BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

CRAWFORD COUNTY EMPLOYEES
LOCAL 3108, AFSCME, AFL-CIO

and

CRAWFORD COUNTY

Case 80
No. 61102
MA-11804

(Pam Weyrough Grievance)

Appearances:

Mr. Daniel R. Pfeifer, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 18990 Ibsen Road, Sparta, Wisconsin 54656-3755, appearing on behalf of the Union.

Brennan, Steil, Basting & MacDougall, S.C., Attorneys at Law, by **Attorney Dennis M. White**, 22 East Mifflin Street, Suite 400, P.O. Box 990, Madison, Wisconsin 53701-0990, appearing on behalf of the County.

ARBITRATION AWARD

Pursuant to a request by Crawford County Employees Local 3108, AFSCME, AFL-CIO, herein "Union," and the subsequent concurrence by Crawford County, herein "County" or "Employer", the undersigned was appointed arbitrator by the Wisconsin Employment Relations Commission on October 17, 2002, 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. The parties entered into a "Stipulation of Facts" on October 17, 2002, at Prairie du Chien, Wisconsin. The parties completed their briefing schedule on November 19, 2003.

STIPULATED ISSUES

1. Is the grievance timely filed?

2. Did the County violate the collective bargaining agreement when it refused to pay the Grievant, Pam Weyrough, a bonus when she married another Crawford County employee in 2000 and became insured under the family plan?

3. Did the County violate the collective bargaining agreement when the County refused to pay her an additional $500.00 bonus in 2001 and 2002?

STIPULATED FACTUAL AND CONTRACTUAL BACKGROUND

The County and the Union were parties to a collective bargaining agreement ("CBA") that was in effect from January 1, 2000 to December 31, 2002.

At all times material herein, Pam Weyrough ("Grievant") has been an employee of the County covered by the CBA.

Article 19.04 of the CBA states as follows:

> **19.04** Effective January 1, 2000, the County will pay an annual bonus of $500.00 to employees who are offered the Plan but who elect not to participate for a full calendar year in the health insurance plan provided under this Agreement, provided that the minimum participation levels required by the Wisconsin Public Employers Group Health Insurance Plan are still maintained. In the event that the minimum required participation levels are not maintained, the County may elect not to pay the annual bonus to any otherwise eligible employee. The bonus will be paid at the end of the calendar year. Employees who elect not to participate in the Plan for less than a full calendar year will receive a pro-rated bonus based on the number of months they are out of the Plan in comparison to a full calendar year. Employees who elect not to participate in the health insurance shall thereafter be subject to the rules of the Wisconsin Public Employers Group Health Insurance Plan with respect to entry or reentry into the Plan, including, without limitation, restrictions on coverage of pre-existing conditions.

Article 19.08 of the CBA states as follows:

> **19.08** In the event that two employees are married, the Employer shall only pay one family premium for the two employees based on the equivalent of One Hundred and Five Percent (105%) of the cost of the lowest cost HMO provider.

On or about July 30, 2000, the Grievant married another County employee who was also covered by the Wisconsin Public Employers Group Health Insurance Plan ("the Insurance Plan") through the County. Prior to her marriage, both the Grievant and her spouse participated in the Insurance Plan as single employees.

Effective October 1, 2000, the Employer required the Grievant and her spouse to participate in the Insurance Plan as a married couple under a family plan.

On November 1, 2001, the Grievant filed a grievance protesting, in relevant part, the County's failure to pay her the $500.00 bonus outlined in Article 19.04 of the CBA. For a remedy, the Grievant requested that the County "pay the portion due from the $500.00 bonus for 2000 and to date for 2001."

Effective January 1, 2002, the County voluntarily allowed the Grievant and her spouse to be covered under the Insurance Plan under two single policies, without waiving any of its contract rights.

The County has refused to pay the Grievant the bonuses as requested in the grievance.

The current booklet provided by the State under the Insurance Plan provides the following question and answer:

1. "What if my spouse and I work for the same Employer?"

   > "Your employer may determine whether married employees may each elect single or family coverage or if they are eligible only for family coverage through one of the spouses."

This same provision was effective in prior years.

