

BEFORE THE ARBITRATOR

In the Matter of the Arbitration  
of a Dispute Between

CITY OF RHINELANDER (POLICE)

and

RHINELANDER POLICE ASSOCIATION,  
LOCAL 38, WPPA/LEER DIVISION

Case 79  
No. 54222  
MA-9587

Appearances:

Mr. Phillip Parkenson, City Attorney, City of Rhineland, 135 South Stevens Street,  
Rhineland, Wisconsin 54501-0658, on behalf of the City.

Mr. Gary Wisbrocker, Business Agent, Wisconsin Professional Police Association/LEER  
Division, E. 1125 South Radley Road, Waupaca, Wisconsin 54981, on behalf of  
Local Union 38.

ARBITRATION AWARD

According to the terms of the 1995-96 collective bargaining agreement between the City of Rhineland (hereafter City) and Rhineland Police Association, Local 38, WPPA/LEER (hereafter Union), the parties requested that the Wisconsin Employment Relations Commission appoint a member of its staff to act as impartial arbitrator of a dispute between them involving whether the City violated the labor agreement by appointing Patrol Officer Gleason to act as "temporary shift supervisor". The Commission designated Sharon A. Gallagher to hear and resolve the dispute. Hearing was scheduled and held at Rhineland, Wisconsin on August 26, 1996. No stenographic transcript of the proceedings was made. The parties filed their written briefs by October 1, 1996, whereupon the record herein was closed.

Issue:

The parties stipulated that the following issue should be determined in this case:

Did the City of Rhineland violate the current Agreement when they appointed a "Temporary Shift Supervisor"?

If so, what is the appropriate remedy?

Relevant Contract Provisions:

SECTION 20.02 - CLASSIFICATION ELIMINATION

- A. In the event of a reduction in the number of employees in any job classification, the employee with the least amount of classification seniority in the job classification selected by the employer for the reduction will be initially selected for the layoff or reduction.
- B. Such employee may displace an employee with the least amount of classification seniority in an equal or lower paying job classification in which the employee had previously worked, provided that the employee doing the displacing has more classification seniority than the person who is being displaced. Employees displaced pursuant to this procedure will be allowed to exercise the same displacement rights, if they have sufficient seniority.
- C. Classification seniority shall consist of the total calendar time or full-time employment in a particular job classification. An employee who permanently leaves one job classification will maintain the classification seniority he had at the time of leaving, but will not accrue further seniority in his former classification unless he permanently returns to such classification. Classification seniority will terminate if an employee loses his bargaining unit seniority.
- D. An employee displaced by the elimination of a classification shall be entitled to return to the position if it is reinstated within two (2) years from the time of the elimination. The employee displaced will be reinstated without proceeding through the promotional procedure and without going through probation, provided the displaced employee had successfully completed probation before being displaced.

ARTICLE XXI

PROMOTION PROCEDURE

SECTION 21.01 - PROCEDURE

Whenever a permanent vacancy occurs in a job classification covered by the contract, or a permanent vacancy occurs as a result of a new job classification being established within the Rhinelander Police Department on a non-supervisory position, such vacancy shall be filled by the next qualified applicant as determined by a written examination, and oral examination by the Police and Fire Commission, and by written evaluation by the Chief of Police. . . .

Background:

In or about July, 1994, the City of Rhinelander hired James Sebestyen as Police Chief. At that time, the City employed approximately four individuals as Police Sergeants (Allen, Dumar, Beene, and Parmeter). Also at this time, the City employed twelve Patrol Officers on four shifts with all Patrol Officers and one Dispatcher (on each shift) working under the direction of one of the Sergeants.

It has been the City's practice to assign both Sergeants and Patrol Officers to perform extra duties if they agree to perform them. Since at least January 1, 1996, the following Patrol Officers have been assigned the extra duties listed next to their names:

Officer Melau - Firearms, Dispatch - Squads - SRT - Nordeg

Officer Gauthier - Firearms - Accidents - SRT

Officer Hirsh - Officer Friendly - Bicycle Rodeo - Public Speaking

Officer Zohimsky - SRT - Property Room - Nordeg

Officer Gleason - SRT - Shift Commander

Officer Lueneburg - Nordeg - Coordinator - Detective

Officer Larson - Alarms

Officer Thorpe - K-9

. . .

Officer DeRosier - Accident investigation

. . .

Officers Kabel and Strid have chosen not to perform additional duties and therefore they have been given no extra duties by the City. Officer Martin is the least senior Patrol Officer working for the City and he had not been asked to perform extra duties as of the date of the instant hearing.

