

BEFORE THE ARBITRATOR

In the Matter of a an Arbitration Between

CITY OF NEW RICHMOND

and

THE WISCONSIN PROFESSIONAL POLICE ASSOCIATION

Case 27
No. 72829
MA-15278

AWARD NO. 7898

Appearances:

Mr. Steven C. Zach, Boardman & Clark, LLP, 1 South Pinckney Street, Suite 410, Madison, WI 53701, appeared on behalf of the City.

Mr. Roger Palek, Wisconsin Professional Police Association, 660 John Nolen Drive, Suite 300, Madison, WI 53713, appeared on behalf of the Association.

ARBITRATION AWARD

On January 23, 2014 the City of New Richmond and the New Richmond Professional Police Association, Local 459 of the Wisconsin Professional Police Association filed a request with the Wisconsin Employment Relations Commission, seeking to have the commission appoint William C. Houlihan, a member of its staff, to hear and decide a matter pending between the parties. Following appointment, a hearing was conducted on May 7, 2014 in New Richmond, Wisconsin. No formal record of the proceedings was taken. Post Hearing Briefs and Reply Briefs were filed and exchanged by July 3, 2014.

ISSUES

The parties stipulated to the following:

1. Is the grievance procedurally arbitrable?
2. Did the Employer violate the collective bargaining agreement when it disqualified Officer de la Cruz from participating in the Sergeant promotional process?

REMEDY (if any)

The parties stipulated that if the grievance is sustained Officer de la Cruz should be placed in the promotional process.

BACKGROUND AND FACTS

The City of New Richmond has a Police Department, some of whose members are represented by the Wisconsin Professional Police Association. The parties are signatories to a collective bargaining agreement, the relevant portions of which are set forth below. The Police Department has a Policy and Procedures Manual, one portion of which addresses Promotional Procedures. That provision is also set forth below. The City of New Richmond maintains a Personnel Policy Manual, whose provisions are applicable to all City employees, including those employed by the Police Department. There is a residency provision, which provides as follows:

TRAVELING DISTANCE TO THE CITY

Due to the potential emergency situations the following supervisors and their designated staff will be required to live within 15 minutes traveling distance to the City of New Richmond: City Administrator/Utilities Manager, Police Chief, Fire Chief, Street Superintendent, Parks Superintendent, Electric Superintendent, Water Superintendent, and Wastewater Superintendent.

The City has allowed the Police Chief to identify who is considered “designated staff” within the meaning of the residency rule. Formerly it was all officers within the department. In February, 2008 the residency restriction was eliminated for Patrol and Detectives, but was left intact for the Chief, Lieutenants, and Sergeants. Over time the City has applied the residency requirement to three promotions to Sergeant.

2013 Wisconsin Act 20, Wis. Stats 66.0502 was enacted and provides the following;

66.0502 Employee residency requirements prohibited.

- (1) The legislature finds that public employee residency requirements are a matter of statewide concern.
- (2) In this section, “local governmental unit” means any city, village, town, county, or school district.
- (3)
 - (a) Except as provided in sub. (4) (/document/statutes/66.0502(4)), no local

governmental unit may require, as a condition of employment, that any employee or prospective employee reside within any jurisdictional limit.

- (b) If a local governmental unit has a residency requirement that is in effect on July 2, 2013, the residency requirement does not apply and may not be enforced.
- (4)
- (a) This section does not affect any statute that requires residency within the jurisdictional limits of any local governmental unit or any provision of state or local law that requires residency in this state.
 - (b) Subject to par. (c) (/document/statutes/66.0502(4)(c)), a local governmental unit may impose a residency requirement on law enforcement, fire, or emergency personnel that requires such personnel to reside within 15 miles of the jurisdictional boundaries of the local governmental unit.

In September 2013 a sergeant vacancy arose in the New Richmond Police Department. The position was posted consistent with the terms of the collective bargaining agreement. The grievant, Carlos de la Cruz, and another bargaining unit member applied. Both were interviewed on September 20, 2013. At that meeting Police Chief Mark Samelstad discussed response time with both applicants. Each was asked how far away they lived, and each responded. De la Cruz indicated that he believed he lived 17-20 minutes away, depending on traffic. At that point in the interview process Chief Samelstad indicated that he did not believe the residence of either man was a problem.

