

BEFORE THE ARBITRATOR

In the Matter of a Dispute Between

WISCONSIN PROFESSIONAL POLICE ASSOCIATION
WOOD COUNTY DEPUTY SHERIFF'S ASSOCIATION

and

WOOD COUNTY

Case ID: 465.0000

Case Type: MA

AWARD NO. 7931

Appearances:

Andrew D. Schauer, for the Wisconsin Professional Police Association and Wood County Deputy Sheriff's Association.

Andrew T. Phillips, von Briesen & Roper, S.C., for Wood County.

ARBITRATION AWARD

The Wisconsin Professional Police Association (the "Association") and the County of Wood (the "County") requested that the Wisconsin Employment Relations Commission provide a panel from which I was selected by the parties as the arbitrator to hear and decide this grievance brought by the Wood County Deputy Sheriff's Association (a part of the Association). This matter was heard in accordance with the grievance and arbitration provisions of the parties' 2013 - 2015 labor agreement (the "Agreement"). Hearing was held in Wisconsin Rapids, Wisconsin, on February 11, 2016. A transcript of the hearing was created. The parties submitted briefs, the last of which were received on May 27, 2016, whereupon the record was closed. Based upon a stipulation of facts, evidence and arguments of the parties, the arbitrator makes and issues the following award.

ISSUE

The parties were unable to agree on a statement of the issue but did agree that I had authority to frame the issue after giving consideration to their respective positions. Having done so, I conclude the issue is as follows:

Did the County violate the parties' collective bargaining agreement or any rights incorporated into it when the Sheriff eliminated the Patrol Sergeant positions held by Association members Scott Drew, Matt Susa, and John Hiller, causing those employees to return to lower paying positions within the Wood County Sheriff's Department?

RELEVANT CONTRACT LANGUAGE

ARTICLE 2 – MANAGEMENT RIGHTS

Section 2.01. The Employer [County] retains and reserves to itself all rights, powers, authority, prerogatives, privileges, responsibilities and obligations which are customarily and/or inherently performed by an Employer and which are not specifically abrogated, surrendered, modified or amended by the specific written terms of this Agreement. Any right of the Employer to take unilateral action in its own discretion and judgment with respect to the management and operation of the [Wood County Sheriff's] Department, including the direction of the workforce, is retained and reserved to the sole judgment and discretion of the Employer, unless such right is specifically abrogated, restricted, surrendered, amended, modified, and/or abridged by the clear and unambiguous written terms of this Agreement.

Section 2.02. The Association recognizes the right of the County and the Sheriff to operate and manage the affairs of the Wood County Sheriff's Department in accordance with the Wood County Civil Service Ordinance passed the 14th day of September, 1965, and as amended, the 9th day of September, 1975, and as amended in 1979 and May 17, 1994, and on January 15, 2002.

* * *

ARTICLE 20 – SENIORITY RIGHTS AND LAYOFF

Section 20.01. Definition: Seniority shall commence upon the most recent date of hire, subject to the completion of the probationary period, and shall be based upon the actual length of continuous service for which payment has been received by the deputy. Classification seniority will be used for purposes of layoff, recall, and as it applies to scheduling. However, a deputy who is displaced from their classification through layoff, may displace another less senior deputy in another classification if the deputy has the ability and qualifications to perform the other job.

* * *

Section 20.04. Layoff: In reducing deputy personnel, the last person hired shall be the first person laid off, provided the remaining deputies meet the minimum qualifications to perform the available work. ...

RELEVANT COUNTY CIVIL SERVICE ORDINANCE PROVISIONS

* * *

Chapter 232.02 WHO IS COVERED

To the exclusion of all others in County employment, the following from the Wood County Sheriff's Department are included under this Ordinance:

...
Sergeant – Deputy Sheriff
...

Chapter 232.03 DUTIES OF THE SHERIFF

...

The Sheriff may, with the approval of the Sheriff and Traffic Committee of the Wood County Board of Supervisors, promote any permanent personnel within the Department with an examination for a probationary term of six months. In like manner, such personnel may, during said probationary term, be

returned to his / her former position. After six (6) months, if not removed, the promotion shall become permanent; however, such probationary period may be extended by the Sheriff one additional six (6) month period, if deemed in the best interests of the Department. The officer shall receive a review and written notice from the Sheriff for the reason of extension.

* * *

Chapter 232.05 SUSPENSION, DEMOTION, DISMISSAL

Persons appointed hereunder shall hold office on good behavior with tenure from the last date of hire

* * *

Chapter 232.11 PROMOTIONS

...

Promotion to rank shall be regulated by the provisions of the Wood County Deputy Sheriff Contract. Specific guidelines are spelled out and will be adhered to by the Sheriff in promoting Deputies to rank and specialty positions within the Wood County Sheriff's Department

Promotion of said Deputy to such position shall be for a six-month probationary period; and if not returned to his / her former position before expiration of the six-month period, such promotion shall become permanent; however, such probationary period may be extended by the Sheriff for one additional six-month period, if deemed in the best interests of the Department.

