BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

TEAMSTERS LOCAL UNION NO. 563

and

CITY OF APPLETON

Case 385
No. 57054
MA-10501

(Dave Felauer Sick Leave Grievance)

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by **Attorney Naomi E. Soldon**, 1555 North RiverCenter Drive, Suite 202, P.O. Box 12993, Milwaukee, Wisconsin 53212, for the Union.

Mr. Greg J. Carman, City Attorney, City of Appleton, 100 North Appleton Street, Appleton, Wisconsin 54911-4799, for the City.

ARBITRATION AWARD

Pursuant to a request by Teamsters Local Union No. 563, herein "Union," and the subsequent concurrence by the City of Appleton, herein "City," the undersigned was appointed arbitrator by the Wisconsin Employment Relations Commission on January 22, 1999, pursuant to the procedure contained in the grievance-arbitration provisions of the parties' collective bargaining agreement, to hear and decide a dispute as specified below. A hearing was conducted by the undersigned on March 23, 1999, at Appleton, Wisconsin. The hearing was not transcribed. The parties completed their briefing schedule on November 8, 1999.

After considering the entire record, I issue the following decision and Award.

STIPULATED ISSUES

1. Whether the City violated the collective bargaining agreement when it refused to pay the Grievant, Dave Felauer, his unused accumulated sick leave when his employment with the City ended?

2. If so, what shall the remedy be?

FACTUAL BACKGROUND

Dave Felauer, hereinafter the Grievant, worked for the City for 25 years. On August 6, 1998, at age 50, the Grievant gave written notice of his retirement to the City. In his notice, the Grievant praised the City and his co-workers, and announced that his last day of work would be August 27, 1998, at which time he would use his available vacation time until he retired.

Many of the Grievant's co-workers congratulated him and wished him luck in his retirement. City managers in the garage where he worked likewise wished him luck in his retirement. The Grievant also received many retirement cards from co-workers and City managers and supervisors.

The Grievant moved to Arizona after he retired. He is not employed and has no plans to seek future employment. Instead, the Grievant retired because he is financially secure and no longer needs to work.

The Grievant is a participant in the Wisconsin Retirement System ("WRS"). At age 55, the Grievant will be eligible for an annuity under the WRS.

The City refused to pay the Grievant for his accumulated unused sick leave when he left City employment because it claims that he did not "retire." The City has never paid an unused sick leave benefit, under Article 18D of the agreement, to any employe leaving employment before reaching age 55. The City has also never paid an unused sick leave benefit, under Article 18D, to any employe not eligible for an annuity under the WRS.

All City employes whose labor agreements allow sick leave accumulation are eligible for lump-sum accumulated unused sick leave payouts when they retire. Prior to the present dispute, no employe who retired before age 55 ever grieved the City's failure to pay unused sick leave under Article 18D.

PERTINENT CONTRACTUAL PROVISIONS

ARTICLE 18 – SICK LEAVE

. . .

D. At the time of their retirement, employees shall receive payment for their unused accumulated sick leave up to a maximum of ninety (90) working days. Such employees shall have the option to select this payment in cash, or to have said money placed in a fund, by the City, from which the employee's premium for his Hospital and Surgical Insurance will be paid. In the event that the employee should die before said fund has exhausted, said monies shall continue to be used for the payment of the same insurance plan for his survivors, if they are eligible for continuation of such coverage. If there are no survivors or they are not eligible for coverage, such remaining fund shall be paid to the retiree's estate. Once the initial option has been made by the employee to set up such fund for the payment of insurance premiums, no changes shall be made thereafter.

E. In the event of the death of an employee, said employees (sic) beneficiary as designated under the Wisconsin Retirement Fund shall be paid in cash for said employee's unused sick leave up to a maximum of ninety (90) working days.

. . .

ARTICLE 23 – INSURANCE

. . .

F. Any retiring employees who qualify for an annuity under the Wisconsin Retirement Fund, shall have the option of continuing the Hospital and Surgical coverage.

. . .

POSITIONS OF THE PARTIES

Union's Position

The Union basically argues that when the parties' collective bargaining agreement is construed in its entirety the City is obligated to pay the Grievant for his unused accumulated sick leave.

