

BEFORE THE ARBITRATOR

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

and

**MILWAUKEE COUNTY**

Case 778  
No. 71361  
MA-15131

(Layoff Grievance)

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**Appearances:**

**Christopher MacGillis**, MacGillis Wiemer, Attorneys at Law, 2360 North 124<sup>th</sup> Street, Suite 200, Wauwatosa, Wisconsin 53226, appearing on behalf of Milwaukee Deputy Sheriffs' Association.

**Daniel Vliet, Mark Olson and Sarrie Pozolinski**, Buelow Vetter Buikema Olson & Vliet, Attorneys at Law, 20588 Watertown Road, Suite 200, Waukesha, Wisconsin 53128, appearing on behalf of Milwaukee County.

**EXPEDITED ARBITRATION AWARD**

The Milwaukee Deputy Sheriffs' Association, hereinafter referred to as the Association, and Milwaukee County, hereinafter referred to as the County or the Employer, are parties to a collective bargaining agreement which provides for final and binding arbitration of certain disputes. Pursuant to the parties' request, the Wisconsin Employment Relations Commission appointed Raleigh Jones to decide the above-captioned grievance. A hearing was held in Milwaukee, Wisconsin on January 25, 2012. The hearing was not transcribed. The parties filed briefs on January 28, 2012, whereupon the record was closed. In light of the timing of the layoffs at issue, originally scheduled for December 30, 2011, the parties asked the arbitrator to issue an expedited Award by January 31, 2012. Pursuant to that request, and having considered the evidence, the arguments of the parties and the record as a whole, the undersigned issues the following Expedited Arbitration Award.

**ISSUE**

The parties were unable to stipulate to the issue(s) to be decided herein. The Association frames the issue as follows:

Does the plain language of provision 3.30 in the parties' 2009-2012 collective bargaining agreement require Milwaukee County to reduce the total number of layoffs by the total number of every retirement of an MDSA member from January 1 through October 31, 2011? If so, what is the appropriate remedy?

The County frames the issues as follows:

Did the County violate the terms of section 3.30 of the 2009-2012 agreement between the County and the Milwaukee Deputy Sheriffs' Association when it provided the DSA with names of 61 employees, who were to be laid off, which the DSA alleges to be an inaccurate list?

Did the County violate section 3.30 of the 2009-2012 agreement when it refused to correct this list of 61 employees who were to be laid off?

I have not adopted either side's proposed issue(s). Based on the entire record, I find that the issue which is going to be decided herein is as follows:

If the County lays off 48 deputies from the Sheriff's Department as contemplated, will that action violate Section 3.30(2) of the parties' collective bargaining agreement? If so, what is the appropriate remedy?

My rationale for adopting this issue is explained in the **DISCUSSION**.

**PERTINENT CONTRACT PROVISIONS**

The parties' 2009-2012 collective bargaining agreement contains the following pertinent provisions:

...

**3.21 Retirement Benefits**

...

- (10) Any member of the MDSA, who as of November 1, 2011, does not meet either the age, or the age and length of service requirement to retire, and who files an application for retirement benefits between November 01,

2011 and December 31, 2011, and completes their last day of active service as a county employee no later than December 31, 2011, shall be eligible for:

- (a) The addition to the employee's age of the amount of time that is necessary in order for the employee to meet the normal retirement age requirement or, if applicable to the employee, the Rule of 75 provision for retirement benefits, but in no event no more than five (5) years.

...

### 3.30 Layoff and Recall

...

- (2) Milwaukee County will layoff no more than sixty-one (61) MDSA positions during the time period December 1, 2011, and December 31, 2012. Milwaukee County agrees that for every dollar reduction in total compensation and benefit costs for MDSA members that result from this agreement with the MDSA, Milwaukee County will authorize a proportional number of whole deputy sheriff positions to be funded in the 2012 adopted budget for the Sheriff's Office. Milwaukee County further agrees that for every MDSA member who retires in 2011, Milwaukee County will guarantee one less layoff of MDSA members.

### FACTS

The parties' predecessor labor agreement expired in 2008. In September of 2011, the parties began negotiations to replace the one that expired in 2008. When they started bargaining, they knew that the County Board has to approve the budget for the upcoming year in mid-November. Thus, they knew they were under a time crunch.

In late September, 2011, Milwaukee County Executive Chris Ebele announced his proposed 2012 budget. In that document, he called for severe cuts to the Sheriff's budget, including the layoff of 133 deputies. At the time, there were about 360 deputies in the bargaining unit. Thus, this document called for the layoff of about one-third of the total number of deputies.

