

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration :
of a Dispute Between :
NORTHWEST UNITED EDUCATORS :
and : Case 39
: No. 44020
: MA-6152
CITY OF RICE LAKE (POLICE DEPARTMENT) :
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Appearances:

Mr. James Drost, Chairperson, Salary and Personnel Committee, appearing on behalf of the Employer.
Mr. Alan D. Manson, Executive Director, appearing on behalf of the Union.

ARBITRATION AWARD

The Employer and Union above are parties to a 1988-89 collective bargaining agreement which provides for final and binding arbitration of certain disputes. The parties requested that the Wisconsin Employment Relations Commission appoint an Arbitrator to resolve the retirement payout grievance of Robert Rowe, Jr.

The undersigned was appointed, and the parties stipulated that the record should consist solely of a stipulation of facts and related letters between the parties, and that neither a hearing nor briefs were necessary. The record accordingly consists of the stipulation and the documents identified therein.

STIPULATED ISSUES

1. Did the City of Rice Lake violate the terms of the collective bargaining agreement, specifically Articles XX and XXIV, between it and NUE for the police when it unilaterally changed its city-wide policy affecting the insurance payments for a terminated employee and refused to pay Officer Rowe's insurance premiums during the time that he has accrued for vacation and sick leave at retirement?

2. If so, what is the appropriate remedy?

DISCUSSION

As noted above, the record in this case is entirely stipulated. The stipulation of facts is in relevant part as follows:

. . .

3.The 1985-86 collective bargaining agreement for the police between NUE and the City of Rice Lake was modified by the addition of the following:

Article XXIV - Savings Clause: If any article or section of this Agreement or any addendums thereto should be held invalid by operation of law by any tribunal of competent jurisdiction or if compliance with or enforcement of any article or section should be restrained by such tribunal, the remainder of this Agreement and addendums shall not be affected thereby and the parties shall enter into immediate collective bargaining negotiations for the purpose of arriving at a mutually satisfactory replacement for such article or section. All privileges, benefits and rights enjoyed by the members of the Association which are not specifically provided for or abridged in this Agreement are hereby protected by this Agreement.

4.The 1987 and the 1988-89 NUE collective bargaining agreements for the police have maintained this language unchanged.

5.The 1985-86 and 1987 NUE Rice Lake police contracts also contain the following language:

Article XX - Final Settlements:

A.Regular Salary: When an employee terminates employment between the regular scheduled paydays, he/she is paid for each workday, up to and including the day of the termination.

If he/she is working extra time for another officer on vacation or sick leave, the officer will be paid at the regular pay scale per hour, based on his/her

rank or grade. If he/she has any overtime due, he/she will be paid at the rate of time and one-half of his/her hourly rate per hour based on his/her rank or grade.

B.Vacation: When a police officer terminates employment, he/she shall be paid for all unused vacation time for that year.

C.Sick Leave: Upon termination of employment with the City, the employee should be paid for up to 90 days of accrued sick leave, based on a 23-day work month.

6.The 1988-89 contract between the parties contains a revision of Article XX, which is as follows:

Article XX - Final Settlements:

A.Regular Salary: When an employee terminates employment between the regular scheduled paydays, he/she is paid for each workday, up to and including the day of the termination.

If he/she is working extra time for another officer on vacation or sick leave, the officer will be paid at the regular pay scale per hour, based on his/her rank or grade. If he/she has any overtime due, he/she will be paid at the rate of time and one-half of his/her hourly rate per hour based on his/her rank or grade.

B.Vacation: When a police officer terminates employment, he/she shall be paid for all unused vacation time for that year.

C.Sick Leave: Upon termination of employment with the City, the employee should be paid for up to ninety (90) days of accrued sick leave, based on a 23-day work month. For employees hired after 03/02/88, the daily wage rate for sick leave payout purposes shall be determined as follows:

Years of Service

10 or more	-	Average monthly wage of last 5	years of employment
5 or less	-	Average monthly wage of last 3	years of employment
Less than 5	-	Monthly wage at time of	termination
		divided by 23	

7.For at least 15 years prior to September, 1989, the manner of payment of unused vacation and accumulated sick leave in connection with Article XX above was made as follows: The employee who was terminating employment was carried on the payroll for the number of days of unused vacation plus accrued sick leave; this employee received a check equal to the pay which would have been earned during each of the pay periods following the termination and prior to the exhaustion of the unused vacation and accumulated sick leave days.

As a part of this system of disbursing pay for unused vacation and accumulated sick leave upon termination, the employer also paid the health insurance premiums of the terminated employee during the same period of time following the official termination and prior to the exhaustion of the total of days of unused vacation and accumulated sick leave. These insurance payments were made on a monthly basis, and covered the full month's premium during the month in which the terminated employee's severance pay expired.

