

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

JUNEAU COUNTY

and

WISCONSIN PROFESSIONAL POLICE ASSOCIATION

Case 137

No. 65628

MA-13277

Appearances:

Mr. Lester Pines, Cullen, Weston, Pines & Bach, Attorneys at Law, 122 West Washington Avenue, Suite 900, Madison, Wisconsin 53703, appeared on behalf of the Association.

Ms. Michelle Ford, Crivello, Carlson and Mentkowski, S.C., Attorneys at Law, 710 North Plankinton Avenue, Milwaukee, Wisconsin 53203, appeared on behalf of the County and the Sheriff.

Sheriff Brent Oleson, appeared on his own behalf.

ARBITRATION AWARD

On February 27, 2006 the Wisconsin Professional Police Association/LEER Division, filed a request with the Wisconsin Employment Relations Commission, seeking to have the Commission appoint a member of its staff to hear and decide a grievance pending between the Association and Juneau County. The Commission appointed William C. Houlihan, a member of its staff to hear and decide the matter. On March 7, 2006 Sheriff Brent Oleson and Juneau County filed a Declaratory Judgment Complaint in Juneau County Circuit Court seeking to enjoin the Wisconsin Professional Police Association from proceeding to Arbitration on this matter as an inappropriate intrusion into the Constitutional powers of the Sheriff. This arbitration request was held in abeyance to permit the Declaratory Judgment to proceed.

On December 1, 2006, the Honorable Guy D. Reynolds, issued a Memorandum Decision, which, in part, ordered the County to arbitrate this matter.

A hearing was conducted on February 28, 2007 in Mauston, Wisconsin. A formal record was taken, and distributed on March 19, 2007. The County submitted a pre-hearing

trial brief, which was received on February 26, 2007. That brief supported the County's Motion to Dismiss, which was heard at the outset of the February 28 hearing. That Motion was held in abeyance to permit the taking of evidence. Post-hearing briefs and reply briefs were submitted and exchanged by July 27, 2007.

This grievance was prompted by the assignment/discipline of Kim Strompolis. As originally submitted it accompanied a substantively identical claim filed by Mark Strompolis. Those matters were heard together. On July 27, 2007 the grievance of Mark Strompolis was withdrawn.

BACKGROUND AND FACTS

Juneau County and the Wisconsin Professional Police Association are signatories to a collective bargaining agreement, the relevant portions of which are set forth below. The Association represents the law enforcement employees of the County, who have the power of arrest. The parties' relationship goes back many years.

Kim Strompolis, the grievant, has been employed by the Sheriff's Department since July 1, 1978. Strompolis was hired as a Dispatch/Jailer and within months was assigned to road duty. He worked as a Patrol Officer until March 1980, when he took a written test and an oral board interview/exam and was promoted to Investigator (now Detective). Strompolis' progression within the Department reflects the norm for career progression in the Juneau County Sheriffs Department. New hires are typically assigned to the jail. They thereafter may progress to work as Patrol Officers. There are a limited number of Detective positions in the organization. To secure such a position, an applicant must successfully compete for a promotion under Article XVI – Promotions.

Strompolis worked as a Detective until December, 2005. As a Detective, Strompolis was expected to exercise considerable discretion in the field, and to apply specialized knowledge and ability in the investigation and detection of crime. A Detective is expected to exercise considerable independent judgment in working on specific cases. Much of the work is spent in the field. The attire is plain clothes, in contrast to the uniform required of Patrol and Jail employees.

On December 15, 2005, Strompolis was called in to meet with Sheriff Brent Oleson and Undersheriff John Weger. At the meeting, Strompolis was given the following letter:

December 15, 2005

Detective Kim Strompolis
Juneau County Sheriff's Department
200 Oak Street
Mauston, WI 53948

RE: Reassignment to Jail Duty

Dear Detective Strompolis:

This is to inform you that, as of the date of this letter, I have determined that it is in the best interests of the Juneau County Sheriff's Department that you be reassigned to work in the Juneau County Jail. However, I have decided that this will be only a reassignment. You will retain the job title of detective and the pay of that position until further notice. Based on the advice of counsel, I have concluded that as the Sheriff I have the authority under the Wisconsin Constitution to assign you to jail duties because they are within the range of duties performed by deputy sheriffs.

