

MAR 27 1987

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

* In the matter of the dispute	*	* ARBITRATION AWARD	*
* between	*	* WERC Case 45, No. 34627	*
* WISCONSIN COUNCIL 40, AFSCME,	*	* MIA-988	*
* AFL-CIO, LOCAL 2085	*	* Decision No. 23314-A	*
* and	*	* Richard Pegnetter	*
* RICHLAND COUNTY SHERIFF'S DEPARTMENT	*	* Arbitrator	*
* RICHLAND CENTER, WISCONSIN	*	* March 25, 1987	*
* *****	*		*

APPEARANCES

For the Union

Jack Bernfeld, Staff Representative, Wisconsin Council 40,
AFSCME, Madison, WI

For the County

Jack D. Walker, MELLI, WALKER, PEACE & RUHLY, S.C., Madison, WI

The parties reached an impasse in their efforts to resolve contract terms for 1985 and 1986. A petition requesting compulsory, final and binding arbitration was filed by the Union on February 15, 1985 with the Wisconsin Employment Relations Commission. An informal investigation was conducted on May 7, 1985 by Jane B. Buffett, a Commission staff member. The Investigator advised the Commission on February 17, 1986 that the impasse continued. The undersigned was then mutually selected as the Arbitrator and appointed to the dispute on March 14, 1986. A hearing was held in Richland Center, Wisconsin on May 15, 1986. During the hearing, both parties were given full opportunity to present argument and evidence and hearing proceedings were closed with an exchange of briefs on August 9, 1986.

ISSUES AT IMPASSE

The parties provided final offers which listed the following items at impasse:

1. Grievance procedure - time limits and steps.
2. Overtime - overtime distribution and compensatory time off.
3. Time off on alternating Sundays.
4. Work assignment preference for full-time employees.
5. Work schedule.
6. Sick leave pay-out.
7. Wages.

Position of the Union

The Union focuses most of its case on the large number of contract language changes sought by the County. The Union argues that language which has been used successfully by the parties for a long period of time should be changed only through negotiations, not imposed by the award of an outside arbitrator. The Union stresses that the County's only effort to bargain-out the language changes proposed by the County has been a \$5.00 per month additional pay offer by the County. The Union urges that this offer is not an effective quid pro quo for the massive changes in working conditions demanded by the County.

1. Grievance procedure. The 1984 contract provides a grievance procedure which limits grievances to matters covered by the contract and violations of safety and work rules. Employees or the Union must file grievances within 60 days of knowledge of the occurrence and the Sheriff has 10 days to respond. The procedure also provides for review at step two by the "Richland County Law Enforcement Committee." The Union proposes one change in the existing grievance

procedure, a limit on safety and work rules being grievable if they are related to the contract terms.

The Union maintains that there is no demonstrated basis for amending the grievance procedure. The Union submits that the 60 day period for filing initial grievances is similar to other nearby law enforcement contracts. Further, the 60 day period provides for a "cooling-off" time that permits less emotional treatment of grievances. The Union contends there is no evidence to justify an increased time for management response. Comparable police units in the area use 2 to 5 days as the time for management to respond to the initial grievance. The Union proposed change in language regarding safety and work rules is the same as a change proposed in the County's final offer. The Union urges that there is no foundation for any of the County proposals to alter the existing grievance procedure.

2. Overtime. The 1984 contract contains an overtime provision which gives overtime opportunities to senior employees on the shifts preceding and following the overtime assignment. The same clause provides employees the right to select pay or compensatory time for earned overtime, with accumulated compensatory time over 24 hours paid in cash. The Union again stresses that the overtime distribution clause was mutually negotiated by the parties. The Union contends that without evidence of actual problems, the provision should remain unchanged. The Union submits that the compensatory time provision is understood by employees and, similarly, without need of amendment. The Union seeks to retain existing overtime distribution and compensation language.

3. Time off on alternating Sundays. The 1984 agreement assures outside deputies a shift schedule with Sunday off every other week. The Union proposes no change in the present contract on this matter. The Union emphasizes the negotiated, mutually agreed nature of the practice. The Union also stresses the role of every other Sunday off in the personal lives of deputies. The Union notes that any scheduling problems under the practice are the result of deputy reductions from 12 to the current manpower level of 10. The Union favors mutually developed alterations in the current schedule, but opposes the total elimination of the Sunday provision as proposed by the County.

4. Work assignment preference for full-time employees. The present agreement includes a clause which places strict limits on the right of the County to use part-time and temporary employees. Full-time employees must be given an opportunity to work short term vacancies due to illness or vacations, even if overtime results. The Union seeks to retain the clause, stressing the mutually negotiated background of the provision. The Union submits that the clause has provided meaningful work opportunities for regular employees and should be continued.

