

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
RICHLAND COUNTY (SHERIFF'S DEPARTMENT)

and

**RICHLAND COUNTY DEPUTY SHERIFF'S ASSOCIATION
WISCONSIN PROFESSIONAL POLICE ASSOCIATION
LEER DIVISION**

Case 138
No. 60186
MA-11556

Appearances:

Mr. Gordon E. McQuillen, Director of Legal Services, Wisconsin Professional Police Association, 340 Coyier Lane, Madison, Wisconsin 53713, appearing on behalf of the Union.

Mr. Jon E. Anderson, LaFollette, Godfrey & Kahn, Attorneys at Law, One East Main Street, Post Office Box 2719, Madison, Wisconsin 53701-2719, appearing on behalf of the Employer.

ARBITRATION AWARD

Richland County Deputy Sheriff's Department, Wisconsin Professional Police Association, LEER Division, hereinafter referred to as the Union, and Richland County Sheriff's Department, hereinafter as the Employer, are parties to a collective bargaining agreement that provides for final and binding arbitration of grievances. Pursuant to a request for arbitration the Wisconsin Employment Relations Commission appointed Edmond J. Bielarczyk, Jr., to arbitrate a dispute over the promotion of an employee. Hearing on the matter was held in Richland Center, Wisconsin on January 15, 2003. A stenographic transcript of the proceedings was prepared and received by the Arbitrator by January 14, 2002. Post hearing written arguments and reply briefs were received by April 23, 2002. Full consideration had been given to the testimony, evidence and arguments presented in rendering this Award.

ISSUE

During the course of the hearing the parties stipulated to the following Issue:

“Did Richland County Sheriff’s Department violate Article VI Seniority, in particular 6.05 Probation and 6.06, when it promoted Charles McBain the position of Road Patrol Sergeant/Drug Officer on April 1st, 2001.”

“If so, what is the appropriate remedy.”

PERTINENT CONTRACTUAL PROVISIONS

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ARTICLE VI – SENIORITY

6.01 Definition: Seniority is defined as an employee’s total length of continuous, uninterrupted service within the bargaining unit except that for the purpose of calculating fringe benefits, an employee’s seniority will be the employee’s total length of continuous, uninterrupted service with the Employer. Any break in such service shall result in the loss of bargaining unit seniority except if the chief deputy is appointed from within the bargaining unit, that employee will retain the employee’s accumulated seniority to the date of such appointment but will not accumulate additional seniority while serving as chief deputy. It will be the policy of the Employer to recognize seniority in case of layoff and recall as herein provided. [Emphasis added].

6.02 In the assignment of shifts and in job transfers, seniority shall prevail.

6.03 Vacancies: All vacancies shall be posted on the bulletin board. Such notice shall be posted for at least five (5) work days and shall state the job requirements and qualifications and rate of pay for the job. An employee desiring to fill such vacancy shall sign the posted notice within the five (5) day time period. If such vacancy constitutes a shift change or job transfer, it shall be awarded pursuant to Section 6.02. If such vacancy constitutes a job promotion, the successful applicant shall be chosen according to the following criteria: [Emphasis added]

1) A written test will be given to all applicants that is consistent with the job and is job related. The written test will be scored on a zero to forty point scale.

2) A written recommendation by the Employer will be scored on a zero to twenty point scale. Such recommendation shall measure prior job performance.

3) Seniority will be worth a maximum of forty points with the most senior applicant receiving the maximum, the next senior applicant to receive 35 points, and therein in a like manner. [Emphasis added].

The employee receiving the most total points shall be awarded the position and shall serve the probationary period pursuant to Section 6.08. If the successful applicant does not satisfactorily complete said probation period, the employee with the next highest score shall serve therein in like manner.

6.04 Layoffs: In laying off employees because of a reduction in forces, the employees with the least seniority shall be laid off first, provided that those remaining are qualified to carry on the Employer's usual operation. In reemploying, those employees with the greatest length of service shall be called back first provided they are qualified to perform the required work. Employees laid off under this section shall retain all seniority while laid off for one year, provided that they respond to any call back made during that time.

6.05 Probation: All newly hired employees shall serve a nine (9) month probationary period. During said probationary period employees shall not obtain any seniority rights and shall be subject to dismissal without cause or prior notice or recourse to the grievance procedure. If still employed after such probationary period, their seniority shall date from the first day of hire. An employee who successfully completes his probationary period shall receive sick leave, holiday and vacation benefits from his/her first day of hire, and will receive insurance benefits as soon as permitted by the insurance carrier. A probationary employee receive holidays during the probationary period. If a probationary employee was absent due to sickness upon completion of the probationary period, he/she shall receive sick pay for those days he/she was sick during the probationary period, up to the maximum accumulation for the nine (9) month probationary period. [Emphasis added].