I do not have to provide you with any reason or prove just cause for making this reassignment. Nonetheless, out of courtesy to you and to avoid giving grounds for this action to be misconstrued or misrepresented by you or others, I have decided to generally explain my reasons.

This action is not disciplinary, and will not be noted in your personnel files as such. Nor does this action constitute a determination that there will not be discipline imposed as the result of some of your actions which I deem to be contrary to the best interests of the Department. My concerns related to insubordination, including failure to prepare required reports; undermining Department personnel in communications to other agencies and law enforcement personnel; and acting on personal business while on duty. I do not believe that assigning you to Detective work is an efficient or effective use of you at this time.

You are not capable of working without close supervision and monitoring. I have concluded that the best way to achieve that kind of supervision will be to assign you to the jail. Although these observations could form the basis for disciplinary action, I choose not to do so, because I feel that using my supervisory authority to assign you to other duties is a more appropriate strategy. After one year of satisfactory service in the jail, I will review the assignment and see if it is possible to consider reassigning you back to investigative work. In the interim, you will not lose your title or any wages and benefits. But, we will assign investigative work to others to see that it is performed.

I am issuing you the following direct orders:

1. Surrender all keys to your office and vehicle immediately. Management staff will inventory the contents of the office and the vehicle and turn any personal property over to you.
2. Turn over your Department cell phone to me immediately.

3. Cease all activities as an investigator immediately except as requested to transition investigation files to other staff.
4. Cooperate with the Department management staff in the transition.
5. Report for duty in the jail on the day shift effective on December 16, 2005 and follow the directions of the Lieutenant on shift and Captain Coronado.
6. You may not exercise your authority as a deputy sheriff outside of the jail except (a) with specific permission of the Sheriff, Undersheriff or a shift commander or (b) in an emergency to protect human life or prevent property damage.
7. You are to have no contact with any law enforcement officer of any other County or agency concerning any matters concerned with or related to the Juneau County Sheriff's Department, except as required in connection with your duties in the jail.

I trust and expect that you will abide by the restrictions embodied in this letter and follow the directives of the assignment change. If you fail to obey the direct orders above, please know that you will be subject to disciplinary action for insubordination, possibly to include your termination as a deputy sheriff and employee of Juneau County.

Respectfully,

Brent H. Oleson /s/
Sheriff Brent H. Oleson

It was Strompolis' testimony that there was little, if any conversation relative to the change in assignment reflected in the letter. It appears that nothing substantive was said. No explanation or rationale, beyond that contained in the letter, was offered for the assignment to the jail. Sheriff Oleson took the car keys to Strompolis' County assigned car. At the conclusion of the meeting Strompolis was escorted from the building by Captain Coronado. Strompolis was not permitted to go to his office, which was in the same building. Coronado escorted Strompolis to the door, and offered him a ride home.

There is a disciplinary protocol among the General Rules and Regulations of the Department. It is a formal procedure, which calls for the filing of charges and a hearing. That was not followed in this instance, inasmuch as Sheriff Oleson did not treat this as disciplinary.

Kim Strompolis reported to work in the jail as directed. He continued to work in the jail through the date of the hearing in this matter. During this period he performed the traditional tasks associated with a Jailer. He wears the uniform issued to Jailers. He has received training which has facilitated his work as a Jailer. He was not given an annual review. He has been given no indication as to when he will be returned to Detective work.

He has not performed the tasks traditionally associated with Detective work. He has not been given training other than Department wide training or training which is directly applicable to his work as a Jailer.

At the time the two Strompolis were reassigned there were four Detectives. Following their assignment to the jail two other bargaining unit members, both Road Deputies, were promoted to Detective. They were assigned to Detective work after successfully posting and testing for the position in accordance with Article XVI – Promotions, which is set forth below.

The December 15 letter indicates that the jail assignment is not disciplinary, preserves the title, and pay, of Detective, and indicates there will be no loss of pay or benefits. Status and work related freedom and satisfaction aside, there were certain quantifiable benefits lost. As a Detective, Strompolis was assigned a County owned car, which he drove to and from work each day. That car was taken away when he was assigned to the Jail. He was required to drive his own car to and from work each day. As a Detective, Strompolis was assigned a cell phone, and allowed to make personal calls, without reimbursement. The cell phone was taken away when he was assigned to the Jail, and Mr. Strompolis replaced it with a private phone, at his own expense. As a Detective, Mr. Strompolis was assigned an office, which he lost when assigned to the Jail. In each instance, the phone, car and office were necessary to the performance of the work of Detective, and not to that of a Jailer.

