

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

THE CITY OF RACINE

and

LOCAL 321, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS

Case 693

No. 63380

MA-12568

(Retiree Health Insurance Grievance)

Appearances:

Mr. Guadalupe G. Villarreal, Deputy City Attorney, City Hall, 730 Washington Avenue, Racine, Wisconsin, 53403 appeared on behalf of the City

Mr. John B. Kiel, Attorney at Law, Shneidman, Hawks & Ehlke, S.C., 700 West Michigan, Suite 500, Milwaukee, Wisconsin 53201 appeared on behalf of the Union.

ARBITRATION AWARD

On February 23, 2004, the City of Racine and Local 321, International Association of Firefighters, AFL-CIO filed a request with the Wisconsin Employment Relations Commission, seeking to have the Commission appoint William C. Houlihan, a member of its staff, to hear and decide a grievance pending between the parties. A hearing was conducted on July 27, 2004 in Racine, Wisconsin. A transcript of the proceedings was made and distributed by August 3, 2004. Post hearing briefs and reply briefs were filed and exchanged by October 6, 2004.

This Award addresses the obligation of the City to pay the Medicare insurance premium of qualifying retirees.

BACKGROUND AND FACTS

The captioned parties have a dispute as to whether or not the City of Racine has a contractual obligation to reimburse retirees from the Fire Service, who meet certain qualifications, the cost of Medicare health insurance premiums. The Employer has reimbursed the Medicare premiums since 1964. In 1963, the Racine City Council enacted the following ordinance:

RESOLVED, that from and after January 1, 1964, the City of Racine will pay the premium on Hospital-Surgical Insurance and \$1,000.00 Life Insurance for any fireman or policeman who retires at age 55 or over with 22 years of continuous service immediately preceding retirement.

Following enactment of the ordinance, the City paid the post retirement health insurance premium, until the retired employee reached Medicare age. Once the employee qualified for Medicare, the employer encouraged the retiree to sign up, and paid the Medicare premium cost.

By 1969 the parties had negotiated the benefit into their collective bargaining agreement as follows:

. . .

The City shall pay the premium on Surgical, Hospital and Major Medical Insurance and \$1,000.00 Life Insurance for any fireman who retires at age 55 or over, with 22 years or more of continuous service immediately preceding retirement.

. . .

The 2002-03 collective bargaining agreement contained the following provision:

. . .

3. Continued Insurance: The City shall pay the premiums on surgical, hospital, and major medical insurance for any Fire Fighter who is forced to retire by virtue of duty incurred injury or disease, and for any Fire Fighter who retires at age fifty-two (52) or over with twenty (20) years or more of continuous service immediately preceding retirement....

In addition to the disability, age, and service modifications, the current contract refers to “premiums” as contrasted to the original references to “premium”.

The relevant administration of the benefit has been consistent throughout the 40 year period. The employer has paid the health insurance premium for retirees per the express terms of the collective bargaining agreement. Upon eligibility for Medicare, retirees are encouraged to apply for Medicare benefits. The following is an excerpt from a letter routinely sent to employees anticipating retirement:

This letter will confirm the City of Racine’s present retirement medical hospital insurance plan, life insurance plan or plans, accrued sick leave and pro-rated vacation benefits as they affect you personally.

HOSPITAL SURGICAL AND \$9,000.00 LIFE INSURANCE PLAN

Under Item 52 of November 19, 1963, the Common Council adopted the following resolution:

RESOLVED, that from and after January 1, 1964, the City of Racine will pay the premium of Hospital-Surgical Insurance and \$1,000.00 Life Insurance for any fireman or policeman who retires at age 55 or over with 22 years of continuous service immediately preceding retirement.

(Current agreement provides paid-up insurance after 20 years)

At the time of your retirement you were insured with a family Blue Cross – Blue shield hospital plan and a \$9,000.00 American Bankers Life Assurance Plan both of which are and will continue to be in effect according to the above resolution, although the \$9,000.00 Life Insurance coverage drops to \$1,000.00 upon retirement.

It will be the obligation of both you and your spouse, however, to sign up for Medicare (both Plans A + B) when you each become 65 years of age, or before if you would qualify for a Social Security disability, because our Blue Cross – Blue Shield hospital insurance does not cover those items that Medicare would cover. When this time arrives, please notify this office immediately so we may change your insurance coverage to cover the Medicare Plan as set up by Council Resolution. You will be responsible for paying the Medicare premium, but the City will reimburse you for this premium periodically. Again, I stress

that it is your obligation to notify us at that time as you will not be covered by the above insurance if you don't.

The City health insurance plan has a Medicare carve out provision; i.e. it will not pay for services and treatments provided under Medicare. Once a retiree is Medicare eligible, the City maintains a supplemental plan. Retirees enrolled in Medicare have Medicare premiums automatically deducted from Social Security checks. The employer has historically reimbursed individuals quarterly. Over the years Medicare premiums have increased. In 1966 the monthly premium was \$3.00. By 2004, the monthly premium has grown to \$66.60.

In response to the increases in cost, the City determined to discontinue reimbursement of the Medicare premium, effective January 1, 2004. The Union was notified by the following letter:

Mr. Gary Solfest, President
IAFF, Local 321
810 Eighth Street
Racine, WI 53403

Dear Mr. Solfest:

This letter is intended to officially notify you that effective January 1, 2004, the City of Racine will be discontinuing its past practice of reimbursing the Medicare premiums for those retired members of Local 321, and their spouses if applicable.

