

**IN THE MATTER OF ARBITRATION BETWEEN**

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**MINNESOTA TEAMSTERS PUBLIC AND LAW  
ENFORCEMENT UNION LOCAL NO. 320**

**(Union)**

**and**

**COUNTY OF RAMSEY**

**(Employer)**

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**DECISION AND AWARD**

**BMS CASE NO: 16-PA-0037**

**ARBITRATOR:**

**JAMES N. ABELSEN**

**HEARING:**

**November 24, 2015**

**POST HEARING BRIEFS RECEIVED:**

**January 22, 2016**

**APPEARANCES:**

**FOR THE EMPLOYER:**

**Ms. Jean Gramling  
Human Resources Manager  
Ramsey County Human Resources  
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**FOR THE UNION:**

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## **INTRODUCTION**

This matter came on for hearing on November 23, 2015 at the office of the Bureau of Mediation Services in St. Paul, MN. By agreement of the parties, post hearing briefs were submitted on January 22, 2016, at which time the record was closed.

## **ISSUES PRESENTED BY THE PARTIES**

Was the grievance timely filed and properly before the Arbitrator?

Was the Collective Bargaining Agreement violated, or were the Ramsey County Personnel Rules violated, when the Grievants moved from their positions of Correctional Officer 2 to Probation Officer 1 and their salaries reduced?

## **RELEVANT FACTS AND BACKGROUND**

The Union and Employer are parties to a Collective Bargaining Agreement (CBA or Agreement) covering the period of time January 1, 2012 through December 31, 2014. This Agreement covers the Ramsey County Probation Officers (PO's), and has been in effect during all times relevant to this matter. A similar but separate Collective Bargaining Agreement covers the counties Correctional Officers (CO's). And while the Correctional Officers unit is not a party to this case, the dispute involves the movement of Corrections Department employees from the CO unit to the PO unit.

The Parties are also subject to the Ramsey County Personnel Rules which cover all personnel issues not otherwise covered by the parties Collective Bargaining Agreement. When in conflict, the CBA will control. (Ramsey County Personnel Rules, Sec. 1.3)

The issues presented in this case arise from the voluntary movement of five (5) employees with the job title of Correctional Officer 2, to the position of Probation Officer 1. This move from a CO2 to a PO1 position is generally viewed as a promotion or career advancement since the PO position requires more education, has a wider range of responsibilities, and has higher salary ranges. Nevertheless, the personnel moves in this case were characterized and treated by the Employer as “voluntary reductions” or “voluntary

demotions” because the starting salary set out in the Collective Bargaining Agreement and the Personnel Rules for the PO1 position is less than what the Grievant(s) were being paid as CO2’s.

When the Grievants started in their new PO1 roles, they all signed letters agreeing to a reduced salary. (JT Exhibit 7) It does not appear that there was any discussion between the employees and the Employer about salary prior to the signing of the Agreement. And while salary schedules are available, and are public information, all indications are that the grievants were either unaware of or unconcerned about a lower salary. The Union was also unaware of these transfers or the pay reductions, and learned only after the fact that these moves were being characterized by the Employer as a “voluntary demotion”.

The Employer believed that notice to the Union was not required. This particular job change is not covered by the Probation Officer’s Collective Bargaining Agreement, and they believe the process they followed was consistent with the requirements of the County Personnel Rules.

When details of these personnel changes came to the attention of the Union leadership, this “class action” grievance resulted. No individuals were identified in the filing, but in reviewing what personnel actions corresponded with the facts set out in the grievance, the Employer was able to initially identify one person and responded to the grievance referencing that individual. Subsequently, the Employer identified four (4) others who had made similar career moves in prior years, and concluded that they were the remaining members of the class.

The Employer denied the grievance at all steps in the process, and at the hearing, they also took the position that the grievance had not been timely filed. In response, the Union argues that these were continuing violations and thus the grievance is timely.

### **EMPLOYER’S POSITION**

First, as to the issue of timeliness, the Employer argues that the grievance was not filed within the time requirements set out in the CBA. The individual first identified in the “class action” grievance was appointed to a PO2 position from a CO2 position on April 14, 2014. The four additional grievants were appointed to PO1 positions from CO2 positions in 2012 and 2013. The grievance was filed May 23, 2014, well beyond the required filing time set out in the Collective Bargaining Agreement, which requires filing within “twenty-one (21) calendar days after such violation has occurred”. Additionally, the Employer notes that the original grievant

did not suffer a salary reduction, but was in fact “promoted” from a CO2 position to a PO2 position and received an increase in pay as required by the CBA.

