

**FEDERAL MEDIATION & CONCILIATION SERVICE
VOLUNTARY LABOR ARBITRATION TRIBUNAL**

**In the Matter of Arbitration
Between**

[REDACTED]

College

FMCS Case No. 220627-07154
Issue: Contract Interpretation

-and-

[REDACTED]

Union

OPINION AND AWARD

Arbitrator: Bradley A. Areheart
Date of Award: December 21, 2022

Appearances for the Parties:

[REDACTED]

[REDACTED]

I. PROCEDURAL HISTORY

This matter arises under a labor agreement entered into between [REDACTED] (“the College”) and [REDACTED] (“the Union”) covering the period October 12, 2020 through October 11, 2023 (“the CBA” or

“labor agreement”). Joint Exhibit 1¹. Grievance 1554 was submitted to the College in writing on April 19, 2022 and thereafter processed in accordance with Article 6 of the labor agreement. Following unsuccessful attempts at resolving the grievance it was referred to arbitration. Using the services of the Federal Mediation and Conciliation Service, Bradley A. Areheart was appointed as Arbitrator.

An evidentiary hearing was held by Zoom on October 24, 2022, at which time the parties had full opportunity for the presentation of evidence, examination and cross-examination of witnesses, and oral argument. A recording of the hearing was made for the Arbitrator’s sole use. The parties filed briefs by November 23, 2022, at which time the record closed.

II. RELEVANT CONTRACT PROVISIONS

Article 8 Compensation

B. Longevity Pay

All bargaining unit members shall be eligible for a longevity pay increases [sic] beginning on the first day of the pay period of eligibility as set forth below.

7 years of service:	0.8% increase on base wage rate
10 years of service:	1.6% increase on base wage rate
15 years of service:	2% increase on base wage rate
20 years of service:	3% increase on base wage rate
25 years of service:	4% increase on base wage rate.

[***]

D. Minimum and Hiring Rates

Throughout the course of the agreement, the minimum base rate for the unit classifications shall be as follows:

	<u>Effective July 1, 2021</u>
HVAC Tech	\$25.93/hr
Facilities Tech 1	\$25.17/hr
Facilities Tech 2	\$23.04/h

Joint Exhibit 1, p. 10.

¹ Hereinafter, references to the Joint Exhibit shall be abbreviated as “Jt. Ex.”; and references to Union Exhibits shall be abbreviated as “Un. Ex.”.

Article 26 Entirety Clause

This written agreement as well as any Memorandum of Understanding signed by both parties constitute the entire agreement between the College and the Union and supersedes and replaces any and all agreements and/or past practices, whether written or oral, or express or implied, between and concerning the College and the Union. [***]

Jt. Ex. 1, p. 30.

III. ISSUE

Does Section B of Article 8 (the “Longevity Pay Clause”) of the current CBA apply retroactively to service anniversaries that occurred under prior CBAs?

IV. SUMMARY OF THE EVIDENCE

What follows is a summary of undisputed facts. Where relevant evidence regarding pertinent facts conflicts, the testimonies and/or documentation is summarized. Other facts and evidence may be noted below to the extent knowledge of either is necessary to understand the Arbitrator’s decision.

The Union here represents two separate bargaining units at the College: Environmental (Unit 1), and Engineering, Maintenance, & Grounds (Unit 2). This arbitration addresses the Engineering, Maintenance, & Grounds bargaining unit. In the parties’ current labor agreement, Article 8, Section B (excerpted above) provides for longevity pay increases to the base wage rates of the employees after set lengths of service: 7 yrs./0.8%; 10 yrs./1.6%; 15 yrs./2.0%; 20 yrs./3.0%; and 25 yrs./4.0%.

The prior labor agreement (dated October 12, 2018 - October 11, 2020), Un. Ex. 2, had its own provision for longevity pay. Under it, longevity pay was provided using fixed dollar amounts, which were explicitly said to be “the total amounts applicable to each service level and not cumulative.” Figure 1.