5. Work schedule. The parties currently operate under a work schedule which is contained in side letter attached to the 1984 contract. The letter, commonly referred to as the Breneman-Berglin Schedule, was continued from the 1983 contract. The Union again emphasizes the mutually negotiated nature of the schedule and the absence of need for change in urging the continuation of the existing letter. The Union also submits that the County has the contract right under Hours of Work, Article 14, to change the work schedule, but has not done so, further evidence of the workability of the present schedule.

6. Sick leave pay-out. The 1984 agreement provides that up to 50 days of accumulated, unused sick leave shall be paid to the employee upon retirement or death. The Union final offer proposes an increased maximum of 55 days in 1985 and 60 days in 1986. The Union argues that such a change would be consistent with sick leave benefits the County provides for its other bargaining units.

7. Wages. The basic wage increases proposed by both parties are identical at 4.3% for 1985 and 4.2% in 1986. The County final offer adds an additional \$5.00 per month for each employee in 1985. The Union urges that this additional amount is intended to "buy out" the contract language changes proposed by the County. The Union argues that such a wage change is inappropriate in the face of the significant changes in working conditions sought by the County.

Position of the County

The County argues that the core of the dispute is control of public policy. Elected officials, including the Sheriff, are being denied the right to determine the effective and efficient use of police employees by certain parts

of the collective bargaining contract. The County submits that work schedule restrictions and overtime provisions are central to this claim and should be amended. The County contends that the Union has resisted efforts by the Sheriff to seek useful solutions within the existing language of the contract. As a result, the County asserts the need to change or eliminate contract terms which have been central in creating problems for the operation of County law enforcement.

1. Grievance procedure. The County proposes several changes in the present grievance procedure. These amendments include: reducing the number of days to file an initial grievance from 60 days to 10 days and beginning the time clock for filing when the employee or Union "knew or should have known," rather than "had knowledge" of the grievance incident; giving the Sheriff a copy of the written grievance filed with the Richland County Law Enforcement Committee; expanding the days from 10 to 30 for a Sheriff's response to the initial grievance. The County argues that most of the changes proposed are to put proper responsibility for initiating grievances on the employee and the Union. The County maintains that 60 days causes a festering and heating up of emotions, rather than a cooling off as asserted by the Union. The County also claims that it is common to begin the grievance clock when the employee or local should have been aware of the grievance. Both changes will provide more expeditious treatment of grievances. The notice to the Sheriff at step two sought by the County is intended to keep the Sheriff fully informed. The County contends that its proposed amendments are all intended to improve the resolution of grievances.

2. Overtime. The County seeks to continue overtime pay, but eliminate provisions which control the distribution of overtime. Regarding compensatory time, the County proposes to amend the language to permit the employer to require the use of compensatory time within the work cycle established by the parameters of the Fair Labor Standards Act related to overtime. The County argues that these changes are part of a need to reduce long hours, maintain costs, and provide flexibility. The County submits that the current language severely limits the use of part-time employees and results in long, sometimes unsafe shift hours by regular employees. The County introduced extensive testimony by a witness expert in job stress, Professor Donald Gardner of the University of Wisconsin-Madison, to show the negative effects of long hours in law enforcement. The County also cited extensive data from police contracts across Wisconsin to show that Richland County Sheriff's Unit contract provisions on overtime assignments were highly restrictive. The County contends that changes in overtime restrictions and compliance with Federal FLSA regarding compensatory time would assure reasonable cost savings and reduce the fatigue of 12 hour shifts now common among full-time employees.

3. Time off on alternating Sundays. The County proposes elimination of the provision assuring regular employees they will be off work every other Sunday. The County stresses that this arrangement was negotiated when the Sheriff's Unit had 12 deputies. At the current level of 10 road patrol employees, this guarantee is not feasible. Proposals by the Union and solutions attempted by the Sheriff have not been or could not be successful. The county submits that no other sheriff's unit contract in the state has an "every other Sunday" provision. The County urges that it is crucial for effective law enforcement by a 10 person patrol to eliminate the every other Sunday restriction.

4. Work assignment preference for full-time employees. The County seeks to remove the clause which limits the use of part-time and temporary employees. The County again stresses the effect of long hours on productivity and safety. With some 12 hour shifts caused by the overtime distribution clause, the full-time employee preference provisions result even in longer work schedules. The clause creates artificial overtime payments and even more potential fatigue for regular patrol employees. The County also cites the absence of such restrictions on the use of part-time employees among other county law enforcement contracts in the state. The County notes that a recent grievance arbitration award (Bernstone Award, 1986) upheld the restrictive nature of the full-time employee preference clause regarding assignments. The County claims that deletion of the clause is clearly supported by the evidence.

