

BEFORE THE ARBITRATOR

In the Matter of the Arbitration  
of a Dispute Between

TOWN OF MADISON (POLICE DEPARTMENT)

and

WISCONSIN PROFESSIONAL POLICE  
ASSOCIATION/LAW ENFORCEMENT  
EMPLOYEE RELATIONS DIVISION  
and its affiliate TOWN OF MADISON  
DEPARTMENT EMPLOYEES

Case 43  
No. 51442  
MA-8616

Appearances:

Axley, Brynelson, by Mr. Michael J. Westcott, on behalf of the Town.

Mr. Steven J. Urso, Business Agent, Wisconsin Professional Police Association/LEER  
Division, on behalf of the Association.

ARBITRATION AWARD

The above-entitled parties, herein "Town" and "Association", are privy to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in the Town of Madison, on November 1, 1994. The hearing was not transcribed and both parties filed briefs which were received by December 2, 1994.

Based upon the entire record, and arguments of the parties, I issue the following Award.

ISSUES

Since the parties were unable to jointly agree on the issues, I have framed them as follows:

1. Is the grievance arbitrable?
2. If so, has the Town violated Appendix "A" of the contract by not paying grievant James H. Harper at the 8 year Sergeants' rate of pay and, if so, what is the appropriate remedy?

## DISCUSSION

Grievant Harper was hired by the Town as a full-time police officer on October 1, 1981, and subsequently resigned on December 17, 1984. He was then hired as a part-time officer on April 25, 1985, 1/ and went to full-time status on February 8, 1990, at which time he was paid at the 4 year Patrol Officer's rate of pay.

The January 8, 1990, Town Board Minutes on this subject stated:

...

Chief Romeis and Mike Harper then met with the Board and discussed the appointment of James Michael Harper as a police officer in a full-time capacity in the near future. Chief Romeis to advise the Bookkeeper of the effective date. Officer Harper has worked for the Town in a full-time capacity as a patrol officer from 10/1/81 - 12/7/84 & continued as an active part-time officer since then. Mr. Romeis recommended a pay compensation package recognizing this experience and training. Mr. Matthews moved, seconded by Ms. Brimmer, that upon the recommendation of Chief Romeis that Officer James Michael Harper start at the 4 year rate of pay and go to the 8 year rate on his next anniversary date, or October 1, 1990. On that date, he would actually have been a Town employee for nine years, counting both full and part-time status. It is understood that his date of return to full time status be the date used to determine seniority for all other benefits and purposes. Motion carried.

...

Harper in October, 1990, went to the 8 year Patrol Officer's rate of pay. On July 16, 1991, he was promoted to Sergeant at the Sergeant's 4 year rate of pay which represented about a \$90 a month wage increase. By letter dated July 16, 1991, then-Chief of Police Wayne Romeis informed Harper, inter alia:

...

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1/ During the time he was a part-time officer for the Town, Harper worked as a full-time police officer for other law enforcement agencies.

"Effective July 16, 1991, you are hereby promoted to the rank of Police Sergeant. Congratulations! As such, your rate of pay will go to that of Sergeant with four years. This is the next highest rate above what you were currently at."

. . .

Throughout this time, Harper never grieved the rates of pay he was receiving.

Harper on May 2, 1994, filed a grievance over his current rate of pay wherein he alleged that he should be at the 8 year Sergeant's rate of pay, rather than the 4 year Sergeants' rate of pay. The Town denied the grievance partly on the ground that it had been untimely filed.

In support of the grievance, the Association asserts that the grievance is timely because it was filed as soon as the Association and Harper learned that other police officers are being paid at a higher rate than Harper and that Harper should be at the Sergeant's 8 year wage rate under the contractual wage scale. It thus argues, "this case revolves around the issue of fair and equal treatment to employees" because the Town has been "inconsistent" in its pay policy. As a remedy, it requests a prospective award to the effect that Harper be placed "into the eight year pay step effective as of the date of the arbitration award".

The Town, in turn, asserts that the grievance is not arbitrable because it was filed "nearly three years late" from the time that Harper was placed at the 4 year Sergeants' wage rate; that it is not a continuing grievance because the grievance turns on Harper's classification in a particular wage progression, rather than on mere paycheck errors which is normally the case with continuing grievances; and that even if the grievance were timely, Harper in any event is not entitled to any back pay. As to its merits, the Town mainly contends that Harper is unable to point to any specific contract provision in support of his grievance; that he in fact has been treated fairly; that the Town had legitimate reasons for placing other officers at a higher wage rate; and that a past practice supports its position.

