BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
CITY OF BERLIN EMPLOYEES LOCAL 514A, AFSCME, AFL-CIO	Case 38 No. 46309 MA-6944
and	
CITY OF BERLIN	

Appearances:
Mr. Michael J. Wilson, Staff Representative, on behalf of the Union.
vonBriesen & Purtell, S.C., by Mr. James R. Korom and Ms. Jennifer S. Walthe

ARBITRATION AWARD

The above-entitled parties, herein the Union and the City, are privy to a collective bargaining agreement providing for final and binding arbitration. Hearing was held on January 7, 1992, in Berlin, Wisconsin, where it was not transcribed. Briefs were filed by February 17, 1992.

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

ISSUE

The parties have agreed to the following issue:

> Did the City violate the last paragraph of Article X, Section A, of the contract by its refusal to pay one-half (1/2) of the premium cost of continued coverage under the group health, hospital and surgical insurance program for grievant Charles F. Pierce and his wife and, if so, what is the appropriate remedy?

DISCUSSION

Pierce, who is 57 years old, was employed by the City since 1974 until he left his employment on June 1, 1991, because of a permanent total disability. At that time, he applied for and received a disability annuity from the State of Wisconsin pursuant to Section 40.63, Wis. Stats. Pierce by letter dated June 10, 1991, also asked the City to pay one-half of his health insurance premium which now totals $396.66 per month. The City refused to do so on the ground that he chose disability over retirement and that he therefore is not covered under the contract's early retirement provision. Pierce then filed the instant grievance on July 3, 1991.

In support thereof, the Union primarily argues that Pierce was eligible for a "regular pension"; that he chose to receive a disability annuity instead; that the applicable Wis. Stats. treat such an annuity as a retirement; that the contract requires the City to pay one-half of a retiree's health insurance premium before the age of 65 without regard to whether a retiree is receiving a disability annuity; and that the City therefore violated the contract when it refused to pay for half of Pierce's insurance premiums. As a remedy, it asks that Pierce be made whole and that the City be required to pay its half of such premiums until he is 65 years old.

The City, in turn, maintains that Pierce did not choose early retirement; that contrary to the Union's assertions, "the contract language does not result in an injustice"; and that the grievance therefore should be denied.

The resolution of this issue turns upon Article X, Section A, of the contract which provides, inter alia, that:

. . .

> An Employee who chooses an early retirement prior to age sixty-five (65) shall be allowed to continue in the present group health, hospital and surgical insurance program for himself and dependents if any, and the Employer shall pay one-half (1/2) of the premium until age sixty-five (65). Thereafter, the Employee and/or dependents shall be allowed to continue in the program; provided, however, the Employee or dependents pay the premium in advance each month to the City.

Both parties here argue over whether Pierce in fact "chose" early "retirement" with the Union claiming, and the City denying, that he did.

They do not dispute, however, that there is no bargaining history regarding this precise issue, hence indicating that they did not even consider it when they first agreed to Article X, Section A, which has been left unchanged in the contract since about 1982. It also is undisputed that this marks the first time that this situation has arisen. The absence of such bargaining history and any past practice thus makes it somewhat difficult to ascertain how the language of Article X, Section A - which does not clearly address this question on its face - should be applied.

To be sure, the Union presents a plausible case as to why Pierce's annuity retirement should be treated the same as an early retirement - i.e. the fact that he was eligible for a regular pension, that the contract requires the City to pay one-half of the insurance premiums for anyone who retires before 65 years without any limitation, and that Wis. Stats. 40.2(49) defines a "Retired employe" as one who is either retired or who is on an immediate or disability annuity.

This is a valid argument as far as it goes, but it does not go far enough since Section 40.23 Wis. Stats. provides for "Retirement annuities" and "Disability annuities", hence showing that there is a difference between the two. In addition, Section 40.2(50) refers to a "Retirement annuity" as provided for in Section 40.23 Wis. Stats.

This also can be seen by the fact that the Wisconsin Department of Employe Trust Funds has issued a special brochure entitled Disability Benefits which, on page one therein, states that a disability annuity will be paid only if an employe has not "reached the 'normal retirement age' for your employment category." The Department of Employe Trust Funds' Your Benefit Handbook at page 8 also refers to one's "Normal Retirement Age", a "retirement annuity", and "unreduced retirement benefits at any time after you reach your normal retirement age." Disability benefits are separately provided for on page 10-11 therein, with the explanation that, "You must be below the normal retirement age" to receive same, hence showing again that there is a difference between the two.

All this is why the City is correct in pointing out that "early retirement" under Article X and the companion reference in Article XI of the contract to the Wisconsin Retirement System, "is a unique status that is only defined by one set of circumstances under the Wisconsin Retirement System" and that Pierce's receipt of a disability annuity thereunder does not constitute an

"early retirement" as that term is defined therein.

This difference is major: a disability annuity is payable after a qualified employe only works for five years; a retirement annuity, on the other hand, is fully payable at 65 and it is also available on a reduced basis to employes who are at least 55. Under the Union's theory, then, an employe who started working at 20 years of age and then suffered a permanent total disability at 25 years of age would be entitled to have one-half of his insurance premiums paid by the City for 40 years.

The question then becomes whether the City ever agreed to provide these two benefits, as opposed to only one.

Absent clear contract language expressly addressing the annuity disability issue, it is not lightly to be assumed that an employer would agree to such a costly benefit which is different than the regular kind of retirement that one receives at his/her "normal retirement age" and which thus limits the amount of insurance premiums that the City must pay. 1/ Here, since there is no bargaining history or past practice showing that the City ever in fact agreed to such a large liability, it follows that the City was not required to pay one-half of Pierce's insurance benefits after he received his disability annuity since that would involve granting a separate benefit which was never obtained in contract negotiations.

In light of the above, it is my

1/ In contrast to the situation here, the City has paid one-half of the insurance premiums for former workers Henry Bulchuck and Harold Resop who respectively retired when they were 62 and 63 years old.

AWARD

That the City did not violate the last paragraph of Article X, Section A, of the contract by refusing to pay one-half (1/2) of the premium cost of continued coverage under the group health, hospital and surgical insurance program for grievant Charles F. Pierce; the grievance is therefore denied and dismissed.

Dated at Madison, Wisconsin this 28th day of Arpil, 1992.

By Amedeo Greco /s/
Amedeo Greco, Arbitrator

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