

COMMONWEALTH OF MASSACHUSETTS

BEFORE ARBITRATOR MARY ELLEN SHEA

In the matter of the arbitration between:

NORFOLK COUNTY SHERIFF'S OFFICE

-and-

NEW ENGLAND POLICE BENEVOLENT
ASSOCIATION, LOCAL 570

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INTRODUCTION

A demand for arbitration was filed by the New England Police Benevolent Association, Local 570, pursuant to the parties' collective bargaining agreement. The parties jointly selected Mary Ellen Shea to act as single neutral arbitrator in the matter. A hearing was conducted on October 4, 2022 in Quincy, Massachusetts.

The New England Police Benevolent Association, Local 570 (Union), was represented by Attorney Gary Nolan. Lieutenant John Nee, Local President, appeared for the Union. Also in attendance for the Union were Shaun Dewey and William Ryan.

The Norfolk County Sheriff's Office was represented by Attorney [REDACTED]. Appearing for the Sheriff's Office were Kevin Durkin, Human Resources Director; and Danielle Frane, Superintendent. Also in attendance was [REDACTED], Senior Advisor and Counsel.

The parties submitted post-hearing briefs at which time the record was closed.

THE ISSUES

The parties stipulated the following issues are to be decided:

Was the present grievance filed in accordance with the requirements of Article V of the parties' collective bargaining agreement?

If not, is the present grievance arbitrable?

Does the rate of compensation paid by the employer to Lobby Officer Sergeant [REDACTED] violate the collective bargaining agreement?

If so, what shall be the remedy?

RELEVANT CONTRACT PROVISIONS

The parties' collective bargaining agreement contains the following pertinent provisions:

ARTICLE I RECOGNITION

The Employer recognizes the Union as the sole and exclusive bargaining agent for the purposes of Collective Bargaining as to hours and other conditions of employment for all supervisory employees, including but not limited to all full-time Sergeants, Lieutenants and Captains, including the position of Steward, Superintendent of Plant Security, Plant Engineer, Service Specialist, Senior Officer Maintenance and Environmental Health Officer, Chief of Transportation, Maintenance, Fleet Service Specialist, Record Supervisor, and further excluding all of the confidential managerial and other employees in the Norfolk County Sheriff's Office and Correctional Center.

ARTICLE II UNION REPRESENTATION

A. The Union agrees that it shall act as the exclusive bargaining agent for all employees covered by this Agreement, and shall act, represent, and negotiate agreements and bargain collectively for all employees within this bargaining unit, and shall be responsible for representing the interests of such employees without discrimination and without regard to whether or not said employees are union members. . .

ARTICLE IV NON-DISCRIMINATION

A. The Employer shall not discharge or discriminate against any person with respect to promotion, assignment or any other matter because of race, color, religion, sex, age, sexual orientation, physical or mental handicap (if otherwise qualified with reasonable accommodation afforded by the Employer), union membership, union office or other union activity, or national origin, and all persons covered by the terms of this Agreement shall receive equal and full protection thereunder. Neither the Employer, its agents or any supervisory personnel shall discriminate against or discharge any employee because he/she has filed or processed any grievance under this Agreement or instituted any proceeding under any state or federal statute relating to wages, hours, or conditions of employment.

ARTICLE V
GRIEVANCE PROCEDURE

DEFINITION:

A grievance is any dispute between the parties to this Agreement as to the meaning, application, interpretation or enforcement of the provisions of this Agreement.

If an employee covered by this Agreement or the Association shall have a grievance which cannot be adjusted in an informal manner, such grievance shall be settled in the following manner:

Step 1. Informal Meeting. The parties agree that the Union Steward in those cases that are unit-wide grievances or an individual Grievant may submit a grievance in writing, and in either case, said grievances must be signed. Grievances will be submitted within twenty (20) working days of the grievance or reasonable knowledge of its occurrence and submitted to the Deputy Superintendent of the Bureau of Personnel and Professional Standards....

C. For the purpose of this Article, "working days" shall exclude Saturdays, Sundays and legal holidays when computing the times specified.

