

BEFORE THE ARBITRATOR

- - - - -
In the Matter of the Arbitration :
of a Dispute Between :
PRICE COUNTY PUBLIC EMPLOYEES :
LOCAL UNION 1405-A, AFSCME, AFL-CIO : Case 12
and : No. 41861
CITY OF PARK FALLS : MA-5482
- - - - -

Appearances:

Mr. Philip Salamone, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, N-419 Birch Lane, Hatley, Wisconsin 54440, appearing on behalf of the Union.
Mr. Dave Deda, Slaby, Deda & Marshall, Attorneys at Law, 215 North Lake Avenue, P.O. Box 7, Phillips, Wisconsin 54555, appearing on behalf of the City.

ARBITRATION AWARD

The Price County Public Employees Local Union 1405-A, AFSCME, AFL-CIO, hereafter the Union, and the City of Park Falls, hereafter the City, are parties to a collective bargaining agreement which provides for final and binding arbitration of disputes arising thereunder. The Union made a request, in which the City concurred, that the Wisconsin Employment Relations Commission appoint an arbitrator to hear and decide a dispute concerning the meaning and application of the contract. The Commission appointed Stuart Levitan to serve as the impartial arbitrator. Hearing in the matter was held at Park Falls, Wisconsin, on June 21, 1989. No stenographic record was made. The parties delivered oral arguments in lieu of written briefs.

ISSUE

The Union frames the issue:

Did the employer violate the collective bargaining agreement by ending the seniority of Joe Jeske, the Grievant, in August 1985 when he became a part-time employe? If so, what is the remedy?

The City frames the issue:

Did Joe Jeske's status as a bargaining unit member/ employe of the City of Park Falls Police Department terminate prior to April 1, 1987? If not, what is the remedy?

The undersigned frames the issue:

Did the Employer violate the collective bargaining agreement by ending the seniority of Joe Jeske in August, 1985? If so, what is the remedy?

RELEVANT CONTRACT LANGUAGE

Article 1 - RECOGNITION

Section 1. The Employer recognizes the Union as the sole collective bargaining representative of all regular full-time and regular part-time law enforcement personnel

with the power of arrest of the City of Park Falls, excluding chief, sergeant, managerial, confidential and supervisory employees for the purpose of collective bargaining on questions of wages, hours and conditions of employment in accordance with W.E.R.C. Certification Decision No. 20716.

. . .

Article 4 - DEFINITION OF EMPLOYEES

Section 1. Regular full-time employees are considered to be employees who are employed an average of forty (40) hours each week, twelve (12) months each year, with full benefits under this Agreement.

Section 2. Temporary and Casual Help. In the event the City deems it necessary to hire temporary or casual help for short periods of time due to increased workload, the City may do so provided said help is not used to replace the bargaining unit employees, they are not assigned overtime unless current employees are all working or not available, they work no more than 160 hours in any calendar year, and are not used when regular employees are on layoff. They shall not receive any fringe benefits or earn seniority. They shall be hired only as an addition to the current labor force and paid at an hourly rate as determined by the City, not to exceed the rate of a starting recruit. Seniority and rights of the bargaining unit employees shall be recognized and honored by the City in all respects.

. . .

ARTICLE 6 - SENIORITY

Section 1. It shall be the policy of the Employer to recognize seniority. The seniority of each employee shall begin with their starting date of employment and shall not be diminished by temporary layoff due to shortage of funds, lack of work or any other contingency beyond the control of either party to this Agreement. Part-time employees shall accrue seniority on the basis of hours worked.

Section 2. An employee's seniority shall terminate when:

- a) The employee quits;
- b) The employee is discharged for just cause;
- c) The employee fails to report for work within fifteen (15) days following receipt by certified mail, of a notice of recall.

Section 3. The Employer shall post a seniority list on January 1 of each year on the employees' bulletin board and keep same up to date. A copy said list shall be mailed to the secretary of Local 1405-A.

Section 4. Extra duty assignments, such as school, extra-curricular assignments, etc., shall be made on the basis of seniority.

BACKGROUND

This dispute concerns the employment status of the Grievant, Joe Jeske, specifically whether he relinquished certain rights and benefits due to his voluntary reduction in hours worked. The basic facts are generally not in dispute; what is at issue is the application of the collective bargaining agreement to these facts.

