

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between  
**WAUKESHA DEPUTY SHERIFFS LABOR UNION**  
and  
**WAUKESHA COUNTY**

Case ID: 488.0006

Award No. 7969

(Alyssa Moose Grievance)

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**Appearances:**

Kevin Todt and Christopher MacGillis, Attorneys at Law, MacGillis Wiemer, 11040 W. Bluemound Road, Suite 100, Milwaukee, Wisconsin, appearing on behalf of the Union.

Dan Vliet and Saveon Grenell, Attorneys at Law, Buelow Vetter Buikema Olson & Vliet, 20855 Watertown Road, Suite 200, Waukesha, Wisconsin, appearing on behalf of the County.

**ARBITRATION AWARD**

Waukesha Deputy Sheriffs Labor Union, hereinafter referred to as the Union, and Waukesha 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. The Union made a request, with the concurrence of the County, that the Wisconsin Employment Relations Commission designate a member of its staff to chair a tripartite arbitration panel to decide the Alyssa Moose grievance. The undersigned was so designated along with Union-designated arbitrator Jason Perkiser and County-designated arbitrator Erik Weidig. A hearing was held via Zoom on November 18, 2020. The hearing was transcribed. The parties filed briefs and reply briefs, whereupon the record was closed on February 5, 2021. Having considered the evidence, the arguments of the parties and the record as a whole, the undersigned issues the following Award.

**ISSUES**

The parties did not stipulate to the issues to be decided. The Union frames the issues as follows:

1. Whether the County's denial of the step increase violated Wis. Stat. § 59.26? If so, what remedy is appropriate?
2. Whether the County's denial of Deputy Moose's step increase was reasonable under County policies and the CBA? If so, what is the proper remedy?

The County frames the issue as follows:

Did the County violate the parties' CBA when it delayed the merit pay increase of Deputy Moose and if so, what is the appropriate remedy?

I hereby adopt the County's proposed issue as the issue that will be decided herein.

**PERTINENT CONTRACT PROVISIONS**

The collective bargaining agreement (hereinafter CBA) applicable here runs from January 1, 2018 to December 31, 2019. It contained the following pertinent provisions:

1.05 Existing Practices In the interpretation of this Agreement nothing shall be construed as an existing practice unless it meets each of the following tests. It must be:

- A. Long continued.
- B. Certain and uniform.
- C. Consistently followed.
- D. Generally known by the parties hereto.
- E. Must not be in opposition to the terms and conditions of this contract.

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**ARTICLE VII  
WAGES, COMPENSATION, HOLIDAYS**

7.01 All wage rates shall be biweekly and based upon the regularly scheduled two (2) week work period. Wages rates for the classifications and the time intervals for merit increases between steps are set forth in the wage schedule.

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The wage schedules for the years 2018 and 2019 are found at the end of the CBA but are not reproduced here. Each schedule contains a 10-step wage progression for the position of deputy sheriff. These steps are denominated as Step 1, Step 2, etc. Underneath each step are three sets of numbers. Those numbers identify the hourly, biweekly and monthly pay that corresponds to each step. The following language is found at the bottom of each wage schedule:

Employees must work twelve (12) months in each step before being eligible for a merit increase to the next step except Deputy Sheriff time between Steps 1, 2, and 3 only is six (6) months.

### **BACKGROUND**

The County operates a sheriff's department for the public safety of its citizens. The Union is the bargaining representative for the County's law enforcement personnel.

This case involves the denial of a merit pay step increase on the salary schedule. As will be noted in more detail later, the wage schedule contains a 10-step wage progression for the position of deputy sheriff, which is the position involved here. Employees do not automatically get a step increase each year. Instead, the step increase is tied to merit and is specifically designated as a "merit increase."

Prior to 2019, WPPA was the bargaining representative for the law enforcement bargaining unit. In that year, the Waukesha Deputy Sheriffs Labor Union became the bargaining representative. The Union and the County are now negotiating their first CBA. In the meantime, the Union is enforcing the prior CBA which was between WPPA and the County.

