

Arbitration

The State of Connecticut

And

SEBAC

Gr: Early Retirement Incentive

Cases: S-04 and S-05

Award: August 22, 2012

Arbitrator: Roberta Golick, Esq.

Hearing: August 9, 2012

Appearances: For the State
Linda Yelmini, Director
Office of Labor Relations

For the Union
Dan Livingston, Esq.
Counsel and Chief Negotiator
SEBAC

Issues

This arbitration proceeding addresses two grievances – one filed by SEBAC on behalf of the Coalition, and one filed by the Office of Labor Relations on behalf of the State. SEBAC’s grievance contends:

That since on or about May 15, 2009, the State has violated the agreement by using an incorrect interpretation of “actual state service” as applied to the Retirement Incentive Program of 2009. This has resulted in denying eligible employees the opportunity to take advantage of the Program.

The State’s grievance contends that:

Following the execution of the 2009 SEBAC Agreement, the parties became aware of an incorrect interpretation of the statute and Pension Agreement by the Retirement Division. For many years, the Division has allowed individuals who did not have twenty years of hazardous

duty service to retire and immediately begin receiving their retirement benefits under the State Employees Retirement System. The Division has permitted [individuals] to retire with less than twenty years of hazardous duty service by adding to the individual's service accrued leave and allowing the individual to retire and begin their pension at the same time as the leave has been credited...

The parties agree that the issues are:

- I. What shall be the disposition of SEBAC's grievance?
- II. What shall be the disposition of the State's grievance?

The parties acknowledged at arbitration that the grievances are independent of each other. That is, the outcome of one grievance does not bear upon the outcome of the other.

Background

There are no factual disputes surrounding either grievance, and the parties have entered into the following stipulation:

1. In 2009, the parties agreed to a revised collective bargaining agreement covering Pension and Healthcare, known as SEBAC 2009. That agreement included a time-limited Retirement Incentive program.
2. That program was available to certain Hazardous Duty Employees who met the following criteria:
 - All full-time employees who are members of SERS, who are eligible for hazardous duty retirement, regardless of age, and:
 - a) Who are on active status on the payroll on the day prior to retirement; and
 - b) Who and [sic] have a minimum of twenty (20) years of actual hazardous duty state service in the SERS; and
 - c) Who retire directly from employment and begin immediately receiving normal retirement benefits; and
 - d) Whose effective date of retirement is June 1, but no later than July 1, 2009, except as provided in B below.
3. In the discussions that led to the 2009 Agreement, the parties agreed that "actual hazardous duty service in SERS" would mean whatever it had meant in previous Early Retirement Incentives.

4. The underlying pension agreement uses the following language to describe the 20 year period for eligibility for hazardous duty retirement:
 - a. For Tier 1: “[W]ho has completed at least twenty years of hazardous duty service for the state”
 - b. For later Tiers: “[W]ho has completed twenty years of credited service while a hazardous duty member”
5. For as long as the parties have now been able to determine, the Retirement Division has interpreted the language in paragraph 4 to allow hazardous duty employees:
 - a. Count accruals towards the 20 year requirement, so that an employee can retire with fewer than 20 calendar years of hazardous duty service if the addition of the accruals results in a total of 20 or more years; and
 - b. Allowed employees to receive payouts of the accruals necessary to total 20 years of service simultaneously with the receipt of pension payments under the hazardous duty plan.
6. This interpretation was not discussed with the parties nor agreed to by them. While some union members and managers in the affected departments may have been aware of this interpretation, the Chief Negotiators for the parties were not aware of this interpretation in 2009, and were unaware that it had been effectuated either in general, or in previous Early Retirements.
7. In the 2009 Early Retirement Incentive, the State learned about the Retirement Division’s interpretation of the 20 year requirement. The State took the position that accrued time did not count towards the 20 year eligibility requirement and denied employees who would have met the requirement if their accruals were included the opportunity to retire under the incentive program.
8. SEBAC has grieved the denial of these employees of their right to participate in the RIP. The Coalition maintains that the Retirement Division’s interpretation is long established and has been effectively adopted and incorporated into the collective bargaining agreement. Further SEBAC maintains that the parties’ agreement during the discussions that led to the SEBAC 2009 Agreement that the Retirement Incentive’s eligibility requirements would be handled as they had been during previous incentives is binding on both parties with respect to interpreting the language of the 2009 program.
9. The State has denied the grievance, and further filed its own grievance seeking to end the Retirement Division’s practice with respect to normal hazardous duty retirements. The State maintains that the 20 year requirement’s language is clear, and that it predominates over the representations made during the 2009 discussions, and over any prior history of interpretations by the Retirement Division.
10. The parties agree that if SEBAC’s grievance is granted, affected employees who had 20 or more years of service as of June 30, 2009 as previously interpreted by the Retirement Division but were unable to take advantage of the RIP due to the State’s contrary position shall be made whole. The pensions of such employees shall be computed with the addition of 3 years of service, provided however, that any such affected employee not yet retired at the time of the Arbitrator’s award must do so by submitting their retirement application no later than October

31, 2012 and retiring no later than November 1, 2012. SEBAC will provide the State a list of such employees no later than October 16, 2012.

