

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of the Arbitration Between: *
*
CITY OF ATTLEBORO *
*
-and- *
*
MASSACHUSETTS LABORERS *
DISTRICT COUNCIL *
*

ARB-16-5128
16-5129

Arbitrator:

Timothy Hatfield, Esq.

Appearances:

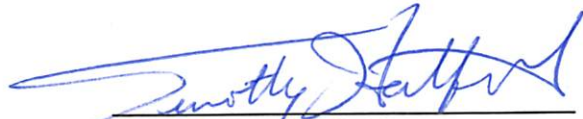
Daniel Brown, Esq. - Representing City of Attleboro

Salvatore Romano - Representing Massachusetts Laborers'
District Council

The parties received a full opportunity to present testimony, exhibits and arguments, and to examine and cross-examine witnesses at a hearing. I have considered the issues, and, having studied and weighed the evidence presented, conclude as follows:

AWARD

The City did not violate the collective bargaining agreement when it used the grievants' net creditable service dates, rather than their initial City service date (Date of Hire), to determine their entitlement to longevity payments. The grievances are denied.



Timothy Hatfield, Esq.
Arbitrator
March 31, 2017

INTRODUCTION

On March 11, 2016, the Massachusetts Laborers District Council (Union) filed a unilateral petition for Arbitration. Under the provisions of M.G.L. Chapter 23, Section 9P, the Department of Labor Relations (Department) appointed Timothy Hatfield Esq. to act as a single neutral arbitrator with the full power of the Department. The undersigned Arbitrator conducted a hearing at the Department's Boston office on October 4, 2016.

The parties filed briefs on March 20, 2017.

THE ISSUE

Did the City violate the collective bargaining agreement when it used the grievants' net creditable service dates, rather than their initial City service date (Date of Hire), to determine their entitlement to longevity payments? If so, what shall be the remedy?

RELEVANT CONTRACT LANGUAGE

The parties' Collective Bargaining Agreement (Agreement/CBA) contains the following pertinent provisions:

ARTICLE XVIII – LONGEVITY PAY (In Part)

Section 1. Effective July 1, 2012, an employee who completes the number of years indicated below of creditable service in the contributory retirement system shall be granted a longevity lump-sum payment in the amount set forth below for the number of years of such service he has completed ...

RELEVANT STATUTE

M.G.L. Chapter 32 (In Part)

Section 4: Creditable service

Section 4. (1) *Qualifications for Credit for Service.* -- (a) Any member in service shall, subject to the provisions and limitations of sections one to twenty-eight inclusive, be credited with all service rendered by him as an employee in any governmental unit after becoming a member of the system pertaining thereto; provided, that in no event shall he be credited with more than one year of creditable service for all such membership service rendered during any one calendar year. ...

(c) Creditable service in the case of any member shall include any period of his continuous absence with full regular compensation, or in the event of his absence with partial regular compensation such period or portion thereof, if any, as the board shall determine. Creditable service in the case of any member may be allowed by the board for any period of his continuous absence without regular compensation which is not in excess of one month. Any portion of any leave or period of continuous absence of any member without regular compensation which is in excess of one month shall not be counted as creditable service except as specifically otherwise provided for in this section, but no duly authorized leave or period of absence shall be deemed to be a termination of membership or service.

FACTS

The City of Attleboro (City) and the Union are parties to a successor collective bargaining agreement that was in effect at all relevant times to this arbitration. The grievants, Leslie Veiga (Veiga) and Linda Gouveia (Gouveia), are members of the bargaining unit and work in City Hall.

Veiga's original net creditable service date, as well as her date of hire with the City is December 19, 2005. From June 2010, through March 2011, she was out of work due to a serious illness and took FMLA leave. During that time she utilized her accrued time off and was compensated for two months and eighteen

days. Pursuant to its authority under M.G.L. c.32, the City's Contributory Retirement Board (Retirement Board) added another month to that time when it calculated her new net creditable service date. The Retirement Board informed her on May 15, 2012, that her new net creditable service date was May 27, 2006.

Gouveia's original net creditable service date, as well as her date of hire with the City, was October 26, 1992. Gouveia was out of work without pay from June 26, 2006 to July 2, 2007 and took FMLA leave. As a result of this absence, her net creditable service date was adjusted to August 11, 1993. No grievance was filed over this change. Gouveia was out of work on another leave of absence from August 31, 2014 until October, 2015 and took FMLA leave. The Retirement Board notified her that her new net creditable service date was August 24, 1994.

Each grievant filed for a longevity payment based on their date of hire and the City denied their requests. Each grievant filed a grievance that was denied at all steps of the grievance procedure and resulted in this consolidated arbitration hearing.

