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IN THE MATTER OF THE ARBITRATION BETWEEN

THE POLICE OFFICERS'	)	EMPLOYER'S CASE NO.
FEDERATION OF MINNEAPOLIS,	)	07-18461
	)	UNION'S CASE NO.
	)	10990-8
	)	
Union,	)	
	)	
and	)	
	)	
THE CITY OF MINNEAPOLIS,	)	DECISION AND AWARD
	)	OF
Employer.	)	ARBITRATOR

APPEARANCES

For the Union:

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For the Employer:

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On November 29, 2007, and on December 14, 2007, in Minneapolis, Minnesota, a hearing was held before Thomas P. Gallagher, Arbitrator, during which evidence was received concerning a grievance brought by the Union against the Employer. The grievance alleges that the Employer violated the labor agreement between the parties by failing to pay the

grievant, Brenda L. Davis, compensation for work she performed in a higher classification. Post-hearing briefs were received by the arbitrator on January 26, 2008.

#### FACTS

The Employer is the City of Minneapolis, Minnesota. The Union (sometimes referred to as the "Federation") is the collective bargaining representative of employees of the Employer who fit the description given in Article I of the parties' labor agreement -- "all sworn law enforcement personnel except those appointed to serve in the positions of Chief of Police, Assistant Chief of Police, Deputy Chief and Inspector." Thus, the Union represents those who work in the Employer's Police Department (the "Department") in the classifications, Police Officer, Sergeant, Lieutenant and Captain.

The grievant began working in the Department as a Police Officer in 1994, after two years' previous experience as a Police Officer for the Minneapolis Park Police. On October 5, 2003, she was promoted to the rank of Sergeant, a classification in which she continues to work.

On February 16, 2007, Christopher K. Wachtler, attorney for the Union, acting in behalf of the grievant and in behalf of the Union, sent the following grievance to Sharon Lubinski, Assistant Chief of Police:

#### Statement of Grievance:

Sgt. Brenda Davis worked in the Background Unit from August, 2004 until she was transferred to the Assault Unit January 28, 2007. Sgt. Davis worked out of class during her entire time of service in the Background

Unit, in violation of Article 30, Section 30.3 of the Labor Agreement between [the Employer and the Union]. The Background Unit had traditionally been run by a Lieutenant. Up until, and immediately preceding Sgt. Davis' transfer to the Unit, the Background Unit Sergeant reported to a Lieutenant. However, for all but the final month of her service there, Sgt. Davis reported to Deputy Chief Harris. During her entire time of service, she performed the duties and responsibilities of a Lieutenant herself, as head of the Background Unit.

Contract Violation:

Article 30, specifically Section 30.3 - Working out of class.

Remedy Sought:

Make Sgt. Davis whole in every way, including but not limited to, back pay.

The primary function of the Background\* Unit is to investigate and test the qualifications of those who apply for employment with the Department, whether in sworn law enforcement positions or in non-sworn positions.

During the years relevant to the present dispute, the organization of the Department has undergone several changes, some occasioned by changes in the Department's chief administrative officer, its Chief of Police. Generally, the Department has been organized into bureaus, bureaus have been organized into divisions and divisions have been organized into units. I note, however, that the testimony of several witnesses and the several organization charts in evidence do not show strict adherence to this nomenclature. Thus, witnesses used the word "unit" to describe both the middle level of organization,

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\* The testimony and the documents in evidence sometimes refer to this unit as the "Backgrounds Unit" and sometimes as the "Background Unit," For consistency, I use the latter term throughout this Decision.

and the bottom level of organization. As I describe just below, Donald Harris testified that, in 2002, he was the Lieutenant in charge of the "Training Unit" and that the Sergeant in charge of the Background Unit reported to the "Training Unit" Lieutenant. As changes in organization structure have occurred, the name given to the bureau in which the Background Unit was placed was either the "Professional Standards Bureau" or the "Professional Development Bureau," though some witnesses referred to it as the "Professional Standards Division." For consistency, I refer to it as the "Professional Standards Bureau."

