

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 ID: 161.0044  
Award No. 7964

(Grievance No. 61063 Brandy Lester Grievance)

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**Appearances:**

Graham Wiemer, MacGillis Wiemer, Attorneys at Law, 11040 W. Bluemound Road, Suite 100, Milwaukee, Wisconsin, appearing on behalf of Milwaukee Deputy Sheriffs' Association.

Melinda Lawrence, Assistant Corporation Counsel, Milwaukee County, 901 North Ninth Street, Room 303, Milwaukee, Wisconsin, appearing on behalf of Milwaukee County.

**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, were parties to a collective bargaining agreement which provided for final and binding arbitration of all disputes arising thereunder. In October, 2018, the Association made a request, with the concurrence of the County, that the Wisconsin Employment Relations Commission designate a member of its staff to hear and decide a grievance which the parties denominated as Grievance No. 61063. That grievance also came to be known as the Brandy Lester grievance. The undersigned was so designated. No hearing has been held in this case. In February 2020, the Association asked the arbitrator to set the matter for hearing and the County objected to that request. On June 9, 2020, the parties filed briefs. Based upon the arguments of the parties and their submissions, the undersigned makes and issues the following Award.

**ISSUE**

The undersigned frames the issue as follows:

Should the County's procedural objection to hearing this grievance on timeliness grounds be sustained?

### **PERTINENT CONTRACT PROVISIONS**

The parties' 2014 collective bargaining agreement (hereinafter CBA) contained the following pertinent provisions:

#### **Section 5.01 – Grievance Procedure**

(1) APPLICATION: . . . Any disputes that arise between the Association and the County including employee grievances shall be resolved under this section.

. . . .

(8) Grievances designated for arbitration shall be appealed to the Wisconsin Employment Relations Commission within thirty (30) calendar days of the date of the written response from Step 3.

### **BACKGROUND**

The County operates a Sheriff's Department. The Association is the exclusive bargaining representative for a bargaining unit which includes Deputy Sheriffs and Deputy Sheriff Sergeants in the Milwaukee County Sheriff's Department.

As will be noted below, in 2018 the Association filed a grievance that came to be known as the Brandy Lester grievance. The substantive merits of the grievance are not going to be resolved herein. Instead, the question to be resolved herein is whether an arbitration hearing on that grievance will be scheduled.

. . .

Sometime in 2017 (the exact date is not specified in the record), Fred Gladney and Brandy Lester filed grievances concerning mandatory overtime each had been forced to work in July 2017. Each contended that their forced overtime violated the CBA. Gladney's grievance was captioned as Grievance No. 61083 and Lester's was captioned as Grievance No, 61063. Collectively, these two grievances came to be known as the Gladney/Lester grievances. The County provided a Step 3 response to both grievances on July 16, 2018. The Association appealed both grievances to arbitration on October 29, 2018. On December 6, 2018, the County's counsel asked for time to discuss the grievances with the new sheriff. In February 2019, the County's new counsel, Melinda Lawrence, proposed to the Association's counsel that the Gladney/Lester grievances be set for

hearing. On April 3, 2019, the Association's counsel asked the arbitrator for some proposed hearing dates. Within days, the parties had accepted a date from the arbitrator and the County suggested using that date for the Gladney /Lester hearing. Instead, the Association proposed that the agreed upon date be used for other cases, which is what happened. With respect to the Gladney/Lester grievances, the Association's counsel stated he would "be in touch." On May 1, 2019, the County's counsel sent the Association's counsel an email inquiring about the status of the Gladney /Lester grievances. There was no reply to same. On May 28, 2019, the County's counsel again sent the Association's counsel an email inquiring about the status of the matters. There was no reply to same. On August 12, 2019, the arbitrator sent an email to the Association's counsel which provided in pertinent part:

I have been directed to close out 3 old – but still pending – grievances. They are the following cases:

...