ARTICLE VII
PROMOTIONS

6. In making his appointments, the Sheriff will follow the following procedure. For each promotional position, the Sheriff shall choose from one (1) of the top three (3) highest scoring applicants...

ARTICLE VIII
SPECIALIST POSITIONS

21. LOBBY OFFICER...

3. Selection Process

There shall be an Oral Interview Specialist Board established for the purpose of interviewing and recommending to the Sheriff applicants to the appointment to Specialists positions....

ARTICLE IX
JOB POSTING

The parties agree that in order to create a new position or new title, the request must be submitted with the budget for the prospective fiscal year by the Sheriff. It is agreed hereto that the positions and job postings as described

hereafter are only those positions which have been approved and established in the budget process.

Whenever the Sheriff intends upon making a promotion, filling a new position or a vacancy occurs in a Specialist position or for promotion, the Sheriff shall comply with the following posting procedures.

A. Posting

1. All new positions or vacancies in Specialist or Promotional positions that are established by the budget process, shall be posted by the Sheriff for at least seven (7) days prior to the selection process being initiated...The posting shall contain the name or title of the position, the current job description, the rate of pay, hours of duty and the qualifications for the position. The Sheriff agrees that it shall meet with the Union to discuss any new position prior to it being posted.
2. Persons shall be selected for the posted positions, whether they be new positions or vacancies in the Promotional or Specialist positions, in accordance with the selection process set out heretofore in separate articles entitled SPECIALIST POSITION and PROMOTION PROCEDURE.

ARTICLE XXIX
OUT OF GRADE PAY

When an officer is assigned in writing by the Sheriff to a higher-grade position and serves in that position for ten (10) consecutive working days, he shall be paid at the higher rate of pay retroactive to the first days of the assignment.

ARTICLE XXXVII
SEVERABILITY CLAUSE

Should any provision of this Agreement be found to be in violation of any federal or state law, or by a final decree of a court of competent jurisdiction, all other provisions of this Agreement shall remain in full force and effect for the duration of this Agreement. The parties shall promptly meet or request of either party, to negotiate a proper provision to replace any provisions, which have been found to be in violation of law.

MEMORANDUM OF AGREEMENT
JULY 1, 2017 TO JUNE 30, 2020

#9. Officers Pecevich (DARE), Coughlin (Lobby), Erti (Lobby), [REDACTED] (Lobby), and Ross (DARE) will remain at same pay, not receive a regrade and will get raise according to their Collective Bargaining Agreement. Once these specific Officers leave their current position, new occupants of these posts will receive their rank pay and not a higher rate of pay. A possible stipend for these positions when vacated will be considered as opposed to paying out of rank. If

any of these Officers earn a supervisory rank then they would get paid that rank's pay plus a possible stipend.

BACKGROUND

The New England Police Benevolent Association (NEPBA) represents employees of the Norfolk Sheriff's Office. Local 570 of the NEPBA represents supervisory employees such as Sergeants, Lieutenants, and Captains. Local 575 of the NEPBA represents non-supervisory employee namely, the Corrections Officers. This grievance was filed by Local 570 and concerns the Lobby Officer position, a Specialist position listed at Article VIII. Depending on the incumbent's rank, a Lobby Officer may be a member of either Local 570 or Local 575.

In 2019, the Sheriff's Office and Local 570 executed a Memorandum of Agreement (MOA) as a successor agreement. The 2019 MOA included a provision about the Lobby Officer position, in which the parties agreed to phase out the practice of paying Lobby Officers at a higher rate of pay than their rank. For example, at the time of the 2019 MOA, [REDACTED] [REDACTED] (formerly, [REDACTED]) was one of two employees in a Lobby Officer position who was being paid above her rank as a Corrections Officer.¹ The 2019 MOA provided that [REDACTED] would continue being paid at the higher rate as long as she remained in that position. According to the MOA, if/when [REDACTED] was promoted to a supervisory rank, she would no longer be paid above her rank, but would be paid at her own "rank's pay plus a possible stipend."

