

SNYDER AND HOAG, LLC CLIENT NEWSLETTER

2011 – SECOND EDITION

Clients: it's been a slow few months, so there is not much to report. Probably a sign of the times.

OREGON

GREIVANCE DECISION

ARBTRATOR LANKFORD REVERSES PERMANENT DEMOTION OF PAROLE AND PROBATION OFFICER

The parole and probation officer had been a 22 year employee without any discipline. He became diagnosed with diabetes about 20 years ago. He had to inject himself with insulin as needed, and in 2009 he was experiencing substantial pain and getting ready to go in for an operation. About this point in time, he was arrested for DUII, property hit and run, and refusal take a breath test. His license was permanently suspended for a year. The agency permanently demoted him from his classification to a lower paying classification.

Arbitrator Lankford reversed the demotion because it became clear in the arbitration that the reason the parole and probation officer was demoted was when he was arrested he showed the police officers his badge and in the “eyes of the agency” attempted to use his position of authority to get out of being arrested.

Arbitrator Lankford found the problem with that being the reason for the demotion is that the agency charging document never mentioned the abuse of authority, but only mentioned driving under the influence and failure to take a breathalyzer test. Arbitrator Lankford declared it was outside of his authority to consider charges that were not listed in the charging document. For that reason, he stated that the demotion would only run for the year, that the employee had lost his license and there after reinstated him.

Editorial Comment: Most arbitrators would follow this logic. However, in the case tried by this firm a number of years ago an arbitrator did consider charges outside the charging instrument in spite of testimony from a supervisor that it was because of those facts that an employee was as severely disciplined as he was. This reinforces the maximum of know your arbitrator.

EMPLOYMENT RELATIONS DECISION

ERB RULES AFSCME WAIVED ITS RIGHT TO NEGOTIATE OVER A DRUG FREE WORK PLACE POLICY

The case of *AFSCME v. Lane County* (UP-38-09 2011) arose when the County implemented a drug free work place policy a week after the parties had negotiated a Collective Bargaining Agreement.

Under the facts of the case the Board found that the matter had been raised at negotiations and had been set aside. The Board accepted the County's version of events that had occurred during bargaining. Here the Union alleged that the County in bad faith withdrew its proposal for its drug free work place policy during regular bargaining, waited until the contract was signed, and then utilized the expedited mid contract bargaining procedure "knowing the Union would be disadvantaged by this type of bargaining." The ERB rejected the Union's contention based on an email from the County in regards to a discipline case indicating that the County wanted to negotiate the policy after the contract was resolved. Given this fact, the ERB found that the Union had waived its right to complain about the County using the expedited bargaining process.

WASHINGTON

VANCOUVER POLICE COMMAND UNIT "AWARDED" WAGE FREEZE FOR 2.5 YEARS

An interest arbitrator recently imposed a 2.5 year wage freeze on a management level police bargaining unit in Vancouver, Washington despite longstanding contract language that would have required a retroactive 5.1% wage increase and despite her conclusion that "the City's finances are in good shape."

OPEIU Local 11 represents 5 Commanders employed by the Vancouver Police Department (prior to this year it also represented 10 Lieutenants). For the past 20 years Local 11's contract included an "anti-compression" clause setting the spread between Sergeants and Lieutenants (22.4%) and Lieutenants and Commanders at (10%).

As a result of a 5.1% wage increase in 2009 for Sergeants represented by the Vancouver Police Officers Guild, Local 11 argued that its members' wages should be increased 5.1% pursuant to the "anti-compression" clause. The City argued that a wage freeze was appropriate given its "ongoing need to navigate the financial crisis."

Arbitrator Jane Wilkinson observed “The country appears to be climbing slowly out of the recession, but state and local government remain very strapped . . . Unemployment in the Portland/Vancouver area remains stubbornly high . . . The City’s financial health, while sound, is the result of the aggressive cutting of expenditures.” She concluded that the City’s wage freeze position was reasonable: “The City has had to carefully manage its expenses in order to achieve a balanced budget, and it should not be penalized for achieving not only a balanced budget, but a reasonable level of reserves.” She awarded a wage freeze for the first 2.5 years of the contract with a 5.1% increase July 1, 2011.

The City also proposed to increase employee insurance premium contributions from \$61 to 15%. The highest contribution by any other City bargaining unit is 10%. In a July 2010 City Health Care Summit the City declared a “target” of 10% contributions by all employees. Arbitrator Wilkinson’s award requires that employees contribute 10% of their health insurance premiums.

Editorial Comment: The City is in good shape financially, but a wage freeze is appropriate???