

In the matter of interest arbitration
between

CITY OF MOSES LAKE

AND

TEAMSTERS UNION, LOCAL 760

INTEREST ARBITRATION OPINION AND AWARD

PERC CASE 13128-I-97-281

Appearances:

CITY OF MOSES LAKE

Joseph K. Gavinski

TEAMSTERS UNION, LOCAL 760

Kenneth J. Pedersen

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AND

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OPINION OF THE NEUTRAL CHAIRMAN

PROCEDURAL MATTERS

In accordance with RCW 41.56.450, an interest arbitration hearing involving certain uniformed personnel of the City of Moses Lake was held before an arbitration panel consisting of three persons. The City of Moses Lake appointed Jim Cherf as its designee on the Panel. Teamsters Union, Local 760, appointed Mark L. Rogstad as its designee on the Panel. Arbitrator Jack T. Cowan was designated as the Neutral Chairman of the Panel under RCW 41.56.450(1) and WAC 391-55-210(2). The hearing was held in Moses Lake, Washington, on February 9, 1998. The employer was represented by City Manager Joseph K. Gavinski. The union was represented by Kenneth J. Pedersen of the law firm of Davies, Roberts & Reid. The testimony of witnesses was taken under oath and the parties presented documentary evidence.

The parties agreed upon the submission of post-hearing briefs, and agreed to waive the statutory requirement that the interest arbitration award be issued within 30 days following the conclusion of the hearing. It was agreed that the Neutral Chairman would present a draft of his Award to the employer-appointed and union-appointed members of the Panel, and then would issue his decision after receiving their input. The Neutral Chairman received the parties' briefs on March

17, 1998. The Neutral Chairman distributed an initial draft of his Opinion and Award to the other Panel members, and met with the other Panel Members on November 9, 1998, in Ellensburg, Washington, in order to receive their input.

APPLICABLE STATUTORY PROVISIONS

RCW 41.56.465 sets forth criteria which must be considered by an arbitrator in deciding the controversy:

RCW 41.56.465 Uniformed personnel -- Interest arbitration panel-- Determinations--Factors to be considered. (1) In making its determination, the panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and, as additional standards or guidelines to aid it in reaching a decision, it shall take into consideration the following factors:

- (a) The constitutional and statutory authority of the employer;
- (b) Stipulations of the parties;
- (c) (i) For employees listed in RCW 41.56.030(7)(a) through (d), comparison of the wages, hours and conditions of employment of like personnel of like employers of similar size on the west coast of the United States;
- ...
- (d) The average consumer prices for goods and services, commonly known as the cost of living;
- (e) Changes in any of the circumstances under (a) through (d) of this subsection during the pendency of the proceedings; and
- (f) Such other factors, not confined to the factors under (a) through (e) of this subsection, that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment....

The two statutory provisions cited within RCW 41.56.465 contain the following provisions pertinent to this proceeding:

RCW 41.56.430 Uniformed personnel--Legislative declaration. The intent and purpose of this 1973 amendatory act is to recognize that there exists a public policy in the state of Washington against strikes by uniformed personnel as a

means of settling their labor disputes; that the uninterrupted and dedicated service of these classes of employees is vital to the welfare and public safety of the state of Washington; that to promote such dedicated and uninterrupted public service there should exist an effective and adequate alternative means of settling disputes.

RCW 41.56.030 Definitions. As used in this chapter:

...

(7) "Uniformed personnel" means: (a)(i) Until July 1, 1997, law enforcement officers as defined in RCW 41.26.030 employed by the governing body of any city or town with a population of seven thousand five hundred or more and law enforcement officers employed by the governing body of any county with a population of thirty-five thousand or more; (ii) beginning on July 1, 1997, law enforcement officers as defined in RCW 41.26.030 employed by the governing body of any city or town with a population of two thousand five hundred or more

According to population data compiled by the Office of Financial Management of the State of Washington, the City of Moses Lake had a population of approximately 13,330 as of April 1, 1997.