A grievance was filed on December 16, 2005 which asserts a violation of the just cause provision of the agreement. The following answer was filed on December 21, 2005:

Date: December 21, 2005

To: Michael S. Peterson LBA INC.
Wisconsin Professional Police Association

...

Re: Grievances 05-540 and 05-541

Dear Mr. Peterson,

On Monday, December 19, I received Grievances 05-540 and 05-541 filed by you on behalf of Deputies/Detectives Kim and Mark Strompolis. On Thursday, December 15, I reassigned both Mark and Kim from the Detective Division to the Jail Division. In my reassignment, I kept both employees at the same level of pay even though they are now performing duties which are compensated at a lower rate than that of detectives.

Constitutional authority and case law allows a County Sheriff to assign departmental employees as deemed necessary to best serve the people of his/her said county. In PROFESSIONAL POLICE ASSOCIATION V. DANE

COUNTY, 106 Wis. 2D 90 (1978) the Court advised that a Sheriff could assign an employee and also stated that “principal and important duties’ of the Sheriff cannot be subject to bargaining. It was ruled by WERC in CRAWFORD COUNTY, DEC. NO. 20116 that “a proposal will be found to be a prohibited subject of bargaining if it limits or infringes on a Sheriff’s constitutional powers or duties.” Delegation of manpower obviously falls under the scope of the Sheriff’s Duties and powers. That principal was later reaffirmed in the Manitowoc County Case.

Because the Sheriff’s power to assign deputies cannot be infringed or limited by the collective bargaining agreement, and the fact that the reassigned deputies were kept whole, Grievances 05-540 and 05-541 are not permissible and relate to prohibited subjects of bargaining. I refuse to accept or acknowledge the grievances, and take the position that the Union, the Agreement and the County have no power to restrict my right to assign deputies as I deem appropriate.

The Grievance asserts that the action was disciplinary. It was not. I reassigned the deputies for reasons within my authority, but not for disciplinary reasons. No disciplinary action has been noted against either deputy. If I do decide to impose discipline against either deputy, I will inform them at that time and then afford them the opportunity to be represented by the union in connection with that matter.

Please feel free to contact me if you have any questions regarding this matter.

Respectfully,

Brent H. Oleson /s/
Sheriff Brent H. Oleson

ISSUE

The parties could not stipulate to an issue.

The Association regards the issue to be:

Whether the assignment of Kim Strompolis to the jail amounted to discipline or demotion.

At hearing, the County set forth the following issue:

Whether the assignment of Kim Strompolis to the jail amounted to demotion as defined by Section 13.02 of the collective bargaining agreement, which encompasses demotion as a subsection of discipline that is grievable and arbitrable.

In its post-hearing brief, the County argues for the following:

1. Is assignment to jail duties within Sheriff Oleson's constitutionally-protected authority and not subject to limitation by the collective bargaining agreement?
2. Is the transfer within management rights and not subject to the grievance procedures in the collective bargaining agreement?

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

ARTICLE II – ASSOCIATION SECURITY

...

Section 2.03 – Employer's Rights: The County possesses the sole right to operate the County and all management rights repose in it, subject to the terms of this Agreement. Its rights include, but are not limited to the following:

- (a) To direct all operations of the County;
- (b) To establish reasonable work rules and schedules of work;
- (c) To hire, promote, transfer, schedule and assign employees in positions within the County;
- (d) To suspend, demote, discharge and take other disciplinary action against employees for just cause;
- (e) To maintain efficiency of County operations;

...

ARTICLE IX – HOURS OF WORK

Section 9.01 Regular Hours:

- (A) The twenty-four (24) consecutive hour time period beginning with the employee's ordered report in time shall constitute that employee's duty day,

except for the four (4) rotators covered by Section 9.02, sergeants or in the event of a departmental meeting. Said duty day shall embrace said employee's work shift. Said work shifts shall be distinguished as follows for Jailers, and Patrolmen:

6:00 AM	2:00 PM
2:00 P.M.	10:00 PM
10:00 PM	6:00 AM

3 Days of 10:00 PM to 6:00 AM and then 3 Days of 2:00 PM to 10:00 PM

...

