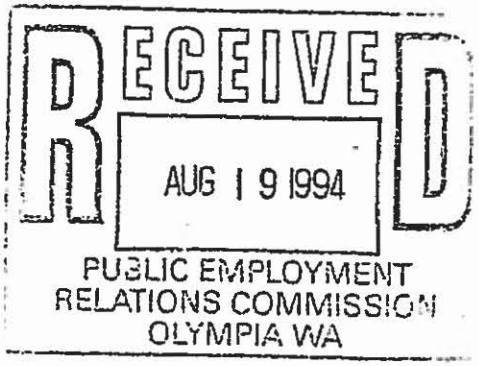
In The Matter Of The Arbitration)
)
between)
)
KITSAP COUNTY, WASHINGTON)
)
and)
)
OFFICE AND PROFESSIONAL EMPLOYEES)
INTERNATIONAL UNION, LOCAL 11,)
AFL-CIO)

PERC CASE

10841- I -93-229

INTEREST ARBITRATION



OPINION AND AWARD

OF ARBITRATOR

Eaton H. Conant
Arbitrator
August 13, 1994

NATURE OF PROCEEDINGS

This interest arbitration matter came on for hearing before Arbitrator Eaton H. Conant on June 1 and 2, 1994 at Port Orchard, Washington. The matter was scheduled pursuant to RCW 41.56.030 which was amended in the 1993 Regular Session by the Washington State Legislature to provide that county corrections officers are eligible for interest arbitration. The personnel relevant to this hearing, then, are the approximately forty-five nonsupervisory corrections officers employed by Kitsap County who are in the bargaining unit of Local 11 of OPEIU, AFL-CIO. There are ten units in the County.

Representing Local 11 was Mr. David C. Winders, Labor Relations Specialist, of the Union. Making the appearance for the County was Mr. Lawrence B. Hannah of Perkins Coie, the attorney for Kitsap County in this matter. Witnesses were sworn. The proceedings were transcribed by M. C. Trevis Court Reporting. The parties agreed to submit post-hearing briefs. The arbitrator closed the hearing on July 15, 1994 on the receipt of the briefs.

ISSUES

Prior to the hearing the parties submitted to the neutral arbitrator a list of their outstanding proposals in bargaining, as required by WAC 391-55-220. Several of these issues were resolved by the parties before the hearing took place. The remaining issues for the hearing were: (1) Salary Schedule, (2) Longevity Bonus, and (3) Health and Welfare.

At the hearing the parties discussed the question if shift differential should be an issue that is before the neutral arbitrator. The employer contended that this issue was not one appropriately before the arbitrator because it had not been identified to PERC and processed through PERC as an issue outstanding. The Union position was that the arbitrator could consider the issue within the context of the general package for compensation. It is the ruling of the arbitrator that the employer's position will prevail for this hearing. Shift differential will not be an identified issue for this matter.

PUBLIC POLICY AND STATUTORY MATTERS

The statutory basis for public employee collective bargaining in the State Of Washington is RCW 41.56.00. In his-her determinations of issues presented by the bargaining parties this law directs an arbitrator to consider a number of "standards or guidelines." Specifically RCW 41.56.460 cites these factors:

> (a) The constitutional and statutory authority of the employer;
>
> (b) Stipulations of the parties;
>
> (c) (i) . . . comparison of the wages, hours and conditions of employment of personnel involved in the proceedings with 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 foregoing circumstances during the pendency of the proceedings; and
>
> (f) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment.

Such a list, of course, provides enough range for the discretion of arbitrators so that they should hardly strangle in the stockade of comparators. Even so, arbitrators have given careful consideraton for the use of wage and benefit criteria cited in (c), (i). And in the instant hearing, the parties, as discussion will indicate, centered much of their issue presentations around these criteria of (c). Prior to appearing at this interest arbitration the parties had largely concluded negotiations for a three year agreement to cover 1994 through 1996. The agreement for this period would, in effect, be concluded by the award of the interest arbitrator. The arbitrator would note here that it is his perspective that the statutory criteria, especially in (c), dictate that an award should favor the presentation of that party that most fairly, reasonably and carefully employs the criteria in their wages and benefits presentations.

POSITIONS OF THE PARTIES

The parties position on the issues will be stated here. Arguments and evidence pertaining to these positions will be more completely examined subsequently in the opinion section of this document.

Accordingly, then, the Union seeks these arbitration results:

Wages:

Effective 1-1-94: 5% increase to base wage (retroactive).

Effective 1-1-95: 90% Seattle CPI + 1% to base wages.

Effective 1-1-96: 90% Seattle CPI + 1% to base wages.

Health and Welfare: Add dependent medical/dental/vision coverage at 100% coverage effective 6-1-94 and maintain this coverage for the life of the agreement.

Longevity Bonus: Maintain current contract language.