ISSUES

The union represents 21 uniformed employees in the employer's Police Department. The union and employer were parties to a collective bargaining agreement for the period of January 1, 1995 through December 31, 1996. The parties were unable to reach agreement on a new contract, despite their efforts in negotiation and the assistance of a mediator. In accordance with RCW 41.56.450, the Executive Director of the Public Employment Relations Commission certified four issues for interest arbitration, as follows:

1. Article 8 - Employer Rights
2. Article 14 - Vacation Leave
3. New Article - Longevity Pay
4. New Article - Education Incentive

Those are the only issues for determination by the interest arbitration panel in this proceeding.

COMPARABLE EMPLOYERS

In an October 1, 1996 letter to the union, Human Relations Director Robert West identified a list of 24 jurisdictions (12 each in western and eastern Washington) which, he said the employer would rely upon in developing comparative salary data for its exempt staff, professional and clerical employees. In population order, the cities listed by West were:

| <u>Jurisdiction</u> | <u>Western</u> | <u>Eastern</u> | <u>Population</u> |
|---------------------|----------------|----------------|-------------------|
| 1. Richland | | X | 36,270 |
| 2. Walla Walla | | X | 28,870 |
| 3. Bothell | X | | 25,850 |
| 4. Pullman | | X | 24,360 |
| 5. Wenatchee | | X | 24,180 |
| 6. Pasco | | X | 22,500 |
| 7. Oak Harbor | X | | 19,160 |
| 8. Marysville | X | | 16,890 |
| 9. Mukilteo | X | | 14,760 |
| MOSES LAKE | | X | 13,330 |
| 10. Ellensburg | | X | 12,900 |
| 11. Anacortes | X | | 12,820 |
| 12. Centralia | X | | 12,730 |
| 13. Kelso | X | | 11,870 |
| 14. Sunnyside | | X | 11,710 |
| 15. Tumwater | X | | 11,420 |
| 16. Enumclaw | X | | 10,170 |
| 17. Mill Creek | X | | 9,230 |
| 18. Bonney Lake | X | | 9,085 |
| 19. Issaquah | X | | 9,025 |
| 20. Cheney | | X | 8,240 |
| 21. Toppenish | | X | 7,765 |
| 22. Grandview | | X | 7,725 |
| 23. Clarkston | | X | 6,810 |
| 24. College Place | | X | 6,735 |

West stated, however, that he would rely on the 12 eastern Washington cities and Grant County (which includes the City of Moses Lake) in developing comparability data for police officers. West

further stated that he would use the same eastern Washington cities and Grant County as comparables in interest arbitration.

When interest arbitration became imminent, the union contacted West in an attempt to reduce the list of comparable jurisdictions. West responded that the employer would not agree to eliminate any of the jurisdictions which it had identified.

Acting upon West's response, the union used the same eastern Washington cities which the employer had identified and also included four western Washington cities (Anacortes, Centralia, Tumwater and Kelso) which had earlier appeared in the total list of cities provided by the employer. Relevant information for these 16 jurisdictions was researched by the union, and was provided at the hearing.

At the interest arbitration hearing, the employer offered a pared-down list of six cities as comparables. That new list included three eastern Washington cities previously listed (Cheney, Ellensburg and Wenatchee), and three western Washington cities which West had included on his original list but later refused to rely upon (Anacortes, Mukilteo and Tumwater). The employer then contended these cities were the most comparable to Moses Lake in terms of population, assessed valuation per capita, size of police department budget, and the number of officers in their police departments.

The arbitrators have selected a total of seven cities to use as comparables. They include five western Washington cities (Anacortes, Centralia, Kelso, Mukilteo and Tumwater) and two eastern Washington cities (Ellensburg and Sunnyside). Of the cities selected, four had appeared on the employer's list of comparables, and all except Mukilteo had appeared on the union's list of comparables. Population (according to the April 1, 1997 OFM data) was used as the primary means

of comparison. The populations of the selected cities are the closest to Moses Lake (excluding two Seattle suburbs neither party had cited) and range from 85% to 119% of its population.

