
BEFORE THE ARBITRATOR

In the Matter of the Arbitration Between

MILWAUKEE DEPUTY SHERIFFS' ASSOCIATION

and

MILWAUKEE COUNTY

Grievance No. 61111

Case ID: 161.0115

Award No. 8003

Appearances:

Christopher J. MacGillis and Dusty E. Gross, MacGillis Law Group, LLC, 12700 W. Bluemound Rd., Suite 200, Elm Grove, Wisconsin, appearing on behalf of the Milwaukee Deputy Sheriffs' Association.

Johnathan Beck, Milwaukee County Office of Corporation Counsel, 901 N. 9th St, 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, were parties to a collective bargaining agreement which provided for final and binding arbitration of unresolved grievances. Pursuant to that agreement, the Wisconsin Employment Relations Commission assigned the undersigned to decide a grievance. A hearing on that grievance was held via Zoom on July 28, 2025. Afterwards, the parties filed briefs, whereupon the record was closed on August 29, 2025. Having considered the evidence, the arguments of the parties, and the record as a whole, the undersigned issues the following Award.

ISSUES

The Association and the County frame the issue as follows:

1. Did the 2025 vacation selection procedure for Deputies assigned to JJC violate the CBA?
2. If so, what is the remedy?

PERTINENT CONTRACT PROVISIONS

The collective bargaining agreement (CBA) applicable here was from January 1, 2024, to December 31, 2024. It contained the following pertinent provisions:

1.02 Management Rights

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 determine the number, structure and location of departments and divisions; the kinds and number of services to be performed;
- The right to determine the number of positions and the classifications thereof to perform such service;
- The right to direct the work force;
- The right to establish qualifications for hire, to test and to hire, promote, and retain employees;
- The right to assign employees, subject to existing practices and the terms of this Agreement;
- The right, subject to civil service procedures and [] 63.01 to 63.17, Stats., and the terms of this Agreement related thereto, to suspend, discharge, demote or take other disciplinary action;
- 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. However, the County reserves total discretion with respect to the function or mission of the various departments and divisions, the budget, organization, or the technology of performing the work. These rights shall not be abridged or modified except as specifically provided for by the terms of this Agreement, nor shall they be exercise for the purpose of frustrating or modifying the terms of this Agreement. But these shall not be used for the purpose of discriminating against any employee or for the purpose of discrediting or weakening the Association.

3.14 Vacation

(3) The department shall establish a vacation selection procedure, which will enable all Deputies to be informed of their approved vacation request by March 1 of each year. Assignment to another division within the Sheriff's Department shall not invalidate approved vacation requests.

(4) Vacation picks shall be made within classification in division and within current shift assignments on the basis of the date of hire within the bargaining unit. For purposes of this section, shift shall mean:

First shift – Beginning at or after 6 a.m.

Second shift – Beginning at or after 2 p.m.

Third shift – Beginning at or after 10 p.m.

(5) For purposes of this section, the term "bureau/division" shall mean those work units between which selections have been customarily approved as of January 1, 1984.

5.01 Grievance Procedure

(9) No grievance shall be initiated after the expiration of (60) calendar days from the date of the grievable event, or the date on which the employee becomes aware, or should have become aware, that a grievable event occurred, whichever is later. This clause shall not limit retroactive payment of economic benefits for which it has been determined the County is liable nor would it prohibit a prospective adjustment of an ongoing situation.

FACTS

The Association represents sheriff's deputies employed by Milwaukee County. Deputy Sheriffs can be assigned to two different courthouses: the downtown Milwaukee Courthouse (herein, Adult Court) or the Juvenile Justice Center (herein, Children's Court) in Wauwatosa.

Adult Court deputies and Children's Court deputies have similar duties and responsibilities. Deputy Estelle Smith and Deputy Travis Thompson credibly testified that no special training was needed for Adult Court deputies to work in the Children's Court, only a quick walk-through.

Deputy Smith also credibly testified that Adult Court deputies and Children's Court deputies have selected vacation dates together, by seniority, since at least 2012.

Children's Court is a sought-after position, often chosen by more senior deputies. Because vacation is chosen based on seniority, and because there is a higher concentration of more senior deputies in the Children's Court, Children's Court deputies are more likely to take the most sought-after vacation time around the Thanksgiving and Christmas holidays. In 2023, there were staffing shortages around the Thanksgiving and Christmas holidays, with as many as eight out of twelve Children's Court deputies on vacation at the same time.