5. Work schedule. The County proposes to delete the Brenemen-Berglin side letter which was appended to the 1984 agreement. The County stresses that even the Union acknowledges the need to change the existing schedule. However, the County submits that the over-riding problem in altering the schedule contained

in the letter is alternating Sundays off. If the clause related to Sundays remains in the agreement, the elimination of the side letter schedule will not resolve the work schedule issue, according to the County.

6. Sick leave pay-out. The County final offer provides no change in existing language related to sick leave payments at death or retirement. The County emphasizes that the Union sought an increase only after two other County bargaining units secured the increase. The County submits that the Union should accept equal treatment on all contract terms if it wants "me-tooism" on sick leave. The County contends that the 20% increase in sick leave pay-out sought by the Union is not appropriate.

7. Wages. As noted earlier, the basic wage proposals of the parties are the same. The County offer provides for \$5.00 more per month in 1985. This addition, plus an improvement in vacation benefits proposed by both parties, represents a substantial effort to adjust for changes in contract language, according to the County. The County emphasizes the value of its combined wage and vacation package in evaluation of County total final offer.

Discussion

1. Grievance procedure. The central issue in dispute regarding grievance procedures is the time limit for filing and responding to grievances. The County is correct in noting that 60 days to file an initial grievance is higher than the norm. However, there is no firm evidence that this extended time has had the effect of increased grievances or less resolution at lower steps in Richland County. Nor is there evidence of a need to triple the time period for the Sheriff's response to 30 days. Similarly, there were no data to demonstrate that problems have been created by the grievant not coming forward when he or she "had knowledge" rather than when the grievant "should have known" of the grievance or because the Sheriff was not notified of grievances taken on to the Law Enforcement Committee. Consequently, one of the significant factors in justifying a change in existing language is not present. Namely, there is no well demonstrated evidence that substantial problems have developed under the present grievance language. Thus, the position of the Union is stronger, favoring basic retention of the current grievance system.

2. Overtime. The County advances several persuasive points regarding overtime distribution and compensatory time. One, the potential for fatigue, when overtime and work assignment preference provisions are taken together, are substantial for Richland County law enforcement personnel. It would not be unique to have a deputy work several 12 hour shifts in a row under some circumstances. The testimony of expert witness Gardner was impressive in underscoring the fatigue factors which could result. Two, the rigid and mandated distribution of overtime in the existing contract does not represent the most common pattern among comparable county law enforcement agreements across the state. Three, the County presents a strong argument in Brief (p. 13) that the current overtime language may, if fully implemented, be at odds with state legislation and that legislation should prevail.

However, the history of overtime distribution under the contract must be weighed against the points raised by the County. Of significant concern is the deletion of all seniority consideration in the County proposal. Seniority is a useful, but not immutable concept. The parties here have mutually agreed over the years to use seniority in the allocation of overtime opportunities. The County proposal replaces the use of seniority and shifts assignment with fully unilateral management discretion. That leap is too large for an imposed, non-negotiated change. It is not necessary to completely eliminate the concept of seniority to provide a safer, more flexible allocation of overtime. Yet, that elimination is the only solution contained in the County proposal. A modification which preserved some measure of seniority in distributing overtime would have been more appropriate.

Regarding compensatory time, I find no sufficient justification for amending the existing contract as proposed by the County. While some salary savings may result from the County proposal, there is no evidence that the present method of using compensatory time has caused significant financial or scheduling difficulty. Nor was comparative data able to substantiate a basis for altering the present contract. Consequently, I find, in favor of the Union position, no adequate foundation for modifying the existing overtime provisions for overtime distribution and compensatory time.

3. Time off on alternating Sundays. The County proposal for elimination of a guarantee to have every other Sunday off work is well supported by the evidence. The alternating Sunday schedule was mutually developed under different circumstances than those now prevailing in the Richland County Sheriff Department. This change is especially apparent regarding the now smaller number of employees. Further, the comparative data from other county law enforcement shows a pattern substantially different from the Richland County agreement here. The evidence shows, and the Union acknowledges, that the every other Sunday off arrangement works a hardship on the County under present staffing. The County proposal is favored by the Arbitrator on this issue.

4. Work assignment preference for full-time employees. There can be little question that this provision of the contract is in need of amendment. The clause creates artificial overtime costs; puts regular employees at risk of stress and fatigue due to long hours and multiple shifts; and is unduly inflexible and constraining for management. Again, this clause, similar to the alternating Sunday off provision, was appropriate when negotiated, not under current circumstances. The potential rigidity of the clause was demonstrated in the parties' recent arbitration involving the assignment of work.