Figure 1.

B. Longevity Pay

All I.U.O.E. bargaining unit members shall be eligible for a longevity pay increment beginning on the first day of the pay period within which the employee completes seven years of total service with the College. All eligible bargaining unit members shall receive an hourly longevity increment, applied to base pay, according to the table below. Such increments are the total amounts applicable to each service level and are not cumulative.

7 years of service - \$.1875 per hour
10 years of service - \$.375 per hour
15 years of service - \$.50 per hour
20 years of service - \$.75 per hour
25 years of service - \$.90 per hour

As a part of negotiations for a successor labor agreement, the two parties exchanged written contract proposals. With regards to longevity pay, the College proposed on August 10, 2021 maintaining the prior contract language, including the provision that longevity pay would not be cumulative. Un. Ex. 5. That same day, the Union countered with maintaining the previous contract language (including the non-cumulative language), but changing the fixed dollar amounts for each defined level of service to percentages (as set out below). Figure 2.

Figure 2.

B. Longevity Pay

All I.U.O.E. bargaining unit members shall be eligible for a longevity pay increment beginning on the first day of the pay period within which the employee completes seven years of total service with the College. All eligible bargaining unit members shall receive an hourly longevity increment, applied to base pay, according to the table below. Such increments are the total amounts applicable to each service level and are not cumulative.

7 years of service - .8% ~~\$.1875 per hour~~
10 years of service - 1.6% ~~\$.375 per hour~~
15 years of service - 2% ~~\$.50 per hour~~
20 years of service - 3% ~~\$.75 per hour~~
25 years of service - 4% ~~\$.90 per hour~~

On September 1, 2021, the College offered a written counterproposal. Un. Ex. 7. For longevity pay, the College adopted the Union's proposal to change the fixed dollar amounts for each defined level of service to specified percentages. However, the College also proposed striking the sentence which provided that the increases were not cumulative (as set out below). Figure 3.

Figure 3.

B. Longevity Pay

All I.U.O.E. bargaining unit members shall be eligible for a longevity pay increment beginning on the first day of the pay period within which the employee completes seven years of total service with the College. All eligible bargaining unit members shall receive an hourly longevity increment, applied to base pay, according to the table below. ~~Such increments are the total amounts applicable to each service level and are not cumulative.~~

7 years of service - .8% increase on base wage rate ~~\$.1875 per hour~~
10 years of service - 1.6% increase on base wage rate ~~\$.375 per hour~~
15 years of service - 2% on base wage rate ~~\$.50 per hour~~
20 years of service - 3% on base wage rate ~~\$.75 per hour~~
25 years of service - 4% of base wage rate ~~\$.90 per hour~~

At this point, there is somewhat of a disagreement about the negotiations which ensued. The Union's chief spokesman was [REDACTED]. The College's chief negotiator was [REDACTED], who at that time was Vice President of Administration. Un. Br. at 4.² According to the College, she has since retired. Co. Br. at 5. [REDACTED] was typically responsible for preparing proposals for negotiation. According to the Union, during a Zoom call on September 1, 2021 (the same day of the College's above counterproposal), [REDACTED] explained that the basis for striking the "not cumulative" language was that "bargaining unit members had not received significant wage increases over the past years, and that although the College was not in a position to offer wage increases for any but one job classification [Facilities Tech 2], it could offer increased earnings by making longevity payments cumulative." Un. Br. at 4.³ The Union further contends that the parties discussed the specific example of [REDACTED], the longest-serving bargaining unit member. [REDACTED] was set to reach 25 years of service under the new labor agreement. According to [REDACTED] testimony, [REDACTED] explained that under the College's proposal [REDACTED] would receive "a cumulative increase of 7.4% for his already-completed years of service [7, 10, 15, and 20 year increases applied cumulatively], and an additional 4% upon reaching his 25 years of service." Un. Br. at 4.

The College does not deny that these conversations occurred. According to CFO/Vice President [REDACTED] (another member of the negotiation team), he did not "recall" the discussion of [REDACTED] or anything from the negotiations specifically.