Donald Harris, who now holds the rank of Lieutenant, appeared as a witness for the Union. He testified that, for about six months in 2002, he was the Lieutenant in charge of the "Training Unit" -- apparently then a part of the Professional Standards Bureau. I note that in a later organization chart, dated October 18, 2005, "Training" and "Backgrounds" appear as if they are two of seven units under a box titled, "Professional Standards." I interpret Harris' testimony to mean that the Background Unit Sergeant reported to the Training Unit Lieutenant in 2002. For about four months during 2002, the grievant, then a Patrol Officer, worked as an investigator in the Background Unit while Harris was in charge of the Training Unit. The grievant was an investigator in the Background Unit for only a few months in 2002, leaving when she was assigned to the Third Precinct as a Patrol Officer.

Harris left the Training Unit in the fall of 2002, when he was promoted to Inspector, an upper management, non-Union

position. He held that position until early 2004, when he was made Acting Deputy Chief of Police, a position he held for three months, until he was appointed as a Deputy Chief -- no longer an Acting Deputy Chief.

When Harris became Acting Deputy Chief, he was assigned to manage the Professional Standards Bureau. The Background Unit has always been directly supervised by a Sergeant, and, as I describe below, except for a time during Harris' incumbency as Deputy Chief, the Sergeant in charge of the Background Unit has always been directly supervised by a Lieutenant -- apparently the Lieutenant in charge of the Training Unit.

On July 15, 2004, Harris posted a Job Announcement for a Sergeant to supervise the Background Unit, replacing the Sergeant then in charge of the Background Unit, Sharon Carpenter. Parts of the Job Announcement are set out below:

The Professional Standards Division [sic] is seeking interested candidates for the position of Backgrounds Unit Supervisor. The supervisor will be responsible for overseeing the daily operations of the units including, managing the unit's case load, supervising unit staff, implementing new policies and procedures, and producing required reports. The supervisor will report to the Commander of the Professional Standards Division.

Requirements: . . .

Benefits: Candidate will have the opportunity to develop and implement new policies and procedures.  
Candidate will develop strong supervisory and management skills.  
Position is an 8 hour position, primarily day hours. Most weekends off.

On August 8, 2004, the grievant, who had been promoted to Sergeant on October 5, 2003, was selected for this position, and she became the Sergeant in charge of the Background Unit.

Harris decided to have the grievant report directly to him rather than to the Lieutenant in charge of the Training Unit. Harris testified that he wanted the new supervisor of the Background Unit to report directly to him because he thought the work done by the Background Unit was very important. He described the Background Unit as the "gate keeper" to employment with the Department and, as such, a primary influence on maintaining racial and gender diversity. Harris testified that he knew that the function of the Background Unit was essential to fulfilling the requirements of a "Mediation Agreement" -- an agreement reached in December, 2002, between the Department and the Unity Community Mediation Team, an entity comprised of leaders in Minneapolis community relations. The Mediation Agreement was negotiated with the help of a mediator appointed by the United States Department of Justice, as the result of allegations made by members of the community that racial bias influenced law enforcement in Minneapolis. The Mediation Agreement established an entity to monitor compliance with its substantive requirements -- the Police Community Relations Council (the "PCRC"), which consists of eighteen members of the community and twelve members appointed by the Department.

Harris also testified that he wanted the new supervisor of the Background Unit to report directly to him because he wanted to monitor the updating of the process used by the Background Unit in performing its investigations -- process revisions recommended by a Quality Assurance Audit issued on September 30, 2002.

