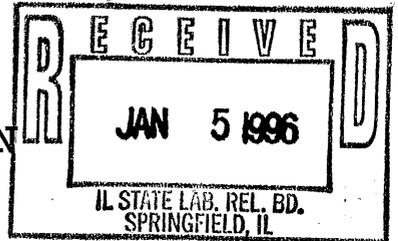


ILRB
133

INTEREST ARBITRATION DECISION



CITY OF MURPHYSBORO

and

MURPHYSBORO PROFESSIONAL FIRE
FIGHTERS ASSOCIATION, IAFF,
LOCAL 3042

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Decision: January 3, 1996

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ISLRB No. S-MA-95-164
LONGEVITY PAY
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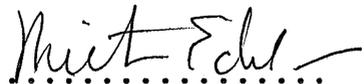
Appearances

Union	Ronald McDonald, Union Representative
City	John S. Rendleman, Attorney Feirich/Mager/Green/Ryan

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AWARD

The City's final offer is chosen.


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Milton Edelman
January 3, 1996

PRELIMINARY MATTERS

Under the authority of Section 1230.80 of the *RULES AND REGULATIONS* of the **ILLINOIS STATE LABOR RELATIONS BOARD**, the parties waive a three-person arbitration panel and agree to present their case to the neutral chairman. A hearing was held October 26, 1995. The parties then filed post-hearing briefs. After reviewing briefs and evidence the chairman, acting under authority of Section

14(f) of the ILLINOIS PUBLIC LABOR RELATIONS ACT, remanded the issue to the parties for "further collective bargaining for a period not to exceed 2 weeks." That period ran from December 4, 1995, through December 17, 1995.

In separate letters the parties told the chairman they were unable to reach agreement and returned the issue to me for decision.

FINDINGS OF FACT

A single issue--Longevity Pay--divides the parties.

Section 14(g) of the ACT authorizes the arbitration panel to decide whether an issue is economic. This one is, for longevity pay directly affects the total pay received by members of this bargaining unit. Under that same section of the ACT the panel--in this instance, the chairman--is told to "adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h)." Final offers were submitted in writing at the hearing.

Union Final Offer

Section 5.5 Longevity Pay

The Employer agrees to pay longevity pay, which shall be added to the employee's salary, as set forth in Appendix A. Longevity pay shall be paid in the amount of \$50.00 per month for each employee after 7, 10, 13, 16, 19, 22, 25, 28 years of continuous service.

Effective November 1, 1995, all ranks shall receive the longevity based on their years of service with the Fire Department.

City Final Offer

Section 5.5 Longevity Pay

The City agrees to pay longevity pay, which shall be

added to the employee's salary, as set forth in Appendix A. Longevity pay shall be increased from \$30.00 to \$50.00 per month, effective November 1, 1995, for each employee after attaining 7, 10, 13, 16, 19, 22, and 25 years of continuous service.

These offers differ in only one respect. The Union would grant longevity pay of \$50¹ to members of the unit for all years of service, including all years that precede the effective date of November 1, 1995. For example, a Firefighter with 11 years of service who received a longevity increase of \$30 after 7 years and another \$30 after 10 years would have that amount changed to \$50 for all the years that person received \$30.

Under the City's proposal the \$50 longevity pay would apply only to those years of service that follow the effective date of November 1, 1995. A Firefighter with 11 years of service on the effective date would be receiving a total of \$60 per month in longevity pay--\$30 after 7 years and another \$30 after 10 years. That person would receive an additional \$50 upon attaining 13 years of service, for a total of \$110 per month. (Under the Union's proposal that person would have each of the \$30 amounts increased to \$50, then receive another \$50 upon attaining 13 years, for a total of \$150 per month.)

Longevity pay in its present form is first found in the 1983-84 collective bargaining agreement. Before that longevity pay was part of the wage scale, increases being granted after six months, one year, and each year thereafter up to twenty years, based solely on length of service. With the 1983-84 agreement the parties adopted the \$30 per month longevity increase after completion of the same number of years of service as in their present proposals, but to be "counted back to May 1, 1982." The next three

¹Under the previous collective bargaining agreement (1993-1995) longevity pay stood at \$30 for the same number of years of service. There is no dispute concerning the increase from \$30 to \$50.

agreements, 1984-5, 1986-7, and 1988-90, drop the phrase "counted back to May 1, 1982," but retain the \$30 increase and the same number of years of service.

In a 1989 arbitration decision I ruled for the City on a grievance seeking to accomplish part of what would be achieved if the Union's final offer in this interest arbitration were adopted. If that grievance had been granted the two Firefighters who filed the grievance would have received longevity pay for all years of service prior to May 1, 1982. (No increase in the amount of longevity pay was involved.)

Binding past practice governed in that case. The City continued to use May 1, 1982, as a cutoff date for calculating longevity pay right up through the 1988-90 agreement. Even though three agreements were negotiated between 1983-4 and 1988, when the grievance was filed, and none contained the 1982 cutoff date, the practice did not change. The Union, in effect, accepted May 1, 1982, as a cutoff date.

