

IN THE MATTER OF ARBITRATION

OPINION & AWARD

-between-

Grievance Arbitration

**THE AMERICAN FEDERATION of
STATE, COUNTY & MUNICIPAL
EMPLOYEES, COUNCIL NO. 65**

Re: Longevity Pay

-and-

B.M.S. No. 09PA0174

**INDEPENDENT SCHOOL DIST. 316
COLERAINE, MINNESOTA**

**Before: Jay C. Fogelberg
Neutral Arbitrator**

Representation-

For the Union: Sarah Lewerenz, Attorney

For the District: George J. Stunyo, Consultant

Statement of Jurisdiction-

The Collective Bargaining Agreement duly executed by the parties provides, in Article IX, for an appeal to binding arbitration of those disputes that remain unresolved after being processed through the initial three steps of the procedure. A formal complaint was submitted by the Union on behalf of the Grievant on July 22, 2008, and thereafter appealed to binding arbitration when the parties were unable to resolve the matter to their mutual satisfaction during discussions at the intermittent steps. The undersigned was then selected as the Neutral Arbitrator to hear evidence

and render a decision from a panel provided to the parties by the Minnesota Bureau of Mediation Services. Subsequently, a hearing was convened in Coleraine on July 27, 2009. There, the parties were afforded the opportunity to present position statements, testimony and supportive documentation. At the conclusion of the proceedings, each side indicated a preference for submitting written summary statements. They were received on August 24, 2009, at which time the hearing was deemed officially closed. The parties have stipulated that all matters in dispute are properly before the Arbitrator for resolution on their merits, and while they were unable to agree to a precise statement of the issue, the following is believed to constitute a fair description of the matter to be resolved.

The Issue-

Did the Employer violate the parties' Collective Bargaining Agreement when it denied longevity payments to the Grievants on a cumulative basis? If so, what shall the appropriate remedy be?

Preliminary Statement of the Facts-

The adduced evidence indicates that the Grievants are hourly support personnel employed by Impendent School District 316 (hereafter

“District”, “Employer” or “Administration”) in Coleraine Minnesota. In this capacity, they are represented by A.F.S.C.M.E. Council 65, Local 456 (“Union” or “Local”) who, together with the Administration has negotiated and executed a labor agreement (Joint Ex. 1) covering terms and conditions of employment for the employees that comprise the bargaining unit.

The parties’ 2006-07 Collective Bargaining Agreement contained a longevity provision that paid an employee \$175 after ten years of service, \$350 after fifteen years, \$525 after twenty years, and \$700 after twenty-five years in addition to their annual salary. At the commencement of bargaining over the current (2007-09) contract, the Union informed the District that they wanted what “the teachers (bargaining unit) had” in their contract relative to longevity (Joint Ex. 14). More particularly, their proposal called for an additional \$100 to be added to each of the four longevity increments.¹ The District, in turn, indicated that they wished to have the grievance language in the then current agreement “cleaned up.” Eventually, the parties agreed upon a \$50 adjustment at each existing step in Article XXIII, along with a Letter of Understanding that was appended to the contract addressing grievances (Joint Ex. 1). After

¹ No new contract language was contemplated by the Local.

setting forth the four new incremental amounts, the longevity provision included an additional sentence which read: "For a total of \$1950.00 after four years of service" (*id.*).

The contract was then ratified by the Union and executed by the parties in June of 2008. Subsequently, however, the District began to pay longevity to eligible members of the bargaining unit in a manner different than what the Union believed had been agreed to. That is, the benefit was not paid cumulatively which is what the Local thought was bargained. Consequently, the Union filed a formal complaint on July 22, 2008 alleging that the Administration was in violation of Article XXIII, and seeking a make whole remedy (Joint Ex. 5).

In grievance meeting discussions that followed the Union and the Employer reached an agreement whereby the benefit would be paid cumulatively, but that it would become effective on July 1, 2009. The School Board however, voted not to accept the resolution. Thereafter, the parties agreed to take the matter to binding arbitration for resolution.

Relevant Contract Provisions-

Article XXIII

Longevity

All employees who have completed ten (10), fifteen (15), twenty (20) or twenty-five (25) years of service or more in the school District shall be paid longevity pay in addition to their base salary in accordance with the following:

10 years @ \$225.00 15 years @ \$400.00

20 years @ \$575.00 25 years @ \$750.00

For a total of \$1950.00 after 25 years of service

Positions of the Parties-

The **UNION** takes the position in this matter that the District has violated the terms of the parties' new Contract and the grievance settlement reached as well when they refused to administer the longevity benefit on a cumulative basis. In support the Local maintains that from the very outset of negotiations over the current Agreement, they made it abundantly clear to the Employer that its members sought the same benefit the teachers were receiving which included compounding longevity payments at each threshold reached. The claim is made that throughout bargaining, the parties considered an increase in the longevity

amount on a cumulative basis, and that this was discussed at each and every meeting. The documentation surrounding the correspondence between the Local's Business Agent, Mark Mandich, and the (then) Superintendent of Schools, Rochelle Van Den Heuvel, bear this out. Consistently, the figure \$1950 is found in the bargaining notes of both sides which is the total sum of the four incremental steps added together. Indeed the new sentence added to the Article that was ultimately agreed to and signed off on by representatives from each party includes this same figure. That the Employer was operating under the erroneous assumption that longevity had always been paid on a cumulative basis (just as the teachers' are) does not excuse the fact that they reviewed and signed off on the new Contract. Moreover, in discussions during the grievance process, the Administration acknowledged that compounding was discussed and understood to be part of the benefit. In consideration of the District's financial plight, the Local agreed with the representatives of the Employer to settle the matter by altering the retroactive date from July 1, 2007 to July 1, 2009, while maintaining the compounding feature. Yet the School Board still chose to ignore the resolution. Accordingly, for all these reasons, they ask that the grievance be sustained and that the Employer be directed to honor the longevity provision that was agreed to

and to make the benefit retroactive to July 1, 2007.

Conversely, the **DISTRICT** takes the position that there was no meeting of the minds between the parties for the phrase: "For a total of \$1950 after 25 years of service," as set for the in Article XXIII. In support of their claim, the Administration notes that neither in the bargaining which transpired and the subsequent positions taken by the parties relative to this grievance, has there been any indication of anything other than good faith efforts on both sides of the table. Rather, what occurred here was a true and honest mistake based upon an incorrect assumption that the Grievants had been receiving the longevity benefit on a cumulative basis for years, when in fact that had not been the case. Simply put, there was never a meeting of the minds between the parties on this issue and therefore a valid agreement was never reached regarding longevity. The District argues that the \$1950 phrase now reflected in Article XXIII, does not on its face mean that the Union can benefit from such a windfall as they are now seeking. Indeed, should the Local prevail here they would be the recipient of a contract settlement that would nearly double that of the teachers. That is not what the Union sought at the outset of negotiations as they clearly announced that they wished to receive the same type of

settlement that the teachers had obtained from the School Board. The Parol Evidence Rule holds that a contract may be modified upon a showing of (among others) a mistake. Clearly, they maintain, there was a mutual mistake in this instance. Were the Union to prevail here it would amount to an unjust enrichment at the expense of a school district that has been in statutory operating debt for twelve of the past thirteen years. The \$1950 figure referenced in the negotiation notes and in the new contract is merely a carry over from discussions of the representatives at the table where the four increments were added together. Compounding cannot be logically inferred from this sentence alone. Accordingly, the Employer asks that the grievance be denied in its entirety.

Analysis of the Evidence-

Pared to its essentials, this dispute centers on whether or not the longevity provision found in the parties' current (2007-09) Collective Bargaining Agreement was amended to allow for a cumulative benefit (Union's view) or remained, as in the past, a non-compounding incentive to a senior employee's wages (Employer's position). Following a careful review of the evidence placed into the record and consideration of the

respective arguments put forth by each side, I conclude that the Local's position has merit.

Consideration of the new language in Article XXIII indicates that it is arguably less than clear on its face. As the Employer notes, the reference to "\$1950 after 25 years of service" at first blush, appears to be inconsistent with the wording directly above it which calls for longevity to be paid as follows: "25 years @ \$750.00" (Joint Ex. 1; p. 33). Moreover, no where in the final draft of the document is there specific wording indicating that the benefit is cumulative.

In the absence of desired clarity, the application of a basic tenet of contract interpretation holds that pre-contract negotiations offer valuable assistance in the interpretation of the language under review (See: Elkouri & Elkouri *How Arbitration Works*, BNA 6th Ed., at p. 453).

The forceful evidence demonstrates that from the outset of negotiations, the Union sought a longevity provision identical to the one already in place for the teachers (Joint Ex. 14). Their Chief Negotiator, Mark Mandich testified: "We explained (to the Board's negotiating team) from the start, we wanted the longevity compounded" just as the teachers had enjoyed the same benefit for many years. At the same time, the

District sought new language that would “clean up” the grievance procedure set forth in the then existing Agreement. Ultimately, the new 2007-09 Contract included a “Letter of Understanding” which conformed to the Employer’s desire to expedite the dispute resolution process (Joint Ex. 1; p. 49).

The School Board maintains that there never was a meeting of the minds between the parties relative to the longevity issue and therefore a valid contract never existed. To the contrary, I find the clear weight of the evidence demonstrates that there was an understanding with regard to what the Union was seeking and what was eventually included in the new Master Agreement.

Local Union President Peggy Mikulich, who was present at the bargaining table throughout negotiations, recalled their proposal clearly indicated that they wanted the same benefit as the teachers in terms of compounding the longevity payments. She offered the following:

Union: “Do you believe the Employer understood what the (Union’s) proposal was?”