Chief Samelstad was subsequently approached by other members of the command staff who expressed a concern that de la Cruz lived outside the residency area. Chief Samelstad and Lieutenant Cody timed the distance and concluded that de la Cruz lived 21 minutes and 16 miles traveling one route and 23 minutes and 17 miles traveling another route.

On October 14, 2013 the grievant was advised that he lived outside the required response time and thus was ineligible to promote to the Sergeant position. On October 21 the grievant appeared before the Police and Fire Commission and asked the PFC to review and reverse the Chief's decision. Following the grievant's appearance the PFC went into closed session with Chief Samelstad, concluded it would not reverse the Chief's decision, and asked the Chief to draft a response. The following was prepared and sent to Officer de la Cruz"

Date: October 2013

To: New Richmond Police & Fire Commission Members

From: Mark W. Samelstad/Chief

Ref: Residency Issue for Sergeant's Promotion

Cc: Officer Carlos de la Cruz

On October 24th 2013 (Thursday) the Commission met to discuss recently hired new Department Officers, promotions that have occurred and to discuss the current promotion taking place to fill an empty Patrol Sergeant's position.

Officer de la Cruz was also present for this meeting of the Commission and addressed the Commission regarding his participation in the promotion process. On October 14th 2013 I talked with the two Officers (Sather & de la Cruz) that had applied for the vacant Sergeant's Position. On this date, I informed Officer de la Cruz that he did not meet one of the requirements for the position of Patrol Sergeant, that he did not live within fifteen (15) minutes response time to the city limits. Therefore, he was not eligible to apply for the vacant Sergeant's position.

Addressing the Commission, Officer de la Cruz asked the Commission to overturn my decision as to his participation in the promotion process. After Officer de la Cruz's talk, the Commission went into "Closed Session" to discuss this issue with myself.

The Commission asked that I check with the Wisconsin League of Municipalities', to see if the Governors 2013 Budget Bill, which included language prohibiting Wisconsin Municipalities' from enforcing residency requirements on city workers changed the City's current policy.

Currently, the New Richmond City Employee Handbook addresses residency for certain City Employees. Specifically, the Handbook addresses City Department Heads, including the Chief of Police, requiring those Department Heads Identified be required to live within fifteen (15) minutes response time to the City. In addition, the Handbook states that the Chief of Police and his "designated staff" are required to live within the fifteen (15) minute response time.

During the meeting I informed the Commission that this “policy” has been in place for a very long time and that all employees of the Police Department are aware of this requirement. I furthered informed the Commission that either in 2009 or 2008, I addressed the “Residency Requirement” as it applies to the Police Department. In checking my records, I located the memo that I issued on February 28th 2008 which addressed the “Residency Requirement”. In this memo, I removed the fifteen (15) minute response time requirement for the position of “Patrol Officer and Detective”. I also stated that the “fifteen minute response time” will remain in effect for the positions of Chief of Police, Lieutenant and Sergeant. This memo was posted on the Department Bulletin Board and Union Rep Bruce Borgen was given a copy of this memo.

On February 25th 2013, I talked with the Wisconsin League of Municipalities Legal Counsel – Claire Silverman. My discussion with Ms. Silverman centered on the Governor’s Budget Bill and the “Residency Requires” contained in the Budget.

I explained to Ms. Silverman what the City presently has as far as a “Residency Policy”, that being a fifteen (15) minute response time for certain identified Department Heads and their designees. Ms. Silverman was asked how this related to what the Governor had in his “Budget Bill” that eliminates a “residency requirement” for city employees. Ms. Silverman stated that the Governor’s Bill states for “law enforcement” the city may require a 15 mile limit. As far as what the City has now for the Chief of Police and his “designated staff” (the fifteen minute response time) compared to what is contained in the Budget Bill (fifteen mile limit) she said that she did not know how that would be looked at. Ms. Silverman did suggest that the City look at changing the “15 minute” language we currently have to the “15 mile” language as contained in the Budget Bill.

I did talk with Mayor Horne today regarding the need to change the “Employee Handbook” language regarding the “Residency” requirement. Mayor Horne said that this will be addressed at the November Council meeting.

Regarding Officer de la Cruz’s issue, as I informed the Commission Lt. Cody and I drove the route that Officer de la Cruz takes to work. The drive time was between 22 to 23 minutes and covered seventeen (17) miles. Officer de la Cruz has been aware of this “residency” requirement for several years, prior to his purchasing the residence where he and his family is currently residing. As I stated at the

meeting, Officer de la Cruz does not meet the “residency requirements” for Patrol Sergeant.