One week after these negotiations, the Union offered a counterproposal (dated September 8, 2021) which would clearly reflect that the payments were cumulative. That counterproposal is set out in Figure 4.

Figure 4.

B. Longevity Pay

All I.U.O.E. bargaining unit members shall be eligible for a longevity pay increment beginning on the first day of the pay period within which the employee completes seven years of total service with the College. All eligible bargaining unit members shall receive an hourly longevity increment, applied to base pay, according to the table below. Such increments are ~~the total amounts applicable to each service level and are not~~ cumulative.

7 years of service - .8% increase on base wage rate ~~\$.1875 per hour~~
10 years of service - 1.6% increase on base wage rate ~~\$.375 per hour~~
15 years of service - 2% on base wage rate ~~\$.50 per hour~~
20 years of service - 3% on base wage rate ~~\$.75 per hour~~
25 years of service - 4% of base wage rate ~~\$.90 per hour~~

² Hereinafter, references to the Un. Br. shall be abbreviated as "Un. Br."; and references to the College Brief shall be abbreviated as "Co. Ex."

³ [REDACTED] testified as follows: "[REDACTED] had explained that they were not proposing any wage increases for the HVAC Tech 1 and 2 and so to help the guys out who had been there, especially [REDACTED] who was approaching 25 years, that they would now be, you would add, each year they would stack, and you would cumulate them according to your [inaudible.]"

Sometime in the months that followed, factfinding was slated for January 5, 2022 to address some “remaining open issues.” Un. Br. at 6. On December 30, 2021, Union Counsel emailed College Counsel noting places where the parties appeared to be in agreement and suggesting that they explicitly agree upon those in order to narrow down the issues in factfinding. For longevity pay, Union Counsel retained language showing agreement on using percentages instead of fixed dollar amounts for specific service levels. The College’s last proposal had been to eliminate the “not cumulative” sentence altogether; the Union highlighted its most recent proposed change in language, which was to edit the sentence to show the increases were cumulative. Un. Ex. 9.

That very same day, College Counsel responded by email. He proposed the following language for longevity pay, which was “based on ██████’s concerns.”

Figure 5.

B. Longevity Pay

All H.U.O.E. bargaining unit members shall be eligible for a longevity pay ~~increases increment~~ beginning on the first day of the pay period **of eligibility as set forth below.** ~~within which the employee completes seven years of total service with the College. All eligible bargaining unit members shall receive an hourly longevity increment, applied to base pay, according to the table below. Such increments are the total amounts applicable to each service level and are not cumulative.~~

- 7 years of service - .8% increase on base wage rate
- 10 years of service – 1.6% increase on base wage rate
- 15 years of service – 2% on base wage rate
- 20 years of service – 3% on base wage rate
- 25 years of service – 4% of base wage rate

Later on December 30, 2021, Union Counsel responded that the Union agreed with the proposed changes to longevity pay.⁴ Un. Ex. 11.

On January 5, 2022, the parties engaged in factfinding to address the remaining open provisions of the labor agreement. According to the position statements provided to the undersigned, neither party raised longevity pay as a disputed issue before the factfinder. Un. Ex. 13, 16. The factfinder also did not address longevity pay in his January 19, 2022 order. Un. Ex. 17. Once the factfinder’s report was issued, the parties agreed to a new labor agreement (signed by the parties on January 27, 2022 and February 17, 2022, respectively) and made it retroactive to October 12, 2020. This new labor agreement included increases to the starting pay for the three classifications in the bargaining unit. Jt. Ex. 1, p.10.

Following the issuance of the new labor agreement, there quickly arose a dispute over the calculation of longevity pay. On April 19, 2022, the Union grieved the College’s calculation of backpay for certain certifications and licenses, as well as its calculation of longevity pay. Un. Ex.

⁴ According to the Union’s Post-hearing Brief, Union Counsel in that December 30, 2021 email mis-identified Section B on Longevity Pay as “Section D.” Un. Br. at 6 n.2.