The Employer next argues that the grievance should be denied because the Collective Bargaining Agreement was not violated. In particular, they note that the Probation Officer Agreement describes three (3) separate and distinct Probation Officer classifications, PO1, PO2, and PO3. And a separate Correctional Officer Agreement covers two (2) separate and distinct Correctional Officer classifications, CO1 and CO2.

Other than the first identified grievant, (who, as noted, was promoted to a PO2 position), the others who moved from their CO2 positions, voluntarily applied for and moved into a PO1 position, which is a classification with a pay rate lower than what they were receiving as a CO2. Therefore, argues the Employer, the moves were not the kind of promotions which carry a pay increase, but were career enhancing moves that initially, under the Personnel Rules, result in a pay reduction.

The Employer notes next that the PO Collective Bargaining Agreement does not address the situation which is the subject of this grievance. Nothing in that Agreement addresses the setting of salary when an employee voluntarily moves into a lower paying position in the PO unit from a CO 2 position which is in a different bargaining unit. Therefore, there is no provision in the Agreement that can be violated and therefore nothing to grieve. And since the Agreement is silent on this issue, the procedure and rules for setting the salary for employees making this kind of career enhancing transfer are established by the Ramsey County Personnel Rules (Rule 1.4). And those Rules were followed, they do not conflict with the CBA, and the Rules are not subject to grievance.

In response to the Union’s suggestion that the Employer improperly dealt directly with employees, the Employer argues that they did not enter into any agreement with any employee that “conflicts with the terms and conditions of (the) Agreement”, which would be prohibited by Article 2.2 of the CBA. The employees involved with this grievance sought out the opportunity to move from an institutional job supervising inmates in custody, to a Probation Officer position with different opportunities and eventually, higher pay. And again, those career moves are not covered by the CBA.

## UNION'S POSITION

First, on the issue of timeliness, the Union believes the grievance was timely filed since every hour worked at an improper wage is a new occurrence, and therefore there is a continuing violation of the Agreement every time an employee is under paid. That being the case, a grievance can be filed at any time, and the appropriate remedy is not to bar the grievance, but to limit the amount of any financial remedy that may arise. They also note that had they been informed of the voluntary demotion letters signed by the employees, the matter would have been dealt with immediately. But since no notice was given, the Union filed the grievance as soon as they were made aware of all the facts. And finally, they note that the Employer failed to raise the timeliness issue during the grievance process, and therefore the Employer has waived any right to object at the hearing.

As to the Union's substantive issue, they contend that moving from a CO position to a PO position is not a reduction but a promotion, citing the Collective Bargaining Agreement (Sec. 17.3), the Employer's Personnel Rules (Jt. Ex. 6), and the relevant job descriptions (Jt. Ex. 7).

For a number of years Correctional Officers were not able to move into Probation Officer positions because that was always considered a "promotion" by the Employer. More recently a process was put in place which allowed for such movement if minimum requirements are met, but because the educational requirements are higher the move is still treated throughout the system as a promotion. And yet the Employer had the grievants sign a letter agreeing to a voluntary "demotion" and a reduction in pay.

The crux of the Union's argument is not simply that this is a promotion which deserves more money. Their critical point is that there are two (2) *classifications* in play – Corrections Officer being one, and Probation Officer the other. And within those two classifications there are different *positions*, i.e. CO 1 and 2, and PO 1, 2, and 3. That being the case, argues the Union, when an employee moves from what they describe as the "CO classification" to the "PO classification", the salary ranges of the two classifications are such that under County Personnel Rule 3.18, which defines "promotion", and under Rule 16.4, which addresses "Promotional Increases", these are in fact, Promotions, and a salary increase is called for.

Not only is that conclusion required by the Rules, argues the Union, but it is also consistent with the language in the CBA calling for pay increases following promotion. And, as

noted, the Employer has historically and consistently referred to a move from CO to PO as a promotion. So under both the County Rules and the CBA, if the grievants have been promoted from the *classification* of Correctional Officer to the *classification* of Probation Officer they are entitled to a pay increase, not a decrease.

## **DISCUSSION OF THE ISSUES**

### **Timeliness of the Grievance**

Article 20 of the Collective Bargaining Agreement provides in relevant part as follows:

20.4. Step 1. An employee claiming a violation concerning the interpretation or application of this Agreement shall, within twenty-one (21) calendar days after such violation has occurred, present such grievance to the (Employer)....