After the 2023 holiday season, the County reviewed the CBA and decided that it did not prevent them from having Children's Court deputies pick vacations separately from Adult Court deputies, to avoid similar staffing problems in the future. Milwaukee County Courts Commander Aaron Dobson informed deputies of this change in a December 21, 2023, email, which read:

“In order to maintain operational efficiency we will be deviating from the past practice of adult and children’s court deputies picking vacations together as one group. We will follow the clear contract language of section 3.14(4) of the MDSA contract in 2025 by having children’s court deputies pick vacations separately from deputies in adult courts. Please note that this change will take effect for 2025 vacation selections.” *See Exhibit 14.*

Dobson did not receive any objections, grievances, or requests to bargain from the Association.

On December 11, 2024, Sergeant Dave DeSmet emailed deputies asking them to complete their vacation selection for 2025: “Unlike previous years, only two JJC deputies will be on vacation per week.” *See Exhibit 11.*

On December 11, 2024, the Association filed a grievance alleging that the County had violated the CBA, Sec. 3.14(4), requiring vacation selections to be made within classification in division.

DISCUSSION

1. The Grievance Is Timely

On December 21, 2023, the Milwaukee County Courts Commander Aaron Dobson sent an email informing deputies that, going forward, Adult Court deputies and Children’s Court deputies would no longer pick vacations together as one group. *See Exhibit 14.*

On December 11, 2024, Sergeant Dave DeSmet sent separate emails to Adult Court deputies and Children’s Court deputies, requesting that they submit their vacation selections separately. *See Exhibit 11, pgs. 1 – 2.*

The County argues that the grievance is untimely because the Association waited until a year after the 2023 email to file a grievance. However, the grievance procedure in Sec. 5.01(9) states that: “No grievance shall be initiated after the expiration of (60) calendar days from the date of the grievable event, or the date on which the employee becomes aware, or should have become aware, that a grievable event occurred, whichever is later.” *See Exhibit 1, pg. 45.* The Association correctly points out that it waited until a grievable event occurred – the December 11, 2024, emails requesting that Adult Court deputies and Children’s Court deputies submit their vacation selections separately – to file its grievance on December 11, 2024. *See Exhibit 2, pg. 5.* The grievable event occurred when the vacation selection change went into effect, not when the change was announced. Since the Association filed its grievance within 60 calendar days of the December 11, 2024, email, the grievance is timely.

2. Merits

The Association contends that the County's actions violated the CBA, while the County disputes that assertion. Based on the rationale which follows, I find that the County's actions violated the CBA.

An arbitrator cannot disregard or modify plain or unambiguous provisions of a CBA. *See Madison Tchrs. Inc. v. Madison Metro. Sch. Dist.*, 2004 WI App 54, 271 Wis. 2d 697, 678 N.W.2d 311 at ¶15. However, an arbitrator has authority to construe an ambiguous provision. *Id.* Therefore, the initial question is whether the provision of the CBA in question – Sec. 3.14 – was ambiguous. A provision is ambiguous when there is more than one plausible interpretation. *See Portage County*, WERC MA-14386 (Millot, 10/15/10).

Sec. 3.14 governs vacation selection. It reads, in relevant part:

(3) The department shall establish a vacation selection procedure, which will enable all Deputies to be informed of their approved vacation request by March 1 of each year. Assignment to another division within the Sheriff's Department shall not invalidate approved vacation requests.

(4) Vacation picks shall be made within classification in division and within current shift assignments on the basis of the date of hire within the bargaining unit. For purposes of this section, shift shall mean:

First shift – Beginning at or after 6 a.m.

Second shift – Beginning at or after 2 p.m.

Third shift – Beginning at or after 10 p.m.

(5) For purposes of this section, the term "bureau/division" shall mean those work units between which selections have been customarily approved as of January 1, 1984.

This section shows that, although the parties made the department responsible for establishing a vacation selection procedure, the parties decided that this vacation selection procedure must be based on seniority ("on the basis of the date of hire"), "shift assignments" (with the shifts defined below), and "classification in division." "Classification" is not defined in this section or elsewhere in the CBA. Sec. 3.14 defines "division": "For purposes of this section, the term "bureau/division" shall mean those work units between which selections have been customarily approved as of January 1, 1984." However, "work units" is also undefined, because the CBA does not clarify which work units selections were customarily approved between as of January 1, 1984. Because the undefined terms have more than one plausible interpretation, the language is ambiguous.