The Association's position in negotiations drastically changed after the County Executive announced his budget. The Association's priority became reducing the number of layoffs from the 133 layoffs proposed by the County Executive to zero layoffs. In order to accomplish this, the Association understood that it needed to make significant concessions.

The parties had a bargaining session on October 19, 2011. At this time, the parties knew that the number of layoffs needed to meet the 2012 budget had been reduced from 133 deputies to 117. This reduction occurred because there were 16 vacant positions in the department that could remain vacant for cost savings. At this meeting, County labor negotiator Fred Bau brought a cost analysis of various benefits (such as health insurance, uniform allowance, etc.) This cost analysis looked at the cost savings achieved through concessions in different areas and the ultimate number of deputy positions that could be saved from layoff as a result of such concessions. Specifically, for every \$91,000 of concessions, the County would layoff one less deputy. In other words, \$91,000 is the approximate average annual cost of one deputy. All of the concessions on the list were to be effective in 2012; none were to be retroactive. Thus, the County indicated that it was willing to offset the number of layoffs based on prospective reductions in costs to the County.

The County made its first written proposal to the Association on October 24, 2011. This proposal was for a four-year agreement running from January 1, 2009 through December 31, 2012. The concessions requested by the County included the following:

- (1) No wage increase for the duration of the agreement;
- (2) Overtime calculated per the FLSA (from January 1, 2012 forward);
- (3) No payment of uniform allowance, educational bonus, hazardous duty allowance for the 2012 calendar year;
- (4) Switch insurance to Milwaukee County Health Insurance with monthly contributions (effective January 1, 2012); and
- (5) A monthly employee pension contribution of 6.9% of base pay (effective January 1, 2012).

All of the changes proposed by the County were prospective changes.

In response to the County's initial proposal, the Association made a counteroffer on October 25, 2011. In its counteroffer, the Association proposed the following:

- (1) No wage increase for the duration of the agreement;
- (2) Switch health insurance to Milwaukee County Health Insurance (effective January 1, 2012);
- (3) Association positions will be covered by the Rule of 75 for the duration of this agreement (effective January 1, 2012); and
- (4) No deputy layoffs for the duration of the agreement.

On October 26, 2011, the parties had another bargaining session. Prior to the meeting, the County submitted a counteroffer in which it introduced two new concepts, namely, a provision regarding layoffs and a retirement window for certain employees. Specifically, the County offered to cap the number of layoffs for the duration of this agreement and to offer an incentive to certain deputies to retire prior to the start of the 2012 calendar year. The County offered the retirement window as an alternative to the Association's request for the Rule of 75 to apply to all Association members. The County was unwilling to consider offering the Rule of 75 because it was simply too expensive. It felt that given its budgetary restraints, it could only accept proposals that would ultimately reduce costs to the County. The retirement window provided an incentive for current employees to retire earlier than anticipated in order to save the County the costs of their salary and benefits. Based on the inclusion of the retirement window, the County also decided that it was willing to include some type of cap on the number of layoffs. Specifically, the County had determined that for every deputy it could encourage to retire under the retirement window, it would reduce the number of layoffs by one. During this meeting, County negotiator Bau specifically told the Association of the County's desire to promote further retirements in November and December 2011 through the retirement window in order to reduce the number of necessary layoffs on December 30, 2011.

In response to the Employer's offer, the Association made a counteroffer which, along with a number of other concessions, included the County's provisions regarding layoffs and a retirement window. The Association's proposal mimicked the County's proposed cap by including a blank for the amount of layoffs for the duration of the agreement and a retirement window that was limited to November 1, 2011 through December 31, 2011.

On November 1, 2011, the parties had another bargaining session. At this meeting, the Association verbally conveyed its latest counteroffer. In that offer, the Association proposed that the County agree to absolutely no layoffs for 2012 and 2013. The County rejected that proposal (for no layoffs) because it could not be accomplished within the proposed 2012 budget. Bau advised the Association's bargainers that without more cost reductions, zero layoffs simply was not feasible. Later in that bargaining session, the County offered to cap the number of layoffs at 50. In that same offer, the County continued to offer the retirement window and specifically stated that for every deputy who takes advantage of the retirement window and retires in November and December, 2011, the County would reduce the cap of 50 layoffs by an additional layoff.

On November 2, 2011, Association Attorney Graham Wiemer made a counteroffer to the County via e-mail. In this counteroffer, the Association proposed a limit of 25 total layoffs. With regard to the retirement window, Wiemer wrote: "Additionally, the Executive Board is concerned that the retirement window as proposed by the County is not going to entice enough retirements by December 31, 2011. They certainly understand the urgency to get retirements by the end of 2011, so their updated proposal is intended to obtain more retirements by then."

