

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

PRICE COUNTY

and

PRICE COUNTY PROFESSIONAL DEPUTIES ASSOCIATION, LOCAL 116

Case 104

No. 69849

MA-14766

Appearances:

Lori Blair-Hill, Human Resources Coordinator, 126 Cherry Street, Room 1, Phillips, Wisconsin 54555, appearing on behalf of Price County.

Benjamin M. Barth, Labor Consultant, The Labor Association of Wisconsin, Inc., N116 W16033 Main Street, Germantown, Wisconsin 53022, appearing on behalf of Price County Professional Deputies Association, Local 116.

ARBITRATION AWARD

Price County (County) and Price County Professional Deputies Association, Local 116 (Association) are parties to a collective bargaining agreement covering contract years 2008-2009. (Contract). The Contract provides for final and binding arbitration of grievances arising under the Contract. On May 14, 2010, the Association filed a Request to Initiate Grievance Arbitration with the Wisconsin Employment Relations Commission (Commission) regarding the County's decision to deny Grievant's request to use a vacation day on February 9, 2010. The Association further requested a panel of five WERC staff members and commissioners from which the Parties could select an arbitrator. The undersigned was selected. Hearing was held on the grievance on August 30, 2010 in Phillips, Wisconsin. The hearing was not recorded or transcribed. The Parties then submitted post-hearing written arguments in support of their positions, the last of which was received on November 2, 2010, closing the record in the matter.

Now, having considered the record as a whole, I make and issue the following award.

ISSUE

At the hearing, the Parties stipulated to the following issue to be decided:

Did the Employer violate the expressed or implied terms and conditions of the collective bargaining agreement and/or past practice when the Employer denied the grievant's request to use vacation on February 9, 2010?

If so, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

ARTICLE 2 – MANAGEMENT RIGHTS

The County possesses the sole right to operate County government and all management rights that repose in it, subject only to the provisions of this Contract and applicable law. These rights include, but not limited to, the following:

- A. To direct all operations of the County;
- B. To establish reasonable work rules and schedules of work;
- C. To hire, promote, transfer, schedule and assign employees to positions within the County;
- D. To suspend, demote, discharge and take other disciplinary action for just cause against employees;
- E. To relieve employees from their duties because of lack of work or any other legitimate reasons;
- F. To maintain efficiency of County government operations;
- G. To take whatever action is necessary to comply with state or Federal law;
- H. To introduce new or improved methods or facilities;
- I. To change existing methods or facilities;
- J. To determine the kinds and amounts of services to be performed as pertains to County Government operation; and the number and kinds of classifications to perform such services;

- K. To contract out for goods or services;
- L. To determine the methods, means and personnel by which County operations are to be conducted;
- M. To take whatever action is necessary to carry out the functions of the County in situations of emergency.

The Association and the employees agree that they will not attempt to abridge these management rights, and the County agrees it will not use these management rights to interfere with rights established under this Agreement. Nothing in this Agreement shall be construed as imposing an obligation upon the County to consult or negotiate with the Association concerning the above areas of discretion and policy.

ARTICLE 15 - VACATION

...

- C. **Scheduling:** Effective calendar year 1991, bargaining unit member will select vacation time for the next calendar year on a seniority basis. On or before November 1 of each year the Employer shall post either one roster or separate roster for bargaining unit members to select vacation for the next calendar year.

There is to be a first round of selection of vacation done in blocks in one week or two consecutive weeks by seniority. After the first round is completed, there is to be a second round of selection by seniority during which employees may select the balance of the vacation days that they are entitled to. Any vacation remaining can then be selected on a first come first serve basis. In case two employees make selection on the same date and at the same time seniority shall prevail.

Bargaining unit members shall complete their selections by November 30. Approval of the vacation rosters will be made by the Employer by December 15.

No more than a total of four employees (2 deputies and 2 jailors) are entitled to take vacation at the same time except with approval from the Employer.

...

BACKGROUND

Price County operates a Sheriff's Department (Department). One of the functions of the Department is to transport inmates to various hospitals and mental health facilities. Although many of these transports are short in distance and duration, some are to distant facilities and involve lengthy drives. Two deputies are assigned to each transport. Particularly during the lengthier transports, restroom breaks are required. As a result of the potential for a restroom break, the Department attempts to have at least one of the deputies assigned to the transport to be of the same gender as the inmate, particularly on longer trips. However, despite this preference, the County has on at least nine occasions during the past ten years sent two male deputies on transports of female inmates.

Grievant Stephanie Stafford (Grievant) is a deputy employed by Price County in the Sheriff's Department. She has worked for Price County since February 2005. At 7:00 AM on February 3, 2010, Grievant submitted a request to take a vacation day on February 9, 2010. At 7:20 AM, a male deputy also submitted a request for time-off on February 9, 2010.¹ On February 4, 2010, Lieutenant Cummings, the County supervisor charged with approving deputies' time off requests, discussed staffing needs for February 9, 2010 with the Jail Administrator and determined that Grievant would be needed to staff a transport of a female inmate. Lieutenant Cummings subsequently denied Grievant's vacation request and granted the male deputy's time off request. The denial was communicated by hard copy to the Grievant's workplace mailbox and also electronically through the computer messaging system in Grievant's squad car. She did not challenge the denial and reported to work as ordered on February 9, 2010.

