

BEFORE THE ARBITRATOR

In the Matter of the Arbitration	:
of a Dispute Between	:
	:
RICE LAKE PROFESSIONAL FIREFIGHTERS	: Case 40
ASSOCIATION LOCAL 1793	: No. 44181
	: MA-6199
and	:
	:
CITY OF RICE LAKE	:
	:

Appearances:

Mr. Michael B. Dietz, President, Rice Lake Professional Firefighters Local 1793, IAFF, 34 South Wilson Avenue, Rice Lake, Wisconsin 54868, for the Association.
Mr. James Drost, Chairman, Personnel Committee, City of Rice Lake, 603 West Newton, Rice Lake, Wisconsin 54868.

ARBITRATION AWARD

The above-captioned parties, herein the Association and the City, are signatories to a collective bargaining agreement providing for final and binding arbitration. Pursuant to the parties' request for the appointment of an arbitrator, the Wisconsin Employment Relations Commission appointed Jane B. Buffett, a member of its staff, to decide a dispute regarding the interpretation and application of the agreement. On June 11, 1990, the parties filed a stipulation of facts. On July 17, 1990 the parties filed a copy of an arbitration award they deemed relevant to the instant case. The parties declined opportunity to file briefs.

ISSUE

The parties stipulated to the following statement of the issue:

Therefore, did the City of Rice Lake violate the terms of the collective bargaining agreement between it, and Local 1793 for the Firefighters, when it unilaterally changed its city-wide policy affecting the insurance payments for a terminated employee and refused to pay Thome'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?

BACKGROUND

The parties submitted the following stipulation of facts:

In the past, the Employer has disbursed pay for unused vacation and accumulated sick leave upon termination and 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.

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 the Firefighters, Local 1793.

Bargaining unit member Thome submitted his resignation to be effective April 2, 1990. The Employer responded by accepting his resignation and by also informing him of the new health insurance pay policy. When the bargaining unit addressed the Personnel and Negotiating Committee for the continuation of health insurance payments for Thome, the request was denied.

RELEVANT COLLECTIVE BARGAINING AGREEMENT PROVISIONS

ARTICLE VIII

INSURANCE

The City agrees to pay up to \$222.22 per month for

family coverage and up to \$86.26 per month for single coverage for 1988 and \$232.22 for family coverage per month and \$91.26 per month for single coverage in 1989 for the employee's health and welfare insurance policy.

The City also agrees that they will not change or alter health insurance benefits without the agreement of the Association. The City agrees to pay the full premium of a \$2000 life insurance policy for each member of the Rice Lake Professional Fire Fighters Association.

. . .

ARTICLE XVII

FINAL SETTLEMENTS

1. . . .
2. Vacation Time:
 - A. . . .
 - B. Vacation time is earned during the year preceding the year in which it is actually taken. Therefore, when a person terminates employment, he shall receive pay for the unused portion of the vacation time earned during the previous year plus any vacation earned in the year of termination.
3. Sick Leave
 - A. Upon terminating employment with the City, the employee shall be paid for each day of accrued sick leave, up to a maximum of 90 days, based on a 22 day work month. This benefit shall not be available to an employee who is discharged with less than ten (10) years of service and was hired after January 1, 1987.

. . .

ARTICLE XIX

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 or 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 articles or section. All privileges, benefits and rights enjoyed by the members of the Rice Lake Professional Firefighters Association which are not specifically provided for or abridged in this Agreement are hereby protected by this agreement.

. . .

ADDITIONAL SUBMISSION

The parties also filed an arbitration award with the following cover letter:

Enclosed is the copy of an award issued by WERC staff member, Christopher Honeyman, which is very similar to the case involving Mr. Thome and the Rice Lake Firefighters.

The enclosure is a matter of information and is being offered jointly by the City of Rice Lake and the Rice Lake Firefighters.

DISCUSSION

Since the Honeyman arbitration award (hereinafter, the Police Department Arbitration,) submitted by the parties involved the same employer, but a

different labor organization, it cannot be regarded as controlling precedent. Nevertheless, since the parties chose to jointly submit it, and submitted no additional arguments, the undersigned concludes that the parties believe said award should be considered as significant guidance to whatever extent it is legally relevant.

Although the details of the factual stipulation in the Police Department Arbitration were more extensive than the facts submitted in the instant case, the relevant facts were essentially identical: one, the City had a history of paying health insurance premiums for the period of time allocated to the payment of unused vacation time and payable sick leave; and, two, in September, 1989, the City terminated that practice.

Not only are the facts in the two cases essentially identical, the contracts involved were nearly identical. The provision for payment of unused vacation and sick leave in the firefighters contract is essentially the same as the corresponding provision in the Police Department contract. Similarly, the Savings Clause in the two contracts is, excepting the identification of the labor organization, identical.

With the facts and the contract provisions of the Police Department Arbitration and the instant dispute essentially identical, it is appropriate to turn to Arbitrator Honeyman's award for guidance. That arbitrator first considered and rejected an argument not raised in the instant case. 1/ The arbitrator then proceeded to consider the effect of that portion of the Savings Clause in the Police Department Contract which corresponds to the portion in the Firefighters contract providing:

All privileges, benefits, and rights enjoyed by the members of the Rice Lake Professional Firefighters Association which are not specifically provided for or abridged in this Agreement are hereby protected by this agreement. (Emphasis added.)

The arbitrator found that continued payment of health insurance premiums is a major benefit and therefore is protected under that clause.

The undersigned can find no flaw in that reasoning. The City's payment of the health insurance premium is self-evidently a benefit to a terminated employe, and since that payment is not specifically provided for in the language of the contract, it falls within the purview of this clause. Therefore, the Savings Clause preserves the payment of health insurance premiums for the months during which the terminated employe receives compensation allocated for vacation and sick leave pay, and the City's unilateral elimination of such health insurance premium payments violated the collective bargaining agreement.

In the light of the record and the above discussion, the arbitrator issues the following

AWARD

1. The City of Rice Lake violated the terms of the collective bargaining agreement between it and Local 1793 for the Firefighters when it unilaterally changed its city-wide policy affecting the insurance payments for a terminated employee and refused to pay Thome's insurance premiums during the time that he has accrued for vacation and sick leave at retirement.

2 The City shall reimburse retired employe Thome for health insurance premium payments during the time allocated for accrued, unused and payable vacation and sick leave at the time of his retirement, as described in the first paragraph of the parties' stipulated facts. (See Background, above.)

Dated at Madison, Wisconsin this 5th day of October, 1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Jane B. Buffett, Arbitrator

1/ The Honeyman award carefully considers the argument raised by the City in that case, (but not raised herein) that the elimination of the disputed health insurance payments was justified by the City's elimination of its practice of keeping the terminated employe on the payroll during the time allocated to vacation and sick leave payout, in favor of a practice of making lump-sum payments. The arbitrator rejected the argument that the former practice of paying health insurance premiums was a necessary result of having the terminated employe remain on the payroll and as such could properly be unilaterally abandoned along with the payroll practice.

