

BEFORE THE ARBITRATOR

In the Matter of the Arbitration	:
of a Dispute Between	:
	:
STEVENS POINT POLICE OFFICERS	: Case 80
ASSOCIATION	: No. 45809
	: MA-6764
and	:
	:
CITY OF STEVENS POINT	:
	:

Appearances:

Lawton & Cates, S.C., Attorneys at Law, by Mr. Richard V. Graylow, 214 W. Mifflin Street, Madison, Wisconsin 53703-2594, appearing on behalf of the Association.
Mr. Louis Molepske, City Attorney, 1525 Church Street, Stevens Point, Wisconsin

ARBITRATION AWARD

The above-captioned parties, hereinafter the Association and the City or Employer respectively, were signatories to a collective bargaining agreement providing for final and binding arbitration of grievances. Pursuant to the parties' request, the Wisconsin Employment Relations Commission appointed the undersigned to hear the instant grievance. No arbitration hearing was held in the matter and no briefs were filed. Instead, the parties agreed that the undersigned was to issue an arbitration award based on the record developed at a related prohibited practice complaint hearing conducted January 7 and 8, 1991. Briefs in that matter were filed by October 16, 1991. On January 23, 1992, the undersigned requested certain information from the parties which was provided February 6, 1992. Based on the above-noted record, the undersigned issues the following Award.

ISSUE

The parties stipulated to the following issue:

Whether or not the 1988 corporal promotional testing in the Police Department was "fair" within the meaning of the collective bargaining agreement when read with Directive 80-3 and all of its components.

PERTINENT CONTRACT PROVISIONS

The parties' 1989 collective bargaining agreement contained the following pertinent provisions:

ARTICLE 30 - TESTING

Notice and testing of any vacancy or promotion for the positions within the bargaining unit will be posted for interested applicants no less than fifteen (15) days prior to the filling of the vacancy or the making of the promotion. All officers shall compete on a fair and equal basis for any vacancy or promotion.

The Chief of Police shall provide to an employee, upon request(s), that employee's scores, testing placement, cumulative tests and evaluation results.

Testing will be done without an officer taking compensatory time off if on duty at the time the test(s) are administered. All officers will be tested simultaneously and make-up exams will be offered only at the convenience of the City, and at the expense of the officer involved.

PERTINENT DEPARTMENTAL WORK RULE

Department Directive No. 80-3

The following are procedures for promotion to the ranks which are within the Police Officers' Bargaining Unit, (Sergeant, Corporal, and Detective).

1. CORPORAL and DETECTIVE
 - a. Any opening or vacancy shall be posted according to the then current Labor Agreement between the City of Stevens Point and Stevens Point Police Officers (Labor Contract).
 - b. No person may be considered for promotion to the rank of Corporal or Detective unless he/she shall have a minimum of three (3) years continuous service as a Police Officer with this Department.
 - c. A written examination will be scheduled and held. The written examination will be conducted by the City & County Testing Service of the Wisconsin Department of Employment Relations. The results of the written examination shall count as a value of twenty (20%) percent toward the final promotional score.
 - d. An oral interview will be scheduled and conducted by an Oral Interview

Board appointed by the Chief of Police. The Board shall consist of three (3) persons. One member shall be a Captain or Lieutenant from this Police Department. One member shall be a management-level sworn Police Officer from another law enforcement agency. And one shall be an at-large member, a person who need not be a sworn Police Officer. The Board shall interview each candidate individually. The results of the oral interview shall count as a value of twenty (20%) percent toward the final promotional score.

- e. No person may be considered for promotion to the rank of Corporal or Detective unless he/she has taken the written examination and has taken the oral interview. Provisions contained in the then current Labor Contract regarding scheduling, payment of overtime, and make-ups for promotional testing shall be followed. Absent any express provision in such Labor Contract, make-up tests are not allowed.
- f. Performance, personal record and suitability evaluations will be conducted on each prospective Officer for promotion by each Officer's past, present, and future (if promoted) Management-level superiors. Each of the three evaluations are separate. All three evaluations shall count as a value of sixty (60%) percent toward the final promotional score, with each component counting as twenty (20%) percent.

Performance: Appraisal of the Officer's past and present performance on the job within the Department. This evaluation is intended to show how the Officer does his/her job. This involves "proficiency", including car and foot patrol, criminal and traffic investigations, handling emergencies, oral and written communication, weapons, court, public relations, knowledge of laws, ordinances, and procedures, etc.

Personal-Record: Appraisal of the Officer's personal record.

This evaluation is intended to show peripheral items, such as, the Officer's Personnel Record (awards, letters of commendation, training scores, disciplinary actions, etc.), attitude, uniform and general appearance, respect toward superiors and cooperation with co-workers, care for equipment, attendance, willingness to learn, etc.