The grievant remained the Sergeant in charge of the Background Unit until January 28, 2007. On December 1, 2006, Scott R. Gerlicher was appointed Deputy Chief in charge of the Professional Standards Bureau. During December, he made several changes in its organization. He separated the Training Unit into two parts -- the Pre-service Unit and the In-service Unit. He appointed Lieutenant Sally J. Weddel as supervisor of the Pre-service Unit and Lieutenant Jack Kelly as supervisor of the In-service Unit. Five units were assigned to the Pre-service Unit under Weddel -- Background, Recruitment, Community Service, Academy and Field Training. Thus, under this reorganization, the grievant, as supervisor of the Background Unit, reported to Weddel, a Lieutenant, rather than to a Deputy Chief, as she had when Harris was in charge of the Professional Standards Bureau.

Weddel testified that she took charge of the Pre-service Unit on December 24, 2006. Before that date, however, she knew that she would have that assignment, and, at Gerlicher's suggestion, she interviewed personnel in the Background Unit, including the grievant. Weddel found that most of the sworn staff working in the Background Unit, including the grievant, were working four shifts of ten hours each week, while the non-sworn staff were working five shifts of eight hours each week. Because Weddel thought it was inefficient to have the supervising Sergeant and the sworn staff not working on one of the days when the non-sworn staff was working, she ordered that the grievant and the others work a five-day work week.

On December 28, 2007, Weddel sent the following email to the grievant:

After thinking about this for a couple days I've decided it best for the unit if you schedule the psychological from now on. With Jennifer doing the medical and you doing the psychological it will free up Jabra for more actual case work. I want to get away from officers doing a lot of these Sergeant duties. In the past you had no choice than to delegate because you were doing the job of a Lieutenant. I do appreciate your hard work but now will try to divide the work between you and me.

The grievant testified that she was ill for much of December, 2006, and January, 2007. As noted above, on January 28, 2007, she left the Background Unit after being reassigned to the Assault Unit. Mark Koenig, a Sergeant, was assigned to replace her as supervisor of the Background Unit.

The grievant testified that, soon after January 28, 2007, she prepared a written summary of the duties she performed as supervisor of the Background Unit that she thought were the duties of a Lieutenant. She did so by inserting on a copy of the Job Specification for the Lieutenant's classification her written descriptions of work she did as Background Unit supervisor, which she viewed as the work of a Lieutenant. Though the grievant testified that she prepared this document at the request of Weddel to give it to Weddel and Gerlicher, Weddel testified that she did not recall receiving it, and Gerlicher testified that he did not receive it.

The grievant has been married to Michael Davis for thirteen years. He has been a Lieutenant in the Department for a period not specified in the evidence. The grievant testified that, for ethical reasons, she and her husband, who is assigned

to the Department's Internal Affairs Unit, had an agreement not to discuss the work they were doing during the time she supervised the Background Unit. She also testified that after she left the Background Unit she did discuss with him a possible grievance for having done out-of-class work while she was supervising the Background Unit and that, on about February 10, 2007, he suggested that she discuss the matter with William A. Champa, a Human Resources Generalist, whose assignment includes Department personnel matters. The grievant had often discussed personnel matters with him during her supervision of the Background Unit. The grievant testified that she met with Champa a few days after February 10, 2007, and that she explained to him that she thought she had been working out of class, doing the work of a Lieutenant during the time she supervised the Background Unit. When she asked for the job descriptions of a Sergeant and a Lieutenant, he gave them to her. He advised her to talk to a Union representative about any grievance she might have.

On February 15, 2007, the grievant telephoned Lyall B. Delaney, the Union's Treasurer. When she told him about her possible grievance for doing out-of-class work while supervising the Background Unit, he told her to call Wachtler, the Union's attorney. She did so, and, as noted above, on February 16, 2007, Wachtler sent the present grievance to Assistant Chief of Police Lubinski.

#### DECISION

The parties have stipulated that this grievance presents the following two primary issues:

1. Is the Union's grievance timely?
2. If the Union's grievance is timely, was the grievant working out of class during her service in the Background Unit of the Minneapolis Police Department?