To construe the terms of a CBA, an arbitrator may use rules, standards, and principles borrowed from the jurisprudence developed by courts, as well as the express language of the agreement, statements of the parties in negotiations, bargaining history, custom, and past practice. *See*

Madison Tchrs. Inc. v. Madison Metro. Sch. Dist., 2004 WI App 54, 271 Wis. 2d 697, 678 N.W.2d 311. Binding past practice must be (1) unequivocal, (2) clearly enunciated and acted upon, (3) readily ascertainable over a reasonable period of time, and (4) an established practice accepted by both parties. *See Green Bay Area Public School District*, WERC MA-9115 (Mawhinney, 2/96).

The evidence shows that the parties had a past practice of defining “classification” to mean an individuals’ rank. Deputy Thompson credibly testified that “classification” means an individual’s rank, such as deputy or sergeant.

Further, the evidence shows that the parties had a past practice of defining “division” or “work units between which selections have been customarily approved as of January 1, 1984” to encompass the Adult Court deputies and the Children’s Court deputies. Deputy Smith testified that the Adult Court deputies and the Children’s Court deputies have selected vacation together since she started with the Office in 2012. The 2023 Milwaukee County Sheriffs’ Office has several divisions listed, one of which is the “Courts Division” including both Adult Court and Children’s Court. *See Exhibit 7*. Likewise, the County’s website lists “MCSO Court Services” as one division of the Milwaukee County Sheriffs’ Office. *See Exhibit 8*. Employees transferring from Children’s Court to Adult Court are considered an “Intra Division Transfer.” *See Exhibit 13*. It is clear that “division” or “work unit” encompasses both the Adult Court and the Children’s Court.

The County argues that, although the parties had a past practice of defining “division” as encompassing the Adult Court and the Children’s Court, management had the right to implement a change because the past practice was causing staffing issues. However, an employer cannot unilaterally eliminate a past practice; the practice must be ended by mutual agreement. *See Marathon County*, WERC MA-6260 (Burns, 02-07-91).

The County further argues that changing the vacation selection procedure was a management right. Section 1.02 of the CBA gives the County the right to “determine the number, structure and location of departments and divisions; the kinds and number of services to be performed, and the right to determine the number of positions and the classifications thereof to perform such service.” The County argues that it has exercised managerial discretion by changing the Children’s Court work group under Sec. 1.02, as well as setting the vacation selection procedure under Sec. 3.14(3). Sec. 1.02 certainly allows the County to decide the structure of the Sheriffs’ Office, the services they perform, and the number and types of employees. However, it does not give the County broad authority over terms and conditions of employment specified elsewhere in the CBA. It is a cardinal rule of contract interpretation that specific language controls over general language. *See Village of Williams Bay*, WERC DR(M)-618 (Meier, 6/01). The specific language of Sec. 3.14(4), which states that vacation selection will occur within classification in division, within current shift assignments, and based on seniority, controls over the general language in 3.14(3) allowing the County to set the vacation selection procedure, as well as the language in Sec. 1.02 giving the County the right to determine the department’s structure, mission, and staffing.

Lastly, the County argues that the Association failed to request impact bargaining when the County announced the vacation selection procedure change in 2023. However, the Association believed that they didn’t have a duty to impact bargain, because a grievance was the appropriate

route to address this issue. Sec. 5.01(1) of the CBA states that “Only matters involving the interpretation, application or enforcement of rules, regulations or the terms of this Agreement shall constitute a grievance.” Here, the Association correctly believed that this was a matter involving the interpretation and application of Sec. 3.14.

In conclusion, the ambiguous language in Sec. 3.14(4) is given meaning by the parties’ long-established past practice of having Adult Court deputies and Children’s Court deputies select vacation together. The 2025 vacation selection procedure for Children’s Court deputies violated the CBA.

On the basis of the above and foregoing, the evidence, and the arguments of the parties, the undersigned makes and issues the following:

AWARD

That the Employer’s actions in this matter violated the parties’ CBA. To remedy this contract violation, going forward, the County shall follow its past practice of having Adult Court deputies and Children’s Court deputies select vacation together. I retain jurisdiction over this matter for at least sixty days to resolve any disputes that may emerge as the parties comply with this Award.

Issued at Madison, Wisconsin this 13th day of November 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Katherine Scott Lisiecki, Arbitrator