BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
LA CROSSE PROFESSIONAL POLICE SUPERVISORS ASSOCIATION, WISCONSIN PROFESSIONAL POLICE ASSOCIATION	Case 280 No. 53332 MA-9312
and	
CITY OF LA CROSSE	

Appearances:

Mr. Steven J. Urso, Executive Assistant, Wisconsin Professional Police Association/ LEER Division, appearing for the Association.

Mr. James W. Geissner, Director of Personnel, City of La Crosse, appearing for the City.

ARBITRATION AWARD

La Crosse Professional Police Supervisors Association, Wisconsin Professional Police Association, herein the Association, requested the Wisconsin Employment Relations Commission to designate a member of its staff as an arbitrator to hear and to decide a dispute between the parties. The City of La Crosse, herein the City, concurred with said request and the undersigned was designated as the arbitrator. Hearing was held in La Crosse, Wisconsin, on June 25, 1996. A stenographic transcript of the hearing was not taken. The parties completed the filing of post-hearing briefs on September 16, 1996.

ISSUES:

The parties stipulated to the following issues:

> Did the City of La Crosse violate Section 8(B) of the 1994-95 collective bargaining agreement when it failed to award Sergeant Robert Bott a twenty (20) year step increase as of September 22, 1995? If so, what is the remedy?

BACKGROUND:

The grievant, Robert Bott, began working for the City on September 22, 1975, as a police cadet. In that position, Bott was a non-sworn civilian employe assigned to the Police Department. As a cadet, Bott's responsibilities included crossing guard duties, enforcing parking regulations,

clerical work, directing traffic and enforcing bicycle laws. The position of police cadet is in the general employe bargaining unit, which unit is represented by Service Employees International Union Local 180.

On November 15, 1977, Bott began working as a police officer in the City's Police Department. As such, Bott possessed the power of arrest and was included in the bargaining unit represented by the La Crosse Professional Police Officers Association. On November 16, 1984, Bott was promoted to the position of sergeant, which position is included in the bargaining unit represented by the Association. Bott received his first longevity pay increase of three percent (3%) on November 15, 1987. On November 15, 1992, Bott received an increase in his longevity pay to six percent (6%).

On October 12, 1995, Bott filed a grievance requesting that his longevity pay be increased to nine percent (9%) effective on September 22, 1995. The grievance was denied and became the basis for the instant proceeding.

During the period of time beginning on January 1, 1988 through December 31, 1995, all of which time was covered by contracts between the City and the Association, longevity pay was either initiated or increased for seven employes, including Bott in 1992, each of whom began their employment with the City in a position other than a sworn police officer. In each of those cases, the City relied on the date on which the employe began working as a sworn police officer to determine the employe's eligibility for longevity pay. The language concerning longevity pay was the same in the 1992-93 contract as the language in the 1994-95 contract. Both the 1988-89 and the 1990-91 contracts based longevity pay increases on "years of service in the department." According to the City's method of computing longevity, two employes, including Bott, are scheduled for longevity pay increases under the 1996-97 contract.

The 1994-95 contract and the 1992-93 contract between the City and the Union representing the non-supervisory police officers each contained a section on the computation of longevity pay, which section contained language identical in all relevant aspects to the language in the 1994-95 contract between the City and the Association. Both the 1988-89 and the 1990-91 contracts covering the same unit relied on the term "years of service" in determining eligibility for longevity payments. During the period of January 1, 1988 through December 31, 1995, longevity pay was either initiated or increased on nineteen occasions, excluding one increase resulting from an equal rights lawsuit, for non-supervisory police officers covered by the aforesaid contracts, each of whom began working for the City in a position other than as a sworn police officer and subsequently transferred to a position as a sworn police officer without any break in their employment with the City. In each of said nineteen cases, the City relied on the date on which the employe began working as a sworn police officer, rather than the employe's initial date of employment with the City, to determine the employe's eligibility for longevity pay.

POSITION OF THE ASSOCIATION:

The current contract between the Association and the City contains specific language on wages. Section 8 refers to a wage schedule which contains two components. The first component

is a schedule based upon total years of departmental service. The second component is a schedule based upon length of service within rank. The 1994-95 contract provided for longevity pay based on departmental service exclusively. The parties agreed to new language in the 1996-97 contract, which language expands creditable length of service beyond that which was credited under the prior contract. Longevity is no longer a one dimensional program. Expanding the language to provide credit for time in grade means that the language relative to appointment to the department includes more than just the time served as a police officer.

To remain consistent, the longevity benefit must be computed in the same manner as are sick leave and vacation benefits. All of those benefits are earned by an employe's entire length of service with the City. The longevity benefit is designed to reward service time both in the department and in grade. The new longevity language requires a new and broader interpretation of credit for service time than the City uses.