3. On April 25, 2022, the College issued its grievance answer at the informal grievance step indicating the calculation of backpay was “in process with HR.” *Id.* On June 4, 2022, the College issued its formal grievance step answer. Un. Ex. 4. An accompanying email stated the College’s position:

[L]ongevity rates are given according to the years of service . . . that the employee has reached on the date of the signed contract. Example, if an employee has currently worked 10 years on the date of the new signed contract, that employee will receive a longevity increase of 1.6% added to their base rate of pay. The employee will not receive 0.8% for 7 years, and then 1.6% for 10 years. Longevity increases are not stacked.

Un. Ex. 4.

The grievance answer stated that the grievance was “denied because the new pay rates and adjustments were entered before the Director of HR received the grievance.”⁵ *Id.*

At the evidentiary hearing, the College ultimately acknowledged that longevity pay under the current labor agreement is prospectively cumulative; that is, longevity pay is cumulative for employees who achieve certain levels of service in the future. However, the College argued that longevity pay is not retroactively cumulative; that is, levels of service attached to a longevity bonus, but achieved prior to the current CBA, are not added to one’s compensation. In other words, the College contends that employees are only entitled to the longevity pay percentage for his or her current years of service as of the effective date of the labor agreement.

V. POSITIONS OF THE PARTIES

The Union’s Position. The Union contends that the issues to be resolved in this arbitration are whether longevity pay increases are cumulative and, if so, what shall be the remedy? It contends that those increases are cumulative and should result in increases for the affected workers.

The Union first argues that the Longevity Pay Clause is ambiguous. It notes that an agreement is ambiguous if plausible contentions may be made for conflicting interpretations. Here, there is nothing in the text of the Longevity Pay Clause which directs one to whether the increases are cumulative. Such ambiguity, the Union contends, allows the undersigned to look outside of the Contract to construe the Clause’s meaning.

Second, the Union argues the bargaining history supports its understanding of the Longevity Pay Clause. The Union notes that bargaining history is a widely accepted interpretative aid, and the prior labor agreement explicitly provided longevity pay was “not cumulative.” Over the course of the negotiation, though, the College took that language out and did so in part because workers in the incumbent bargaining unit had been underpaid for too long. According to ██████, there was no question of whether these increases were meant to be cumulative.

The Union’s chief negotiator ██████ testified that ██████ discussed the application of longevity pay for ██████, an employee who was approaching 25 years of service. According to the Union, ██████ explained that under the College’s proposal ██████ would receive a cumulative increase of 7.4% for his already-completed years of service, and an

⁵ Even so, the calculations are now entered and thus ripe given the College’s position that longevity increases are “not stacked.”

additional 4% upon reaching his 25 years of service. This testimony was not, according to the Union, contradicted by CFO [REDACTED].

Third, the Union argues the College's interpretation of the Longevity Pay Clause would lead to absurd results. They argue that when one interpretation of an ambiguous contract would lead to absurd results, while an alternative interpretation would lead to reasonable results, the latter interpretation should be preferred. Here, the Union asks us to imagine two employees: one who has 10+ years of service and one who has 15+ years of service at the time of the new labor agreement. Depending upon the specifics, the 10+-year employee may well reach his 15-year anniversary before the 15+-year employee reaches his 20-year anniversary and thus could receive more in longevity pay for several years. The Union argues this is an absurd result because the purpose of longevity pay is to compensate employees, relatively, for their seniority. If the increases are not retroactive, then longevity payments will not consistently reward more senior employees.

The Union asks the undersigned to sustain the grievance and order the College to make longevity payments retroactive to the effective date of the labor agreement.

The College's Position. The College contends that the issue to be resolved in this arbitration is whether the Union met its burden in establishing that the Longevity Pay Clause applies retroactively to service anniversaries that occurred under prior CBAs? It contends the Union did not meet that burden for at least three reasons.

