BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between GENERAL TEAMSTERS UNION, LOCAL 662 and CLAIREMONT NURSING FACILITY	Case 22 No. 54390 A-5507

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller and Brueggeman, S.C., Attorneys at Law, by Ms. LeeAnn G. Anderson, and Ms. Heidi A. Eichmann, appearing on behalf of the Union.

Mr. Alan D. Brown, Labor Relations Consultant, appearing on behalf of the Employer.

ARBITRATION AWARD

General Teamsters Union, Local 662, hereinafter referred to as the Union, and Clairemont Nursing Facility, hereinafter referred to as the Employer, are parties to a collective bargaining agreement which provides for the final and binding arbitration of disputes arising thereunder. The Union made a request, with the concurrence of the Employer, that the Wisconsin Employment Relations Commission designate a member of its staff to act as an arbitrator to hear and decide a grievance over the meaning and application of the terms of the agreement. The undersigned was so designated. Hearing was held in Eau Claire, Wisconsin on February 25, 1997. The hearing was not transcribed and the Union filed a post-hearing brief. The Employer was given an extension to file its brief. On August 6, 1997, the undersigned sent a letter to the Employer's representative inquiring as to the status of its brief. No brief or response was received and the undersigned closed the file and proceeded to issue the following decision.

Issue:

The parties stipulated to the following:

> Whether the Employer violated the collective bargaining agreement by failing to make the insurance premium contributions in the amounts mandated by Article 17, Section 3?
>
> If so, what is the appropriate remedy?

Pertinent Contractual Provisions:

ARTICLE 17

HEALTH AND WELFARE BENEFITS

. . .

Section 3. Premium Sharing. For participating eligible employees, the Employer will contribute the following toward the monthly insurance premiums:

Health Insurance:

Effective January 1, 1996:

Employees with less than 4 yrs service	$ 90.00 per month
Employees with 4 but less than 5 yrs service	$118.13 per month
Employees with 5 or more yrs of service	$133.88 per month

Effective July 1, 1996:

Employees with less than 4 yrs service	$ 90.00 per month
Employees with 4 but less than 5 yrs service	$120.00 per month
Employees with 5 or more yrs of service	$140.00 per month

Effective January 1, 1997:

Employees with less than 4 yrs service	$ 90.00 per month
Employees with 4 but less than 5 yrs service	$125.00 per month
Employees with 5 or more yrs of service	$145.00 per month

. . .

Effective January 1, 1997, any increases in premium for the life of this Agreement will be split 50/50 between the Employer and the employee.

Background:

The grievance arose in July, 1996. 1/ An employe, Linda Jensen, with a seniority date of June 7, 1992 was not given the 4 to 5 year rate premium contribution on July 1, 1996 of $120.00 but remained at $90.00. 2/ The Employer took the position that she was not eligible for the 4 to 5 year rate until January 1, 1997. 3/

The parties began negotiations for a successor to the 1993-95 collective bargaining agreement in the spring of 1995. In December, 1995, the parties were still negotiating and the

1/ Ex. 2.

2/ Ex. 5.

3/ Ex. 3.

amount of insurance premium payment was an issue with a different premium amount based on years of service. The Union proposed that the first year would be $90, between 1 and 5 years, it would be 75 percent of the single rate and after five years, the Employer would pay 100 percent of the single rate. 4/ The Union sought adjustment of the premium contribution on the anniversary date. 5/ The Employer rejected the proposal on the grounds that it was too difficult to administer. The parties reached an impasse but later the spokesmen reached a tentative agreement. On the insurance payment, the Tentative Agreement provided as follows:

> The Employer shall make additional contributions to the Employee Health Insurance based on the rates as quoted by the Insurance Carrier on the following formula, converted to dollars as follows:
> Employees to 4 years of continuous service $90.00 / month
> Employees 4 to 5 years of continuous service 75% of quoted single rate.
> Employees 5 plus years of continuous service 85% of quoted single rate.
> Percentages as cited above converted to dollars / month =
> Employees to 4 years of continuous service $ 90.00/ month.
> Employees 4 to 5 years of continuous service $118.13/ month.
> Employees 5 plus years of continuous service $133.88/ month.

When insurance premiums increased, a dispute immediately arose over whether the percentages applied or the dollar amounts applied. The Union filed an unfair labor practice charge with the NLRB claiming the Employer failed to pay its agreed upon share. 6/ The NLRB investigator concluded that there was no meeting of the minds and the Union withdrew its complaint. The parties returned to the bargaining table and negotiated an agreement for 1995-96 and the issue of anniversary date for implementation of increased contribution toward the insurance premium was never discussed. The Union's witnesses testified that it wasn't necessary to discuss it as it seemed obvious and they assumed anniversary date would be used based on the wage schedule. The Employer's witnesses indicated that as they did not agree to it, the anniversary date proposal was dropped. The parties eventually reached agreement which provides the language on premiums set out above. The grievance was denied and appealed to the instant arbitration.

