BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	Jeff Hebl Dismissal
KIEL POLICE DEPT. EMPLOYEES, LOCAL 1362, AFSCME, AFL-CIO	Case 43 No. 48589 MA-7648
and	
CITY OF KIEL (POLICE DEPT.)	

Appearances:

Wisconsin Council 40, American Federation of State, County and Municipal Employees, by Ms. Helen Isferding, Staff Representative, 1207 Main Street, Sheboygan, WI 53083 appearing on behalf of Local 1362.

Godfrey & Kahn, S.C., Attorneys at Law, 605 North Eight Street, Post Office Box 1287, Sheboygan, WI 53082-1287, by Mr. Paul C. Hemmer, appearing on behalf of the city of Kiel.

ARBITRATION AWARD

Pursuant to the provisions of their collective bargaining agreement, the City of Kiel (hereinafter referred to as the City) and Local 1362, AFSCME (hereinafter referred to as the Union) requested that the Wisconsin Employment Relations Commission designate a member of its staff to act as arbitrator of a dispute over the dismissal of Officer Jeff Hebl. The undersigned was so designated. Hearings were held on May 20 and July 13, 1993, in Kiel, Wisconsin, at which time the parties were afforded full opportunity to present such testimony, exhibits, other evidence and arguments as were relevant to the dispute. Post hearing briefs were submitted, which were exchanged through the undersigned. On September 30, 1993, the reply brief of the City was received, whereupon the record was closed.

Now, having considered the evidence, the arguments of the parties, and the record as a whole, the undersigned makes the following Award.

ISSUE

The parties agreed that the following issue was to be determined herein:

"Did the employer violate the contract when it discharged Jeff Hebl on November 30, 1992? If so, what is the appropriate remedy?" 1/

PERTINENT CONTRACT LANGUAGE

. . .

ARTICLE I RECOGNITION

The Employer recognizes the Union as the exclusive bargaining agent for the Police Department employees, in accordance with the provisions of Sec. 111.70 of the Wisconsin Statutes, but excluding supervisory, confidential, managerial employees.

FAIR SHARE AGREEMENT

. . .

As to a new employee, the deduction shall begin with the first paycheck following the first month of employment.

The Employer shall provide the Union with a list of all employees from whom such deductions are made with each monthly remittance to the Union.

. . .

ARTICLE II MANAGEMENT RIGHTS

Unless otherwise herein provided, the management of the work and the direction of the working forces, including the right to hire, promote, transfer, demote or suspend or otherwise discharge for just cause is vested exclusively in the Employer. The Employer may adopt reasonable work rules and amend the same from time to time. Each employee shall be given a copy of current work rules.

1/ The City made a Motion to Dismiss, based upon their position that the grievance was not arbitrable. The motion was taken under advisement and is disposed of in the discussion of the grievant's probationary status.

ARTICLE III PROBATIONARY PERIOD

The first twelve (12) months of employment for new employees shall constitute the employee's probationary period.

Such probationary employees may be disciplined or discharged without recourse to the grievance procedure contained in this Agreement. Continued employment beyond the probationary period is hereby defined to be evidence of satisfactory completion of probation.

The seniority of an employee who has satisfactorily completed probation shall date from his original date of employment, and he shall then be entitled to all benefits accruing to regular employees.

A regular full-time or part-time employee is hereby defined as a person hired to fill a regular position. A part-time employee is a regular employee who is scheduled to work a regular schedule, but for fewer than the normal work week as hereinafter defined.

Regularly scheduled part-time employees who work six hundred (600) hours or more per year shall be eligible for all fringe benefits on a pro-rated basis.

Part-time, seasonal or temporary employees shall not be employed as a means of displacing regular full-time employment.

A temporary employee is a person hired for a specified period of time not to exceed ninety (90) days and who will be separated from the payroll at the end of such period.

A seasonal employee is one who is on the active payroll only during the season in which his services are required.

Part-time (fewer than six hundred (600) hours per year), temporary and seasonal employees are not entitled to the fringe benefits as provided in this Agreement.

ARTICLE IV - SENIORITY

1. Definition - It shall be the policy of the Employer to recognize seniority. Seniority shall consist of the total calendar time elapsed since the original date of employment provided, however, that no time prior to a discharge for just cause or a quit shall be included and provided that seniority shall not be diminished by temporary layoff or leaves of absence.

. . .

3. Layoffs - When a reduction in personnel is necessary, the last person hired shall be the first person laid off and the last person laid off shall be the first person rehired provided said person has the ability to perform the work available.

