

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
THE LABOR ASSOCIATION OF WISCONSIN, INC.

and

THE CITY OF MEQUON

Case 28
No. 56448
MA-10293

(Diane Porter Grievance)

Appearances:

Mr. Patrick J. Coraggio, Labor Consultant, Labor Association of Wisconsin, Inc., on behalf of the Association.

Michael, Best & Friedrich, by **Mr. Robert Mulcahy**, on behalf of the City.

ARBITRATION AWARD

The above-captioned parties, herein "Association" and "City", are signatories to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in Mequon, Wisconsin, on January 12, 1999. The hearing was transcribed and the parties thereafter filed briefs and reply briefs that were received by March 29, 1999. Based upon the entire record and the arguments of the parties, I issue the following Award.

ISSUES

Since the parties were unable to jointly agree on the issues, I have framed them as follows:

1. Is the grievance arbitrable?

2. If so, did the City violate the contract when it conditioned long-term disability coverage to grievant Diane Porter on her paying part of the retroactive premium demanded by the City's insurance carrier and, if so, what is the appropriate remedy?

BACKGROUND

Grievant Diane Porter, an Administrative Secretary I, was hired as a part-time employe in 1990 and became a full-time employe in August, 1995, at which time she became eligible for certain benefits, including long-term disability insurance ("LTD"). Porter testified that no one on the City's behalf then told her that she was eligible for LTD insurance.

Porter near the end of 1997 asked about such coverage and former Acting Human Resources Manager Carol L. Wichmann then asked the City's insurance carrier, United Wisconsin Insurance Group ("UWG"), whether Porter was eligible to join the disability plan. UWG initially said no because Porter had a pre-existing medical condition, but ultimately relented and said yes only after Wichmann made repeated pleas on Porter's behalf. UWG, however, placed a condition on Porter joining the plan and waiving its existing condition requirement: it insisted that back premiums for the last 14 months in the amount of \$558.61 had to be paid in order for Porter to receive immediate coverage. Since the contract at Section 20.06 states that employes must pay part of the long-term disability premium, the City decided that Porter should pay part of the retroactive premium demanded by UWG which totaled \$558.61.

Wichmann testified she first discussed this proposal with Porter on February 16, 1998 (unless otherwise stated, all dates herein refer to 1998), to which Porter reportedly replied words to the effect: "I'll get back to you on that. I'll let you know about it." About a half hour later according to Wichmann, Association Representative Kevin Naylor telephoned Wichmann to say that Porter was not happy about paying any back premiums. Porter, on the other hand, testified that her conversation with Wichmann occurred on February 18. Wichmann informed Association Representative Patrick J. Coraggio of the City's proposal by letter dated February 19. The record is unclear as to when Porter first saw this letter.

Wichmann subsequently spoke to Porter on February 26, at which time Porter agreed to make such payment in the amount of \$209.44 which was to be paid through monthly payroll payments of \$20.94 per month. Porter testified she so agreed because that was the only way she could receive disability coverage. On February 28, she filed the instant grievance. Porter subsequently became eligible for disability coverage on March 1.

POSITIONS OF THE PARTIES

The Association asserts that its grievance is timely because: (1), the ten-day filing deadline provided for in the contract did not start to run until after Wichmann spoke to Porter on February 26; and (2), the grievance in any event was filed within ten days after Wichmann wrote to Association Representative Coraggio on February 19. As to the merits, the Association contends that the City failed to offer Porter LTD insurance “in a timely fashion”; that the City has failed to prove it offered such insurance to Porter when she became a full-time employee; that the City had an obligation to offer such coverage at that time; and that Porter therefore should be repaid the \$209.44 she was required to pay for retroactive coverage.

The City, in turn, maintains that the grievance is untimely because it was not filed within ten days after Porter first learned in 1997 that she did not have LTD coverage and because it was not filed within ten days after Wichmann spoke to Porter and Naylor on February 16. The City also asserts that the grievance is without merit because “the remedy requested in the original grievance has already been provided”; because it has fulfilled all of its contractual obligations; and because Porter herself agreed on February 26 to help pay for the retroactive payment demanded by the City’s insurance carrier.

DISCUSSION

Turning first to whether the grievance was timely filed, Article IV of the contract, entitled “Grievance Procedure”, states:

ARTICLE IV – GRIEVANCE PROCEDURE

Section 4.01: The grievance procedure in this Article shall apply only to grievances involving the interpretation or application of the specific provisions of this Agreement. The grievance process shall be initiated within ten (10) working days of the incident or within ten (10) working days of the time that the aggrieved became aware of or should have been aware of the incident. Any member of the Association or the Association, may be a grievant. All grievances are required to be in writing, and shall state the specific provision or provisions of the Agreement alleged to have been violated. All grievances shall be processed as follows:

Step 1: The grievant and/or the Association representative shall present the grievance in writing to the Department Head. The Department Head shall respond in writing within ten (10) working days of receiving the written grievance.