On or about August 12, 1983, Jeske became a part-time patrolman for the City of Park Falls Police Department. On or about October 21, 1983, he was appointed a full-time patrolman.

On August 16, 1985, Jeske wrote to Police Chief Daniels and the Common Council as follows:

I Josef J. Jeske hereby submit my resignation as a full-time patrolman for the City of Park Falls.

I plan to further my education at the University of Wisconsin Marathon County. I will be starting classes September 3, 1985 as a full-time student, therefore, my last day of employment will be August 30, 1985.

I do request if possible to retain a position as a part-time officer. I will have my weekends free and also vacation days and during summer break. If you find it necessary to deny my request, I would like to state that it has been a privilege to work for the city and I appreciate the confidence you had in me when I was hired.

Respectfully,

Josef J. Jeske /s/

Josef J. Jeske

This communication, described as "a letter of resignation", was presented to the Park Falls Common Council on August 20, 1985. Motion "to accept the resignation" was adopted, 7-0.

During the calendar year 1985, Jeske's biweekly salary was \$761.39. For the three pay periods ending July 26, August 9 and August 23, Jeske's pay was slightly higher, based on a total of 12 hours overtime. For the pay period ending September 6, his gross earnings were \$1,332.80, reflecting a pay-out of 140 hours accumulated leave. From the January 11 paycheck to the September 6 paycheck, the City deducted \$13 for union dues every other pay period.

During calendar year 1985, the City maintained an hourly wage of \$7.72 for regular part-time officers and \$6.25 for temporary/casual officers. For the pay periods ending between September 20 and January 24, 1986, Jeske was paid at the regular part-time rate, as follows:

Sept. 20	9 hours	\$69.48
Oct. 4	25 hours	\$193.00
Oct. 18	24 hours	\$185.28
Nov. 1	66 hours	\$509.52
Nov. 15	13 hours	\$100.36
Jan. 24	8 hours	\$61.76

In February, 1986, Jeske assumed a full-time position with the Price County Sheriff's Department, which position he held until April 1, 1987, when he left to return to a full-time post with the City Police Department. During that period Jeske's payroll record was as follows:

1986	May 30	\$93.75	15 hours at \$6.25
	June 13	\$43.75	7 hours at \$6.25
	June 27	\$93.75	15 hours at \$6.25
	July 11	\$143.75	23 hours at \$6.25
	July 25	\$100.00	16 hours at \$6.25
	Aug. 8	\$84.38	
	Aug. 22	\$71.88	
	Sept. 19	\$43.75	7 hours at \$6.25
	Oct. 3	\$25.00	4 hours at \$6.25
	Oct. 17	\$65.63	
1987	Jan. 2	\$50.00	8 hours at \$6.25
	Jan. 30	\$50.00	8 hours at \$6.25
	Feb. 13	\$81.25	12 hours at \$6.25
	Feb. 27	\$15.63	2.5 hours at \$6.25
	Mar. 13	\$43.75	7 hours at \$6.25
	Mar. 27	\$100.00	16 hours at \$6.25

POSITIONS OF THE PARTIES

The Union contends that the Grievant never broke his seniority with the City, in that his letter of August 16, 1985 was essentially to seek a reduction in hours from full-time to part-time, not to resign completely from City service. Moreover, as payroll records indicate, the City itself treated the Grievant as a part-time, bargaining unit employe from August 1985 to January 1986, when it made a unilateral decision to treat him henceforth as a temporary/ casual employe. Such decision was invalid because it was violative of the contract provision specifying that temporary/casual employes are only to be used during periods of increased workload, and because it was never communicated to the Grievant.

The City contends that the Grievant's letter of August 16, 1985 was indeed a resignation, and was accepted as such by the Common Council. The payment of the regular part-time rate for the remainder of 1985, it states, was because the Grievant had met the contractual threshold of 160 hours for such status, which threshold was not met in 1986. It further notes that all accumulated benefits were paid out during the pay period that included the stated date of resignation, August 30, 1985.

DISCUSSION

In his memorandum denying the grievance, Police Chief Richard D. Scanlon described the pertinent parts of the collective bargaining agreement as being "vague and ambiguous". Such concern is understandable, in that there appears to be some conflict between provisions of the contract.

In Section 1, Article I, the City recognizes the Union as the sole collective bargaining representative of "all regular full-time and regular part-time law enforcement personnel with the power of arrest", excluding certain named positions and classifications. Thus, according to this provision, temporary/casual employes are not included in the bargaining unit.

