

THE MATTER OF ARBITRATION BETWEEN

ST. LOUIS COUNTY,)	
)	
Employer,)	
)	
and)	DENZLER STEP
)	INCREASE GRIEVANCE
)	
AFSCME COUNCIL 5,)	
)	
Union.)	BMS Case No. 11-PA-1274
)	
)	

Arbitrator:	Stephen F. Befort
Hearing Date:	October 11, 2011
Post-hearing briefs received:	November 10, 2011
Date of Decision:	November 30, 2011
APPEARANCES	
For the Union:	Ken Loeffler-Kemp
For the Employer:	Steven C. Fecker

INTRODUCTION

AFSCME Council 5 (Union), as exclusive representative, brings this grievance claiming that St. Louis County (Employer) violated the parties' collective bargaining agreement by declining to advance Jan Denzler on the Investigator salary schedule at his one-year anniversary of service. The grievance proceeded to an arbitration hearing at which the parties were afforded the opportunity to present evidence through the testimony of witnesses and the introduction of exhibits.

ISSUE

Did the Employer violate the parties' collective bargaining agreement when it failed to provide the grievant a one-step pay increase following one year of service?

RELEVANT CONTRACT LANGUAGE

ARTICLE 7 – WAGE RATES, PAY DATES

Section 3.

a. An employee, upon receiving a work performance rating of competent, shall receive an increase in pay equal to the next step in the applicable pay plan attached hereto, at the beginning of the pay period that includes the first of the month following six (6) months of service; one (1) year of service; two (2) years of service; three (3) years of service; and four (4) years of service. An employee receiving a work performance rating of competent shall be eligible to receive an increase in pay equal to the next step in the pay plan attached hereto at the beginning of the pay period that includes the first month following eight (8) years of service; twelve (12) years of service; sixteen (16) years of service; twenty (20) years of service; and twenty-four (24) years of service.

b. For the purposes of determining eligibility for annual step increases, a "year of service" for part-time employment requires one thousand nine hundred fifty (1950) hours of straight time service or one (1) calendar year since the employee's last annual step advance, whichever is longer. For the purposes of determining eligibility for longevity step increases, employees must complete a minimum of 1000 straight time hours within the payroll year in order to get credit for a year of service for the purposes of receiving longevity step increases.

Section 5. The Department head has discretion at time of hire to grant a higher step in the salary schedule, not to exceed Step VI, subject to the approval of the Employee Relations Director.

ARTICLE 26 – COMPLETE AGREEMENT, WAIVER OF BARGAINING, SAVINGS

Section 1. This written agreement represents the complete agreement between the Union and the Employer.

Section 2. The parties acknowledge that during negotiations which resulted in this Agreement, each party had the unlimited right and opportunity to make proposals with respect to any subject or matter not removed by law from the area of collective

bargaining and that the complete understandings and agreements arrived at by the parties after exercise of that right and opportunity are set forth in this Agreement.

FACTUAL BACKGROUND

The Employer hired grievant Jan Denzler for an Investigator position in the County Attorney's office late in 2009. Because of his prior work experience, the Employer appointed Denzler to a step 5 position on the Investigator pay scale rather than to an entry-level step 1 position. Denzler started work pursuant to this appointment on January 4, 2010.

After six months of service, Denzler received a work performance rating of competent and was advanced to step 6 on the investigator pay plan. Six months later, Denzler again earned a competent work performance rating, but this time the Employer declined to grant him a one-step pay increase at his one-year service anniversary. The Employer claims that step 7 on the pay plan is a longevity step which requires a minimum of eight years prior service with the County. The Union grieved this denial based upon the language of Article 7, Section 3(a) which provides for a step increase following one year of service.

