

BEFORE THE ARBITRATOR

 :
 In the Matter of the Arbitration :
 of a Dispute Between :
 :
 DUNN COUNTY :
 :
 and : Case 70
 : No. 42571
 : MA-5737
 DUNN COUNTY JOINT COUNCIL OF UNIONS :
 :

Appearances:

Mulcahy & Wherry, S.C., Attorneys at Law, by Mr. Stephen L. Weld, on behalf of the County.
Mr. Steven Day, Staff Representative, Wisconsin Council 40, AFSCME, on behalf of the Union.

ARBITRATION AWARD

The above entitled parties, herein the County and Union, are privy to a collective bargaining agreement providing for final and binding arbitration before a Wisconsin Employment Relations Commission staff arbitrator. Pursuant thereto, I heard this matter on November 21, 1989, in Menomonie, Wisconsin. The hearing was not transcribed and both parties filed briefs which were received by January 9, 1990.

Based upon the entire record, I hereby issue the following Award.

ISSUE:

I have framed the issue as follows:

Is the County required under Appendix A, Article A-11, of the contract to pay part of the income continuation insurance premium for part-time employees?

DISCUSSION:

The parties in 1988 engaged in collective bargaining negotiations over a successor contract, during which time the Union proposed that the County provide income continuation insurance to its employees under the Wisconsin Public Employer's Group Income Continuation Insurance Program, herein ICI, which is administered by the Wisconsin Department of Employee Trust Funds and which provides that it must be offered to all eligible municipal employees employed by employers covered in the program.

The County initially rejected said proposal, but later on offered said insurance in its own proposal. At no time during negotiations did the parties ever discuss whether ICI would also be made available to part-time employees. The parties subsequently agreed to a successor contract in January, 1989 and the County thereafter ratified the contract in February, 1989. On February 15, 1989 the Dunn County Board of Supervisors adopted a resolution providing that ICI "will be offered to eligible personnel through the program of the State of Wisconsin Group Insurance Board."

A dispute subsequently arose between the parties over whether the ICI covered part-time employees and whether the County would have to pay part of the ICI premium with the Union asserting, and the County denying, that it did. The parties thereafter agreed that the issue should be resolved in arbitration with the arbitrator deciding what should be done on this issue. In the meantime, the County has been paying the ICI premium for the approximate 64 part-time employees who have elected to participate in the program (about 32 part-timers have declined such coverage).

The Union maintains that throughout negotiations it understood that ICI covered all employees, including part-time employees; that it gave the County information to that effect; that the County never tried to exclude part-time employees from said insurance; that the County now is only trying to take away a benefit it knowingly granted in negotiations; and that the County for the duration of the contract is required to continue paying its share of the ICI premium for part-time employees.

The County asserts that there was no "meeting of the minds" between the parties over this issue; that as the proponent of the language, the Union "had the responsibility to explain that it intended" to have ICI extended to part-time employees; that the Union is trying to achieve through arbitration something that was not negotiated; that unless expressly bargained for, past practice shows that part-time employees do not receive fringe benefits; and that the ICI language is directly tied in to an employee's sick leave, something part-timers do not receive.

In resolving this issue, it is first necessary to look at the pertinent

language in Appendix A, Article A-11, entitled "Long Term Disability Insurance", which provides:

With this contract, employees shall have the option of being covered by the State of Wisconsin Long Term Disability Insurance program as described in "Wisconsin Public Employers' Income Continuation Insurance," booklet number ET-2129 (2/87).

The County will pay the monthly premium rate and the sixty (60) day waiting period premium if the employee has in their sick leave balance and maintains the 60 day sick leave balance. The cut-off for determining annual employee premium will be the last day of the pay period which includes November 30th.

Since this language refers to "employees" without any exclusions, and since part-time employees are in the bargaining unit, the first sentence here indicates that part-time employees are covered by ICI. However, that is undercut by the next sentence which refers to a 60-day sick leave balance. Since part-time employees do not receive sick leave, this indicates that only full-time employees are covered by ICI. Viewing these two (2) sentences together, it must be concluded that this proviso on its face is ambiguous as to whether the County is required to pay part of the ICI premiums for part-time employees.

Turning elsewhere, we see that Article VIII, entitled "Compensation", provides:

Section 2. Part-Time Employees' Fringe Compensation. A part-time employee is one who works less than three-quarters (3/4) of the standard work week on a year-round basis.

In lieu of fringe benefits, part-time employees will receive 85 (cents) per hour in addition to the regular pay upon completion of their probationary period.

Full-time employees who are involuntarily reduced to part-time employment shall have the right to purchase the health and dental insurances from the County.