The following provisions of the parties' labor agreement are relevant:

Section 5.3 - Informal Problem Resolution. From time to time, concerns regarding possible violations of this agreement may arise. Many of these concerns can be resolved informally. A concern that cannot be resolved informally and which is subsequently presented to the Employer formally pursuant to the procedures set forth in this Article is called a grievance.

Section 5.4 - Grievance Procedure. Grievances shall be resolved in the manner set out below. . .

Subd. 1 - Step One. To initiate a non-disciplinary grievance, an employee (or a Federation representative) acting on behalf of the employee) shall, within the time period specified below, inform the employee's immediate supervisor of the grievance in writing on the standard grievance form. If the employee has initiated the grievance without the assistance of a Federation representative, the employee shall present a copy of the grievance to the Federation at the time it is presented to his/her supervisor. If an employee expressly requests a discussion with the immediate supervisor concerning the written grievance, such discussion shall take place within three (3) days after filing the grievance, unless the time is mutually extended. The discussion with the immediate supervisor shall be held with one of the following:

- a. The employee accompanied by a Federation representative;
- b. The Federation representative alone if the employee so requests;
- c. The employee alone on his/her own behalf.

Within ten (10) days after the grievance is filed or the discussion meeting concludes, whichever is later, the immediate supervisor shall state his/her decision in writing, together with the supporting reasons, and shall furnish one (1) copy to the Federation, one copy to the Assistant Chief and one (1) copy to the Director of Employee Services. Each step one decision shall be clearly identified as a "step one decision."

A grievance must be commenced at step one no later than twenty (20) calendar days from the discovery of the

grievable event(s) or from when the event(s) reasonably should have been discovered, or twenty (20) calendar days from the receipt of the Employer's response to a related letter of inquiry, whichever is earlier.

Section 30.3(a) of the labor agreement, set out below, states the parties' agreement about compensation to employees who work out of class:

Section 30.3 - Working Out of Class.

a. General Rule. Generally, employees are considered as working within the correct class if at least sixty percent of their assigned duties are those commonly attributed to that class. If it is found that for a period of five consecutive scheduled work days or more an employee spends more than forty percent of the time performing assigned duties and responsibilities that are normally those of a different class than that to which the employee was certified, the duties assigned to that employee shall be reassigned to an employee in the correct classification and the employee who was working out of class shall receive compensation for the out of class work as if the employee had been properly detailed to the position in accordance with Section 1.5. In all cases the period of compensation shall run from the first work day on which he/she assumed the out of class duties to the day on which such out of class duties were reassigned.

The evidence includes several descriptions of the Sergeant's classification and the Lieutenant's classification, including the descriptions given in Section 30.2 of the labor agreement:

Section 30.2 - Job Classifications. The parties recognize that work and methods of service delivery may change from time to time. The general responsibilities described below are intended to establish guidelines to determine to which job classification work should be assigned. However, these descriptions are not intended to be exhaustive or to limit the ability of the City to respond to changing demands. . .

Sergeant - Administer the directives of superiors and guide the actions of subordinates in enforcing Federal, State and local laws for the Minneapolis Police Department; perform secondary case investigation of crimes and assure public safety. Supervisor as defined by Minnesota [Statute] 179A.03, subd. 17.

Lieutenant - Commands and supervises major areas or programs as defined by the chief, enforces compliance with departmental policies, procedures and goals. Supervisor as defined by Minnesota [Statute] 179A.03, subd. 17.

The parties presented additional descriptions of the two classifications, including the Job Specifications, "Promotional" descriptions, classification reports and a Job Analysis Questionnaire for Sergeant. The following excerpts from the Job Specifications, which state the "typical duties" of each classification, are consistent with the other descriptive materials presented:

Police Sergeant

Supervised by:

Police Lieutenants and Higher Level Staff.

Supervises:

Police Officers, Police Cadets and clerical support staff.