| <u>Jurisdiction</u> | <u>Western</u> | <u>Eastern</u> | <u>Population</u> | <u>OFM Rank</u> | <u>%</u> |
|---------------------|----------------|----------------|-------------------|-----------------|------------|
| Mukilteo | X | | 15,890 | 43 | +19.2 |
| Ellensburg | | X | 13,600 | 45 | +2.0 |
| Centralia | X | | 13,480 | 46 | +1.1 |
| Anacortes | X | | 13,460 | 47 | +1.0 |
| MOSES LAKE | | X | 13,330 | 48 | --- |
| Tumwater | X | | 12,130 | 50 | -1.0 |
| Sunnyside | | X | 11,980 | 51 | -10.0 |
| Kelso | X | | 11,950 | 52 | -10.4 |

While these seven cities may not serve as an exact match with Moses Lake, they do, in the opinion of the arbitrators, offer a reasonable and usable comparison. As emphasized by the employer, it is difficult to find precise comparables. Each city police department is created and structured in a unique way. Each city has a set of factors which determine the number of officers and the composition or structure of the department. Budgetary constraints are a primary factor. Priorities of the cities can include such items as necessity, function, appearance and efficiency. Crime rate or criminal activity in the city is a strong factor of consideration. A chief's persuasiveness and modus operandi with the powers that be may also be a factor in the size and structure of a police department. While it may be possible to statistically analyze and compare cities on various standards, the reasons or rationale for the present forms of municipal structure remain in a mist. There are an extreme number of variables, of unknowns which escape detection. There is no one way to structure city administration. Personalities, dynamics of leadership and political aspects of the area are additional factors which enter into the complex mass of city organization. As a purposeful avoidance of such a labyrinth, the arbitrators chose population as the primary factor for comparison.

DISCUSSIONEMPLOYER RIGHTS

The parties' 1995-1996 collective bargaining agreement contained a management rights article which read as follows:

ARTICLE 8 - EMPLOYER RIGHTS

8.01 Except as expressly limited by a specific provision of this agreement or law, the employer hereby reserves and retains the exclusive right to take any action it deems appropriate for the efficient management of its' facilities or operations and the direction of its work force.

8.02 The employer by not exercising any right hereby reserved to it, or the exercise of any such right or function in a particular way, shall not be deemed a waiver of the right to exercise such prerogatives or rights in the same or some other way not in conflict with the terms of this agreement.

The union proposes to add language to read, "to suspend, demote, discharge, or take other disciplinary action against members for just cause".

The employer is subject to a state civil service law with regard to employees in its Police Department, and feels the proposed language is superfluous. The union emphasizes that the civil service commission is composed of persons appointed by the city manager, that the current secretary of the civil service commission is Human Resources Director Robert West, and that both the city manager and West are involved in every disciplinary decision made by the Police Department. The union further contends that the jurisdiction of the civil service commission is limited to review of suspensions, terminations and reductions in rank, so that police officers have no ability to challenge other discipline through the civil service procedure.

The addition of "just cause" language to the parties' contract would permit resolution of disputes over disciplinary matters through the grievance and arbitration procedure established in that

contract. The Legislature has permitted, and even expressed a preference for, grievance arbitration. See, RCW 41.56.122(2) and RCW 41.58.020(4).

At least five of the selected comparables (Anacortes, Centralia, Ellensburg, Kelso, and Sunnyside) have "just cause" language in their contracts. That language varies from city to city, and the Tumwater contract uses "just cause" in a sentence which also references civil service. Just cause, or its equivalent, is commonly found in collective bargaining agreements in cities throughout the state of Washington, where it serves as a preferred method for resolving disciplinary disputes.

The language proposed by the union shall be included in Article 8 of the parties' collective bargaining agreement, with one limitation. Reflecting the availability of the statutory civil service process to individual employees, an "election of remedies" clause shall be added to avoid processing the same discipline through both the civil service and arbitration forums.

VACATION LEAVE

The parties' 1995-1996 collective bargaining agreement did not contain any language providing for the reimbursement of employees for unused sick leave, or a sick leave cash out. The union proposed language, as follows:

14.10 Reimbursement of Unused Sick Leave: Unused accumulated sick leave will be paid as severance pay upon voluntary termination or a reduction in force on the following basis:

- A. One hundred percent (100%) to a maximum of four hundred eighty (480) hours after thirty (30) years of continuous service.
- B. Seventy-five percent (75%) to a maximum of four hundred eighty (480) hours after twenty (20) years of continuous service.
- C. Fifty percent (50%) to a maximum of four hundred eighty (480) hours after

- ten (10) years of continuous service.
- D. Twenty-five percent (25%) to a maximum of four hundred eighty (480) hours after five (5) years of continuous service.
- E. Ten percent (10%) for up to five (5) years of continuous service.