In support thereof, the Union first argues that parties to an agreement may articulate their intent to rely on external rules or laws by referring to those rules or laws in selected provisions of the agreement. CITY OF FORT DODGE, 93 LA 759, 760 (COHEN, 1989). The Union adds that the parties' failure to reference external rules or laws in other provisions of the same agreement means that the external rules or laws do not apply where not explicitly referenced. CITY OF FORT DODGE, 93 LA 759, 760 (COHEN, 1989).

Applying the above standards to the instant case, the Union claims that since the parties' agreement does not mention the WRS in the disputed contract provision which states that employes at the time of their retirement "shall receive payment for their unused accumulated sick leave up to a maximum for ninety (90) working days," the Arbitrator may apply the ordinary meaning of the word. The Union concludes that since it is undisputed that the Grievant retired according to the ordinary meaning of the term the City is obligated to pay him his unused accumulated sick leave.

The Union also argues that the City's attempt to add additional terms to the contract by unilaterally imposing its own unique definitions, i.e. retirement means being eligible for a pension under WRS is not proper under the contract and the aforesaid rules of arbitral construction.

Finally, the Union maintains that its prior failed attempts to obtain sick leave payouts for employes who quit or who were discharged is not relevant to the instant dispute because the Grievant did not quit, and he was not discharged, he retired. The Union adds that its prior attempts to obtain sick leave payouts for employes who left City employment do not evidence any understanding by the Union that the term "retirement" herein is defined by WRS rules, as argued by the City.

Based on all of the above, the Union requests that the Arbitrator uphold the grievance, and make the Grievant whole for his losses as a result of the City's action.

City's Position

The City maintains that when you read the language of Articles 18 and 23 of the collective bargaining agreement together, as required by the rules of contractual construction, the Grievant is not eligible for a sick leave payout because he retired before he was eligible for a pension under the WRS.

The City also relies on a decision which has facts "on all fours" with the instant dispute. In CITY OF ASHLAND, CASE 53, NO. 42668, MA-5769 (BIELARCZYK, 1991), according to the City, the provision relied upon by the employer to deny a sick leave payout did not define "retirement" beyond using the term itself. The City states that another Article in the agreement mandated that the employer pay funds into the Wisconsin Retirement Fund

for the employes' future pensions. Based on the foregoing, according to the City, the arbitrator found that, reading these provisions together, it would be inconsistent to conclude that an employe's separation of employment would be called a "retirement" unless he was eligible to receive a pension under the Fund. Because the grievant was not eligible to receive a pension from the State of Wisconsin, the City states the arbitrator in CITY OF ASHLAND concluded the employer did not violate the agreement when it failed to provide the grievant with retirement benefits.

Finally, the City claims that the Grievant's position would lead to absurd results in that under certain circumstances an employe could begin working for the City at age eighteen (18), work to age twenty-eight (28), inherit a large sum and "retire" from the City and the City would then be obligated to make a sick leave payout of 90 accumulated days to the "retired" employe. The City claims that there is nothing in the record, past practice, legal principles or logic that would support such a proposition.

Based on the above arguments, and the record, the City requests that the Arbitrator deny the grievance and dismiss the matter.

DISCUSSION

At issue is whether the City violated the collective bargaining agreement when it refused to pay the Grievant his unused accumulated sick leave when his employment with the City ended. The Union argues that there is a contract violation while the City takes the opposite position.

The primary rule in construing a written instrument is to determine, not alone from a single word or phrase, but from the instrument as a whole, the true intent of the parties, and to interpret the meaning of a questioned word, or part, with regard to the connection in which it is used, the subject matter and its relation to all other parts or provisions. RILEY STOKER CORP., 7 LA 764, 767 (PLATT, 1947). To the greatest extent, the Arbitrator must ascertain and give effect to the parties' mutual intent. That intent is expressed in the contractual language, and the disputed portions must be read in light of the entire agreement. HEMLOCK PUB. SCH., 83 LA 474, 477 (DOBRY, 1984).