Suitability: Appraisal of the Officer's suitability for filling the promotional opening or vacancy. This is intended to show how the Officer is suited for the higher rank. How will he/she perform his/her new duties if promoted? Does he/she have the necessary attributes to be a Corporal or Detective, such as, leadership abilities, ability to supervise, plan, and organize, etc.? Job experience is a consideration.

- g. The results of each of the five components (each at 20%) shall be tallied. If there is one opening/vacancy for Corporal/Detective, the Captain shall submit the names of the four (4) Officers who had the four (4) highest accumulative promotional scores. If there is more than one current opening/vacancy, the next two (2) highest shall be added to the list, for each additional opening. (For example, 2 openings, 6 highest; 3 openings, 8 highest; etc.) In the case of tie in the lowest score on the list, the size of the list may be increased to include all Officers who scored the tie. The list shall be submitted by the Captain to the Chief of Police. The list shall not be in order by score, but rather in alphabetical order. The scores shall not be divulged to the Chief until after the Chief has made his/her promotional selection(s). The Chief will make the final promotional selection(s) from the names on the

list.

- h. The promotional eligibility list shall remain active for a period of twenty-four (24) months from the date of the first posting of a Corporal/Detective opening/vacancy which was posted during the term. During this period of time, should there be one or more new openings/vacancies, the eligibility list will be used again. However, Officers who were previously below the three-year service requirement and thereby were not tested, and who now meet the three-year service requirement, shall be afforded the opportunity to participate in the outlined promotional procedure. Such scores will be integrated with the earlier scores, and the promotional list which is submitted to the Chief shall be amended accordingly. At the end of the twenty-four month term, the eligibility list shall lapse. A new term begins with the next opening/vacancy posting.

2. SERGEANT

. . .

WAIVER. Under certain conditions and situations, the Chief of Police retains the prerogative to waive any and all of the above listed requirements, screening and selection processes, when deemed appropriate and necessary to fill a rank position, in the best interests of the Police Department. Any waiver requires the approval of the Police and Fire Commission.

BACKGROUND

The Police Department's promotion procedure for the rank of corporal is known as Department Directive 80-3. It provides that whenever a corporal vacancy occurs in the Department, the vacancy is posted and any person considered who has at least three years service as a police officer. The applicants then take a written examination, receive an oral interview, and are evaluated on their performance, personal record and suitability. A value of 20% is assigned to each of these five factors/components in determining a final score. The written examination (i.e. the first factor) is a test conducted by the City and County Testing Service of the Wisconsin Department of Employment Relations. The oral interview (i.e. the second factor) is conducted by an Oral Interview Board appointed by the Chief of Police. This Board consists of three persons: one member is a captain or lieutenant from the Stevens Point Police Department, one member is a management-level police officer from another law enforcement agency and the remaining member is an at-large member who need not be a police officer. The remaining three factors (i.e. performance, personal record and suitability) are evaluations determined by the officer's past, present and future management-level superiors. Each of these three factors/components are considered separately. Each is then assigned a value of 20% so that together these three factors comprise 60% of the final promotion score. The performance factor (i.e. the third factor) involves an appraisal of the officer's past and present performance on the job with the Department. This evaluation is intended to show how the officer does his/her job. This involves "proficiency", including car and foot patrol, criminal and traffic investigations, handling emergencies, oral and written communications, weapons, court, public relations, knowledge of laws, ordinances, and procedures. The personal record factor (i.e. the fourth factor) involves an appraisal of the officer's personal record. This evaluation is intended to show peripheral items such as the officer's personnel record (awards, letters of commendation, training scores, disciplinary actions, etc.), attitude, uniform and general appearance, respect toward superiors and cooperation with co-workers, care for equipment, attendance and willingness to learn. The suitability factor (i.e. the fifth factor) involves an appraisal of the officer's suitability for filling the promotional opening or vacancy. This evaluation is intended to show how the officer is suited for the higher rank and how he/she will perform his/her new duties if promoted. Additionally, the officer's leadership abilities, ability to supervise, plan, and organize are considered. Finally, consideration is given to job experience. After these three evaluations are completed by the supervisors, the results of all five components are tallied to reach a final score. When there is one corporal opening/vacancy, the captain in charge of the testing process submits the names of the four officers having the four highest accumulative scores. When there is more than one current opening/vacancy, the next two highest officers are added to the list. For example, if there are two openings, six names are placed on the promotion list, three openings, eight names are placed on the list, etc. In case of tie in

scoring, the size of the list is increased to include all officers whose score was tied. The names on this eligibility list are arranged alphabetically, without any data or scores, and submitted to the Chief. The reason the names are listed alphabetically is that the Chief of Police does not have to select the highest scoring officer. Instead the Chief can select whomever he wants off the eligibility list for promotion. All candidates on this list are considered equally eligible candidates for promotion.

