

BEFORE THE ARBITRATOR

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

Case ID: 161.0016
Case Type: MA

AWARD NO. 7935

Appearances:

Graham P. Wiemer for the Union.

James M. Carroll for the County.

ARBITRATION AWARD

Pursuant to the terms of the parties' collective bargaining agreement, I was assigned by the Wisconsin Employment Relations Commission to serve as arbitrator of a retirement grievance. Hearing was held in Milwaukee, Wisconsin, on November 4, 2016. The proceedings were not transcribed or otherwise recorded. Both parties filed written argument by December 7, 2016.

ISSUES

The parties were unable to agree upon a statement of the issues to be resolved by this Award but did agree I could frame the issues after considering their respective positions. Having done so, I frame the issues as follows:

1. Does the grievant have a contractual right to retire now under the Rule of 75?
2. If so, what remedy is appropriate?

DISCUSSION

The grievance before me contests the County's determination that the grievant was not eligible to retire "under the rule of 75" in September 2016. The grievance asserts the County's action "IS IN VIOLATION OF STATE LAWS, COUNTY ORDINANCE AND COLLECTIVE BARGAINING AGREEMENT." The grievance more specifically states that the County's conduct violates Section 3.21 of the collective bargaining agreement, as well as Milwaukee County General Ordinance ch. 201, § 11.4, and § 40.30, Stat.

Section 3.21(9) of the parties' collective bargaining agreement provides:

Employees who become Deputy Sheriff 1, Deputy Sheriff 1 (Bilingual)(Spanish), and Deputy Sheriff Sergeants prior to January 1, 1994, shall be eligible to retire without penalty when the total of their age and years of creditable pension service equals or exceeds seventy-five (75).

Although the grievant did not become a Deputy Sheriff until after January 1, 1994, the Union contends that his pre-1994 employment with the City of Milwaukee provides sufficient reciprocal additional creditable service to reach the age/service threshold of 75.

The Union first argues in its initial brief that "WISCONSIN STATUTE 40.30 REQUIRES MILWAUKEE COUNTY TO ALLOW DEPUTY WATKINS TO RETIRE." However, the Union has not identified a contractual provision that incorporates Wisconsin Statutes such as § 40.30 into the bargaining agreement. As my jurisdiction is limited to interpreting the contract, I do not have jurisdiction to determine whatever rights the grievant may have under § 40.30, Stats. Therefore, I reject this argument.

Next the Union argues "MILWAUKEE COUNTY GENERAL ORDINANCE 201.24(11.4) REQUIRES MILWAUKEE COUNTY TO ALLOW DEPUTY WATKINS TO RETIRE." Section 6.01 of the contract does generally incorporate certain County ordinances into the collective bargaining agreement and thus could provide me contractual jurisdiction to interpret Ordinance 201.24(11.4). However, the first sentence of contractual Section 6.01 specifically provides:

The grievance procedure shall not be used to change existing wage schedules, hours of work, working conditions, fringe benefits, and position classifications established by ordinance and rules which are matters processed under other existing procedures.

This specific contract language overrides the more general provisions of Section 6.01 and persuades me that issues as to ordinance-established fringe benefits (such as retirement) are

not to be resolved through the grievance arbitration process but, rather, as the grievant is doing, through the appeal processes provide by the relevant ordinance. Therefore, I am contractually barred from interpreting Ordinance 201.24 (11.4).

Lastly, the Union argues that although Section 3.21 is silent as to reciprocity, there is a past practice sufficient to create the reciprocity retirement right sought here. In that regard, the Union cites a practice of providing vacation benefits to the grievant based on a calculation that includes his City of Milwaukee service. However, as the County points out, no evidence of a retirement practice was presented,¹ and a practice as to the vacation benefits does not persuasively translate into a retirement practice.² Thus, this Union argument must also be rejected.

AWARD

Given all of the foregoing, I conclude the grievant does not have a contractual right to retire now under the Rule of 75 and the grievance is dismissed.

Dated at Madison, Wisconsin, this 10th day of January 2017.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter G. Davis, Arbitrator

¹ A County employee did initially tell the grievant that he was eligible for Rule of 75 retirement. While I can certainly sympathize with the grievant's reaction when he was subsequently told he was not eligible, the County correctly argues that the initial error does not create a practice.

² Because no relevant practice exists, I need not determine whether any such practice would be sufficient to fill the existing Section 3.21 contractual silence as to reciprocity.