This language supports the County's position because it clearly provides that part-time employees do not receive fringe benefits. Elsewhere in the contract, however, we see that that statement is not as sweeping as it first appears because part-time employees do in fact receive certain fringe benefits, i.e., life insurance and retirement. Accordingly, the contract as a whole establishes the general principle that part-time employees do not receive fringe benefits unless they are expressly bargained for.

Here, while both parties point to bargaining history in support of their respective claims that ICI benefits for part-timers were or were not bargained for, the parties in fact never specifically discussed this issue in their negotiations, thereby leaving us with an ambiguous bargaining history.

The County blames the Union for not raising this issue, citing the well-recognized arbitrable principle that any ambiguities in contract language should be resolved against the drafter of the proposal. Here, though, that rule is tempered by the fact that the Union dropped this proposal, only to have the County itself make this proposal as part of one of its contract offers. Accordingly, it can just as well be said that the County at that time was the proponent of this language and that it, too, must shoulder some of the responsibilities caused by the language's ambiguity. In addition, the Union during negotiations gave the County certain documents which expressly provided that ICI must be offered to all eligible employees, a requirement which on its face included part-time employees.

Trying to reconcile this ambiguous contract language and ambiguous bargaining history is difficult, if not impossible, to do. In normal circumstances, this might favor the Union because the general rule is that all bargaining unit personnel are covered under a contract unless there is a specific exclusion. Here, though, the rule is reversed because past practice establishes that part-time employees do not receive any contractual benefits unless the parties expressly agree to them. As a result, it must be concluded that there was no "meeting of the minds" over this issue and that the contract is silent over whether the County is required to pay for its share of the ICI premium for part-time employees.

Under normal rights arbitration, this would dictate dismissal of the Union's grievance. But here, the parties have agreed that I should also act as an interest arbitrator in order to resolve this problem if it is ultimately determined that the contract itself does not govern.

In this connection, the County urges the arbitrator to either order

immediate negotiations on this issue and to order withdrawal of all employes from the ICI plan if negotiations fail; to require a reduction of wages of those part-time employes who participate in the ICI plan; or to require all part-time employes to voluntarily opt out of the program. Irrespective of what remedy is chosen, it also wants all part-timers to reimburse the County for the past ICI payments it has made on their behalf.

Taking these in reverse order, I find that it would be unfair to now order part-time employes to reimburse the County for past payments since the County itself is partially responsible for this situation by not learning more about the ICI program when it offered the program as part of its own contract proposal. The County at that time had received information from the Union stating that ICI had to be offered to all eligible part-time employes and the employes thereafter ratified the contract based upon their reasonable expectancy that the County would pay the premium for part-timers, particularly since the Union accepted a lower wage settlement because it believed that the County was paying for this benefit. In such circumstances, it would be inequitable to place all of the financial burden on them for this problem. As a result, the County will not be reimbursed for any past payments.

As to the other alternatives, it is not at all clear that an arbitrator has the legal authority under the rules established by the Wisconsin Department of Employee Trust Funds to order part-timers to "voluntarily" opt out of the ICI program. That suggestion is therefore rejected.

By the same token, I cannot grant the County's additional request that I mandate the withdrawal of the entire group of employes from the plan if negotiations fail. In addition, it would be wrong to order full-time employes out of the plan when the County so clearly has agreed to pay for the ICI premium for their behalf.

More reasonable is the County's other suggestion that the parties bargain over this matter in an attempt to reach a voluntary agreement. In that way, the parties themselves can best determine whether the wages should be reduced for those part-timers who have chosen to participate in the ICI plan or whether some other solution can be found. Accordingly, they shall notify the undersigned within thirty (30) days whether they have been able to reach any agreement on this issue.

Absent any voluntary settlement and absent any strong reasons why I should not do so, I will order that part-time employes who have ICI shall have the option effective June 1, 1990, of either pulling out of the plan or paying for the County's share of the ICI premium themselves for the remainder of the contract. 1/ In that way, both employes and the County shall bear part of the financial burden in this matter.

In light of the above, it is my

AWARD

1. That while the County was required to pay for its share of past ICI premiums on behalf of part-time employes, it is not required to continue making those payments after June 1, 1990 absent any contrary agreement between the parties.

2. That the parties shall advise within thirty (30) days whether they have resolved this issue in negotiations.

3. That I shall retain my jurisdiction pending final disposition of this matter.

Dated at Madison, Wisconsin this 9th day of April, 1990.

By _____
Amedeo Greco, Arbitrator

1/ This presupposes that such withdrawals are proper under the plan. If they are not, part-timers shall pay for the County's share of the premium until such time, if ever, that the parties agree otherwise.