6.06 Upon completion of said probationary period, employees shall be granted seniority rights from the date of original hire. A seniority roster shall be available on a bulletin board designated by Employer and kept up to date by the Employer.

6.07 Step Increases: New employees, upon completion of their initial probationary period, shall advance one step in their classification pay range and an additional one step each eight (8) months thereafter until a maximum has been reached.

6.08 Employees who are promoted must also be required to serve a three (3) month probationary period in the position to which they are promoted. If the employee does not complete the probationary period satisfactorily, he/she shall return to his former position with all rights unimpaired. However, they shall not be subject to discharge without the right of grievance.

6.09 Promotions: When an employee is promoted to a position in a higher classification, his pay shall be increased to the minimum rate of the higher class. If his present rate is equal to or exceeds this minimum, his pay shall be increased to the next higher step in the new class regardless of the time since the last increase. Upon promotion to the appropriate step, the employee will advance an additional one step each eight (8) months thereafter until the maximum has been reached. Any change in a position classification must be approved by the Employer.

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BACKGROUND

The Employer and the Union have been parties to a series of collective bargaining agreements. During the negotiations that culminated into the 1982 collective bargaining agreement the parties agreed to the language contained in Article 6.03. This provision provides for a process to fill any vacancy that would result in a promotion. Points are awarded for a written test, zero (0) to forty (40) points. Points are awarded based on the Sheriff's recommendation, zero (0) to twenty (20) points. Points are awarded for seniority with the most senior to receive forty (40) points, the next most senior to receive thirty-five (35) and therein in a like manner. Since the inception of Article 6.03 probationary employees have been allowed to apply for vacancies that would result in a promotion. Since the inception of the language the Union has never challenged the application of Article 6.03, paragraph 3. However, the instant matter is the first time a probationary employee was promoted over a senior employee.

On February 19, 2001 the Employer posted two (2) vacancies for newly created Road Patrol Sergeants/Drug Officer Positions. Five (5) employees applied for the position and four (4) employees, Kenneth Moe, Jerry Johnson, Dane Kanable and Charles McBain participated in the written examination. The written examination (including a standard State of Wisconsin City and Law Enforcement test) was created, administered and scored by Chief Deputy Tom Hougan. Hougan presented the results to Sheriff Darnell Berglin on March 21st, 2001. On the same date Sheriff Berglin assigned his recommendation points. Hougan then tabulated the results and the Sheriff Berglin issued the following final scores:

	Written Exam Points	Sheriff's Points	Seniority Points	Total
Moe	23.59	8	40	71.59
Johnson	17.44	12	35	64.44
Kanable	31.05	20	30	81.05
McBain	31.26	20	25	76.26

Based upon the above results Kanable and McBain were offered the vacant positions. Moe has a seniority date of January 15, 1992. McBain has a seniority date of January 15, 2001. Thereafter Moe, hereinafter referred to as the grievant, filed a grievance questioning the assignment of seniority points to McBain, a probationary employee. The matter was then processed to arbitration in accord with the parties' collective bargaining agreement.

UNION'S POSTION

The Union contends the Employer violated the collective bargaining agreement when it promoted McBain instead of the grievant. The Union asserts Article 6.05 is clear and unambiguous, newly hired probationary employees shall serve a nine (9) month probationary period and probationary employees shall not obtain any seniority rights. The Union argues that because the language is clear and unambiguous there is no need because the words are clear, convey a distinct idea thus there is no need to resort to technical rules of interpretation. The Union also argues that elsewhere in Article VI seniority based rights are described. In support of its position the Union points to Article 6.04, 6.07 and 6.08. The Union avers that in Section 6.08 a deputy who is promoted can return within a three (3) month probationary period with all rights unimpaired but cannot be discharged without the right of a grievance. The Union asserts that had McBain not met the requirements of the sergeant's position he could have returned to his former position but would not have been subject to discharge without the right to file a grievance, contrary to the express provisions of Section 6.05. The Union contends this result is not what the parties intended. The Union argues the Employer is attempting to excerpt Section 6.03 (3) from the whole of Article VI. The Union concludes the County is wrong and urges the Arbitrator to sustain the grievance based upon the clear and unambiguous language of the agreement.

