

BEFORE THE ARBITRATOR

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

Case IDs: 161.0070 and 161.0074
Case Types: MA

(Boone/Heikkinen Grievances)

AWARD NO. 7984

Appearances:

Attorney Christopher MacGillis, for the Union.

Attorney Melinda Lawrence, for the County.

ARBITRATION AWARD

On February 8, 2021 (Boone) and August 25, 2021 (Heikkinen), the Milwaukee Deputy Sheriffs' Association filed requests with the Wisconsin Employment Relation Commission asking that a member of the Commission's staff be assigned to serve as a grievance arbitrator as to the two related grievances. I was so assigned.

On September 23, 2021, a zoom hearing was held. The hearing was recorded. The parties thereafter filed written argument by February 7, 2022.

ISSUE

The parties did not agree on a statement of the issue to be resolved. Having considered the parties' positions, I conclude the issue to be resolved is:

Does the County violate a contract by moving to medically separate an employee before the Pension Board has acted on the employee's application for disability pension benefits?

DISCUSSION

The Union concedes that there is nothing in the parties' written contract that prohibits the County from moving to medically separate an employee before the Pension Board has acted on the employee's application for disability pension benefits. Instead, the Union contends that there is a contractually binding past practice that prohibits such County action. The Union asserts that the practice is based on a 2010 verbal agreement between Union and County representatives.

The County asserts that there is no such practice or verbal agreement. Among other matters, the County also argues that the contractual zipper clause bars enforcement of verbal agreements and that the Union's failure to raise the existence of the alleged agreement at any time prior to the hearing ought to bar any arbitral consideration. Assuming for the sake of argument that these County arguments lack merit, I conclude that testimony from both participants to the alleged agreement would be needed as a prerequisite to any conclusion that it was enforceable. Because the testimony of only one participant was presented, I reject the Union contention that a binding past practice exists. Therefore, I conclude that the County does not violate a contract if it moves to medically separate an employee before the Pension Board has acted on the employee's application for disability pension benefits.

Issued at the City of Madison, Wisconsin, this 22nd day of April, 2022.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter G. Davis, Arbitrator