

**IN THE MATTER OF ARBITRATION BETWEEN**

<b>HOPKINS POLICE OFFICERS ASSOCIATION</b>	)	<b>ARBITRATION</b>
	)	<b>AWARD</b>
	)	
<b>and</b>	)	
	)	<b>LEDBETTER ASSIGNMENT</b>
	)	<b>GRIEVANCE</b>
	)	
<b>CITY OF HOPKINS</b>	)	
	)	<b>BMS CASE NO. 06-PA-262</b>

Arbitrator: Stephen F. Befort

Hearing Date: February 6, 2006

Date post-hearing briefs received: February 23, 2006

Date of decision: March 24, 2006

**APPEARANCES**

For the Union: Gregg M. Corwin  
Katherine L. Miller

For the Employer: Ann Antonsen

**INTRODUCTION**

Hopkins Police Officers Association (Union) is the exclusive representative of a unit of police officers employed by the City of Hopkins (City). The Union, in this grievance, claims that the City violated the parties' collective bargaining agreement when it failed to assign Officer Mark Ledbetter, the most senior applicant, to an open position in the Police Department's Investigations Unit. The City maintains that its appointment of another officer to that position was in compliance with the parties' agreement because

that officer had qualifications superior to those of Ledbetter. The grievance proceeded to an arbitration hearing at which the parties were afforded the opportunity to present evidence through the testimony of witnesses and the introduction of exhibits.

### **ISSUE**

Did the City violate the parties' collective bargaining agreement by not assigning the grievant to the Investigations Unit?

### **RELEVANT CONTRACT LANGUAGE**

#### **ARTICLE 10. SENIORITY**

10.1 Seniority shall be determined by the employee's length of continuous employment with the Police Department as a full time sworn Police Officer, except that employees re-entering the Police Department after less than one year from the date of severance shall have their original date of hire adjusted forward by the number of days they were separated from the Department. Seniority rosters may be maintained by the Chief on the basis of time in grade and time within specific classifications.

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10.4 Senior employees will be given preference with regard to transfer, job classification assignments and promotions when the job relevant qualifications of employees are equal.

### **FACTUAL BACKGROUND**

The grievant, Mark Ledbetter, has been employed by the City Police Department as a police officer since 1996. He has a Masters Degree in biology and has attended numerous department-sponsored training sessions. Ledbetter worked as a patrol officer during all of his tenure with the City except for a three and one-half month light duty assignment in the Investigations Unit in 1999 following reconstructive shoulder surgery. In that assignment, Ledbetter engaged in most aspects of normal investigation work except that his restriction precluded him from interviewing suspects.

On August 4, 2005, Hopkins Police Chief Craig Reid announced an opening for a two-year assignment in the Investigations Unit. He invited patrol officers with more than two years experience to apply, and five officers, including Ledbetter, submitted letters of interest. Ledbetter had the greatest seniority among those in the applicant group.

During the most recent previous opening in Investigations in 2004, the sergeant assigned to the Investigations Unit interviewed each of the candidates. In this instance, however, Chief Reid took charge of the selection process himself and dispensed with the interview step. Reid testified that the new acting Investigations sergeant already had a full plate and that a short time frame existed for filling the two-year investigator position.

Chief Reid met twice with members of his supervisory team to review the candidates. At the first meeting, conducted shortly before the application deadline, the four attending supervisors supported various candidates, and the group was unable to agree on a consensus selection. The second meeting took place on the application deadline of August 12, 2005. By this time, the applicant pool was expanded by the addition of a letter of interest submitted by patrol officer Gretchen Monahan, a four and one-half year employee of the department. Each of the three supervisors attending this second meeting (Chief Reid, Captain James Liddy, and Sergeant Tony Hanlin) supported Monahan's selection.

At the arbitration hearing, Chief Reid testified as to his rationale for the selection of Monahan. Because the Investigations Unit had experienced considerable turnover and was now headed by an acting sergeant, Chief Reid explained that he was looking for a candidate with investigation experience who could hit the ground running. According to Reid, Monahan met these criteria. Monahan had worked in the Investigations Unit for a

fourteen month period from June 2003 through July 2004. During that time, she performed all of the tasks normally assigned to Investigations officers and, by all accounts, did so satisfactorily. Monahan also was familiar with the investigative protocols used in the Investigative Unit. In this regard, Sergeant Hanlin testified that Monahan was familiar with the forms and databases currently used by the Investigations Unit, while those aspects of the job had changed since Ledbetter had worked in the unit in 1999.

### **POSITIONS OF THE PARTIES**

#### **Union:**

The Union contends that the City violated the parties' collective bargaining agreement by failing to assign the most senior patrol officer to the investigator position. The Union points out that Ledbetter, in addition to his greater seniority, also possessed superior education and training credentials as compared to Monahan. The Union further maintains that the City's asserted explanation for preferring Monahan amounts to a matter of administrative convenience as opposed to legitimate "job relevant qualifications." Since Ledbetters qualifications are at least equal to those of Monahan, the Union concludes that Ledbetter, with his greater seniority, is entitled to the Investigations Unit position by virtue of Article 10.4 of the parties' contract.