. . .

ARTICLE V GRIEVANCE PROCEDURE

Any dispute arising out of the terms of this Agreement shall be resolved in the following manner:

. . .

The arbitrator shall have no authority to modify, add to, subtract from or change any of the terms or conditions of this agreement or any amendments or supplements hereto.

The arbitrator shall hold a hearing as promptly as possible and shall render his decision in writing, and the decision shall be final and binding on both parties.

. . .

. . .

ARTICLE XX WAGES

. . .

Effective July 1, 1992, the rate per month in each classification shall be as follows:

Lieutenant - $2,353.25
Sergeant - $2,256.28
Patrolman - $2,225.20

Effective July 1, 1993, the rate per month in each classification shall be as follows:

Lieutenant - $2,459.14
Sergeant - $2,357.81
Patrolman - $2,325.33

New employees shall be hired at eighty (80) percent of the classification rate and will be increased five (5) percent each succeeding six (6) months from the anniversary of their hire until they reach one hundred (100) of the then

applicable classification rate for their position.

. . .

BACKGROUND 2/

The City is a municipality providing general governmental services to the people of Kiel in Calumet County, Wisconsin. Among the services provided is police protection. The Union is recognized by the City as "the exclusive bargaining agent for the Police Department employees, in accordance with the provisions of Sec. 111.70 of the Wisconsin Statutes, but excluding supervisory, confidential, managerial employees."

With the death of an officer in 1983, the City went from a manning level of six full-time police officers to five full-time positions. Since 1975, the City has also employed a varying number of part-time officers. Part-time officers are used to cover temporarily vacant shifts, where the full-time officer is on vacation, on sick leave, at training, etc. They are also used occasionally on weekend evenings, as backups for the full-time officers. Unlike full-time officers, part-time officers are not assigned to the same work shift on a recurring or permanent basis. The Union and the City have never bargained over the wages, hours, and conditions of employment of part-time officers, except as they affect full-time officers. Part-time officers have not accrued seniority in the bargaining unit, been subject to the fair share clause, nor ever used the grievance procedure of the agreement.

The grievant, Jeffery Hebl, was first appointed to a part-time position within the Police Department in August of 1991. In October of 1991, he took a leave of absence from his regular job as a security guard in a Sheboygan hospital to work a 6 on / 3 off shift in Kiel left vacant by an injury to a full-time officer, Lee Pasket. Hebl continued to receive part-time officer's pay during this period, and did not receive any contractual fringe benefits. Chief of Police Ricky Sloan told Hebl that he was trying to get a prognosis on Pasket, and that he might put him on an extended medical leave. Sloan said that, in that event, he would replace Pasket with Hebl.

In early January of 1993, the City placed Pasket on an involuntary extended medical leave. Pasket was informed that another officer would be hired to replace him, and that upon his recovery he would be eligible for the next vacant position. Hebl was appointed to a full-time officer's position effective January 18, 1992. Although the contract called for newly appointed officers to receive 80% of the regular pay rate, with 5% increases every six months, Sloan recommended to the City Council that Hebl be paid at 90% of the regular rate. As of

---

2/ The parties reached a stipulation on many of the underlying facts, which has been incorporated into the narrative portion of this Background Section. The text of the stipulation is set forth at the end of the Award, as Appendix "A".

January 18th, Hebl received the 90% rate, plus the fringe benefits due under the contract.

On November 10, 1992, an arbitrator issued an Award, ruling that the City had violated the contract by denying Pasket had the right to return to a full-time position, effective with the date of his full medical release to return to work, March 9, 1992. She ordered that he be immediately reinstated. On November 24, 1992, the City Council voted to terminate Hebl's employment. In a letter the following day, Mayor Thomas Keller informed Hebl of the Council's decision:

> Dear Patrolman Hebl:
>
> The City Council voted November 24, 1992 at their regular Council meeting to terminate your employment with the City of Kiel Police Department prior to the conclusion of your probationary period. The Council's decision was based on the strength of maintaining the policy of a 5 full-time officer department. The decision is not a reflection of your performance which has always been outstanding. Your last paid full-time shift with the City will be on November 30, 1992 from 3 P.M. to 11 P.M.
> . . .
> Lastly we regret that the decision of the Council will cause some hardship for you. I am certain there will be an ongoing effort by Chief Sloan and other City employees to locate a position for you. Again, thank you for your outstanding service to the City of Kiel.

After his dismissal as a full-time officer, Hebl reapplied for a part-time position with the Department and was hired.