Nature of Work:

Administer the directives and guide the actions of subordinates in enforcing Federal, State and local laws and ordinances for the Minneapolis Police Department.

Typical Duties and Responsibilities:

(Including, but not limited to the following)

- Supervise, evaluate, train, schedule, assign and provide guidance to subordinates engaged in the enforcement of laws and ordinances.
- Effectively utilizes resources by assigning work and equipment to ensure proper performance of police functions.
- Make recommendations on hiring, discipline and commendation.
- Interpret laws, ordinances and court decisions relating to enforcement activities.
- Formulate budget and participate in strategic planning.
- Coordinate activities at crime scenes, investigate crimes and perform or direct apprehension activities.
- Interview and interrogate, victims, witnesses and suspects.
- Act as a liaison with other law enforcement agencies and related organizations.
- Assist with internal complaint investigations.
- Assist in development and implementation of policies and procedures.

- Prepare complete and accurate reports and other related paper work.
- Evaluate reports for continued investigations.
- Communicate and maintain good relations with the general public, including involvement in community-oriented policing programs and activities.

Police Lieutenant

Supervised by:

Police Inspector, Police Captain and Higher Level Staff.

Supervises:

Police Sergeants, Police Officers, and clerical support staff.

Nature of Work:

Commands and supervises work units in the Police Department ensuring compliance with departmental policies, procedures and goals.

Typical Duties and Responsibilities:

(Including, but not limited to the following)

- Supervise, assigns, and schedules the work of subordinates in the enforcement of laws and ordinances for the Minneapolis Police Department.
- Interpret laws, ordinances and court decisions relating to enforcement activities.
- Interprets policies and procedures for application.
- Research and recommend policy and/or procedures governing departmental operations.
- Coordinate investigative activities at crime scenes and in other situations.
- Perform public relations and community services work, i.e., attend block club meetings, respond to inquiries on safety and crime preventions, etc.
- Respond to requests for services as a Watch Commander.
- Effectively utilize available resources and monitor work to ensure proper performance of police functions.
- Ensure harassment and discrimination free work environment.
- Develop and direct training programs.
- Assist with preparation and monitoring of budget.
- Write clear, complete and concise reports and handle other related paper work.
- Assumes command of precinct or division in the absence of the commanding officer.

These descriptions and the testimony of witnesses for both parties show that Sergeants and Lieutenants perform many of the same job duties. Thus, Betty J. Stanifer, a Human Resources Senior Classification Consultant, testified that the two classifications have similar duties and that the primary difference

between the two is in the scope and complexity of those duties, i.e., that the similar duties performed by a Lieutenant have broader scope and greater complexity than those performed by a Sergeant. This evidence is consistent with the distinguishing language in the descriptions of each classification found in Section 30.2 of the labor agreement. Though the two classifications have similar duties, a Lieutenant "commands and supervises major areas or programs," but a Sergeant does not.

The Employer makes the following procedural argument. The grievance, which was initiated on February 16, 2007, was not brought within the time limit required by Section 5.4, Subd. 1, Step One, of the labor agreement -- that "[a] grievance must be commenced at step one no later than twenty (20) calendar days from the discovery of the grievable event(s) or from when the event(s) reasonably should have been discovered." The Employer argues that, if the grievant was working out of class as a Lieutenant after her assignment to supervise the Background Unit in August of 2004, she should have brought the grievance within twenty calendar days of that assignment -- because she knew or should reasonably have discovered the nature of her work at the time of her assignment or soon after.

The Union argues that the grievant did not become aware either that she had been doing the work of a Lieutenant or that doing so created a claim for out-of-class compensation until sometime after she was reassigned to the Assault Unit on January 28, 2007 -- an awareness that occurred within twenty calendar days previous to February 16, 2007, the date of the grievance.

In addition, the Union argues that the Union itself, and not the grievant, is the grieving party and that it did not "discover" the events creating the grievance until February 15, 2007, when the grievant informed Delaney of those events.