The Union also argues that even if the language was not clear and unambiguous other standards support its position in the instant matter. The Union argues that sections or portions of an agreement cannot be isolated from the rest of the agreement and given construction independently of the purpose of the parties evidenced by the entire document. The Union asserts each paragraph and each sentence must be determined in relation to the contract as a whole. The Union contends the County's actions would in effect segregate provisions of the collective bargaining agreement.

The Union also contends the County's actions would lead to a harsh, absurd or nonsensical result. The Union argues the County's manipulation of seniority makes a mockery of the fundamental concept of seniority based promotional procedures. The Union points out the grievant is a twelve (12) year employee and points out McBain essentially walked in off the streets. The Union avers that an employee with one (1) day of employment could be promoted over an employee with the grievant's years of service. The Union argues this imperils the integrity of the promotion process.

The Union argues the predictability of a seniority based promotion system is dashed by the Employer's actions. The Union points out that had there been more applicants McBain, in all likelihood would not have been promoted. The Union avers that County's actions makes the system dependent to the number of applicants, a result that is entirely contrary to seniority based promotion system. The Union acknowledges that the number of applicants does have some impact in the selection process but contends the rank order of seniority has to do only with persons who otherwise have a right to have seniority seriously counted. The Union concludes otherwise a mere five (5) points separate those with vested seniority from those who have just come to the job.

The Union also argues the doctrines of reason and equity should apply to the instant matter. The Union points out a senior employee was prevented from having a promotion he was otherwise qualified for. The Union avers no rule of reason exists for promoting a newly hired deputy over more experienced individuals. The Union stresses length of service is an objective index and eliminates preferential treatment and other dangers of subjectivity in determining job preferences and employment benefits. The Union also points out that Hougan helped write test questions and scored them. Hougan could recognize the handwriting off the applicants. Hougan also had input into the Sheriff's assignment of preference points. McBain was allowed to take the to take the State test, alone, in an unsupervised room. McBain was also allowed to apply for his initial position after the Employer had closed the vacancy posting.

The Union also argues that the Employer's attempt to use past practice to demonstrate the contract was amended by mutual action is not supportable. The Union argues that the examples presented by the Employer at the hearing fail to support its actions. The Union points out that in many of the examples there was just one applicant. Therefore seniority was not at issue. The Union does acknowledge that probationary employees can apply for vacant positions. The Union also points out that in four (4) of the Employer's exhibits, although probationary employees were on the application list, there is no evidence of any probationary employee being promoted over a senior employee. The Union also points out there is no evidence the Union was informed by the Employer that seniority was to be a factor in the promotional process. The Union acknowledges two (2) of the Employer's exhibits, 7 and 9, demonstrating the award of seniority points to probationary employee Richard Swenson, the awarding of seniority points had no impact because a senior employee was awarded the promotion and the Union had no knowledge or involvement.

Thus the Union asserts it cannot have been deemed to have waived grievability of the flawed process. The Union concludes that not once has a probationary employee been awarded seniority points in a promotional proceeding that allowed the employee to be promoted over a more senior non-probationary employee.

The Union would have the Arbitrator sustain the grievance and award the grievant the position and make him whole.

EMPLOYER'S POSITION

The Employer contends the applicable contract language does not clearly define the meaning of seniority points and seniority rights. The Employer acknowledges that Article VI, Section 6.05 clearly states that seniority rights are not afforded to probationary employees. However, the Employer points out that seniority rights are not defined in Section 6.05 or Section 6.06. The Employer argues that Section 6.03 applies to all promotion applicants irrespective of probationary status because the provision states: "... the successful application shall be chosen according to the following criteria." The Employer further points out that the specific awarding of seniority points, in accord with criteria 3, is applied on an applicant basis as opposed to probationary or non-probationary status. The Employer concludes all applicants therefore receive seniority points. The Employer argues the concept of seniority rights and the assigning of seniority points are two different concepts. The Employer also points out that points are not in direct relationship to an employee's seniority but as to their ranking in the bargaining unit. The Employer argues that there is no issue with respect to how they were distributed but that the Union claims McBain no points should have been awarded in accord with criteria 3. The Employer asserts the contract and the parties' practice does not support such a result. Pointing to Section 6.01 the Employer argues the collective bargaining agreement defines seniority as the employee's total uninterrupted service with the Employer and that the agreement does not define seniority rights or seniority service.