The violations complained of occurred in 2012 and 2013 for four (4) of the identified grievants and on April 18, 2014 for the fifth. The grievance was presented by the Union as a “class action” grievance claiming that “the County failed to set wages properly when employees were promoted from Correctional Officer to Probation Officer”. Individuals were not identified, however the Employer was able to determine who the individuals were based on the information provided in the Union’s grievance documents.

The grievance was filed on May 23, 2014, well beyond the twenty-one (21) day time requirement set out in the CBA. None of the individuals who made up the “class” of grievants informed the Union of their new positions or the change in their compensation, nor did the Employer. Upon receiving the grievance, the Employer issued a denial and continued to deny the grievance at all steps in the process, never objecting to the grievance on the basis of timeliness.

So the timeliness issue has two parts to it. First, the Union’s failure to file their grievance within twenty-one (21) days of the violations, and secondly, the Employer’s failure to object at any time prior to arbitration, to the Union’s failure to file within the required time lines.

#### **(a) Twenty-One (21) Day Filing Time Lines**

It is not unheard of for grievances involving wages to avoid untimely filing claims on the theory that each time a grievant receives an improper amount in their paycheck, a new violation occurs. (*See Fed’l Bureau of Prisons, 127 LA 415, 2010; Safeway, 126 LA 1686, 2009*). In all but one of the situations here, the individuals were placed in a lower wage rate because they

moved from a CO2 position into a PO1 position, which carries a lower starting wage rate.<sup>1</sup> So following the Union's "continuing violation" line of reasoning, a valid argument can be made that the filing was within the time lines set out in the Agreement.

The Union also argues that even if this is not a continuing violation, the time lines should be extended or waived because the Employer failed to notify the Union of their actions and dealt directly with the employees who were unaware that the pay reduction was a violation of the CBA.

As to the direct dealing issue, the Employer believes that dealing directly with employees on this matter is not covered by the Collective Bargaining Agreement and therefore this was well within their authority and not something that required Union involvement. They also argue that wages are posted and available for all employees and the Union to see, and the employees had full opportunity to find out the wages of the position they were applying for. Therefore, lack of formal notice to the Union and failure of the employees to inquire about wages, is no basis for extending the filing time lines.

While contractual time lines, notice requirements, and other procedural requirements are generally enforced, it is often the case that neither an employee nor the Union are aware of a contract violation until after filing time lines have passed. And in those situations it is not uncommon for grievances to be heard and considered. (*See Chevron USA, 95 LA 393, 395, 1990; Amana Refrigeration, 93 LA 249, 256, 1989*).

But it has also been held that where an employee had knowledge that some adverse action, such as a pay reduction was occurring, the fact that the Union did not know or was not told about it is not a reason for extending or waiving time lines. (*See Elkouri Ch.5.7.A.v.*) So depending on the facts and circumstances, authority can be found to support either waiving or strictly enforcing grievance filing time lines.

(b) Employers Failure to Object to the Late Filing

The record indicates that while the Union filed the grievance well past the twenty-one (21) day time limit required by the contract, the Employer did not object to the late filing or raise this as an issue until the arbitration hearing.

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<sup>1</sup> After working as a PO 1 for the requisite period of time, all were promoted to PO2's and their wages soon exceeded their pay as CO2's.

Again, it has often been held that if time lines for filing a grievance are not met, and the Employer acknowledges and processes the grievance, and fails to raise an objection to the untimeliness, the Employer may be deemed to have waived its right to object. (*See cases cited in Elkouri Ch. 5.7.A.iv*) So while the Union may not have filed in a timely manner, the Employer may not have objected in a timely manner either.

As a practical matter, and as an aside, had the Employer refused to proceed with the grievance on the basis of timeliness, a separate, costly and time consuming process could have ensued dealing only with this procedural or jurisdictional issue, and the more important substantive issue would have been unnecessarily delayed. It is not unusual, and in fact it may well be sound public policy and good employee relations, for an Employer to process a grievance filed well past the filing time lines, so as to avoid additional cost and unnecessary discord. Many substantive issues, like those raised in this case, are of great importance to the Employer and their employees. And all parties, as well as the public, are perhaps best served when procedural issues can appropriately be avoided, and the substantive issues addressed and resolved as quickly as possible.

### **Classifications and the Appropriate Salary**

Five people were identified as the individuals covered by this “class action” grievance. For reasons described in an earlier related arbitration decision, one of the individuals was placed in a work-out-of-class assignment as a PO1, which by the time she was given a permanent assignment, gave her enough time as a Probation Officer to qualify as a PO2. As a result, that individual did not incur a pay reduction.

