

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

WASHBURN COUNTY

and

**WISCONSIN PROFESSIONAL POLICE ASSOCIATION/LAW
ENFORCEMENT EMPLOYEE RELATIONS DIVISION, LOCAL 225**

Case 51
No. 64750
MA-12998

(Classification Seniority Grievance)

Appearances:

Gary Gravesen, Bargaining Consultant, Wisconsin Professional Police Association/Law Enforcement Employee Relations Division, 16708 South Lee Road, Danbury, Wisconsin, on behalf of Local 225.

Michael D. Miller, Administrative Coordinator, Washburn County, Washburn County Courthouse, P.O. Box 337, Shell Lake, Wisconsin, on behalf of Washburn County.

ARBITRATION AWARD

On March 11, 2005 Washburn County (hereinafter, County) and the Wisconsin Professional Police Association/Law Enforcement Employee Relations Division on behalf of Local 225 (hereinafter, Union) filed a joint request that the Wisconsin Employment Relations Commission appoint staff arbitrator Lauri A. Millot to decide a grievance pending between the parties. The parties submitted stipulations of fact and exhibits and declined hearing or the filing of briefs. Based upon the evidence, the undersigned makes and issues the following Award.

ISSUE

The parties jointly framed the issue as follows:

Who has greater seniority as to the selection of vacation, and shift, if applicable:

Ms. Marsha Bruner, who has greater regular, full-time seniority in the classification of clerical but less bargaining unit seniority as a regular full-time employee; or

Ms. Michelle Parenteau, who has greater bargaining unit seniority as a regular, full-time employee, but less classification seniority in the classification of clerical employee?

What is the appropriate remedy to the grievance involved?

JOINT STIPULATIONS OF FACT

The parties submitted the following facts as they relate to the seniority selection of vacation benefits:

1. The Washburn County Sheriff's Department, within the collective bargaining unit, consists of the following classifications as identified in Appendix A of the labor agreement in force and effect:
 - A. Deputy Sheriffs
 - B. Jailer/Dispatchers
 - C. Clerical Staff
 - D. Kitchen Staff.
2. Joint Exhibit No. 1 (2002-2003 Labor Agreement), as well as agreements preceding Joint Exhibit 1, Article 5 (Layoff) depicted two (2) classifications; Deputy Sheriff's and All Others.
3. Joint Exhibit 2 (2004-2005 Labor Agreement), depicts a modification in Article 5 (Layoff) as to recognition of classification as it relates to layoff; Deputy Sheriff, Jailer/Dispatchers, Clerical, and all others.
4. The parties agree that since the 1980's prospectively, at a minimum of four (4) occasions, when a bargaining unit employee transferred from the "all others" classification to a patrol deputy, he/she went to the bottom of the patrol deputy seniority list for purposes of vacation and shift selection.
5. Bargaining unit member Michelle Parenteau has a date of hire of March 4th, 1991 as a part-time cook, and September 24th, 1991 as a regular, full-time cook. On January 14th, 2002, she took a voluntary reduction in grade to a regular, part-time clerical staff position, a position she occupies to present.

6. Bargaining unit member Marsha Bruner has a date of hire of February 10th, 1992 as a regular, full-time clerical staff employee, a position she occupies at present.

RELEVANT CONTRACT PROVISIONS

The parties submitted the following articles from the labor agreement that they determined were applicable to this dispute:

1. Article 1 – Recognition. The Employer recognizes the Union as the sole and exclusive bargaining agent for all regular full-time and regular part-time employees of the Washburn County Law Enforcement Department, but excluding the Sheriff, the Sheriff’s wife, managerial, supervisory and confidential employees, for the purpose of engaging in conferences and negotiations on questions of wages, hours and conditions of employment.

2. Article 4 – Seniority.

A. Definition: The seniority of all employees covered by the terms of this Agreement shall consist of the total calendar time elapsed since the date of original employment; however, no time prior to a discharge or quit shall be included and provided that seniority shall not be diminished by temporary layoff or leaves of absence or contingencies beyond the control of the parties to the Agreement, subject to the provisions in Section B. Part-time employees shall accrue seniority as of their date of hire as a regular part-time employee.

. . .

C. Promoted Employees. Any employee who is promoted to a position in the department that is outside of the bargaining unit shall not lose any seniority he or she has accumulated to the time of such promotion. An employee who leaves the bargaining unit for reasons of promotion to a position not covered by the terms and conditions of this agreement, with the Washburn County Sheriff’s Department, shall have seniority frozen at the point he or she left the bargaining unit. Except that an employee, who returns to the bargaining unit within six (6) months shall continue to accumulate seniority during the period out of the unit. If an employee changes classification within the collective bargaining unit, he or she shall maintain his or her total seniority from date of hire as it relates to accrual of vacation days and sick days. However, all other seniority rights shall accrue from the date of change into the new classification. The chief Deputy position, when vacant, may be filled from the ranks of the bargaining unit.

3. Article 5 – Layoff

A. Procedure: Whenever it becomes necessary to layoff employees for reasons not related to their performance on the job, they shall be laid off within the following categories in the inverse order of their length of service in such categories:

1. Sworn Deputies
2. Jailers/Dispatchers
3. Secretarial Staff
4. All Others

Within such categories, no full-time employee shall be laid off until all part-time employees are laid off. Employees laid off in one classification can bump into another classification provided they have both seniority in the classification in which they are bumping into and have greater classification seniority than a bargaining employee's of the classification they are bumping into. Bargaining unit members, during their trial period who are involuntarily returned to their former position due to layoff shall be offered to return to the classification they were involuntarily displaced from due to layoff when the next vacancy occurs. Employees shall be recalled in each category in the inverse order that they were laid off.