[REDACTED] eventually was promoted to Sergeant at which time she became a member of the Local 570 bargaining unit. She continued to serve in the Lobby Officer position and, consistent

¹ At hearing the Sheriff asserted that [REDACTED] had been promoted to Sergeant prior to the execution of the 2019 MOA. The assertion is not supported by evidence. The jointly drafted and agreed upon MOA identifies [REDACTED] as an "Officer"; and the HR Director's response to an information request lists her date of promotion to Sergeant as July 14, 2019. In addition, in its brief, the Sheriff argued that the 2019 MOA was not enforceable because, "At the time of the signing...all five correctional officers were exclusively represented by a different union."

with the 2019 MOA, she continued to receive the Sergeant's rate of pay, rather than a rate above her rank.

On July 20, 2021, [REDACTED] left the Lobby Officer position when she received a temporary promotion to Lieutenant and began receiving the Lieutenant's rate of pay. On October 13, 2021, [REDACTED] was returned to the rank of Sergeant when the temporary promotion expired. Three weeks later, the Sheriff posted a Notice of Employment Opportunity for a Lobby Officer position that appeared to be the position [REDACTED] left in July (Employer Exhibit #7). The posting listed the same job title [REDACTED] previously held and listed the same duties she had performed prior to her promotion to Lieutenant. The November 5, 2021, posting stated the rate of pay would be "dependent on rank," which was consistent with the 2019 MOA. Sergeant [REDACTED] applied for the vacant Lobby Officer position, was selected, and was appointed to the Lobby Officer position on November 28, 2021 (Joint Exhibit #4).

On November 28, 2021, Superintendent Frane decided to assign additional duties to [REDACTED] Lobby Officer assignment, which were not listed in the posted Notice of Employment. The new duties included supervision, oversight of enhanced security, and responsibility for providing training. Superintendent Frane testified she determined the new duties warranted a reclassification and she directed Human Resources Director Durkin to increase [REDACTED] rate of pay to that of a Lieutenant (Grade 18). [REDACTED] pay was increased effective the same day, November 28, 2021.

In early January 2022, Local 570 members elected John Nee as Local President. Local President Nee testified that, within a couple weeks of being elected, he heard rumors that Sergeant [REDACTED] was being paid above her rank as a Lobby Officer. President Nee filed a grievance on February 5, 2022:

Nature of Grievance is the violation of the NEPBA 570 contract, pertaining to Sgt. [REDACTED] [REDACTED] regrade when being promoted to the Lobby Officer. That is clearly stated in the memorandum signed between NEPBA 570 and the Norfolk County Sheriff's Office...

Desired resolution would be to increase all Sgts. to the current lobby rate or to regrade Sgt. [REDACTED] [REDACTED] to her original salary as Sgt.

Joint Exhibit #3

The parties attempted to resolve the matter during the grievance process. On March 1, 2022, the Union requested information about the rate of pay and/or stipends to employees who had held the Lobby Officer position (Joint Exhibit #6). On March 9, 2022, the Sheriff's Senior Attorney Courtney Madden wrote to Union Attorney Gary Nolan for clarification about the Union's information request. Attorney Nolan explained:

...the union believes that the current Lobby Officer, a sergeant, is being paid at a higher rate of pay than Sgt. The MOU...states that any new occupant of those positions (which is the case here) shall not be paid at a higher rate of pay than their rank. The Union is looking to enforce that provision as to its bargaining unit members...So the union was looking for the information to confirm whether its understanding is accurate or not...

Joint Exhibit #5

The Sheriff's Office responded to the Union's information request on March 22, 2022:

The following information is in response to your request for salary/stipend information for NEPBA 570 members assigned to Lobby Officer positions subsequent to July 1, 2017 through June 30, 2020 Successor Agreement.

Sergeant [REDACTED] [REDACTED] is the only NEPBA 570 member assigned to a position in the lobby since that agreement went into effect. Sergeant [REDACTED] has never received a stipend for serving in that position and received only her rank pay, first as a CO/Specialist and then a Sergeant, a Lieutenant (temporary assignment 6/20/21-10/22/21) before returning to her Sergeant rank on 10/13/21.

That remained the case until her position was reclassified and regraded as a supervisory position beginning 11/28/21.