POSITIONS OF THE PARTIES

THE UNION

This dispute rests on a single issue, specifically, the Retirement Board's adjustment of the grievants' creditable service date. The Retirement Board adjusted the eligibility dates in direct relationship to the correlating days each employee was out on Family Medical Leave Act (FMLA) approved leave.

Because the City only utilizes these adjusted dates for longevity pay requests, the grievants' received full credit for their other benefits.

FMLA provisions prohibit adjusting or deducting from an employee's seniority date. The City's Employee Handbook also clearly restores all benefits to an employee when they return from FMLA leave. An employee's seniority date is not adjusted for similar benefits, i.e. accrued sick leave or accrued vacation time. Not only does adjusting dates for longevity payments not make sense, it is not authorized.

The City has erroneously adjusted the grievants' creditable service dates. If the City had not made this error, each employee would have qualified for their requested longevity payment, Veiga would have received a \$700.00 longevity payment, and Gouveia would have received a longevity payment of \$1100.00. The City's denial of both requests for longevity pay is a direct violation of the collective bargaining agreement and the provisions of the City's Employee Handbook. As such, the Union requests that the grievants be made whole for their missed longevity payments.

THE EMPLOYER

The Union's position is that longevity payments should be calculated and paid according to an employee's contractual seniority date (his/her original date of hire with the City). The plain language of the collective bargaining agreement however provides that:

an employee who completes the number of years indicated below of creditable service in the contributory retirement system shall be granted a longevity lump-sum payment in the amount set forth below for the number of years of such service he has completed ...

Clearly, net creditable service time determines the timing and amount of longevity payments. The City has always calculated and paid longevity in this manner. In fact, although the City first changed Gouveia's annual longevity payments in 2007 because of a change in her net creditable service date, no grievance was ever filed.

Both grievants raised the issue of how FMLA impacts the calculation of longevity. The Union's position is that time out of work for serious illness cannot be deducted from an employee's contractual seniority. The Union is correct in the sense that the collective bargaining agreement states that FMLA leave will not affect seniority. Of course, the issue of contractual seniority is irrelevant to the longevity provision of the collective bargaining agreement. The FMLA allows employees to leave work for up to three months per year under certain circumstances. Further, it mandates that employees are allowed to return to their same, or equivalent positions, without any reduction in benefits. In this case, both grievants were allowed to remain out of work for over three months, well beyond the mandate of the FMLA. Further, the FMLA only requires that employees be allowed to take time off without pay. Pursuant to M.G.L. c.32, uncompensated time out of work (over one month) is deducted from employees' net creditable service dates. Neither the type of leave nor the statutory authority for the leave is relevant to the M.G.L. c.32 calculations. The City treated the employees in the same manner as all other employees would be in similar circumstances. Thus, they experienced no reduction in benefits as compared to other similarly situated employees.

For all the foregoing reasons, the City requests that the arbitrator deny the grievances.

OPINION

The issue before me is:

Did the City violate the collective bargaining agreement when it used the grievants' net creditable service dates, rather than their initial City service date (Date of Hire), to determine their entitlement to longevity payments? If so, what shall be the remedy?

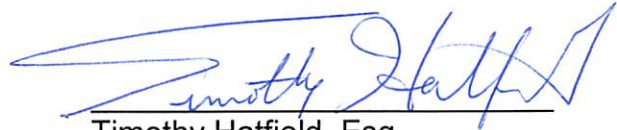
For all the reasons stated below, the City did not violate the collective bargaining agreement when it used the grievants' net creditable service dates, rather than their initial City service date (Date of Hire), to determine their entitlement to longevity payments. The grievances are denied.

A plain reading of the language in Article XVIII of the parties' collective bargaining agreement clearly and unequivocally states that "creditable service in the contributory retirement system" is the trigger for any longevity payments to which bargaining unit members are entitled. If the parties had wanted to use another trigger, such as date of hire by the City, they could have negotiated such language. Here, however, the parties clearly articulated their intent to use the date provided by the Retirement Board as the proper date to base all longevity payments. As such, the Union, as a party to the negotiations, is estopped from claiming that any other date, including the grievants' date of hire, is the proper date to base any potential longevity payments on.

Finally, the Union argues that the Retirement Board improperly calculated the grievants' credible service dates. Based on the stipulated issue agreed to by the parties in this matter, the calculation of the net credible service date for the grievants is not before me. The issue before me asks whether it was improper for the City to use the net creditable service date provided by the Retirement Board, not whether the Retirement Board improperly calculated the grievants' net creditable service dates because they were on a FMLA leave. As such, I decline to rule on this portion of the Union's argument.

AWARD

The City did not violate the collective bargaining agreement when it used the grievants' net creditable service dates, rather than their initial City service date (Date of Hire), to determine their entitlement to longevity payments. The grievances are denied.



Timothy Hatfield, Esq.

Arbitrator

March 31, 2017