BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

TEAMSTERS LOCAL UNION NO. 579

and

CITY OF MILTON

Case 34
No. 59122
MA-11183

(Vicki L. Heritage Sick Leave Grievance)

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by **Attorney Andrea F. Hoeschen**, 1555 North Riverside Drive, Suite 202, Milwaukee, WI 53212, for the Union.

Roethe, Krone, Pope, McCarthy & Haas, by **Attorney Michael R. Haas**, Milton City Attorney, 24 North Henry Street, P.O. Box 151, Edgerton, WI 53534-0151, for the City of Milton.

Nowlan & Mouat, LLP, by **Attorney David C. Moore**, 100 South Main Street, P.O. Box 8100, Janesville, WI 53547-8100, appearing as observer/personal attorney for the Grievant.

ARBITRATION AWARD

Pursuant to a joint request for the appointment of a staff arbitrator made to the Wisconsin Employment Relations Commission by Teamsters Local Union No. 579, hereinafter referred to as "the Union," and by the City of Milton, hereinafter referred to as "the City," the undersigned was designated by the WERC as Arbitrator to hear and to decide a grievance concerning the interpretation of a provision contained in the parties' collective bargaining agreement. The hearing was held on November 1, 2000, in Milton, Wisconsin. The hearing was not transcribed. Post hearing briefs were exchanged on December 15, 2000, marking the close of the hearing.

ISSUES

1. Did the City violate Article 13 when it refused to pay the Grievant, Vicki L. Heritage, her unused accumulated sick leave when her employment with the City ended?

2. If so, what is the proper remedy?

BACKGROUND

Vicki L. Heritage, hereinafter referred to as "the Grievant," was employed by the City as the Deputy Treasurer for a period of roughly 13 years. Pursuant to the terms of the collective bargaining agreement she accrued sick leave at the rate of one normal workday (8 hours) per month during her 13 years of service. The Grievant voluntarily terminated her employment with the City on February 3, 2000, at which time she had accumulated 443.5 hours of sick leave.

Upon terminating her employment, the Grievant requested a pay out from the City for the accumulated sick leave she had accrued up to a maximum limit of 130 days. (See Joint Exhibit 1, Article 13 and Employer's Exhibit 1. Note that Employer's Exhibit 1, the "Personnel Action Request" submitted by the Grievant, references her accumulated sick leave to be "130 hours." During her testimony she explained that this entry was a mistake on her part and that she meant to say "130 days," the maximum amount allowable under the Contract. (The parties do not dispute this error.) The City denied this request on the grounds that such a pay out was reserved for persons who "retired" under the agreement and since the Grievant had "resigned" she was not entitled to receive this benefit.

The Grievant was a participant in the Wisconsin Retirement System (WRS). The City has never made a pay out of unused sick leave to any employee who did not qualify for a retirement annuity under the WRS at the time of termination and no employee who left the City's employ prior to his or her entitlement to such an annuity has ever grieved the City's refusal to make the pay out, until now.

PERTINENT CONTRACTUAL PROVISIONS

ARTICLE 13. SICK LEAVE BENEFIT

Sick leave with pay will be granted to all full time City employees as follows for absence due to sickness or injury where the employee is ill and unable to perform work related duties. Sick leave time will be earned by all full time

employees at the rate of one (1) normal work day per month. Effective January 1, 1995, unused sick leave will accumulate from year to year to 130 days. Unused sick leave accumulated in excess of the above stated days shall lapse, but such lapsed sick leave shall be recorded by the City Clerk. In the event of extended illness or injury of any full time employee or their [sic] dependents with lapsed unused sick leave recorded, such lapsed sick leave shall be restored and may be used, in whole or in part, by such employee on recommendation of the department head and Council. Lapsed unused sick leave may only be used after the accumulated sick leave (as stated above) has been depleted, but may never become part of regular accumulated unused sick leave.

. . .

Upon retirement, an employee shall be paid for all accumulated sick leave days up to the maximum stated above, or the City may use said accrued days to pay for health insurance premium for retiree if necessary.

. . .

ARTICLE 23. PENSIONS

The Employer will pay the contributions for the employee to the Wisconsin Retirement Fund.

POSITIONS OF THE PARTIES

The Union

The Union argues that Article 13 of the collective bargaining agreement supports the proposition that the City is obligated to pay accrued sick leave to any employee who leaves the employ of the City for any reason other than (presumably) discharge for cause.