Position/Salary for Sgt. [REDACTED] [REDACTED]	
July 1, 2017	CO/Spec/Lobby Officer Grade 17...
July 7, 2019	Cost of Living Adjustment Grade 17...
July 14, 2019	Sgt/Spec/Lobby Officer Grade 17...(Promoted to Sgt- no change in salary)

July 5, 2020	Cost of Living Adjustment Grade 17...
July 4, 2021	Cost of Living Adjustment Grade 17...
July 20, 2021	Temporary Lieutenant Grade 18...
October 13, 2021	Return to Sergeant Grade 17...
November 28, 2021	Sgt/Spec/Lobby Officer Grade 18....
	(Position reclassified/regraded to supervisory)
	Joint Exhibit #4

The parties were unable to resolve the grievance which the Sheriff denied as untimely filed. The matter subsequently was submitted to arbitration.

POSITIONS OF THE PARTIES-ARBITRABILITY

THE SHERIFF

The Sheriff argues the Union failed to file the grievance in a timely fashion as required by the collective bargaining agreement. According to the Sheriff, Article 5 required the Union to grieve Sergeant [REDACTED] rate of pay within 20 working days of November 28, 2021, the date her pay was increased. There is no dispute that the Union filed its grievance on February 5, 2022, or 45 workdays after Sergeant [REDACTED] pay was increase. Mr. Durkin testified that the Sheriff's office strictly adheres to the contractual timelines and there was no agreement to extend the timelines in this case. The Sheriff urges the grievance be dismissed as procedurally not arbitrable.

THE UNION

The Union argues the grievance was timely filed and the matter is arbitrable. The Union contends the contract allows a grievance to be filed within 20 working days of reasonable knowledge of its occurrence. The Sheriff had not notified the Union of its decision to increase [REDACTED] pay and when he heard about it, Local President Nee promptly filed a grievance. The Union also points out that the alleged violation is recurring and each pay period establishes a

new 20-day period for filing a grievance. The Union urges the arbitrator find the grievance to be procedurally arbitrable.

POSITIONS OF THE PARTIES - MERITS

THE UNION

The Union argues the rate of compensation paid to Lobby Officer [REDACTED] violates clear and unambiguous contract language regarding the rate of pay for Lobby Officers appointed after the execution of the 2019 MOA. The Union contends the contract language in question is unmistakably clear; that it specifically applies to named Lobby Officers, including [REDACTED] and it requires that [REDACTED] be compensated at a rate no higher than her rank. Beginning November 2021, the Sheriff improperly increased [REDACTED] compensation to the rate corresponding to the rank of Lieutenant even though [REDACTED] held the rank of Sergeant. As a result, [REDACTED] is receiving a salary that is higher than contractually permitted, which amounts to an individually secured benefit not available to other bargaining unit members.

When the Sheriff posted the Lobby Officer position in question, the vacancy announcement stated the rate of compensation would be "dependent on rank." Neither the Union nor any bargaining unit members was on notice that the position might be reclassified or that the rate of compensation might be raised by an entire rank. The failure to provide this information meant that the bargaining unit members were denied an informed and fair opportunity to decide whether to for the position. The Union also contends the procedure and selection criteria for Specialist jobs such as Lobby Officer were not followed as set forth in Article VIII, Specialists. In addition, the Union argues the Sheriff failed to follow the provisions of Article IX, Job Posting, which establish how and when jobs can be posted or filled. According to the Union, the decision to reclassify [REDACTED] position did not comply with Article IX, Job Posting, which

requires all new positions first be submitted with the annual budget. Finally, the Union argues that Article IX, Job Posting, required the Sheriff to meet with the Union to discuss the new position prior to posting, which did not happen.

The Union concludes the grievance should be sustained because the rate of compensation paid to Sergeant [REDACTED] [REDACTED] violates the collective bargaining agreement. The Union asks that the arbitrator order a make-whole remedy, with interest, in one of the following ways: 1) compensate all sergeants at the same rate paid to [REDACTED] retroactively to the date of the grievance, or 2) compensate all sergeants at the same rate as [REDACTED] from the date of the award forward. The Union asks that the arbitrator retain jurisdiction as to the implementation of the award.