Section 9.03 – Work Week Schedule: Except for Detectives, the Juvenile Officer, the Court/Process Officer, and as provided in Section 9.02 above, the work schedule shall be (6-3) as follows: six days on duty, followed by three days off duty; and then repeating the cycle. A normal work day for all employees shall consist of an eight (8) hour shift. In addition to the duties associated with Boat Patrol, Snowmobile Patrol, and Court Officer, the Deputy Sheriff/B.P./S.P. Court officer may also be utilized as a Patrolman/Rotator. When working as a Patrolman/Rotator, this employee shall work any of the established three (3) shifts. . .

...

The work schedule of Detectives shall be (5-2), (5-2), (4-3) as follows: five days on duty, followed by two days off duty; then five days on duty, followed by two days off duty; then four days on duty, followed by three days off duty; and then repeating the cycle. (The first work day of the cycle shall be a Monday.) . . . The regularly scheduled shift for the Detectives shall be 8:00 a.m. to 4:00 p.m.; provided however, Detectives may work a different shift upon mutual agreement of the Detective and the Sheriff. The regular scheduled shift for the Juvenile Officer/Detective shall be 3:00 p.m. to 11:00 p.m.; provided, however, when necessary the Sheriff may temporarily assign another shift as long as such assignment does not affect days off. Detectives will not be regularly scheduled to work in other job classifications. (It is understood that Detectives will not be regularly required to wear a uniform.)

...

ARTICLE XIII – DISCIPLINE/DISCHARGE

Section 13.01 Employees may be disciplined or discharged for just cause. The County recognizes the principle of progressive discipline as part of its discipline practices.

Section 13.02 Discipline shall consist of oral warning/reprimand, written warning/reprimand, suspension, demotion, or discharge.

...

Section 13.04 Any discipline or discharge may be appealed through this Agreement's grievance procedure, consistent with the following:

...

ARTICLE XIV – GRIEVANCES

Section 14.01 – Definition: In the event that any difference arises between employer and Association or between employer and any employee concerning interpretation, application or compliance with the provisions of this Agreement, such difference shall be settled only in accordance with a grievance procedure set forth herein.

...

ARTICLE XVI – PROMOTIONS

In the event of a vacancy in the positions of Juvenile Officer, or Detective, the following procedure shall be used to fill such vacancy:

A. Each position vacancy shall be posted for seven (7) calendar days. Bargaining unit employees who are interested in filling the vacancy shall sign the posting.

B. No outside (non-bargaining unit) applicants may be considered for the position where there exists at least three bargaining unit employees who possess at least the minimum entry level qualifications and who have signed the posting.

...

C. Bargaining unit employees who posted and outside applicants as necessary who meet the minimum entry level qualifications shall participate in the following selection process:

Phase 1: These participants shall participate in a written examination administered by a professional testing service. Participants must achieve at least a 75% passing score on the exam in order to continue in the selection process.

Phase 2: All participants who pass the written exam shall progress to the oral examination phase of the selection process. A score shall be computed for each participant regarding his/her performance in this phase. Said score shall be the average of all members of the examination panel or committee. This raw score shall also be translated into a percentage score.

Phase 3: Employees shall receive credit for their department seniority in the form of one final grade point, or prorating thereof, for each year, or part thereof, or employment not to exceed ten (10) points.

Phase 4: A final grade, to include the written exam, oral exam and seniority, shall be computed for each participant. . .The computed final grade point values in each category (written exam, oral exam & seniority), for each participants shall be added together to determine each employee's final grade.

D. The highest scoring bargaining unit participants, up to a maximum of three such persons, who achieve a final grade of 80 points or higher, shall progress to the final step in the process – a final interview by the Sheriff. If there are less than three such bargaining unit participants, the employer shall add the highest scoring non-bargaining unit participant(s), who achieve a final grade of 80 points or higher, to the bargaining participants in order to achieve a requisite three (3) names to be submitted to the Sheriff for his interview at the final step. The Sheriff, following this final interview, shall fill the vacant position with one of the finalists.

...

