BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

VILLAGE OF PLEASANT PRAIRIE

and

VILLAGE OF PLEASANT PRAIRIE POLICE OFFICERS' ASSOCIATION, LOCAL 185 of the WISCONSIN PROFESSIONAL POLICE ASSOCIATION

Case ID: 486.0002
Case Type: MA

AWARD NO. 7951

Appearances:

Mark L. Olson and Kevin C. Pollard, for the Village.

Roger W. Palek, for the Association.

ARBITRATION AWARD

Pursuant to the terms of their 2016-2017 collective bargaining agreement, the Village of Pleasant Prairie Police Officers' Association, Local 185 of the Wisconsin Professional Police Association, and the Village of Pleasant Prairie selected me to serve as the arbitrator of a seniority grievance. Hearing was held in Pleasant Prairie, Wisconsin, on January 8, 2018. A stenographic transcript of the hearing was prepared, and the parties filed written argument by April 16, 2018.

ISSUES

The parties agreed that the following issues are before me:

> Is the grievance filed by the Association arbitrable?
>
> If the grievance is arbitrable, did the Village violate the collective bargaining agreement by its categorization of seniority for four bargaining unit members hired in 2016, and, if so, what is the remedy?

DISCUSSION

When four full-time police officers were hired in early 2016, the Association advised the Village of its belief that the officers' order of seniority established by the Village was not consistent with the bargaining agreement. The Association further advised the Village that if the seniority was not modified, "[w]e're going to see this in about 18 months." The Village did not change the officers' order of seniority and, in August 2017, after the officers had completed their contractual 18-month probationary period, the Association filed a grievance asserting that the August 4, 2017, overtime had been improperly awarded based on the improper seniority rankings.

The Village asserts, contrary to the Association, that the grievance should have been filed in early 2016, once the seniority dates were established, and thus the August 2017 grievance is untimely and not contractually arbitrable.

The following portions of the parties' bargaining agreement are relevant to the arbitrability issue:

Section 4.01 of the grievance procedure defines a grievance as:

> ... a dispute concerning an alleged violation of the terms of the collective bargaining agreement.

Step 1 of the grievance procedure states:

> Any employee who has a grievance shall first discuss it with his immediate supervisor, with or without the presence of the steward, at the employee's option. Such discussion must occur within ten (10) calendar days after the employee knew of the event giving rise to the grievance.

Section 4.04 of the grievance procedure provides:

> Time Limits for Filing Grievances: Any grievance shall be presented within ten (10) days after the date of the event or occurrence, or said grievance will be barred. Any grievance which is not filed within ten (10) days shall be considered to be untimely.

There is no specific reference in the grievance procedure to an "Association" grievance, but the parties have litigated this matter on the assumption that the Association can file a grievance and the deadlines quoted above are applicable. I will do the same.

Fundamentally, the issue of timely filing and arbitrability turns on whether the "alleged violation" or "event" or "occurrence" was the establishment of a seniority date or the allegedly improper overtime assignment premised on the seniority date established by the Village. Both

sides have cited arbitral precedent in support of their position. That precedent reveals the reality that each arbitrator makes what is in effect a "gut call" as to this type of issue in each case. I readily acknowledge that I am doing so here and that either result presented by the parties is a supportable one.

While it obviously presents a close question, I conclude it is the allegedly improper overtime assignment in question that triggered the obligation to timely file a grievance. In reaching this conclusion, I am strongly influenced by the reality that the Association put the Village on notice in early 2016 that if the seniority rankings were not changed, it would be challenging the application of those rankings after the affected employees had completed their 18-month probationary period. To the extent that the Association may not have challenged the seniority date application at the first opportunity, the employees in question lost the opportunity for a remedy of any contract violation. However, the Association did not thereby lose the right to challenge future allegedly improper applications. Because the grievance in question was filed within ten calendar days of the alleged violation, the grievance is timely and thus procedurally arbitrable.

Turning to the merits of the seniority issue, the record establishes that two individuals accepted full-time employment with the Village but needed to receive training at the law enforcement academy before they could begin providing law enforcement services in the Village. Subsequently, two already trained individuals accepted full-time employment with the Village and began to provide law enforcement services in the Village before the other two employees had completed academy training. The Village concluded the two officers who were able to immediately begin providing law enforcement services were the most senior.

The contract states that "[s]eniority shall be determined by the length of service as of the first day of employment by the Village as a full-time police officer."

Both parties assert that the above-quoted contract language is determinative and clear. I agree the language is determinative, but I do not find it to be clear. The Village contends the language should be read as defining seniority as of the first day a full-time employee begins to provide law enforcement services in the Village. The Association argues the language should be read as defining seniority based on the date of hire without regard to whether an employee thereafter needs to attend the law enforcement academy. In effect, both parties have presented reasonable but conflicting interpretations of the word "employment." Does it mean "hired" (as argued by the Association) or does it mean actually being serving as a full-time police officer (as argued by the Village).

When confronted with ambiguous language, the parties' past practice can provide determinative assistance as to the parties' contractual intent. Here, there is a prior instance involving the establishment of seniority for an employee who was hired and sent to the academy and for a subsequently hired employee who immediately began providing law enforcement services. The employee who was hired first has more seniority. The Village argues this practice is inapplicable because a different police chief was making seniority decisions at that time and because it did not involve the hiring of four individuals at the same time. However, these distinctions are not relevant ones. It is the contract language not the identity of the chief that

controls seniority, and the essential fact pattern is present in both instances – hire date versus date an employee is ready to provide law enforcement services. In summary, this prior instance provides valuable and determinative evidence of the proper interpretation to be given the disputed contract language. It is the date of hire that is determinative. Therefore, I conclude the Village did violate the contract by its categorization of seniority of the four bargaining unit members hired in 2016. I will retain authority over this matter for a minimum of 60 days from the date of this Award for the purpose of resolving any disputes as to the appropriate remedy.

Signed at the City of Madison, Wisconsin, this 3rd day of July, 2018.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

_____

Peter G. Davis, Arbitrator