On February 9, 2010, Grievant met with the Sheriff to discuss why her vacation request had been denied even though another deputy's later request for the same day had been approved. The Sheriff investigated the issue by talking with the lieutenants who had made the decision to deny the request. The reason for the denial was that the Grievant was the only female deputy available to be assigned to the transport during the February 9, 2010 shift. Because the transport involved a 3 ½ hour drive each way, it had been decided that a female deputy would be needed. Further, the inmate in question had been disruptive and engaging in "shenanigans," increasing the concern that the inmate would cause problems during restroom breaks and heightening the need, from the County's view, to have a female deputy available during the transport. Grievant did not accept these as valid reasons for the denial and filed a grievance. Following exhaustion of the earlier steps of the grievance procedure, the instant arbitration proceeding was conducted.

¹ The record indicates that the male deputy's time off request was not for a vacation day, but rather for "holiday time."

DISCUSSION

I conclude that the County did not violate the Contract when it denied Grievant's request to take a vacation day on February 9, 2010 because the plain language of Article 15 does not resolve the issue and because management did not act in an arbitrary, capricious or discriminatory manner when denying the request.

The Association argues that the plain language of Article 15 required the County to grant Grievant's request to take vacation on February 9, 2010. The Association highlights the following language which provides that, following a series of vacation block requests taking place in November of the prior year,

Any vacation remaining can then be selected on a first come first serve basis. In case two employees make selection on the same date and at the same time seniority shall prevail.

The Association concludes that since it is undisputed that Grievant was the first employee to select vacation for February 9, 2010, the plain language of this section required the County to approve her vacation request.²

I do not find this argument persuasive because while the language of this section allows employees to make vacation selections, it does not require the County to approve those vacation selections. Looking at the whole of Paragraph C of Article 15, it is clear that when the word "selection" is used, the intention is for those selections to subsequently be approved by the County.

Paragraph C sets forth a two-round vacation selection process at the end of the year prior to when the vacation is to be used. During the first round, employees place their vacation selections in blocks of one or two consecutive weeks on the roster. During the second round, employees are able to place the balance of their vacation selections for the following year on the roster. Once these two rounds are completed, Article 15 requires that "Approval of the vacation rosters will be made by the Employer by December 15." If selections during this process are subject to approval, then it follows that selections of remaining vacation time made later are also subject to approval. I find that the identified language simply permits employees to make vacation selections, and that if selections are submitted at the same date and time and both selections would otherwise be approved, the relative seniority of the selecting employees determines which selection is approved. Therefore, the County did not violate Article 15 because it denied Grievant's request while approving another employee's request.

² Article 15 of the Contract further provides that "No more than a total of four employees (2 deputies and 2 jailors) are entitled to take vacation at the same time except with approval by the Employer." Neither party addressed this provision as a reason why the County could or could not have granted Grievant's request for vacation on February 9, 2010.

Because I do not find that the County violated Article 15 when it denied Grievant's vacation request for January 9, 2010, I must determine whether the County violated Article 2 – Management Rights which is reproduced above. Article 2 preserves the County's discretion to act in areas that are not otherwise limited by other provisions of the Contract or applicable law. However, such "managerial discretion must be exercised reasonably and discretionary management decisions will be reviewed to determine if they were arbitrary, capricious, or discriminatory." ELKOURI & ELKOURI, *HOW ARBITRATION WORKS*, 6TH EDITION AT PAGE 480 (CITATIONS OMITTED).

I conclude that the County did not act in an "arbitrary, capricious, or discriminatory" manner when it denied Grievant's request to take a vacation day on January 9, 2010. The County made the decision to deny the request based on the particular facts of the transport in question. Lieutenant Cummings testified that he had originally marked the request as "approved," based on his understanding of the operational needs for February 9, 2010, but did not communicate that approval to the Grievant. He later changed the request to a "denial" after conferring with the Jail Administrator, and determining that it was necessary to have a female deputy assigned to the transport. The basis for the determination was that the female inmate to be transported had pulled "shenanigans" and it was anticipated that she would likely cause issues during the transport. These concerns were heightened by the fact that the transport involved a lengthy 3 ½ hour drive to Oshkosh. Because the County based its decision to deny Grievant's request for vacation on valid operational needs, I do not find the denial to have been made in an arbitrary, capricious, or discriminatory manner.

The Association presented evidence that on nine occasions during the past ten years, the County assigned two male deputies to transport female inmates.³ The Association also argues that restroom breaks could have been taken at secured facilities along the route and that those facilities would have female deputies on duty. While it is undisputed that the preferred practice is for restroom breaks to occur at secured facilities during inmate transports, there was no evidence presented that such facilities were conveniently located along the route at issue in this grievance. Further, due to the sometimes urgent need for restroom breaks, I do not see any way that the County could have been certain that a secured facility would be available at the time a restroom break was needed. In short, the evidence presented by the Association does not refute the evidence presented by the County that it had particular and valid operational concerns related to the specific inmate and transport involved in this matter, that those concerns required assigning a female deputy to the transport, and that Grievant was the only female deputy available for the transport.

³ Both the County and Association argue that no past practice has been established that relates to the facts in this matter. The County argues that the Association did not establish a past practice of the County assigning two male deputies to transfers of female inmates. The Association argues that the County did not establish a past practice of assigning at least one female deputy to transports involving female inmates. I agree with both Parties and find that, based on the record here, neither Party has established the existence of any relevant past practice.

AWARD

For the foregoing reasons, I conclude that the County did not violate the Contract when it denied Grievant's request to take a vacation day on February 9, 2010. The grievance is hereby denied and dismissed.

Dated at Madison, Wisconsin, this 3rd day of February, 2011.

Matthew Greer /s/

Matthew Greer, Arbitrator