In or about the fall of 1995, Chief Sebestyen promoted Sergeant Parmeter to Lieutenant. After he did so, the Chief decided that he did not wish to fill the Sergeant's position left open by Parmeter's promotion. On December 21, 1995 Chief Sebestyen issued the following Amended Order #16:

. . .

Due to a recent promotion, one of the shifts has been left without a Supervising Sergeant.

Senior Officers on that shift and Sergeant Dumar's shift were talked to and the following shift changes were made.

Sergeant Dumar will be changed to fill the vacancy left by Lieutenant Parmeter's promotion, Patrolman Kabel will remain on his 1995 scheduled shift and Patrolman Gleason will be put in charge of his shift with the title of "Temporary Shift Supervisor."

See attached shift schedule.

This order takes effect January 1, 1996.

The 1996 shift schedule which was attached to the Chief's December 21, 1995 Amended Order #16 read as follows:

1996 SHIFT SCHEDULE

<u>Sergeant Allen</u>	<u>Sergeant Duman</u>	<u>Sergeant Beene</u>	<u>Temporary Shift Supervisor Gleason</u>
Ptm. Larson	Ptm. Melau	Ptm. Strid	Ptm. Kabel
Ptm. Gauthier	Ptm. Hirsch	Ptm. Lueneburg	Ptm. DeRosier
Ptm. Thorpe		Ptm. Zohimsky	
Disp. Piasecki	Disp. McDermott	Disp. Waid	Disp. Adams

The job description for the position of Sergeant which has been contained in the City's policies and procedures book since at least 1988, reads as follows:

SERGEANT - JOB DESCRIPTION.

- (a) General Statement of Duties. A Sergeant performs supervisory and general duty police work enforcing state and local laws.
- (b) Distinguishing Features of the Class. This is a supervisory position involving the performance of responsible police work and exercising supervision over Patrol Officers, patrol duties and other law enforcement activities. Although work is performed in accordance with general departmental policies and procedures, this employee must exercise initiative in applying them to specific situations as they arise. Work is performed under the supervision of the Chief of Police and/or the Captain of Police.
- (c) Examples of Work. (Illustrative Only.)
  - (1) Supervises and directs the activities of Patrol Officers as assigned.
  - (2) Prepares assignment schedules and supervises and trains officers and instructs them in their duties.
  - (3) Inspects officers to ascertain that they are properly uniformed, equipped and filled for duty.
  - (4) Responds to accidents, burglaries, complaints and other crimes, preparing reports and doing other necessary paperwork.
  - (5) Reviews the reports of subordinate officers.
  - (6) Evaluates personnel performance and takes or recommends appropriate actions.
  - (7) Makes provisions for the maintenance and repair of all assigned vehicles and equipment to ensure proper and efficient functioning at all times.
  - (8) Enforces all municipal and pertinent county, state and federal laws.
  - (9) Investigates citizen complaints, including those concerning suspected criminal activity, stray animals, domestic disturbances and noise.
  - (10) Issues citations, makes arrests and apprehends suspects.(sic)
  - (11) Appears in court when required.
  - (12) Conducts in-service training and instruction in police methods and practices and the use of firearms.
  - (13) Checks officers on patrol periodically.
  - (14) Observes and checks businesses and other property for unlocked doors and signs of criminal activity.
  - (15) Reports cases of misconduct or violations of the

- rules and regulations to Commanding Officer.
- (16) Conducts background checks of Patrol Officer candidates.
  - (17) Operates fingerprint, radar, Intoxilyzer, and other special equipment.
  - (18) Attends regular training sessions in police methods, first aid and other subjects.

(d) **General Qualifications.**

- (1) Knowledge of the principles and practices of law enforcement.
- (2) Knowledge of state laws, local ordinances and rules and regulations.
- (3) Knowledge of the geography of the City.
- (4) Ability to direct and supervise and command the respect of subordinate officers.
- (5) Ability to react quickly and calmly in emergency and stress situations.
- (6) Ability to maintain accurate and complete records and prepare clear and detailed reports.
- (7) Good physical condition.
- (8) Possession of a valid Wisconsin driver's license.
- (9) Certification in the operation of radar, preliminary breath test and Intoxilyzer.
- (10) Meet the requirements of the State of Wisconsin Law Enforcement Standards Board.