Additional background information dealing with the contract language involved here, the relevant bargaining history, and past instances of deputies who had a merit increase delayed and/or denied will be addressed in the DISCUSSION.

### **FACTS**

Deputy Alyssa Moose has been working with the County as a deputy sheriff since May 2015. She is a road deputy. She has not been disciplined by the Department.

The facts are straightforward. Moose was denied a merit increase on May 18, 2020 as part of the evaluation process. This denial was based on various performance related concerns, none of which were disciplinary in nature. She subsequently filed a grievance challenging that action which was appealed to arbitration.

Additional facts dealing with the denial of Moose's merit increase will be addressed in the DISCUSSION.

## DISCUSSION

At issue here is whether the County violated the CBA by denying Deputy Moose's 2020 merit pay increase. I answer that question in the negative, meaning I find no contract violation. My decision is structured as follows. In Part 1, I will address the relevant contract language, the relevant bargaining history and past instances of deputies having a merit increase delayed and/or denied. In Part 2, I will address the denial of Moose's merit increase. Finally, in Part 3, I will address the Union's claim that the County violated Wis. Stat. § 59.26 by its actions here.

### Part 1

My analysis begins with a review of the contract language relevant to this dispute. It is found in Section 7.01 and the wage schedule. For the purpose of context, it is noted that the wage schedule found at the end of the CBA contains a 10-step wage progression for the position of deputy sheriff. Wage progression steps are routinely found in public sector CBAs. Where they do exist, they generally fall into one of two broad categories: those where the step increase is automatic each year and those where the step increase is not automatic. The undersigned remembers seeing numerous pay schedules in CBAs, particularly pre-Act 10, that made it clear that employees move automatically from one step to another each year. Teacher pay schedules readily come to mind. That is not the situation here; there is nothing automatic about employees getting a step increase each year under this CBA. Here's why. The sentence at the bottom of the wage schedule makes this clear when it says "employees must work twelve (12) months in each step before being **eligible** for a ...increase." *Emphasis added*. Thus, an employee is "eligible" for a step increase each year, but it is not an automatic entitlement. Said another way, until an employee reaches the top of the wage schedule, they are **eligible** for a step increase each year but nothing more. They are not entitled to it.

Next, when I was quoting the contract language involved here, I intentionally omitted a single word from the quoted language. The word which I omitted is the word "merit." That word is used in the sentence at the bottom of the wage schedule, as well as in Section 7.01. Both times, the word which follows "merit" is the word "increase" or the plural "increases". When the two words "merit" and "increase" are read together, it buttresses the conclusion reached above that the step increases found in the wage schedule are not automatic each year. Instead, as just noted, the step increases are based on "merit."

Having interpreted the relevant contract language, the undersigned has decided to offer this observation about it: employees should not have an expectation that they will automatically get a merit increase. That is not what the contract language says. Even if an employee has gotten a merit increase in the past, there is no assurance under this contract language that they will get it in the future. Simply put, they must earn the merit increase.

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The relevant bargaining history with WPPA buttresses this inclusion. In 2002, WPPA proposed deleting the word "merit" from Section 7.01 so that the step increases on the wage

schedule became automatic. That proposed change was not accepted by the County, so the existing contract language continued. That contract language - wherein step increases were not automatic but were tied to "merit" - has continued to be in the CBA to the present day (almost 20 years later).

Additionally, the phrase "merit increase" has been in what is now Section 7.01 since 1992. In the CBA prior to that, just the word "merit" was used in what is now Section 7.01. In the 2008-2010 CBA, the phrase "merit increase" was also added in a sentence at the bottom of each year's wage schedule.

The final bargaining history matter that is relevant here is that the Union herein, which became the certified bargaining representative in 2019, is now negotiating a successor agreement to the one involved here. In that bargaining, the Union made a proposal to eliminate the word "merit" from Section 7.01 and the wage schedule. In making this proposal, the Union's stated intent was that it wanted movement to the next step on the salary schedule to be automatic and not tied to merit. That proposal is obviously a change from the status quo. The fact that the Union wants to change the status quo establishes that the Union is well aware that right now, advancement from one step to another on the wage schedule is dependent on the County's determination of whether a merit step is warranted.