The Investigators in the County Attorney's Office first obtained union representation through AFSCME in 2006. The initial collective bargaining agreement applicable to this unit was adopted in 2007. This agreement and those adopted for subsequent periods, including the current 2010-11 agreement, contained the language of Article 7 and Article 26 as quoted above. As the Union points out, the language of Article 7, Section 3(a) describes eligibility for step increases upon completing specified periods of service and does not expressly label any of these steps as being in the nature of a "longevity" step. Section 3(b), however, does describe the hourly service requirements for determining eligibility for "longevity step increases."

Assistant Employee Relations Director Melissa Honkola testified at the arbitration hearing that, prior to organizing, the County Attorney established the pay practices for the Investigator position. The pre-collective bargaining 2006 salary schedule provided for annual step increases during the first four years of employment followed by five additional “longevity” steps. The longevity steps provided for salary increases upon an employee’s reaching 8, 12, 16, 20, and 24 years of service with the County.

The Employer submitted evidence at the hearing showing that the Union, in negotiating a first contract for the Investigator’s unit in 2007, proposed the continuation of the pre-existing pay plan. Honkola, who participated in these negotiations, testified that although the resulting pay plan prepared by the Employee Relations Department did not specifically label the latter steps as being for “longevity,” the parties’ intent was to carry forward the existing plan which provided for a combination of annual and longevity steps.

Ms. Honkola also testified that the Investigator and Assistant County Attorney units negotiated their respective contracts in 2007 in tandem. The contract adopted for the Assistant County Attorney group expressly provides that “for purposes of longevity step increases, the reference to ‘years of service’ refers to total years of service with St. Louis County.” Honkola expressed the opinion in her testimony that this same understanding was implicit in the pay plan incorporated into the Investigator’s contract.

POSITIONS OF THE PARTIES

Union

The Union contends that the Employer violated the parties’ collective bargaining agreement by failing to provide grievant Jan Denzler with a one step pay increase on the anniversary of his first year of service with the County. The Union bases this contention on the

plain language of Article 7, Section 3(a) of the agreement which states that “an employee, upon receiving a work performance rating of competent, shall receive an increase in pay equal to the next step in the applicable pay plan . . . following . . . one (1) year of service.” As the Union points out, Denzler has met both the rating and service requirements for a step increase, and nothing in Section 3(a) additionally imposes a longevity requirement of eight years of service with the County. The Union finally argues that the prerequisites of the pre-collective bargaining pay plan are irrelevant to this grievance.

Employer

The Employer maintains that Article 7, Section 3 continues the pay plan that existed prior to the 2007 negotiations. Under that plan, an employee was eligible for pay increases beyond the initial four annual steps only by fulfilling certain specified longevity requirements beginning with eight years of service. The Employer asserts that the uncontroverted testimony of Assistant Employee Relations Director Honkola establishes that the parties intended to adhere to this pay structure under Article 7, Section 3 of the 2007 and subsequent contracts. In this instance, the grievant failed to meet eligibility for the first longevity step because he does not have eight years of service with the County. The Employer additionally argues that the Union’s interpretation dispensing with longevity requirements is unreasonable since it would result in spiraling inequities in pay between the grievant and other unit employees.

DISCUSSION AND OPINION

Contract Language

The plain language of the parties’ collective bargaining agreement provides the starting point in any contract interpretation dispute. In this instance, Article 7, Section 3 provides as follows:

- a. An employee, upon receiving a work performance rating of competent, shall receive an increase in pay equal to the next step in the applicable pay plan attached hereto, at the beginning of the pay period that includes the first of the month following six (6) months of service; one (1) year of service; two (2) years of service; three (3) years of service; and four (4) years of service. An employee receiving a work performance rating of competent shall be eligible to receive an increase in pay equal to the next step in the pay plan attached hereto at the beginning of the pay period that includes the first month following eight (8) years of service; twelve (12) years of service; sixteen (16) years of service; twenty (20) years of service; and twenty-four (24) years of service.
- b. For the purposes of determining eligibility for annual step increases, a “year of service” for part-time employment requires one thousand nine hundred fifty (1950) hours of straight time service or one (1) calendar year since the employee’s last annual step advance, whichever is longer. For the purposes of determining eligibility for longevity step increases, employees must complete a minimum of 1000 straight time hours within the payroll year in order to get credit for a year of service for the purposes of receiving longevity step increases.