FACTS

In 1988, thirteen patrol officers from the Department sought promotion to the rank of corporal. All thirteen officers took a written examination conducted by the City and County Testing Service of the Wisconsin Department of Employment Relations. The scores of eleven of the thirteen candidates on the written exam are in the record. They are as follows:

<u>Rank</u>	<u>Name</u>	<u>Score</u>
1	J. Dowling	93.50
2	R. Voelker	89.50
-	-	-
4 (tie)	D. Kratzke	85.00
(tie)	P. Kaczmarek	85.00
6	E. Eggleston	84.00
7	R. Carlson	82.50
8	R. Loomis	80.50
9	J. Buermesch	78.00
10 (tie)	R. Zdroik	77.00
(tie)	D. Mommaerts	77.00
-	-	-
13	M. Meronek	72.50

Next, all the candidates for promotion to corporal were given oral interviews by an Oral Interview Board. The scores of eleven of the thirteen candidates on the oral examination are in the record. They are as follows:

<u>Rank</u>	<u>Name</u>	<u>Score</u>
1	J. Dowling	89.50
2	R. Carlson	88.50
-	-	-
4 (tie)	D. Kratzke	86.00
(tie)	P. Kaczmarek	86.00
6	E. Eggleston	84.50
7 (tie)	J. Buermesch	83.50
-	-	-
9	M. Meronek	81.00
10 (tie)	R. Zdroik	77.00
(tie)	D. Mommaerts	77.00
12	R. Voelker	72.00
13	R. Loomis	70.00

The performance, personal record and suitability evaluations were made by a management team in an all-day evaluation session which occurred in October, 1988. No minutes or tape recordings were kept of this meeting. The moderator and non-voting member of this management team was Captain J. Schmidt, who is not a supervisor of any of the candidates. The four voting members of this management team were Lt. D. Johnson, Lt. F. LaRosa and Lt. A. Bemke. Additionally, Captain L. Perlak served as a voting proxy member substituting for Lt. D. Sankey, who was about to retire. Before the evaluations started,

Schmidt held a half-hour briefing session for the management team members wherein he explained the evaluation process, described the bell curve used for ratings and identified what criteria they were to use in making their performance, personal record and suitability evaluations for each of the thirteen candidates. The exact scores/ratings which each of the four supervisors gave to each of the thirteen candidates for each category is not contained in the record. After the evaluations were completed, Schmidt tallied the evaluators' collective scores for the thirteen candidates. The combined scores of eleven of the thirteen candidates on the performance evaluation are in the record. They are as follows:

<u>Rank</u>	<u>Name</u>	<u>Score</u>
1 (tie)	R. Voelker	88.50
-	-	-
3	R. Carlson	88.00
4	J. Buermesch	87.50
5	R. Zdroik	86.50
6 (tie)	E. Eggleston	84.50
(tie)	M. Meronek	84.50
-	-	-
9	J. Dowling	83.00
10	P. Kaczmarek	80.50
11	D. Kratzke	79.50
12	D. Mommaerts	78.00
13	R. Loomis	77.00

The combined scores of eleven of the thirteen candidates on the personal record evaluation are in the record. They are as follows:

<u>Rank</u>	<u>Name</u>	<u>Score</u>
1	R. Carlson	88.50
2	J. Buermesch	87.50
3	R. Voelker	85.00
-	-	-
5 (tie)	R. Zdroik	84.00
-	-	-
7 (tie)	E. Eggleston	82.50
(tie)	M. Meronek	82.50
9	P. Kaczmarek	82.00
10	D. Kratzke	80.50
11	D. Mommaerts	79.50
12	R. Loomis	78.00
13	J. Dowling	77.50

The combined scores of eleven of the thirteen candidates on the suitability evaluation are in the record. They are as follows:

<u>Rank</u>	<u>Name</u>	<u>Score</u>
1	R. Carlson	85.50
2	R. Voelker	85.00
-	-	-
-	-	-
5 (tie)	J. Buermesch	81.50
(tie)	R. Zdroik	81.50
7	J. Dowling	81.00
8 (tie)	E. Eggleston	79.50
(tie)	M. Meronek	79.50

10	R. Loomis	77.50
11	D. Kratzke	76.00
12	D. Mommaerts	75.00
13	P. Kaczmarek	74.50

The combined scores from the performance, personal record and suitability evaluations were then tallied with the scores from the written examination and the oral interviews for a final ranking. The overall scores of eleven of the thirteen candidates are in the record. They are as follows:

<u>Rank</u> <u>Score</u>	<u>Name</u>	<u>Overall</u>
1	R. Carlson	86.50
-	-	-
3	J. Dowling	85.00
4	R. Voelker	84.00
5	J. Buermesch	83.50
6	E. Eggleston	83.00
-	-	-
8 (tie)	P. Kaczmarek	81.50
(tie)	D. Kratzke	81.50
(tie)	R. Zdroik	81.50
11	M. Meronek	80.00
12	D. Mommaerts	77.50
13	R. Loomis	76.50

Although their scores on the five above-noted components are not contained in the record, R. Barge was ranked second overall and J. Benz was ranked seventh overall.

