

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
WISCONSIN PROFESSIONAL POLICE ASSOCIATION

and

LAFAYETTE COUNTY

Case ID: 415.0001

Case Type: MA

(Grievance No. 22-00489)

AWARD NO. 7987

Appearances:

Attorney Andrew D. Schauer, for the Association.

Attorney Kyle J. Gulya, for the County.

ARBITRATION AWARD

On October 14, 2022, the Wisconsin Professional Police Association filed a grievance arbitration request with the Wisconsin Employment Relations Commission. Pursuant to that request and the terms of an applicable collective bargaining agreement, the Commission assigned me to serve as arbitrator as to the seniority/slide of hours grievance. A hearing was held on January 5, 2023. The hearing was recorded. An unofficial transcript was created by the County. The parties thereafter filed briefs by February 24, 2023, and reply briefs on March 24, 2023. Having considered the evidence, the arguments of the parties, and the record as a whole, the undersigned issues the following Award.

ISSUE

The parties agreed to the following statement of the issue:

Did the County violate the collective bargaining agreement when it awarded the slide of hours to Deputy Chin and not to Deputy Monahan? If so, what is the remedy?

DISCUSSION

Ronna Monahan is a Sheriff's Deputy for Lafayette County. On July 23, 2022, Lafayette County Sheriff Reginald "Reg" Gill issued an "Award of Bid" documenting a "power shift" or "mid-shift" Jailer/Dispatcher position becoming vacated by Deputy Elias Gill upon his filling of an open shift patrol position. The "Award of Bid" states, "[a]ny full-time Jailer/Dispatcher wishing a slide of hours to Deputy Gill's power shift position, should notify me in writing of their wish to do so...". The job announcement did not include a "male-only" qualification.¹ Following the July 23 posting, Deputy Ronna Monahan applied in writing for the "mid-shift" Jailer/Dispatcher position opening, requesting a slide of hours to fill Deputy Gill's position. On August 18, 2022, Sheriff Gill issued an "Award of Slide" to Deputy Peter Chin, awarding him the "Mid-Shift Jailer/Dispatcher" position, but with the move to mid-shift not occurring until such time as staffing allows for someone to backfill his current night shift position. As of the date of the hearing, as well as the filing of the final briefs on March 24, 2023, Deputy Chin has not yet moved to the mid-shift position. Deputy Peter Chin is male, Deputy Ronna Monahan is female. Deputy Chin has less seniority than Deputy Monahan.

The staffing model for the Lafayette County Jail is based on having a specific number of personnel on duty and generally, the sex of the Jailer/Dispatchers also matters, when assigning staff to these full-time positions. There is A shift and B shift. Each shift has two day-shifts, two night-shifts, and one mid-shift position. On day shift and night shift, there is one full-time male, and one full-time female Jailer/Dispatcher, then there is a mid-shift Jailer/Dispatcher that has historically been male, creating a two males to one female staffing ratio during the busier times of the day. The day shift works 6:00 a.m. to 6:00 p.m.; the night shift works 6:00 p.m. to 6:00 a.m.; and the mid-shift works 9:00 a.m. to 9:00 p.m. Monday through Thursday and 11:30 a.m. to 11:30 p.m. Friday through Sunday.

Eight other Department personnel are available to fill-in vacant shifts, including three part-time female Deputies and five full-time male Road Deputies. Sheriff Gill prefers to backfill with part-time employees so as to not pull Road Deputies from patrol to backfill in the Jail, as it reduces patrol from three squads to two from providing law enforcement services for the whole County. For many months, there were no male part-time employees that could backfill the mid-shift in the Jail, so Sheriff Gill relied on female employees to backfill mid-shift vacancies. From August 1, 2021 through August 13, 2022, the mid-shift was backfilled 76 times by a female Deputy, including Deputy Monahan on a few occasions. Additionally, since August 2022, the mid-shift position has been primarily backfilled by female Deputy Ali Moris.

With respect to job postings and filling vacancies, Article 8, Section 8.1 of the collective bargaining agreement (hereinafter CBA) provides in pertinent part:

¹ The County conceded that Sheriff Gill did not specifically note that the position must be filled by a male in the August 15 announcement. Testimony and evidence presented at the hearing establish that it was overlooked when the Sheriff prepared the memo. However, even if the August 15 announcement included the "male-only" qualification, for reasons expressed herein, it would not change my Award.

When there shall be any vacancy or job opening within a particular classification, there shall first be one (1) slide of shift hours into the vacancies by any qualified employees in that same job classification. Then, the opening created shall be posted and bid with the entire unit to fill the opening. If the opening is successfully bid by an employee working in another job classification, then the opening created by that bid will also be subject to one (1) slide of shift hours by employees in that classification before the vacancy may be filled by the Employer. If more than one employee within a job classification shall desire a slide of shift hours, then preference shall be given to the employee who has the most seniority within that job classification.