The Union claims that the pay reductions the others received were a violation of both the Collective Bargaining Agreement and the Ramsey County Personnel Rules. In support of that argument the Union first cites Article 17 Sec. (a) of the PO’s Collective Bargaining Agreement which provides as follows:

“On promotion, an employee’s new salary will be set at that rate in their new salary range next above that rate equal to or closest to being equal to their current rate.”

So while the Agreement does not specifically address movement from outside the bargaining unit, which is the situation here, and while the cited Section 17.3 (a) specifically deals with promotions from the PO1 level to the PO 2 level and the PO2 level to the PO 3 level, the Union

nevertheless believes the Agreement clearly indicates that when there is a promotion there is a pay increase, not a decrease.

They also argue that the Employer has always considered a move from the CO unit to the PO unit as a promotion. They cite a number of instances where the Employer has explicitly called these moves promotions, and where a number of personnel actions were taken based on the Employers clear acknowledgment that these are moves into a more professional position, requiring more education, and are sought after by employees as career enhancement moves. To now call these moves voluntary “demotions” or “reductions” is not only illogical, but inconsistent with the clear practices of the Department.

The Employer on the other hand argues that even though moving from a Correctional Officer position to a Probation Officer position is generally considered a career enhancing move, and would be considered by most anyone to be a promotion, the important point is that there is nothing in the PO Collective Bargaining Agreement that deals with the setting of salary when someone is “promoted” from a CO 2, which is in one bargaining unit, to a PO 1, which is in a different bargaining unit.

As noted earlier, the Union’s reference to Article 17 of the Agreement and the treatment of promotions, is applicable only to promotions within that bargaining unit, not a movement from one bargaining unit to another. And since the Agreement is silent on this particular type of employee move, the Employer must then rely on the Ramsey County Personnel Rules. And in this particular case, under the Personnel Rules, the salary range for a PO1 is simply lower than the salary range for a CO2, and therefore, by definition, this move is not a “promotion” that carries a pay increase, but rather, it is a “reduction”.<sup>2</sup>

The Union has next argued, and this is the most critical issue, that the Employer is incorrect by characterizing these moves from CO2 to PO1 to be a move from one classification to another. The Union believes that these are instead, moves from the broader *classification* of Correctional Officer to the other broader *classification* of Probation Officer.

They argue that there are only two (2) classifications, Correctional Officer and Probation Officer, and that within those two classifications there are the “positions” of CO1 and CO2, and PO1, PO2 and PO3. And that the appropriate way to determine salary for these promotional

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<sup>2</sup> A *promotion* is defined in the Rules as a movement into a classification with a salary grade *greater* than 4% at both the minimum and maximum of the range while a *reduction* is a move into a salary range which is more than 4% *lower* at both the minimum and maximum of the range.

moves is to compare the salary ranges in what they contend is the “classification” (i.e. CO to PO), not in the “positions” (i.e CO2 to PO1). And when the employee move is from the CO classification to the PO classification, that move fits within the definition of a “promotion” (see footnote 2) and requires a salary increase.

The Employer argues that the Unions analysis is simply incorrect. There are not two (2) classifications, there are five (5). And they cite a number of factors as support for that position. Specifically, the Collective Bargaining Agreement ( Art 2.1, 17.3), the job descriptions (Jt. Ex. 9), job classes and individual job codes in the Ramsey County Pay Equity Compliance Report (Jt. Ex. 11), and the separate salary grades in the County Compensation Plan (Jt. Ex. 12). All of which clearly point out that in the Probation Officer Agreement there are three (3) classifications, PO1, PO2 and PO3, and in the Correctional Officer Agreement there are two (2) classifications, CO1 and CO2.

Since there is nothing in the CBA which supports an argument that there are only two (2) classifications, and since the County Personnel Rules clearly indicate that there are five (5) classifications, the Employer contends that their actions are correct, that the salaries paid to the grievants are correct, and that the entire process was consistent with both the Collective Bargaining Agreement and the County Personnel Rules.

## **ANALYSIS AND CONCLUSIONS**

The dispute here has been clearly articulated and very well argued by the parties. And if the Union is correct, that these moves were in fact promotions because the grievants moved from a *classification* called Correction Officer to another *classification* called Probation Officer, then their argument that this is a promotion under the Personnel Rules, which requires a pay increase, has some merit.

On the other hand, if the Employer is correct that there are five (5) classifications in the Community Corrections Department, it then becomes difficult to make a compelling case that they acted improperly in setting the wages for these grievants.

