

BEFORE THE ARBITRATOR

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

Case 719
No. 69605
MA-14673

Appearances:

Graham P. Wiemer, Attorney, MacGillis Wiemer, LLC, 2360 North 124th Street, Suite 200, Milwaukee, Wisconsin 53226, appearing on behalf of the Milwaukee Deputy Sheriffs' Association.

Roy Williams, Milwaukee County Corporation Counsel, 901 North 9th Street, Suite 303, Milwaukee, Wisconsin 53233.

ARBITRATION AWARD

Pursuant to the terms of the collective bargaining agreement (CBA) between the Milwaukee Deputy Sheriffs' Association (the Union) and Milwaukee County, the parties selected me from a panel of arbitrators provided by the Wisconsin Employment Relations Commission to hear and resolve a dispute between them. The dispute involves the County's denial of the Grievant's request to receive an educational bonus payment to which he claims he was entitled under the terms of the CBA. In lieu of a hearing, the parties stipulated to the issues and facts and submitted briefs, which I received on October 14, 2011.

STIPULATED ISSUES

1. Did Milwaukee County violate Section 3.07 of the parties' Collective Bargaining Agreement when it did not pay Deputy Donnie Rutter an educational bonus for 2009?
2. If so, what remedy?

STIPULATED FACTS

Donnie Rutter is a Deputy Sheriff I and a member of the Association. Deputy Rutter has been employed with the Milwaukee County Sheriff's Department ("Department") since December 17, 2004. He remained in the employ of the Department for the full calendar year of 2009 and had five years service as a Deputy Sheriff I on December 17, 2009.

By January 20, 2009, Deputy Rutter had completed sixty-six (66) credits toward an Associates degree in Police Science Technology from Milwaukee Area Technical College. In January, 2009, Rutter submitted a form to receive an educational bonus pursuant to Section 3.07 of the parties' Collective Bargaining Agreement ("Agreement"). On May 19, 2009, Milwaukee County's Human Resources Department ("Human Resources") responded to his January 2009 request for an educational bonus, indicating that it had denied his request because Deputy Rutter had not yet completed his fifth year as a Deputy Sheriff I.

Human Resources requires its Education Bonus Eligibility Form to be completed and received by December 15th of the year for which payment is to be made. Deputy Rutter's fifth anniversary occurred two days after the December 15th deadline.

Section 3.07 of the Agreement, in pertinent part, states as follows:

3.07 EDUCATIONAL BONUS

(1) The County will make the following annual payments for the completion of course work described . . . herein for all employees in the bargaining unit:

. . .

\$325.00 per year for 64 credits.

. . .

These payments shall be made on an annual basis as soon as possible after December 31 of the current year. No payments will be made to employees for any year in which they do not remain in the employ of the Sheriff's Department for the full calendar year.

Employees who attain the required educational credits during the calendar year shall be paid a prorated amount from the first pay period after the educational courses are completed and reported to the County by December 31 of that year.

(2) No employee will be eligible for these salary payments unless he has a minimum of 5 years' service as a Deputy Sheriff I . . . with Milwaukee County.

The Association timely filed Grievance No. 51414 on June 4, 2009 challenging Milwaukee County's denial of Deputy Rutter's educational bonus. That grievance worked its way through the grievance process in Agreement Section 5.01, and the Association timely appealed Labor Relations' denial of this grievance to the Wisconsin Employment Relations Commission pursuant to Section 5.01(8).

ANALYSIS

To resolve this dispute, I must interpret § 3.07 of the CBA and apply that section to stipulated facts. "Arbitrators have the authority to use principles of contract law in resolving disputes under collective bargaining agreements." *MADISON TEACHERS INC. V. MADISON METROPOLITAN SCHOOL DIST.*, 2004 WI App 54, ¶ 17, 271 Wis. 2d 697, 711, 678 N.W.2d 311, 318. ¶ 22 "The primary goal in contract interpretation is to 'give effect to the parties' intent, as expressed in the contractual language.'" *MARYLAND ARMS LTD. PARTNERSHIP V. CONNELL*, 2010 WI 64, ¶ 22, 326 Wis. 2d 300, 311, 786 N.W.2d 15, 20, *citing* *SEITZINGER V. CMTY. HEALTH NETWORK*, 2004 WI 28, ¶ 22, 270 Wis. 2d 1, 676 N.W.2d 426. "In ascertaining the intent of the parties, a court must adhere to the plain meaning of the contract if a contract is unambiguous." *TOWN BANK V. CITY REAL ESTATE DEVELOPMENT, LLC*, 2009 WI App 160, ¶ 11, 322 Wis. 2d 206, 217, 777 N.W.2d 98, 104, *citing* *HORTMAN V. OTIS ERECTING CO., INC.*, 108 Wis. 2d 456, 461, 322 N.W.2d 482 (Ct.App.1982). "In the interpretation of a contract the contract must be considered as a whole in order to give each of its provisions the meaning intended by the parties." *MCCULLOUGH V. BRANDT*, 34 Wis. 2d 102, 106, 148 N.W.2d 718, 720 (1967), *citing* *KETAY V. GORENSTEIN* (1952), 261 Wis. 332, 53 N.W.2d 6 (1952). I apply these principles of contract interpretation in my analysis below.

