

BEFORE THE ARBITRATOR

 In the Matter of the Arbitration :
 of a Dispute Between :
 :
 MENOMONIE CITY EMPLOYEES, : Case 75
 LOCAL 734, AFSCME, AFL-CIO : No. 47418
 : MA-7261
 and :
 :
 CITY OF MENOMONIE :
 :

Appearances:

Mr. Guido Cecchini, Staff Representative, Wisconsin Council 40, AFSCME,
 AFL-CIO, 470 Garfield Avenue, Eau Claire, Wisconsin 54701, for the
 Union.
 Skinner, Schofield & Higley, Attorneys at Law, 700 Wolske Bay Road, Menomonie, W

ARBITRATION AWARD

The Union 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, on April 29, 1993, appointed Jane B. Buffett, a member of its staff, to hear and decide a dispute regarding the interpretation and application of said agreement. On May 28, 1993, in a conference telephone call, the parties requested that the arbitrator rule, prior to the hearing, on the validity of ARTICLE 6, Section C-3 and C-4 of the agreement. The parties made oral argument to the arbitrator. The parties agreed the arbitrator announce her ruling by telephone and such announcement would be followed by a printed ruling. Said telephone announcement was made May 28, 1993. This document constitutes the printed ruling.

RULING

The collective bargaining agreements at issue provides as follows:

ARTICLE 6 - JOB POSTING

. . . .

C)

. . . .

- 3) Seasonal, part-time and limited term employees in the unit where the job opening exists and who are union members will be given consideration after steps 1 (one) and 2 (two) have been executed.
- 4) Seasonal, part-time and limited term employees in the unit opposite where the job exists and who are union members will be given consideration after steps 1 (one), 2 (two), and 3 (three) have been executed.

The parties agree that a provision which discriminates against employees who are not members of the union would be unlawful, and that it would be

unlawful to provide a benefit to an employe based on union membership. The parties disagree, however, on the manner in which the Arbitrator should treat the unlawful provision.

The Union argues that the arbitrator could interpret the provision in a lawful manner by not giving effect to the words: "and who are union members," but by giving effect to the remainder of the provision. The Union argues further that striking the unlawful phrase would not alter the meaning of the provision.

The City argues that none of the provision should be given effect. It reasons that the mere deletion of the reference to union membership would create a modified provision whose meaning is different from that of the original provision.

The contract has no Savings Clause which would govern circumstances in which a provision is found to be unlawful or circumstances in which, as here, the parties agree that a provision is unlawful. Nor have the parties had any past dispute over any unlawful contract provision.

In addressing this question, this Arbitrator is bound to an interpretation of the parties' contract which accurately reflects the parties' intended meaning. Both parties agree that the provision at issue was designed to give a preference to a union member over an employe who is not a union member. If this Arbitrator were to accept the Union's argument and give effect to a modified version of the clause, the result would place all seasonal, part-time and limited term employees on an equal footing, regardless of whether or not they were union members. Such an interpretation would alter the meaning of the provisions in contradiction to the parties' original intent.

Since the arbitrator cannot give effect to the provision as written without giving effect to a provision the parties agree is unlawful, and cannot give effect to the provision as written by ignoring only the words "who are Union members" without altering the provision's intended meaning, it necessarily follows that the arbitrator can not give any effect to ARTICLE 6, Section C-3 and C-4.

RULING

The entirety of ARTICLE 6 - JOB POSTING, Sections C-3 and C-4, set forth above, cannot be given effect.

Dated at River Falls, Wisconsin, this 1st day of June, 1993.

By Jane B. Buffett /s/
Jane B. Buffett, Arbitrator