Union's Position:

The Union contends that Article 17, Section 3 is clear and unambiguous and the plain language must be applied. It observes that the provision contains no general language or reservations and conveys the concept that the Employer must pay the increase in insurance

---

4/ Ex. 7, p. 3.

5/ Id.

6/ Ex. 10.

premiums at the employe's anniversary date according to the steps in Article 17, Section 3. It asserts that the Employer's argument that increases became effective only on January 1, 1997 is not plausible and conflicts with the plain language of the contract. It submits that a term used by the parties in one sense must be used in that same sense throughout the contract and Article 17, Section 3 provides that effective January 1, 1997, any increase in premiums will be split 50-50, yet no other limitation was included and it argues that the expressed intent of the plain language must be given effect.

The Union insists that Article 17, Section 3 mandates Employer increased insurance payments on the employe's anniversary dates. It observes that the anniversary date triggers all other benefits in the collective bargaining agreement and Exhibit "A", wage increases, have always been implemented on the employe's anniversary date. It claims that the "four years service" and "five years service" in Article 17, Section 3 means that contributions would increase on the employe's seniority date just like other provisions throughout the contract. It asserts that because wage increases occur on the seniority date, the health insurance premium payment must also. It submits that a general rule of construction requires the same interpretation gives meaning to all provisions of the contract. The Union observes that contract language must be read in light of the context. It states that had the parties intended the date of January 1, 1997 to be the effective date, they would have explicitly written that into their agreement. The Union requests the Arbitrator sustain the grievance and order the Employer to make any person whole for all losses sustained.

Discussion:

Article 17, Section 3 provides that the Employer will contribute certain amounts toward employes' monthly insurance premiums and those amounts differ on January 1, 1996, July 1, 1996 and January 1, 1997. The amount of contribution differs based on length of service. The Employer did not make any change in the amount of contribution based on years of service until January 1, 1997. There is nothing in Article 17, Section 3 which provides for such a result and the plain meaning of the language would contradict such a conclusion.

The Union argues that the amounts must change on an employe's anniversary date. The contract is silent on the date the insurance premium contribution increases based on years of service. There is no past practice as the concept of different contribution rates based on seniority was first negotiated into this contract. As far as bargaining history is concerned, the first tentative agreement was found not to be valid in the insurance area because there was no meeting of the minds. In the second round of negotiations, the issue of when it was effective based on length of service was never brought up by the Union and as noted above, nothing appears in the contract language. It must be concluded that neither past practice nor bargaining history can be used as an aid to interpret the contract language.

Therefore, Article 17, Section 3 must be interpreted on its own within the four corners of

the contract. The Union points to Exhibit "A", the wage schedule, which is also silent on the effective date based on seniority and it is undisputed that the new rates become effective on the employe's anniversary date even though the contract is silent. Article 14 on vacations in Section 1 does expressly state that vacation will be determined by reference to the anniversary date of an employe's employment. Thus, the parties sometimes put in anniversary date and other times didn't. It could be argued that if the parties intended it to be applied on the employe's anniversary date, they would have included language to that effect just like vacation. On the other hand, Exhibit "A" does not include any language on anniversary date and the parties apply it. It must be noted that Exhibit "A" states, "Effective January 1, 1996 through July 30, 1996". There are some differences between wages which are hourly and premiums which are monthly, so it is easy to change the wages on anniversary date, whereas dividing up a monthly rate based on date of hire seems awkward at best. Thus, reference to other provisions of the contract does not definitively establish application of a similar interpretation to Article 17, Section 3.

Interpreting Article 17, Section 3, the undersigned concludes that the language "Effective January 1, 1996" applies to both amounts and service at that time. Those amounts do not change until July 1, 1996 and "Effective July 1, 1996," the employes' amount of service at that time determines the amount of premium contribution. The same rationale applies to January 1, 1997. Had Article 17, Section 3 included the phrase "through June 30" as does Exhibit "A" the result might be different.

Thus, referring to Exhibit 5, Christa Bandup and Cynthia Schuett should have been receiving $140.00 and Linda Jensen $120.00 on July 1, 1996 toward the insurance payment and on January 1, 1997, these would have increased $5.00 plus 50 percent of any premium increase. Marilyn Brantner would get $125 plus 50 percent of any premium increase on January 1, 1997. These amounts would remain the same until the 50 percent amount changed or the parties negotiated something different in Article 17, Section 3.

Based on the above and foregoing and the record as a whole, the undersigned issues the following

AWARD

The Employer violated the collective bargaining agreement by failing to make insurance premiums on the effective dates set forth in Article 17, Section 3 based on the years of service as of that effective date and not the individual's anniversary date. The Employer is directed to immediately make the affected employes whole by payment to them of the amounts that should have been made in accordance with the discussion set out above.

Dated at Madison, Wisconsin this 10th day of September, 1997.

By Lionel L. Crowley /s/
Lionel L. Crowley, Arbitrator