

BEFORE THE ARBITRATOR

In the Matter of the Arbitration :
of a Dispute Between :
 :
LOCAL #71, AFSCME, AFL-CIO : Case 154
 : No. 44646
 and : MA-6372
 :
CITY OF KENOSHA :
 :

Appearances:

Mr. Jack Bernfeld, Staff Representative, AFSCME, appearing on behalf of
the Union.
Mr. Roger E. Walsh, Davis & Kuelthau, Attorneys at Law, appearing on
behalf of the City.

ARBITRATION AWARD

The Union and the Employer named above jointly requested that the Wisconsin Employment Relations Commission appoint the undersigned to resolve the grievance of Mario Sessa. A hearing was held on March 7, 1991, in Kenosha, Wisconsin, at which time the parties presented their evidence and arguments.

ISSUE:

The parties agree that the Arbitrator may frame the issue. The Arbitrator will address the following question:

If the Grievant leaves his job with the City before reaching age 55 and does not collect an annuity from the Wisconsin Retirement System, is he entitled to the payout of accumulated sick leave under Section 9.07 of the collective bargaining agreement?

CONTRACT LANGUAGE:

ARTICLE IX - SICK LEAVE

. . .

9.07 Payment Upon Death or Retirement.

Option 1. The City agrees that any member of the bargaining unit who retires from City employment under the provisions of the Wisconsin Retirement Fund, or the estate of any member of the bargaining unit who dies, shall receive a severance pay equal to fifty (50) percent of his/her accumulated sick leave at his/her final rate of pay, excluding the sick leave bank, . . .

BACKGROUND:

The Grievant, Mario Sessa, is a bargaining unit member who started working for the City on May 15, 1961, as a seasonal employee and became a permanent regular employee on November 27, 1961. He has been a full-time employee since that time. Sessa was 52 years old at the time of the hearing and will be 53 on July 3, 1991. Sessa is still employed by the City, but wants to retire completely, not work for another employer, and move to northern Wisconsin.

When the Wisconsin Retirement System (WRS) made changes to allow to early retirements with more lucrative benefits, Sessa went to Madison to see what he would receive if he retired. He was informed that one option would be to receive an annuity when he reached age 55. Sessa then talked to Larry Albertson, personnel analyst for the City, to see if he could receive a payout of his accumulated sick leave. Sessa wanted to use his accumulated sick leave (869 hours as of 2-23-91, worth more than \$5,000 under the parties' formula for payout) to buy insurance to hold him over until he started receiving his WRS annuity at age 55. However, Albertson informed him that a payout of accumulated sick leave under those circumstances would be a drastic departure from the City's practice, and that such a request would be denied.

Sessa was the first person to request a payout of sick leave when leaving City employment without getting an annuity. Albertson noted that no one had received such a benefit in his 17 years with the City. The City had no actual knowledge that employees who asserted that they were retiring were in fact collecting annuities from the WRS, up until the City's preparation for the

hearing in this matter. Records obtained by the City from the Department of Employee Trust Funds show that all prior bargaining unit members who retired received annuities within a day or so of their date of retirement from the City, with the exception of someone on disability.

In bargaining for a previous labor contract, the Union presented a proposal dated September of 1985 to amend Section 9.07 to provide for a 75 percent payout, including payout upon voluntary termination. This proposal was rejected by the City.

Sessa remains employed, and he grieved the City's decision to deny sick leave payout. The parties agree that the grievance has been properly processed to arbitration.

THE PARTIES' POSITIONS:

The Union asserts that Sessa, having worked for nearly 30 years, is considered by the WRS to have a full career, which is defined by the WRS as 25 to 30 years of service. Sessa plans to retire completely, not work again, and has earned sick leave of 869 hours as a City employee. When Sessa retires, he does not anticipate accepting retirement benefits from the WRS until he reaches age 55; he will not collect a separation benefit that he could get if he retired now. Therefore, the Union argues that under Section 9.07, Sessa is entitled -- as a bargaining unit member retiring from City employment -- to the sick leave payout.

In the alternative, the Union asks that if it is found that he is not immediately qualified for the sick leave payout, that the City should make the payout when Sessa becomes 55 years old. The Union points out that the parties have agreed to other delayed benefits, particularly in health insurance benefits in Section 32.02(E) where employees retiring before age 62 will have the benefit of the City paying the premium between age 62 to 65, even though that employee has left City employment.

The Union states that because Sessa is the first person to request this payout, there is no history of denying such a benefit. Moreover, the Union notes that the City does not know when employees are getting annuities and that the City does not require employees to produce proof of getting annuities as a condition of receiving payout for sick leave. The sole requirement in the contract is that someone retire, and whether an individual collects an annuity at age 55 or postpones it is based on individual circumstances. The Union claims that Sessa is not voluntarily terminating his employment but is retiring.

The City objects to the Union's characterization of Sessa's planned termination as "retirement," noting that Section 4.07 of the contract uses three different concepts -- a quit, a discharge, and a retirement -- for loss of seniority. Under Section 9.07, the contract calls for retirement under the provisions of the WRS, and Section 40.04(49), Wis. Stats., defines a retired employee as one who is retired on an immediate or disability annuity. Sessa is not applying for any of the options noted by the WRS, such as separation, death benefits, disability, or retirement.