When hired as a cadet, the grievant was covered by the contract between the City and Local 180, which contract provided for longevity to be paid according to an employe's years of continuous service. As a police officer and a member of the bargaining unit of the City's non-supervisory police employes, the applicable contract provided for longevity to be paid according to an employe's years of service. The supervisor's contract bases longevity payments on the employe's date of appointment to the department. The Association believes that Bott was a member of the department when he was hired as a cadet in 1975. Although he was not a sworn officer, he did work exclusively under the direction of Police Department supervisors. At all times since his hire in 1975, Bott has been an employe of the City. The City has relied on that hire date for purposes of wage progression, sick leave accumulation and vacation entitlement. The same date should be used to compute Bott's longevity pay, since all three bargaining units provide for longevity pay based on length of service.

The fact that the City has computed longevity pay for other employes in the same manner as it seeks to apply to Bott does not prove that its interpretation is correct, but rather, only shows that the City has incorrectly applied the contract for too long a time. The absence of prior grievances over the City's method of computing longevity pay does not prevent Bott from filing a grievance over that method.

The Association requests the arbitrator to sustain the grievance.

POSITION OF THE CITY:

For at least the last ten years, the terms "in the department" and "appointment to the department" have been interpreted to mean working in a classification included in one of the two police officer bargaining units, which inclusion required that unit members be sworn police officers appointed to the department. The civilian service position of police cadet, along with all other non-sworn Police Department positions, is contained in a separate bargaining unit than the two police officer units. Further, there has been at least a ten year pattern of computing longevity based on an employe's experience in the Police Department as a sworn police officer.

Bott received his first two longevity step increases based on his date of appointment to the Police Department as a sworn officer. Such treatment was consistent with all other employes who transferred from a position not included in either police unit to a sworn police officer position. Bott did not file a grievance requesting earlier effective dates for either of those increases.

None of the Union's witnesses, including Bott, who testified at the hearing were present during any of the negotiations which resulted in contracts covering the years 1991-1997. Conversely, Pamela Ghouse, a personnel specialist for the City, was involved in the bargaining process leading to the last three contracts between the City and the Association. Ghouse testified that the phrases "in the department" and "appointment to the department" have always meant the effective date that the employe takes the oath of office and is appointed a police officer for the City.

During the period of time from January 1, 1988, through the date of the hearing in the present case, there were twenty-eight (28) occasions when employes, each of whom had begun their employment with the City in a position other than as a sworn police officer and subsequently became sworn police officers with the City, either began receiving longevity pay or were granted an increased amount of longevity pay. All of said increases were computed using the employe's date of hire as a sworn police officer, except for one case involving an Equal Rights Division award. During said period of time, no longevity payments were granted based on an employe's initial date of hire in a civilian position. The Association was aware of this longstanding practice and did not seek to change the practice during contract negotiations.

Other contractual provisions, such as sick leave and vacation, do not contain references to "appointment to the department" as a date for computing those benefits.

The current, i.e., 1996-97, contract has no bearing on this case. The City's method of computing longevity pay for Bott did not violate the 1994-95 contract and, therefore, the grievance should be denied.

RELEVANT CONTRACTUAL PROVISIONS:

1994-95 Contract:

SECTION 6
SICK LEAVE

A. Accumulation

All employees shall accumulate one (1) day of sick leave which shall be credited to them for each month of employment commencing with the first month of employment. The sick leave credits shall be capped at a maximum of 120 days.

. . .

SECTION 8
WAGE AND SALARY SCHEDULE

A. Wage Increases

. . .

Promotional salary increases shall be effective on the date of such promotion. Progressive increases due to promotion shall be effective on the anniversary of the promotion.

B. Computation of Longevity

Longevity shall be included in Salary Schedules A and B, and computed as follows:

1. At Step B, the hourly rate shall be three percent (3%) higher than Step A. Step B is effective following ten (10) years of service.

2. At Step C, the hourly rate shall be six percent (6%) higher than Step A. Step C is effective following fifteen (15) years of service.

3. At Step D, the hourly rate shall be nine percent (9%)

higher than Step A. Step D is effective following twenty (20) years of service.

4. Pay Step Advancement. All employees are entitled to pay step advances on the anniversary of their appointment to the department, after ten, fifteen and twenty years of service.

. . .

1996-97 Contract:

SECTION 8
WAGE AND SALARY SCHEDULE

A. Wage Increases

. . .

Promotional salary increases shall be effective on the date of such promotion. Progressive increases due to longevity or time in grade shall be effective on the applicable anniversary date of hire or promotion.

B. Computation of Longevity

Longevity shall be included in Salary Schedules A and B, and computed as follows:

1. At Step B, the hourly rate shall be three percent (3%) higher than Step A. Step B is effective following ten (10) years of service.

2. At Step C, the hourly rate shall be six percent (6%) higher than Step A. Step C is effective following fifteen (15) years of service.

3. At Step D, the hourly rate shall be nine percent (9%) higher than Step A. Step D is effective following twenty (20) years of service.

4. Pay Step Advancement. All employees are

> entitled to pay step advances on the anniversary of their appointment to the department, after ten, fifteen and twenty years of service.
>
> . . .

DISCUSSION:

The disputed language in Section 8 is sufficiently ambiguous so as to permit both parties to make a reasonable argument in support of their respective interpretation of the language. Since the language is not clear on its face, the arbitrator must look to other factors for the appropriate interpretation.