Arbitrability is the first issue which must be resolved here. As to that, it is undisputed that Harper waited three years before protesting his 1991 placement at the Sergeant's 4 year wage rate. The only reason offered for this delay is his claim that he (and the Association) did not know until 1994 that other officers with similar or less experience are being paid at the higher Sergeant's 8 year wage rate.

To some extent, this is a continuing grievance because Harper is aggrieved every time he receives his paycheck which reflects his placement at the Sergeant's 4 year wage rate. On the other hand, it was his responsibility to learn much sooner whether he is properly being paid.

But, even assuming arguendo that his grievance is arbitrable, it nevertheless must be

denied since there is no contractual requirement that he be paid at the higher wage rate sought. Thus, Appendix "A" of the contract provides in pertinent part:

APPENDIX A

<u>Position</u>	Monthly Pay Rate <u>1-1-94</u>	Monthly Pay Rate <u>7-1-94</u>
Police Officer		
Starting	\$2,157.00	\$2,200.00
1 Year	2,299.00	2,345.00
2 Years	2,508.00	2,558.00
4 Years	2,679.00	2,733.00
8 Years	2,725.00	2,779.00

Sergeant-Detective

Starting	\$2,306.00	\$2,352.00
1 Year	2,461.00	2,510.00
2 Years	2,684.00	2,738.00
4 Years	2,836.00	2,893.00
8 Years	2,916.00	2,974.00

<u>Position</u>	Monthly Pay Rate <u>1-1-95</u>	Monthly Pay Rate <u>7-1-95</u>
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Police Officer

Starting	\$2,266.00	\$2,311.00
1 Year	2,415.00	2,463.00
2 Years	2,635.00	2,688.00
4 Years	2,815.00	2,871.00
8 Years	2,862.00	2,919.00

Sergeant-Detective

Starting	\$2,423.00	\$2,471.00
1 Year	2,585.00	2,637.00
2 Years	2,820.00	2,876.00
4 Years	2,980.00	3,040.00

8 Years	3,063.00	3,124.00
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For purposes of computing hourly rates that are to be used for computing overtime payments, the monthly pay rate shall be divided by 162.5 hours.

The date for pay increases shall become effective on the pay periods closest to January 1, 1994 and January 1, 1995, respectively.

There is nothing in this language -- or in any other part of the contract for that matter - which requires the Town to credit prior seniority to employes who terminate their employment and then return to work which, in essence, is what Harper is seeking here. There similarly is no contractual requirement that the Town must give full seniority credit to part-time employes. As a result, the Town was free to grant or not grant such seniority, depending on the particular circumstances of a given situation.

That is why the Town Board's January 8, 1990, Minutes state that Harper's "date of return to full-time status be the date used to determine seniority for all other purposes and benefits." Hence, Harper agreed at that time that his prior full-time and part-time seniority would not be used for pay progression purposes. In addition, the Association at that time never objected to the Town's actions and its treatment of Harper's prior seniority. The terms of that 1991 bargain therefore still stand and must be honored.

Moreover, the record in any event shows that the Town has not treated Harper unfairly. Thus, Officer Burt Bolderbuck, who is at the Sergeant's 8 year rate of pay, has more continuous service than Harper, thereby fully warranting his placement at a higher rate of pay. In addition, Officer Christian Thompson is paid the same rate as Harper because the Town, at the time of Thompson's hire, credited him with two year's seniority as an inducement to hiring him and because Chief Romeis decided in 1992 to place Thompson at the Sergeant's 4 year rate of pay because he otherwise would only have received a \$5 per month increase when he became a Sergeant.

Hence, the Town had legitimate business reasons in treating Bolderbuck and Thompson differently than Harper. As a result, there is no basis for finding that the Town has treated Harper unfairly. To the contrary, this record establishes that the Town has gone out of its way to treat Harper fairly by at times paying him more than the contractual minimum.

In light of the above, it is my

AWARD

That even if the grievance is arbitrable, the Town nevertheless did not violate Appendix "A" of the contract by not paying grievant James H. Harper at the 8 year Sergeant's rate of pay; the grievance is therefore denied.

Dated at Madison, Wisconsin this 22nd day of March, 1995.

By Amedeo Greco /s/  
Amedeo Greco, Arbitrator