCC or paid holiday** on any given **date.** **No more than two (2) employees (equal to 16.5 hours) may be scheduled off on any given shift. In addition, only one (1) employee may be scheduled off for vacation, occ or paid holiday per shift (resulting in a maximum total of three off per day) during EAA or Country USA. The EAA restriction would consist of the day before the start of EAA through the last day of the convention. The Country USA restriction would consist of the days there are scheduled performances.**

The Association proposed that Section 1.1.1 be amended to read as follows:

- 1.1.1 No more than two persons (equal to 16.5 hour) may be scheduled off for vacation on any given shift. Only one person per shift may be scheduled off for vacation during the period consisting of the day before the start of EAA through the last day of the convention.

Ultimately, Section 1.1.1 was amended as follows and incorporated into the Agreement:

- 1.1.1 No more than two persons (equal to 16.5 hours) at any given time may be scheduled off for vacation, paid holiday, or OCC on any given straight shift. No more than one (1) person (equal to 8.25 hours) at any given time may be scheduled off for vacation, paid holiday or OCC on any given straight shift during the period

consisting of the day before the start of EAA through the last day of the convention and for County USA on days of scheduled performances.

### DISCUSSION

This dispute focuses on the interpretation of Article 10(A), Section 1.1.1 of the Agreement and, more specifically, the question of how many dispatchers are permitted under that provision to use scheduled time off during a particular shift. It is the County's position that the Agreement provides that only two dispatchers may take scheduled time off during a shift. It is the Association's position that the provision allows for more than two individuals to take time off during a shift, as long as there are only two individuals on scheduled time off at any given moment during that shift.

The outcome of this case is properly driven by the plain meaning of the language of the Agreement. Section 1.1.1 expressly limits the number of people who can take scheduled time off to no more than two people "at any given time" for an ordinary shift or to no more than one person "at any given time" when the EAA or County USA conventions are occurring. A plain reading of the phrase "at any given time" indicates that the number of dispatchers who are off work will be evaluated, from a contract compliance standpoint, on a moment-to-moment basis. Contrary to the County's position in this case, neither that phrase nor any other part of Section 1.1.1 references an entire shift as the relevant time frame. The failure to do so is particularly significant given the fact that the Agreement successfully employs the "per shift" limitation elsewhere, such as in Section 2.2.

The County argues in its brief that if the words "at any given time" were absent from the Agreement, as they were in the previous collective bargaining agreement, nothing in the provision would support the Association's position. The problem with this contention is that those words *are* present in the Agreement. Indeed, the phrase "at any given time" was specifically added to Section 1.1.1 of the Agreement in the parties' last round of negotiations, and it must be given some meaning.

The County argues that the phrase "at any given time" should be read as "at a time", indicating that no more than a certain number of people can be off at a time. This different phrasing, were I to agree that it is equivalent in meaning to the phrase that actually appears in the Agreement, nevertheless does not produce the two-persons-per-shift maximum for which the County advocates.

The County argues that the provision at issue in this case must be interpreted in conformity with other, similar provisions in the Agreement. Section 2 of Article 10(A) governs unscheduled vacation and the scheduling of other time off. Section 2.2 provides that "no more than two employees *per shift*" shall be allowed to take time off with pay except when a certain exception applies. Sections 2.2.1, 2.2.2, and 2.2.3, which follow it, also discuss the number of

employees allowed to take time off “from a given shift”. The County contends that the repeated reference, in this portion of Article 10(A), to the “shift” as the parameter in which time-off limitations apply should be read as an indication that the parties meant “on any given shift” when they said “at any given time”. I am not persuaded. It is not obvious that time-off restrictions set forth in Sections 1 and 2 of Article 10(A) must be consistent with one another. Section 1 applies to scheduled vacation and Section 2 applies to unscheduled vacation and other time off. It is conceivable that the parties could have decided to handle those two subjects in different ways. Indeed, the Agreement, on its face, indicates that they did.

Given my conclusion that the language of the Agreement is clear and unambiguous, it is unnecessary to give consideration to the other extrinsic evidence on the record.

On the basis of the foregoing, I make the following

**AWARD**

The grievance is sustained.

Dated at Madison, Wisconsin, this 30<sup>th</sup> day of September, 2010.

Danielle L. Carne /s/

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Danielle L. Carne, Arbitrator