The positions of Kitsap County on the issues pertaining to proposed 1994 to 1996 agreement are these, Wages:

Effective 1-1-94: 2% increase to wages.

Effective 1-1-95: Wages to be adjusted by 90% of the percent change in Seattle CPI-U, as determined by BLS, based on 2nd half semi-annual index published in month of February, 1995. The increase not to be less than 2.0% nor exceed 4.0%.

Effective 1-1-96: Wages to be adjusted by 90% of the percent change in Seattle CPI-U, as determined by the same source of BLS data as for 1-1-95 adjustment, except published in February, 1996. The 1996 increase also not to be less than 2.0% nor more than 4.0%.

Longevity Bonus: Effective 1-1-94, the longivity bonus shall be amended to read as follows for all employees:

5 -9	years	1.5%
10 -14	years	2.0%
15 -19	years	2.5%
20+	years	3.0%

Health & Welfare: The County proposes no change.

DISCUSSION OF THE ARBITRATOR

First, some comments will be useful at the outset concerning how this exposition will be conducted. The hearing produced many exhibits, extensive transcripts and briefs which the arbitrator has poured over for hours. It has never been the ambition of this arbitrator to produce ninety page award documents at the expense of the parties. The result is that brevity will be the order here. For each issue area the determination of the neutral arbitrator will be cited. Concise remarks will then follow to explain the determination reached. Some more general remarks will be offered first that pertain to the over-all perception of the arbitrator of the parties' presentations.

For the wages issue area, the parties argued extensively about appropriate and relevant comparable data and sources. The Employer had much the better of the argument and the evidence. The Employer, in general, followed the comparability criteria and logic of the statute more carefully and reasonably. The data gathered were appropriate to criteria of geography, size, similar employers, and so forth. Also, the Employer followed the results of the counties selected, favorable or not, to their conclusion. This entire empirical exercise proved greatly superior to the Union's efforts in conformity with statutory criteria as well as in general sensible handling of data sets.

The Union's efforts in the same direction appear overly labored to produce a partisan, favorable result. Government units of greatly unlike size were included in data. The

geographical dispersion of counties selected was limited. Moreover, the Union sought to focus attention on a "total compensation" set of variables that included wages, longevity pay, incentives and other phenomena. The Union obviously believed that the more variables that could be entertained as total compensation, the worse the County would appear. The Union also made the effort to devise a compensation-per-hour statistic where the hourly figure was a compound of various figures for averages of hours employed. This attempt by the Union produced a very "muddy" analysis for the neutral arbitrator to perform. Even when, as Union suggested, we left out King and Pierce Counties, and when we looked only at the figures for average wages in salary structures, the picture did not improve much. The comparables base selected, and the complex, additive averages for "total compensation" left the analyst with uneasy feelings that the data were not useful for determining the more limited issue questions that were before the arbitrator. This arbitrator likes to solve complex problems. But this comment comes with the caveat that solutions are derivable only when basic data are immediately useful.

These more general comments are directed at the parties' positions on the issues of longevity bonus and health and welfare: The positions had in common that both parties sought to obtain from interest arbitration changes in practices that have long standing in the history of give-and-take in the bargaining history of the parties. In the longevity area, the

County seeks to have this transient, one-time interest neutral fundamentally change the terms of the longevity provision that has existed in the agreement. The arbitrator appreciates this signal of trust that, perhaps, the County has assigned to his discretion. But the arbitrator is less easy himself with a conclusion that he should shake up potentially years of bargaining results and impose his own particular brand of choice on the parties. Note that these remarks are made in a context where the parties ask the neutral arbitrator to have a major impact on existing agreement terms.

Nor is the Union blameless in this regard. To avoid sounding like a scold, the arbitrator will only say that the Union's request for dependent medical has features much like those of the County's above described performance: We are asked at one swoop of interest arbitration to intervene and overturn bargaining equilibria of years, and dictate our own and different result. And these are major demands, not just requests for pennies per hour. Below the arbitrator will remark less generally and more pointedly on reasons for the award determinations in these areas. Here, we thought these more general comments might be useful preliminaries.

The Wages Award

It is the determination of the arbitrator that wages for the agreement will be the wages as proposed by the County. This means that the County proposal as presented in this award document on page 5 above will be implemented: Effective 1-1-94

there will be implemented a 2% increase with increases to follow on 1-1-95 and 1-1-96 as determined by 90% of the percent change in the Seattle CPI-U, based on the BLS data as identified by County proposal.

The arbitrator wishes to clearly point out that these increases per year will surely result in annual increases that are more, and probably much more, than the 2% and CPI-U figures imply on the surface. First, it is clear from the data that the corrections employees, in addition to those scheduled January increases, will get increases exceeding 1% per year from their movements in the salary structure. While the figures are not in evidence before the arbitrator to calculate total gains precisely, it is the arbitrator's estimate that most employees in the bargaining unit would receive about 3.5% increases per year from the combination of structure movement and raises.