On December 5th, Hebl and the Union filed a grievance with the City, alleging that the City did not have just cause to discharge Hebl, as required by the collective bargaining agreement. The grievance also noted the provision of the contract prohibiting the use of part-time officers to displace full-time officers. The City denied the grievance, asserting that Hebl was a probationary employee at the time of his discharge. The matter was not resolved in the grievance procedure, and was referred to arbitration.

Additional facts, as necessary, will be set forth below.

THE POSITIONS OF THE PARTIES

Position of the Union

The Union takes the position that Officer Jeffery Hebl was a non-probationary employee of the City at the time of his discharge, and thus was entitled to the protection of the just cause language in the Management Rights provision of the contract. The grievant was first hired by the City in August of 1991 and began work in September of that year. As a

part-time officer, his duties and powers were indistinguishable from other members of the Department. The probationary period is twelve months for new employees. Hebl was a new employee when he started as a part-time officer. There is no logical argument that he was a new employee some five months later when the City Council got around to appointing him formally to the full-time position. The Union's position is buttressed by the contract language measuring seniority from the "original date of employment".

The actions of the City confirm that Hebl was not a new employee when he was appointed to a full-time job in January of 1992. Under the contract, new employees receive 80% of the regular rate, and this is increased by 5% every six months until they achieve the full rate for the position. It is undisputed that Hebl received 90% of the regular rate upon his appointment, an acknowledgment by the City that he was entitled to credit for prior service. Furthermore, he was not required to submit a new application for the full-time job, as any new employee would. Instead, he signed a posting and was simply interviewed. During the interview, no one told the grievant that he was a new employee, nor was any mention made of a fresh probationary period. Had the City made such disclosures to Hebl, it is unlikely that he would have resigned his full-time job as a security guard in Sheboygan. All parties to this hiring treated it as a continuation of employment, rather than new employment.

Even if Hebl was a probationary officer, the City's actions in this case are invalid. The City concedes that there is a sixth position in the Police Department's table of organization. The Council has not chosen to fund that position for a number of years, but it does exist. With the reinstatement of Pasket, the force was manned by six officers. The reduction to five officers must be viewed as a layoff. Hebl, as a full-time officer, could not be laid off while the City continued to use part-time officers. The contract itself forbids the use of part-time officers to displace full-time officers, and §62.13 (5m) requires that part-time employees be dismissed first in cases of reductions of force, and only then full-time officers in order of seniority. While Hebl was certainly the junior full-time officer, the City did not have the right to lay him off while still employing part-time officers on the police force.

For all of these reasons, the Union asks that Hebl be reinstated to his full-time position and made whole for his losses.

Position of the City

The City takes the position that Officer Hebl was a probationary employee at the time of his dismissal and that the grievance is therefore not arbitrable. Hebl was appointed to a full-time position within the Department on January 18, 1992 and was discharged slightly more than ten months later. The probationary period established by the collective bargaining agreement is twelve months. The parties have specifically withheld from the arbitrator any authority to hear cases involving the discharge of probationary employees, and the instant grievance should be dismissed.

The Union's argument that the grievant was, in effect, placed on layoff and thus has the

right to return to work before any part-time employees may be employed is at odds with the facts. The parties stipulated that Hebl was "removed" from employment, and the letter of November 25th made no reference to a layoff. The undisputed testimony of City officials was that the City Council voted to discharge the grievant, not lay him off. Since this is a discharge case, neither §62.13(5m) Stats. nor the provisions of the collective bargaining agreement prevent his removal while part-time employees are still working.

The Union suggests that Hebl may have accrued some sort of rights or credit against the probationary period while he served as a part-time officer. It is clear, the City asserts, that part-time officers such as those used by the City -- not assigned to any regular shift or schedule -- are not treated as bargaining unit members for the purposes of contract coverage. No provision of the contract has ever been applied to part-time employees, and the parties have never bargained over issues related to part-time employees, other than those cases where full-time employees' interests were safeguarded against the use of part-timers. In point of fact, the parties have acted in accordance with the reality of the situation -- part-time employees are not members of the bargaining unit and the contract does not apply to them. Contrary to the arguments of the Union, the Probationary period of the contract did not start running until Officer Hebl was appointed to a full-time position on January 18, 1992.

The City anticipates that the Union may claim that the grievant became a member of the bargaining unit in late October of 1992, when he began to fill-in for Officer Pasket. Hebl acknowledged in testimony that he filled in the vacant shifts for Pasket only for so long as Pasket remained unavailable, and that he understood he was not working pursuant to a full-time appointment. Therefore he was not a member of the bargaining unit, even in his own mind, at the time the union claims he became eligible.