(e) **Training and Experience.**

- (1) Graduation from high school preferably supplemented by some college-level courses in police science, three hundred twenty (320) hours of Basic Recruit Training and considerable experience at the level of a Patrol Officer, or any combination of training and experience which provides the required knowledge, skills and abilities.
- (2) There is a minimum requirement of three (3) years of service with the Rhinelander Police Department.

(f) **Responsibilities and Duties.**

- (1) A Sergeant of Police is charged with exacting the

proper performance of patrol and other police duty from members of the department assigned to him.

- (2) A Sergeant shall particularly and thoroughly familiarize himself with all subjects pertaining to the duties of a Patrolman and shall assist and instruct the Patrolmen under his supervision in the proper discharge of their duties and shall be held strictly responsible for their efficiency, discipline and general conduct and appearance.
- (3) A Sergeant shall thoroughly acquaint himself with the capabilities of Patrolmen under his supervision and impartially report in writing to his Commanding Officer every case of misconduct, incompetency, neglect of duty or any violation of the rules and regulations on the part of such Patrolmen; and his failure to report will be sufficient cause for charges being preferred against him.
- (4) At the beginning of tour of duty and the reading of dispatches and orders, a Sergeant shall make careful inspection of the members under his respective supervision to ascertain that they are properly uniformed and equipped and fitted for duty. If they are found improperly uniformed or equipped or in any way unfit for duty, such fact will be reported at once to his Commanding Officer who will take proper action.
- (5) A Sergeant shall constantly scrutinize and follow-up the activities of Patrolmen under his charge with a view of ascertaining whether Police duties, orders and instructions are properly and efficiently performed. He shall interview complaints and see that complaints made have received proper attention, and he shall make a written report at the expiration of each tour of duty outlining the work performed by him, his observations and the results of his investigations.
- (6) The Chief of Police shall appoint a Sergeant to be present during the pre-hiring interviews of candidates for Department positions.
- (7) A Sergeant will be directly responsible to the Chief of Police.
- (8) Whenever it appears that a Patrolman is unaware of his duties and after a reasonable period of instruction

he still shows no indicating of improvement or if for any reason a Sergeant (sic) believes any Patrolman under his supervision is either mentally or physically incompetent or unfit for patrol duty, he shall promptly inform his Commanding Officer in writing of his observations.

- (9) A Sergeant, during his tour of duty, shall, if practicable, visit all Patrolmen, special details, public gatherings or other special duties or posts as often as possible.
- (10) A Sergeant is strictly enjoined to require from his subordinates a proper attitude of respect and obedience at all times and shall, on no occasion, indulge in unofficial-like conduct with him.
- (11) A Sergeant shall set an example to all subordinates in sobriety, dignity, courtesy, discretion, skill, diligence, the observation of proper discipline and shall, at all times, appear neatly attired, clean in person and equipment.
- (12) A Sergeant, on arriving at the scene of any fire, riot, crime or other important emergency, shall immediately send or communicate such information to his Commanding Officer and take such other action as the situation requires.
- (13) Inasmuch as the efficiency of the patrol force depends largely upon the manner in which a Sergeant performs his duties and enforces discipline, he shall be held responsible for the proper conduct and appearance of subordinates and will be deemed guilty of neglect of duty efficiency when those under his command or supervision are habitually late and indifferent in the performance of their duties.
- (14) A Sergeant keeps the Chief and Captain of Police informed of activities as necessary or desirable.
- (15) Within the framework of the department policy, a Sergeant independently directs handling of a variety of work situations in a manner that provides justice of (sic) the individual, the department and serves the common good.
- (16) All sworn police personnel regardless of their rank and/or position are considered law enforcement officers, specific and/or special assignments are not exclusive duties and do not relieve one from



enforcing any law and performing any other police function should they be so ordered or should they arise.

- (17) Whenever a superior officer, in the necessary performance of his duties, orders any subordinate not attached to his shift, he must exercise great care that such orders do not unnecessarily conflict with those of the Sergeant of the shift to which subordinates are assigned. Whenever orders so given are important or requires the subordinate receiving the same to leave his regular duty or assignment, the superior officer giving such orders shall, as soon as practicable, inform such subordinate's Sergeant of the action taken.
- (18) Sergeants shall not permit any officer assigned to his shift to indulge in acts of recklessness and shall report to his Commanding Officer any officer who persists in recklessness despite warnings. He shall report the insubordination or misconduct of any officer to this Commanding Officer any suspicion he may have or any officer being lax in his moral conduct or in the performance of his duty.
- (19) A Sergeant is required to correct and report to his Command Officer any instances of unfitness detected during his tour of duty.
- (20) A Sergeant shall conduct periodic examinations of the firearms, ammunition, belts and holsters of assigned personnel, promptly corrected them as need be.
- (21) A Sergeant shall exert every effort to satisfy the needs of citizens requesting service, assistance or information and courteously explain any instances where jurisdiction does not lie with the police agency, suggesting procedures to be follows. (sic)
- (22) A Sergeant shall supervise and direct subordinates in investigations and effecting case preparation.
- (23) A Sergeant shall insure civil treatment and protection of rights for all persons coming into the scope of police authority.
- (24) A Sergeant shall strive to promote efficiency, safety and economy in the Police Department.
- (25) A Sergeant shall provide leadership that influences