Per the decision of the Police and Fire Commission, if checking on the Governor’s “residency requirements” does not change the policy that the City of New Richmond currently has, the Commission denied Officer de la Cruz’s request. The Commission has denied Officer de la Cruz’s request to overturn my decision.

Per the direction of the Commission, this letter is being sent to all members of the New Richmond Police & Fire Commission and to Officer Carlos de la Cruz.

If there are any questions, please contact me.

Sincerely,

Mark W. Samelstad
Mark W. Samelstad
Chief of Police

A grievance was filed. Andrew Westmoreland, Association President, talked with Lieutenant Cody on November 7, and indicated that the Association was going to file a grievance. Lieutenant Cody replied that the matter was not grievable and denied it. A written grievance was filed. It is dated November 7 and placed in the mail to the Chief. Chief Samelstad testified that he received the grievance on November 12, and responded that same day, denying the grievance as being untimely. The response was appealed and subsequently denied by the City Administrator on December 6, 2013.

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

ARTICLE 4 - GRIEVANCE PROCEDURE AND ARBITRATION

4.1 Definition.

A grievance is defined as any dispute between an employee(s) and the Employer, or between the Association and the Employer, as to interpretation or application of this Agreement or any matter related to wages, hours or conditions of employment.

4.2 Settlement of Grievance.

A grievance shall be considered settled at the completion of any step in the grievance procedure if the parties

hereto are mutually satisfied. Dissatisfaction is implied in timely recourse from one step to another.

4.3 Representation.

A representative(s) chosen by the grievant may be present and participate at any step of the grievance procedure. The Employer will recognize a representative (steward) designated by the Association as the grievance representative of the bargaining unit. The grievant shall be entitled to representation at any step of the grievance procedure. The Association shall notify the Employer, in writing of the name of such Association representative and of the successor when so designated.

4.4 Time Limits.

Time limits specified in this Article may be waived or extended by mutual agreement of the parties.

4.5 Steps In Procedure.

Step 1. An earnest effort should first be made to settle the matter informally between the grievant and his/her immediate supervisor. If the grievance is not resolved informally, a written grievance shall be presented to the Lieutenant within fourteen (14) calendar days of the date the grievant knew or should have known of the matter giving rise to the grievance. The written grievance should set forth the nature of the grievance, the facts on which it is based, the provision or provisions of the agreement alleged to have been violated, and the remedy requested. The Lieutenant may discuss the grievance with the grievant. If the grievance is not resolved within seven (7) calendar days after this presentation it shall be submitted to Step 2.

Step 2. Any grievance not settled at Step 1 shall be submitted, in writing, to the Chief of Police not later than ten (10) calendar days after the end of the seven (7), day period referred to in Step 1. The Chief of Police may discuss the grievance with the grievant. If the grievance is not resolved within seven (7) calendar days after receipt by the Chief, it may be submitted to Step 3.

Step 3. Any grievance not settled at Step 2 shall be submitted, in writing, to the City Administrator not later than ten (10) calendar days after the end of the seven (7) day period referred to in Step 2. The City Administrator may discuss the grievance with the grievant. If the grievance is not resolved within seven (7) calendar days after receipt by the City Administrator, it may be submitted to Step 4.

Step 4. Any grievance not settled in Step 3 shall be submitted to arbitration by requesting the Wisconsin Employment Relations Commission to appoint a staff member from a list of mutually agreeable staff members to serve as sole arbitrator. The request for arbitration shall be submitted, with a copy of the City Administrator's decision, within fifteen (15) calendar days of receipt of the written decision in Step 3. The arbitrator shall meet with the parties on a mutually agreeable date to review evidence and hear testimony relating to the grievance. Following this review and hearing, the arbitrator shall render a written decision, which shall be final and binding on the parties. The decision of the arbitrator shall be limited to the subject matter of the grievance and shall be restricted solely to the interpretation of the contract in the area where the alleged breach occurred. The arbitrator shall not modify, add to or delete from the express terms of the Agreement.