4. Article 18 – Vacation

B. Scheduling: A proposed vacation list may be posted after January 1st of each year and employees may request their earned weeks of vacation in any month. Employees will be allowed to use vacation credited for that calendar year during the same calendar year subject to Department scheduling and normal County operations. Every employee must notify the sheriff at least two (2) weeks in advance of his or her intent to take earned vacation and each request must be approved by the Sheriff, such approval to be strictly governed by the need for public service. Seniority shall prevail in the event of a dispute as to the number of employees allowed off at any particular time of the year due to the need for public service. One employee from the Patrol Division and one employee from the Jailer/Dispatcher Division, per shift, shall be allowed off at the same time. All other employees shall be allowed to take their vacation at any time.

5. Article 19. Work Day, Work Week, Overtime.

E. Assignment of Overtime. No part-time or seasonal employee shall work overtime unless all regular employees are working overtime or are unavailable to work.

6. Appendix A – Wages. The parties mutually and jointly stipulate that wages for regular part-time and regular full-time account clerk are paid at the same hourly rate.

DISCUSSION

This case presents a specific question on very limited facts; who has greater seniority? It need be noted from the onset that I do not have a copy of the grievance and thus, am at a disadvantage as to the circumstances giving rise to this dispute.

The parties submitted the language of Article 4, Section C and stipulated that it was applicable to this fact situation. Article C is titled, Promoted Employees, and as such, the first question could be whether the Parenteau's change in classification from a full-time lower paying position to a part-time higher paying position is considered a promotion. Given that stipulation of fact 4 utilizes the term "transfer" for purposes of similar movement from one position to another and that the parties have not identified this as a contested issue, I will conclude that it is not a question before the undersigned. Having said that, if such a question was at issue, I would reach the same result given that the plain language of Subsection C addresses employment actions in addition to promotions. I therefore turn to who has greater seniority for purposes of shift and vacation selection.

The clause of Article 4 applicable to employees who change classifications states:

...if an employee changes classifications within the collective bargaining unit, he or she shall maintain his or her total seniority from date of hire as it relates to accrual of vacation and sick days. However, all other seniority rights shall accrue from the date of change into the new classification.

It is the role of an arbitrator to determine the intent of the parties when drafting contract language. Elkouri & Elkouri, *How Arbitration Works*, 6th Ed. (2003) P. 430-431. If the meaning is plain and clear from the words, it is unnecessary to rely on extrinsic evidence. *Id.* at 431-432. I find the language of this section to be unambiguous.

The language bargained by the parties' states that if an employee changes classification, then the employee has two seniority dates; the date of initial hire and the date of their most recent promotion to a new classification. Each seniority date has a meaningful purpose. The initial date of hire is utilized for accrual of vacation and sick time. This is reasonable given that if an employee's initial seniority date did not follow them into promoted positions,

employees would be deterred from ever seeking a promotion because they would lose valuable sick and vacation time.

The second seniority date, the date an employee changes from one classification to another, is utilized for “all other seniority” rights. This would include the scheduling of vacation time and shift selection, if applicable. This acknowledges that a newly promoted employee does not have rights superior in that classification to the individuals that have been performing in that classification for a longer amount of time. The evidence establishes that the parties have recognized this principle on four occasions since the 1980’s in as much as when a bargaining unit employee moved into a patrol deputy position, he/she was placed at the bottom of the patrol deputy classification seniority list. See Stipulation of Fact 4.

Applying this language to Parenteau and Bruner, the evidence establishes that Parenteau’s bargaining unit seniority date is March 4, 1991 and her classification seniority date of January 14, 2002. Bruner’s bargaining unit and classification seniority date is February 10, 1992. Thus, Parenteau has greater bargaining unit seniority, but Bruner has greater classification seniority.

As to the second issue presented by the parties, what is the appropriate remedy to the grievance, there is an insufficient amount of information in the record for me to address this question. For purposes of efficiency, I will make the following observations based on the language of the parties’ labor agreement. The presentation of the issue indicates that there is specific relevance to the selection of vacation and shift. This is troublesome to me for two reasons, first, it appears from the vacation language that only full-time employees are entitled to vacation and therefore, Parenteau would not be entitled to vacation. Second, the last sentence of Article 18 states that “all other employees” are allowed to take their vacation time at any time. “All other employees” includes the Secretarial Staff and therefore it would appear that there is no need for seniority-based selection of vacation time in this classification.

The parties also submitted the issue of seniority-based shift selection. Article 19 indicates that the full-time clerical employees work “an eight hour day, five (5) days on two (2) off” and that the Sheriff assigns the schedule for regular part-time employees. As such, it would appear seniority-based vacation and seniority-based shift selection are not applicable to Parenteau and Bruner. These observations regarding seniority-based vacation and shift selection are only offered for the purpose of addressing the remedy issue of the grievance and are not intended to be definitive interpretations of the contract clauses.

ORDER

1. Ms. Marsha Bruner, has greater regular, full-time seniority in the classification of Clerical Staff for purposes of “all other seniority rights” which may include the selection of vacation and shift.

2. I will retain jurisdiction for 30 days for purposes of determining a remedy in the event that the parties are unable to fashion one consistent with one (1) above.

Dated at Rhinelander, Wisconsin this 18th day of August, 2005.

Lauri A. Millot /s/

Lauri A. Millot, Arbitrator