APPENDIX A

Wage Schedule

Patrolman, Jailer & Court/Process Officer

1-1-2007	Hourly	Bi-Weekly	Annual
Hire
6 months
12 months
18 months
24 months	40,131.14

APPENDIX B

Wage Schedule

Investigator & Juvenile Officer/Investigator

1-1-2007	Hourly	Bi-Weekly	Annual
Hire
6 months
12 months
18 months
24 months	43,798.37

POSITIONS OF THE PARTIES

It is the view of the Association that the County demoted Kim Strompolis when Sheriff Oleson reassigned him to work in the County jail. The Association argues that the Sheriff requires just cause to demote. The Collective Bargaining agreement does not define demote, which causes the Association to turn to dictionary definitions and arbitration awards in support of its claim that the Sheriff demoted Strompolis.

The Association points to Article IX, Section 9.03 and contends that the parties have negotiated a work schedule for Detectives which is not being honored. It is the view of the Association that Strompolis spent a career working his way up the career path of the Department. The Sheriff has returned Strompolis to the job from which he began employment. Notwithstanding the contention that the reassignment would be for one year, nothing in the record suggests that to be the case. The fact that the Sheriff allowed the grievant to retain his job title and pay does not change the nature of the action.

The Sheriff stripped the grievant of his Detective job duties as those duties are defined by the job description of Detective. It is the view of the Association that the Sheriff has ignored the contractual hours of work provision as well as Sec. 9.03's directive that Detectives not be regularly scheduled to work in other job classifications nor be regularly required to wear a uniform.

It is the view of the Association that the grievant be made whole by ordering that he be returned to his position as a Detective.

In its reply brief, the Association contends that the arbitrability issue has already been litigated in the Juneau County Circuit Court. It is the view of the Association that any claim as to the Constitutional authority of the Sheriff is not before me. It is the further position of the Association that the County is wrong in its constitutional analysis.

It is the view of the County and Sheriff that the assignment of Strompolis to jail duties falls within Sheriff Oelson's Constitutionally-protected authority, and is not subject to arbitration. The County cites a number of Supreme Court decisions, principally *MANITOWOC CO. V. LOCAL 986-B*, 168 Wis. 2D 819, 484 N.W. 2D 534 (1992) in support of its contention that the Sheriffs actions in this matter fall within his Constitutional authority and are not subject to review under the terms of a collective bargaining agreement.

It is the view of the County that reassignment is not subject to the grievance procedure. Management has the right to transfer and assign under Sec. 2.03 of the Agreement.

In its response brief, the County contends that the record does not support a finding that the assignment was disciplinary within the meaning of Sec. 13.02 of the Agreement. The assignment did not change his job title, rate of pay or fringe benefits. The Sheriff indicated the reassignment was temporary.

DISCUSSION

Jurisdiction

The parties went to Court over the question of what, if any, jurisdiction a grievance arbitrator has in this dispute. Their respective claims were placed before the Court. The honorable Guy D. Reynolds ordered the county to arbitrate this matter, after concluding "...the court is satisfied that the issue of whether the assignment of two detectives to jail duties amounts to discipline or demotion is referable to arbitration under the CBA..." For purposes of arbitrability, the Court drew a distinction between the contractual claims and the Constitutional authority of the Sheriff.

The finding of the Court is consistent with the Collective Bargaining Agreement, which defines a grievance as a difference in the "interpretation, application or compliance with the provisions of this Agreement..." and directs unresolved grievances to Arbitration. Discipline matters are specifically made subject to the grievance procedure.

Constitutional Powers of the Sheriff

The parties have made a number of arguments relative to the scope and application of the Constitutional authority of the Sheriff. Suffice it to say they disagree as to both scope and application. The nature of the Sheriffs Constitutional authority falls outside the authority granted to an Arbitrator under this proceeding. It does not draw its essence from the Collective Bargaining Agreement, and is not before me. Therefore, the argument and claims relative to the Constitutional authority of the Sheriff are not addressed in this Award.

Demotion or Reassignment

The real issue in this proceeding is whether or not the assignment of Strompolis to the jail amounts to discipline. That is both arbitrable and common to the parties' view of the dispute.

The matter giving rise to this proceeding was Sheriff Oleson's December 15 letter reassigning Strompolis to the jail. The letter indicates that the transaction is a reassignment and that the matter is not disciplinary. It goes on to describe the behaviors which have prompted the jail assignment, including "insubordination, including failure to prepare required reports; undermining Department personnel in communications to other agencies and law enforcement personnel; and acting on personal business while on duty." Such matters are common grounds for discipline, which fact the Sheriff notes in the letter.