First, the College contends that the meaning of the Longevity Pay Clause is clear. There is nothing in its language which would suggest the application of pay levels is retroactive—nor was that the College's intent. Moreover, prospective increases are consistent with how compensation is typically handled, whether additions to one's "base rate of pay" for certifications or across the board wage increases. The College also argues it would not make sense for an employee to have the same work anniversary multiple times under different CBAs. Finally, the College notes that where it sought to identify a clause as retroactive, it was able to do so clearly. This is evidenced by Article 8, Section D, which notes that the increases for minimum pay are retroactive to a date that is earlier than the date of the current labor agreement.

Second, the College argues that the labor agreement has a merger clause which prevents the Arbitrator from adding new agreements to the Contract. According to the College, this clause prevents consideration of bargaining history on the issue of whether increases are cumulative.

Third, the College argues that even if one considers bargaining history, it better supports its interpretation of the Longevity Pay Clause. In particular, the College states that the parties negotiated the reference to cumulation out of the agreement. So, to the extent the Union views cumulation as encompassing retroactivity, the parties struck that wording from the Longevity Pay Clause. Additionally, the College argues it was not trying to load deficiencies in prior compensation into longevity pay; after all, there were additional increases, such as a 3% across-the-board raise, which were memorialized in Section 8.⁶

The College requests the undersigned deny the grievance.

⁶ The Union's testimony is that the 3% increase was extended under the prior labor agreement and was not conveyed by the current labor agreement.

VI. ANALYSIS

The issue to be resolved in the present arbitration is whether the Longevity Pay Clause applies retroactively to service anniversaries that occurred under prior CBAs? Central to the resolution of any contract application dispute is a determination of the parties' intent as to specific contract provisions. In undertaking this analysis, an arbitrator will first examine the language used by the parties. If the language is ambiguous, an arbitrator will assess comments made when the bargain was reached, assuming there is evidence on the subject. In addition, an arbitrator will examine previous practice by the parties related to the subject. When direct evidence is not available, circumstantial evidence may be determinative.

A. Is the Longevity Clause Ambiguous?

The first task here is to determine whether the meaning of the Longevity Pay Clause is plain or ambiguous. If it is plain, then there is no need to resort to interpretation; the Arbitrator will derive the Longevity Pay Clause's meaning entirely from the nature of the language. If it is ambiguous (i.e., capable of more than one meaning), then the Arbitrator may examine extrinsic evidence to help determine that meaning.

Two meanings are often conceivable where parties avoid addressing a critical topic: in this case, the methodology around longevity compensation. For the Union, the deletion of language that longevity pay was "not cumulative" was surely a welcome development and they proposed to make the switch to cumulative pay explicit. For the College, they countered the Union proposal to state longevity pay was cumulative by removing any mention of accumulation. Both parties moved forward with few written details on how longevity pay would be apportioned; it appears the parties were unable to agree on terms that would explain the provision.

The undersigned finds that the Longevity Pay Clause is ambiguous. While there is a listing of specific increases to be applied "on the first day of the pay period of eligibility," nothing explains *how* they should be applied. Are they cumulative? Are they retroactive? Nothing in the clause so indicates. The College has two arguments that are responsive. First, if it wanted the longevity increments to be retroactive it would have made that clear as it did in Article 8, Section D. There minimum base rates were said to be "effective" on July 1, 2021—a date that was earlier than the effective date of the CBA. The comparison to Section D, though, does not make the meaning of the Longevity Pay Clause less ambiguous. Additionally, Section D only said when the new rates were effective. Section B also implicitly provides for when the new longevity increments are effective (i.e., the date of the agreement); its shortcoming is that it does not indicate how those "increases" are calculated.

The College's second argument is that an employee cannot have the same work anniversary multiple times under different CBAs. Co. Br. at 1-2. This argument has some intuitive appeal. But the Union established through testimony there was no "double dipping" when it came to longevity bonuses. Indeed, any prior longevity bonuses could not have been carried over because there were entirely new base wage rates established under Section 8(D) that swamped prior longevity increases and applied to everyone—regardless of prior work anniversaries.