An example of this method of payment is that an employee who terminated employment on the last day of February, and who had 20 days of unused vacation and 90 days of accumulated sick leave would be paid for 110 workdays starting on March 1, with checks arriving at the same time the normal paychecks would arrive for the employees in this unit. The normal work cycle is a 15-day schedule (5 on, 2 off, 5 on, 3 off) and has been since at least 1985. The parties have determined that a normal work month consists of 23 workdays.

Because of the regular work schedule and the 23-day agreement, the

110 workdays of unused vacation and accumulated sick leave in the above example (retirement on the last day of February with 20 days of unused vacation and 90 days of accrued sick leave) entitled the employee to 4 months and 18 days of pay and 5 months of insurance payments; the employee in this example would be paid checks equal to the regular amount of money normally earned in March, April, May and June, with 18 additional paid days in July. The pay would be based on the formula in the contract which is, for employees hired before March 2, 1988, the last regular rate of pay for the employee. Until this dispute arose, the employer has paid the insurance through the end of the month during which the employee received the last of the severance pay.

8. In September of 1989 the Rice Lake City Council amended its Employer Termination Pay Policy to state that health insurance will not be extended for accumulated time unless the employee pays for it. This was a unilateral change by the Employer in this pay policy, which was designed to affect all City employees, including those represented by NUE in the police unit. NUE was not asked to participate in any deliberations, discussions, or negotiations regarding this amendment to the termination pay policy of the City as it affected the previously established health insurance payments.
9. On September 28, 1989, NUE drafted the letter which is attached as Exhibit 1 regarding the City's amended Termination Pay Policy.
10. On October 24, 1989, the City responded with the letter marked Exhibit 2.
11. No officers represented by NUE from this bargaining unit terminated employment since September 1989 and the issue has not been resolved as the result of the exchange between the parties of exhibits 1 and 2.
12. On March 17, 1990, bargaining unit member Officer Robert C. Rowe, Jr. submitted his resignation to be effective on June 28, 1990 (a copy of that letter of resignation is attached as Exhibit 3). In that letter officer Rowe inquired about unused vacation time and unused sick leave and the manner in which they would apply to continued group health insurance payments by the Employer.
13. On April 12, 1990, Mr. James Drost, Chairperson of the City of Rice Lake Personnel and Negotiating Committee sent a letter to NUE (with copies to Officer Rowe and others) indicating that the City was denying Officer Rowe's request for health insurance payments through the time that he has accrued for vacation and sick leave at retirement. That letter is attached as Exhibit 4.
14. The parties have agreed that the issue before the arbitrator in this case is this: Did the City of Rice Lake violate the terms of the collective bargaining agreement, specifically Articles XX and XXIV, between it and NUE for the police when it unilaterally changed its city-wide policy affecting the insurance payments for a terminated employee and refused to pay Officer Rowe's insurance premiums during the time that he has accrued for vacation and sick leave at retirement; and, if so, what is the appropriate remedy?
15. The parties recognize that Officer Rowe's pending retirement is scheduled for June 28, 1990, and that if a decision in this matter is made by the arbitrator prior to that date, that the parties can act according to that decision with respect to the retirement of Officer Rowe.
16. Attached as Exhibit 5 is the 1988-89 collective bargaining agreement. The parties are actively negotiating for 1990, and have stipulated that the contract shall remain unchanged (including Articles XX and XXIV) except for a dispute over wages and insurance payments by the Employer for all active employees; that dispute is before an interest arbitrator.

The parties' arguments are laid out in two letters exchanged in advance of Officer Rowe's retirement, when the issue first came to light. The pertinent parts of the Union's September 28, 1989 letter to the City are as follows:

. . .

Please be advised that, with respect to the police officers represented by NUE, the collective bargaining agreement guarantees the represented officers, upon termination, the right to continue to have their insurance paid for the time equivalent to their accumulated leaves (including vacations). The relevant sections of the contract are Articles XX and XXIV.

NUE is convinced of this right since it is based on the manner in which officers have been treated in the past, and since the City is amending its policy unilaterally, and not changing the language in the labor agreement with NUE. How that amended policy applies to other city employees (managers, unrepresented, and represented) is not relative to the particular negotiated contract language in the NUE agreement.

. . .

The pertinent parts of the City's October 24, 1989 letter in reply to the Union are as follows:

. . .

Article XX does not require the continuation of paid insurance benefits in the situation you describe. Nor does any other provision of the Agreement expressly so provide. Nevertheless, you evidently contend that the City must continue to make such payments by virtue of Article XXIV, which provides in relevant part that "all privileges, benefits, and rights . . . not specifically provided for or abridged in this Agreement are hereby protected by this Agreement."