and motivates subordinates a high level of achievement. He will act as an advisor to aid and assist other personnel under his command in the performance of their duties, to the best police service to the public may be attained.

- (26) A Sergeant is accountable for subordinates' failures and inadequacies.
- (27) A Sergeant shall ensure that all policy, rules, regulations, orders, procedures and directives of the Police Department are enforced and implemented by their subordinates.
- (28) A Patrol Sergeant will, at the beginning of his/her assigned shift, check the Police vehicle for cleanliness, maintenance and Police emergency equipment. The Sergeant will insure that these will be present.
- (29) Sergeants are required to complete a minimum of two (2) personnel evaluations of each employee assigned to them annually. The second personnel evaluation regarding a probationary employee shall be submitted to the Chief of Police prior to the first Monday of the month of that employee's first anniversary date. This will include the recommendation regarding the probationary employee's post-first twelve (12) months status (i.e., employee to be placed on permanent status, extend probationary status with the desired time limit stated or dismissal) stating the justification for that recommendation.

The job description for the Patrol Officer position, contained in the City's policies and procedures book since 1988, reads as follows:

#### PATROL OFFICER - JOB DESCRIPTION.

- (a) **General Statement of Duties.** A Patrol Officer performs general-duty police work connected with the maintenance of public safety through the enforcement of state and local laws.
- (b) **Distinguishing Features of the Class.** This employee performs a wide variety of duties connected with general police patrol work involving the enforcement of laws and

ordinances in a designated area on an assigned shift and the provision of various types of assistance. Assigned duties are performed in accordance with departmental rules and regulations. Specific instructions are received and the work is regularly checked; however, a Patrol Officer is required to exercise initiative and judgment when faced with emergency situations. Work is performed under the supervision of a Sergeant or Police Captain. A Patrol Officer may act as a shift supervisor as assigned.

(c) **Examples of Work. (Illustrative Only.)**

- (1) Enforces all municipal and pertinent county, state and federal laws.
- (2) Patrols an assigned area in a marked or unmarked departmental vehicle or on foot.
- (3) Operates radar equipment and issues citations.
- (4) Directs and escorts traffic.
- (5) Investigates accidents and other crimes, preparing reports and doing other necessary paperwork.
- (6) Observes and checks business and other property for unlocked doors or signs of criminal activity.
- (7) Investigates citizen complaints, including those concerning suspected criminal activity, stray animals, domestic disturbances and noise.
- (8) Makes arrests and apprehends suspects.
- (9) Serves papers and warrants.
- (10) Operates fingerprint, radar, Intoxilyzer and other special equipment.
- (11) Transports prisoners.
- (12) Renders first aid and other types of assistance.
- (13) Appears in court when required.
- (14) Gives speeches and other public presentations concerning bicycle safety, juvenile delinquency and other issues.
- (15) Maintains and checks police equipment such as squad cars, radios, cameras, firearms and uniforms.
- (16) Fills in for other departmental personnel and assists them with their duties as needed.

(d) **General Qualifications.**

- (1) Knowledge of the principles and practices of law enforcement.