Resolution of the procedural issue requires a review of the evidence relating to the work the grievant did as supervisor of the Background Unit, in order to determine when she knew or reasonably should have discovered that she had a potential claim for out-of-class compensation. Therefore, the following discussion about the evidence relating to the grievant's work is relevant both to the procedural issue and to the substantive issue.

Broadly stated, the substantive issue is whether the grievant's work when she was supervisor of the Background Unit met the definition of out-of-class work given in Section 30.3(a) of the labor agreement. Under that provision, an employee is entitled to out-of-class compensation "[if] it is found that for a period of five consecutive scheduled work days or more an employee spends more than forty percent of the time performing assigned duties and responsibilities that are normally those of a different class than that to which the employee was certified."

The grievant testified that, as supervisor of the Background Unit, the work she did in the following categories was out-of-class work. First, she testified that Harris asked her to assess and change as necessary what was needed to bring the Background Unit into compliance with the Department's Quality Assurance Report of October, 2002 -- an audit based on a national review of similar police departments in large cities.

She met with the author of the Report twice to determine what was needed and reported to Harris about those meetings. She also testified that Harris asked her to have the Background Unit comply with the provisions of the Mediation Agreement that relate to hiring; in that process, she had meetings with the PCRC Board, with an Assistant City Attorney and with Harris in developing policies for the Background Unit. She described this work and her work on Quality Assurance as continuous, beginning in August, 2004, when she first became supervisor of the Background Unit, and ending in January, 2007, when she left the Unit. She testified that, when she left, the Background Unit was in compliance with the Mediation Agreement.

She developed a Power Point presentation relative to hiring in compliance with the Mediation Agreement to show to the PCRC Board, part of which she presented in April, 2006, and she gave the same presentation to the Recruitment Unit in June or July of 2006.

Second, the grievant testified that Harris asked her to develop standard operating procedures for the Background Unit in early 2005 and that she gave the finished draft to him in October of 2006.

Third, the grievant testified that she twice revised a questionnaire originally developed by Harris for candidates for sworn police positions and that she developed a similar questionnaire for candidates for non-sworn positions. In doing so, she did not consult with Harris, but she did consult with an Assistant City Attorney.

Fourth, the grievant testified that Harris and Lubinski asked her to consult with an outside contractor, Verified Credentials ("Verified"), to determine whether one part of the Background Unit's investigation process -- verifying the employment history of candidates for employment -- could be outsourced. She had several communications with Verified over a period of about six months, but found that Verified would extend its investigation back only seven years, failing to meet the requirements of the Department that employment history be checked back to age eighteen.

Fifth, the grievant testified that, when she became supervisor of the Background Unit, its staffing was minimal, with only one sworn Police Officer used as an investigator, and that over the period of her supervision, the staff was expanded substantially. At Harris' direction, she expanded the staffing to seven Police Officers, five non-sworn Police Support Technicians and three non-sworn Administrative Assistants. This expansion occurred from the fall of 2004 through 2006. The grievant interviewed the candidates and made the necessary offers of employment. The expansion of staffing required her creation of appropriate Job Announcements and consultation with Harris and with Champa for their approvals of those she selected to hire.

Sixth, the grievant testified that, at Harris' direction, she updated about thirty-five to forty forms used by the Background Unit and that Harris approved the forms as finally revised. This work began in August of 2004 and continued over the period of her supervision of the Background Unit.

Seventh, the grievant appeared at meetings of the Hiring Board, a body composed of Department upper managers and Champa, to present to the Board information relating to the Background Unit's investigations of candidates for employment. She answered the Board's questions, but did not make recommendations about hiring.

Eighth, the grievant testified that Harris wanted the Background Unit to take over the function of scheduling psychological examinations of candidates from the Department's Administrative Services Bureau. She carried out that directive at the end of 2005 or the beginning of 2006.