The City points to the award by the arbitrator in the Pasket grievance as evidence of Hebl's date of hire. Arbitrator Schiavoni made reference several times to the hiring of Hebl as Pasket's replacement on January 18, 1993. The Schiavoni Award is binding upon both parties by the terms of the arbitration clause and by well established principles of labor relations. The prior award establishes that the grievant was still within his probationary period when the City decided to discharge him in November of 1992.

The Union's attempts to rely on various statutes in this case must be rejected as misguided. The statutes reserve to the Chief and the Police and Fire Commission the right to determine whether employees will be advanced past the probationary period. An arbitrator may not usurp this right without destroying this statutory policy. The Wisconsin Court of Appeals recognized this principle in Milwaukee Police Association v. City of Milwaukee, 113 Wis. 2d 192, 335 N.W.2d 417 (1983), relying upon the Supreme Court's reasoning in Kaiser v. Board of Police and Fire Commissioners, 104 Wis. 2d 498, 311 N.W.2d 646 (1981). Further, the section of the statutes dealing with "Disciplinary Action Against A Subordinate" is inapplicable for two reasons. First, the Supreme Court has found that a probationary employee is not a subordinate within the meaning of the statute (Kaiser v. Board of Police and Fire Commissioners.) Second, the statutes deal with discipline for misconduct. There was

no misconduct in this case. The grievant was dismissed because the City policy called for a manning level of 5 full-time officers, and the reinstatement of Pasket increased the staffing beyond that level. There is no statutory provision addressing Hebl's supposed rights, and in any event there is no authorization in the contract for an arbitrator to interpret or apply state statutes.

The City argues that it was, at all times, honest with and fair to Officer Hebl. He knew of Pasket's situation and that he had been hired to replace Pasket. He was aware that Pasket was challenging the City's actions and seeking to reclaim the job. Alderman Conley told him in the employment interview that his tenure would be ties to Pasket's return. This is the reason he was advised not to buy a home in Kiel until his probation was over. In recognition of this uncertainty, and in an effort to make the job more attractive, Chief Sloan persuaded the City Council to start Hebl at 90% of the regular rate, rather than the 80% rate dictated by the contract. While Chief Sloan tried to comfort his fear regarding his employment security, Sloan never guaranteed him a job. The City vigorously contested the Pasket grievance, in large part because it felt indebted to the grievant for his assistance. This was in contravention to the then-expressed wishes of the Union, which twice urged the City to discharge Hebl as a probationary employee and reinstate Pasket. Notwithstanding the City's efforts to stand by Officer Hebl, the Award was adverse to the City and to Hebl, and the City had no choice but to comply.

DISCUSSION

The threshold issue in this case is whether the grievant, Officer Jeffery Hebl, was still within his probation period with the City of Kiel when the Common Council voted to discharge him. If he was, the City has the express contractual right to terminate him without any arbitral review of the decision, and the grievance must be dismissed as substantively non-arbitrable. If he was not a probationary employee, he enjoys the protection of the just cause and seniority provisions of the contract, and has recourse to the grievance procedure.

The argument over the grievant's probationary status flows from the fact that the grievant has two significant "dates of employment". The first was when he initially began work as a part-time officer in September of 1991. The other was on January 18, 1992, when the City Council hired him as a full-time officer with full contractual benefits to replace Pasket. 3/ Using the former date places him beyond the twelve month probationary period when he

---

3/ A third potentially significant date was on October 20, 1991, when he began filling in on Pasket's shifts, working what amounted to full-time hours, albeit at part-time pay and without contractual benefits. The import of this date was not argued by the parties and the record was not fully developed on this point. Absent a full discussion of the effect of a casual employee's assignment to a regular schedule on a long term basis, I decline to speculate on the impact of this assignment on the grievant's status.

was terminated in November, 1992, while the latter leaves him seven weeks short of non-probationary status.

The right in issue in this case are contractual rights. 4/ They turn on the intent of the parties in negotiating the various provisions of the collective bargaining agreement. The beginning point for determining intent is the probationary period defined in Article III:

> The first twelve (12) months of employment for new employees shall constitute the employee's probationary period.

The Union's argument hinges on reading the probationary period as the "first twelve (12) months of employment for new employees" in Article III as meaning employment as a police officer, without distinguishing between full-time or part-time status. The City's position is that the clause must be read as referring only to employment following appointment as a full-time officer. Neither reading is completely consistent with the contract language.