In the text above the arbitrator has already commented on the parties' presentations concerning wages. In some major degree the wages award has been influenced by the relative quality of these presentations. If a finder-of-facts has to begin by disassembling compounded data that has been put together by uncertain criteria, then the presenter has tripped at the start. To be sure, the Counties' data presentation was not without faults and some arbitrary conventions. But it was hardly an impediment to decision-making.

The Longevity Bonus Award

It is the determination of the arbitrator that the County proposal for revision of the Longevity schedule is rejected. The determination is that the existing schedule of the past agreement shall remain in effect.

The County remarked in its presentations that the Union should not obtain in interest arbitration, in effect, what it could not get at the bargaining table. These were words of some value for the system and for the parties. The best of the agreements are the ones that they obtain for themselves. We would only note that this value statement may require some revisions for the public sector where bargaining power is constrained. But the point relevant is that the arbitrator was not convinced by the Employer's presentation that the merits reached to require an overturn of bargained status quo by a decision of an arbitrator. The Union was able to show, in this context, that the parties had earlier modified applications of a previous longevity schedule in ways that favored the County. There was no compelling case made that efficiency and economic reasons were imperative enough to justify the County position.

Health and Welfare Award

The Union position was entirely concerned with obtaining dent 100% coverage effective 6-1-94 for medical, dental sion. At times the Union's presentation appeared to be only on obtaining medical coverage. The Union's brief,

which was unsigned and undated, does not serve to clarify the matter. Following the details of the hearing transcript and the Union's May 25, 1994 communication to the arbitrator, we assume the proposal is for medical-dental-vision coverage for dependants at 100% coverage.

In their presentations the parties sought advantage where the Union initially used data and the County presented data that omitted/included data to show that the County, since bargaining in 1992, paid employees wages in lieu of payments for dependent medical. The amount in question was identified as $ 75.00 per month with a total employer payment monthly per employee at $ 313.17 for both employee and dependants.

Inspection of the amounts that the County pays per employee for health and welfare in its numerous other units for bargaining indicates that this figure is not out-of-line for most other units, or for the average for all units. It seems clear that the Union, in this interest arbitration, may be trying to reach a break-through that would make it a pace setter amoung county units for health benefits. The Employer, in this context, cautions the arbitrator that any substantial response to the Union proposal by the arbitrator will cause considerable problems with and between the many County bargaining units where historically packages bargained may differ, but an objective has been to equitably equalize costs of bargains between units.

To be sure, granting the Union's H&W proposal would

apparently have a major cost impact. The Union presented interesting data suggesting that many employees' dependents would not utilize County medical benefits. But even with an allowance for this fact costs appear substantial. At the hearing the Union indicated that the dollar cost to the County would be approximately 9 percent of wages if the benefit were applied across the bargaining unit. This figure was offered to rebut what the Union asserted was a management estimate of 11 to 14 percent wages equivalent for the health benefit cost.

The Union's proposal obviously was not incremental. It proposed that the arbitrator make a very high dollar cost award. The Union had no proposal concerning where the funds for a 9 percent wage-equivalent increase would come from. If the Union's estimated 9 percent for benefits is added to the Union's wage proposal only for 1-1-94, 5%, then we know that the cost impact of year one alone of Union proposals would be at least 15%, including allowance for schedule increases. This interest arbitrator does not chose to reward proposals of this nature. The award statement that follows just below reflects this determination.

At the hearing the parties were concerned with the matter of how employees recently retired might be affected by the award terms. The focus was on wages and where retroactivity was a consideration. For this reason the parties stipulated that the arbitrator was to retain authority and jurisdiction

in the post-award period only for purposes of resolving any dispute the parties cannot themselves resolve when they move to consider how a recent retiree, and any retiree who may have retired in the period up to the date of the award, should be treated according to the award that the arbitrator gives in this matter.

Having studied and carefully considered the statutory criteria, the evidence and party positions, the arbitrator makes the following final determination of the issues in dispute.

AWARD

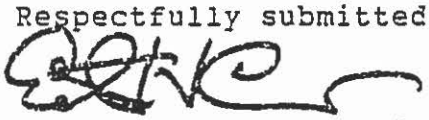
The following award terms will apply to the labor agreement for the period 1994 through 1996:

(1) The proposal of Kitsap County for wages and salary schedule for 1994 (retroactive), 1995 and 1996 will be implemented. This proposal is reproduced at page 5 of this document.

(2) The proposal of the Union for the longevity issue (no change) will be implemented in the new agreement.

(3) The Proposal of Kitsap County for Health and Welfare (no change) will be implemented for the new agreement.

Respectfully submitted,



Eaton H. Conant 8-13-94
Arbitrator