The letter goes on to conclude that it is not efficient or effective to assign Strompolis to investigative work, and that close supervision is required. Temporary assignment to the jail was directed, with a review after one year to determine whether satisfactory service had occurred and to consider the possibility of reassignment back to investigative work.

The numbered direct orders effectively stripped Strompolis of his investigative assignments and authority.

This is the context in which the County and Sheriff contend that Strompolis remains a Detective, assigned to the jail, and the Association asserts that Strompolis has been demoted.

The Collective Bargaining Agreement does not define the term "demotion". Both parties turn to dictionary definitions in support of their competing claims. Both parties cite *Black's Law Dictionary* (7th ed. 1999) which defines demotion as "to lower in rank, position, or pay". Additionally each party cites authority which supports its claim as to whether or not the jail assignment constitutes a demotion. The *Dictionary* definition recognizes that a demotion is not solely a function of pay. The definition recognizes the possibility that a demotion may occur due to a reduction in rank or position, notwithstanding pay. The mere fact that the pay was left intact is not dispositive.

Reference to external authority can be useful in providing a context or background in the interpretation of a collective bargaining agreement. However, it is not a substitute for an analysis of the terms of the contract which is in dispute. Inasmuch as my authority derives from the contract, it is the contract, as opposed to external law or arbitral authority that must be analyzed. This decision must reflect that analysis, and be limited to the interpretation of the contract.

As noted, the collective bargaining agreement does not define either Investigator (Detective) or Jailer. The job description for Detective was made a part of the record and provides:

- C. Detectives to be called out on all serious incidents such as but not limited to:
1. Burglaries (large property loss)
 2. Homicides
 3. Serious Offenses
 4. Drug investigations
 5. Search warrants
 6. Armed robberies
 7. Sexual Assaults
 8. Arson
 9. Other incidents deemed appropriate by Supervisors/Undersheriff/Sheriff
- D. Detectives should notify Supervisors, Undersheriff/Sheriff of serious incidents.
- . . .
- F. Detective hours are pursuant to current contract language.
- G. Hours of work may vary due to investigations being conducted.

This captures the traditional duties and responsibilities of a Detective or Investigator. Strompolis is performing the work of a Jailer. That fact is acknowledged in the December 21 grievance answer. As was made clear from the Sheriff's December 15 letter, Strompolis is not performing the work of a Detective. The Departmental organizational chart was also stipulated into the record, and it shows different lines of reporting authority for Jailers and Detectives. Strompolis reports to Jail supervision.

Appendix "A" and "B" acknowledge pay differences between the two positions. Strompolis is paid as a Detective.

Article IX of the Collective Bargaining Agreement defines the hours of work of Jailer and of Detective. Sec. 9.03 provides a 6-3 schedule for Jailers and a 5-2, 5-2, 4-3 schedule for Detectives. Kim Strompolis has been assigned a Jailer schedule. If Strompolis is regarded as a Detective, such an assignment is inconsistent with Sec. 9.03. Strompolis works a Jail schedule because he performs traditional jail work.

Sec. 9.03 allows the Sheriff to temporarily assign a Detective to another shift as long as such assignment does not affect days off. The Collective bargaining Agreement anticipates the potential need to temporarily assign a Detective away from his regularly assigned shift and regulates such an assignment. This assignment is not consistent with Sec. 9.03. Here, Strompolis' days off have been affected. He formerly had weekends off. Under the new schedule he works some or all of most weekends. This assignment, notwithstanding the one

year reference in the December 15 letter, does not appear to be temporary. One year has passed with no review. Two Detective positions have been posted and filled with internal candidates. The Department started with four Detectives, sent two to the Jail, and replaced them. The end result is that the Department ended up with four Detectives.

The staffing result points out the obvious. On its face, the reassignment had to do with the Sheriff's perception of Strompolis' performance. This had nothing to do with staffing the jail. There was no reallocation of resources away from the Detective classification. To the contrary, the Detective vacancies created by the reassignment were filled in accordance with the contract. There is nothing which distinguishes the Jailer position. It is the entry-level position, requiring the least experienced background and subject to the greatest degree of supervision. It requires the least exercise of professional judgment. There are no special qualifications involved. Nothing in the record suggests that Strompolis was selected for the Jail assignment because he brought some particular skill set to the position. Rather, it appears that Strompolis was sent to the jail for the reasons set forth in Sheriff Oleson's December 15 letter: to subject him to a greater level of supervision. The administrative change was made as an expressed alternative to invoking contractually-regulated discipline.