Another matter which is related to the parties' bargaining history concerns the grievance history related to past merit increase denials. The record shows that grievances were filed after a merit increase was delayed for Brost in 2000, for Moglia in 2018, and for Benande in 2019. In each of these three cases, a grievance was filed and processed, but the Union did not appeal the grievance to arbitration.

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Having reviewed the history of the contract language as well as the relevant bargaining history, the focus now turns back to the word "merit" which is used in both Section 7.01 and the wage schedule. That term is not defined anywhere in the CBA. That is not surprising, because deciding whether something has "merit" involves making an admittedly subjective determination. That being so, the question is who gets to make that admittedly subjective determination: is it the employee or the employer. It is the latter. Thus, the County gets to decide whether "merit" exists in any given situation or with one individual. If it was the employee that got to make that call (as opposed to the employer), the language would expressly say so, and it does not. Consequently, the County gets to decide if the employee qualifies for a "merit increase." The County traditionally makes that decision when it evaluates employees. The record shows that the Sheriff's Department uses an evaluative assessment to determine whether the employee deserves a merit increase based on the employee's performance in that evaluation year. It logically follows that since the County has the right to evaluate its employees, it also has the right to take action based on that evaluation. The "action" I just referenced in the previous sentence refers to determining whether a "merit increase" is or is not warranted.

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Given the numbers that I am going to review next, it can be surmised that most deputies qualify to get a merit increase each year until they reach the top of the wage schedule. Not all though. There have been exceptions. The focus now turns to an examination of the exceptions.

There are ten instances documented in the record where merit increases were denied and/or delayed. As the Union noted in their original brief, these ten instances occurred in two “batches.” The first “batch” occurred between the years 1997 to 2000. Five employees had their step increase delayed during that time frame. The second “batch” occurred in the years 2017 to 2019. Five employees had their step increase delayed during that time frame, too. When one looks at the years just referenced, one can’t help but notice that there is quite a lengthy gap between the two “batches.” That 17 year gap prompts me to ask this rhetorical question: was merit pay delayed or denied to any employees in that time period? Retired Human Resources Manager Jim Richter answered that question in the affirmative. He estimated that there were 10 to 20 County employees who had their merit pay denied and/or delayed each year during that time period. It can reasonably be inferred from Richter’s un rebutted testimony that some deputies were probably in this group of 10 to 20 County employees that had their merit pay denied and/or delayed each year during that 17 year period. The problem though is that there are no documents dealing with those denials and/or delays during that time period that are part of the instant record. Instead, the only instances documented in the record are the ten instances already mentioned which occurred in the two separate “batches.”<sup>1</sup>

The ten instances noted above will now be reviewed in more detail. I’m going to start with the first “batch” of denials. The record shows that Deputies Ward, Jaekl, Haren, Zuhke and Brost had their merit increases delayed during the time period of 1997 to 2000. According to the Union, those instances need not be considered by the arbitrator because the reason for their merit denials is “absent” the record. I find otherwise. Richter’s testimony established that all five had performance issues and four of the five were rated as “Needs Improvement” on their evaluation. Thus, these five employees all had their merit increase delayed for performance reasons.

The focus now turns to the second “batch” of denials. The record shows that Deputies House, Pavlovich, Stubbe, Moglia and Benande had their merit increases delayed between 2017 and 2019. The Union reviews their factual situations in detail and emphasized that each of them not only had performance issues, but also had disciplinary problems as well. From there, the Union contends that based on these five cases there is a “new” past practice of delaying merit increases only “in very narrow situations involving formal discipline or extraordinarily egregious performance issues.” In order for a past practice to constitute an implied term of the CBA, strong proof of its existence is required. I find that the Union’s claimed past practice mischaracterizes the facts because the record does not show that merit pay denial is always tied to discipline. For example, in the first “batch” of denials, discipline was not a factor in four of the five cases. That being so, the Union’s claimed past practice is overly broad because the record does not show that