The Employer contends this lack of clarity is significant and results in ambiguity. The Employer argues seniority and seniority rights are not the same and stresses that if they were the same there would have been no reason to refer to them differently. The Employer contends examination of the parties' past practice becomes compelling and that the past practice provides clear evidence that the grievance must be denied.

The Employer argues it has clearly substantiated through its exhibits and the testimony of Hougan that probationary employees who applied for promotional opportunities have been awarded seniority points in accord with criteria 3. The Employer stresses that since 1982 seniority points have been awarded to all probationary employees who have applied for a promotional opportunity. The Employer concludes bargaining history and construction of the current contract language supports the Employer's interpretation and application of Article VI, Section 6.03. The Employer points out that prior to 1982 promotional opportunities were based

on strict seniority. In 1982 examinations, Sheriff's preference and seniority were added. The Employer points out that Hougan, who participated in the 1982 negotiations, testified that application of seniority point system to probationary employees was never discussed and that the issue has not been raised over the past twenty (20) years (Tr., p. 62-63). The Employer contends members of the Union have been aware of the Employer's administration and application of the language. The Employer points out that when the grievant was a probationary employee he received probationary points and written documentation to applicants has informed the employees of the practice.

The Employer argues the practice is binding because it is clear, has a long-standing duration, has been consistent, has occurred frequently and both parties have known and accepted the practice. The Employer points out each applicant each time they have applied for a promotional opportunity the results of the scoring process. The Employer avers the failure to grieve or challenge this practice demonstrates at a minimum tacit acceptance of the practice. The Employer contends there can be no question the employees and their Union understood what process was being used in the ranking of promotional applicants. The Employer argues one party cannot unilaterally change such a practice and the place to attempt such a change is at the bargaining table.

The Employer would have the undersigned deny the grievance.

UNION'S REPLY BRIEF

The Union argues that the fact the agreement does not define its terms expressly is not dispositive of the issues in this case. The Union contends the arbitrator must rely on the ordinary meaning given to the phrase in labor parlance:

“Seniority rights: Privileges, rights, and other benefits which accrue to an individual because of length of service or in the performance of certain work. These rights may be construed and protected by arbitrators or the courts in interpreting the collective bargaining agreement.”

ROBERTS' DICTIONARY of INDUSTRIAL RELATIONS, Bureau of National Affairs, Washington D.C., Fourth Edition (1994), p. 705.

The Union argues the Arbitrator should construe the language in dispute to cover all benefits that inure to the good of an employee based upon seniority and reject the Employer contention that there are two sorts of seniority rights. The Union also argues that because seniority is retrospective in its application there is no need to expressly note its application as in sick leave, holiday and vacation benefits. The Union points out there is not a need to expressly append the words “except for probationary employees in every provision of the agreement because there is a generic provision that says they have no seniority rights. The Union also points out the term “strictly” as applied by the Employer in its argument is nowhere in the agreement.

The Union also argues that Hougan's testimony adds no substance because he merely replicates the Employer's case. The Union asserts the system set up for awarding seniority points provides a means for distinguishing among applicants but the system cannot ignore the fact probationary employees do not have seniority rights. The Union acknowledges that Section 6.01 defines seniority but argues this is so employees who are subject to the agreement can use their seniority to achieve benefits. The Union concludes that none of the benefits are accessible until the person has completed their probationary period. One provision explains what it means and the balance of the provisions explain how it is used.

The Union also acknowledges that there is nothing in the agreement that bars probationary employees from applying for promotional opportunities. However, the Union points out, that is not the issue herein. The Union argues the mere fact probationary employees can apply for a promotional opportunity does not lead to a conclusion they can then be ascribed seniority points.

The Union also acknowledges that the issue of whether seniority points would apply to probationary employees was never raised at bargaining table. The Union contends the broad language of the agreement that probationary employees enjoy no seniority rights covers the field so there was never a reason for the Union to raise the issue at the bargaining table. The Union also stresses that there is no evidence the Union, *qua* Union, was ever informed of the use of seniority points for probationary employees who were involved in the promotional process.

