

BEFORE THE ARBITRATOR

In the Matter of the Arbitration  
of a Dispute Between

GENERAL TEAMSTERS UNION, LOCAL 662

and

PIERCE COUNTY (SHERIFF'S DEPARTMENT)

Case 106  
No. 52299  
MA-8904

Appearances:

Ms. Christel Jorgensen, Business Agent, for the Union.

Weld, Riley, Prenn & Ricci, S.C., by Mr. Stephen L. Weld, for the County.

ARBITRATION AWARD

The above-entitled parties, herein "Union" and "County", are privy to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held on May 30, 1995, in Ellsworth, Wisconsin. The hearing was not transcribed and the parties thereafter filed briefs which were received by June 25, 1995.

Based upon the record, I issue the following Award.

ISSUE

The parties have agreed to the following issue:

*Did the County provide an "equivalent" schedule when it changed the schedule stated in Article 15 of the contract from a 6-3, 8 1/2 hour per day schedule to a 7-3, 7-3, 6-2, 8 hour per day schedule and, if not, what is the appropriate remedy?*

DISCUSSION

Lieutenant Michael Knoll by memorandum dated November 30, 1994, informed all Jailer/Dispatchers that:

. . .

The Department is considering a different schedule for the Dispatch/Jail group. The change would take place early in 1995.

Sgt. Brown and I have met with the Captain and the Sheriff

to discuss the issue. Any ideas you may have relating to the schedule are welcomed. Please direct any questions or concerns that you may have to Sgt. Brown or myself.

...

In reply, various Jailer/Dispatchers filed a grievance over the proposed change by informing Sheriff James Hines by memorandum dated December 28, 1994 that:

Ref: Violation of Labor Agreement - Scheduling more hours per week period than Labor Contract agrees to.

This letter is being prepared in compliance with Article 8, Section I (2) of the Labor Agreement entered into by and between the Pierce County Sheriff's Department and General Teamsters Union, Local 662 dated January 1, 1992.

On January 1, 1995 the Employer plans to adopt a 7-3 7-3 6-2 schedule, 8 hours per day. This is in violation of Article 15; "The work period for Patrol Officers and Jail/Dispatchers shall be based on a 6-3 schedule, 8 1/2 hours per day, or an equivalent hour schedule." The proposed schedule is neither the 6-3 schedule, nor is it an equivalent hour schedule. 6-3 8 1/2 hours per day is equivalent to 2068 hours in 365 days; proposed schedule is equivalent to 2086 hours in 365 days.

To relieve the situation, maintain the current 6-3 schedule, 8 1/2 hours per day.

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The County unilaterally adopted a 7-3, 7-3, 6-2 schedule on January 1, 1995, for a total work cycle of 28 days. Hines subsequently denied the grievance on January 3, 1995. Such schedule changes were never discussed in the two contract negotiations leading up to the present contract.

Sheriff Hines testified here that he changed the schedule for the Jailer/Dispatchers in 1995 because that was the only way that he could provide for a DARE Officer after the County Board told him that it would not authorize that position under the prior 6-3 schedule. Hines added that the DARE Officer was funded by the Department of Public Instruction when school is in session. When school is not in session, the DARE officer performs the duties of a Jailer/Dispatcher.

Road Deputy Robert Funk testified without contradiction on behalf of the Union that the

new schedule will result in either losing 168 hours of paid vacation and holiday pay or working an additional 168 hours for all the Jailer/Dispatchers. He added that the new schedule will result in forcing each of them to work 17.39 additional scheduled hours per year.

The County in January, 1994, had earlier adopted the same 7-3, 7-3, 6-2 schedule for the Patrol Deputies who are in the same bargaining unit as the Jailer/Dispatchers. Funk testified that the Union never grieved the schedule change for the Patrol Deputies because it provided for something they long wanted; i.e., an extra Patrol Deputy out on patrol for "safety and coverage". Funk added that the Patrol Deputies were "torn" over this issue because this benefit was accompanied by shift changes they did not like.