The next day, Bau responded to the Association's proposal of the previous day. The County's proposal included the following language:

**10. LAYOFF STATEMENT**

Milwaukee County agrees that for every dollar reduction in total compensation and benefit cost for DSA members that result from this agreement with the DSA, Milwaukee County will authorize a proportional number of whole deputy sheriff positions to be funded in the 2012 adopted budget for the Sheriff's Office. Milwaukee County further agrees that for every DSA member who retires in 2011, Milwaukee County will guarantee one less layoff of DSA members.

Bau intended this language to confirm the verbal statements previously made to the Association that any retirements that are enticed through the retirement window will be offset against the County's layoff cap.

On November 4, 2011, Wiemer called Bau regarding the most recent County proposal. At this time, they briefly discussed the layoff statement referenced above. Wiemer requested information regarding the layoff statement and Bau responded that the language seemed "pretty clear" to him. As they talked on the phone, Wiemer took notes directly on the County's proposal. One of the things that Wiemer wrote on this document was that Bau stated that under this proposal, the Association could "come pretty close to zero [layoffs]." In their discussion concerning the layoff statement, Wiemer did not ask Bau whether the year referenced in that language covered the entire calendar year or just a portion thereof. Similarly, Bau did not say whether the year referenced in that language covered the entire calendar year or just a portion thereof.

The Association's bargaining team met later that same day. They determined that while the layoff statement referenced above was a significant step, for the agreement to be ratified by the membership, they needed a specific number to cap the total number of layoffs.

Later that day, the County sent two new proposals to the Association. In those proposals, it added a sentence to the layoff statement language that capped the number of layoffs. The number contained in that sentence was 61. In offering that number, the County concluded that 61 layoffs were necessary in the Sheriff's Department for it (i.e. the County) to meet its 2012 budget. The record indicates that the County reached that number (i.e. 61) as follows: it concluded that based on the concessions agreed to by the Association, the County could reduce the revised number of 117 layoffs by 27. In addition, the County's Finance Committee had restored 29 deputy positions since the County Executive's budget was initially released. Putting these numbers together, the County concluded that the total number of

layoffs necessary, should the County not realize any further savings from retirements, was 61. Both sides understood that this number could be reduced if deputies took advantage of the retirement window.

After the County made the offer referenced above, the Association accepted it. The parties then finalized the language. Both sides then took the tentative agreement back for ratification. The Association ratified on November 6, 2011. The Milwaukee County Board of Supervisors ratified on November 16, 2011.

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On December 9, 2011, the Association filed the following grievance:

Sheriff Clarke has indicated that he will layoff 61 deputies. The Director of Human Resources has produced a list of the names and addresses of the employees who should be laid off that is not accurate. The list of employees to be laid off does not comply with section 3.30 of the collective bargaining agreement or the Milwaukee County General Ordinances. I have discussed this issue with Insp. Richard Schmidt. I informed him we were going to file a grievance if we could otherwise not correct the list. They have indicated that they will not correct the list. The list of 61 deputies does not comply with the order of layoff as contained in 3.30 and MCGO.

Per the parties' collective bargaining agreement, the grievance was appealed to arbitration. As noted in the introductory paragraph of this Award, the parties asked the arbitrator to issue an expedited Award by January 31, 2012.

...

The record indicates that 30 deputies retired from the Sheriff's Department in 2011. Twenty of them retired between January and October. Ten of them retired in November and December.

...

At the hearing, the parties stipulated to the following matters:

- 1) The grievance arbitration between Milwaukee County and the MDSA presents two issues for the arbitrator to decide: (1) the total number of layoffs; and (2) the correct members to be laid off. The parties generally refer to these two issues as the "amount issue" and the "who issue". The parties agree that the MDSA has preserved the "who issue" before this arbitrator. The parties further agree that this arbitrator shall initially decide the "amount issue", deferring the "who issue" to a later date.

2) The parties agree to hold either 3 or 2 potential layoffs in abeyance until December 31, 2012. Milwaukee County believes that it is limited to 51 total layoffs of MDSA members. The MDSA believes that Milwaukee County is limited to 31 total layoffs. If this arbitrator determines that Milwaukee County's position on the "amount issue" is correct, Milwaukee County will be limited to 48 total layoffs of MDSA members in 2012. If the MDSA is successful, at most 29 members could be laid off in 2012. As a result of this agreement, this arbitrator is ultimately deciding whether Milwaukee County is limited to 48 or 29 layoffs.