THE SHERIFF'S OFFICE

The Sheriff argues the rate of compensation paid to Sergeant [REDACTED] does not violate the collective bargaining agreement because 1) the provision cited in the 2019 MOA is unenforceable; 2) the remedy sought would violate the contract's anti-discrimination and equal protection clauses; and 3) whether the Sheriff should have bargained with the Union is not properly before the arbitrator.

The Sheriff argues that the provision cited in the 2019 MOA is unenforceable because the Union was not authorized to bargain over or enter into agreements for the five named Corrections Officers. None of the officers listed in the cited provision was a member of Local 570 and thus the Union had no authority to bargain on their behalf and so the provision is not enforceable.

The Sheriff also argues the remedy sought by the Union would require the Sheriff to violate Article IV, Non-Discrimination, the non-discrimination and equal protection provision of

the contract. The Union requested a remedy that seeks to have [REDACTED] pay reduced while other male supervisors are allowed to retain their pay increases. The Sheriff contends the Union singled out [REDACTED] while turning a blind eye to the same situation where Sergeants [REDACTED], who are all men and who are all compensated at a rate above their rank. The principles of fairness demand that the grievance be denied.

The Sheriff also argues the decision to increase [REDACTED] duties and her rate of compensation were not cited in the Union's initial grievance, nor was the grievance amended to include the belated argument that the Sheriff failed to give notice to or failed to bargain with the Union about changes to [REDACTED] position. The Sheriff urges the arbitrator deny the grievance in its entirety.

DISCUSSION-ARBITRABILITY

The first question is whether the grievance was filed in accordance with the requirements of Article V, Grievance Procedure. The Sheriff challenged the timeliness of the grievance and has the burden of proving it was not timely filed.

According to Article V, the deadline for filing this grievance was no later than 20 working days after the date [REDACTED] pay was increased, *or* 20 working days after the Union had "reasonable knowledge" of [REDACTED] pay increase. The Sheriff established that the Union did not file the grievance within 20 working days of [REDACTED] pay increase. The Sheriff failed to refute, however, the assertion that the grievance was timely filed based on when the Union had "reasonable knowledge" of [REDACTED] pay increase or the assertion that the grievance was timely because it concerns an alleged continuing violation.

According to Local President Nee, the Union did not have "reasonable knowledge" of [REDACTED] November 2021 pay increase until mid-January 2022 when he heard a rumor about it.

The Sheriff's argument that this testimony should be discredited because Nee could not recall the exact date he learned about [REDACTED] pay increase is not persuasive. Nee testified he heard about [REDACTED] pay increase within a couple weeks of being elected Local President sometime in January 2022. The Sheriff did not refute this testimony. Assuming that Nee was elected Local President in early January and heard about [REDACTED] pay increase within a couple weeks, the earliest he would have had "reasonable knowledge" would have been about January 14, 2022. The grievance was filed on February 5, 2022, which was clearly within "20 working days" of the date the Union had "reasonable knowledge."

The Sheriff also argued that Nee's testimony should be excluded because the grievance was filed by Sergeant DiTullio, not by the President himself. I disagree. Article V, Grievance Procedure, provides that a grievance should be filed by "the Union Steward...or an individual Grievant." According to the grievance document (Joint Exhibit #3), Sergeant DiTullio was the Union Steward. The Sheriff has not met its burden of proving the grievance was untimely filed. I find the grievance was filed within 20 working days of the Union's "reasonable knowledge" of the alleged violation and, in any event, the grievance concerns a continuing violation. The grievance is arbitrable.

DISCUSSION-MERITS

The next question is whether the rate of compensation to Lobby Officer Sergeant [REDACTED] violates the collective bargaining agreement. As a contract interpretation grievance, the Union has the burden of proving a violation of the agreement. The Union argued that the Sheriff's decision to increase Sergeant [REDACTED] rate of pay violated the collective bargaining agreement at item #9 of the 2019 MOA; and at Article IX, Job Posting.

