

BEFORE THE ARBITRATOR

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

Case IDs: 161.0095, 161.0103, 161.0104
Case Type: MA

(Consolidated OT Grievances)

AWARD NO. 8001

Appearances:

Brendan P. Matthews and Dusty E. Gross, Attorneys, MacGillis Wiemer, LLC, 11040 W. Bluemound Road, Suite 100, Milwaukee, Wisconsin, appearing on behalf of the Milwaukee Deputy Sheriffs' Association.

Melinda S. Lawrence, Assistant Corporation Counsel, Milwaukee County, 901 N. 9th Street, Room 303, Milwaukee, Wisconsin, appearing on behalf of Milwaukee County.

ARBITRATION AWARD

The Milwaukee Deputy Sheriffs' Association, hereinafter referred to as the Association, and Milwaukee County, hereinafter referred to as the County or the Employer, were parties to a 2021-2023 collective bargaining agreement (CBA). In April and May 2024, the Association filed three grievance arbitration requests related to mandatory overtime with the Wisconsin Employment Relations Commission. Pursuant to that request and the terms of the CBA that provides for final and binding arbitration of unresolved grievances, the Commission assigned me to serve as arbitrator. On May 16, 2024, the parties agreed to a consolidated hearing and award for grievance nos. 63750, 63520, 51648, 61127, 61128, 61129, and 63314. A hearing was held in Milwaukee on October 10, 2024. The hearing was transcribed. Afterwards, the Association filed its initial brief on December 9, 2024. The County filed its initial brief and response on January 13, 2025. On January 31, 2025, the Association filed a reply brief. On February 11, 2025, the County submitted the hearing transcript. On March 26, 2025, the parties submitted the exhibits and rebuttal exhibits electronically. On June 20, 2025, I requested that the parties file additional argument on remedy. On June 25, 2025, the parties were in dispute on how to address remedy. Having considered the evidence, the arguments of the parties, and the record as a whole, the undersigned issues the following Award.

ISSUE

The parties stipulated to the following issue:

Do the MCSO's overtime practices violate the Collective Bargaining Agreement? If so, what is the appropriate remedy?

PERTINENT PROVISIONS

Regarding the assignment of mandatory overtime, a 2014 Stipulation provides in relevant part:

2014 STIPULATION AND ORDER

1. Mandatory overtime for deputy sheriffs and deputy sheriff sergeants shall be limited to: (1) the shift immediately after their regular straight-time work shift (with no break in hours worked); (2) the shift immediately prior to their regular straight-time work shift (with no break in hours worked); or (3) on their off days, for their regularly assigned work shift.

2. This stipulation does not consider emergency situations requiring overtime or overtime for Special Events.

3. A "Special Event" is a limited event occurring only one time per year, although the event may last two or more contiguous days. The following list is set forth as an illustration of the types of events intended by the parties to be covered as Special Events, but is not intended to be an exhaustive list:

- (a) Voces de la Frontera Immigration March in April;
- (b) Memorial Day Weekend – Lakefront / Parks;
- (c) Big Bang Fireworks in late June;
- (d) Patrolling Park-and-Ride lots during Summerfest;
- (e) Independence Day parks and lakefront patrol and nighttime fireworks;
- (f) South Shore Water Frolics and the Air and Water Show in July;
- (g) USA triathlon in late summer;
- (h) Harley-Davidson Corporate Anniversaries;
- (i) "Rock the Green" Music Festival at Veteran's Park;
- (j) Labor Day parks patrol and separate expressway patrolling;
- (k) Operation Trick / Treat (Sex Predator Compliance) around Halloween; and
- (l) New Year's Eve OWI Enforcement.

4. The Sheriff will provide at least two weeks written notice of any Special Event assignment, whether deputy sheriff sergeants will be required to change their shifts or be assigned to work mandatory overtime. Notwithstanding this prior sentence, if a previously-noticed Special Event is re-scheduled for reasons beyond the Sheriff's Department control, the Sheriff's Department will provide as much advance notice as reasonably possible under the circumstances.