Sec. 9.03 goes on to provide that "detectives will not be regularly scheduled to work in other job classifications." For over one year, Strompolis has been regularly scheduled to work in the Jailer classification. If he is a Detective, as argued by the County, this provision has been violated. There follows a parenthetical sentence, which indicates the understanding that Detectives will not be regularly required to wear a uniform. Strompolis wears a uniform to work every day. If he is a Detective, this understanding is not being honored.

Article XIV addresses promotions within the Department. Under the terms of the Collective Bargaining Agreement, Juvenile Officer and Detective vacancies are promotions. This appears not to be so for other positions within the unit. The introductory sentence of Article XVI directs that the contractual process "shall be used to fill such vacancy". It permits no discretion to the contrary. The provision goes on to create a procedure, including written exam, oral exam, and final grade which reflects exam scores and seniority. The final step is an interview with the Sheriff, who fills the position with one of three finalists. This is the process that Strompolis utilized to be promoted to Detective. Once he qualified for the promotion, the then Sheriff exercised some level of discretion in selecting Strompolis for the position of Detective.

Once an employee achieves Detective status, the Collective Bargaining Agreement provides for certain benefits and prerogatives, as described above. Strompolis' wage and job title have been preserved. The balance, including his hours and working conditions have been lost. Strompolis has worked in the Sheriff's Department for over 29 years. He was promoted to Detective and performed Detective work for many of those years. This reassignment significantly alters the hours he works and the kind of work he performs. It is a significant change in his professional status and his professional lifestyle. The Collective Bargaining Agreement recognizes that fact. The contract draws a distinction between job classifications.

The Jailer is an entry-level position. Detective is identified as the most advanced position in the bargaining unit.

The County contends that the Sheriff was exercising his right, under Sec. 2.03 to transfer, schedule, and assign employees. Such right must be exercised consistent with the other provisions of the Agreement. The general assignment of job duties cannot be exercised in a way which violates more specific provisions of the Agreement. The right to assign work does not authorize the repeal of hours of work schedules set forth in Article XVI, or the wage schedule set forth in Appendix A and B. The specific wages, hours and conditions of employment bargained into the Agreement must be honored in the assignment process.

The Union introduced testimony relating to the loss of cell phone privileges and County assigned car. Those benefits are assignment based tools. While the loss of free cell phone time and commuting mileage may be relevant as to remedy, they do not form a part of the contractual definition of the positions in controversy.

I believe Strompolis has been demoted. He was promoted to Detective. His reassignment to the jail can only be regarded as a demotion. To find otherwise is to strip the promotion provision of all meaning. The parties thought enough of the Detective position to afford it special contractual treatment. One cannot ascend to Detective through operation of seniority. To become a Detective, and all that it entails, an individual has to successfully complete a testing and interview process which seeks to cull out the unfit. It is impossible to read this contract and conclude that he is a Detective, who has been assigned to the Jail. If that were the case there are a number of provisions of the Agreement that are violated every day. The County has made no effort to reconcile its actions with those provisions.

I believe the Sheriff determined that Strompolis was unfit to serve as a Detective. The contract permits discipline, including demotion, for just cause. That process, which involves notice and an opportunity to be heard, was not used. The Sheriff has available a process for discipline. However, the sheriff would have a burden of satisfying a just cause standard under such a proceeding. No such burden was addressed in this proceeding.

AWARD

The Motion to Dismiss is denied. The grievance is sustained.

REMEDY

The County and Sheriff are directed to reinstate Kim Strompolis to the position of Detective, consistent with the terms of the collective bargaining agreement, and to make him whole for all lost wages and benefits.

JURISDICTION

I will retain jurisdiction over this matter, for a period of 60 days from the date of this Award, for the sole purpose of resolving any disputes as to remedy.

Dated at Madison, Wisconsin, this 6th day of November, 2007.

William C. Houlihan /s/

William C. Houlihan, Arbitrator