The pertinent section of the 2019 MOA follows:

#9. Officers Pecevich (DARE), Coughlin (Lobby), Erti (Lobby), [REDACTED] (Lobby), and Ross (DARE) will remain at same pay, not receive a regrade and will get raise according to their Collective Bargaining Agreement. Once these specific Officers leave their current position, [the] new occupants of these posts will receive their rank pay and not a higher rate of pay. A possible stipend for these positions when vacated will be considered as opposed to paying out of rank. If any of these Officers earn a supervisory rank then they would get paid that rank's pay plus a possible stipend.

This section guarantees that the named officers, including [REDACTED] would continue to receive the rate of pay then in effect and as long as they continued in the position they held at the time of the 2019 MOA. In [REDACTED] case, this meant she would continue to be paid above her Corrections Officer rank as long as she remained in her then "current position" of Lobby Officer. This section also provided that when the named officers, including [REDACTED] earned a supervisory rank "they would get paid *that* rank's pay." The evidence establishes that the Sheriff complied with this section when [REDACTED] earned the rank of Sergeant by paying her "that rank's pay" and by making "no change in salary." (Joint Exhibit #4).

The parties also agreed that when any of the named officers, including [REDACTED] "leave their current position," the person appointed to fill the vacated position would "receive *their* rank pay and not a higher rate of pay." The testimony and evidence establish that [REDACTED] did "leave [her] current position" when she was promoted to Lieutenant in July 2021. Three months later, the Sheriff posted a notice of the vacant Lobby Officer position. According to the 2019 MOA, the "new occupant" of that Lobby Officer position would be paid at "their rank pay and not a higher rate." The term "new occupant" is interpreted to mean any employee appointed to a Lobby Officer position vacated by a previously grandfathered employee because the parties do not indicate any exceptions to the term "new occupant" (such as a previously grandfathered Lobby Officer, like [REDACTED]). The Union has established that the November 2021 pay increase to [REDACTED] violated the collective bargaining agreement at Item #9 of the 21019 MOA.

The Union also argued the Sheriff's actions violated the provisions of Article IX, Job Posting, which establish how and when jobs can be posted or filled:

The parties agree that in order to create a new position or new title, the request must be submitted with the budget for the prospective fiscal year by the Sheriff. It is agreed hereto that the positions and job postings as described hereafter are only those positions which have been approved and established in the budget process....The Sheriff agrees that it shall meet with the Union to discuss any new position prior to it being posted.

The Union argued that the increase in [REDACTED] rate of pay essentially created a new position, which should have been discussed with the Union and included in the annual budget before being posted. The argument is not persuasive because the posting described an existing and established position and title. Despite Superintendent's Frane's testimony that [REDACTED] Lobby Officer position was reclassified or regraded, there is no evidence such as personnel records that the position's title was changed or that a new position description was issued. The position [REDACTED] was awarded in November 2021 was the same Lobby Officer position described in the 2019 MOA and in the Notice of Employment Opportunity posted on November 5, 2021.

The Union correctly argues that Article IX, Job Posting, requires that job postings must "contain the name or title of the position, the current job description, the rate of pay, hours of duty and the qualifications for the position." The evidence establishes that [REDACTED] was awarded a position with a different rate of pay than was posted and made known to bargaining unit employees. The Sheriff does not dispute that [REDACTED] rate of pay was increased to the rate of a Lieutenant when she was awarded the Lobby Officer position. The Union has established that the Sheriff's decision to increase [REDACTED] rate of pay also violated the collective bargaining agreement at Article IX, Job Posting, Section A. 1.

The Sheriff countered the Union's testimony and evidence with several arguments. First, the Sheriff contends the provision cited in the 2019 MOA (#9) is unenforceable because the

Union did not have authority to bargain over or enter into agreements for Corrections Officers who were represented by a different Local. The Sheriff did not cite a contract provision to support this argument. It is assumed the Sheriff means that a provision about non-bargaining unit employees violates collective bargaining laws. Whether a provision of the 2019 MOA violates external law, however, is a matter beyond the four corners of the agreement and beyond the arbitrator's authority. The parties contract addresses enforceability and the issue of external law at Article XXXVII, Severability Clause. The parties agreed to sever any provision "found to be in violation of any Federal or State law or by a final decree of a court of competent jurisdiction." There is no evidence the Sheriff challenged the enforceability or legality of the 2019 MOA and no evidence that any portion of the 2019 MOA has been found "in violation" of law by decree or by a court of competent jurisdiction. For these reasons, the terms and conditions of the 2019 MOA must be interpreted and applied as written.