DISCUSSION

At issue here is whether the 1988 corporal promotional testing, wherein thirteen patrol officers competed for the right to be placed on upcoming corporal eligibility lists, was "fair" within the meaning of the contract. The Association contends it was not while the City disputes this assertion.

The contractual testing language is found in Article 30 and consists of three short paragraphs. Paragraph one provides that notice of the testing will be given to bargaining unit members and that all employees shall compete on a fair and equal basis for the promotion, paragraph two provides that test scores/results can be provided to employees and paragraph three addresses when testing is done and how make-up exams are handled. It is the last sentence of the first paragraph that is involved here, namely the one providing: "All officers shall compete on a fair and equal basis for any vacancy or promotion." The remainder of the provision is simply inapplicable here.

In deciding whether the officers competed for the 1988 corporal vacancies "on a fair and equal basis", the undersigned will begin by reviewing what actually happened. The record indicates that the thirteen candidates for promotion completed all five parts/components of the process contained in Department Directive 80-3. Specifically, they took a written exam, received oral interviews and were evaluated by Department supervisors on their performance, personal record and suitability. A value of 20% was assigned to each of these five factors. The candidates' scores for their performance, personal record and suitability evaluations were then tallied with their scores from the written exam and the oral interview for a final score and ranking. The top-ranked candidates available were then placed on the eligibility list submitted to the Police Chief, who made his selection (of who to promote) from among the names on the eligibility list.

So far as the record shows, every step of the process contained in Department Directive 80-3 was followed to the letter in testing the 1988 corporal promotional candidates and there are no allegations to the contrary. As a result, it is held that the City complied with their own procedure for handling corporal promotions.

Having so found, attention is turned to a review of the process itself. As previously noted, the five parts/components in the process were a written exam, an oral interview and evaluations by Department supervisors of their performance, personal record and suitability.

Parts one and two (i.e. the written exam and the oral interview, respectively) are easily disposed of because the Association acknowledged in their brief that each was "valid". 1/ In the context of this case, the undersigned reads the word "valid" as synonymous with "fair".

The focus now turns to parts three, four and five of the promotion process where four Department supervisors evaluated the candidates on the grounds of their performance, personal record and suitability. It is noted at the outset that these evaluations involved elements of judgment and discretion by the supervisors. As a result, these evaluations were partially subjective.

This fact though does not make them, or the entire testing process, automatically unfair since any evaluation involves some subjectivity. Certainly the supervisors making the evaluations could manipulate the criteria being used and the weighting system in order to rate certain candidates high or low. Had that happened, this obviously would have had the effect of raising or lowering the candidate's overall score and raising or lowering the candidate's chances of making it to the eligibility list. Here, though, there is no showing that such was the case. Additionally, the undersigned is unwilling to simply infer or surmise that just because the supervisors were empowered to exercise subjective and discretionary responsibilities, they did so here in a manner which was inherently unfair or discriminatory to any of the candidates for promotion.

At most, the evidence indicates that some candidates for promotion disagreed with the ratings given them by the four Department supervisors in these evaluations. Such is to be expected when subjective decisions/evaluations are involved. However, just because some employees disagreed with the (subjective) judgment calls made by Department supervisors does not make the evaluations or their scoring unfair within the meaning of the contractual testing provision. Instead, actual proof of unfairness is required. The undersigned finds that such proof is lacking here. Since the Association has the burden of showing that the testing process utilized here was unfair, and has failed to do so, it is held that no contractual violation has been shown.

It is therefore held that insofar as the contract is concerned, the thirteen candidates who competed for promotion to corporal in 1988 did so on a fair and equal basis.

Based on the foregoing and the record as a whole, the undersigned enters the following

AWARD

1/ See "Reply Brief of Complainants" dated October 7, 1991, p. 28.

That the 1988 corporal promotional testing in the Police Department was "fair" within the meaning of the collective bargaining agreement when read with Directive 80-3 and all of its components. Therefore, the grievance is denied.

Dated at Madison, Wisconsin this 20th day of February, 1992.

By Raleigh Jones /s/
Raleigh Jones, Arbitrator