However, a need to modify the clause is not equal to a need for either total elimination or complete preservation of protection for full-time employment opportunities. As an example, one part of the current clause is the sentence "[r]egular part-time employees will not be used to reduce the work opportunities of regular employees." Other parts of the clause are less palatable. For example, guaranteeing full-time employees certain work even though overtime results. A clause which attempts to preserve full-time hours for regular employees or give preference for extra work to regular part-time employees is appropriate, especially when the parties have incorporated such concepts in their past and present contracts, as they have here. The harsh edge of the clause in dispute is that it requires up to three days of any vacancy to be filled with overtime work by full-time employees who are willing to work. The County argues correctly that many comparable contracts in the state give some preference to full-time employees in the distribution of overtime, but do not require the use of overtime in the same manner as the Richland County agreement.

This evidence is significant. It shows that a common practice among county law enforcement contracts is to provide some rights or preference for full-time employees to secure overtime. The result of the County proposal here (delete all of Section 14.10 on full-time work assignment preference) and the County proposal to eliminate seniority in overtime distribution (Section 14.03) would remove any assurance that seniority or full-time status would be considered in overtime assignments. The County proposal is more traumatic as a modification of existing practice than is the Union request for status quo, albeit burdensome with only 10 deputies on full-time staff. The Union proposal is, therefore, favored by the Arbitrator regarding work assignment preference for full-time employees.

5. Work schedule. The Breneman-Berglin side letter is now an attachment to the contract and represents a mutually agreed solution to scheduling developed in 1983. However, even Union witness Berglin testified in hearing that, given current circumstances and staffing, the schedule could stand some change. More critically, the schedule as it now stands is not insulated from unilateral change by the Sheriff. Section 14.02 provides that ". . . after consultation with the employees and the Union . . . the Sheriff shall have the prerogative to initiate modifications in schedules and hours of work . . ." Consequently, the attached side letter should continue as an attachment to the contract as a reflection of mutual understanding. This finding favors the Union position. However, the continuation of the side letter is in no way intended to modify the Sheriff's authority to amend or change the schedule in accordance with Section 14.02.

6. Sick leave pay-out. Neither party presented extensive evidence on this issue. The Union notes that other county bargaining units enjoy an improved benefit here and the County stresses that the Union is only grasping at "me-tooism" with its demand. Consequently, there is little evidence from comparative law enforcement units to distinguish the two positions. The evidence available shows modest favor for the Union position, standing as data from public employees in a comparable community.

7. Wages. As in the case of sick leave pay-out, there is little firm evidence with which to distinguish the two positions. The basic wage rates offered are the same. The County offer adds \$5.00 per month beyond the basic rate. Both offers seem reasonable and are within .8% of the cost of living figures cited for the contract years in dispute here, 1985 and 1986. The County offer is to be slightly favored as it represents a modest improvement over the Union position. Both basic wage positions are similar to the level of increase for other Richland County employees in 1985 and 1986.

Summary

The essence of this dispute is the alteration of language and working conditions related to scheduling and overtime. The County provided persuasive evidence for change in both areas and sought change in the grievance procedure with much less effective evidence. The Union stressed the mutual, negotiated history of the scheduling and overtime provisions. The central issue before the Arbitrator is the amount of change justified, given the reasonable financial offers, against the magnitude of the problems generated by existing language. I find the scope of the County's proposed revisions to be excessive. The strongest foundation for this conclusion is that the County position does more than modify several principal concepts now in agreement; the concepts are eliminated entirely. These concepts are the use of some consideration for seniority in overtime assignments and the use of some rights to extra work opportunity for full-time employees. If the County had proposed a reasonable and more workable amendment of these concepts, in conjunction with the highly equitable wage and vacation package contained in the County offer, a different finding would have resulted, in spite of the County's grievance proposal. However, the County final offer was to totally excise these concepts and that proposal was more harsh a modification than could be supported by the evidence. Consequently, the preservation of existing language in the areas of scheduling, overtime, and grievance procedure, as proposed by the Union, is more reasonably supported by the evidence and prevails.


One final area of dispute demands comment. That is the issue of alternating Sundays off. The total award is in favor of the Union final offer, including retention of the alternating Sunday language. However, the parties are urged to further address this issue. A mutual resolution which reflects the current staffing level would be preferable to a unilateral accommodation under Section 14.02 with fragmented work and time off blocks.

Therefore, in accordance with the above discussion I hereby make the following

AWARD

The Final Offer of the Union is selected by the Arbitrator to be included in the 1985-86 agreement between the parties.

Fort Collins, Colorado
March 25, 1987


Richard Pagnetter
Arbitrator