The proposed benefit is substantial: If the employees receive 8 hours (or one day) of sick leave accumulation per month, the 480 hour mark could be achieved in a five-year period (60 months), assuming no sick leave usage.

The union emphasizes that all comparable jurisdictions permit their police officers to accumulate sick leave at the rate of one (1) day per month of service. Some impose a cap on the number of days which can be accumulated, while others have no restriction. The union further emphasizes that this employer provides a sick leave reimbursement policy for all of its employees who are not represented by labor organizations. The employer responds that there are a variety of systems among the cities which provide sick leave cashout, which make comparisons very difficult. As examples, it cites one plan that allows days over a maximum number to be traded for time off or paid on a ratio basis; another that allows for 25% of accumulated sick leave to be paid off upon termination, but capped and limited by a dollar amount based upon a minimum number of years of service; a third plan that allows payment of 25% of accumulated sick leave upon termination of service after having a minimum of 10 years of service; and yet another that allows 25% of sick leave (up to a 30-day maximum) to be paid upon retirement or voluntary separation. The employer also points out that there is no limit on the number of sick leave days which its police officers can accumulate. In summary, the employer reminds the Panel of the statutory obligation to compare the wages, hours and conditions of employment of the commissioned police officers with the wages, hours and conditions of employment of like personnel.

The comparables chosen by the Panel show a nearly even split between cities which have some sort of sick leave payout at termination and those which do not. The fact that this employer already provides such benefits to its unrepresented employees overcomes resistance that would exist if the union's proposal were really breaking new ground in its overall workforce.

A provision for payout of 25% of unused accumulated sick leave (to a maximum accumulation of 480 hours) as severance pay upon voluntary termination or a reduction in force shall be included in Article 14 of the parties' collective bargaining agreement.

LONGEVITY PAY

There was no language in the parties' 1995-1996 collective bargaining agreement concerning longevity pay. The union proposes addition of the following language to the contract:

11 - WAGES/OUT OF CLASS PAY

...

11.04 Members of the bargaining unit shall receive longevity pay in the amount of \$11 per month multiplied by the member's total years of service commencing with the third (3rd) year of service.

Again, the proposed benefit is substantial: An employee with 10 years of service would receive \$110 per month, constituting a 3.5% increase from the base wage; an employee with 20 years of service would receive \$220 per month, constituting a 7.0% increase from the base wage.

The union states that a police officer with 20 years of service with the city receives the same pay as an employee with only one year of service under the present wage structure, and that there is no way for an employee to attain higher pay other than by promotion to higher rank. The union

contends the comparables show some cities pay longevity benefits, and emphasizes that those who do not have a higher wage scale than Moses Lake. The employer proposes no change in the current language, and argues that a clear majority of the comparables it offered do not pay longevity benefits. The employer offered evidence to show that, of the 42 commissioned police officers who have left the department over the past 25 years, only 10 left to accept employment in another law enforcement agency. The employer terms longevity pay as “loyalty pay”, and cites City of Moses Lake and IAFF local 2053, PERC Case 847-I-90-195 (1881), where Arbitrator Snow stated,

What the arbitration panel failed to receive, however, was any kind of empirical evidence detailing the benefits to the fire department from longevity pay. This is not to suggest that such benefits do not exist but only that the panel received no evidence of any benefits. The employer submitted evidence showing that, from 1975 to 1990, 17 workers have left the department. ... Only four employees went to other fire departments. The arbitration panel received no objective evidence that longevity pay would have had any significant impact on the employment status of these former employees. Nor should it be overlooked that none of the comparable jurisdictions use the percentage formula set forth in the association’s proposal.