Association's brief, page 6

### DISCUSSION

I'm first going to address what issue is going to be resolved herein. The County maintains that the Association expanded the subject matter identified in the grievance at the hearing. It asserts in this regard that the Association's grievance only addressed the selection process (i.e. who was to be laid off) and did not address the number of employees to be laid off. Even if that's the case, and the Association's grievance did not address the number of employees to be laid off, that changed at the hearing. The following shows this. Before the hearing started, the parties stipulated to some matters. The stipulations were identified in the Association's brief (page 6). Stipulation #1 provides as follows:

1) The grievance arbitration between Milwaukee County and the MDSA presents two issues for the arbitrator to decide: (1) the total number of layoffs; and (2) the correct members to be laid off. The parties generally refer to these two issues as the "amount issue" and the "who issue". The parties agree that the MDSA has preserved the "who issue" before this arbitrator. The parties further agree that this arbitrator shall initially decide the "amount issue", deferring the "who issue" to a later date.

I read this stipulation as expressly asking me to resolve the "amount issue" (meaning the total number of layoffs). That being so, that's the matter I'm going to address herein. That's also why I did not adopt either side's wording of the issue and worded the issue as I did (to address the total number of layoffs).

As just noted, this is a layoff case. Here, there's no dispute that the County has the right under the parties' 2009-2012 collective bargaining agreement to lay off members of the bargaining unit. Instead, as previously noted, the issue herein is how many deputies can be laid off by the County. As the Association sees it, the County is attempting to lay off more deputies than what Section 3.30(2) of the collective bargaining agreement calls for. The County puts the number of employees to be laid off at 48, while the Association maintains the number should be 29. Based on the rationale which follows, I find that the County's proposed



number of layoffs (i.e. 48) comports with Sec. 3.30(2) of the collective bargaining agreement, while the Association's number (i.e. 29) does not.

The language being interpreted here is brand new contract language. It was just agreed upon about two months ago.

The parties have differing views about the meaning of the last sentence in Section 3.30(2). That sentence provides thus:

Milwaukee County further agrees that for every MDSA member who retires in 2011, Milwaukee County will guarantee one less layoff of MDSA members.

The Association reads the phrase "who retires in 2011" to cover the entire calendar year. Thus, the Association starts the clock, so to speak, on January 1, 2011, so that any retirement that occurred in 2011 must reduce the number of potential layoffs. The County disagrees. Its position is that only retirements that occurred pursuant to the retirement window are to be used to offset the maximum number of layoffs. According to the County, there should be no retroactive counting of retirements (meaning those retirements that occurred between January and October, 2011 are not to be used to offset the maximum number of layoffs).

The Association's interpretation of the last sentence of Sec. 3.30(2) to cover the entire calendar year has a simpleness and a straightforwardness about it that is, on its face, appealing. When I first read that sentence before the hearing started, my initial inference was that the phrase "who retires in 2011" covered all of calendar year 2011. After all, if the parties had intended to cover a time period that was less than the entire year, they could have said so. They did not, so the year must be the entire year.

Then the hearing started and for the next six hours, I heard detailed testimony about the parties' bargaining history that resulted in the parties' 2009-2012 collective bargaining agreement. That bargaining history illustrated the old adage that, like so many things in life, language that seems simple can sometimes be considerably more complex. Such is the case here. The reason I commented on the hearing at the beginning of this paragraph is to emphasize that the parties litigated a bargaining history case. That being so, I can't decide this case - as the Association essentially proposes - by just looking at the last sentence of Section 3.30(2) in and of itself and ignore the bargaining history. I'd be remiss as an arbitrator if I found, based on just my initial inference already noted, that the last sentence of Section 3.30(2) was clear and unambiguous in providing that all deputy retirements that occurred in calendar year 2011 were to be used to offset the maximum number of layoffs referenced in the first sentence of that section. Obviously, I still need to address the Employer's conflicting contention that only prospective or future retirements that occurred pursuant to the retirement window were to be offset against the maximum number of layoffs. Consequently, I'm going to review the parties' bargaining history to help me determine the proper interpretation of the last sentence of Section 3.30(2).

The parties' bargaining history conclusively establishes that the parties' intent was that the prospective or future deputy retirements that occurred pursuant to the retirement window were the only retirements to be offset against the maximum number of layoffs. Here's why. The County introduced the original layoff clause and the retirement window in the same proposal and consistently linked the two together during negotiations with the Association. Further, Section 3.30(2) did not contain a retroactivity provision. In fact, all of the proposals the County submitted to the Association were forward looking/prospective and the last sentence in Section 3.30(2) must be read in the same manner. Thus, the only retirements available to offset the maximum number of layoffs are those individuals who retired pursuant to the retirement window in November and December, 2011.