The only two possible readings of the probationary period definition would either be the literal wording, which would mean twelve months of employment by the City in any capacity, including in non-law enforcement positions outside of the Police Department, or an interpretation that would measure the probationary period from the first date of employment under the contract. The former interpretation is at odds with the underlying purpose of an initial probationary period in law enforcement, which is generally to determine the fitness of an individual for employment in a sworn capacity, 5/ rather than the person's general suitability

---

4/ The parties made extensive arguments concerning the possible statutory rights of the grievant. While reference may be made to external law to help define ambiguous contract terms, or for guidance in crafting a remedy, the jurisdiction of the arbitrator extends to interpreting and applying the contract. Article V states, in part:

> Any dispute arising *out of the terms of this Agreement* shall be resolved in the following manner:
> . . .
> The arbitrator shall have no authority to modify, *add to*, subtract from or change any of the terms or conditions of this agreement or any amendments or supplements hereto.

Granting that contract terms and statutory provisions must be harmonized where possible, harmonizing rights is not the same as creating them out of whole cloth. The substantive rights of the grievant in this forum must be rooted in the contract.

5/ For example: "There is no doubt that the use of a probationary period is an excellent means of examining candidates and is well-suited to securing the best service available. It enables the board to better evaluate a potential officer's skill and character. Probation is a

for municipal employment. The latter interpretation is consistent with the purpose of a probationary period in a department charged with keeping the public order and a position carrying with it special powers and responsibilities, as well as the fact that the contract is, as a practical matter, negotiated for the benefit of the employees covered by its terms, rather than City employees generally. Accepting the latter interpretation, as I do, leaves the central question of whether the grievant was employed under the contract as of September, 1991.

The City has recognized the Union as the exclusive bargaining agent for "the Police Department employees", excluding only supervisory, confidential, and managerial employees. On its face, this would include all officers, as well as the dispatchers and any clerical or other employees. However, the dispatchers are represented in a separate unit by the IBEW, and the parties have limited the scope of the contract to law enforcement officers. The issue is which law enforcement officers. Article III contains an extensive listing of the types of officers that may from time-to-time be employed by the Department:

> A *regular full-time or part-time employee* is hereby defined as a person hired to fill a regular position. A *part-time employee* is a regular employee who is scheduled to work a regular schedule, but for fewer than the normal work week as hereinafter defined.
>
> *Regularly scheduled part-time employees* who work six hundred (600) hours or more per year shall be eligible for all fringe benefits on a pro-rated basis.
>
> Part-time, seasonal or temporary employees shall not be employed as a means of displacing regular full-time employment.
>
> A *temporary employee* is a person hired for a specified period of time not to exceed ninety (90) days and who will be separated from the payroll at the end of such period.
>
> A *seasonal employee* is one who is on the active payroll only during the season in which his services are required.
>
> *Part-time* (fewer than six hundred (600) hours per year), *temporary and seasonal employees* are not entitled to the fringe benefits as provided in this Agreement.

Upon his hiring in September of 1991, the grievant, like other part-time officers, was used to fill temporarily vacant shifts. He was not a "regular" employee within the meaning of

---

continuation of the hiring process." Kaiser v. Board of Police and Fire Commissioners, 104 Wis. 2d 498, 504 (1981).

the contract. A review of the contract's terms suggests that Article III is the only provision which makes any mention of other than regular employees, and is the only provision which was negotiated with any thought to such employees. This reading is consistent with the stipulations of the parties, including their acknowledgment that they have never engaged in collective bargaining over the wages, hours, and conditions of employment of part-time patrol officers, except as the use of those officers affects full-time officers. 6/

Given that the rights asserted on behalf of the grievant are granted by the just cause and seniority provisions of the contract, this stipulation and the clear bargaining history supporting it seriously undercut the Union's position. The probation period is a window in which an employee is denied certain of the rights he would otherwise enjoy. If the parties have never negotiated just cause protection for other than regular employees, the calculation of a probation period from the date of hire for such employees would make little sense. The probationary period cannot be subdivided in such a way as to start the period running with the hire of these casual employees without also granting them non-probationary status after twelve months. There is absolutely no evidence that casual part-time employees have just cause protection or seniority rights, and the stipulations preclude the conclusion that they could have such protection.