We must reject your contention. As you may know, the City formerly met its obligation to pay post-termination accrued leave balances by having the affected employee remain on the City's payroll following termination, with such employee being paid his/her regular salary at normal pay period intervals until all accrued leave amounts were paid in full. During the time the employee remained on the payroll, the City continued to pay insurance contributions on behalf of that employee, as it would for an active employee.

If the City still intended to meet its accrued leave obligations by having affected employees remain on the payroll in the manner described above, we would perhaps pay some credence to your argument that the elimination of paid insurance benefits during the interim between termination and payment in full of accrued leave amounts would constitute a violation of the above-quoted provision of Article XXIV. However, that is certainly not the case here. In lieu of deferring payment of its accrued leave obligation in the aforescribed manner, the City, in literal compliance with Article XX, intends to satisfy its entire accrued leave obligation by making one lump sum payment to each affected employee upon termination. In so doing, affected employees would not longer remain on the City's payroll following termination, and the corresponding post-termination payment of insurance benefits predicated upon payroll status would cease accordingly.

For purposes of Article XXIV, the City submits that any purported "privileges, benefits and rights" associated with the post-termination payment of health insurance benefits must be strictly viewed in relation to the deferred payment arrangement formerly utilized by the City. The post-termination continuation of paid insurance benefits is inextricably intertwined with that deferred payment arrangement. Any purported "privileges, benefits and rights" with respect to paid insurance benefits cannot exist independent of that deferred payment arrangement. In short, without the requisite deferred payment arrangement in the first instance, the City's discontinuation of post-termination paid insurance benefits neither violates Article XXIV of the Agreement, nor, for that matter, any other provision of the Agreement.

. . .

Upon review of Article XX of the collective bargaining agreement, I find that nothing in it implies the manner in which the payment for vacation and sick leave is to be made. While, upon a bare reading, the formula introduced in paragraph C in the 1988-89 contract, governing the rate of pay for employees hired after March 2, 1988, would appear to imply payment would be made on a lump-sum basis, this plainly did not contemplate agreement to the City's change with respect to all employees, for two reasons. First, the change was made in the 1988-89 agreement, and there is no evidence that the language change was in any way related to the City's unilateral change in method of payment which took place only in September, 1989. Indeed, even though there is nothing in the stipulated facts to indicate exactly when the parties reached agreement on their 1988-89 contract, there is a clear stipulation of fact in paragraph 8 to specify that "NUE was not asked to participate in any deliberations, discussions or negotiations regarding this amendment" There is therefore nothing to relate the change in language to the City's apparently subsequent unilateral action. Second, even if there were such an implication that the Union was accepting lump-sum payments, that would apply on its face only to employees hired after March 2, 1988. There is no evidence that Rowe was such an employee.

The City's practice of maintaining an employee on the payroll, thus triggering continued payment of health insurance premiums during the time allocated to vacation and sick leave payout, did not violate Article XX. Accordingly, the key question in this matter is whether that practice constitutes a "privilege, benefit or right" within the meaning of Article XXIV.

I conclude that it does. The City's argument expressed in its October 24, 1989 letter contends that the continuation of paid insurance benefits is "inextricably intertwined" with the deferred payment arrangement. Accepting that contention to be true, I do not find that the deferred payment arrangement is a mere matter of management convenience or organization which may be changed at will within management's rights. Continued payment of health insurance, perhaps for a matter of months, is a major benefit to an employee and is clearly a matter on which parties bargain long and hard. The fact that the practice in question concededly existed for 17 years, that the City concededly changed it unilaterally, and that the agreement clearly contains a provision expressly protecting such "privileges, benefits and rights . . . which are not specifically provided for or abridged in this agreement" is sufficient to demonstrate that the deferred payment of wages with its attendant benefit of health insurance is a benefit to be protected under that clause. This is true even though the City might reasonably argue that in this case its action did involve some degree of countervailing benefit improvement, in the form of "cash on the barrelhead" on date of retirement rather than the less-valuable deferred payments. Under this language, management may wish to introduce such an improvement in "privileges," etc., but it cannot make the price for such an improvement the unilateral removal of any other "benefit or privilege."

For the foregoing reasons and based on the record as a whole, it is my decision and

AWARD

1. That the City violated Article XXIV of the collective bargaining agreement by changing unilaterally its policy affecting insurance payments for a terminated employee in this collective bargaining unit and by refusing to pay Officer Rowe's insurance premiums during the time that he has accrued for vacation and sick leave at retirement.

2. That as remedy, the City shall, forthwith upon receipt of a copy of this Award, continue Officer Rowe's insurance premiums upon retirement during the time that he has accrued for vacation and sick leave as of that date.

Dated at Madison, Wisconsin this 12th day of June, 1990.

By _____
Christopher Honeyman, Arbitrator