Mikulich: Yes I do.

Q: Why?

A: It’s very clear for a “total of \$1950.”

Similarly, another member of the Local's bargaining team, Rene Vogel, testified:

Union: "At any point in time did you have any questions in your mind that the District understood the proposal?"

Vogel: No."

Finally, Mark Mandich's recollections were most consistent with those expressed by the other members of the Local's team:

Union: "Did you think the Superintendent and other representatives at the table for the District understood what you were saying?"

Mandich: Yes, it was addressed at every meeting."²

The foregoing must necessarily be contrasted with the testimony of the District's witnesses and most particularly their chief negotiator at the time, Rochelle Van Den Heuvel. Repeatedly, she testified that the School Board had a different understanding of what transpired at the bargaining table and that at no time did the Employer believe that the longevity benefit was to be cumulative. The weight of the evidence however, indicates otherwise.

First, the Superintendent's bargaining notes (Joint Exs. 9 & 10) make reference to the total amount after twenty-five years of service. Indeed,

² During the course of his cross-examination of this witness, the Employer's representative allowed that he believed the witness to be a "true and honest man."

no matter what number was inserted into each of the four steps specified, a total number was consistently noted. Further, the evidence shows that the new language contained in the final draft of the 2007-09 Contract was printed in bold face so that the changes ultimately agreed to could be easily identified. Significantly the “total of \$1950 after 25 years of service” clause was included in the bold lettering. This is the same language that was delivered to the Superintendent on or about May 6, 2008 by Mr. Mandich (Joint Ex. 6); the same language she allowed that she “may have” thereafter spoken to the Union’s representative about, and; the same language that was thereafter signed off on when the new agreement was executed by the Board later that month.³

Throughout the course of Ms. Van Den Heuvel’s testimony she repeated that the “\$1950” sentence added to Article XXIII was nothing more than a total of each of the steps that precedes it. There would however, be no reason to include such language were the District’s position credited here. “\$1950 after twenty-five years of service” is nonsensical if its intent is only to express the total of the four numbers above it, as the Employer maintains, serving no particular purpose. Rather,

³ Under cross-examination Ms. Van Den Heuvel acknowledged that she had reviewed the document and the changes that were included prior to signing off on it as a representative of the District.

the more logical and reasonable interpretation is consistent with the position taken by the Union and the unswerving recollections of their three bargaining team members relative to the cumulative aspect of the provision. Indeed, the District's Business Manager, Ben Hawkins, testified that the plain meaning of the sentence as it is written is, "...that after twenty-five years the (eligible) employee gets \$1950."

Stated simply, the language in issue cannot have any other logical purpose as it is expressed in the parties' Collective Bargain Agreement other than what the Union is claiming in their grievance. To now claim that there was no meeting of the minds in light of the bargaining history and what was ultimately included in the new Contract, strains credulity. An adoption of the Employer's position would essentially result in a forfeiture of the changes that were bargained in Article XXIII. The record more than adequately supports the conclusion reached here that there was give and take at the table with both sides obtaining some of what they sought from the outset. To modify the Agreement, as the District now proposes, would essentially deprive one side of the benefit of the bargain that was ultimately struck. There is insufficient proof of a mutual mistake. To the contrary, what the Local sought, what was expressed at the table and in

documentation - what was ultimately included in the new Contract, indicates that the longevity provision was to be changed allowing for the monetary incentive to be administered in a cumulative manner.

Further compelling evidence supporting the conclusion reached here is found in the initial settlement of the grievance filed in the summer of last year regarding this matter. At that time, according to the unrefuted testimony placed into the record, the Employer acknowledged the compounding aspect of new language in Article XXIII as the Union had maintained, while at the same time the Local recognized the financial restraints the District was operating under. Accordingly, an agreement was struck by the representatives allowing for the cumulative application of the benefit at each of the steps but, unlike wages, it was to become retroactive to July 1, 2009, rather than with the effective date of the new Master Agreement. While both sides approved the resolution negotiated, the Employer subsequently withdrew its consent, hence the need for the hearing and this decision.

To now void that settlement and effectively nullify the efforts of the appointed (and competent) representatives of each side, would be most imprudent. It would, in my judgment, severely erode the chances of these

parties settling any dispute they may encounter in the future. There was absolutely no evidence that the discussions leading to the accord were not conducted in good faith or that one side was somehow placed at a severe disadvantage. Accordingly, I am loathe to alter the results of their labors in this setting.

Award-

For the reasons set forth above the grievance of the Union is sustained. However, the remedy ordered is to be consistent with the terms of the understanding reached in discussions between the representatives of the Local and the District subsequent to the filing of the grievance. The compounding of the longevity incentive pay is to take effect as of July 1 this year.

Respectfully submitted this 16th day of September , 2009.

Jay C. Fogelberg, Neutral Arbitrator