ARTICLE 13 - JOB POSTING

- 13.1 When the Employer determines that a vacancy should be filled or a new position created within the bargaining unit, the Employer shall post a notice of such vacancy or new position for a period of at least five (5) days. The job posting shall set forth the job title, hours, rate of pay, and a brief description of job requirements and qualifications. The procedure and selection process outlined in Directive No. 34-03 of the New Richmond Police Department shall be used for all promotions and new assignments.
- 13.2 New employees shall not be entitled to or eligible to sign a posting until after completion of the probationary period.

- 13.3 The employee selected shall serve a one (1) year trial period in the position. If the Employer determines during the one-year trial period that the employee is not qualified for the position, or if the employee elects during the first 30-days of the trial, period to return to his/her former position, he/she shall be returned to the former position at the former rate of pay.

RELEVANT PROVISIONS OF THE POLICY AND PROCEDURES MANUAL

NEW RICHMOND POLICE DEPARTMENT POLICY & PROCEDURES

I. POLICY:

Promotion policy and procedure shall be established in addition to applicable provisions of Wis. Statutes, employee contracts, and regulation by the Policy & Fire Commission. Regulation and procedure shall primarily apply to sworn officers but shall also be used as applicable for promotion of non-sworn personnel. Promotions of non-sworn personnel shall be subject to the Finance Committee in lieu of the Commission and if standardized or validated examinations are not available, such portion of the procedure shall be substituted or waived.

II. POSTING OF PROMOTION VACANCY-NOTICE OF INTENT:

A vacancy to be filled by promotion shall be posted by the Chief of Police within (5) working days of the opening. The posting will specify the opening for promotion and the minimum qualifications for such department position and/or special instructions and information for the applicants. The opening shall be posted for a least (5) working days during which time employees will submit a letter of intent to compete for the position through promotion procedure.

An individual resume shall be attached to the letter of intent and shall be filed with the Chief of Police.

Employees absent during the vacancy posting for illness or vacation will be notified by letter to their home address. If the employee is out of town on vacation during the posting time period

and will not receive mail until his/her return, the (5) working days shall begin upon return and receipt of notice.

III. ELIGIBILITY FOR PROMOTION:

- A. The following are minimum requirements for promotion to the listed ranks:

Police Detective: Must have (5) or more years of service with the New Richmond Police Department, in addition to any other service time.

Police Sergeant: Must have (4) or more years of service with the New Richmond Police Department, in addition to any other service time.

Any ranks above Police Sergeant will have the minimum requirement of (5) or more years of service with the New Richmond Department, except the rank of Chief of Police which requirements/standards will be set by the Police and Fire Commission.

IV. DEPARTMENT PROMOTION PROCEDURES:

The procedures for promotion to an open rank position may include the following (as applicable):

- A. WRITTEN/PRACTICAL EXAMINATION

Employees who meet the minimum qualifications for the position as listed in the job descriptions may complete written examination administered by the State of Wis. Department of Employee Relations, County/Municipal Testing Service or other standardized examination which is validated for accurate testing related to the position posted, assuming a written test for the position exists. If one does not exist, one will not be used, the remaining tests will, be adjusted accordingly; with percentages.

A Practical Examination may be used instead of the written examination. The Practical Examination will be designed by the Chief of Police and will test the employee's knowledge, management skills,

investigative skills and other skills necessary for the performance of the duties related to the promotion.

Employees who have notified the Chief of Police by letter of intent and resume will be notified in writing of the examination date, time and location, and the same information will also be posted. A minimum of (10) calendar days advance notice will be provided prior to the examination. Employees who are absent for illness or vacation will be notified by letter at their residence.

If employees are required to travel outside of the City of New Richmond for purposes of taking a test for the promotion process, the individual(s) shall be paid wages (straight time) at contract rate as applicable and be reimbursed for any necessary expenses incurred if travel is required. "Work days" as used throughout this policy shall include only Monday through Friday, excluding legal holidays as defined in Wis. Statutes.

Employees who cannot for just cause, attend the examination will be required to make arrangement with the test agency for another test date. The Chief of Police shall be notified and approve alternate arrangements. The exam must be completed and results provided the Chief of Police by the testing agency prior to the interview board examination.

A written/practical exam score by an employee for a position shall remain valid without requirement of retesting for a period of (18) months. The employee may also take the exam when scheduled for promotion selection if the employee wishes to attempt score improvement, etc. The highest score of the two is then allowed as the employee exam score.

Examinations shall be provided weight as listed later in this procedure.

