BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

LOCAL 321, IAFF

and

CITY OF RACINE

Case 494
No. 54072
MA-9540

Appearances:

Hanson, Gasiorkiewicz, and Weber, S.C., by Mr. Robert K. Weber, on behalf of the Union.

Long & Halsey Associates, Inc., by Mr. William R. Halsey, on behalf of the City.

ARBITRATION AWARD

The above-entitled parties, herein "Union" and "City", are privy to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held on April 4, 1996, in Racine, Wisconsin. The parties thereafter filed a factual stipulation and then filed briefs which were received by November 7, 1996.

Based upon the entire record and arguments of the parties, I issue the following Award.

ISSUE

The parties have agreed to the following issue:

> Whether all employes who retire after January 1, 1996, shall be subject to placement within the insurance program established for active bargaining unit members and as subsequently modified through settlement or interest arbitration.

BACKGROUND

The parties' factual stipulation provides:

1. The City of Racine has 960 active employees.

2. These employes are represented by twelve bargaining units, and a group of "non-rep" employees.

3. Eleven bargaining units have agreed to and the non-rep employees had imposed, the "new" insurance program and language identical to that set forth in the contract between the City and Local 321.

4. Any "modifications" to the insurance program would occur no earlier than January 1, 1997. This would occur only through agreement between Local 321 and the City, or as part of an arbitration proceeding.

5. The depositions of Jim Kozina, Mike Vinovich and George Lambert shall be part of the record in this proceeding.

Pursuant to this agreement, the parties have introduced the depositions of Personnel Director James Kozina, Firefighter Mike Vinovich, and Division Fire Chief George Lambert.

Personnel Director Kozina testified that the City's new insurance plan provides better benefits than its prior plan; that he told the Union in the last contract negotiations that almost all of the City's other bargaining units had agreed to it; and that he told the mediator about the City's plan and the fact that employes who retire after January 1, 1996, would be covered by whatever subsequent changes were negotiated between the City and the Union. He also said that about 65-70 percent of the retired firefighters have signed up for the new plan. He also said that retirees previously have been accorded whatever insurance coverage they received at the time of their retirement, with no changes being made in that coverage. Kozina explained that the City needs the ability to change benefits to reign in even higher insurance costs and that other bargaining units have agreed to the language in dispute here. He also said that the City's proposal would only affect "previous retirees who elect to go into the new plan" or employes who retire after January 1, 1996, because "we weren't trying to change the plan for all the retirees if they decided not to opt into the new plan."

On cross-examination, he admitted that the City never presented any written proposal to the Union relating to its desire to change retiree coverage; that the City never directly communicated its offer to the Union; and that, "It was my understanding that the mediator had carried that message to the Union."

Division Chief Lambert testified that the parties in negotiations never discussed the City's proposal and that, "The first time I saw it was in the draft" contract prepared by the City.

Firefighter Vinovich, who is also the Union's vice-president, testified that the only two major items in dispute during negotiations were insurance and COLA; that the new insurance "proposal here provided even better things on certain levels of the insurance but all within --- all within the same carrier"; and that the parties in face-to-face negotiations never discussed the City's proposal. He explained that the Union does not want to accept the City's restriction relating to retirees because "we can't go back and change the benefits for them." He added that the City has

given past retirees the option of switching into the new plan and that the City in negotiations never pointed out that the insurance language provided for possible changes for retirees.

On cross-examination, he stated that the City in negotiations "might have said something similar to that" - i.e., that the City wanted to implement an insurance plan similar to the one implemented for the other bargaining units but that, "I'm not aware of it."

DISCUSSION

The Union argues that the City has not met its burden of proving that a change in retiree insurance benefits is needed; that the City has not offered a quid pro quo for the language it seeks; that there was a "mutual misunderstanding" between the parties as to what was agreed to in their mediation session; and that the "subject of retiree health insurance is a prohibited subject of bargaining."

The City, in turn, contends that it is only asking that "firefighter retirees be treated the same as all other retired City employes"; that "internal comparables" support its position; that its proposal is aimed at helping to curb insurance costs; and that it is "important to note" that coverage "will only be changed if the labor agreement is. . ." changed. Hence, the City maintains that it "is merely reserving the right to have future retirees treated the same as active employes."