The employer also cites City of Richland, Local 1052, PERC Case 6260-I-86-142, where Arbitrator Revelle stated,

[T]he evidence establishes that longevity pay is not a useful incentive The reasoning is well stated by the city in its brief as follows: the issue with respect to a longevity pay proposal is, according to Dr. Spurlin, the city’s expert, whether there is any “Expected relationship between longevity and the contribution that an individual would make to the organization. . . .”, . . . however, Dr. Spurlin concluded that there would be no predictable difference in job performance by a very senior fire fighter(s) compared to others who have reached a “journeyman” level. An individual with three to five years experience is as likely to be the top fire fighter as is one with twenty years’ experience.”

Arbitrator Revelle went on to say, quoting again from Dr. Spurlin, that his own research also

determined that longevity pay plans do not have a positive affect on employee morale. Additionally, the employer cites City of Olympia and Police Guild, PERC Case 4941-I-83-106, where Arbitrator deGrasse wrote,

[C]oncerning longevity, there is no substantial evidence supporting a correlation between time on the job and increased effectiveness. Therefore, I find that a premium or incentive on the basis of longevity alone is not warranted in this case.

The employer contends the union did not supply sufficient evidence concerning the benefits to the city to justify the city paying a longevity incentive.

The arbitrators align with the employer and the above-cited arbitrators on this issue. The comparables are again nearly evenly split, but there is no local practice which tips the balance toward the union on this issue. There shall be no contract language on the subject of longevity.

EDUCATION INCENTIVE

There was no language in the parties' 1995-1996 collective bargaining agreement concerning educational incentive. The union proposes addition of the following language to the contract:

ARTICLE 11 - WAGES/OUT OF CLASS PAY

...

11.03 Members of the bargaining unit who have attained an "A.A." degree shall receive a monthly wage adjustment equal to two percent (2%) of their base wage. Members of the bargaining unit who attained a "B.A." degree shall receive a monthly wage adjustment equal to four percent (4%) of their base pay.

Again, the benefit is substantial. Under the 2% and 4% benefits proposed by the union, those officers holding an AA degree would receive an additional \$62 per month, while those with a BA

would receive an additional \$124 per month. The total monthly cost to the city for those officers who currently have degrees would be \$868.

As with longevity, the union emphasizes that those police officers who have degrees are paid the same as those without degrees. The union offered testimony that a college degree is beneficial to police officers in the performance of their duties, and that there is wide-spread acceptance of the fact that police officers with degrees are more valuable to the jurisdictions they serve. The union contends that the addition of the proposed education incentives will both benefit the employer (by encouraging its employees to improve their educations), and reward officers who improve their skills through educational achievement. The employer proposes no change to the current contract language, and questions why it should pay a premium for a degree which is unrelated to the actual duties of its employees.

The evidence shows that a majority of the comparables used by the Panel (including at least Ellensburg, Centralia, Kelso, Sunnyside and Tumwater) do have educational incentive programs for their police officers. Most of those cities offer a percentage incentive, with a few offering a fixed dollar amount. Percentage amounts vary, but the 2% and 4% amounts proposed by the union here for AA and BA degrees, respectively, are fairly common. This employer already encourages educational achievement by its employees, by paying the cost of tuition for those employees who are pursuing relevant education.

The 2% and 4% educational incentives proposed by the union shall be added to the parties' collective bargaining agreement for employees who have or obtain degrees related to police science, law and justice, or a closely allied field. For purposes of implementing this benefit: (1) Those police officers currently employed by the City of Moses Lake who have degrees in any field are to be

grandfathered into the 2% and 4% educational incentive plan; and (2) the union shall be provided with written notice of the employer's decisions on the eligibility of any officer hired in the future for educational incentive benefits, and any denial of benefits shall be subject to the grievance procedure.

AWARD

The parties shall enter into a collective bargaining agreement effective January 1, 1997, containing the following provisions:

1. The "just cause" language proposed by the union, with an "election of remedies" clause as described above; and
2. A provision for payout of 25% of unused accumulated sick leave (to a maximum accumulation of 480 hours) as severance pay, as described above; and
3. The 2% and 4% educational incentives proposed by the union shall be added for employees who have or obtain degrees related to police science, law and justice, or a closely allied field, subject to the grandfather clause and new employee procedure described above.

Issued at Olympia, Washington, on the 15 day of December, 1998.



JACK T. COWAN, NEUTRAL CHAIRMAN