Results shall be converted to percent scores.

discuss any matters concerning the specific employees to be interviewed. Each Board member will ask the same question(s) of each employee in the same order/manner.

All Board members will give a percent score for each employee interviewed not to exceed one hundred percent (100%).

C. INTERNAL INTERVIEW

Employees who complete the written/practical exam if such exam exists and also complete the Oral Interview will be scheduled for an internal interview by the Chief of Police and/or any interviewers designated by the Chief of Police. The purpose of this interview will be to examine the employee's work history, education, experience and abilities to perform the job tasks for the position open, based on the employee's past performance with the department and resume. The Chief of Police will rate the employee based on evaluation factors listed later in this procedure, and will give a percent score for each employee interviewed, not to exceed one hundred percent (100%).

Each employee will be notified in writing of the date, time and location of the Internal Interview and at least (5) workdays advance notice should be provided. Failure to complete the Internal Interview as set will disqualify the employee from consideration except for just cause and notification to the Chief of Police.

The Chief of Police will prepare questions asked of employees during the Internal Interview.

D. SELECTION AND APPOINTMENT

The top three (3) employees by weighted score shall be placed on an eligible list, which shall be reviewed by the Chief of Police, who shall recommend promotion of one (1) of the employees to the Police & Fire Commission pursuant to Wis. Statute.

The promotion shall be posted upon confirmation of the Commission and shall list an effective date of the promotion.

E. EVALUATION FACTORS

The following factors shall be compiled and added together to determine the employee's overall score in consideration for recommendation to the Commission for review:

1. Written/Practical Examination: ...
2. Oral Interview Board Examination: ...
3. Internal Review: ...
 - A) Evaluation Factors:
 1. Job performance review ...
 2. Post High School Education: ...
 3. Previous Civilian/Military Law Enforcement Experience: ...
 4. Job related specialized training: ...

V. SENIORITY

In the Department Promotion Procedure, if all other factors/scores are found to be equal, with consideration given to qualifications and abilities, employees will then be ranked by seniority on the eligible list for promotion. If there is no eligible list or the position is an assignment that has no eligible list, the opening would be filled by the employee having the most seniority, provided the scores were equal.

VI. CHIEF OF POLICE/COMMAND OFFICER PROMOTIONS:

Vacancies and promotion procedures for the Chief of Police or other Command Officer positions shall be as directed and under the rules, guidelines and directions of the Police & Fire Commission.

Ref:

Wis. State Statute - 62.13 (4) Police and Fire Departments
L.A.W. Local 216 Agreement - Article 13 Job Posting

Mark W. Samelstad

Mark W. Samelstad
Chief of Police

04-21-2009
Issue Date

DISCUSSION

Timeliness

The City believes the grievance to be untimely. The grievance was prompted by the Chief's denial of de la Cruz participation in the promotion process, and the subsequent decision of the Police and Fire Commission to uphold the decision of the Chief in that regard. The matter was brought to the Lieutenant on November 7, 2013. Westmoreland indicated that a grievance would be filed, and Cody replied that it was not grievable and denied it. I believe that step 1 was satisfied. Step 1 requires that an effort be made to settle the matter informally. Westmoreland and Cody did talk. As a practical matter it is unclear how earnest an effort was possible by the Lieutenant and the grievant, given that the actions protested were taken by the Chief and affirmed by the Police and Fire Commission. Sec. 4.3 allows the participation of the Association and Westmoreland was so designated.

The first step was a formality under the circumstances. I think it is of no substantive consequence that the grievant did not personally participate. Once Westmoreland indicated that a grievance would be filed, he was advised that it was denied. In that context it seems futile to then hand Cody a written grievance. The collective bargaining agreement does not identify the consequence of failing to strictly comply with the details of the grievance procedure. There are circumstances where prejudice might arise from non-compliance. This is not one of those cases.