The Union suggests that since the word "retirement" is not specifically defined in the bargaining agreement then it should be given its "common" (i.e. normal and customary) meaning. It argues that the normal and customary meaning of the word "retirement" refers to the act of leaving a particular endeavor for ***any*** reason. The Union argues that while the normal and customary meaning encompasses the concept of the departing employee being of sufficient age and having sufficient longevity to qualify for "retirement benefits" as defined by the WRS, the definition is broader than that and embraces the Grievant's departure for other employment even though she had yet to reach sufficient age to qualify for a retirement annuity.

The City

The City argues that the word retirement as used in Article 13 refers to "common retirement age," i.e. that age, coupled with work experience, upon which an employee becomes eligible for retirement benefits under the Wisconsin Retirement System. Consequently, since the Grievant did not qualify for retirement benefits under the WRS she was not of "retirement age" and thus, not entitled to the sick leave pay out benefit upon her departure from employment with the City.

DISCUSSION

The underlying facts are not in dispute. The controversy surrounds the definition of the word "retirement" as it is used in the contract. The contract does not define retirement and it thus falls to the Arbitrator to determine the mutual intent of the parties in this regard and to uphold that intent in applying contract language to the grievance.

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).

In the instant case, the agreement refers to the word "retirement" twice: once in Article 13 and again in Article 23. Article 23, entitled "PENSIONS," requires that the City pay the contributions for its employees to the Wisconsin **Retirement** Fund. Consequently, Article 23 gives the word retirement meaning by reference to its connection to "pensions" and to its connection with the WRF. The Arbitrator takes official notice of the eligibility criteria for "retirement" set forth by the WRF as follows:

> If you are age 55 or older (age 50 if you are a protective category employe) and are vested under the WRS, once you terminate all WRS employment you are eligible for a retirement benefit.

The rules of construction require that Article 13 and Article 23 be read together and a term used throughout an agreement must be given the same meaning absent a showing that past practice or context indicates otherwise. The Union argues that past employees who have left the employ of the City have been paid the sick leave benefit in one form or another and that

this constitutes a past practice. However, all of these employees had met the retirement age and work experience requirements for a retirement annuity called for by the WRF, while the Grievant had not. The fact that some of these prior employees continued to work after leaving the employ of the City, argues the Union, evidences the fact that they were not "retired" but had merely left the City's employ for other work. This fact, the Union says, supports its position that the word retirement means "to leave" rather than "to leave due to age, disability or illness."

The City's past practice, however, has not discriminated on the basis of whether a "retiring" employee works after retirement or not. The City takes the position that it does not matter whether the employee continues to work elsewhere or not. The City's decision to pay the sick leave benefit under Article 13 hinged only upon whether the employee qualified for an annuity under the rules of the WRF. If so, the departing employee was entitled to receive the sick leave pay out. If not, no entitlement existed and the pay out was denied. Consequently, past practice fails to support the Union's position.

The bargaining history of the parties is not instructive. The language contained in Article 13 has existed for years in its present form and appears in identical form in other collective bargaining agreements between the City and the Union. No effort has been made to change the language in recent negotiations. Consequently, no bargaining history exists to support the Union's position.

The Arbitrator independently reviewed Commission decisions on this issue. CITY OF ASHLAND, CASE 53, NO. 42668, MA-5769 (BIELARCZYK, 1991) is on point with the instant case. In CITY OF ASHLAND the provision relied upon by the employer to deny a sick leave pay out did not define "retirement". However, as here, the term was used in another Article which mandated the employer to pay funds into the Wisconsin Retirement Fund for the employee's future pension. Arbitrator Bielarczyk concluded that these two provisions, when read together, supported the argument that an employee's separation from employment can be called a "retirement" only if the departing employee is eligible for benefits under the WRF.

The instant agreement's reference to the Wisconsin Retirement Fund in Article 23, when read together with Article 13, leads the undersigned to conclude that the parties intended the term "retirement" to refer to the status of one's eligibility for a retirement annuity under the WRS.

Based on the foregoing and the record as a whole, the undersigned finds that the City of Milton did not violate the collective bargaining agreement, specifically Article 13, when it denied the payment of unused accumulated sick leave to Ms. Heritage upon her voluntary separation from City employment.

AWARD

The City of Milton did not violate Article 13 of the agreement when it refused to pay the Grievant, Vicki L. Heritage, unused accumulated sick leave when her employment with the City ended.

Therefore, the grievance, dated July 25, 2000, is hereby denied.

Dated at Wausau, Wisconsin, this 26th day of January, 2001.

Steve Morrison /s/
Steve Morrison, Arbitrator

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