The evidence established that Deputy Monahan and Deputy Chin are in the same classification, Jailer/Dispatcher. All Jailer/Dispatchers are qualified to perform the duties of the job, no matter their sex. According to the Jailer/Dispatcher position description, the purpose of the jailer is to perform jail and Huber security tasks. Essential duties and responsibilities include maintaining jail security with regular patrols of housing units and through direct and indirect surveillance of inmate activities. Other jailer duties include, detect and intercede to prevent inmate violations of state statutes and/or municipal and county ordinances, investigate possible criminal activities and prepare reports for review by the District Attorney's Office, investigate inmate violations of jail rules, and administer discipline as outlined in written procedures. Additionally, jailers mediate inmate conflicts, separate and restrain inmates involved in verbal or physical altercations, conduct searches of inmates and housing areas for contraband, drugs, and/or weapons, identify existing or potential inmate issues and initiate appropriate measures to address and resolve inmate problems, book inmates into jail, including fingerprinting, photographing, screening for medical and mental health, suicide ideation issues, body searches, inventory of personal belongings, and issuance and explanation of jail rules. Jailers are also responsible for releasing inmates from custody when release conditions have been met, and reviewing and creating daily briefing information and reports. In addition to jailer duties, as a dispatcher, the position responsibilities include, answer emergent 911 phone lines, non-emergent phone lines, monitor radio channels, page Fire, EMS, coroner, set off weather sirens, dispatch services for all law, fire, and WMS services in Lafayette County, research information, enter warrants, mission personas, stolen vehicle, properties, and restraining orders.

Out of the considerable number of duties and responsibilities of the position, the only duties that are required to be performed in a sex specific manner are body or strip searches and urinalysis tests. It appears that sex specific duties are performed intermittently.

The sole reason Deputy Monahan was passed over for the mid-shift full-time position was because she is female.²

The County argues that Deputy Monahan is not qualified for the mid-shift position because she does not meet the set qualification requiring that the assigned employee be male. Applicable

² Evidence presented at the hearing showed that male employees complained about the extra work they have to do or might have to do when a female deputy fills the mid-shift position. To some extent, it is possible that the complaints may have influenced the Sheriff in his decision to award the slide to Deputy Chin over Deputy Monahan.

provisions of the CBA the County primarily rely upon are Article 2 and Article 8, Section 8.2. Management Rights in Article 2 of the CBA provides that:

The Union recognizes and acknowledges that the Employer retains all responsibilities, powers and authority that are not specifically modified by other provisions of this Agreement. Such management rights include, but are not limited to, the following: the right and authority to determine, plan, direct and control its operation and the operations of its work force; to determine the size, composition, qualifications and work of the work force; to make assignments of work, including overtime; to hire, promote and layoff; to discipline and discharge for just cause; to establish, revise and enforce reasonable rules of conduct; to terminate or modify existing, or to introduce new or improved methods of operation; to determine and uniformly enforce minimum standards of performance, provided, however, that none of such actions by the Employer shall conflict or be contrary to other provisions of this Agreement.

Regarding job postings and vacancies, Article 8, Section 8.2 of the CBA provides in pertinent part:

...The Employer may select from among the signatories an employee to fill the new or vacated job if said signatory is qualified for the position...When filling a new or vacated job from signatories within the unit, qualifications of applicants shall be the deciding factor, except that where two or more applicants are relatively equal, the applicant with the greater seniority shall be selected.

The Association claims that Section 8.1, not 8.2, applies because Section 8.1 describes a "slide," i.e., a vacancy or job opening within a particular classification. Section 8.2 relates to a vacancy or job opening between different job classifications. While I understand the distinction, either way, both sections give preference to the applicant with greater seniority, when the applicants are equally qualified and in the same job classification.

The County contends that it has the right to establish sex specificity as a qualification for the vacant mid-shift Jailer/Dispatcher position for multiple reasons, including that the qualification has been a job requirement for twenty years, since the creation of the mid-shift position, the plain and unambiguous language of the contract, the general principle that the Arbitrator should not substitute her discretion when determining qualifications and operations of the jail, the historical acceptance of the sex qualification by the Union, and the bona fide nature of the job qualification in a linear jail with a small number of staff, expanded sex-specific duties, and disruption caused when only a lone male Jailer/Dispatcher is working during mid-shift.

I agree that Sheriff Gill has the discretion to determine job qualifications, however, his management rights are limited by those not specifically modified by other provisions of the CBA. Furthermore, the last phrase in Article 2 reiterates that "none of such actions by the Employer shall conflict or be contrary to other provisions" of the CBA. Not only did the County agree to the seniority language in Article 8, but I am also not convinced by any of the County's arguments for

sex specificity for the mid-shift Jailer/Dispatcher position given the undisputed evidence and testimony that it has been predominantly backfilled by female Deputies in nearly the last two years without incident. Actions speak louder than words. Clearly, a male Deputy in the mid-shift position is not necessary for the safe, efficient, and effective operation of the Lafayette County Jail. Under the circumstances, I am persuaded that the sex specificity as a qualification for the mid-shift Jailer/Dispatcher position is unreasonable and contrary to the seniority language in Article 8 of the CBA.³

Deputy Monahan and Deputy Chin are equally qualified for the Jailer/Dispatcher mid-shift position. Both are physically capable of performing the essential duties of the job. Based on Deputy Monahan's seniority, she should have been given preference and awarded the slide.

Given the foregoing, I conclude that the County violated the collective bargaining agreement when it awarded the slide of hours to Deputy Chin and not to Deputy Monahan. To remedy that contract violation, the County shall rescind its August 22, 2022, "Award of Slide" to Deputy Chin and award the slide to the mid-shift position to Deputy Monahan on the same terms it was awarded to Deputy Chin.

Issued at the City of Madison, Wisconsin, this 11th day of May, 2023.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Anfin Jaw, Arbitrator

³ While the Association also argued that the County also violated Article 25 of the CBA, given my finding that the County violated the seniority language in Article 8, it is not necessary to address this part of the Association's argument.