Temporary/casual employes are included, however, in Section 2, Article 4, where they are defined, inter alia, as employes who work for "short periods of time due to increased workload", totalling "no more than 160 hours in any calendar year". This section provides that such employes are paid at an hourly rate "as determined by the City, not to exceed the rate of a starting recruit", and that such employes "shall not receive any fringe benefits or earn seniority". The paragraph on "Temporary and Casual Help", ends with the statement that, "(s)eniority and rights of the bargaining unit employes shall be recognized and honored by the City in all respects".

"Regular full-time employees", meanwhile, are "considered to be employees who are employed an average of forty (40) hours each week, twelve (12) months each year, with full benefits under this Agreement".

But "regular part-time" employees, who are specifically included in the recognition clause, are not referenced in the article on "Definition of Employees". That is, a group which is not in the recognition clause is defined, while a group which is in the recognition clause is not.

There are two possible means of measuring what a regular part-time employee is, and whether Jeske meets such definition. As this is a unit which the WERC has certified, the first test is regularity of work-hours. A second test might infer from the contract that regular part-time employees are those who work more than 160 hours in a calendar year, but less than 40 hours per week, year-round.

Subsequent to August 30, 1985 (his last day as a full-time officer), Jeske worked approximately 137 hours during the remainder of 1985, for which he was paid at the regular part-time wage of \$7.72 per hour. The City's action in this regard indicates that the annual threshold of 160 hours after which an employee is no longer eligible for temporary/casual status) encompasses all hours worked, including those as a full-time officer.

During calendar year 1986, however, Jeske did log less than 160 hours worked. And his payroll records establish that he worked in only 12 of the 26 pay periods, and that in those periods he worked, his hours ranged from four to 23. Thus, under either the Commission's test for regularity, or the contract's benchmark of accumulated hours, Jeske was properly considered, and paid, as a temporary/casual employee. Inasmuch as Jeske received paychecks which reflected the temporary/casual pay rate, and because there is no allegation that the City failed to fulfill its contractual duty to provide a seniority list on January 1, 1987, I discount the Union's further complaint that Jeske was not properly notified of his changed status.

The non-regularity of Jeske's employment is further established by reference to the City's practice of having a roster of about five individuals, all Price County deputies, available for call-in duty. Notwithstanding the contractual provision that temporary/casual assignments are "for short periods of time due to increased workload", such officers have routinely been called in to fill in for full-time officers who are taking compensatory time off, on vacation, and so on. That such assignment is routine, however, does not mean it is regular, as Jeske's own time sheets establish for the period (February 1986 to April 1987) during which he was a deputy sheriff and followed this pattern.

Whether or not the City's use of temporary/casual officers was entirely consistent with the contract is not the question before me; my concern is the relationship between such status and seniority. And the contract clearly provides that temporary/casual help do not accrue seniority.

Jeske's employment history, therefore, shows that prior to August 30, 1985, he was a full-time employee; then, until January 24, 1986, he was treated as a part-time employee; then, until April 1, 1987, he was temporary casual; and since April 1, 1987, he has again been full-time.

The collective bargaining agreement provides that an employee's seniority "shall terminate" when "the employee quits". The contract also provides that part-time employees continue to accrue seniority on a proportional basis. Jeske testified that his letter of August 16, 1985 was a letter of resignation which was not dependent on his desired employment as a part-time officer. The fact that the City continued to treat Jeske as a part-time officer until January 24, 1986 requires that Jeske be granted seniority, on a pro-rated basis, for that period -- but it does not require that Jeske's seniority be continued until his return to full-time status in April, 1987. For, notwithstanding his status in the period from August 31, 1985 to January 24, 1986, Jeske was a temporary/casual employee in the period January 25, 1986 to April 1, 1987.

The collective bargaining agreement does not provide for seniority to be held in abeyance pending an employe's return to full-time or part-time status. Instead, seniority either continues to accrue, or it is terminated. On the record before me, I find that the facts of this specific case support a conclusion that Jeske's 14-month period as a temporary/casual employe--that is, a period of 14 months in which he was not a member of the bargaining unit--satisfied the contractual precedent for termination of his seniority.

Accordingly, it is my

AWARD

That this grievance is denied.

Dated at Madison, Wisconsin this 11th day of September, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Stuart Levitan, Arbitrator