BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

OCONTO COUNTY

and

OCONTO COUNTY SHERIFF'S DEPUTY'S
ASSOCIATION

Case 88
No. 42285
MA-5643

Appearances:
Michael G. Perry, Attorney at Law, for the Union.
Mulcahy and Wherry, S.C., by Dennis W. Rader, for the County.

ARBITRATION AWARD

Oconto County Sheriff's Deputy's Association, herein the Union, pursuant to the terms of its collective bargaining agreement with Oconto County, herein the County, requested the Wisconsin Employment Relations Commission to designate a member of its staff as an arbitrator to hear and decide a dispute between the parties. The County concurred with said request and the undersigned was designated as the arbitrator. The parties waived the contractual board of arbitration and agreed the undersigned would be the sole arbitrator. Hearing was held in Oconto, Wisconsin on August 22, 1989. A transcript of the proceedings was received on August 30, 1989. The parties completed the filing of post-hearing briefs on October 3, 1989.

ISSUE

The parties stipulated to the following issue:

> Did the County violate Article 12 of the collective bargaining agreement between Oconto County and the Oconto County Sheriff's Deputy's Association by not paying the grievant, Clark Longsine, longevity pursuant to the grievant's request of April 20, 1989?

RELEVANT CONTRACTUAL PROVISIONS

ARTICLE XII

LONGEVITY PAY

> After five (5) years of service, each employee shall receive longevity pay in the amount equal to three percent (3%) of his monthly wage multiplied by the number of years of service of each

employee. Such longevity pay shall be paid on the anniversary of said employee's date of employment in each year.

. . .

ARTICLE XXI

AMENDMENT

This Agreement is subject to amendment, alteration, or addition only by a subsequent written agreement between the County and the Bargaining Unit where mutually agreeable. The waiver of any breach, term or condition of this Agreement by either party shall not constitute a precedent in the future enforcement of its terms and conditions.

. . .

BACKGROUND

Longsine worked for the County as a traffic officer from May 17, 1977 to May 15, 1980, at which time he resigned his employment with the County and went to work in a law enforcement position with the City of Oconto. On March 29, 1987, Longsine was re-employed by the County as a deputy sheriff in the Sheriff's Department.

For a number of years, the Sheriff's Department consisted of two separate departments, a traffic police department and a sheriff's department. On or about April 1, 1983, the two departments were merged into one department, i.e., the Sheriff's Department. Prior to April 1, 1983, the employes of the two departments, traffic and sheriff, were in separate bargaining units and covered by separate contracts. In 1983 the two bargaining units were merged and the contract for the 1983 calendar year covered the entire new bargaining unit. The union representing said unit at the time of the merger was different than the Union appearing in this matter, which became the representative for the unit in 1984.

In addition to the contract at issue herein, the County has contracts covering three other bargaining units. The longevity pay provisions in these contracts read as follows:

Highway Department

2. Commencing January 1, 1979, and each year thereafter during the term of this contract, each employee, after five (5) years of service shall receive longevity pay calculated as follows: Three percent (3%) of the monthly wage, multiplied by the number of years service shall constitute the longevity pay (see Example "A").

Said payment shall be made annually commencing in January 1979.

> Example A: Employee A's period of uninterrupted service commenced April 2, 1969. Employee receives a wage of $500 per month. Longevity pay would be calculated as follows: $500 x 3% x 9, or $135. Payment shall be made once a year in the month of January.

Service shall be defined to mean uninterrupted service. In the case of termination of employment by reason of death or retirement under the Wisconsin Retirement Act after August 1, 1978, payment shall be made on a prorated basis. If employment is terminated for any other reason, no payment shall be made.

3. Sick leave or layoff of six (6) months or less shall not be considered interrupted service.

Courthouse

Section 2. Each employee, after the completion of five (5) years of service, shall receive the following longevity pay: Three percent (3%) of the monthly wage, multiplied by the number of years of service, shall constitute the longevity pay (see example below). Said payments shall be made annually at the first pay period after the anniversary date of employment. This provision shall not apply to elective officials, and service shall be defined to mean uninterrupted service. Absences due to sick leave or layoff of six (6) months or less shall not be considered interrupted service.

> Example: Employee A's period of uninterrupted service commenced April 2, 1966. Employee receives a wage of $500 per month. Longevity pay would be calculated as follows: $500 x 3% x 13, or $195, which would be payable April 15, 1979, the first pay period of pay after the anniversary date.