A primary factor relied on by arbitrators to interpret ambiguous language is how the language has been administered in the past, i.e., past practice. The data presented by the City revealed numerous occasions on which it had applied its interpretation in determining an employe's eligibility for either initial longevity payments or increased longevity payments during the time period commencing on January 1, 1988, and continuing to the time when Bott filed his grievance. During that period of time, the parties negotiated four contracts, including the 1996-97 contract. There were no examples presented to show that the City was inconsistent in its application of the longevity pay language. In fact, it appears that the City has consistently used the same interpretation in the other bargaining unit of police officers for determining eligibility for longevity pay. Thus, the City has demonstrated a consistent practice in its application of the disputed language.

The parties did modify Section 8(A) and the wage schedule in the 1996-97 contract. In accordance with Section 8(B), the wage schedules in the 1994-95 contract between the parties included three longevity pay steps beyond the base rate for each rank. The 1996-97 contract between the parties both continued the same longevity pay steps which were in the prior contract and expanded the wage schedule to include a series of wage increases for each rank based on length of service within that rank. Section 8(B) was continued without change in the 1996-97 contract. However, the parties did modify the language in Section 8(A) by adding language to specify that increases due to longevity should be effective on the applicable anniversary of the date of hire. The Association argues that such changes reflect the intent of the parties to expand the longevity program to give credit for an employe's entire employment with the City, even if some of that employment was in a position other than as a police officer. There was no evidence presented to establish that such an intent was agreed to by the City, or, that such an intent even was expressed to the City during contract negotiations.

The Association's assertion that the revised language was intended to give an employe credit for all employment with the City has some appeal, especially when applied to employes like Bott whose entire employment with the City has been in the Police Department. However, if the

parties had agreed to such a result, they could have chosen language which would more clearly express that outcome, such as "date of hire with the City." Instead, the parties used the term "appointment to the department" as the date for determining eligibility for longevity pay. Such a term implies that the parties intended a meaning different from the meaning normally given to "date of hire" and supports the City's interpretation.

During the period of time beginning on January 1, 1988 through December 31, 1995, all of which time was covered by contracts between the City and the Association, longevity pay was either initiated or increased for seven employes, including Bott in 1992, each of whom began their employment with the City in a position other than a sworn police officer. In each of those cases, the City relied on the date on which the employe began working as a sworn police officer to determine the employe's eligibility for longevity pay. The language concerning longevity pay was the same in the 1992-93 contract as the language in the 1994-95 contract. Both the 1988-89 and the 1990-91 contracts based longevity pay increases on "years of service in the department." The change in language from the 1990-91 contract to the 1992-93 contract did not change the City's method of determining longevity pay eligibility. That consistency in practice supports the City's position herein.

The 1994-95 contract and the 1992-93 contract between the City and the Union representing the non-supervisory police officers each contained a section on the computation of longevity pay which was identical in all relevant aspects to the language in the 1994-95 contract between the City and the Association. Both the 1988-89 and the 1990-91 contracts covering the same unit relied on "years of service" in determining eligibility for longevity payments. During the period of January 1, 1988 through December 31, 1995, longevity pay was either initiated or increased on nineteen occasions, excluding one increase resulting from an equal rights lawsuit, for non-supervisory police officers covered by the aforesaid contracts, each of whom began working for the City in a position other than a sworn police officer and subsequently transferred to a position as a sworn police officer without any break in their employment with the City. In each of said nineteen cases, the City relied on the date on which the employe began working as a sworn police officer to determine the employe's eligibility for longevity pay. This consistent practice also supports the City's position.

The Association also contends that longevity should be computed on the same basis as vacation is computed, i.e., total continuous service with the City. Such a contention would be more persuasive if the relevant language in the two provisions were identical. That is not the case. Section 17 uses the phrase "years of continuous service with the City" to establish the amount of time worked in order to qualify for certain levels of paid vacation. Said phrase does not appear in either Section 8(A) or Section 8(B). If the parties had agreed that longevity was to be computed on the same basis as vacation is computed, then they could have clearly expressed their agreement by using the same language as is contained in the section concerning vacations. The Association's position is not supported by the differing language of the two sections.

Similarly, the contractual provision concerning sick leave, i.e., Section 6, uses the specific term "commencing with the first month of employment." As is the case with the vacation language, the sick leave language is different from the longevity language and is not found to be controlling in interpreting the longevity language.

The undersigned concludes that the City did not violate Section 8(B) of either the 1994-95 or the 1996-97 contract when it failed to award Robert Bott a twenty year longevity step effective September 22, 1995, and, instead, used November 15, 1977, as the date for computing longevity pay eligibility.

Based on the foregoing, the undersigned enters the following

AWARD

That the City of La Crosse did not violate Section 8(B) of the 1994-95 collective bargaining agreement when it failed to award Sergeant Robert Bott a twenty (20) year step increase as of September 22, 1995; and, that the grievance is denied and dismissed.

Dated at Madison, Wisconsin, this 3rd day of January, 1997.

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

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