Prior to the year 2000, the County was self insured and the CBA provided as follows in Section 19.03:

> **19.03** Effective July 1, 1990, the County will pay an annual bonus of $500.00 to employees with duplicate coverage of dependents under another plan and who drop the family plan and just use the single plan. Bonuses will be paid either at the end of the calendar year or at the time of termination and will be pro-rated

according to the month in which the family plan was dropped. Employees who receive a bonus and who re-enter the County's family plan within three (3) years after dropping the family plan shall be required to repay the bonuses. Repayment must be made by deduction from the employee's paycheck on a pro-rata basis. Employees shall have the pro-rated payment made over the same period of months as the number of months that they were out of the family plan. If the employee retires or terminates while still owing repayment, the County may withhold the amount owing from the employee's final paycheck.

In the past, the County has not paid a bonus under Article 19.03 when County employees married each other. No employee has ever made such a request.

The Union made the following proposal in its Preliminary Final Offer in the Interest Arbitration/Mediation that preceded the 2000 contract:

The $500 bonus to apply to all employee (sic) who do not take the County's health insurance.

The County proposed in its Preliminary Final Offer in the Interest Arbitration/Mediation that preceded the 2000 contract the language ultimately agreed to in Article 19.04 of the CBA.

PERTINENT CONTRACTUAL PROVISION

. . .

ARTICLE IX – GRIEVANCE PROCEDURE

9.01 The parties agree that the prompt and just settlement of grievances is of mutual interest and concern. Should a grievance arise whether in reference to a question of interpretation and application of the Agreement the grieving employee shall first bring the complaint to the steward or officer of the Union. If it is determined after investigation by the Union that a grievance does exist, it shall be processed in the manner described below.

9.02 **STEP ONE:** The employee, officer or steward shall attempt to resolve the matter with the department head, no later than twenty (20) working days after the grievance occurred or the employee of (sic) the Union should have known of such occurrence. If the grievance is not resolved, the grievance shall be reduced to writing and submitted to the department head. The parties shall meet within one (1) calendar week of receipt of the written appeal to hear the

grievance. Within one (1) calendar week of the hearing, the department head shall give its response in writing.

. . .

POSITIONS OF THE PARTIES

Union's Position

The Union initially argues that the grievance is timely. In support thereof, the Union maintains that the Grievant did not become aware that she might be entitled to the $500 bonus until October of 2001 and then filed a timely grievance. The Union also maintains that this is an ongoing violation of the contract.

Regarding the merits of the dispute, the Union argues that because the Grievant did not have health insurance, in her name, for the relevant time periods, she is entitled to the bonus provided for in the contract. The Union adds that there is nothing in the disputed contract language indicating "that an employee who does not have coverage in his/her name, because of the coverage of a Crawford County spouse, is not entitled to the annual bonus."

The Union contends that the fact that the County has never paid the bonus under these facts is not relevant because no employee had ever previously requested the bonus in a similar situation.

Finally, the Union argues that bargaining history is only relevant to the extent that "the language in question was proposed by the County and, if, it is unclear or ambiguous, it should be construed against the County."

Based on all of the above, the Union requests that the Arbitrator sustain the grievance and order the County to grant the Grievant a bonus of $125 for 2000 and a bonus of $500 for 2001.

Employer's Position

The Employer initially argues that the grievance was not timely filed. In support thereof, the Employer first maintains that the Grievant's claim for the year 2000 bonus is barred because it is untimely filed. In this regard, the Employer notes that the listed date of infraction shown on the grievance – October 25, 2001 – is long after the Grievant should have known that no bonus was paid to the Grievant at the end of calendar year 2000. The Employer adds that there is no evidence that the Grievant met the contractual 20 working day

requirement to attempt to resolve the dispute over the year 2000 bonus with her department head after she first learned that no bonus would be paid in 2000.

The Employer also maintains that the claim for the 2001 bonus is barred because it is premature – the year 2001 bonus would not even be paid until the end of the 2001 calendar year.

The Employer next argues that it did not violate the contract when it did not pay the Grievant a bonus when she married in 2000. In support thereof, the Employer first maintains that the clear language of the collective bargaining agreement demonstrates that the bonus is intended only for those who leave the Plan and are no longer covered by it, *i.e.*, they no longer participate in it. (Emphasis in the original). The Employer next argues that the negotiations history shows that the parties only intended the bonus to be applicable to those who do not take the Plan. The Employer concludes that nothing the Grievant did here constituted a lack of participation in the Plan.

For these same reasons, the Employer argues that it did not violate the contract when it refused to pay the Grievant a bonus in 2001 and 2002.