This is an unusual case because: (1), the City never submitted to the Union any written proposal regarding changes in retirees' health insurance; and (2), the City never directly told the Union about its proposal. Instead, the City asserts that its proposal was communicated to the Union via a mediator, which the Union disputes.

In this connection, I credit Kozina's testimony that the City would not have agreed to the contract without agreement on this issue. The City's position was certainly reasonable because all but two of the City's bargaining units have agreed to it and because the new insurance language agreed to here provides better benefits than the prior plan.

Hence, those better benefits constitute the needed quid pro quo for possible restrictions on retirees' benefits. The majority of retirees certainly feel that these benefits are better since about 65-70 percent of them have switched over to the new plan. This is why there is no merit to the Union's claim that no quid pro quo has been offered here.

Furthermore, the City has proven the need for its change because retirees now account for about two-thirds of the City's health insurance costs. Given that huge expense, the City is certainly entitled in the future to negotiate for changes in this area, which is all that its proposal does.

Furthermore, since the City's language was such an integral part of its contract offer, I find

that it is binding on the Union because the only other alternative is to totally rescind the contract on this basis, which is something that must be avoided if at all possible. That is why it makes much more sense to fill in the contract "gap" by finding that the Union is bound by this language, just like all the other bargaining units which have agreed to it. For if the Union were not bound, that would put it better off than every other bargaining unit (other than police) which has agreed to this language. Absent any compelling reason why firefighters should be treated better than anyone else in City service, I conclude that they should be subjected to the same health insurance language as nearly everyone else.

The Union argues otherwise by citing National Linen Service, 95 LA 829 (Abrams, 1990); General McLane School District, 90-2 Arb., 834 (Dean, 1990).

National Linen centered on whether a union was bound to a contract proposal which curtailed how holiday overtime would be calculated. Arbitrator Rodger I. Abrams found that the union was bound to the contract because union officers had agreed to it and because they signed the contract containing the disputed language without complaint. In General McLane School District, Arbitrator Irwin J. Dean, Jr., similarly found that a union was bound to contract language relating to longevity pay even though the union claimed that it never agreed to that language in negotiations.

While both of these cases involved possible reformation of contracts, they are not controlling because the unique facts herein show that the City's improved insurance benefits were part of a package deal which also provided that retirees henceforth would be subjected to whatever insurance changes were negotiated between the parties. Hence, there is no valid reason for allowing the employes here to receive better insurance benefits while at the same time not subjecting those benefits to the same package deal negotiated with almost every other union. That is why the contract cannot be reformed along the lines suggested by the Union.

Contrary to the Union's claim, this issue does not represent a prohibited subject of bargaining. Instead, it reflects nothing more than subjecting bargaining unit employes to possible future changes that the parties may agree to. Hence, the City's proposal is aimed at current employes a matter which constitutes a mandatory subject of bargaining. That is why the facts here are significantly different from Chemical Workers, 1 v. Pittsburgh Plate & Glass Co., 404 U.S. 157 (1971), which holds that mid-term changes in a retirees' current retirement benefits does not constitute a mandatory subject of bargaining.

Moreover, there is no basis for finding that the City has treated current retirees unfairly since it is not imposing any restrictions on their past coverage. Rather, current retirees were given the option to join the new health plan subject to this proviso. Hence, since the current plan provides better benefits, the City can legitimately make such added coverage dependent upon retirees agreeing that they are to be covered by any changes negotiated between the Union and

City. 1/

Accordingly, it is my

AWARD

That all employes who retire after January 1, 1996, shall be subject to placement within the insurance program established for active bargaining unit members and as subsequently modified through settlement or interest arbitration. The same is true for all retirees who voluntarily have switched over to the new insurance plan.

Dated at Madison, Wisconsin, this 18th day of December, 1996.

By Amedeo Greco /s/
Amedeo Greco, Arbitrator

1/ It is the voluntary nature of this proposal, and the need to negotiate changes for future retirees, which distinguishes this case from Racine Education Association, WERC Decision No. 20652-A (1/84); UMWA v. Royal Coal Co., 6 Employee Benefits Cas. (BNA) 2117 (S.D. W. Va. 1985); Mioni v. Bessemer Cement Co.; 6 Employee Benefit Cas. (BNA) 2677 (W.D. Pa. 1985).