ANALYSIS

With one exception noted later, neither party relies on the factors of Section 14(h) of the ACT, upon which I am to base my findings and award. So the record contains no information on how longevity pay is calculated for Firefighters in comparable communities or in private employment.² The City does not claim

²Comparison with comparable communities is, perhaps, the most commonly used criterion for economic issues in interest arbitration.

The Union elicits testimony on total pay--including longevity--received by one Firefighter rank in Murphysboro compared to West Frankfort, Illinois, but offers no information on the method of calculating longevity pay in West Frankfort. So we do not know whether in West Frankfort--or in any other city--Firefighters receive longevity increases for years of service prior to May 1, 1982,--or any cutoff date--nor do we know whether in West Frankfort negotiated increases in longevity pay apply to all years of service. This is the only evidence from either

inability to pay. Cost of living is not involved. In fact only one of the eight factors listed in Section 14(h) comes into play in any way.

Of the factors listed in Section 14(h) only the eighth, "other factors...normally or traditionally taken into consideration," is used by either party. That "other factor" concerns comparison with other employees of the City. In interest arbitration Police are often compared with Firefighters. In Murphysboro, however, this comparison does not help, for Police are paid under a different wage scale, one that incorporates longevity directly into their pay. Firefighters were paid under a similar arrangement before the 1983-84 agreement, but the 1983-84 agreement abandoned that plan in favor of the present system of adding longevity increases after a certain number of years of service.

But other City employees do receive longevity pay calculated in the manner proposed by the City and granted after the same number of years of service, 7, 10, 13, 16, 19, 22, 25, and 28. Employees of the Water and Sewer Department and the Street Department--both departments are covered by collective bargaining agreements--and non-union employees, receive longevity increases under such a plan.³

This internal comparison argues for adoption of the City's final offer. Internal comparisons are allowed by the eighth factor in Section 14(h), it being one of the "other factors" used in arbitration. With no comparable communities, this internal comparison must serve.

Of the nine employees in this bargaining unit, four receive no longevity pay because they have not yet served seven years. The other five receive the \$30 increases in effect under previous

party on comparable communities.

³In the course of bargaining for this agreement the negotiators approved a pay scale similar to the Police system, incorporating longevity into the wage, but it was rejected by a membership vote.

agreements, except that one person, Capt. McClarren, with 24 years of service, receives no longevity for the years he served prior to May 1, 1982. He was one of the grievants affected by the 1989 arbitration decision.

In the course of negotiations preceding this arbitration proposals were made that would have given Capt. McClarren his longevity for those early years, but they were not adopted. If the Union's final offer were chosen Capt. McClarren would get longevity for his service prior to May 1, 1982, and, in addition, all Firefighters who now receive \$30 per month would have that amount increased to \$50 for all years of service.

In arguing for adoption of its final offer the Union says a three-tiered longevity system would exist under the City's offer, which, it maintains, is manifestly unfair. Younger Firefighters would be getting the \$50 increase while the more senior would continue to receive \$30 for service prior to November 1, 1995, and Capt. McClarren would receive no longevity for his early years of service. Newly hired Firefighters will be getting \$50 while the veterans will continue to receive only \$30 for the years before November 1, 1995. This borders on age discrimination, the Union maintains.

This equity argument has appeal in Capt. McClarren's situation. The parties evidently thought his predicament inequitable enough to discuss ways of granting him longevity for those early years. But I cannot write my own version of a longevity pay article granting Capt. McClarren longevity pay for his service prior to May 1, 1982. I am required by the ACT to adopt one of the final offers unchanged. Choosing the Union's offer gives \$50 to all Firefighters--not just Capt. McClarren--for all years of service prior to November 1, 1995. The Union presents insufficient evidence to support such a choice.

Another City argument concerns the past practice article of the agreement, Article VI, PREVAILING RIGHTS. The City proposed eliminating that article. When its proposal was rejected, the City

offered an amended version more clearly defining a past practice. That too was rejected, so Article VI remains unchanged.

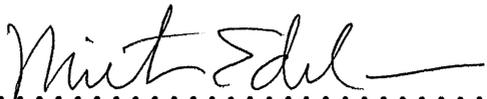
With Article VI retained, the City argues, the City's method of calculating longevity pay remains as a past practice, having been used consistently since the 1983-84 agreement. This, the City maintains, includes both the May 1, 1982, cutoff date and using the \$30 figure for all prior years.

This argument has special validity with regard to the May 1, 1982, cutoff date. As I argued in the grievance arbitration decision, even after that date was removed the parties continued to use it through three collective bargaining agreements. It became part of the agreement by mutual consent.

But the parties can voluntarily change any past practice, so they could adopt the Union's proposed method of calculating longevity pay, if both agreed to do so. But the record simply does not contain enough evidence to allow me to say that the Union's final offer is supported by the criteria listed in Section 14(h) of the ACT. I am unable, therefore, to order the adoption of the Union's final offer.

AWARD

The City's final offer is chosen.


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Milton Edelman