

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: 161.0092

Case Type: MA

(Grievance Nos. 61122 & 61123)

AWARD NO. 7990

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**Appearances:**

Attorney Kevin P. Todt, for the Association.

Attorney Melinda Lawrence, for the County.

**ARBITRATION AWARD**

I was assigned by the Wisconsin Employment Relations Commission to serve as the arbitrator as to canine handler assignment grievances filed by the Milwaukee Deputy Sheriffs' Association against the County of Milwaukee. A hearing was held on June 5, 2023. No transcript or other recording was made of the hearing. The parties filed written arguments on June 30, 2023. Neither party filed a reply by the given deadline of July 21, 2023.

**ISSUE**

I was authorized to frame the issues as follows:

1. Did the Milwaukee County Sheriff's Office violate the Labor Agreement between Milwaukee County and the Milwaukee County Deputy Sheriffs' Association when it assigned Deputy Brendt Van Wagoner as the canine handler of Rocco, a patrol dog of the Criminal Justice Facility? If so, what is the appropriate remedy?
2. Did the Milwaukee County Sheriff's Office violate the Labor Agreement between Milwaukee County and the Milwaukee County Deputy Sheriffs' Association when it

denied MDSA members the opportunity to apply as Rocco's canine handler? If so, what is the appropriate remedy?

### **DISCUSSION**

In 2020, the Milwaukee County Sheriff's Office (MCSO) purchased two canines, including Rocco, for use in the Criminal Justice Facility (CJF or the jail). In anticipation of receiving the dogs, MCSO notified all non-sworn personnel on September 23, 2019, that it was seeking to assign two new canine handlers for the CJF dogs. MCSO only solicited interest for correctional officers for the CJF canine assignments due to the intent to use the dogs solely in the CJF, and the fact that the dogs were purchased with funds allocated for the CJF. After qualifying for the canine handler special assignment, correctional officer Benjamin Jackson was assigned to handle Rocco.

On April 13, 2022, CO Jackson notified MCSO that he was resigning effective April 28, 2022, but later pushed the date effective to May 12, 2022. That began the task of finding a suitable replacement handler for Rocco. Although it is not usually feasible or advisable to reassign a police canine to a new handler, due to the intense bonding required for the pair to work together effectively, Rocco's youth, potential, and the substantial funds (approximately \$20,000) MCSO invested in Rocco, made it worthwhile to attempt the reassignment.

On April 15, 2022, MCSO issued a new notice to all correctional officers or non-sworn personnel, seeking a replacement handler for Rocco. The post closed for selection on April 25, 2022. After qualifying for the assignment, on May 6, 2022, CO Toshia Spears was selected as Rocco's handler. Unfortunately, after her first day of training with Rocco, Spears rejected the assignment. There was no other alternatively qualified or eligible correctional officer to replace CO Spears. This gave the County four days to find a replacement handler for Rocco before Jackson's resignation.

MCSO had existing lists of deputies interested in becoming canine handlers from recent selections made for airport and patrol canine units. With only four days left to transition Rocco to a new handler, the decision was made to consider the already vetted deputies on these lists. Deputy Brendt Van Wagoner had placed highest on the list of deputies for assignment to a canine in the Patrol Division and fourth for the assignment to the airport canine unit. He was the highest deputy remaining on the canine assignment list at the time.

Thus, Deputy Van Wagoner was assigned as Rocco's handler on May 9, 2022. Coincidentally, Deputy Van Wagoner was uniquely qualified to take over as Rocco's handler because he had been a canine handler in the Marines prior to joining the MCSO. Not only was Van Wagoner a certified canine trainer, but he also had experience transitioning dogs.

The County argues that the right to make assignments and the right to designate canine handlers are explicitly reserved to the County. With respect to temporary assignments as a canine handler, Part 3, Section 3.09 of the Labor Agreement between the County of Milwaukee and the Milwaukee Deputy Sheriffs' Association (hereinafter CBA) provides in pertinent part:

- (3) The MDSA acknowledges that the Sheriff or his designee has the authority to determine which employees are designated as canine handlers as well as their shift assignments, within the parameters of Section 3.25 through 3.28.

The County also relies on Part 1, Section 1.02. Management Rights of the CBA, which provides:

The County of Milwaukee retains and reserves the sole right to manage its affairs in accordance with all applicable laws, ordinances, regulations and executive orders. Included in this responsibility, but not limited thereto, is:

...

- The right to direct the work force;

...

- The right to assign employees, subject to existing practices and the terms of this Agreement;

...