- (2) Knowledge of the laws and ordinances governing local law enforcement.
  - (3) Knowledge of the laws, rules and regulations pertaining to the department.
  - (4) Knowledge of the geography of the City.
  - (5) Ability to establish and maintain effective working relationships with other department personnel and the general public.
  - (6) Ability to maintain accurate and complete records and prepare clear and detailed reports.
  - (7) Good physical condition.
  - (8) Possession of a valid Wisconsin driver's license.
  - (9) Meet the requirements of the State of Wisconsin Law Enforcement Standards Board.
- (e) **Training and Experience.** Graduation from high school and three hundred twenty (320) hours of Basic Recruit Training or any combination of training and experience which provides the required knowledge, skills and abilities.
- (f) **Philosophy and Relative Goals.** While actively employed as a police patrol officer, each member must commit him or herself to related goals that communicate the highest degree of public service and fair treatment while reflecting total commitment to the ethics of law enforcement. Each member must actively employ the best of resources by diligent care of the equipment made available at his or her disposal. He or she must seek alternate means of effectively reducing costs while maintaining a superior level of police service to the community. Each member furthers a personal commitment to physically and mentally maintain the highest degree of professional appearance that will reflect the highly skilled police officer who meets the routine with zealous enthusiasm. He or she must seek the total person of law enforcement, one who is fair yet courageous, who is honest but also is diligent, sincere, but yet is firm, one who seeks truth above all else.
- (g) **Responsibilities and Duties.**
- (1) Patrol -- Checking In. A Patrol Officer shall:
    - a. Obtain orders and instructions regarding shift duties from the officer in charge or through (sic) his own initiative, e.g., operating radar at a specific location, making vacation

- b. Review log activity sheet, complaint reports and/or other summary forms from prior shift(s) to determine pertinence to current assignment; review individual reports from previous day(s) for accuracy and completeness if desired or so directed from the Commanding Officer.
  - c. Review current posted list of stolen vehicles and wanted criminals for potential use during routine performance of job duties.
  - d. Check that vehicle and miscellaneous equipment issued is present and in operating condition (e.g., red light, siren, first aid kit, shotgun, portable radio, etc.); assumes responsibility for operation and security of the same during his shift hour.
- (2) Patrol -- Observance. A Patrol Officer shall:
- a. While traveling in patrol vehicle, observe public buildings, business establishments, vacant premises, residential and secluded areas, etc., for signs of disturbance, suspicious activity or potential danger; stops and personally investigate as necessary or as time allows.
  - b. Stop and speak to owners or employees of local establishments to determine if assistance is needed, obtain pertinent information and establish and/or maintain rapport.
  - c. Investigate observed suspicious activities or persons in a cautious manner and determine appropriate action to be taken, e.g., where illegal entry into a business establishment is suspected will collect and preserve physical evidence, question witnesses, etc.
  - d. Record pertinent information concerning suspicious persons, vehicles or activities in officer's notebook; transmits information, orally and/or in writing, to appropriate personnel.
  - e. Assist other law enforcement officers and other departments as requested with prior

approval, e.g., making raids for illegal possession of drugs or other contraband, apprehending criminals, locating missing persons, making traffic stops, providing informal advice, etc.

(3) Patrol -- Traffic Duties. A Patrol Officer shall:

- a. Observe traffic for violation of State of (sic) City Ordinances.
- b. Evaluate circumstances of each violation to determine whether a warning or citation is warranted, issue citations as necessary.
- c. Using patrol radio, contact dispatcher to obtain necessary background information on traffic violator(s), e.g., determine if they are wanted on other charges, assess driver license status, etc., if warrant has been issued, arrest and confine.
- d. Attempt to deter violations by identifying and patrolling ore frequently those areas where violations are more likely to occur.
- e. Operate radar equipment in areas of high speed violations and/or high accident rates.
- f. After stopping traffic violator, observe for clues that person might be under influence of alcohol or other drugs, or for any signs of criminal or abnormal activities.
- g. Direct traffic to insure smooth traffic flow at public events, accident scenes, intersections where traffic lights have malfunctioned.
- h. Using patrol radio, report serious road conditions to dispatcher; remove obstacles or traffic hazards from the road or make arrangements for the same by appropriate authority.

(4) Patrol -- Answering Complaints. A Patrol Officer shall:

- a. Respond to calls/complaints received from citizen(s), dispatcher or observed by self, e.g., burglary-in-progress, officer-needs-assistance, family trouble, bar disturbance, noise disturbance, attempted suicide, rape, dog bite, vandalism, firearms discharge,