The Union argues that Section 3(a) clearly obligates the Employer to provide a pay step increase upon the occurrence of two events: 1) the completion of one year of service; and 2) the receipt of a work performance rating of competent. In this case, it is undisputed that both of these prerequisites have been met. In addition, this provision does not expressly impose any longevity requirement above and beyond the one year of service requirement. The Union, accordingly, maintains that Denzler should have received a pay increase from step 6 to step 7 following his one year anniversary with the County on January 4, 2011.

The Union further contends that this reading of Section 3(a) is unambiguous such that resort to interpretive aids, such as bargaining history, is unnecessary. While the plain language of Section 3(a) appears to support the Union’s position, the language of Section 3(b) muddies the water. Section 3(b) sets out the criteria for determining employee eligibility for longevity increases. If, as the Union alleges, Section 3 eliminates longevity requirements for step increases, why does Section 3(b) specify the criteria for determining longevity step increases? The result is an ambiguity which makes an examination of extrinsic evidence appropriate.

Bargaining History

The Employer contends that the parties' intent in agreeing to the original version of Article 7, Section 3 in 2007 was to carry forward the pre-existing Employer pay plan. The 2006 pay plan provided for annual step increases during the first four years of employment followed by five additional "longevity" steps. The longevity steps provided for salary increases upon an employee reaching 8, 12, 16, 20, and 24 years of service with the County.

The Employer's bargaining history argument is based on the testimony of Assistant Employee Relations Director Honkola who participated in the 2007 negotiations. She testified that the Union proposed the continuation of the pre-existing pay plan during these negotiations. She testified that the parties' agreement with respect to Article 7, Section 3 was premised on the understanding that this provision would continue the existing plan which provided for a combination of annual and longevity steps.

Ms. Honkola also testified that the Investigator and Assistant County Attorney units jointly negotiated their respective 2007 contracts. The resulting Assistant County Attorney contract expressly provided that "for purposes of longevity step increases, the reference to 'years of service' refers to total years of service with St. Louis County." According to Honkola, the parties understood that the Investigator's pay plan would be applied in similar fashion.

I find that this evidence of bargaining history, which is uncontroverted, credibly establishes that the parties intended Article 7, Section 3 to continue the pre-existing Investigator pay plan. Under this plan, initial annual steps are followed by longevity steps which award pay increases only upon completing a certain number of years of service. While the Employer validly appointed Denzler at step 5 on the pay plan because of his prior experience and increased

his pay at the six-month anniversary, step 7 on the pay plan is a longevity step which requires eight years of service with the County.

The ultimate question posed in this grievance is whether an employee appointed at a higher than entry-level step is entitled to move through the pay plan timetable as if appointed at step 1 or whether that timetable should be tempered by longevity step requirements. Pursuant to the Union's position, Denzler would be entitled to receive step 7 compensation, normally reserved for those employees with eight years of service, after only two years of employment. This interpretation would further accelerate the grievant through the pay plan so that he would receive an additional step increase for each of the next three years of service. Under this interpretation, Denzler would be entitled to step 10 compensation after four years of service, even though the Employer's pay plan normally reserves this level of compensation for employees with 20 years of service. As the Employer argues, this construction of the contract would result in an anomalous multiplying pay gap between the grievant and his fellow unit employees.

In conclusion, I find that Article 7, Section 3 is ambiguous with respect to the applicability of longevity steps for employees hired above entry-level step 1 on the Investigator pay plan. Based upon the parties' bargaining history and considerations of reasonableness, I conclude that the Employer validly conditioned the grievant's movement to step 7 on the pay plan upon his completion of that step's longevity requirement.

AWARD

The grievance is denied.

Dated: November 30, 2011

Stephen F. Befort
Arbitrator