The Sheriff also argued the grievance must be denied because the remedy sought would require it to violate Article IV, Non-Discrimination. The Sheriff argues that the Union is singling out [REDACTED] a woman, while turning a blind eye to the fact that three male Sergeants ([REDACTED] [REDACTED]) are also paid at a rate above their ranks. The Sheriff's claim of discrimination or disparate treatment is not supported by the evidence. The three postings for the Time and Attendance Coordinator positions awarded to the male sergeants (Employer Exhibits #2, #3, and #4) clearly stated the rate of pay, which was then paid to each man. The three male sergeants may be receiving a rate of pay that is higher than their rank, but their rates of pay are no higher than was posted and made known to bargaining unit members. Nor is there any evidence that the parties agreed to limit the Time and Attendance Coordinator's compensation to "their rank pay and not a higher rate." In the case before me, however, the posting for the position awarded to

██████ did not accurately describe the rate of compensation she was paid. The Sheriff compensated Sergeant ██████ at a higher rate of pay than was posted and made know to bargaining unit members. More significantly, the Sheriff's decision to increase ██████ pay violated the parties' agreement Lobby Officers appointed after the execution of the 2019 MOA must be paid "their rank pay and not a higher rate of pay."

It must be noted that Article IV, Non-Discrimination, requires that, "all persons covered by the terms of this Agreement shall receive equal and full protection thereunder." In the cases of the Time and Attendance Coordinator postings, all bargaining unit employees were on notice about the rate of pay to expect before deciding whether to apply. In this case, however, the November 5, 2021 posting did not give employees notice about rate of pay to expect for the Lobby Officer position, thereby denying "persons covered by this Agreement" a fair opportunity to make an informed choice about whether to apply.

In conclusion, I find the rate of compensation paid by the employer to Lobby Officer Sergeant ██████ violates the collective bargaining agreement.

REMEDY

The Union asks that the arbitrator order a make-whole remedy, with interest, in one of the following ways: 1) compensate all sergeants at the same rate paid to ██████ retroactively to the date of the grievance, or 2) compensate all sergeants at the same rate as ██████ from the date of the award forward.

In support of the proposed remedy, the Union cited a Town of Carver and NEPBA Local 89, arbitration award where the arbitrator ordered the Town to increase the salaries and benefits of similarly situated employees, rather than lowering the salaries and benefits of those employees

who were the subject of the grievance. The Carver decision, however, involves substantially different facts and the approach to the remedy is not appropriate in the case before me.

This award finds the Sheriff's November 2021 decision to increase Sergeant [REDACTED] rate of pay as a Lobby Officer violated the parties' collective bargaining agreement and is this violation that must be remedied. The Sheriff is ordered to cease and desist from violating the collective bargaining agreement by paying Lobby Officer Sergeant [REDACTED] at a rate greater than her rank. The Sheriff is ordered to immediately adjust [REDACTED] rate of pay to that of her rank pay. The arbitrator will retain jurisdiction for the limited purpose of resolving disputes about the implementation of the remedy.

AWARD

The present grievance was filed in accordance with the requirements of Article V of the parties' collective bargaining agreement.

The present grievance is arbitrable.

The rate of compensation paid by the employer to Lobby Officer Sergeant [REDACTED] violates the collective bargaining agreement.

The Sheriff is ordered to cease and desist from violating the collective bargaining agreement by paying Lobby Officer Sergeant [REDACTED] at a rate greater than her rank. The Sheriff is ordered to immediately adjust [REDACTED] rate of pay to that of her rank pay.

The arbitrator will retain jurisdiction for the limited purpose of resolving disputes about the implementation of the remedy.



Mary Ellen Shea, Arbitrator
March 1, 2023