In addition to the problem of attempting to apply only one-half of the probationary period provision, the balance of the contract does not support the notion that a casual part-time employee is a "new employee" for whom the probation period would begin to run. If the term as used in Article III includes casual part-time officers, it should have a consistent meaning across the contract. The only other provisions of the contract which make reference to "new employees" are the Fair Share Agreement in Article I and the wage clause in Article XX. The Fair Share provision requires that employees pay a service fee for representation and contract administration: "As to a new employee, the deduction shall begin with the first paycheck following the first month of employment." The parties have stipulated that this clause has never been applied to casual part-time employees. Article XX addresses, among other things, the pay rate of new employees: "New employees shall be hired at eighty (80) percent of the classification rate and will be increased five (5) percent each succeeding six (6) months from the anniversary of their hire until they reach one hundred (100) of the then applicable classification rate for their position." The grievant

---

6/ This stipulation was apparently worded by the parties with this specific fact situation in mind, since some part-time employees are covered by the contract. Article III makes it clear that the contract applies to regular part-time employees as well as regular full-time employees.

and other casual part-time officers are not paid a set percentage of the regular officers' rate,and he was not so paid at the time of his hire in September of 1991. 7/ If, as the Union contends, a "new employee" under the contract includes casual part-timers, the Fair Share provision and the negotiated starting rates should apply to these employees.

The Union's case on Hebl's probationary status is largely semantic. It depends upon reading Article III in isolation from the parties' bargaining history, their practices in administering the contract, and from the rest of the contract. There is no evidence that the parties ever contemplated giving a newly hired full-time officer credit for his service as a part-time casual officer, and both the function of the probationary period and the definition of who is and is not a "new employee" elsewhere in the contract support the City's position. On the basis of this, I have concluded that Officer Hebl was still within his probationary period when he was discharged in November of 1992. As a probationary employee, he had neither just cause protection nor access to the grievance procedure. Thus the instant grievance must be dismissed as non-arbitrable.

On the basis of the foregoing and the record as a whole, I have made the following

AWARD

Officer Jeffery Hebl was a probationary employee when he was discharged on November 20, 1992. Inasmuch as the contract denies probationary employees access to the grievance procedure, the grievance is dismissed as being non-arbitrable.

Signed this 29th day of November at Racine, Wisconsin:

By Daniel Nielsen /s/
Daniel Nielsen, Arbitrator

7/ The Union is correct that Officer Hebl was not paid as a "new employee" when he was hired at 90% of the regular rate in January 1992. However, the 90% rate is inconsistent with both parties' positions in this case. Since less than 6 months had passed from his initial hire as a part-time officer, he should have received 80% under both the Union's and the City's theories. It is clear that the City violated the contract by paying the grievant at 90% of the regular rate but the fact of this violation adds nothing to the understanding of his status vis-a-vis the probationary period.

APPENDIX "A" - Stipulations Reached by the Parties

1. In 1975, Chief of Police, Ricky Sloan, initiated a program of employing part-time patrol officers with the City of Kiel Police Department. *(The Union joined in this stipulation after the hearing, at page 2 of the Union's brief.)*

2. Part-time patrol officers are assigned to temporarily vacant shifts, resulting from the absence of full-time police officers by reason of sick leave, vacation, training, etc. Part-time patrol officers are also assigned to certain weekend evening shifts as backup for full-time patrol officers. *(The Union stipulated to the accuracy, but not necessarily the completeness, of this statement.)*

3. Part-time patrol officers are assigned to shifts on the basis of the operational and staffing requirements of the department and the availability of part-time officers. Part-time patrol officers are not assigned to the same work shift on a recurring or permanent basis as are full-time officers.

4. Officer Jeffrey Hebl was appointed to a part-time position within the City of Kiel Police Department in August of 1991.

5. On January 14, 1992, the City Council voted to appoint part-time Patrol Officer Jeffrey Hebl to a full-time police officer position within the department effective January 18, 1992.

6. Patrol Officer Jeffrey Hebl was removed from his position as a full-time patrol officer on November 25, 1992. Jeffrey Hebl was not removed for unsatisfactory work performance or misconduct.

7. Patrol Officer Jeffrey Hebl reapplied for and currently continues to hold his appointment as a part-time patrol officer within the City of Kiel Police Department.

8. To date, the parties hereto have never engaged in collective bargaining over the wages, hours, and conditions of employment of part-time patrol officers, except as the use of those officers affects full-time officers.

9. To date, the fair share clause of the parties' collective bargaining agreement has never been applied to part-time patrol officers.

10. To date, the grievance procedure of the collective bargaining agreement has never been used by part-time patrol officers.

11. To date, part-time patrol officers have not accrued seniority within the collective bargaining unit.