I. Whether the County Violated § 3.07 of the CBA

Based on the plain meaning of § 3.07 of the CBA, I first conclude – and the County does not appear to dispute – that the contractual requirements for the educational bonus at issue have been satisfied. By January 20, 2009, the Grievant had completed 66 qualifying credits, two more than the 64-credit minimum specified in § 3.07(1). The Grievant, moreover, "remain[ed] in the employ of the Sheriff's Department for the full calendar year" of 2009. Sec. 3.07(1), CBA. As of December 17, 2009, the Grievant became eligible to receive the educational bonus, because he "ha[d] a minimum of 5 years' service as a Deputy Sheriff I . . . with Milwaukee County." *Id.*

The County's ostensible basis for denying the bonus is not a failure to fulfill the requirements of § 3.07, but rather an alleged noncompliance with a Human Resource Departmental deadline (December 15, 2009) for completing the Educational Bonus Eligibility form. The County argues:

The Department of Human Resources requires that the Education Bonus Eligibility Form be completed and received by December 15 of the year for which payment is to be made. Unfortunately, [the Grievant's] 5-year

anniversary occurred two days after the December 15th deadline. Section 3.07(2) states that no employee will be eligible for these salary payments (educational bonus payments) unless he has a minimum of five years service as a Deputy Sheriff I with Milwaukee County. In this case, Deputy Rutter had not reached the 5-year mark when the deadline arrived.

(County Br. 2).

This argument is unavailing for various reasons. First, the Grievant did meet the due date for submitting the Education Bonus Eligibility Form. He submitted it in January 2009 – well before the due date of December 15, 2009. That the Grievant’s five-year anniversary occurred two days after the due date for submitting the Eligibility Form does not disturb this conclusion; the December 15th due date expressly applies to the submission of the form, not the required duration of employment for educational bonus eligibility. Mandating, as the County’s position apparently does, that the Grievant’s five-year anniversary occur on or before the County-imposed due date for submitting the eligibility form is to graft an additional requirement onto the H.R. rule and the CBA. Applying such a unilaterally created requirement here, moreover, would conflict with the CBA by depriving the Grievant of a bonus payment to which he otherwise would be entitled under the terms of § 3.07. Rather, I construe § 3.07 and the H.R. rule to permit the timely submission of the eligibility form prior to the maturation of the employee’s five-year anniversary.

This construction is reasonable when the CBA is “considered as a whole in order to give each of its provisions the meaning intended by the parties.” MCCULLOUGH, 34 Wis. 2D at 106, 148 N.W.2D at 720. Here, § 3.07 provides in part, “These payment shall be made on an annual basis *as soon as possible after December 31 of the current year.*” (Emphasis added.) By contrast, “[e]mployees who attain the required educational credits during the calendar year shall be paid a prorated amount . . . *by December 31 of that year.*” (Emphasis added.) That is, the contract terms give the employer until the end of the calendar year during which the employee first earns enough qualifying educational credits, to pay the employee’s prorated share of it. Extending the grace period for the employer’s first, prorated bonus payment until December 31st: 1) recognizes that the employee may complete the educational requirements prior to his/her five-year anniversary, and 2) permits the employer to delay its first prorated bonus payment until the employee has met the five-year eligibility requirement. While the H.R. rule’s December 15th due date for submitting the eligibility form facilitates administrative efficiency, I do not read into it a unilaterally imposed, additional requirement that the employee’s five-year anniversary occur on or before that date. Such a reading would conflict not only with the plain meaning of the CBA’s relevant terms but also their intended interrelationship when the contract is considered as a whole.

I also reject the County’s remaining arguments. The County asserts:

It is a certainty that Deputy Rutter is not the only one for whom this unfortunate situation arises. It is not the fault of the Department of Human Resources or Milwaukee County that Deputy Rutter's anniversary falls beyond the December 15th deadline.

(County Br. 2). The County appears to offer an argument based on past practice, one that I reject, because it is wholly devoid of evidentiary support. *See, e.g.*, Frank Elkouri & Edna Asper Elkouri, *How Arbitration Works*, 607 (Alan Miles Ruben ed., 6th ed. 2003) (noting that "strong proof" of past practice "ordinarily will be required.")

II. The Appropriate Remedy

The Union requests as a remedy "an award ordering Milwaukee County to pay [the Grievant] \$325.00 for an educational bonus for 2009." I reject this requested amount, because § 3.07(1) of the CBA requires proration "from the first pay period after the educational courses are completed and reported to the County" The stipulated facts indicate that "[b]y January 20, 2009," the Grievant had completed the necessary credits to earn the bonus, and that "[i]n January 2009, [the Grievant] submitted a form to receive [it]." Accordingly, I order the parties to determine, consistent with these stipulated facts, "the first pay period" after either the date the Grievant completed the qualifying credits or the date he submitted the Education Bonus Eligibility Form, whichever is later. I further order the parties to use this date to calculate the Grievant's prorated bonus share for 2009 and the County to award that prorated payment to the Grievant. I will retain jurisdiction over this matter for sixty (60) days, in the event the parties have and cannot resolve any disputes regarding the prorated amount of the bonus payment for 2009.

Dated at Madison, Wisconsin, this 9th day of January, 2012.

John C. Carlson /s/

John C. Carlson, Arbitrator