

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**CALUMET COUNTY LAW ENFORCEMENT EMPLOYEES UNIT
WISCONSIN PROFESSIONAL POLICE ASSOCIATION / LEER DIVISION**

and

CALUMET COUNTY

Case 120
No. 62015
MA-12126

Appearances:

Mr. Robert West, WPPA Consultant, Wisconsin Professional Police Association, 340 Coyier Lane, Madison, Wisconsin 53713, appearing on behalf of the Association.

Ms. Melody Buchinger, Corporation Counsel, Calumet County, Calumet County Courthouse, 206 Court Street, Chilton, Wisconsin 53014, appearing on behalf of the County.

ARBITRATION AWARD

The Association and the County are parties to a collective bargaining agreement which provides for final and binding arbitration. Pursuant thereto, the parties jointly requested that the Wisconsin Employment Relations Commission appoint Dennis P. McGilligan, a member of its staff, as arbitrator to resolve a dispute as set forth below. On February 13, 2003, the Commission appointed the undersigned as the arbitrator in the matter. Hearing was held on March 31, 2003, in Chilton, Wisconsin. The hearing was not transcribed and the parties completed their briefing schedule on June 18, 2003.

To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.

After considering the entire record, I issue the following decision and Award.

STIPULATED ISSUES

1. Did Calumet County violate Section 20 of the January 2002 to December 31, 2003, collective bargaining agreement when it failed to award Sergeant Hemauer a 20-year step increase as of January 1, 2002?
2. If so, what is the remedy?

DISCUSSION

During bargaining for a 2002-2003 collective bargaining agreement, longevity was a key issue between the parties. The Association initially asked for an additional twenty-five cents at the seven-year rate. The County opposed a longevity improvement in the agreement based solely on years of service in the Department.

Following mediation by a Wisconsin Employment Relations Commission mediator, the parties used face-to-face meetings, telephone calls and e-mails to reach settlement.

On August 9, 2002, County Human Resource Director Patrick W. Glynn sent the following e-mail to Association representative Henry Kjentvet:

I had a Salary and Personnel Committee this morning and I had the opportunity to discuss our negotiations thus far. After much discussion and debate, our settlement offer stands as we discussed yesterday. In addition to the stipulated items, the following is being offered as a settlement package:

- Add \$.05 per hour on each level of the shift differential
- Add \$25.00 to the uniform allowance in the first year of the contract
- Add a 20-year step to the wage scale \$.15 above the 7-year step

PS – As always, the County reserves the right to rescind this package at any time. In other words . . . take it while the getting is good.

. . .

On August 12, 2002, Human Resource Director Glynn sent the following e-mail to Association representative Kjentvet:

. . .

The 20-year step would affect the following employees: John Dederling, Gerald Page, Gary Hemauer, Roy Dietzen, Larry Schroeder, Robert Pagel, Paul Preissner, Steven Baer, Jeanne Krupp, and Diane Schmitz. Additionally, Joyce Casper would also gain from this during the life of the contract since she had 18.9 years of service effective 12/31/01. I have not costed this all the way out, but it would appear that 25% of the bargaining unit may immediately benefit from this provision. This is certainly more bodies than either of us anticipated (we guessed 5 or 6), and may make this a much more difficult provision to negotiate. However, I will leave this provision open for discussion provided we're able to make headway on the negotiations.

. . .

Based on the foregoing, particularly the August 12 e-mail, Association representative Kjenvet understood that the new 20-year step would be based on years of service in the Department.

Final agreement on a new contract was reached during a meeting between Association representative Kjenvet and Human Resource Director Glynn in Kjenvet's Madison office in late August or early September, 2002. Mark Wiegert, Association negotiator, was contacted by phone during the meeting to confirm the agreement.

Following ratification, the agreement was reduced to writing and signed by the parties. Then on September 30, 2002, Human Resource Director Glynn e-mailed Association representative Kjenvet notifying him for the first time that a problem existed relative to the method for calculating experience to qualify for the 20-year step. Specifically, Glynn stated:

We have an unforeseen problem implementing the 20 Year Step. From what we can gather the issues crop up with Steve Baer, Gary Hemauer, and John Dederling. While these employees have been with the County for more than 20 years, they have been in their respective positions 15, 6, and 5 years.

The County's past practice is that when an individual changes classifications on a "promotion" the following occurs: 1) they move to the step that provides at least a 4% increase; 2) the ensuing pay steps are earned based on the difference between the steps. This has been the process for numerous years and has not been a problem . . . until now. Since there's no contract language for this, we've historically applied the following County policy: Chapter 4, Section 1.07 "Promotion is the movement of an employee from one class to another class resulting from competition and having a greater pay range maximum. When promoted, an employee's pay shall be increased to the step which provides at

least a four percent (4%) increase in the classification, if possible, and the pay advancement will proceed from the date of the promotion as provided in the salary schedule.”

...

Article XX entitled “**WAGE SCHEDULE**” provides in Section 20.01 as follows:

20.01 Employees shall be paid according to the attached wage schedule. All staff members who are members of this bargaining unit and who are on the payroll on the date the Agreement is ratified by the County Board shall be entitled to retroactive pay.