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<sup>1</sup> In its reply brief, the County offered a plausible explanation for why there are not any instances of merit pay being delayed or denied in that 17 year time period. It is this: Human Resources Manager Gage averred that the County is unable to access records for that time period because of a change in record keeping systems. While that is unfortunate, it does offer a simple explanation for the absence of any records of delays in merit increases for deputies during that 17 year period.

merit pay denial is inherently tied to discipline. If anything, the record simply shows that the Department has a history of delaying or denying merit pay when a deputy receives an overall “Needs Improvement” rating on his or her evaluation. That’s because in most of the ten cases involved here, the employee received an overall evaluation rating of “Needs Improvement”. That demonstrates that it is poor performance (as determined by management) and not discipline that results in a delayed merit increase. Thus, in those situations documented in the record where a merit increase was denied, the underlying basis for each particular determination was tied to the overall performance of the employee and not one specific act of misconduct by the employee as claimed by the Union. That history of tying the merit increase to a satisfactory work performance is consistent with the language in Section 7.01 (where, as already noted, the Employer decides, as part of the evaluation process, whether a merit increase is warranted). It is also consistent with Section 2500 of the County’s Administrative Policies and Procedure Manual which expressly states that step increases are based on merit.

Ultimately, the Union has the burden of showing the existence of an implied past practice of actual discipline being necessary in order to delay merit pay. This CBA is unique in that the parties have contractually defined what is necessary to establish a past practice. I find that the Union did not establish that their alleged practice meets the contractual criteria for establishing an enforceable past practice.

## Part 2

In May, 2020, Moose had her yearly evaluation. She was rated overall as “Needs Improvement.” As a result of that rating, her merit increase was delayed 6 months.

The following information provides context for that decision.

At all times relevant here, the Department used an evaluation form wherein employees were rated in these four broad categories: General, Transactional Skills, Report/Forms Preparation, and Technical. In the General category, there were five subcategories. In the Transactional Skills category, there were five subcategories. In the Report/Forms Preparation category, there were four subcategories. In the Technical category, there were six subcategories. Employees were rated by the evaluator in all four categories and all 20 subcategories. The rating key which was used consisted of these ratings: U—Unsatisfactory; NI—Needs Improvement; S—Satisfactory; VG—Very Good; O—Outstanding. The evaluator then assigned the employee an overall rating. Underneath that chart, the following three questions were posed: “The previous evaluation’s specific focus was . . .”, “Action taken during the evaluation period included . . .”, and “The specific focus for the coming period is . . .”. After each question, the evaluator was supposed to provide a narrative response.

The following information pertains to Moose’s prior evaluations.

In her first year of employment, while still a probationary employee, Moose was evaluated four times. Each time, she was rated “Satisfactory” or higher in all 20 of the subcategories referenced on the evaluation form and given an overall rating of “Satisfactory”. In her fourth

evaluation as a probationary employee in the portion of the evaluation form where it posed the questions calling for a narrative response, the evaluator wrote the following for the first question: “Increase SIPA by 25% (Accomplished)” and “Apply for two patrol related schools (Not Accomplished).” At the end of her first year of employment in 2016, Moose was awarded a merit increase.

After her second year of employment, Moose had her yearly evaluation in 2017. This time she was rated as “Satisfactory” or higher in all 20 of the subcategories referenced on the evaluation form and was given an overall rating of “Satisfactory”. In the portion of the evaluation form where it posed the questions calling for a narrative response, the evaluator wrote the following for the first question: “Maintain SIPA levels (Accomplished)” and “Apply for two patrol related schools (Not Accomplished).” Moose was awarded a merit increase that year.

After her third year of employment, Moose had her yearly evaluation in 2018. This time she was rated as “Satisfactory” or higher in 19 of the subcategories referenced on the evaluation form. She was rated as “Needs Improvement” in the subcategory of “Initiative” which is in the Transactional Skills category. She was given an overall rating of “Satisfactory.” In the portion of the evaluation form where it posed the questions calling for narrative response, the evaluator wrote the following for the first question: “Maintain SIFA levels (Not Accomplished); Apply for two patrol related schools (Not Accomplished).” Moose was awarded a merit increase that year.