- game violations, etc.
- b. Drive cautiously to complaint location as the situation warrants, i.e., in an emergency situation quickly with red light and siren, and in a nonemergency situation within speed limits.
  - c. Investigate complaints by questioning involved parties and available witnesses and determine appropriate action to be taken.
  - d. Collect and preserve physical evidence that might be helpful in the investigation of criminal complaints.
  - e. Take appropriate action to personally handle complaints or, if determined necessary, obtain as much information as possible for a Sergeant follow-up; in situations that require immediate Sergeant investigation, secure scene until a superior officer arrives.
  - f. Suppress crowd disturbance using procedures and equipment that will lead to control of the situation to the most efficient and safe manner possible.
  - g. If there is probable cause for alcohol or other drug abuse, charge and arrest violator(s); inform violator(s) of obligations to take chemical test.
  - h. Evaluate accident scene and determine service assistance; notify dispatcher via car radio to make arrangements with proper authority(s) concerning damage, e.g., report damaged traffic signs and road hazards to highway department, notify towing company of inoperable vehicles, inform public utility(s) of damaged electrical or gas lines, etc.
  - i. Construct clear and concise accident reports describing the nature of the accident, extent of damage and other pertinent information; if serious injury or fatality occurs, gather information more intensively and write very detailed and precise report; submit the same to appropriate destination through established

channels.

(5) Criminal and Civil Process Serving. A Patrol Officer shall:

- a. Obtain criminal and/or civil process papers through established departmental channels.
- b. Accept bond from citizens for infractions of the law as dictated by bond schedule, record transaction for departmental files and issues receipt; follow established departmental procedures regarding security of the bond.
- c. Respond to complaints received through telephone calls, correspondence or personal visits from citizens; as needed, file complaints after obtaining all relevant information or make referral to appropriate department.
- d. Monitor location and activity of officers on duty; attend to radio frequencies (often simultaneous) from various sources, and maintain communication with the same as arranged; take personal notes and log relevant information for departmental files.
- e. Compile and type initial report of each complaint received; as necessary, contact responsible person of business establishment or private home via telephone.
- f. Comply with FCC and departmental rules and regulations regarding radio communications.

(6) Traffic and Misdemeanor Court Activities -- Court Duties. A Patrol Officer shall:

- a. Prepare misdemeanor and traffic violation paperwork for court use, checking to assure accuracy, completeness and coherence of the same; present information in court orally and/or in writing.
- b. Evaluate cases, determining if all pertinent information is included, and obtain missing information as needed; arrange for notification of witnesses for court appearance as required.



- c. Explain court procedures and judge's decision to offender if necessary; escort to jail or clerk of courts' office for payment of fine.
  - d. Check for incarcerated traffic violators to be arraigned and make arrangements for court appearance.
- (7) Maintenance of Order and Security -- Court Duties.  
A Patrol Officer shall:
- a. Escort a prisoner in a vigilant and cautious manner to and from court, using handcuffs or other restraints as necessary.
  - b. Maintain vigilance for suspicious activity, persons or objects that might jeopardize the security and/or order of the courtroom; determine appropriate action to be taken and respond to disturbances as necessary.
- (8) Community Relations. A Patrol Officer shall:
- a. Respond orally to routine inquiries made by the general public concerning departmental policies and procedures and the law enforcement area in general.
  - b. Instill confidence and respect in the Police Department by acting in a professional, courteous and conscientious manner both on and off duty; maintain a neat and well-groomed appearance during tour of duty.
  - c. Provide emergency services to the public in a competent and diligent manner following determination of urgency and type of assistance needed, e.g., assist stranded motorists, render first aid to the injured or ill, etc.
  - d. Provide advice and encouragement to new patrolmen, and explain and/or demonstrate various law enforcement techniques or procedures.
- (9) Auto Maintenance and Safety. A Patrol Officer shall:
- a. Provide routine service checks on patrol vehicles and auxiliary equipment; make minor adjustments and repairs as needed.

- b. File written and/or oral report of malfunction or damage to appropriate source for documentation and/or needed repair.

Facts:

The Grievant, Thomas Gleason, has been employed by the City's Police Department for the past twenty-one and one-half years. Both before and after December 21, 1995, Gleason was employed by the City in the classification of Patrol Officer. Officer Gleason stated that before Sergeant Parmeter was promoted in 1995, he (Gleason) worked under the Sergeant as one of his Patrol Officers; that Sergeant Parmeter then assigned him duties and conducted the role call and checked the forms that he and other officers prepared. Gleason also stated that when Sergeant Parmeter was ill or on vacation, which occurred at least once a year, Gleason replaced him as Sergeant. During these times when Gleason replaced then-Sergeant Parmeter, Gleason continued to receive his Patrol Officer pay rate.