For the foregoing reasons, the Employer requests that the grievance be denied and the matter dismissed.

DISCUSSION

Procedural Arbitrability

The Employer raises a threshold issue regarding whether the instant grievance was timely filed. This question must be answered before any other aspect of the case may be addressed.

The Employer asserts that the grievance was not timely filed as it pertains to the claim for the year 2000 bonus.

As pointed out by the Employer, Section 19.04 of the collective bargaining agreement provides that, *inter alia*, ". . . The bonus will be paid at the end of the calendar year." Thus, the bonus, if applicable, was to be paid by December 31, 2000 for the 2000 calendar year and by December 31, 2001 for the 2001 calendar year.

Section 9.02 of the agreement provides that the employee, officer or steward shall attempt to resolve the matter with the department head no later than twenty (20) working days after the grievance occurred or the employee or the Union should have known of such

occurrence. The Employer claims that no evidence exists that the employee or the Union met this 20 working day requirement regarding the claim for the year 2000 bonus. In addition, the Employer points out that the listed date of infraction shown on the grievance – October 25, 2001 – is long after the employee and the Union should have known that no bonus was paid to the Grievant at the end of calendar year 2000.

It is true that the contractual provision noted above provides that the bonus in question will be paid at the end of a calendar year. In addition, the Employer makes a strong argument that the Grievant or the Union should have known that no bonus was paid to the Grievant at the end of 2000. However, the only evidence in the record as to when the Grievant learned that she would not be paid the $500.00 bonus for 2000 indicates that the date of the alleged infraction was October 25, 2001. In other words, the Grievant learned that she would not be paid the aforesaid bonus for 2000 on October 25, 2001. The Grievant filed her grievance on November 1, 2001, well within the 20 working day requirement found in Section 9.02 of the agreement for bringing the grievance to the attention of the Employer. In addition, there is no contractual time limit for actually filing the written grievance. Therefore, the written grievance is timely filed.

The Employer complains that no one from the Union met with the Department head as required by Section 9.02 "no later than twenty (20) working days after the grievance occurred or the employee of (sic) the Union should have known of such occurrence" in order to attempt to resolve the dispute informally. However, there is no evidence that the parties followed this procedure to resolve disputes informally after the written grievance was filed or at any other time material herein. Therefore, the Arbitrator likewise rejects this claim of the County.

Doubts as to the interpretation of contractual time limits or as to whether they have been met should be resolved against forfeiture of the right to process the grievance. Elkouri and Elkouri, *How Arbitration Works*, (BNA, 5th Ed., 1997), p. 277. Moreover, even if time limits are clear, late filing will not result in dismissal of the grievance if the circumstances are such that it would be unreasonable to require strict compliance with the time limits specified by the agreement. Id. This is particularly true where, as here, the dispute is ongoing. *Supra*, p. 281.

The Employer also argues that the claim for the 2001 bonus is barred because it is premature – the year 2001 bonus would not even be paid until the end of the 2001 calendar year.

The listed date of infraction on the grievance is October 25, 2001. The Grievant learned on that date that she would not be paid a bonus in 2000 or 2001. (Emphasis added). (Joint Exhibit No. 2). Because the Grievant knew on October 25, 2001, that she would not be paid a bonus at the end of the year, there was no reason to wait until then to file a grievance.

As noted above, the Grievant filed her grievance protesting, in relevant part, the Employer's failure to pay her the $500.00 bonus for 2001, on November 1, 2001. Again, that is well within the 20 working day requirement found in Section 9.02 for bringing the grievance to the attention of the Employer. Therefore, the Arbitrator finds the claim for a year 2001 bonus timely filed.

The Employer also argues that the claim is untimely for 2002 because it is premature. The grievance makes no claim for a year 2002 bonus. Nor does the Union in its brief. Therefore, the Arbitrator finds that it is unnecessary to address any issues relating to a claim for a bonus for 2002.

Based on all of the above, the Arbitrator finds that the grievance is timely filed with respect to the issue of paying the Grievant a bonus for 2000 and 2001. The Arbitrator will not address any claim relating to a bonus for 2002.

Substantive Issue

The Arbitrator turns his attention to the merits of the dispute.

At issue is whether the Employer violated the collective bargaining agreement when it refused to pay the Grievant a bonus in 2000 and 2001. For the reasons discussed below, the Arbitrator finds no such violation.