EMPLOYER'S REPLY BRIEF

The Employer asserts the Union's argument focuses on Section 6.05 in isolation and argues this provision should not be read in isolation but rather in context with all of the provisions of Article VI. The Employer argues that this case turns not on Section 6.05 but rather on Section 6.03. The Employer also argues the Union assertion in effect disenfranchises a class of workers, probationary employees. The Employer contends the collective bargaining agreement does not compel such a result and does not bar probationary employees from applying for promotions. Further, even if the Arbitrator were to find Section 6.05 unambiguous, Section 6.03 in conjunction with Section 6.01 and Section 6.05 provides the context within which reference to external evidence is required. The Employer points out such evidence is helpful in determining what meanings are reasonable as well as choosing among possible meanings.

The Employer also contends the evidence in the instant matter demonstrates that the language concerning seniority was in the contract prior to the modification of Section 6.03. The Employer argues that the parties understood probationary employees could compete for promotions with other bargaining unit members and seniority points would be based upon relative ranking within the bargaining unit. The Employer concludes the Union theory that Section 6.05 is all-inclusive, a single clause covering all seniority based rights is inconsistent with the other provisions within Article VI. The Employer points out that seniority rights are rights asserted by

an employee such as a right to vacation or the right to a particular work shift. Section 6.03 does not use the term seniority rights but rather puts for a system that provides points to applicants for a position in inverse order of time in the bargaining unit. The Employer avers that if seniority points were weighted based upon length of service there would be logic to the Union's case such as required for shifts and job transfers in Section 6.02. The Employer argues Section 6.03 requires points to awarded to each "applicant" not just those who are non-probationary. Thus, no employee has a seniority right to a job.

The Employer also asserts the evidence of past practice is compelling and cannot be ignored. The Employer argues it has applied Section 6.03 in the same manner for twenty (20) years. The Employer argues that if the language of Section 6.05 is so clear why has it taken so long for the Union to challenge the practice. The Employer concludes the Union disagreed with a probationary employee being awarded the promotion and therefore seeks a result of strict seniority for promotional opportunities.

The Employer also contends the Employer's actions did not result in a harsh, absurd or nonsensical result. The Employer argues strict seniority with its disregard for unqualified performers was the impetus for the change in the language in 1982. The Employer contends it has complied with the intentions of the parties consistently in since 1982. The Employer also points out the system is designed to balance test scores and seniority.

The Employer also argues that the Union contention that the Employer has manipulated the promotion process is totally unsubstantiated. The Employer does acknowledge that the number of applicants can impact on the result, as provide for in the collective bargaining agreement. However, the Employer points out it has no control over how many employees sign a job posting. Had the grievant done better on the test or had the grievant received a higher ranking from the Sheriff the result would have been different. The Employer argues the grievant is attempting to receive preferential treatment and banking solely on seniority to get what he wants.

The Employer also asserts that the Union contention Hougan may have "fixed" the process is not supported by any evidence in the record. The Employer also argues the Union claim it was unaware of how the Employer had implemented the promotional language ignores the fact that anyone who wanted to be promoted at any time during the last twenty (20) years became aware of how the Employer was assigning seniority points.

DISCUSSION

The record demonstrates that four (4) applicants participated in the promotional process for the Road Patrol Sergeant/Drug Officer position. The testing portion of the process consisted of a timed written essay, a take home project and the State Law Enforcement Sergeant's exam. Employees were assigned a random twelve (12) digit number and directed to use the number on

their timed essay and take home project instead of their name. Completed essay and project were scored by six (6) people, Grant County Sheriff Keith Govier, District Attorney Andrew Sharp, Assistant District Attorney Jennifer Alleman, Lieutenants Robert Frank and Dan Krueger and Hougan. The State of Wisconsin scored the Sergeant's exam. The results of the written exams were totaled, then divided by three (3) and are as follows:

McBain	29.21	29.23	35.34	=	93.78	31.26 Points
Kanable	29.43	29.33	34.41	=	93.71	31.05 Points
Moe	22.8	17.3	30.69	=	70.79	23.59 Points
Johnson	11.96	13.4	26.97	=	52.33	17.44 Points

The Union has argued that because Hougan could identify the handwriting of McBain and the grievant that he could have tainted the results. However, there is no evidence the other six (6) people who scored the examinations were aware of the handwriting of the applicants. There is also no evidence of any animosity between the grievant and Hougan. Further, there is no evidence any of the questions developed by Hougan for the written examinations were not directly related to the position the employees were applying for. Therefore the Arbitrator finds no merit in the Union argument that Hougan may have influenced the testing results.