The officer shall receive a review and written explanation by the Sheriff as to the reasons for the extension of the probationary period.

FACTS

Within the Wood County Sheriff's Department (the "Department"), Patrol Deputies and Patrol Sergeants are members of the Association. Deputies with the rank of Lieutenant and

Captain are not represented by or members of the Association; they are considered members of the Sheriff's management or command staff.

In early 2015, Sherriff Thomas Reichert implemented a reorganization of the Department. On February 3, 2015, Reichert's Chief Deputy issued a memo to the Department's employees concerning a reorganization of the Department. The memo stated, "[t]he new organizational structure [of the Department] will consist of adding four Patrol Lieutenants, two Jail Lieutenants, a Patrol Captain, an Investigative Captain and a Jail Captain. The positions of Patrol Sergeant, Jail Sergeant and Investigative Lieutenant will be eliminated." In effect this meant that within the patrol division of the Department, four Patrol Sergeants would be replaced with four Patrol Lieutenants, and a single Patrol Lieutenant would be replaced with a single Patrol Captain.

The duties of the new Patrol Lieutenant positions are greater than those of the Grievants' Patrol Sergeant positions. Reichert vested additional authority and responsibility in the new positions. In addition to the duties transferred from the Patrol Sergeant positions, the Patrol Lieutenants, according to the position description, have additional authority and responsibility for: annually evaluating Patrol Deputies, counseling and disciplining Patrol Deputies and other employees, resolving grievances, supervising canine operations, attending interdepartmental meetings, overseeing tactical team functions, providing for or approving emergency vehicle repairs, approving emergency expenditures for miscellaneous equipment or materials, overseeing and supervising seasonal traffic weight restriction enforcement programs, and arranging for mutual aid if necessary.

By March 2015, Scott Drew, Matt Susa, and John Hiller, the named "Grievants," each held the position of Patrol Sergeant within the Department. Each had passed an examination for promotion to Patrol Sergeant and passed a probationary period.

On March 4, 2015, each Grievant received a letter from County Human Resources Director Connie Janowski. By these letters, and prior conversations with Reichert and his Chief Deputy, the County informed each Grievant that his position as a Patrol Sergeant would be eliminated on March 28, 2015. In the same letter from Janowski, each Grievant was also informed that if he failed to exercise a contractual "bumping right" (provided in Article 20 of the parties' Agreement) he would be laid off from his employment with the County on March 29, 2015. Each Grievant signed a "bumping notice" prepared by the County, electing to "bump" into the position of a Deputy Sheriff / Patrol Deputy rather than face layoff.

Elimination of the Patrol Sergeant positions was not a form of discipline taken against the Grievants.

All three Grievants applied for the newly created Patrol Lieutenant positions. None was hired for the new positions.

After “bumping” to the position of Deputy Sheriff / Patrol Deputy in 2015, each of the Grievants earned \$2.13 less per hour than when employed as a Patrol Sergeant. In 2016, the difference became \$2.17 per hour.

Additional facts, as relevant, are contained in the sections below.

ARGUMENTS OF THE ASSOCIATION

At its core, the Association argues that the elimination of the Grievants’ positions was a demotion in violation of the Agreement. The County’s Civil Service Ordinance is incorporated into the Agreement by virtue of the following language from Section 2.02 of the Agreement: “[t]he Association recognizes the right of the County and the Sheriff to operate and manage the affairs of the Wood County Sheriff’s Department in accordance with the Wood County Civil Service Ordinance”

The County and Association stipulated at the beginning of the hearing that “if a violation occurs under the [Civil Service] ordinance that’s incorporated into the contract, it gives right to a grievance.”

The Civil Service Ordinance provides a promotion to Patrol Sergeant is permanent upon passing probation. So long as the office-holder performs his duties with good behavior he may not be demoted. The language of the Civil Service Ordinance is clear in this regard and trumps any unmentioned or unspecified management right to layoff and bump down employees who have been promoted.

The Grievants were not laid off from their positions as Patrol Sergeants. Layoffs are only permitted by the Agreement for the purpose of reducing Deputy personnel. Here the goal was never to reduce the number of Deputies, but to remove the Grievants from their positions as Patrol Sergeants.

The Grievants were reduced in rank and suffered reduction in pay which meets a commonly accepted definition of “demotion.” Reichert may not take such action against the Grievants without just cause for imposing discipline.

ARGUMENTS OF THE COUNTY

The County argues that in reorganizing his Department, Reichert eliminated the Grievants’ Patrol Sergeant positions, which he may do as the valid exercise of a management right which has not been altered by the terms of the Agreement. Demotion, as defined by the County’s Civil Service Ordinance and statute, may only occur as a form of disciplinary action and for just cause. There is no allegation that the actions of the County were disciplinary.

Because the actions were not disciplinary, they cannot be defined as demotions. Instead, upon elimination of the Patrol Sergeant positions, the Grievants were laid off and bumped down into Patrol Deputy positions consistent with the terms of the Agreement.