As Temporary Shift Supervisor, Gleason stated that he performs the following duties which he did not perform previously as Patrol Officer: Review of daily reports prior to role call; conducting role call and making assignments to Patrol Officers; checking of Patrol Officers' reports and returning them for correction to the Patrol Officers if they are incorrect; driving the Sergeant's car; working on the Sergeants' rotation; preparing weekly and monthly parking ticket accounts of the money collected by the City; attending staff meetings with other Sergeants, the Lieutenant, and the Chief on a regular basis. Gleason stated that since he has been appointed as the Temporary Shift Supervisor, he has been assigned additional duties in the area of armoring and Special Response Team. 1/ Most of the work in regard to these additional duties has been performed by Gleason during his regular hours. However, when Gleason has attended staff meetings or has had to perform duties on overtime, he has been paid time and one-half at the Patrol Officer rate, not the Sergeant rate. Officer Gleason stated that as Temporary Shift Supervisor he performs certain duties that he did not perform when he filled in for then-Sergeant Parmeter in his absence: parking ticket accounting functions and attending staff meetings.

Police Chief Sebestyen stated that at approximately the same time that he promoted Parmeter to Lieutenant, he decided to recommend that the City significantly reorganize the Police Department. Prior to the instant hearing, there had been two meetings regarding reorganizing the Police Department along the lines that the Chief recommended, and two more meetings have been scheduled to occur in executive session. The Chief also stated that whether the City Council will ultimately agree to reorganize the Police Department along the lines of his plan or not is uncertain and that the time frame for completion of the reorganization (should it be authorized) is also unknown, although the Chief has recommended that reorganization take place during the 1997

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1/ The other three Sergeants also have been assigned additional duties.

budget year.

Under the Chief's reorganization plan, all Sergeant positions will be eliminated. The plan also calls for an additional supervisory position to be created. No one will be laid off or terminated due to the plan. Rather, the Chief will utilize attrition to complete the plan. The Chief stated that his reorganization plan is currently in a committee made up of Alderpersons and the Chief; that this committee will make a recommendation to the Council after it has completed studying the plan; and that the Council will then vote on whether to accept the plan. The Chief also stated that implementing the reorganization plan will be costly -- from \$200,000 to \$500,000.

The Chief stated that he selected the Grievant to fill the position of Temporary Shift Supervisor because he felt that Gleason could work well with the officers who were to remain on that shift (Kabel and DeRosier) and because Gleason, in a conversation with the Chief prior to his assignment, stated that he (Gleason) felt he could handle the job. The Chief stated that Gleason has not been given training in the area of supervision and therefore, Gleason would not be held to the same standard as the Sergeants who are Shift Supervisors on the other shifts.

Positions of the Parties:

Union:

The Union argued that because the patrol Sergeant position has not been eliminated by the City, the City must fill the vacancy (created by the promotion of Sergeant Parmeter to Lieutenant) pursuant to the provisions of Article XXI. In the Union's view, the Chief's excuse for not promptly filling the vacancy -- that there is a possibility that the City may reorganize the Department and eliminate the Sergeants positions -- is insufficient to overcome the language of Article XXI. The Union also noted that Section 20.02 of the agreement is not relevant to this case because it refers only to the elimination of classifications, not to vacancies within a classification.

The Union further pointed out that the City's past practice argument should also fail as the City has never permanently replaced a Sergeant with a Patrolman as it has done in this case. Rather, the evidence of past practice proffered herein showed that only short term (not yearlong) replacements were made. The Union urged that although the City has asserted that Patrolman Gleason's appointment to the vacant Sergeant's position is only temporary, the Chief admitted that this "temporary" appointment may go on for an unknown amount of time.

As the Patrol Sergeant position in question is required for the current departmental organization, the Union argued, the Arbitrator should order the City to cease playing word games, promote Grievant Gleason and make the Grievant whole for the Sergeant's work he has performed since January, 1996.

City

The City argued that its treatment of Patrolman Gleason was not unfair to Gleason and that the City acted within its legal and contractual rights in appointing Gleason Temporary Shift Supervisor. The City noted that nothing in the labor agreement addresses the issues in this case. In addition, the City observed, the Patrol Officer job description states that Patrol Officers "may act" as Shift Supervisors when assigned. The City argued that the assignment of Gleason to act as a shift supervisor was not unfair because other Patrol Officers are also assigned to perform extra duties for no additional compensation; and that Gleason has not been subject to unfair expectations as a Shift Supervisor.

The City argued that the evidence was undisputed that Patrol Officers have been assigned as shift supervisors in the past for both long and short-term openings. In the City's view, the fact that the Union waited almost three months before objecting to Gleason's assignment, supported the City's past practice assertions. The City also contended that Chief Sebestyen had valid reasons for refusing to promote a Patrol Officer to Sergeant in 1995 -- he was trying to convince the City to reorganize the Police Department to eliminate one of the four current shifts. To promote an officer to Sergeant just before that position might be eliminated, the City argued, would not have been prudent.