After her fourth year of employment, Moose had her yearly evaluation in 2019. This time, she was rated as “Satisfactory” in 18 of the subcategories referenced on the evaluation form. She was rated as “Needs Improvement” in two subcategories of the Transactional Skills category: “Initiative” and “Accepts Responsibility”. The evaluator also rated her as “Needs Improvement” in that category. Notwithstanding that rating, the evaluator gave Moose an overall rating of “Satisfactory.” In the portion of the evaluation form where it posed the questions calling for a narrative response, the evaluator wrote the following for the first question:

Increase SIFA levels by twenty percent (Not Accomplished); Apply for a community policing related school (Not Accomplished); Develop and Complete community policing initiative (Not Accomplished).

In the second question the evaluator wrote the following:

Deputy Moose’s SIFA results were mixed with a large increase in building checks but a decline in other categories. She did not apply for a community policing school and did not develop a community policing initiative.

The evaluator then wrote that Moose’s goal for the next year is:

Apply for a community policing school, conduct 175 traffic stops, maintain building check levels, [and] establish a community policing initiative.

Moose was awarded a merit increase that year.

After her fifth year of employment, Moose had her yearly evaluation in 2020. This time, she was rated as “Satisfactory” or better in 17 of the subcategories referenced in the evaluation form. She was rated as “Needs Improvement” in three subcategories of the Transactional Skills category: “Initiative”, “Judgment” and “Accepts Responsibility”. The evaluator also rated her as “Needs Improvement” in that category. The evaluator gave Moose an overall rating of “Needs Improvement”. In the portion of the evaluation form where it posed the questions calling for a narrative response, the evaluator wrote the following for the first question:

Apply for a community policing school (Not Accomplished); Conduct 175 traffic stops (Not Accomplished); Maintain building check levels (Accomplished); [and] Establish a community policing initiative (Accomplished).

In the second question, the evaluator wrote:

Deputy Moose started a neighborhood watch program with residents of the Village. She attends Advanced CIT training for those with dementia but did not apply for a community policing school. She failed to meet two of her four goals for the year.

The evaluator then wrote that Moose’s goals for the next year were:

Lead one traffic situation per month on shift. Apply to Child Passenger Safety Technician School if available. Increase SIFA by 20% from 2019 statistics listed above with a better balance of SIFA activities. The first working day of each month, Deputy Moose will continue to provide Village statistics to supervisor.

As part of Moose’s 2020 evaluation, the Department delayed her merit increase that year for six months.

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At issue here is whether that delayed merit increase was reasonable. Based on the following rationale, I find that it was.

Before I offer it though, I am going to address the following Union contentions.

First, the Union notes at the outset that Moose has never previously been denied a merit increase. That is true; previously she had gotten a merit increase each time she was eligible. As will be noted in more detail later, she had gotten a merit increase even in the last several years when she had not accomplished any of the goals that her supervisor had set for her. Building on that, the Union avers that since Moose had not completed her goals in the past, and had still gotten a merit increase, Moose thought she would get a merit increase in 2020 as she had previously. To the extent she thought that, she was just plain wrong. As I noted in Part 1 of my discussion, there is nothing automatic about the step increases referenced in the wage schedule. They are merit based, and the Employer decides if they are granted. Because of that, any employee expectation that they will always get a merit increase is, in a word, misplaced.

Second, while I have already addressed this topic in Part 1, I'm going to briefly address it again as it relates to Deputy Moose. Notwithstanding the Union's contention to the contrary, there is no past practice of only denying step increases to deputies that were formally disciplined. Instead, the record shows that those employees who were rated as "Needs Improvement" on their yearly evaluation had their merit increase denied. As will be noted in more detail later, that is what happened to Moose. Thus, Moose was treated the same as those similarly situated employees.