While not a critical point, and again, as an aside, the Employer may have caused some concern when the grievants were asked to sign a letter accepting a “voluntary demotion”. The word “demotion” is defined in the Rules as a “reduction in position or pay as a result of a

disciplinary action”. Since this action was not disciplinary, the word demotion was probably inappropriate. The more appropriate term would be that these employees were accepting a “reduction”, which by definition is what a move from a CO2 to a PO1 really is.

But the terminology is not determinative. What matters is how the Agreement and the Personnel Rules use the terms “class” and “classification”, and whether there are two (2) or five (5) classifications.

MN. Stat. Sec. 383A.281, which is the statutory authority for the creation of the Ramsey County Personnel Rules, defines these terms as follows:

Subd. 7. Class. “Class” means one or more positions sufficiently similar with respect to duties and responsibilities that the same descriptive title may be used with clarity to designate each position allocated to the class, that the same general qualifications are needed for performance of the duties of the class, that the same tests of fitness may be used to recruit employees, and that the same schedule of pay can be applied with equity to all positions in the class under the same or substantially the same employment conditions.

Subd. 8. Classification. “Classification” means the process of grouping positions into classes with respect to similar duties and responsibilities of the positions.

Subd. 22. Position. “Position” means a group of duties and responsibilities assigned or delegated by the appointing authority, requiring the full-time or less than full-time employment of one person.

These terms “class” “classification” and “position” are often used interchangeably and may mean different things at different times to different people. And it is not unreasonable to suggest that in this particular case the drafters of this legislation, and the drafters of the Ramsey County Personnel Rules which came out of that legislation, may or may not have had the same end results in mind when they used those terms. And the Director who then had to establish the classification system may have applied or used those terms in yet a different way when the rules were promulgated.

But whether or not they all had the same result in mind, the fact is that the Director, pursuant to Personnel Rule 4.1, was charged with the responsibility of creating a classification system. And the system the Director developed said in essence that in the Ramsey County Community Corrections Department there are two types of jobs – One is the job of Probation Officer and the other is the job of Correctional Officer. And within each of these jobs of Correctional Officer and Probation Officer there are a number of “positions” held by individuals. And to those positions which the Director determined were “...sufficiently similar with respect

to duties and responsibilities” he attached the same title, e.g. PO1, CO1, etc. And those “sufficiently similar” positions were then grouped into the five (5) “classifications” of Probation Officer 1, Probation Officer 2, Probation Officer 3, Correctional Officer 1, and Correctional Officer 2.

So while the Union’s argument is not without merit, and while there is some language in the Rules and the Agreement that might bolster their position, there is far more unequivocal and unambiguous language in the Agreement and the Rules to support the Employer’s position as to what “classification” means. And as noted, perhaps more significant than the wording of the rules, and the interpretations that could apply to them, is the fact that the classification of positions was the responsibility of the Director, and the Director has very clearly indicated in the Rules and the classification system that there are five (5) classifications, not two (2).

### **FINDINGS**

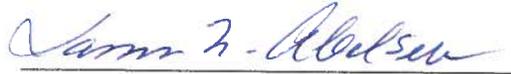
1. While the Union failed to file the grievance within the twenty-one (21) day time line stipulated in the Collective Bargaining Agreement, the Employer processed the grievance and failed to raise the issue of timeliness until the arbitration hearing. While the Employer may have simply chosen not to object, the fact that no objection was raised constitutes a waiver by the Employer of its right to now object for the first time at the arbitration hearing.
2. In the Ramsey County Community Corrections Department there are both Correctional Officers and Probation Officers. And while all the Probation Officer positions have many similarities, there are also varying duties and responsibilities among the different Probation Officer positions. And those positions which have similar duties and responsibilities are grouped into a single classification e.g. Probation Officer 1, Probation Officer 2 or Probation Officer 3. And the same is true for the Correctional Officers. Those who have positions with similar duties and responsibilities are classified as Correctional Officer 1 or Correctional Officer 2. So within the Ramsey County Community Corrections Department, there are five (5) classifications, PO1, PO2, and PO3, and CO1 and CO2.
3. While the movement from a Correctional Officer position into a Probation Officer position is considered a promotion, as that term is generally used and understood, the

movement within the Ramsey County Corrections Department from a Correctional Officer 2 position to a Probation Officer 1 position is, by the terms of the Collective Bargaining Agreement and the County Personnel Rules, a “voluntary reduction”. So while it may be counter intuitive that one can be “promoted” and yet receive less salary, that is precisely what the County Personnel Rules and the Collective Bargaining Agreement require.

### DECISION

Based on the record as a whole and for the reasons cited herein, the grievance is **DENIED**.

Dated: February 22, 2016

  
James N. Abelsen, Arbitrator