

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**WISCONSIN PROFESSIONAL POLICE ASSOCIATION/  
LAW ENFORCEMENT EMPLOYEE RELATIONS DIVISION (WPPA/LEER)**

and

**CHIPPEWA COUNTY**

Case 211  
No. 57938  
MA-10787

*(Daniel K. Prince Grievance)*

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Appearances:

**Mr. Gerald W. Gravesen**, Bargaining Consultant, WPPA/LEER Division, on behalf of the Association.

Weld, Riley, Prenn & Ricci, S.C., by **Ms. Victoria L. Seltun**, on behalf of the County.

**ARBITRATION AWARD**

The above-captioned parties, herein "Association" and "County", are signatories to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in Chippewa Falls, Wisconsin, on November 11, 1999. The hearing was not transcribed and the parties there agreed I should retain my jurisdiction if the grievance is sustained. The parties subsequently filed briefs that were received by January 18, 2000.

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

**ISSUE**

The parties have agreed to the following issue:

Does the contract allow grievant Daniel K. Prince to lose seniority when he reverted back to his former Deputy Jailer position within the six-month trial period of his Patrol Deputy appointment and, if so, what is the appropriate remedy?

### **BACKGROUND**

Grievant Prince has been employed as a Deputy Jailer by the County for about 24 years. He bid for and became a Patrol Deputy on April 19, 1999 (unless otherwise stated, all dates herein refer to 1999). Patrol Deputies are in a different classification and receive a different rate of pay than Deputy Jailers. On or about June 20, Prince voluntarily requested reassignment to his former Deputy Jailer position, which had remained vacant, and he was given that position at that time.

Upon returning to his Deputy Jailer position, Prince retained all of the seniority he had previously earned as a Deputy Jailer, but he was not credited with any seniority for the approximately sixty days he served as a Patrol Deputy between April 19 and June 20. By losing seniority for that short period of time, Prince – who was previously the most senior Deputy/Jailer – moved down the Deputy Jailer seniority list, thereby making him second. That, in turn, means that Prince is now behind Dispatcher Robert Wanish when it comes time to pick shifts and vacations which are based on seniority.

Wanish in about 1977 was given seniority for the time he temporarily moved out of his classification to another classification. (The record does not show, however, what the pertinent contract language then provided.) More recently, Deputy Jailer Jeff Hanzlik in about 1999 lost seniority for some of the time he served as a Patrol Deputy before reverting back to his former Deputy Jailer position.

### **POSITIONS OF THE PARTIES**

The Association contends that Prince is entitled to the sixty days' seniority he lost when he became a Patrol Deputy because the word "interdepartmental" in Article 8, Section 1, refers to different County departments and that Sheriff's Department employees therefore do not lose seniority when they move within the Sheriff Department's four divisions, as Prince did here. It also argues that the County's interpretation would serve as "an impediment to applying for promotion" because employees would be afraid of losing seniority; that no binding past practice supports the County's position; and that the County's interpretation can lead to abuses if an employee is temporarily promoted and then demoted at the end of his/her probationary period, because he/she would lose seniority for the time temporarily served in the other position.

The County, in turn, contends that the “relevant provisions of Article 8 are clear and unambiguous” in stating that departmental seniority is lost after thirty working days and that past practice supports its position.

### DISCUSSION

This case turns on Article 8, Section C, of the contract which states:

C. Probation and Certification: The employee candidate who is awarded the job under B above, shall serve a trial period of up to six (6) months during which the Sheriff may revert the employee to his/her former job where a determination is made that the employee will not satisfactorily complete the trial period. A decision to revert the employee under this provision is not subject to the grievance procedure of this Agreement. During the first thirty (30) working days in the new position, the employee may unilaterally decide to revert to his/her former position and, if so, shall be treated as though he/she had not left the former position. (Emphasis added).

This language clearly and unequivocally states that an employee must revert back to his/her former position “during the first thirty (30) working days in the new position” if he/she is to be “treated as though he/she had not left the former position.” The necessary implication therefore is that employees reverting back after thirty (30) working days are not treated “as though he/she had not left the former position.” Hence, they are to be treated as if they had left, which means that they lose seniority for that period of time. Here, since Prince did not revert back until after sixty (60) days, he is not entitled to receive seniority for the time he worked as a Patrol Deputy.

This result is not contrary to Article 8, Section 1, which states: “Seniority shall exist within job classification and shall not be interdepartmental.” For contrary to the Association’s claim, this record establishes that there always has been separate seniority within the Sheriff Departments’ various divisions. That is why Deputy Jailer Hanzlik recently lost some seniority when he became a Patrol Deputy and then reverted back to his Deputy Jailer position. That being so, it is clear that the word “interdepartmental” means within the Sheriff’s Department, as opposed to the County’s other departments. As a result, this language does not contradict or supercede the thirty (30) working day cutoff set forth in Article 8, Section C, above.

Lastly, the Association asserts that ruling for the County can: (1), make it more difficult for employees to bid outside their divisions because they may be reluctant to give up their seniority; and/or (2), lead to abuses if a Sheriff wants to play games by first awarding a Patrol Deputy position to Deputy Jailer and then finding that person unfit during a

probationary period, thereby reducing that person's seniority as a Deputy Jailer. These fears, however, are just that: fears. Absent any proof that they will occur (they certainly have not in the past), there is no basis for believing they will occur in the future. If they do, the Union at that time is certainly free to grieve.

In light of the above, it is my

**AWARD**

1. That grievant Daniel K. Prince did not accrue any seniority as a Deputy Jailer for the sixty days he served as a Patrol Deputy.

2. That the grievance is hereby denied.

Dated at Madison, Wisconsin this 31st day of March, 2000.

Amedeo Greco /s/

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Amedeo Greco, Arbitrator