Unified Services

B. Longevity: After five (5) years of service, each employee shall receive longevity pay in the amount equal to three percent (3%) of his/her monthly wage multiplied by the number of years of service of each employee. Such longevity pay shall be paid on the anniversary of said employee. Such longevity

pay shall be paid on the anniversary of said employee's date of employment in each year.

There have been other instances of employes who have been re-employed by the County and who have had interrupted service. Lynn Heim was a traffic officer for the County from September 1, 1972 to November 15, 1973 and from March 15, 1974 to May 22, 1980. Heim's longevity payment in 1980 was based on his 1974 hire date. The payment was made under the contract then in effect for the Traffic Department employes, which contract contained the following provision:

ARTICLE XIII - LONGEVITY PAY

After five years of service, each employee shall receive longevity pay in the amount equal to three percent (3%) of his monthly wage multiplied by the number of years of service of each employee. Such longevity pay shall be paid on the anniversary of said employee's date of employment in each year.

The present Sheriff, Kenneth Woodworth, was employed by the County as a Traffic Officer from June 1, 1964 to February 28, 1966. He was re-employed as a Traffic Officer on June 1, 1967 and became eligible for longevity pay on June 1, 1972.

Shelley Murphy was employed by the County from April 23, 1975 to September 14, 1981. Murphy became re-employed by the County on September 14, 1987. Murphy, who is covered by the Courthouse contract, has not received any longevity pay since again becoming an employe in 1987.

In a 1987 arbitration case involving the County and the Union, the arbitrator ruled that, in determining the grievant's, James Saindon's, eligibility for longevity pay, the County had to count the grievant's total years of service without regard to whether the grievant was a member of a bargaining unit during some of those years. Saindon was initially hired by the County in 1975 in a position which was not part of a bargaining unit, but subsequently he transferred to a position within the Sheriff's Department bargaining unit. Saindon's transfer did not interrupt his service with the County.

POSITION OF THE UNION

The phrase "after five (5) years of service" in Article 12 is not ambiguous. Said phrase clearly expresses a period of time and an activity. Therefore, the phrase is not subject to more than one meaning on its face and the arbitrator must accept the plain meaning, which is total years of service, regardless of whether there has been a break in service.

The County has negotiated with other bargaining units to give the word service a special meaning as it relates to longevity pay in their contracts. This should not permit the County to apply the same meaning herein without first bargaining such an application.

The contract states that the parties do not have a past practice clause. Thus, the County can't rely on its practice concerning other employes.

The arbitrator in the Saindon case concluded that service referred to years of employment. Using the same interpretation herein would make the grievant eligible for longevity pay. The grievant has worked for the County more than five years and is entitled to longevity pay.

POSITION OF THE COUNTY

The issue in the Saindon case dealt with a different issue than the issue in this proceeding and is not a precedent. Saindon did not have a break in his service with the County.

The longevity language at issue herein is in fact identical to that found in the County's other labor contracts. In both the Courthouse and Highway contracts, service is not distinguished from uninterrupted service but is identified with it. While the primary longevity language in both of those contracts may be ambiguous as to whether service means continuous service, subsequent language defines service as uninterrupted service. None of the County's contracts use language which would support any interpretation of service other than uninterrupted service.

The County's practice of administering the longevity language has been consistent in all its bargaining units, including the Sheriff's Department. The current longevity language, which is in dispute herein, is identical to the language in the 1979-80 Traffic Department contract. Under that Traffic contract, an employe, Heim, was paid longevity based on his most recent date of hire and he did not receive credit for an earlier period of employment. Heim did not file a grievance over his longevity pay. The Union which negotiated the 1979-80 Traffic contract still represents the Courthouse, Highway, and Unified Services units. It must be presumed that the language in all of those contracts were subject to a similar interpretation. There was no evidence presented to show that different interpretations were applied to the longevity pay provisions in the various contracts.

Other benefits, e.g., sick leave and vacation, provided by the contract are based on the employe's most recent date of hire rather than an earlier date of hire. Seniority is also based on the most recent date of hire. There is no reason to create a new criterion for calculating a benefit which would deviate from the criterion by which all other benefits are calculated.

DISCUSSION

The Union would interpret the word "service" in Article 12 to mean total employment with the County regardless of whether the service was one continuous period of time or whether the service encompassed multiple periods of employment which were interrupted by periods of time when the person was not employed by the County. The County would interpret "service" to mean the period of employment since the person's most recent date of hire by the County. Both of those interpretations are plausible. Thus, the meaning of the word "service" in Article 12 is not clear and unambiguous. The same conclusion was reached by the arbitrator in the Saindon case.