Ninth, the grievant testified that, over the period of her supervision of the Background Unit, it moved its offices several times and that she searched for appropriate space, consulting about the use of City-owned facilities and privately owned facilities, and made arrangements necessary for the moves.

Tenth, the grievant testified that she had input into the budgeting process for the Background Unit.

The grievant estimated that she spent more than 40% of her time while supervising the Background Unit doing the work of a Lieutenant, though she conceded that she did not keep documentation to support that estimate. She testified that she was not aware that she had a potential claim for out-of-class work until she left the Background Unit on January 28, 2007. On cross-examination, she conceded that she did not discipline the employees she supervised or adjust their grievances and that she did not respond to requests to act as a Watch Commander -- all functions of a Lieutenant.

The grievant was the first witness to testify at the hearing. Other witnesses, after listening to her testimony, testified to their opinions whether the work the grievant described in her testimony was sufficient to support a claim for having done out-of-class work as a Lieutenant during the time she supervised the Background Unit.

Harris testified that what the grievant did included the duties of a Sergeant, but that many of the tasks he assigned to her constituted work of a Lieutenant. He thought that the work she did assuring compliance with the Mediation Agreement was a "major area or program" within the description of the work of a Lieutenant given in Section 30.2 of the labor agreement. Harris testified that, when he posted the open position for Background Unit Supervisor in July of 2004, he made the decision to post it as the position of a Sergeant rather than that of a Lieutenant. He testified that it was not his intention when he posted the position to have the Background Unit Supervisor do the work of a Lieutenant, but that, as the grievant's assignments progressed, she did Lieutenant's work out-of-class. Harris conceded that a full-time Lieutenant was assigned the task of assuring compliance with the Mediation Agreement during the entire time that the grievant supervised the Background Unit and that the Department had a separate Quality Assurance Unit.

Delaney testified that he considered the Background Unit to be a "major area or program," that it should be supervised by a Lieutenant and that the grievant, as its supervisor, was doing out-of-class work of a Lieutenant.

Stanifer testified after listening to the grievant's testimony about the work she did as Background Unit Supervisor. Stanifer testified 1) that the grievant's testimony did not indicate that she had done the work of a Lieutenant more than 40% of the time, 2) that much of the work the grievant described as work of a Lieutenant fell within the Job Specification of either the Sergeant's or the Lieutenant's classification -- that either classification could have responsibility for arranging the relocation of the offices of the Background Unit, for developing new policies for the Unit, for creating initiatives to assure compliance with the Mediation Agreement, for taking steps to eliminate discrimination, for developing training programs, for interacting with the PCRC, for preparing a new questionnaire for job applicants, and for presenting investigation materials to the Hiring Board. Stanifer testified that a Sergeant or a Lieutenant may supervise a "Unit," but that only Lieutenants supervise a "Division." She described a Sergeant as a "front-line" supervisor.

In her testimony, Weddel explained that she had been in her new position as supervisor of the Pre-training Unit for only a few days when, on December 28, 2006, she wrote in an email to the grievant "[in] the past you had no choice than to delegate because you were doing the job of a Lieutenant." Weddel testified that this comment was based on an assumption and that, when she knew more about the grievant's work, she saw that the grievant sometimes did the work of a Police Officer, sometimes that of a Sergeant and sometimes that of a Lieutenant; she did

not intend this comment to mean that the grievant's work met the work-out-of-class definition in the labor agreement.

Gerlicher testified that the work of supervising the Background Unit is within the Job Specification for the Sergeant's classification, that the Unit always has been supervised by a Sergeant and that since the grievant left the position and Sergeant Koenig has been the Background Unit Supervisor, Koenig has done substantially the same work as the grievant did. Koenig is responsible for keeping the Background Unit in compliance with Quality Assurance and with the Mediation Agreement, and he has made the arrangements for another relocation of the Unit's offices. Gerlicher testified that supervision of the Background Unit is important work, but that it is not a "major area or program."