Step 2: If the grievant is not satisfied with the reply of the Department Head or if the Department Head does not respond in a timely manner, the grievance may be appealed to the City Administrator or designee within ten (10) working days of the written response in Step 1 or within ten (10) working days of the date that the response was due. The City Administrator or designee shall submit a written determination of the grievance to the grievant within ten (10) working days of receiving the grievance.

Step 3: If the Association is not satisfied with the written decision of the City Administrator or designee, the matter may be submitted to arbitration.

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Section 4.04 – Time Limits: All time limits in this grievance procedure may be modified by mutual agreement of the parties. Working days referred to herein shall be defined as Monday through Friday excluding Saturdays, Sundays and Holidays. Any grievances not started within the time limit set forth above shall be invalid.

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Contrary to the City’s claim, I find that the grievance is timely because it is not at all clear when Wichmann first discussed the City’s proposal with Porter, as Wichmann testified it was on February 16 while Porter said it was on February 18. In any event, it was filed within the ten (10) working days after Wichmann spoke to Porter on February 26 to fully explain the City’s proposal. For while it is true that Wichmann earlier wrote to Coraggio on February 19, Section 4.01, above, states that a grievance can be filed either “within ten (10) working days of the incident” or “within ten (10) working days of the time that the aggrieved became aware or should have been aware of the incident.” Here, since the City acknowledges that Wichmann “fully” made Porter aware of her situation on February 26, the February 28 grievance was filed within ten (10) working days after that full awareness and “incident”.

Turning now to the merits, this case turns on Section 20.05 of the contract entitled “Long Term Disability” and Section 20.06 of the contract, entitled “Premium Contributions”, which state in pertinent part:

Section 20.05 – Long Term Disability:

- a) The City will maintain a Group Long-Term Disability Insurance contract to provide protection for the City’s regular full-time employees.

- b) Officers of the City will enter into a Long-Term Disability Insurance Contract with a carrier selected by the City.
- c) Coverage provided by the contract in a certificate published by the carrier, which will be distributed to covered employees. Briefly, the coverage will include: A monthly benefit of forty percent (40%) of monthly salary not to exceed two thousand five hundred dollars (\$2,500), not coordinated with payments from Worker's Compensation or Social Security, employees will be eligible for this coverage on the first of the month following thirty (30) days of service, there is a waiting period of forty-five (45) consecutive calendar days, or until the expiration of all but ten (10) days of benefits under the City's paid illness/injury leave provided for in *Article XVIII* of this Agreement, whichever is later, and benefits are payable for up to two (2) years for disabilities due to sickness and up to age sixty five (65) for accidental disabilities.
- d) The Long-Term Disability Insurance master contract controls coverage limits and the carrier has final control on eligible benefits.

Section 20.06 – Premium Contributions: The Employer shall pay forty percent (40%) of the premium for all employees enrolled in the long-term disability insurance and the employees shall pay the remaining sixty percent (60%). The City of Mequon shall pay monthly Long Term Disability Insurance premiums as stated above for the entire term of this agreement or until a new agreement is negotiated to replace this one.

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This language plainly requires the City to offer LTD coverage to employees after they have been full-time employees for 30 days. Here, Porter testified without contradiction that no one told her about this benefit when she became a full-time employee in August, 1995. While the City asserts that she was told, there are no documentary records supporting the City's claim and no City witnesses ever came forward and testified that he/she ever related said information to Porter at that time. (Wichmann testified this problem can be avoided in the future through the simple device of having employees sign a check-off sheet which lists such benefits.) Absent any such direct evidence, I credit Porter's testimony that the City never gave her this information.

But having said that, it also is true that Porter could have learned of this benefit if she merely read the contract. By failing to do so, and by not complaining about this situation until the fall of 1997, she also shares some of the responsibility for her lack of LTD coverage before then. Moreover, Wichmann went to great lengths to secure such coverage for Porter after UWG initially turned her down. Indeed, it is questionable whether Porter today would be insured but for Wichmann's efforts, which can only be lauded.

Furthermore, the City has provided Porter with a considerable benefit: Because of Wichmann's efforts, Porter is now covered for her pre-existing condition for the rest of her life, which is something that would not have happened if Porter initially signed up for disability coverage when she first became eligible in September, 1995, and if she became disabled because of that illness during that period. That is why Wichmann testified: "She's already out of the woods." Moreover, if there were no retroactive premiums, Porter would not have been covered for any total disability for all of 1998. Hence, any error by the City in this matter has been more than rectified.

Given this background, I find that the City acted reasonably in having Porter pay part of the retroactive payment demanded by UWG as a condition precedent to insuring Porter for disability coverage.

Hence, it is my

AWARD

1. That the grievance is timely.
2. That the City did not violate the contract when it conditioned long-term disability coverage to grievant Diane Porter on her paying part of the retroactive premium.
3. That the grievance is hereby denied.

Dated at Madison, Wisconsin this 21st day of June, 1999.

Amedeo Greco /s/

Amedeo Greco, Arbitrator

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