BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
SHEBOYGAN FEDERATION OF NURSES AND HEALTH PROFESSIONALS, LOCAL 5011, AFT, AFL-CIO	Case 208 No. 49275 MA-7884
and	
SHEBOYGAN COUNTY	

Appearances:

Ms. Carol Beckerleg, Field Representative, on behalf of the Union.

Ms. Louella Conway, Personnel Director, on behalf of the County.

ARBITRATION AWARD

The above-entitled parties, herein the "Union" and "County", are privy to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in Sheboygan, Wisconsin, on September 2, 1993. The hearing was not transcribed and the parties thereafter filed briefs which were received by September 30, 1993.

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

ISSUE:

I have framed the issue as follows:

> Whether the County violated Article 8 of the contract when it paid its employes by direct deposit and, if so, what is the appropriate remedy?

DISCUSSION

Prior to June, 1993, employes were given the option of either being paid by check at their work sites or via the direct deposit of their checks to the financial institution of their choice. 1/

1/ Employes on first shift are paid on Fridays, while employes on second and third shifts are paid on Thursdays.

Following County Board action on the matter, County Personnel Director Louella Conway by memorandum dated February 18, 1993, 2/ informed all employes that effective June 1 they no longer would have the option of being paid by check and that, instead, all of them would be paid via direct deposit. The County wanted this change to save the time and money otherwise spent in distributing the checks at the workplace which it estimates to be at least $3,300 annually; to save the approximately $2,300 which it estimated would have to be spent on a new check writing machine to print out longer pay stubs; and to cure the problem of lost checks.

The County unilaterally implemented the direct deposit plan in June, over the Union's objection, by providing for direct deposit at the financial institutions chosen by employes pursuant to the Direct Deposit Authorization Form they earlier had filled out. For those employes who did not select an institution, the County arranged for direct deposit at Associated Bank which has several Sheboygan, Wisconsin, locations. In order to receive their pay at Associated Bank, such employes must show their pay stubs which are mailed out on Wednesdays. This, in turn, requires some employes to travel several miles to get paid, as opposed to the prior practice of being paid by check at the work site. Associated Bank has opened up accounts for all such employes at no cost --- a fact unknown to the Union until the instant hearing.

Prior to the June change, earnings' statements were distributed at work. Now they are mailed to employes' residences. Direct deposit was first instituted in 1987 on a voluntary basis and by September, 1993, about 50 percent of bargaining unit employes had signed up for it.

The Union filed the instant grievance on March 8 on behalf of both bargaining units, protesting the unilateral implementation of direct deposit on the ground that it "is not a reasonable work rule." After being denied by the County, Union Field Representative Carol Beckerleg informed the County that "the union will proceed to arbitration on the above-referenced grievances." The Union on May 20 subsequently requested arbitration.

In support of the grievance, the Union primarily maintains that the County must pay by "paycheck" because that is what Article 8 of the contract provides; that past practice supports payment by check; that alternatively, "payment by check is a benefit that is binding upon the employer"; and that the County's claimed savings in using direct deposit are immaterial because employe rights must take precedence over any such cost savings. As a remedy, the Union seeks an order requiring the County to pay employes by check, rather than direct deposit, if that is how they choose to be paid.

2/ Unless otherwise noted, all dates hereinafter refer to 1993.

In response, the County asserts that it retains the "exclusive" and "explicit" right under the contractual management rights' clauses of the two contracts herein 3/ to adopt reasonable rules and to make "such changes in the details of the employment as may be necessary for the efficient operation of the Department"; that it properly exercised its rights because the contracts do not specify the mode of payment and because the parties since 1974 have not bargained over that issue; and that Section 66.042 (3m), Stats. expressly grants municipal employers in Wisconsin the right to pay employes through direct deposit or electronic funds transfer. In addition, the County argues that "as far back as 1938" arbitrable case law has provided for the use of updated technology of wages; that the Federal Reserve Board has stated that the County may institute direct deposit as long as the County does not require utilization of a particular financial institution; "that direct deposit is beneficial to employes"; and that it is cost-effective because it saved the County about $3,300 in 1993 and will save considerably more in future years.

The resolution of this issue turns in part on Article 8, Section C, of the contract which provides:

> All employees shall be paid every other Friday subject to a two (2) week holdback of wages. If payday falls on a holiday, employes will be paid on the preceding workday. The paycheck earnings and deductions statement shall indicate regular hours worked, the employee's rate of pay, overtime hours worked and all deductions made, within the limits of the machine payroll system. (Emphasis added).

The key phrase here is "The paycheck earnings and deductions statement . .", as it clearly assumes the issuance of a "paycheck." The Union therefore correctly points out that:

> "Ordinarily, all words used in an agreement should be given effect. The fact that a word is used indicates that the parties intended it to have the same meaning, and it will not be declared surplusage if a reasonable meaning can be given to it consistent with the rest of the agreement." Elkouri and Elkouri, How Arbitration Works, (BNA, 4th Ed.) p. 353.