The Patrol Sergeant positions were no longer needed and therefore eliminated. Prior to the reorganization, the Patrol Sergeants exercised limited authority in the absence of Reichert or members of his command (management) team. In some cases, this meant that Reichert had to rely on Patrol Sergeants to act in his best interests, despite his understanding that the Association's rules prohibit members from bringing information against the interests of another member to management. Through Reichert's departmental reorganization, he sought to empower supervisors to act independently and in the best interests of the County and / or Sheriff.

Because the Agreement does not clearly and unambiguously limit Reichert's right to organize the Department as he sees fit, he may undertake the 2015 reorganization without first returning to the bargaining table. Elimination of the Patrol Sergeant positions is akin to management reducing operating hours without further midterm negotiations, unilaterally rearranging its employees' work schedules, or unilaterally imposing new work rules, when such management rights are not altered by an agreement.

Further, it is a management right to institute layoffs and the number of positions within the Department is not a mandatory subject of bargaining. The fact that the parties bargained over the impact of layoffs shows that the parties contemplated situations in which a more senior Deputy would take a position in a lower classification as the result of a layoff.

DISCUSSION

The organization of a public agency is a management right. The Agreement created by the County and the Association provides that the County and Sheriff retain all customary management rights except those "specifically abrogated, surrendered, modified or amended by the specific written terms of [their] Agreement." By their Agreement, the parties further agreed that the County and Sheriff retained the right to take unilateral action for the management and operation of the Department, including direction of the workforce, unless such right is altered by the clear and unambiguous written terms of their Agreement.

The parties' 2013 - 2015 Agreement does not by its written terms clearly and unambiguously "abrogate[], restrict[], surrender[], amend[], modify[], and / or abridge[]" Reichert's right to reorganize the Department. Therefore, I find that the County did not violate the Agreement by its actions.

In reaching this finding, I considered the Association's argument regarding the incorporation of the County Civil Service Ordinance into the Agreement. The Agreement

provides that “[t]he Association recognizes the right of the County and the Sheriff to operate and manage the affairs of the Wood County Sheriff’s Department in accordance with the Civil Service Ordinance” The Association’s recognition in Section 2.02 of the Agreement does not clearly and unambiguously alter Reichert’s ability to organize the Department. Notwithstanding the foregoing, the County agrees that a violation of the Civil Service Ordinance may be grieved under the Agreement.

The Civil Service Ordinance provides that a Deputy Sheriff promoted to the rank of Patrol Sergeant shall only be demoted for just cause and after due process. Demotion is only contemplated by the Ordinance in the context of a disciplinary action against a Patrol Sergeant. Generally, however, demotion can be defined to include any circumstance in which an employee is lowered in rank, position, or pay. Although the Grievants were in this case lowered in rank, position, and pay, they were not demoted as contemplated by the Ordinance. Although the end result is the same, it came about due to the elimination of their Patrol Sergeant positions, layoff, and exercise of contractual bumping rights.

The Civil Service Ordinance also provides that upon passing probation, promotion to the rank of Patrol Sergeant is “permanent.” The Association argues that such language creates an inextinguishable right of an employee to hold the position of Patrol Sergeant, absent demotion for just cause. Permanent, in the whole context of the Civil Service Ordinance, means no longer subject to probation. It does not guarantee that the positions will forever exist. The Ordinance does not prevent elimination of a position within a classification or elimination of the entire classification from the Department. As a result, the Grievants – during good behavior – were entitled to hold the positions of Patrol Sergeant, so long as those positions exist.

Given the foregoing, the language of the Civil Service Ordinance cannot be read to clearly and unambiguously alter Reichert’s right to organize the Department.

The former duties of the Patrol Sergeant positions were transferred to the newly created Patrol Lieutenant positions along with additional management duties. The positions are different. There is no evidence that Reichert’s 2015 reorganization of the Department was a sham for the purpose of removing the Grievants from their positions as Patrol Sergeant.

After eliminating the Patrol Sergeant positions, the County had the right to lay off the Grievants. Section 20.01 of the Agreement provides that layoffs shall be undertaken by inverse seniority within a classification. The Patrol Sergeant positions are a distinct classification from the Patrol Deputy positions. The Grievants were presented with the option to “bump” more junior employees in the Patrol Deputy classification. Each reluctantly exercised this right. Due to existing vacancies in the Patrol Deputy classification, no employee was ultimately laid off after the Grievants “bumped” into it.

In summary, Reichert had the right to reorganize his Department. Neither the Agreement nor the Civil Service Ordinance explicitly altered this right. Once the Patrol Sergeant classification was eliminated, the County had the right to layoff the Grievants in accordance with the Agreement, by seniority within the classification. The Grievants then had the right to “bump” into a lower classification.

On the basis of the foregoing, and the record as a whole, I make the following:

AWARD

No, the County did not violate the Agreement when Reichert discontinued use of the Patrol Sergeant classification as part of a Department-wide reorganization, and the County laid off the Grievants from their Patrol Sergeant positions, causing the Grievants to “bump down” to positions in a lower paying classification. The grievance is dismissed.

Dated at Madison, Wisconsin, this 8th day of August 2016.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Karl R. Hanson, Arbitrator