The record demonstrates the Sheriff assigned the following preference points:

Moe	8
Johnson	12
Kanable	20
McBain	20

The Union has argued that Hougan may have influenced the Sheriff's assignment of preference points. The record demonstrates the Sheriff sought input from all his administrative staff, including Hougan, prior to assigning preference points. As noted above, there is no evidence of any animosity between Hougan and the grievant. There is evidence Hougan was aware that McBain had eleven years experience as a police officer and experience in drug enforcement and that he informed the Sheriff of this (Tr. pp. 76-78). However, the Sheriff did not testify. Thus there is no evidence what factors the Sheriff took into consideration when he assigned preference points. There is nothing in the record that would demonstrate the Sheriff had any animosity toward the grievant. Therefore the Arbitrator finds no merit in the Union argument Hougan unduly influenced the Sheriff's assignment of preference points.

The Union has argued that Section 6.05 is controlling in the instant matter and thus McBain, as a probationary employee, should not have been awarded any seniority points. Section 6.01 of the parties collective bargaining agreement clearly defines seniority as ... "total length of continuous, uninterrupted service within the bargaining unit...". Article 6.05 clearly states probationary employees ... "shall not obtain any seniority rights and shall be subject to

dismissal without cause.” Article 6.03 clearly states that if a vacancy constitutes a promotion ... “the successful applicant shall be chosen according to the following criteria:”. The record demonstrates the Employer assigned Seniority points in the following manner:

Moe	40 points
Johnson	35 points
Kanable	30 points
McBain	25 points

The record also demonstrates that since the inception of Section 6.03 probationary employees have been allowed to apply for promotions and that the Union was aware of this. However, the instant matter is the first time that a probationary employee has been selected over a more senior non-probationary employee. The Union has asserted that it does not desire to bar probationary employees from applying for posted vacancies. It only seeks to bar them from receiving seniority points so that Section 6.03 is in compliance with the prohibition in Section 6.05 of probationary employees having any seniority rights.

The record demonstrates that when the parties agreed to in Section 6.03 they were aware they were moving from a system where seniority solely determined who a successful applicant would be to one where it was reduced to a weighted factor. They also adopted a system, criteria 3, that, regardless of the number of years a person had been employed by the Employer, the most an employee could be assigned is forty (40) seniority points. The next applicant receives five (5) less seniority points. Thus, regardless of the next applicant’s length of service the next applicant receives thirty-five (35) seniority points, the next thirty (30), and so on. Therefore, even if the Arbitrator determined that McBain had zero (0) seniority, McBain would still be fourth on the list of applicants and receives twenty-five (25) seniority points. In effect, McBain is the least senior applicant. Because he is an applicant he receives seniority points, five (5) less than the next more senior employee. The parties agreed to this system of criteria and while this is the first time the Union has found the result inappropriate, the place to change the system of criteria is at the bargaining table. Had the Union been unaware that probationary employees applied for promotional opportunities, and, had the Union sought to bar probationary employees from applying for promotional opportunities a different result might entail. However, the Union was aware probationary employees were applying for promotional opportunities and it is not seeking to prohibit them from doing so in the future.

The Union had also argued that the result reached by the Arbitrator is harsh and absurd. However, the criteria system adopted by the parties while recognizing seniority eliminated it from solely determining who would receive promotions. Thus regardless if the most senior applicant had thirty (30) years of seniority and the next applicant had zero (0) seniority, at most the most senior employee is awarded five (5) more seniority points. The result is greater emphasis is placed on the testing and Sheriff’s preference. While the Union has argued Hougan’s testimony (Tr. pp. 48-50) that as a member of the Union’s bargaining team in 1982 that this is

what the parties' intended is self-serving, the Union offered no evidence to refute his testimony. Therefore, no matter how many more years of seniority an employee may have over another employee the most the employee can have is five (5) seniority points more than the next applicant.

Therefore, based upon the above and foregoing, and the testimony, evidence and arguments presented the Arbitrator concludes the Employer did not violate Article VI, Seniority, in particular Section 6.05 Probation, and 6.06 when it promoted Charles McBain to the position of Road Patrol Sergeant/Drug Officer on April 1, 2001. The grievance is therefore denied.

AWARD

“The Richland County Sheriff’s Department did not violate Article VI, Seniority, in particular 6.05 Probation, and 6.06, when it promoted Charles McBain the position of Road Patrol Sergeant/Drug Officer on April 1, 2001.”

Dated at Madison, Wisconsin, this 25th day of October, 2002.

Edmond J. Bielarczyk, Jr. /s/

Edmond J. Bielarczyk, Jr., Arbitrator