Article 12 requires an employe's longevity pay to be paid on the anniversary of said employe's date of employment. Adoption of the Union's position would require that a rehired employe's most recent date of employment be adjusted by the employe's prior period of employment with the County. If the parties had intended such a result, it seems likely they would have used language to express that intent. Thus, the County's position, that the date of employment referred to in Article 12 is the employe's most recent date of hire, is a credible interpretation, since there is no language dealing with an adjustment of a date of employment to give credit to prior periods of employment.

The Saindon arbitration case involved the only previous grievance between the parties concerning Article 12. The issue in that case was whether an employe's eligibility for longevity pay included years of service with the County prior to the employe becoming covered by a union contract. In the Saindon case, the employe never interrupted his employment with the County, but rather, he moved from a non-bargaining unit position to a bargaining unit position. Thus, the parties did not present evidence in the Saindon case as to the issue of whether service had to be continuous or could be interrupted. Accordingly, the Saindon case is not a precedent on that issue for the instant matter.

Arbitrators customarily examine past practice to give meaning to ambiguous contract language. There have been two prior instances involving longevity pay for Traffic Department employes with interrupted service, Heim and Woodworth. Both of those cases occurred prior to the 1983 merger of the Traffic and Sheriff's Departments bargaining units. Although a different union represented the Traffic Department prior to 1983, the longevity language in the contract then covering the Traffic Department unit was the same as the longevity language in the current contract. Both affected employes received longevity pay based on their years of service since their most recent date of hire by the County. In calculating longevity pay, neither employe received credit for previous periods of employment with the County. No grievances were filed by either employe. Accordingly, there is no evidence to show that the County has ever interpreted service for law enforcement employes in a different manner than it did in this case.

The uncontradicted testimony of the County accountant was that, in cases involving re-hired employes, the County has always calculated longevity pay based on the employe's most recent date of hire. Two of the contracts covering different bargaining units of County employes, Highway and Courthouse, define service to mean uninterrupted service for longevity pay purposes. Another contract covering Unified Services employes contains the same language as appears in the Sheriff's Department contract. Thus, it appears that the County has consistently interpreted years of service to mean uninterrupted years of service when calculating longevity pay, irrespective of whether or not the contractual longevity pay provisions defined service to mean uninterrupted service.

The Union contends that Article 21 states the parties do not have a past practice clause and, further, that the Union has never waived its right to grieve the interpretation of service for longevity pay calculations. In determining the issue herein, the undersigned is not amending, altering, or adding to the contract, but rather, he is resolving a dispute over the definition or interpretation of existing language, in accordance with the contractual grievance procedure. It is true that the Union's failure to previously grieve the issue presented in this case is not a waiver of its right to

now file such a grievance. However, the language of Article 21 does not prevent the undersigned from examining the past application of the disputed language as an aid in determining the proper interpretation of the ambiguous disputed language. Even assuming that Article 21 precludes the consideration of past practice, the undersigned would conclude that the County properly interpreted the term "years of service" in Article 12. As discussed earlier, the County's interpretation is consistent with the last sentence of Article 12, whereas the Union's interpretation is not, since it would require the date of employment to be adjusted by an earlier period of employment.

Further support of the County's interpretation of the disputed language is found in the vacation article of the contract which provides for increasing lengths of vacations based on a corresponding increase in years of service. Said language makes no mention of credit for prior periods of employment for rehired employes and the County has always computed a rehired employe's vacation from the employe's most recent date of hire. Similarly, rehired employes do not carry over any sick leave accrued during a prior period of employment, but rather, their sick leave is calculated from their most recent date of hire. Neither does the contract provide for a rehired employe to receive seniority credit for previous periods of employment, rather than having seniority based on the employe's most recent date of hire as the County has done. It would not be logical to adjust longevity pay as the Union seeks without making similar adjustments in vacation, sick leave accrual and seniority. In the absence of contract language providing for such adjustments, the County's interpretation of Article 12 is more consistent and logical than the Union's interpretation.

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

AWARD

That the County did not violate Article 12 of the collective bargaining agreement between Oconto County and the Oconto County Sheriff's Deputy's Association by not paying the grievant, Clark Longsine, longevity pursuant to the grievant's request of April 20, 1989; and, that the grievance is denied and dismissed.

Dated at Madison, Wisconsin this 21st day of November, 1989.

By Douglas V. Knudson /s/
Douglas V. Knudson, Arbitrator

c:\wp51\data\scanning\3873.wp1