Finally, the City pointed out that to fashion a remedy for Grievant Gleason would create problems in the Department because other employees performing extra duties would also wish compensation therefor. For all these reasons and as there is no legal basis for treating Officer Gleason differently from other officers who regularly perform extra duties, the City sought an award denying and dismissing the grievance in its entirety.

#### DISCUSSION:

Section 20.02 of the effective labor agreement concerns elimination of classifications. Therefore, it is not an issue in this case. Here, the facts clearly show that to date, the City Council has not reorganized the Police Department to eliminate the Sergeant classification, despite the Chief's efforts over the past year or more. Thus, the only provision of the labor agreement that appears to be relevant to this case is Section 21.01.

Considering Section 21.01 in light of the facts of this case, it is clear that absent the City Council's final action to reorganize the Department by eliminating all Sergeant positions, the promotion of Sergeant Parmeter to Lieutenant created a "permanent vacancy" in the Sergeant classification under Section 21.01. The fact that since January 1, 1996, Grievant Gleason has completely replaced the Sergeant who formerly worked on his current shift, further supports a conclusion that the position filled by Gleason was a permanent Sergeant vacancy as of January 1, 1996. This conclusion is also supported by the fact that no evidence was presented to show that the City had ever before assigned a Patrol Officer to "act" as Shift Supervisor for eight months or more. Rather, the undisputed evidence showed that Patrol Officers have been assigned to act as

Shift Supervisors during brief periods such as vacations, sick leave, and other approved leaves of absence of the Sergeants on their shifts.

The City's argument that Officer Gleason's assignment as "Shift Supervisor" merely amounted to his agreement to perform extra duties similar to those performed by other Patrol Officers and Sergeants is neither logical nor persuasive. In my view, since January 1, 1996 Officer Gleason has been performing as a Sergeant who is responsible (like the other Sergeants) to supervise his shift and perform all of the duties contained in the Sergeant's job description on a daily basis. The duties assigned to Gleason are not extra duties. These duties constitute a new and different position, that of Sergeant.

In addition, I disagree with the City's claim that it would not have been prudent to promote an officer to a Sergeant position prior to the possible elimination of that classification. On this point, I note that eight months had passed from January 1, 1996 to the date of the instant hearing, during which the City Council had not acted upon the Chief's request to reorganize his Department. Furthermore, the Chief admitted herein that he had no idea when -- or if -- the Council would approve his reorganizational plan. The question then arises how long the "temporary" assignment of Gleason to Shift Supervisor might continue while the City failed to pay Gleason the proper rate for his Sergeant work. The City has asserted that its treatment of Gleason has been fair. I must disagree.

The facts of this case show that the Chief made no attempt to follow the promotional procedures contained in Section 21.01 when he assigned Gleason to perform Sergeant work as "Temporary" Shift Supervisor. As such, the Award herein cannot place Grievant Gleason in the position of Sergeant. Rather, the Award shall order the Chief and the City to follow Section 21.01 and fill the position as soon as possible, but to pay Officer Gleason the difference between his Patrol Officer rate and the Sergeant's rate for the period of time he has acted as Shift Supervisor from January 1, 1996 until the date the City promotes someone to the vacant Sergeant position pursuant to Section 21.01 and that person begins performing those duties.

Based upon the relevant evidence and argument herein I therefore issue the following

AWARD 2/

The City of Rhinelander violated the current agreement when it appointed temporary Shift Supervisor Gleason. The City shall therefore take the following affirmative action:

1. Make Patrol Officer Gleason whole by paying him the

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2/ I will retain jurisdiction regarding the remedy only herein for 60 days after the issuance of this Award.

difference between his Patrol Officer rate and the Sergeant pay rate for the period January 1, 1996 until such time as the City has promoted someone pursuant to Section 21.01 to fill the Sergeant position on Gleason's shift. 3/

2. The City and the Chief shall follow Section 21.01 and shall promote someone to fill the Sergeant position on Gleason's shift as soon as possible.

Dated at Oshkosh, Wisconsin this 20th day of December, 1996.

By Sharon A. Gallagher /s/  
Sharon A. Gallagher, Arbitrator

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3/ The City shall make Patrol Officer Gleason whole at the Sergeant's rate including any and all overtime he has worked and payment for all fringe benefits.