Third, the Union repeatedly contends that Moose had her merit increase denied because she failed to meet the goals that were set for her by her supervisor. However, that's just part of the reason her merit increase was denied. The other reason it was denied was because she was rated overall as "Needs Improvement". Thus, the Department had two reasons for its action, not just one. This point is addressed further below.

Fourth, in both of its briefs, the Union devotes a lot of attention to the testimony of the supervisors who signed off on Moose's evaluation. According to the Union, their testimony - particularly Deputy Inspector Esser's - was filled with inconsistencies and contradictory statements. Building on that premise, the Union asks me to find him not credible. I decline to do that. In my view, I don't need to make a credibility call to decide this case. Instead, I am going to base it on the information which I reviewed above.

As previously noted, in 2020 Moose was given an overall rating of "Need Improvement" on her yearly evaluation. That was a big change for this reason: in the four years prior to that, she had always been rated overall as "Satisfactory". That is why she got her merit pay each time. However, in 2020 for the first time ever, she received an overall rating of "Needs Improvement". That overall rating was based on the following.

First, in 2020, Moose received a rating of "Needs Improvement" in three subcategories: "Initiative", "Judgement" and "Accepts Responsibility". That was the most "Needs Improvement" ratings she had ever gotten. The year before, she had received two ratings of "Needs Improvement", and the year before that, she received one rating of "Needs Improvement". This increase in the number of "Needs Improvement" ratings in her evaluations over the past three years shows that Moose's supervisors thought her performance was declining. While Moose got some "Needs Improvement" ratings in 2018 and 2019, she still received an overall rating of "Satisfactory" from her supervisors in those years. That changed in 2020, when her supervisors concluded her job performance no longer warranted an overall rating of "Satisfactory", and instead gave her an over rating of "Needs Improvement".

Second, in her evaluation in 2019, Moose's supervisor set four goals for Moose to reach in 2020. They were the following: 1) apply for a community policing school; 2) conduct 175 traffic stops; 3) maintain building check levels from the previous year; and 4) establish a community policing initiative. She met the last two items just referenced but did not meet the first two. Thus, in 2020, she met half of her goals.

The focus now turns to the goals she did not meet. Regarding the first item, Moose testified that she did not accomplish that goal because, as she put it in her testimony, she "was not able to

find a class that [she] liked.” As for not conducting 175 traffic stops (a goal she had previously accomplished), Moose averred that COVID was an issue and a department directive limited her contact with individuals unless it was life-threatening. However, the Department’s directive that Moose just referenced was instituted by the Department in March of 2020, ten months into Moose’s evaluation year (since she was going to be evaluated in May of 2020). It would be one thing if Moose had proffered valid, legitimate reasons for not accomplishing these two goals. However, Moose’s supervisors did not think much of the reasons she proffered for not accomplishing her goals. Neither does the undersigned.

The Union notes that while Moose only met half of her goals in 2020, that was better than she had done in 2019 and 2018 when she did not meet **any** of her goals set by her supervisor. While that is true, it also shows a pattern on Moose’s part of not accomplishing the goals her supervisor had set for her. It also shows a lack of concern on her part for actually completing those goals. Since Moose’s job performance was found lacking by her supervisors in 2020, they decided it was time to get her attention. They did that by giving her an overall rating of “Needs Improvement” for the first time ever and delaying her merit increase. That certainly got her attention.

Based on the above, I find the Department had an objective, reasonable and supportable basis to delay Moose’s 2020 merit increase.

### Part 3

Finally, the Union raised the claim that the delay in Moose’s merit increase violated Wis. Stat. § 59.26. While I could easily sidestep this claim on the grounds that it raises a question of statutory interpretation and I am only empowered to interpret the CBA, I’ve decided to address the statutory claim in order to complete the record.

