

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration :  
of a Dispute Between :  
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CITY OF MANITOWOC WASTEWATER : Case 88  
TREATMENT PLANT EMPLOYEES : No. 47783  
LOCAL 731, AFSCME, AFL-CIO : MA-7382  
 :  
and :  
 :  
CITY OF MANITOWOC :  
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Appearances:

Mr. Gerald D. Ugland, Staff Representative, Wisconsin Council 40, AFSCME,  
AFL-CIO, on behalf of the Union.  
Mr. Patrick L. Willis, City Attorney, on behalf of the City.

ARBITRATION AWARD

The above-captioned parties, hereinafter, the Union and the City respectively, are parties to a collective bargaining agreement providing for final and binding arbitration. Pursuant to said agreement, the parties requested the Wisconsin Employment Relations to appoint a member of its staff to hear the instant dispute. The undersigned was designated by the Commission to hear the matter. Hearing was held on March 24, 1993, in Manitowoc, Wisconsin. No stenographic transcript was made. The parties completed their briefing schedule on May 6, 1993. Based upon the record herein and the arguments of the parties, the undersigned issues the following Award.

ISSUE

The parties at hearing stipulated to the following issue:

Did the City violate the collective bargaining agreement by suspending a life insurance provision associated with the health insurance?

If so, what is the appropriate remedy?

RELEVANT CONTRACTUAL LANGUAGE

ARTICLE XI

INSURANCE

. . .

Section 9. Life Insurance.

All employees covered by this agreement shall be required to pay the premium for their life insurance for the first month of each year or in the case of new

employees, their first month of employment upon becoming eligible for the life insurance program. The Employer agrees to make the required contributions for the remaining months of each year. The life insurance program shall be the State Life insurance program administered by the Wisconsin Retirement Fund.

#### FACTS

The facts in the instant case are essentially undisputed. Prior to January of 1986, the only life insurance benefit available to employees was that described in Article XI, Section 9 of the 1986-1988 collective bargaining agreement. In January of 1986, the City began self-funding health insurance benefits. As part of this decision, the City purchased stop loss insurance. It solicited a number of bids for the stop loss insurance and chose Sun Life Assurance Company of Canada. Sun Life, which made the most reasonable proposal, however, required the City to purchase life insurance on each employee equal to the employee's annual salary.

The employees were aware at the time that the bargaining was occurring that life insurance was to be part of the health insurance plan. This was explained to them sometime prior to the execution of the 1986-1988 agreement in May of 1986. The City sent the following letter to Michael Wilson, the Union's bargaining representative on or around March 31, 1986, also prior to the execution of the 1986-88 collective bargaining agreement:

March 31, 1986

#### MEMO

To: Mr. Michael Wilson, AFSCME Local No. 731  
Mr. Glenn Tarkowski, Teamsters Local No. 75  
Mr. Michael Kunesch, IAFF Local No. 368  
Captain Richard Brey  
Ms. Mary Lou Wagner, City of Manitowoc Nurses

From: Patrick L. Willis, City Attorney

Re: Life Insurance Benefit

Dear Bargaining Representative:

As you are aware, beginning January 1, 1986 the City of Manitowoc went to a self funded health insurance program. In order to minimize the City's loss exposure under the program, we obtained stop gap loss insurance for both individual claims and aggregate losses. The most reasonable insurance we could find for these expenses was from Sun Life. As part of its agreement to provide the insurance, Sun Life required that we also purchase an additional life insurance policy on each participating employee in the amount of the employee's annual salary rounded down to the next lower \$1,000.

For calendar year 1986, each of your members will enjoy this additional life insurance benefit. The benefit does not extend to retirees.

The City is paying for this life insurance coverage because even with it, the Sun Life proposal was more reasonable than the next lowest proposal for reinsurance on our health plan. Because of the particular circumstances under which the coverage is being provided, the City is making no commitments to its continuation in future years. In fact, it is only likely to be continued if the same set of circumstances which led to its acceptance initially continue. However, because of those circumstances, your members will enjoy this additional life insurance benefit at no cost to them in 1986.

There is no evidence that the Union dissented or assented to the terms of the March 31 letter. Although the Union President, Michael Cumming, testified that Wilson did not inform him about the March 31, 1986 memo, because Wilson was the Union's bargaining representative and agent, Wilson's receipt must be presumed to be sufficient notice to the Union of the City's position regarding this additional life insurance.

The City continued the additional life insurance benefit unchanged until 1988 when it reduced coverage to \$10,000 for each employee. It did not notify the Union of this change. The Sun Life benefit was eliminated entirely at the end of 1990. Again the City neglected to inform the Union that it was dropping the additional life insurance.

In February of 1992, upon inquiry by a bargaining unit employee as to the extent of his life insurance coverage, the Union discovered that the Sun Life life insurance policy had been cancelled completely.

At least one employee testified at the hearing that after he was hired in March of 1986 and made aware of the Sun Life policy, he cancelled a private policy in reliance upon the Sun Life benefits.

## POSITIONS OF THE PARTIES

### Union

The Union stresses that the employees believed that they had an additional life insurance benefit because of the bargaining in 1986. According to the Union, this benefit was discussed as part and parcel of the contemplated health insurance change and was an inducement for the Union to agree to the change. It submits that this additional life insurance is a past practice which was in place long enough to create a justifiable reliance on the employees' part.