I make the following rulings. The evidence does not show that the grievant's work during the time she supervised the Background Unit met the requirements of Section 30.3(a) of the labor agreement -- "that for a period of five consecutive scheduled work days or more" she spent "more than forty percent of the time performing assigned duties and responsibilities that are normally those of a different class than that to which [she] was certified."

The evidence shows that the grievant reported to a Deputy Chief, whereas other supervisors of the Background Unit have always reported to a Lieutenant. Nevertheless, it is within the Job Specification of a Sergeant to be supervised by a Lieutenant or "higher level staff." Harris' explanation for having the

grievant report directly to him rather than to the Lieutenant in charge of the Training Unit is reasonably explained by Harris' intention to monitor closely the Unit's compliance with the Mediation Agreement. As his Job Announcement of July 15, 2004, shows, however, Harris still decided that the work to be done by the new Background Unit Supervisor would be that of a Sergeant and not that of a Lieutenant -- notwithstanding his decision that he should supervise the successful applicant directly.

The evidence shows that the grievant expanded the staffing of the Unit substantially, that she initiated revisions of policies and forms and that she undertook other tasks that the previous supervisor of the Unit had not done. As witnesses for the Employer conceded, some of this work could be described as work that a Lieutenant would ordinarily do, but the evidence shows that much of that work also falls within the Job Specification of a Sergeant. Even assuming that some of the grievant's tasks were exclusively tasks done by a Lieutenant, the evidence fails to show that she performed those tasks more than 40% of the time "for a period of five consecutive scheduled work days or more."

This ruling on the substantive issue is fully dispositive of the grievance. Nevertheless, I make the following comments about the now-moot procedural issue, which the parties may wish to use for future guidance. First, under Section 5.4, Subd. 1, Step One, of the labor agreement, the initiation of a non-disciplinary grievance must be undertaken by "an employee" or by the Union in behalf of the employee. The grievance must be commenced

within twenty calendar days of the "grievable event(s) or from when the event(s) reasonably should have been discovered." Though this language is in the passive voice, I interpret it as stating a time limit that begins to run when the employee with the grievable claim discovers or reasonably should have discovered the "grievable event." If the language were interpreted as the Union proposes in this case -- that the twenty-day time limit does not begin running when the employee discovers the grievable event, but instead, begins only when the Union discovers the grievable event, the provision would have virtually no limiting effect -- an interpretation that appears to be unreasonable.

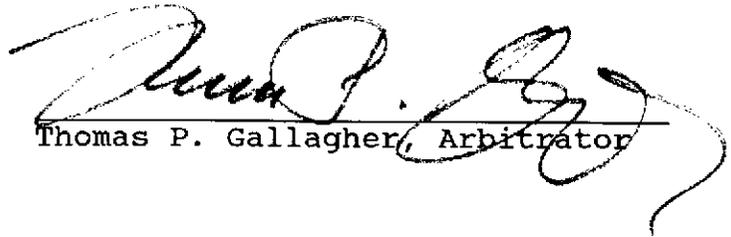
Second, in a grievance such as this one -- where a question arises about when an employee should reasonably have discovered that ongoing occurrences create a grievable event -- it may be reasonable that the employee did not to discover the grievable nature of those occurrences until more than twenty days after the date of the first such occurrence.

For example, in the present case, though the grievant was aware of the tasks she was performing as she performed them, it appears that she was unaware that those tasks might fall within the Job Specifications of a Lieutenant -- at least until December 28, 2006, when Weddel's email alerted her to that possibility. In other words, "discovery" of a grievable event may require not only the employee's knowledge of events, but, in addition, extrinsic knowledge sufficient to inform the employee that those events give rise to a grievance claim.

AWARD

The grievance is denied.

April 4, 2008

  
Thomas P. Gallagher, Arbitrator