For the purpose of context, it is noted that Wis. Stat. § 59.26 provides deputies with due process rights for suspensions, demotions or discharges. Simply put, that section provides a statutory process for having those types of serious disciplinary actions reviewed. The Union claims that the delay in Moose’s merit pay increase equates to a disciplinary suspension. When the Union made this claim in their opening statement at the hearing, I was skeptical, but said to myself rhetorically “maybe there’s a court that has agreed with the Union’s claim” that delays in merit pay increases are subject to Wis. Stat. § 59.26. Building on that, I thought the Union’s brief would cite some legal precedent to support their claim. While the Union’s initial brief did cite a court decision to support their claim, I find that the decision cited is inapplicable here. The following shows why. In *Cockcroft v. Moore*, 638 F. Supp. 2<sup>nd</sup> 1024 (2009), a Polk County deputy sheriff (Cockcroft) worked unsuccessfully to defeat his boss, County Sheriff Moore, when Moore ran for reelection. After the election, Cockcroft was reassigned from one form of patrol duty to another and relieved of his responsibilities as a firearm instructor. Believing that Moore took these actions in retaliation for his political speech, Cockcroft sued Moore in federal court, contending that Moore violated his First Amendment right to speak out on behalf of opposition candidates and had created workplace conditions amounting to constructive discharge without providing due process. The Court granted summary judgment in defendant Moore’s favor. While the main claim in this

case was the First Amendment claim already referenced, the Court addressed Wis. Stat. § 59.26 when reviewing Cockcroft's due process claim. Specifically, it addressed whether a new job assignment constituted a "demotion" within the meaning of § 59.26. The Court answered that question in the negative. Nowhere in the Court's decision did it address whether the denial of a merit pay increase constitutes a suspension. That's important because that is the issue here. Consequently, the *Cockcroft* decision is distinguishable from what is involved here.<sup>2</sup> Since *Cockcroft* was the only decision cited by the Union to support their claim, and it is inapplicable here, it can reasonably be inferred there are no Wisconsin court decisions where a court has accepted the conclusion that the Union asks me to reach. That's telling.

To the extent that the Union wants my interpretation of Wis. Stat. § 59.26, here it is. In my view, the plain meaning of the statute demonstrates that it simply doesn't apply to merit pay. The statute only addresses suspension, demotion, or termination. The Union's claim that a denial of merit pay is discipline which is subject to § 59.26 is contrary to the plain meaning of the statute. Applying that interpretation to the facts at hand, I find that the delay in Moose's merit pay increase was not an unpaid suspension subject to Wis. Stat. § 59.26. That's because she worked every day and never lost a day's pay. All that happened was a discretionary wage increase was delayed. The fact that she ultimately did not get paid as much as she would have if she had gotten the step increase does not mean that she was suspended within the meaning of Wis. Stat. § 59.26.

I therefore reject the Union's claim that the delay of a merit pay increase is discipline that is subject to Wis. Stat. § 59.26. To the extent that the Union invites me to make a just cause determination here (i.e., that the County lacked just cause to discipline Moose by denying her a merit increase), I expressly decline to do so.

In light of the above, it is my

### **AWARD**

That the County did not violate the parties' CBA when it delayed the 2020 merit pay increase of Deputy Moose. The grievance is therefore denied.

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<sup>2</sup> Aside from that, *Cockcroft* can be interpreted to support the County's view that the plain meaning should be given to the three types of discipline referenced in Wis. Stat. § 59.26 (i.e., suspension, demotion, and discharge). Here is why. In *Cockcroft*, the Court declined to stretch the meaning of the word "demotion" to apply to a new job assignment. In this case, of course, the Union is trying to stretch the meaning of the word "suspension" to apply to a delayed merit pay increase.

Issued at Madison, Wisconsin this 30<sup>th</sup> day of March, 2021.

By: Raleigh Jones /s/  
Raleigh Jones, Chair, Arbitration Panel

**UNION**

**COUNTY**

I concur.

I concur.

\_\_\_\_\_  
Jason Perkiser

Erik Weidig /s/  
Erik Weidig

\_\_\_\_\_  
Date

3/29/2021  
Date

I dissent.

I dissent.

Jason Perkiser /s/  
Jason Perkiser

\_\_\_\_\_  
Erik Weidig

3/29/2021  
Date

\_\_\_\_\_  
Date