The 2002 wage schedule states:

3% Across the Board Increase Effective January 1, 2002 1/

Classification	Step 1 Start	Step 2 6 mo.	Step 3 18 mos.	Step 4 36 mos.	Step 5 60 mos.	Step 6 84 mos.	Step 7 240 mos.
Secretary	\$11.26	\$11.79	\$12.39	\$13.00	\$13.60	\$14.20	\$14.35
Radio Operator	\$15.46	\$16.16	\$16.90	\$16.98	\$17.16	\$17.29	\$17.44
Correctional Officer	\$15.61	\$16.33	\$17.04	\$17.16	\$17.31	\$17.95	\$18.10

Classification	Step 1 Start	Step 2 6 mo.	Step 3 12 mos.	Step 4 36 mos.	Step 5 60 mos.	Step 6 84 mos.	Step 7 240 mos.
Patrol Officer	\$17.12	\$17.92	\$18.70	\$18.79	\$19.01	\$19.99	\$20.14
Police School Liaison Officer	\$17.12	\$17.92	\$18.70	\$18.79	\$19.01	\$19.99	\$20.14

...

1/ Effective January 1, 2002, a 20-year step shall be created by adding \$.15 to the 84-month step after the ATB increase has been applied to the wage schedule.

Jail Sergeant	\$17.99	\$18.79	\$19.66	\$19.75	\$19.91	\$20.87	\$21.02
Investigator	\$17.99	\$18.79	\$19.66	\$19.75	\$19.91	\$20.87	\$21.02
Special Investigator	\$17.99	\$18.79	\$19.66	\$19.75	\$19.91	\$20.87	\$21.02

The County argues that the above contract language is clear and unambiguous and is identical in all respects to prior collective bargaining agreements “except that it added a 7th step for those individuals in the position for more than 240 months (20 Years).” The County adds that currently, as in the past, employees increase “their rate of pay by years of service in the job classification, and not by time in the Department.”

However, as pointed out by the Association, “this language, on its face, does not provide the reader with the information necessary to interpret it.” It can be interpreted to mean that employees increase “their rate of pay by years of service in the job classification, and not by time in the Department” as claimed by the County. Or it can plausibly be read, as submitted by the Association, that employees advance to Step 7, (the 20-year step), by their years of service with the Department. In this regard, the Arbitrator points out that the wage schedule sets forth a grid with a start wage and then wage adjustments after probation, which become standard at Step 4 at 36 months. (Joint Exhibit No. 2). The new step (Step 7) is achieved after 240 months, which is 156 months after the previous step. *Supra*, p. 16. This is a much “different” and/or longer “step than the others.” A question arises as to whether the time necessary to qualify for the new step is calculated differently than the first six steps because of the length of time between Steps 6 and 7. Because the contract language does not clearly and expressly provide an answer to these questions, the Arbitrator must turn to bargaining history and past practice in order to interpret the true meaning of the agreement.

Bargaining history is murky. It does not provide a clear answer to what is meant by the disputed contract language. In this regard, the Arbitrator notes that both Henry Kjentvet and Mark Wiegert, former Union President and a negotiator of the instant agreement, testified that they understood that the 20-year step would be for service in the Department, not in the job. However, neither testified that this is what the parties expressly agreed to in the aforesaid meeting when the parties reached final accord on a new contract. The WPPA Tentative Agreement, a summary of the major areas of change in the 2002 – 2003 contract settlement between the County and the Association, simply refers to the “New Step: After the ATB increase, add a 20-year step \$.15 above the 84-month step.” It makes no express reference to whether the 20-years of experience is within a classification or the Department. Human

Resource Director Glynn testified that he did not “recall” any express discussion or agreement over a 20-year step based on years of experience in the Department. Certainly, the final document makes no reference to years of service in the department as a basis for moving to the 20-year step. (Joint Exhibit No. 2). The 20-year step (Step 7) is simply added to the existing

Page 6

MA-12126

6 steps. Once an employee is placed in a particular classification listed therein, the employee moves through at least the first 6 steps based on years of experience within the classification. The question of how the 20-year step works is not answered by bargaining history.

Of course, if the parties had intended that the 20-year step be based upon years of service in the Department they could have clearly so stated as they have done in other parts of the contract (Joint Exhibit No. 2, Article V, Section 5.01, Subsection a).

Past practice clearly supports the County’s position in this dispute. It is undisputed that currently, and in the past, employees increased their rate of pay by years of service in the job classification, and not by time in the Department. When an employee was promoted or reclassified, they were moved to a position that gave them a 4% increase, not to the position that would match their years of service to the Department. The ensuing pay steps are then earned based on the difference between the steps. This practice has never been challenged by the union, and has been applied a number of times with step raises and promotions that have occurred over the years.

The Association argues that at no time during bargaining did the County mention this re-classification salary replacement process. However, in an undated letter to Association representative Kjentvet from Human Resource Director Glynn prior to the bargaining Glynn told Kjentvet about this practice. The County specifically informed the Association that incumbents in secretarial positions would be placed “at the step, which provides at least a four percent (4%) increase retroactive to January 1, 2001” as a result of a job evaluation study. (County Exhibit No. 1). Progression through the steps would be based on years of service within the classification. *Id.* See also the testimony of Human Resource Director Glynn. Contrary to the Union assertion, it knew, or should have known, how bargaining unit employees progressed through the salary schedule.