Finally, within the clause itself, there is ambiguous syntax as it relates to the possibility of cumulation. ELKOURI & ELKOURI, *HOW ARBITRATION WORKS* (6th ed. 2003), Ch. 9.2.C (discussing "the ambiguity of syntax" error). The Longevity Pay Clause states that bargaining unit members are eligible for "a longevity pay increases beginning on the first day of the pay period of

eligibility” (emphasis added). It would seem clearer to the undersigned to either say members are eligible for “longevity pay increases” or “a longevity pay increase.”

B. Did the parties intend for the Longevity Clause to be cumulative and/or retroactive?

Having found the Longevity Pay Clause ambiguous, the undersigned must now ascertain its meaning considering all the circumstances surrounding the labor agreement. Here, there are several potential interpretative aids. The College argues there is a merger clause that prevents consideration of bargaining history, among other interpretive clues. But merger or zipper clauses do not exclude facts that might cast light on ambiguous contract language.

i. Bargaining History

Precontract negotiations or bargaining history are a natural aid in determining what two parties meant. Indeed, where the meaning of a term or clause is in dispute, it will be deemed, if there is no evidence to the contrary, that the parties intended for it to have the same meaning as that given to it during the negotiations leading up to the agreement. Here, the most objective evidence is that the language “not cumulative” was dropped from the Longevity Pay Clause. The College claims to have dropped this language because it was “confusing.” The Union claims that the College dropped this language as a way to increase compensation for a set of units that had been underpaid for years. Either way, cutting this language suggests that the longevity increments may now be “cumulative” (setting aside for the moment what that term means).

Another piece of evidence from the bargaining history comes from witness testimony. Here, the Union’s primary spokesman ██████████ testified that ██████████, the College’s chief negotiator, specifically discussed how this Longevity Pay Clause would work using the longest-serving employee in the bargaining unit. ██████████ allegedly explained that under the College’s proposal ██████████ would receive “a cumulative increase of 7.4% for his already-completed years of service [7, 10, 15, and 20 year increases applied cumulatively], and an additional 4% upon reaching his 25 years of service.” Un. Br. at 4. According to ██████████, these increases were cumulative and meant as a way to compensate workers who had been historically underpaid.

██████████ testimony was undisputed by ██████████ who did not attend the evidentiary hearing. It was similarly undisputed by ██████████ who attended the evidentiary hearing and participated in negotiations, but did not recall the discussion of ██████████ or anything from the negotiations specifically. ██████████ did say that the College had not intended during negotiations for the proposed increases to be retroactive, but could not recollect anything said during the negotiations which would have effectively conveyed that intent. While the undersigned would have liked to hear ██████████ testify at the Hearing, it was the College’s prerogative whether to call her. The undersigned finds ██████████ testimony credible with no other testimony to persuasively rebut it.

The College’s primary argument here is that the bargaining history supports its interpretation since the parties negotiated the “confusing reference to ‘cumulation’” out of the agreement. Co. Br. at 5. I do not understand how either party could think they were adding clarity by striking language which seemed perfectly clear (“not cumulative”). Moreover, it would not appear the bargaining history improved clarity for the College as illustrated by ██████████ testimony.

Early on, he denied there was any cumulative effect for longevity pay, observing that if a 7-year employee later reaches the 10-year mark, he would only receive a total of 1.6% in longevity pay—and not .8% + 1.6%. However, ██████ later claimed that a long-term employee could eventually earn 11.4% in longevity increases (which would be the cumulative stacking of all longevity increments). Visual Aid.

For the reasons that are set out above, the undersigned finds that the bargaining history supports the longevity increments being both cumulative and retroactive.

ii. Other Interpretive Aids

Besides bargaining history, there are two other interpretive rules that might aid the analysis. The Union argues that the College's interpretation would yield absurd results, by enlisting a hypothetical involving a 10+ and 15+ year employee (explained above). An arbitrator may also choose an interpretation that fits with the principal purpose of the provision.