3. Grievance No. 61083 and 61063 – Gladney and Lester grievances. It was appealed to the WERC on October 29, 2018. It has never been scheduled for hearing. It is WERC Case No. 161.0044.

Can these three files be closed?

There was no reply to this above email. Six months later, on February 11, 2020, the arbitrator sent another email to the Association's counsel which asked if the grievances referenced in his August 12, 2019 email could be closed. On February 14, 2020, the Association's counsel responded that with regard to this grievance (i.e. Grievance No. 61063 – Lester grievance) it "needs to be set for hearing; MDSA, however, only intends to move forward with the Lester grievance, not the Gladney grievance". On March 9, 2020, the County objected to the Association's request to reactivate the Lester grievance and schedule a hearing "on procedural grounds of considerable delay".

### **DISCUSSION**

At issue here is whether this grievance - which was appealed to arbitration in October, 2018 - should be scheduled for hearing or dismissed. Based on the following rationale, I find that the latter (i.e. dismissal) is appropriate under the circumstances.

I'm going to start by reviewing the following background. That background will give some context to the discussion which follows.

This grievance was appealed to arbitration over a year and a half ago. Although it came close to being scheduled for hearing in July, 2019, the agreed upon hearing date was used for other cases instead. Thus, it has never officially been scheduled for hearing. Instead, it has been dormant

since then. In August of 2019, the arbitrator sent an email to the Association's counsel asking if the matter could be dismissed. There was no response from the Association to that email. Six months later, the arbitrator sent a second status email. The Association responded to that email asking that the Lester case be rescheduled for hearing. The County opposed the Association's request to reactivate the Lester grievance.

While this arbitrator has had other cases with the instant parties where a dormant grievance was unilaterally reactivated by the Association, in those cases the County did not object to that happening. Here, though, it does.

I find that the County's objection to reactivating this old grievance has a sound contractual basis. It is this. Section 5.01 (8) of the parties' CBA provides that "Grievances designated for arbitration shall be appealed to the Wisconsin Employment Relations Commission within thirty (30) calendar days of the date of the written response from Step 3." In this case, the written response from Step 3 (which the Association included in the paperwork which it submitted to the WERC) was dated July 16, 2018. Pursuant to the language just quoted, the Association had until August 17, 2018 to file the appeal with the WERC. Instead, the Association filed the appeal on October 28, 2018, over two months later. That made the appeal to arbitration untimely. While sometimes fault for not moving a grievance along in the contractual grievance procedure can be apportioned to both sides, that is not the situation here. In this case, it is the Association that bears sole responsibility for the delay in filing for arbitration. Obviously, that delay is problematic for the Association because grievances are supposed to be processed in a timely fashion. When they are not processed in a timely fashion, they are commonly dismissed as untimely.

Here, though, there is no provision in the contractual grievance procedure that sets a penalty for an untimely appeal to arbitration. Nonetheless, I find that in this case, dismissal of the grievance is warranted. Here's why. Over the last two decades, I've heard and decided dozens of cases with the instant parties. In the overwhelming majority of those cases, I issued a decision on the merits (as opposed to dismissing it on procedural grounds). One case where I did the latter though was Grievance No. 51467 (which the parties had identified as the "Back Vacation Time Grievance"). In that case, the issue was whether the grievance was timely filed. I found it was not. After reaching that conclusion, I then opined:

While the contract does not specifically say that untimely grievances are to be dismissed, I find that in this case - where the instant grievance was filed almost two years late - dismissal of the grievance is warranted.

WERC Arbitration Award No. 7828, page 10 (October 2, 2012).

Consistent with that precedent, I reach the same conclusion here. The grievance is therefore dismissed.

In light of the above, it is my

**AWARD**

The County's procedural objection to hearing this grievance on timeliness grounds is sustained. The grievance is therefore dismissed.

Issued at Madison, Wisconsin, this 30<sup>th</sup> day of July, 2020.

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Raleigh Jones, Arbitrator