In addition, the Association as the proponent of the 20-year step, had a duty to ensure that the final language of the collective bargaining agreement clearly reflected its intent that the 20-year step be based on years of service in the Department. This is particularly true where, as here, the first six steps in the wage schedule are based on years of service within a job. As noted above, the disputed contract language does not provide express support for the Association’s position.

The Association also argues that the length of time required to attain this step is far and away greater than any other step and that makes it “unique.” The Arbitrator agrees that it is

“unique” to wait such a long time for this step improvement. However, that alone does not establish that the 20-year step is based on years of service in the Department.

Page 7
MA-12126

The Association notes that after the collective bargaining agreement was signed the County decided that the information it provided was wrong as to who would be covered by the 20-year step. The Association is correct in pointing out that a unilateral mistake by one party does not provide a sufficient basis for contract reformation. Arbitrators will grant relief only in case of *mutual* mistake. Elkouri and Elkouri, *How Arbitration Works*, (BNA, 5th Ed., 1997), p. 572. There is no mutual mistake in the instant case. As far as the arbitrator can tell, the agreement as written best reflects the intent of the parties. “Parties are held to the contracts that they sign.” VILLAGE OF GREENDALE, Case 66, No. 57540, MA-10669, p. 19 (Mawhinney, 1/2000). “An arbitrator will not set aside the terms of an agreement simply because, at the time of the signing of the agreement, one of the parties failed to realize the full ramifications of the provision signed.” Supra, p. 20.

The Association maintains if the County had raised its after-bargaining concern before bargaining was concluded, no agreement would have been reached. That certainly was the testimony of Mark Wiegert. However, it is not clear that the Association took this position during bargaining. A new 20-year step, even based on seniority within a classification, was an improvement over the existing contract. The new step, combined with other tentative agreements reached during bargaining, provided for a number of improvements over the term of the successor agreement. (Joint Exhibit No. 8).

Finally, the Association argues that it relied upon information provided by the County as to who would be covered by the 20-year step in reaching an agreement on the new step and a new contract. In particular, on August 9, 2002, the County offered to add “a 20-year step to the wage scale \$.15 above the 7-year step.” (Joint Exhibit No. 6). However, the County did not indicate in this e-mail whether the 20-year step was based on years of experience in the Department or in the position. Id. The County next e-mails the Association on August 12, 2002, and lists all the individuals who would be affected by this new 20-year step. Id. The County lists several individuals including the Grievant who did not have 20 years service in their position but had 20 years in the bargaining unit. Id. Association representative Kjenvet concluded, therefore, that the new step was based on years of service with the Department. That was the understanding that the Association carried into the final meeting in Madison where agreement on the entire contract was reached. (Testimony of Kjenvet and Association negotiator Wiegert). The County did not provide any different information until after the agreement was signed. It then for the first time informed the Association that those individuals (including the Grievant) were not eligible for the 20-year step because while “these employees have been with the County for more than 20 years, they have been in their respective positions 15, 6, and 5 years.” (Joint Exhibit No. 7)

The County concedes that the August 12th e-mail to the Association was “confusing.” It is more than confusing. It contains information that the Association could reasonably rely on as to the meaning of the 20-year step. The Association relied on this faulty information to its

Page 8
MA-12126

detriment when it ratified and signed the agreement. Detrimental reliance may serve as a substitute for consideration and thus make a promise enforceable as a contract. *Black's Law Dictionary*, 7th Edition, Bryan A. Garner Editor in Chief, West Group, p. 1293 (1999). Given the Association's acceptance of the settlement agreement based, in part, on its detrimental reliance as to who would be covered by the new 20-year step, the County is in violation of the wage provision, Article XX and the attached wage schedule, when it does not pay those employees at the 20-year step. BARRON COUNTY, Case 128, No. 55030, MA-9867 (Greco, 7/97).

Based on all of the above, I find that the answer to the stipulated issue is YES, in part, and NO, in part. The County did not violate Section 20 of the collective bargaining agreement when it interpreted the 20-year step based on years of experience in the position, instead of in the bargaining unit. However, the County did violate said provision when it failed to honor its commitment to give the Grievant, and others similarly situated, a 20-year step as expressed in its e-mail of August 12. Therefore, I am sustaining that part of the grievance. (Joint Exhibit No. 1, last p.).

In light of all of the foregoing, it is my

AWARD

The instant grievance is sustained in part and denied in part. The County is ordered to pay the Grievant and all other bargaining unit employees listed in its August 12, 2002 e-mail to the Association the 20-year step increase effective January 1, 2002.

To resolve any questions that may arise over application of the remedy portion of my Award, I shall retain jurisdiction for at least ninety (90) days.

Dated at Madison, Wisconsin, this 7th day of August, 2003.

Dennis P. McGilligan /s/

Dennis P. McGilligan, Arbitrator

DPM/gjc
6554