In the absence of any contrary language in the rest of the

3/ One contract covers employes in the Public Health and Community Programs; the second contract covers Registered Nurses at the County's institutions.

contract, it thus must be assumed that this reference to "paycheck" reflected the parties' understanding that payment is to be made by check. That understanding was certainly reasonable since that apparently was the only way that employes were paid at the time that the parties agreed to this language.

The County nevertheless asserts that it has the right under Article 3, entitled "Management Rights Reserved", to change such "details of the employment. . ." because there is nothing in the contract expressly prohibiting it from doing so. As just noted, however, Article 8's reference to "paycheck" indicates that payment is to be made by paycheck, thereby establishing that the County is not free to alter this mode of payment without an employe's consent, which is exactly what the County did in 1987 when it began to give employes the option of either being paid by check or via direct deposit. That, along with the fact that none of them dealt with mode of payment, is what distinguishes this case from the other cases cited by the County in support of its claim that changing mode of payment represents a reasonable work rule. 4/

The County also cites two cases involving mode of payment: United States Steel Corp., 36 LA 220 (McDermott, 1961), and Diamond Alkali Co., 38 LA 1055 (M. Rubin, 1962). United States Steel Corp. turned on whether the company could unilaterally discontinue its three year old in-plant check checking service. Arbitrator Garrett ruled that it could because "the evidence does not support a finding that the Company agreed to maintain a check-cashing system at the plant as an essential ingredient of payment by check." In Diamond Alkali, Arbitrator Rubin ruled that the company did not violate the contract when it unilaterally went from paying by cash to paying by check at the plant. In doing so, he stated that the contract "expresses no intent, either expressly or by implication, in what form wage payment shall take. . ." and he further found that the method of wage payment is not the "type of benefit grounded by the principle of accepted past practice."

The facts there, however, differ from the facts here because (1), employes there were still paid at the plant even after the changes and (2), the pertinent contracts did not refer to "paycheck" as does Article 8 here.

It therefore is unnecessary to decide, as Arbitrator Rubin

4/ See United Carr-Tennessee, 59 LA 883 (Cantor, 1972); Packaging Corp. of America, 86 LA 753 (Smith, 1986); Simmons, U.S.A., 85 LA 809 (Seidman, 1986); Lima Register Co., 76 LA 935 (Heinsz, 1981); Stroh Die Casting Co., 72 LA 1250 (Kerkman, 1979); General Telephone Co. of Pennsylvania, 71 LA 488 (Ipavec, 1978), and Illinois Water Company, FMCS No. 92/19295 (Nielsen, 1993).

did, whether a change in mode of payment at a plant constitutes a past practice. Rather, the issue here is whether changing mode of payment and forcing employes to collect their pay via direct deposit away from the plant is proper.

Given Article 8's reference to a "paycheck" and the nearly twenty-year past practice of paying by check at the work site, I find that it is not. For as noted by Arbitrator Garrett in a subsequent case, Picklands, Mather & Co., 87 LA 1067 (1986), changing the mode of payment from cash to direct deposit does constitute the kind of "benefit" protected by past practice. 5/ The Company seeks to distinguish Picklands, Mather & Co. on the ground that it involved a Minnesota statute making it unlawful for employers to pay by direct deposit unless employes so agree. While that certainly was a factor considered by Arbitrator Garrett, the thrust of his opinion indicated that he would have ruled as he did irrespective of the Minnesota statute because of his separate determination that the "benefit" protected by the contract was "the individual employee's right to choose whether or not to receive pay directly from the Company instead of by direct deposit in a bank." So, too, here.

The County's legal authority does not provide for a contrary result. Thus, it is immaterial that Section 66.042 (3m) Stats., allows for direct deposit, as that is an entirely different question from whether an employer must bargain over such a subject and whether a collective bargaining agreement governs how wage payments are to be made - which is the case here. It is also immaterial that the Federal Reserve Board has informed the County that it can establish direct deposit if employes are left free to select their own financial institution, as that, too, is a separate question of whether a collective bargaining agreement governs how payment is to be made.

In light of the foregoing, it is my

AWARD

1. That the County has violated Article 8 of the contract by no longer giving employes the option of being paid by check at the work site.

2. That to rectify this contractual breach, the County shall immediately cease paying its employes via direct deposit for

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5/ Arbitrator Garrett's ruling is particularly significant because he had earlier ruled in United States Steel that the company could discontinue its check-cashing services. This shows that there are variables surrounding this general issue and that answers must be based on the facts and the pertinent contract language of each case.

those employes who want to be paid by check, effective the first full pay period after the issuance of this Award.

Dated at Madison, Wisconsin this 9th day of November, 1993.

By Amedeo Greco /s/
Amedeo Greco, Arbitrator