The Union believes that the employees are entitled to notice which they did not receive when the City intends to change employee benefits. The employees are entitled to consider the impact of the change in benefits as it affects their welfare and that of their families. The Union claims that the City has put the employees at considerable risk by removing the life insurance without notice. Employees are also entitled to notice in order to determine whether or not their collective bargaining agreement has been violated, and to seek timely redress.

In the Union's view, the City has been secretive in dropping the life insurance policy. It questions the City's motives in not discussing its decision openly. The Union requests that the arbitrator find that the City has violated the collective bargaining agreement between the parties, that the City be ordered to restore the \$10,000 life insurance benefit described in the agreement and to pay to any employee's heirs, prior to reinstallation of the benefit, the \$10,000 for the death of any employee.

### City

The City maintains that Article XI, Section 10 of the collective bargaining agreement does not require the City to continue the Sun Life Life Insurance benefit. It stresses that this section, by its terms, did not apply to the termination of the additional life insurance benefit at the end of 1990 because the "carrier" remained the same during this period of time. Neither the express language or the spirit of Section 10 have been violated because the extra life insurance is not specified in the agreement. According to the City, Section 10 is designed to preserve benefits set forth elsewhere in the labor agreement but does not create new benefits. Both the health and life insurance benefits spelled out in the contract remain in place.

The City submits that it is not required to provide an unbargained for benefit in the additional life insurance. It disputes the Union's contention that this additional benefit is a past practice which must be maintained. The practice is not "unequivocal", because until 1986 there was no additional life insurance, in 1988 it was reduced from one year's salary to \$10,000, and then it was dropped altogether. The City contends that the additional insurance was not "clearly enunciated and acted upon", but rather subject to the specific conditions set forth in the City March 31 memo. It is the City's position that the benefit has not been readily ascertainable over a reasonable period of time as a fixed and established practice. It notes that if the Union's understanding of the benefit differed from the City's memo of March 31, it at no time contacted the City and expressed disagreement.

The City implies that the Union waived any arguments as to the practice being readily ascertainable when it failed to grieve the reduction to \$10,000 in 1988 after all employees received new booklets outlining the reduction. In this regard, it notes that the behavior of the Union from early 1986 until the time of the instant grievance is consistent with a mutual understanding of the parties that the life insurance benefit was offered on the terms set forth in

the City's March 31, 1986 memo. The Union has not met its burden to establish that the additional life insurance is a past practice, but rather has proved the opposite.

The City requests that the grievance be denied.

#### DISCUSSION

The thrust of the instant dispute centers around a determination as to whether or not the additional Sun Life life insurance benefit is incorporated as a part of the collective bargaining agreement by past practice. The Union makes no argument that any express provision of the collective bargaining agreement mandates this additional insurance benefit.

It should be noted that the agreement does provide in Article XI, Section 9 for Life Insurance as a part of the State Life Insurance Program administered by the Wisconsin Retirement Fund. No other life insurance benefits are mentioned elsewhere in the agreement. Generally speaking, arbitrators have adhered to the principle of expressio unius est exclusio alterius, to expressly include one or more of a class in a written instrument must be taken as an exclusion of all others. 1/ Here because the parties have expressly included the Wisconsin Retirement Fund Life Insurance Program in their written collective bargaining agreement and have not included any additional life insurance benefits in Section 9 or any other provision, there is, under this rule of construction, at least a strong inference that the parties did not intend to include additional life insurance benefits as a part of their collective bargaining agreement. This is the case because to expressly include some guarantees in an agreement is to exclude other guarantees. 2/

Thus, in evaluating just the insurance language contained in the agreement, specifically Article XI, Section 9, the undersigned cannot conclude that the City obligated itself to maintain the additional Sun Life Insurance benefit. The question then remains as to whether the Sun Life Insurance benefit can be construed as an unwritten implied term of the agreement, as a past practice.

Union assertions to the contrary, the memo of March 31, 1986 makes it evident that the City regarded this additional life insurance as a gift and not a benefit which it was prepared to incorporate into the collective bargaining agreement. The third paragraph of that memo includes the following representation: "The City is paying for this life insurance coverage because even with it, the Sun Life proposal was more reasonable than the next lowest proposal for reinsurance on our health plan. Because of the particular circumstances under which the coverage is being provided, the City is making no commitments to its continuation in future years. In fact, it is only likely to be continued if the same set of circumstances which led to its acceptances initially continue."

Thus, the City made it clear that it did not regard this additional life insurance benefit as anything other than a gratuity which it was providing for

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1/ How Arbitration Works, Fourth Edition, Elkouri and Elkouri, p. 355.

2/ Ibid.

as long as limited circumstances permitted. There was no mutually agreed-to, readily ascertainable benefit which both parties acknowledged, existing over a reasonable period of time. The benefit existed from 1986 to 1990 when it was terminated. In 1988, it was substantially reduced. While the arbitrator in no way condones the City's failure to give notice to the Union and the employees regarding its decision to terminate the benefit, she is unconvinced that the benefit was ever a bargained-for benefit rising to the status of a past practice/implied contract term. Accordingly, it is my decision and

AWARD

The City did not violate the collective bargaining agreement by suspending a life insurance provision associated with the health insurance.

The grievance is denied.

Dated at Madison, Wisconsin this 26th day of May, 1993.

By Mary Jo Schiavoni /s/  
Mary Jo Schiavoni, Arbitrator