- The right to maintain efficiency of operations by determining the method, the means and the personnel by which such operations are conducted and to take whatever actions are reasonable and necessary to carry out the duties of the various departments and divisions.

In addition to the foregoing, the County reserves the right to make reasonable rules and regulations relating to personnel policy, procedures and practices and matters relating to working conditions giving due regard to the obligations imposed by this Agreement.

The Association contends that the County created a new position within the bargaining unit—a Milwaukee County Sheriff's Office Deputy Jail Canine Handler position—without following the proper procedures for selection and appointment, in violation of the CBA and the Milwaukee County Civil Service Rules. The Association asserts that the CBA and the Milwaukee County Civil Service Rules contain several requirements for filling job vacancies, including requirements for filing applications, announcement of examinations, creation of eligible lists, and ultimately the appointment of an eligible candidate to fill the vacant position. While I understand that if the County created a new position within the bargaining unit, it would certainly have to comply with the CBA and the mandatory Civil Service Rules associated with an appointment to vacant positions. However, the evidence established that canine handlers are a special assignment designated to qualified employees.

The canine handler assignment is not a new position within the bargaining unit. Part 3, Section 3.09 of the CBA clearly demonstrates that canine handlers are temporary assignments. There are canine handler assignments as a correctional officer or non-sworn personnel, and canine handler assignments as a sworn deputy. Clearly, members of the Association have the opportunity to apply for canine handler assignments in the patrol and airport units. As a temporary or special assignment, the Sheriff or his designee has the explicit authority to determine which employees are designated as canine handlers.

The Association also argues that there is favoritism as to which deputy gets a canine handler assignment. The Association asserts that the County unilaterally and arbitrarily appointed Deputy Van Wagoner, but presented no evidence that there is a contract provision in the CBA that limits management's discretion as it relates to temporary or special assignments.

The County however, persuasively pointed out that “[e]ven where the agreement expressly states a right in management, expressly gives it discretion as to a matter, or expressly makes it the “sole judge” of a matter, management’s actions must not be arbitrary, capricious or taken in bad faith.” *Elkouri & Elkouri, How Arbitration Works, 8<sup>th</sup> Edition*, 13.1.B. Credible testimony and evidence established that the County’s decision to assign Deputy Van Wagoner as Rocco’s handler was not arbitrary, capricious, or in bad faith. While MDSA accurately claims that MCSO did not allow deputies the right to seek consideration for the assignment as Rocco’s handler, yet later assigned Deputy Van Wagoner based upon prior review of his skills and experience, I am persuaded that this does not lead to the conclusion that the County violated the CBA.

The evidence raised by the Association does establish that the County sought a variance from the usual practice of assigning a correctional officer to handle CJF or “jail canines,” but also that MCSO did not want to change this practice. It appears that the MCSO made every effort to be consistent with its position that Rocco should be handled by a correctional officer, and only deviated from that position when the sole eligible and willing correctional officer rejected the assignment, leaving the County with no reasonable alternative and mere days to act.

The Association made the argument that Rocco could have been kenneled to allow time to repost and allow deputies to submit their interest for the assignment. MCSO considered, but ultimately, rejected this option as unfeasible and inhumane due to concerns for Rocco’s health and well-being. Typically, canine assignments take several weeks to months from posting through the consideration and selection process. The especially expedited selection of CO Spears took 21 days. Not only would 21 days exceed the eight-day limit that MCSO puts on kennel stays for its canines, but also, experience shows that even short kennel stays have negative impacts on the health, well-being, and functioning of the dogs, potentially even ending their careers. When high energy, semi-aggressive law enforcement canines are confined to a small kennel space for even a few days, without exercise, work, or training, there have been instances where the dog has chewed off its own tail. In good conscious, MCSO could not have kenneled Rocco to allow for a reposting of the assignment.

On the contrary from being arbitrary, capricious, or in bad faith, Deputy Van Wagoner’s assignment as Rocco’s handler was appropriate, reasonable under the circumstances, and in

accordance with the CBA. He has been successfully paired with Rocco for almost a year and a half now.

Given the foregoing, I conclude that the County did not violate the collective bargaining agreement when it assigned Deputy Van Wagoner to take over as Rocco's handler upon CO Jackson's resignation. I also conclude that the County did not violate the collective bargaining agreement when it denied the Association's members the opportunity to apply to be Rocco's canine handler replacement.

Issued at the City of Madison, Wisconsin, this 6<sup>th</sup> day of October, 2023.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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Anfin Jaw, Arbitrator