The parties' 2021-2023 CBA contained the following pertinent provisions:

3.02 OVERTIME

- (1) All time credited in excess of eight (8) hours per day or forty (40) hours per week shall be paid in cash at the rate of one and one-half (1½) times the base rate, except that employees assigned to continuous jury sequestration shall be paid sixteen (16) hours at their base rate and eight (8) hours at the rate of one and one half (1½) times the base rate for each 24-hour period of uninterrupted duty, and except that first shift hours worked in excess of forty (40) per week shall be paid at the rate of one and one-half (1½) times the base rate.
- (2) Overtime needs and required staffing levels shall be determined by the Sheriff.
- (3) All scheduled overtime shall be assigned within classification as follows:
 - (a) Employees shall volunteer for overtime and their names shall be place on a list in seniority order within each work unit
 - (b) When necessary to schedule overtime the assignment shall be rotated by seniority among all volunteers on the list within the work unit where the overtime is being scheduled.
 - (c) In the event an employee refuses to accept an overtime assignment or there are insufficient volunteers for the work unit where overtime is required, the least senior employee in the classification in the work unit shall be required to work the overtime assignment.
 - (d) Employees will not be scheduled for overtime when they are liquidating accrued time off or during an approved leave of absence or disciplinary suspension.
 - (e) For an event identified by the Sheriff as a Special Event, the above procedure shall be utilized on a departmental basis. In the event there are insufficient volunteers for a Special Event overtime assignment the Sheriff shall rotate in the inverse order of seniority among all employees in the department in the classification.
 - (f) Employees shall not be permitted to volunteer to work during a period of scheduled vacation, personal time, holiday time or compensatory time unless approved to work by the Sheriff. However, for Special Events as defined in (e) above, employees shall have the opportunity to work overtime hours in accord with the above procedures when they are on vacation, on their normal off-days, or are using holiday or personal days only under the condition that the Sheriff's Department is under contract to be reimbursed for the non-tax levy overtime expense incurred for the Special Event.
- (4) Employees shall have the option of accumulating two hundred forty (240) hours of compensatory time, exclusive of holidays, in lieu of cash, within twenty

six (26) pay periods, provided that such compensatory time may be liquidated only with the consent of the department head and if the County determines staffing is adequate and if no overtime assignment will result employees will be allowed to liquidate their accrued compensatory time. If, because the needs of the department, such compensatory time is not liquidated within the time limited, the unliquidated balance shall be compensated in cash.

(5) Any mandatory overtime in excess of thirty-two (32) additional hours worked in a pay period will require the advanced approval of the Sheriff or his designee.

DISCUSSION

This case involves the assignment of mandatory overtime, otherwise known as MOT. The rules that govern the assignment of mandatory overtime are in dispute. The County argues that the assignment of mandatory overtime to Association members is governed by the 2014 Stipulation and the 2017 Overtime Rules document. The Association contends that the assignment of mandatory overtime is governed by the 2014 Stipulation and the parties' 2021-2023 CBA. I conclude that the Association is correct.

There is no dispute over the 2014 Stipulation. However, the evidence presented did not make clear that the 2017 Overtime Rules document was an agreement or an amendment to Section 3.02 of the CBA. Not only is the document unsigned by the Association, but there was also conflicting testimony on whether the rules were being followed by the County. Therefore, I cannot conclude that the assignment of mandatory overtime is governed by the 2017 document.

The overtime provisions in the parties' CBA were incorporated into the document in 1991. Presumably, there have been many signed agreements since that time. The language in Section 3.02 of the CBA is not ambiguous. Clearly, the parties have continued to agree on the language in 3.02, since it has not been removed. Consequently, I conclude that, in addition to the 2014 Stipulation, the assignment of mandatory overtime must be governed by the parties' 2021-2023 CBA.

All seven grievances filed in this matter relate one way or another to the assignment of mandatory overtime at the jail. The County admits that it does not follow the mandatory overtime provisions in the CBA when it has assigned MOT at the jail. Thus, the County is in violation of Section 3.02(3)(c) when MDSA members are assigned mandatory overtime at the jail. To remedy this contract violation, first, the County shall follow all provisions in Section 3.02 of the parties' 2021-2023 CBA when it assigns mandatory overtime. The second part of the remedy deals with the County's potential back pay liability for its failure to adhere to the mandatory overtime provisions in the CBA. With respect to the second part of the remedy, I will leave that matter open for the parties to resolve on their own. If the parties cannot resolve that portion of the remedy, then further proceedings will be scheduled. In the meantime, I retain jurisdiction over the remedy.

In light of the above, it is my:

AWARD

That the Employer's actions in this matter violated the parties' CBA. To remedy this contract violation, going forward, the County shall follow all provisions in Section 3.02 of the parties' 2021-2023 CBA when it assigns mandatory overtime. Any back pay liability for the County's failure to follow the mandatory overtime provisions in the CBA is left to the parties to decide. Finally, I retain jurisdiction over the remedy for at least 60 days.

Issued at the City of Madison, Wisconsin, this 26th day of June 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Anfin J, Wise, Arbitrator