The Arbitrator notes, as pointed out by the City, that while Article 18D does not define "retirement" any further than the use of that term, Article 18E, dealing with the death of said employe, allows for payout to the "employee's beneficiary under the Wisconsin Retirement Fund." The rules of construction require these two (2) provisions in the same article be read together. Further support for an interpretation of the contract language in this fashion can be found in Article 18D, which states that employes shall have the option to select payment "in cash, or to have said money placed in a fund, by the City, from which the employee's premium

for his Hospital and Surgical Insurance will be paid." (Emphasis in original) The City adds that Article 23 of the collective bargaining agreement "requires an employee to be qualified for 'an annuity under the Wisconsin Retirement Fund' in order to continue 'Hospital and Surgical Coverage.'" The Arbitrator agrees with the City's conclusion that if one reads Articles 18D, 18E and 23 together, in order to give them all equal effect, an employe must reach age 55 to be eligible for a sick leave payout.

The City also relies on CITY OF ASHLAND, CASE 53, NO. 42668, MA-5769 (BIELARCZYK, 1991) in support of its position. In the aforesaid decision, as noted by the City, the provision relied upon by the employer to deny a sick leave payout did not define "retirement" beyond using that term. However, another Article in the agreement mandated that the employer pay funds into the Wisconsin Retirement Fund for the employe's future pensions. Arbitrator Bielarczyk found that, reading these provisions together, it would be inconsistent to conclude that an employe's separation of employment can be called a "retirement" unless he was eligible to receive a pension under the Fund. Arbitrator Bielarczyk concluded that since the grievant was not eligible to receive a pension from the Fund the employer did not violate the agreement when it failed to provide the grievant with the aforesaid retirement benefit. The Arbitrator agrees with the City that the Bielarczyk decision provides further support for its interpretation of the disputed contract language.

The Union, however, relies on CITY OF FORT DODGE, 93 LA 759, 760 (COHEN, 1989) for the proposition that if the parties had intended to rely on a reference to an external law to define "retirement" in Article 18D, they would have referenced that law in the sick leave payout provision as they had done in other provisions of the agreement. However, the above case is distinguishable from the instant dispute. The arbitrator in CITY OF FORT DODGE concluded that the grievant therein (an employe who resigned from the police force when he was less than 55 years old) was entitled to his sick leave payout. He reached his decision in said case based, in part, on the fact that the contract therein mentioned several different parts of the Iowa Code to describe various provisions of the contract not related to retirement matters but made no mention of that part of the Iowa Code dealing with retirement benefits in the disputed contract provision dealing with leave payout upon retirement. The arbitrator therefore gave the term retirement its ordinary meaning, i.e. "to withdraw from one's position or occupation." CITY OF FORT DODGE, SUPRA, AT 760. In the instant case, as noted above, the parties' agreement makes several references to the Wisconsin Retirement Fund not only in the Article in question, but other provisions of the contract. Said references are all in the context of the City's obligation to pay benefits to a "retired" employe or "beneficiary as designated under the Wisconsin Retirement Fund." Therefore, the Arbitrator can reasonably conclude that the parties intended the term "retirement" in Article 18D to refer to eligibility for a pension under the WRS. Because the Grievant retired before he was eligible for a pension under WRS, he was not entitled to his unused sick leave benefit.

A conclusion that the term "retirement" in Article 18D refers to eligibility for a pension under WRS, and should not be used in its ordinary sense is supported by past practice and bargaining history. In this regard it is undisputed that the City has never paid a lump sum sick leave payout to any employe not eligible for an annuity under WRS. The City has, in fact, denied requests for such payments. (Testimony of David Bill) The Union has never grieved this matter in the past. In addition, the Union has attempted unsuccessfully in the past, during collective bargaining, to obtain the unused sick leave payout when an employe left the employment of the City for any reason. (City Exhibit Nos. 1-3)

Based on all of the above, and the record as a whole, the Arbitrator finds that the answer to the stipulated issue is NO, the City did not violate the collective bargaining agreement when it failed to pay the Grievant, Dave Felauer, his unused accumulated sick leave when his employment with the City ended, and it is my

AWARD

That Dave Felauer's grievance dated July 20, 1998, is hereby denied and the matter is dismissed.

Dated at Madison, Wisconsin, this 10th day of January, 2000.

Dennis P. McGilligan /s/
Dennis P. McGilligan, Arbitrator

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