

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

MILWAUKEE DEPUTY SHERIFFS' ASSOCIATION

and

COUNTY OF MILWAUKEE

Case ID: 161.0061

Case Type: MA

AWARD NO. 7968

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**Appearances:**

Attorney Graham P. Wiemer, for the Association.

Attorney Melinda Lawrence, for the County.

**ARBITRATION AWARD**

On February 17, 2020, the Milwaukee Deputy Sheriffs' Association filed a request with the Wisconsin Employment Relations Commission asking that a member of the Commission's staff be assigned to serve as a grievance arbitrator as to a dispute between the Association and the County of Milwaukee. I was so assigned.

On March 9, 2020, the County filed a position statement asserting that the grievance in question was not procedurally or substantively arbitrable. The Association filed response on November 11, 2020.

As to the substantive arbitrability issue, the County contends the grievance is not substantively arbitrable because the wage rate dispute does not require interpretation of a specific contract provision but instead involves interpretation of a County rule. The Association counters by asserting that the bargaining agreement allows disputes as to rules to be resolved by the grievance arbitration process.

Where, as here, there is a dispute as to whether the parties to a collective bargaining agreement have agreed that grievance can substantively proceed to arbitration, the threshold legal

analysis "is limited to a determination whether there is a construction of the arbitration clause that would cover the grievance on its face, and whether any other provision of the contract specifically excludes it." *See School District No. 10 v. Jefferson Education Association*, 78 Wis. 2d 94, 111 (1977).

Section 5.01(1) of the contract states “. . . matters involving the interpretation, application or enforcement of rules, regulations or the terms of this Agreement shall constitute a grievance.” There is no other provision of the contract that specifically excludes the interpretation of a rule from the scope of an arbitration proceeding. Thus, applying the Jefferson test, I conclude the grievance is substantively arbitrable.

As to the procedural arbitrability issue, the County contends that the grievance was not timely filed. The applicable collective bargaining agreement generally provides that grievances are to be filed within 60 days of the allegedly improper action and instant wage rate grievance was filed almost a year after the allegedly improper wage rate was established for the grievant. The Association argues that the wage rate represents a continuing violation inasmuch as it continues to impact the grievant each day he works.

Having considered the matter, I am persuaded that the wage rate issue does constitute a continuing potential contractual violation and thus I conclude the grievance is procedurally arbitrable. However, in recognition of the contractually established 60 day period for filing and the resultant general intent of the parties that issues be promptly raised by a grievance, I further conclude that any remedy will commence no earlier than the 60<sup>th</sup> day prior to the date the grievance was filed.

Issued at the City of Madison, Wisconsin, this 22<sup>nd</sup> day of January, 2021.

## **WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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Peter G. Davis, Arbitrator