11. The parties agree that if the State's grievance is granted, any hazardous duty retirement member who submits a retirement application on or after November 1, 2012, who chooses to rely upon accrued time in order to reach the required twenty years of service shall not receive a pension benefit during the period covered by such accrued time.

Discussion

I. SEBAC Grievance

Key to SEBAC's grievance is the fact that in the discussions leading to the Retirement Incentive Program [RIP] contained in the SEBAC 2009 Agreement, the parties expressly agreed that the phrase "actual hazardous duty service in SERS" [State Employees Retirement System] would mean whatever it had meant in previous Early Retirement Incentive Programs [ERIPs]. Though the State and SEBAC *now* disagree about how the phrase *ought to be interpreted*, they do not disagree about how the phrase was interpreted and applied in previous ERIPs. As the State has acknowledged, the practice of the Retirement Division has been consistent (whether in the context of Early Retirement Incentives or otherwise): Hazardous duty employees have been able to count accruals towards their 20-year "actual hazardous duty service" requirement, so that employees could retire with fewer than 20 calendar years of hazardous duty service if the addition of the accruals resulted in a total of 20 or more years, and such employees were allowed to receive payouts of the accruals necessary to total 20 years of service *simultaneously* with the receipt of pension payments under the hazardous duty plan.

In agreeing during SEBAC 2009 negotiations that the phrase "actual hazardous duty service in SERS" would mean whatever it had meant in previous ERIPs, the parties committed themselves to a methodology that would mirror the methodology used before. Where there is no dispute that the methodology utilized in previous ERIPs is the precise methodology that SEBAC contends should have governed the 2009 ERIP, its grievance must be granted.

II. State's Grievance

The State bases its grievance on the language of the underlying pension agreement. That agreement provides that eligibility for hazardous duty retirement requires that an employee:

For Tier 1: Complete at least twenty years of hazardous duty service for the State;

For later Tiers: Complete twenty years of credited service while a hazardous duty member.

The State argues that the language is clear on its face and that it cannot mean anything other than twenty "completed" years of service; that the Retirement Division's practice is inconsistent with the clear language; and that going forward, the clear language of the pension agreement must trump any inconsistent practice previously applied.

I agree with the State that the language requiring that employees *complete* twenty years of hazardous duty service to be eligible for retirement is clear on its face. Though SEBAC argues that the language is arguably ambiguous and that prior practice must give it meaning, no actual ambiguity is discernible, so prior practice becomes immaterial.

One might easily ask: How can it be that SEBAC and the State can each succeed in its own grievance? Doesn't past practice control both? The answer is no. In the SEBAC grievance, the parties specifically and unequivocally agreed that prior practice would control the interpretation given to "actual" service. Therefore, in the SEBAC grievance, prior practice must prevail over any arguably contrary interpretation one might advance of "actual" service.

The State grievance, in contrast, asks whether the phrase "completed" service can mean anything other than what the words mean on their face. Clear language means what it says and does not change its

meaning by virtue of some incongruent way of doing things.¹ Since the words now in dispute must be read to require completed service (as opposed to service plus accrued benefits), the past practice does *not* control going forward. The only requirement is that the State provide proper notice so as not to disadvantage affected employees who relied on the practice when selecting their retirement dates. Through their stipulations, the parties have agreed to what they regard as appropriate remedies for each alleged violation. I agree that the remedies are appropriate, and I so order them.

Award

- I. SEBAC's grievance is granted. The remedy is set forth in Paragraph 10 of the parties' stipulation above. It is so ordered.

- II. The State's grievance is granted. The remedy is set forth in Paragraph 11 of the parties' stipulation above. It is so ordered.



Roberta Golick, Esq.
Arbitrator

Date: August 22, 2012

¹ The Chief Negotiators for both parties were not aware of the incongruent interpretation/application of the language, and therefore cannot be said to have intended to modify the clear pension agreement language.