The undersigned finds these other interpretive aids to be less important than bargaining history. Even so, they too favor the Union's interpretation. For example, take absurd results. One can easily imagine situations where the longevity provisions do not reward seniority if the longevity increments are not retroactive. Imagine two employees under the current labor agreement who have 14 and 16 years of service, respectively. The 14-year employee would reach his 15-year anniversary one year after the CBA goes into effect and thus be receiving a cumulative 3.6% pay enhancement (1.6% + 2.0%) while the 16-year employee would receive only a 1.6% longevity pay enhancement for four years. This means that the relatively junior worker would be paid more under the Longevity Pay Clause for three years. The Union observes that this type of possibility is an absurd result, and the undersigned agrees. Such an outcome would also undercut the principal purpose of the Longevity Pay Clause, which is to reward more senior workers.

One can imagine a counterargument that is hinted at in the College's brief: that longevity increments are not the only source of additives to one's "base rate of pay." Co. Br. at 1-2. To return to the hypothetical, the 16-year employee would have worked for the College two more years than the 14-year employee, giving the 16-year employee more time to earn certifications or other wage increases. E.g., Un. Ex. 3, Attach. 1. While that may be true, the undersigned believes that the purpose of longevity pay ought to be served directly by the Longevity Pay Clause. Only the Union's interpretation of the clause accomplishes that.

Finally, the undersigned found the arc of the College's positions on longevity hard to follow. The College's counsel claims that the reference to "not cumulative" was deleted during negotiations because it was "confusing." That explanation for the change is notably different than what the Union claims it was told. Even College counsel seemed to indicate that striking the "not cumulative" language was "based on ██████'s concerns." Un. Ex. 10.

Then when the Grievance was first filed, the Director of HR stated with little clarification that "[l]ongevity increases are not stacked." Based upon the example she gave, she *may* have meant what I understand to be the College's current position: that they are not stacked for an incumbent worker who has already achieved prior service levels, but they are stacked prospectively. However, she also may have meant what I understand the Union took that statement to mean: that service level increments are never stacked. Her statement is simply not clear.

Months later, during the evidentiary hearing, the lone College representative repeatedly denied that there was *any* cumulative effect for longevity pay. Union counsel probed ██████'s position on cumulation by two examples. The first was an employee who has 9 years of service at

the time of the new labor agreement and is thus receiving .8% in longevity pay for passing the 7-year mark. Union Counsel asked whether that employee gets an additional 1.6% at the 10-year mark, for a total of 2.4%? ██████ responded that the employee, upon reaching the 10-year mark, would be limited to a total of 1.6% longevity pay. The second example was a new hire. Union counsel asked whether that employee would receive .8% in longevity pay at the 7-year mark and then get the 1.6% on top of the .8% at the 10-year mark? Once again, ██████ was clear that this employee would be limited to a total of 1.6% in longevity pay at the 10-year mark.

However, shortly after working through these examples, ██████ seemed to claim that longevity pay increases *do stack*. He gave the example of an employee who remains with the College over time and stated that worker could earn a total of 11.4% in longevity increases (as illustrated by the visual aid, which College Counsel displayed during his questioning of ██████ and later provided to both the Union and Arbitrator). The Arbitrator found the arc of the College's positions on longevity pay to be mildly puzzling.

The undersigned concludes that the preponderance of the evidence favors the Union's understanding of the Longevity Pay Clause. Accordingly, the Union has met its burden in showing the Longevity Pay Clause was intended to apply retroactively to service anniversaries which occurred under prior labor agreements.

VII. AWARD

The grievance is sustained. The Arbitrator directs the College to make longevity payments retroactive to the effective date of the labor agreement. The undersigned will retain jurisdiction of this matter for a period of sixty (60) days to address any issues regarding implementation of this Award.



Date: December 21, 2022

Bradley A. Areheart, Arbitrator
Knoxville, TN