

BEFORE THE ARBITRATOR

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In the Matter of a Dispute Between  
WINNEBAGO COUNTY DEPUTIES' ASSOCIATION  
and  
WINNEBAGO COUNTY

Case ID: 528.0006

Case Type: MA

AWARD NO. 7948

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**Appearances:**

Benjamin Barth and Doug Nelson, Labor Consultants, The Labor Association of Wisconsin, Inc., 11430 W. Bluemound Road, Suite 104, Wauwatosa WI 53226, appearing on behalf of the Association.

Michael J. Collard, Director of Human Resources, 112 Otter Avenue, P.O. Box 2808, Oshkosh WI 54903, appearing on behalf of the County.

**ARBITRATION AWARD**

The Winnebago County Deputies' Association and Winnebago County jointly requested that the Wisconsin Employment Relations Commission assign me to serve as arbitrator to resolve an "extra time" grievance. The Commission honored that joint request. Hearing was held in Oshkosh, Wisconsin on December 12, 2017. The hearing was not transcribed or otherwise recorded. The parties filed written argument by February 14, 2018.

**ISSUE**

The parties were unable to agree on a statement of the issue to be resolved but did authorize me to frame the issue after giving due consideration to their respective positions. Having done so, I conclude the issue is best stated as:

Did the County violate the contract by changing "extra time" procedures and, if so, what is the appropriate remedy?

## DISCUSSION

The parties' 2016-2018 contract does not contain any language specifying how overtime "extra time" vacancies will be filled. The contract does include a management rights clause that states:

Except to the extent expressly abridged by a specific provision of this Agreement, the County reserves and retains, solely and exclusively, all its Common Law, statutory and inherent rights to manage its own affairs, as such rights existed prior to the execution of this or any other previous Agreement with the Association.

The contract also contains a seniority provision which states in pertinent part:

Seniority . . . shall be used to determine the pay grade, the number of vacation days an employee is eligible for, vacation selection and the status of the employee for layoff and recall purposes.

During bargaining sessions leading to the creation of the 2016-2018 contract, the Association made a partially seniority based proposal to modify the manner in which overtime vacancies were filled in the Patrol Division. The County did not agree to the Association proposal and told the Association that it wanted to retain its existing flexibility as to how such vacancies were filled.

After the 2016-2018 contract was ratified, the County advised employees represented by the Association that it would be implementing (on a "trial basis") a change in Patrol Division overtime procedures that paralleled the proposal made by the Association during bargaining. The County subsequently ended that change and implemented new procedures which, in turn, prompted the filing of the instant grievance.

The Association contends that the 2016-2018 contract contains an implicit provision which was violated by the County's most recent change in overtime procedures. The Association acknowledges that creation of an implicit provision requires mutual agreement or acceptance by both parties to the contract. As is evidenced by the County's rejection of the Association's overtime proposal and assertion of an ongoing interest in retaining flexibility, an agreement on overtime procedures that the County is contractually obligated to follow is not present here.

The Association also asserts that the County was obligated to bargain with the Association before making a change in overtime procedures. However, the parties did bargain over this topic when creating the 2016-2018 contract and the County asserted a right to make changes in existing procedures if it choose to do so. Indeed, the County did make a change shortly after the 2016-2018 contract was ratified. Because this change paralleled the Association's rejected contract proposal, it is understandable that the Association did not object. It is also understandable that the Association hoped/believed that this new change would remain in place for the duration of the 2016-2018 contract. But the record does not support a conclusion

that the County ever made such a commitment before or after contract ratification nor that the County had a contractual obligation to bargain before making any changes.

**AWARD**

Given the foregoing, I conclude the County did not violate the contract by changing “extra time” procedures.

Dated at Madison, Wisconsin, this 10th day of April, 2018.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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Peter G. Davis, Arbitrator