#### **City:**

The City counters that it did not violate Article 10.4 because Monahan possessed superior qualifications with respect to the Investigations position than did Ledbetter. The City stresses the fact that Monahan had a longer and more recent assignment to the Investigations Unit that provided her with more relevant experience for the Investigations

position. The City argues that this is not just a matter of administrative convenience, but evidence that Monahan likely would be able to perform the range of investigator duties more quickly and more ably than Ledbetter. The City concludes that, since Monahan possessed superior relevant qualifications, it did not violate the parties' agreement by denying the assignment to the most senior applicant.

### **DISCUSSION AND OPINION**

The language of Article 10.4 governs this dispute. That provision states: "Senior employees will be given preference with regard to transfer, job classification assignments and promotions when the job relevant qualifications of employees are equal."

Contractual seniority clauses come in many varieties. Some clauses preserve competitive positions for the bidding employee with the greatest seniority so long as that individual meets the minimum qualifications for the job in question. Other clauses are less deferential to seniority in that they only compel consideration of seniority along with other factors. The parties' contract in this instance adopts a mid-ground "relative ability" standard. Under this type of clause, "seniority becomes a determining factor only if the qualifications of the bidders [for the position] are equal." ELKOURI & ELKOURI, HOW ARBITRATION WORKS 873-74 (6<sup>th</sup> ed. 2003).

In this case, The Union maintains that Ledbetter has qualifications at least equal to that of Monahan for the following reasons:

- 1) Ledbetter has a greater level of education (Masters degree in biology) and has participated in more department-sponsored training programs that has Monahan;

- 2) Ledbetter has developed considerable experience in handling preliminary investigation duties in conjunction with his work as a patrol officer. Although Monahan has spent more actual time working in the Investigations Unit, Ledbetter's greater experience as a patrol officer combined with his three and one-half months working in Investigations provides him with essentially the same level of experience as possessed by Monahan;
- 3) Sergeant Gordon Klingbeil, Monahan's former supervisor, testified that he had some problems in being able to contact Monahan by radio when she worked as a patrol officer and that Monahan was not as tenacious as he would have liked;
- 4) Sergeant Kristine Smith, Ledbetter's supervisor, testified that Ledbetter performed well as a patrol officer and that, in her estimation, Ledbetter had job relevant qualifications equal to that of Monahan; and
- 5) Chief Reid's preference for Monahan was based upon matters of administrative convenience, such as familiarity with paperwork flow, rather than upon an assessment of substantive capabilities.

The City, in response, primarily relies upon the fact that Monahan spent fourteen months working in the Investigations Unit and that she could, as Chief Reid testified, "hit the ground running" in the new position.

Although it is clear that Ledbetter meets the qualifications to perform the Investigation Unit assignment, I believe that the City has demonstrated that Monahan is the better qualified candidate for the position. Article 10.4 speaks in terms of the "job relevant qualifications" for the position in question. It is difficult to imagine any more

“job relevant qualifications” than demonstrated successful performance of the job in question. Monahan demonstrated just that by performing all of the job duties of the investigator position for a fourteen month period. In contrast, Ledbetter had performed only the light duty functions of the investigator position during his three and one-half month assignment. Captain Liddy and Sergeant Hanlin both testified that, in their estimation, Ledbetter only had experience in approximately 50% of the regular investigative duties.

In addition to being more extensive, Monahan’s experience in the Investigations Unit also was more recent in time. This fact is significant since the Investigations Unit had changed a number of procedures between Ledbetter’s temporary assignment in 1999 and Monahan’s temporary assignment in 2003-04. As a result, Monahan was familiar with unit procedures, including current databases and forms, while Ledbetter was not.

The Union argues that Chief Reid, in preferring someone who “could hit the ground running,” acted in a manner inconsistent with Article 10.4 by basing the assignment decision on considerations of administrative convenience rather than substantive qualifications. The Union’s post-hearing brief makes this point as follows:

Reid improperly focused on the administrative functions associated with the investigative position when making the appointment. Reid testified that he selected Monahan because of her familiarity with the investigative division’s computer system and paperwork flow. This approach ignored the candidates’ investigative experience, training, education and seniority. The City confused administrative convenience with qualifications.

Association’s Post-Hearing Brief at 3-4.

The Union’s argument is not without some merit. An assignment selection decision based solely on matters of administrative convenience that bear no relationship to “job relevant qualifications” would not be sufficient to trump seniority under Article

10.4. That, however, is not the context of this case. Here, the City’s administrative concerns and Monahan’s job relevant qualifications are one and the same. It is precisely Monahan’s demonstrated knowledge as to both the substantive and the procedural components of the investigator duties that made her able to “hit the ground running” in the new position. These are, in short, legitimate, performance-based attributes that made her the better qualified candidate for the Investigations Unit position.

Because Monahan possessed superior job relevant qualifications for the Investigations Unit position, the City did not violate the parties’ collective agreement by not affording the grievant a seniority-based preference for that assignment.

**AWARD**

The grievance is denied.

Dated: March 24, 2006

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Stephen F. Befort  
Arbitrator