

Contract Provisions Involved

ARTICLE IX - SENIORITY

Seniority shall be measured from the date of full-time permanent Civil Service appointment, unless otherwise specified in this Agreement.

For the purpose of computing seniority for the members of the Union, the following shall govern:

.....

- (b) As to those officers appointed after July 1st, 1984, the date shall be established based upon the full-time permanent appointment date, and, in the case where two or more patrolmen are appointed on the same date, **then seniority in that instance shall be determined based upon their ranking on the Civil Service list from which they were appointed** (emphasis supplied).

Positions of the Parties

As noted in the stipulated issue, this dispute centers on the document to be used to determine the seniority for ten permanent police officers who are the grievants in this case. To understand the dispute, we must begin by briefly examining the multiple step process of appointing police officers pursuant to the civil service law and rules.

The names of the grievants, and others, were originally on a Certification form issued by the Personnel Administrator in the State Human Resources Division (HRD) for appointment as permanent full-time reserve police officers. All of the names on the Certification were ranked in descending order based upon their civil service examination scores. The City's appointing authority, the Mayor, selected candidates for appointment from among the first $2n + 1$ persons on the Certification willing to accept appointment as reserve police officers. The names of the candidates selected, including the grievants, were put on a Form 14 and submitted to HRD for approval or rejection. The names on the Form 14 were not ranked in order of civil service examination scores. HRD approved the Form 14, and the candidates were then appointed reserve police officers and added to the City's Roster.

When the City subsequently made the reserve officers permanent full-time police officers, after approval by HRD, it issued sequential badge numbers using the order of names on the Roster.

The crux of the dispute stems from the fact that the order in which the names appear are different on the Certification (ranked by examination scores) than on the Roster (as listed on the HRD approved Form 14).

The City maintains that because the appointments of the grievants were after July 1, 1984, and were for full-time permanent appointment, the term “Civil Service list” in Article IX of the Agreement can only refer to the Roster, since that is the list from which they were appointed as permanent officers. The City acknowledges that the Certification ranked the candidates according to examination scores, but it argues that the Certification is only relevant to appointment as reserve officers and has no bearing on the subsequent appointment of permanent officers. Having followed all of the requirements of civil service law and rules with respect to the creation and use of the Roster in making appointments as permanent officers, there can be no violation of Article IX of the Agreement by using the Roster to compute seniority for permanent officers.

The Union’s response to this argument is to look to the language of Article IX and the words “ranking on the Civil Service list from which they were appointed”. Unless and until the names are listed in order of examination scores, the Union maintains, it cannot be a ranking. And only the names on the Certification were ranked by examination scores. Because the names on the Form 14, which is the basis for the Roster, were not ranked by examination scores, the Union argues that the Roster is only a list; it not a ranking. Thus, the Roster is not the appropriate document to use to comply with the language of Article IX of the Agreement. Rather, the City must look to where there is a list with a ranking, and the only such list is the Certification of the reserve officers.

Opinion

The issue in this case is how the parties contractually agreed to establish seniority dates when two or more officers are permanently appointed on the same date. The City has maintained that this case involves the application and interpretation of civil service law (see the City’s Motion to Dismiss the Demand for Arbitration). It also asserts that it has in all respect complied with the requirements of civil service law and rules in the appointment of reserve and permanent officers. There is nothing in the evidence presented to me to suggest otherwise. However, this is not a matter of civil service law, *per se*, but rather one of determining as a matter of contract interpretation what the parties meant to refer to by reference to “their ranking on the Civil Service list from which they were appointed”.

The language of the Agreement shows intent by the parties to create a mechanism to compute seniority in those instances where two or more officers have the same date of permanent appointment. They could have done so in ways having nothing to do with civil service. Creating a lottery is a common example. But they did not do so, deciding instead to determine seniority “based upon their ranking on the Civil Service list from which they were appointed”. If the parties had intended to go further and limit the list to only that from which they were appointed to full-time permanent officer, rather than

reserve officer, as the City's argument implies, they could have said so explicitly. Since they did not, I will not find such a limitation in the absence of clear language.

The analysis must then examine the term "ranking" as used in the Agreement. The term "ranking" as it appears in the Personnel Administration Rules refers to the ranking of candidates according to examination scores. While there are exceptions to ranking allowed in the Rules, including the by-pass of candidates, the concept of ranking is embedded in the process of civil service hiring, and the Rules expressly use the term. If I accept the City's view that ranking only applies to the appointment of reserve officers and not to the appointment of permanent officers, and that therefore the "Civil Service list from which they were appointed" could only then refer to the Roster, it would make the use of the term "ranking" in Article IX superfluous, or the term would mean something other than ranking by examination score. Reading the terms of the Agreement as a coherent whole, it makes more sense to me to view the term "ranking" in the Agreement as having the same meaning as it is used in the Rules.

If the term "ranking" is to have meaning in the collective bargaining Agreement, and be part of a mechanism to determine seniority between officers appointed on the same date, one must look to the document that contains the concept of ranking. And in the absence of an express limitation in the contract language, that document must be the Certification and not the Roster.

Finally, I note the irony that if there are two or more officers that are ranked with the same examination score, the parties may still need to determine how to break that tie. That scenario does not appear to exist among the ten grievants. But the parties must first look to the ranking on the Certification to determine seniority for those officers permanently appointed on the same date.

Award

The City violated Article IX of the collective bargaining Agreement when it assigned seniority dates using the Roster rather than the Certification. As a remedy, the seniority of the grievants shall be determined using their ranking on the Certification from which they were appointed full-time permanent reserve police officers.

Date: July 13, 2011

Paul T. Edgar, Esq., Arbitrator