In my view, this conclusion is buttressed by the following points. First, the negotiations which ultimately resulted in the parties' 2009-2012 collective bargaining agreement were driven by the need to reduce the 2012 budget for the Sheriff's Department. Both sides were well aware of the County's tenuous financial condition and budgetary constraints. The County's 2012 budget was already in draft form by October, 2011, and it included the layoff of 133 deputies. When that budget was proposed, it already took into account the retirements that had occurred thus far in the Sheriff's Department through October, 2011. The record indicates that 20 deputies retired between January and October, 2011. The cost savings from their retirements (i.e. no longer being on the payroll) had already been factored into the proposed 2012 budget. What the County sought in negotiating a new contract was savings from additional retirements in 2011 and cost reductions from personnel costs for 2012. To that end, the negotiations started with the County presenting a laundry list of potential wage and benefits cuts to help balance the 2012 budget. The Association ultimately agreed to many of the concessions sought by the County. I need not identify those concessions here. When considered in that context, the County's position that the parties intended for only prospective/future retirements to be counted against the layoff maximum is consistent with the overall purpose of bargaining. Conversely, it is inconsistent with the negotiations where the parties were counting every dollar in order to save positions, to add back the 20 positions for the deputies who retired between January and October, 2011. Were I to accept the logic of the Association's position, I would have to find that the County first meticulously calculated the number of layoffs necessary by looking at the dollar for dollar savings in the tentative agreement and the Finance Committee's reinstatement of positions to determine the required layoffs, but then simply handed back 20 positions to the Association at the end of bargaining without discussion or receiving any additional concessions from the Association. In my view, that makes little sense given the hard bargaining that had just occurred. Additionally, if it was the County's intent to add two million dollars in costs back into the budget by allowing the 20 employees who retired between January and October to be offset against the 61 maximum layoffs, then there certainly would have been discussion to that effect. There was not such a discussion because that wasn't the Employer's intent.

Having reviewed the parties' bargaining history, the focus now turns back to the pertinent contract language. That language is the retirement window and subsection (2) of the layoff clause.

The retirement window is found in Section 3.21(10). That section provides for a retirement window for employees running from November 1, 2011 through the end of 2011. Under this language, an employee who didn't meet either the years or age requirement for retirement would be credited with up to 5 more years of age, for retirement purposes, so that the employee could qualify for retirement immediately. The window closed at the end of December, 2011. The record indicates that the reason the window closed at that time was because the Employer's goal (in agreeing to the window) was to reduce the number of employees before the start of the next fiscal year. The window was an attempt to encourage as many employees as possible to retire before year's end.

The cap on the number of employees who could be laid off is found in the first sentence of Section 3.30(2). That sentence provides that the County will lay off no more than 61 bargaining unit positions during the time period of December 1, 2011 through December 31, 2012. The plain meaning of that sentence is that the County is limited to a maximum of 61 layoffs for the time period just referenced. Said another way, the maximum number of employees who could conceivably be laid off is capped at 61. The last sentence in Section 3.30(2) is the one that contains the phrase "who retires in 2011". That sentence is inextricably linked to the retirement window referenced in the preceding paragraph. As just noted, the retirement window was only for the months of November and December, 2011. When the retirement window language is juxtaposed with the last sentence of Section 3.30(2), and particularly the phrase "who retires in 2011", it means that the only retirements which count are the ones which occurred during the November and December window period. In other words, it is just those retirements (i.e. the November and December retirements) that can be used to offset the maximum number of layoffs.

Based on the foregoing, I find that it would be a circumvention of the bargaining process to give the last sentence of Section 3.30(2) the meaning the Association gives it so that it covers all of calendar year 2011. Instead, when that language is considered in the context of the parties' bargaining history, and read in conjunction with Section 3.21(10), it only covers the retirements which occurred during the November and December window period referenced in Section 3.21(10). Thus, the 20 deputy retirements that occurred between January and October, 2011 do not count in determining the maximum number of layoffs. It follows from this finding that the County has the contractual right to lay off 48 deputies.

Those arguments not addressed in my discussion were considered, but were deemed unnecessary to decide this matter.

In light of the above, it is my

AWARD

That if the County lays off 48 deputies from the Sheriff's Department as contemplated, that action will not violate Section 3.30(2) of the parties' collective bargaining agreement. Therefore, the grievance is denied.

Dated at Madison, Wisconsin, this 31st day of January, 2012.

Raleigh Jones /s/

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Raleigh Jones, Arbitrator