The written grievance was filed with the Chief. The parties dispute whether the matter was filed within 14 calendar days of "...the matter giving rise to the grievance." The City would run the clock from October 14, when the Chief told de la Cruz that his residence would block his participation in the promotional process. The Union would start the clock following de la Cruz receipt of the October 28 letter, which the Union projects to be October 31. I think the triggering event was when de la Cruz did not get the job. The Chief testified that during the course of the October 24 closed Police and Fire Commission meeting one consequence of de la Cruz being eliminated was that the sole remaining candidate for the job was promoted. Once de la Cruz was advised that the decision was final and that someone else had received the promotion I think he was on notice that he had experienced a grievable action. I think the October 14 date is too speculative. The promotion was intertwined with the application of the residency ordinance. The Chief had initially indicated that he wasn't inclined to quibble over a couple of minutes. This was in the context of de la Cruz indicating that he lived 17-20 minutes away. The relatively new state statute hovered in the background. There was a chance the PFC would intervene. There was nothing to grieve until the City filled the position with someone else. Had the City determined not to fill the position, de la Cruz had no grievance.

The written grievance was dated November 7 and mailed to the Chief. Chief Samelstad testified that he received it on November 12, 15 days from the date of the October 28 letter.

Assuming the letter took at least one day in transit, the letter was filed within 14 calendar days of the matter giving rise to the grievance.

The purpose of the timelines is to prevent delay in the handling of grievances. It is at least noteworthy that by filing directly with the Chief the process was expedited, and not delayed.

Merits

The collective bargaining agreement has two job posting requirements that regulate the posting of vacancies. Sec. 13.1 directs the Employer to post vacancies that are to be filled for a period of at least 5 days. There is no dispute surrounding that provision. It then directs that; “The procedure and selection process outlined in Directive No. 34-03 of the New Richmond Police Department shall be used for all promotions and new assignments.”

Directive No. 34-03 is divided into a number of sections. The first section, I. Policy: indicates that the policies and procedure will be established in accordance with Wisconsin Statutes, employee contracts, and regulation by the Police and Fire Commission. There is a statutory regulation of residency, set forth above. There is an employee contract, noted in the paragraph above. There is no indication in the record that the residency provision is a regulation of the Police and Fire Commission, but rather is a City rule or ordinance.

Paragraph II. addresses posting of the vacancy. There is no indication that the letter of intent or the resume was defective. Paragraph III addresses eligibility for the promotion. There is no indication that de la Cruz lacks the service time required for promotion to Sergeant.

Paragraph IV sets forth the Exams to be used, the Oral interview, the internal interview, selection and appointment, and the evaluation factors. Paragraph V goes on to outline the role of seniority. Par. VI reiterates that the guidelines for promotion are to be those of the Police and Fire Commission.

Nothing in Directive 34-03 refers to residency, with the possible exception of Par. I's reference to the Wisconsin statutes. Paragraphs I and VI make reference to the rules and policies of the Police and Fire Commission. There is no indication in the record that the Police and Fire Commission has adopted a residency rule. The sole rule identified is that of the City.

The City has added an eligibility requirement for promotion that is not found in the contract or in the incorporated Directive 34-03. The City urges me to regard the residency requirement as a past practice. I think that is how the residency rule should be treated for the purpose of this analysis. The testimony indicates that it has been openly applied to prior Sergeant promotions. It reflects a recurring application of the residency requirement so as to put all on notice and evolve into an understanding.

In the absence of a new statute on residency this award might end with a traditional past practice analysis relating to residency. However, there is a statute which regulates residency. Par.

I of Directive 34-03 makes reference to the statutes. Directive 34-03 is incorporated into the contract by Article 13.1.

The statute has to be a part of the analysis in this proceeding. The promotional Directive makes reference to the statute. The residency requirement was created at a time when there were no statutory restrictions on residency. Sec. 66.0502(3)(b) provides that if the local government has a residency requirement that is in effect on July 2, 2013 the requirement does not apply and may not be enforced. It is at least arguable that the City is inviting me to enforce the residency requirement. The past practice has to be measured against the statutory directive. They are incompatible. The circumstances giving rise to the practice have changed fundamentally. When the practice developed, the law allowed for it. With the enactment of 2013 Wisconsin Act 20, the residency rule in effect has been declared an unenforceable nullity.

The statute permits a local government to enact a 15 mile residency rule for law enforcement employees. The City has not done so. It is not for me to do so. The City contends that I could enforce the rule to the extent permitted by the statute. That would require me to construct a rule that I believe satisfies the statute, and then apply it to de la Cruz. That exceeds my authority under Article 4.

AWARD

The grievance is granted.

REMEDY

The parties stipulated to the remedy, which is set forth above.

Dated at Madison, Wisconsin, this 11th day of November 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

William C. Houlihan, Arbitrator