The answer to this question turns on what is meant by the word "participate" which is contained in the first sentence of Article 19.04:

> Effective January 1, 2000, the County will pay an annual bonus of $500.00 to employees who are offered the Plan but who elect not to participate for a full calendar year in the health insurance plan provided under this Agreement, . . ."

The Union argues that as long as the employee does not have health insurance in his/her name the employee is eligible for the bonus. The County, on the other hand, argues that the contract language in question clearly provides that the bonus is intended only for those who are not covered by the plan.

When interpreting contract language, arbitrators use the ordinary and popular meaning of words, unless there is an indication that the parties intended a special meaning. *The Common Law of the Workplace, The Views of Arbitrators, National Academy of Arbitrators*, Theodore J. St. Antoine, Editor, Chapter 2, "Contract Interpretation", Carlton J. Snow, Chapter Editor, s. 2.5 Ordinary and Popular Meaning of Words, p. 69 (1998). The word

"participate" is defined "to take part; join or share with others." *The American Heritage Dictionary of the English Language, New College Edition*, (10th Ed. 1981) p. 905. It also means "to share in; partake of." Id. There is no evidence that the parties intended a different meaning. Thus, the word "participate", as used in Article 19.04, clearly means to take part in or to partake of the Insurance Plan as submitted by the County, i.e., "covered" by it.

An interpretation of the word "participate" in this manner is supported by the common and ordinary meaning of that word as used in public documents describing health insurance coverage. For example, in the Group Health Insurance Plans & Provisions, "It's Your Choice," 2004, prepared by the Wisconsin Department of Employee Trust Funds, at page D-12, "Participant" is defined as "The Subscriber or any of his/her Dependents who are have been specified for enrollment and are entitled to benefits." (Emphasis added). "Dependent" is defined as "spouse." Supra, p. D-8. It is clear that although the Grievant did not have health insurance in her name, she was enrolled in; had coverage through; and was entitled to benefits under her husband's County family health Insurance Plan at all times material herein.

Bargaining history also shows that the parties only intended the bonus to be applicable to those who do not take the health insurance plan. Both the Union's and the Employer's bargaining proposals for the instant collective bargaining agreement contained proposals that the bonus would be paid to those who did not "take" or "participate" in the County's health Insurance Plan. As pointed out by the County, these proposals were "significant because the County was switching from a self funded plan to the State plan, which has its own requirements for coverage of single or family plans and for reentry into the plan if someone leaves the plan." Joint Exhibit No. 3.

The current language also differs from the prior agreement, which provided a bonus if someone switched from family coverage to single coverage under the old self funded plan. Thus, there is nothing in the proposals or negotiation history to show any intent to pay a bonus because of a change in coverage from family to single or vice versa under the plan. Instead, during negotiations that led to the instant agreement, the parties focused on a bonus only if someone did not participate in the plan and was not covered by it.

The Union argues that bargaining history is not relevant except to the extent that if the disputed language is unclear it should be construed against the County. However, in order to determine the purpose of the disputed contract language, the Arbitrator may look not only to the language of the contract but also to evidence of bargaining history and the parties' administration of the contract. *Labor and Employment Arbitration*, Volume 1, Tim Bornstein, Ann Gosline and Marc Greenbaum General Editors, Chapter 9, Contract Interpretation and Respect for Prior Proceedings by Jay E. Grenig, s. 9.01[2], 9-5 (1998). Bargaining history supports a finding that the parties never intended that the County pay a bonus when an employee switched from single Insurance Plan to a family Insurance Plan in his/her spouse's

name. If the parties had intended such a result, it is clear, based on prior contract language, that they knew how to write contract language to accomplish this.

Based on all of the above, the Arbitrator finds that the answer to the issue as stipulated to by the parties is NO, the County did not violate the collective bargaining agreement when it refused to pay the Grievant, Pam Weyrough, a bonus when she married another Crawford County employee in 2000 and became insured under the family plan. The County also did not violate the agreement when it refused to pay her an additional $500 bonus in 2001. Finally, because the issue of a bonus for 2002 is not properly before the Arbitrator, the Arbitrator has no jurisdiction to decide it.

Based on all of the foregoing, it is my

AWARD

That the grievance filed in the instant matter is denied and the matter is dismissed.

Dated at Madison, Wisconsin, this 16th day of December, 2003.

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

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