Appendix F of the contract also refers to retiring employees and the date of retirement to elect to use accrued sick leave for either cash or health insurance coverage. Section 11.07 of the contract refers to employees voluntarily separated for vacation payout purposes, similar to the Union's 1985 proposal rejected by the City. Section 32.02(E) refers to an employee retiring, and while Sessa would have rights under federal law (COBRA) to retain health insurance, the key word in this section is retirement in order to received the delayed benefit.

If the Union's theory of sick leave payout were correct, nothing would prevent an employee from receiving sick leave payout at earlier ages, such as 50 or even 40. Under the WRS, one always has the right to leave the money in the fund and get the benefit at a later date.

The City acknowledges that the Union has pointed out an administrative problem in that the City has no mechanism to determine that employees actually apply for annuity benefits. However, the evidences shows that in all cases, employees did get annuity benefits when they said they were retiring. While the City has not required proof in the past, it intends to rectify that loophole.

While Sessa may be retiring in his own mind, under the contract he is terminating his employment and will get an annuity at some future date. Thus, it is the City's position that Sessa is not retiring under WRS's interpretation. If the Union want the benefit it seeks here, it must get it in collective bargaining, not through arbitration.

DISCUSSION:

The parties have clearly provided in Section 9.07 that a payout of accumulated sick leave is available to a bargaining unit member "who retires from City employment under the provisions of the Wisconsin Retirement Fund . . ." (Emphasis added.) This sets the threshold requirement for eligibility of sick leave payout. If the parties had intended that sick leave would be paid out in the event of other kinds of terminations, they would have so stated, as they did in Section 11.07 for vacations, where they used the term "voluntarily separated," and as the Union proposed for the sick leave payment during negotiations in 1985. Therefore, the sick leave payout is only available for those who retire from the City under the WRS.

Sessa's plans call for retirement at age 52, working for no other employer, and collecting the WRS annuity at age 55. This cannot be characterized at the type of retirement contemplated by Section 9.07, as he would not be retiring under the provisions of the WRS. He would be quitting early, albeit with a long term or full career of public employment, and delaying the benefits of the WRS until he is eligible to collect an annuity. Sessa's plans can be more appropriately characterized as a voluntary separation, the kind contemplated by Section 11.07 of the contract.

While the Union notes that Sessa has worked a full career as defined by the WRS of between 25 to 30 years, 1/ others could have worked a full career or more than 30 years and be well under the earliest age that an employee would be eligible for benefits under the WRS. For example, if an employee started working for the City at age 18, at age 43, he would have 25 years of service. Under the Union's interpretation of the contract, that employee would have the right to sick leave payout if that employee states he is retiring and collects an annuity 12 years later. This clearly is well beyond what the parties contemplated when they limited the sick leave payout to those retiring under the WRS. The phrase "under the provisions of the Wisconsin Retirement Fund" in Section 9.07 must be given some effect. The parties did not merely state that those who retire would get the benefit; they qualified retirement by further adding the language "under the provisions of the Wisconsin Retirement Fund." The City's interpretation -- that under the WRS means to collect an annuity -- is preferable to the Union's -- that one only needs to state that one is retiring. After all, all the employees in the bargaining unit are covered by the WRS -- but it is those who are retiring under the provisions of the WRS that are eligible for sick leave payout.

Under this labor contract, as well as most, different consequences attach to different types of employment terminations, whether voluntary quits, discharges, layoffs, or retirements. The language of Section 9.07 should not be expanded through this proceeding to apply to Sessa's unique circumstances. To collect the benefit sought here, Sessa must continue to work to meet the terms of the labor contract. Every employee has the option to voluntarily quit, and those who do must accept the loss of benefits associated with retirement.

The Union correctly points out that the City had no knowledge of whether employees who asserted they were retiring were actually receiving annuities from the WRS. The fact that employees had the opportunity to deceive the City by gaining sick leave payout benefits without actually receiving annuities is no reason to now expand the contract language.

The Union asks for an alternative remedy by allowing Sessa to retire now and collect the sick leave payout at age 55 when he starts collecting his annuity. However, the contract does not provide for this either. The contract has delayed benefits in Section 32.02(E) for health insurance, and if the parties intended sick leave to be paid out in a delayed manner, they could have bargained it into their contract, as they did for health insurance.

Based on the contract language and the record as a whole, I conclude that the grievance must be denied.

AWARD

The grievance is denied.

Dated at Madison, Wisconsin this 11th day of April, 1991.

1/ The benefit handbook published by the Wisconsin Department of Employee Trust Funds (Joint Ex. #6) defines a "full career" as 25 - 30 years of service or more, and it also refers to being a career public employee and retiring at the "normal retirement age" to establish the formula for benefits. Normal retirement age is further defined on page 7 of the handbook, and the retirement benefits section on page 5 show that the earliest employees may start receiving monthly annuities is age 55, except for protective employees, which does not apply here.

By _____
Karen J. Mawhinney, Arbitrator