The Union asserts in support of the grievance that the County's schedule change violated the contract because it is not "equivalent" to the former one since Union Exhibit 1 establishes that Jailer/Dispatchers are receiving less paid vacation and holiday time and that they also are working 17.39 additional scheduled hours each year. The Union also contends that it is immaterial that the Patrol Deputies have not grieved their earlier schedule change because it provided certain benefits to them, unlike the situation here which resulted in "no benefit whatsoever" to the Jailer/Dispatchers. It also maintains that the County's purpose in creating the new schedule -- to free up time to cover a vacant DARE position -- is no justification for violating the contract. As a remedy, the Union requests that the existing schedule of the Jailer/Dispatchers be rescinded and that the prior 6-3, 8 1/2 hour per day schedule for them be re-established.

The County argues that the term "equivalency standard" in Article 15 does not exist in a vacuum because it must be considered within the context of past contract negotiations and an interest arbitration proceeding before Arbitrator Sherwood Malamud who selected the County's final offer and who then determined that the Union's attempt to change the then existing 6-3 schedule "limits the authority of the Sheriff to change the work schedule." The County points out that the Union subsequently prevailed on this same issue before interest arbitrator Joseph Kirkman who selected the Union's offer because it gave the County the flexibility to establish an "equivalent hour schedule." The County adds that sheriff Hines "had a valid, completely defensible reason for making the change"; that the schedule change was in accord with the Union's presentation in its brief to Arbitrator Kirkman that the equivalency standard gives the Sheriff the flexibility in establishing a schedule as long as it does not cut or significantly increase the number of hours worked; and that the addition of less than 1 1/2 hours of work per month does not "significantly increase" work hours under Article 15.

The resolution of this issue turns on the construction of the word "equivalent" which is found in Article 15 of the contract, entitled "Hours of Work and Overtime," and which states:

The work period for Patrol Officers and Jailer/Dispatchers shall be based on a 6-3 schedule, 8 1/2 hours per day, or an equivalent hour schedule. Time and one-half (1 1/2) shall be paid for all hours in

excess of regular scheduled hours.

As the Union correctly points out, Black's Law Dictionary, p. 636 {4th Edition}, defines the word "equivalent" as "Equal in value, force, measure, volume, power, and effect, or having equal or corresponding import, meaning or significance; alike, identical."

Here, the new 7-3, 7-3, 6-2 schedule is hardly "equal" since it requires Jailer/Dispatchers to work an additional 17.39 hours a year with no extra pay. "Equal" or "equivalent" in this context means that the Sheriff can unilaterally change schedules, provided that employees not be disadvantaged when he does so. Measured by this contract standard, the County therefore violated Article 15 when it required Jailer/Dispatchers to perform additional work with no additional pay.  
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It is true that the Union's brief to Arbitrator Kirkman stated that the County could change

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2/ The County also violated this provision by reducing vacation and holiday hours. While the County concedes that it never thought about these issues, it argues that they cannot be considered here because they were not part of the original grievance. I disagree. The grievance raised all issues relating to the schedule change even if all of the nuances of that change were not initially raised by the Union.

the schedule if it did not "significantly increase" hours. The phrase "significantly increase", of course, differs from the contract phrase "equivalent." But, it is the latter term which controls here since that is what is in the contract. Moreover, while the phrase "significantly increase" allows for some increase of hours, that is a separate question of whether the County can require Jailer/Dispatchers to work such extra hours without added compensation. As to that, there is nothing whatsoever in the record to establish that it can.

In light of the above, it is my

AWARD

1. That the County violated Article 15 of the contract when it failed to provide an "equivalent schedule" when it changed the 6-3, 8 1/2 hour per day schedule to 7-3, 7-3, 6-2, 8 hour per day schedule.

2. That to rectify this contractual breach, the County shall immediately rescind the 7-3, 7-3, 6-2, 8 hour per day schedule for the Jailer/Dispatchers 3/ and revert to the prior 6-3, 8 1/2 hour per day schedule until such time, if ever, that it adopts an "equivalent hour schedule."

3. That to resolve any questions which may arise over application of this Award, I shall retain my jurisdiction for at least sixty (60) days.

Dated at Madison, Wisconsin this 17th day of July, 1995.

By Amedeo Greco /s/  
Amedeo Greco, Arbitrator

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3/ The County need not change the schedule for the Patrol Deputies since they have not grieved this change.