Any questions concerning this letter may be directed to me.

Respectfully,

James C. Kozina /s/
James C. Kozina
Interim Human Resources Director

Retirees were notified by the following letter:

October 23, 2003

Dear Local 321 Fire Fighter Retiree:

This letter is intended to inform you that effective January 1, 2004, the City of Racine will no longer reimburse your (and your spouse's, if applicable) Medicare premiums. This reimbursement has been historically provided by the City for many years, but due to soaring health care costs and budgetary constraints, the various City unions are being notified of the discontinuance of this practice as their contracts expire.

Do not lose sight of the fact, however, that the City's insurance will not cover those expenses that Medicare covers.

We hope you understand the necessity of this economic measure, which has now grown, to approximately \$350,000 per year.

Any questions concerning this letter may be directed to the City of Racine Human Resources Department.

Respectfully,

James C. Kozina /s/
James C. Kozina
Human Resources Director

There was no proposal made to bargain a change in the terms of the collective bargaining agreement. The Union filed a grievance on, or about November 6, 2004, which was denied and has led to this proceeding.

In the Fall of 2000 the Racine Water Commission and the Racine Wastewater Commission made proposals to "Delete Utility payment of monthly Medicare premium reimbursement (presently \$45/ month)." The proposals were dropped. The language in the Water and Wastewater Agreements is substantively identical to that in the Firefighter Agreement. The Utilities are separate entities, though bargaining is coordinated through the City Human Resource office. The Utility fringe benefit package is common to that of City employees. Former Human Resource manager, James Kozina testified that he was unaware of the proposal.

ISSUE

The parties could not agree on the issue.

The Union regards the issue to be:

Did the City of Racine violate the collective bargaining agreement when it unilaterally determined to stop paying the Medicare insurance premium of Local 321 members who retire at 52 or over with 20 years or more of continuous service immediately preceding retirement.

If so, what is the appropriate remedy?

The City regards the issues to be:

Is the grievance arbitrable?

If so, did the employer violate the collective bargaining agreement when it stopped reimbursing retired firefighters for their Medicare insurance premiums.

If so, what is the appropriate remedy?

All proposed issues are addressed by this Award.

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

ARTICLE VI

MANAGEMENT RIGHTS

...

The City possesses the sole right to operate the Racine Fire Department and all management rights repose in it, but such rights must be exercised consistently with the other provisions of this Agreement and the past practices within the Racine Fire Department unless the past practices are modified by this Agreement or by the City under rights conferred upon it by this Agreement, or the work rules of the Racine Fire Department.

...

The City reserves the total discretion with respect to functions and/or missions of the Department, including the budget, organization and technology of performing that function or mission except as may be modified by State law. The Union agrees that it will not attempt to abridge these management rights and the City agrees that these rights shall not be exercised to undermine this Agreement or the existent past practices in the Department unless said practices have been modified in accordance with this Article. These rights shall be exercised in a reasonable manner, consistent with the traditional manner in which they have been exercised prior to the execution of this Agreement. The exercise of these rights shall be subject to the grievance procedure.

...

ARTICLE XI

GRIEVANCE PROCEDURE

1. Definition of Grievance: A grievance shall mean any dispute arising out of this Agreement.

...

5. Steps in Procedure:

Step 1: The grievant, or the Union in the event of a policy grievance, shall first present the grievance in writing to the Battalion/Division Chief of the Fire Department in charge of his/her platoon no later than thirty (30) calendar days of the last cause of such grievance or from the date that the employee knew about the cause of the grievance. . . .

ARTICLE XII

ARBITRATION

...

4. Arbitrator: Any grievance which cannot be settled through the above procedures may be submitted to an Arbitrator to be selected as follows:

...

5. Scope of Award: The decision of the Arbitrator shall be limited to the grievance and shall be restricted solely to the interpretation of the Agreement and such past practices as are existent in the Department unless said practices have been modified pursuant to Article VI of this Agreement. The Arbitrator shall not modify, add to or delete from the express terms of this Agreement or past practices unless said practices have been amended pursuant to the terms of Article VI of this Agreement. The determination of the Arbitrator shall be final and binding upon the parties.

...

ARTICLE XIV

INSURANCE

...

3. Continued Insurance: The City shall pay the premiums on surgical, hospital, and major medical insurance for any Fire Fighter who is forced to retire by virtue of duty incurred injury or disease, or for any Fire Fighter who retires at age fifty-two (52) or over twenty (20) years or more of continuous service immediately preceding retirement. In the event that a retired Fire Fighter who is entitled to insurance benefits under the provision of this Section 3 dies leaving dependent survivors, those survivors shall be entitled to health insurance under the provisions of this Section 3 until such time as single dependents exceed the age for dependent coverage under the terms of the City's health insurance policy or until the widow/widower of the deceased Fire Fighter shall remarry, obtain other health insurance coverage, or be covered under Medicare or Medicaid health insurance, whichever event first occurs.

The City shall pay the premiums on surgical, hospital and major medical insurance for the employee, widow/widower and/or dependent survivors of any Fire Fighter who dies or becomes disabled by virtue of non-duty related injury or disease provided that the Fire Fighter has at least fifteen (15) years of continuous service with the Department. This privilege shall terminate upon the remarriage of the widow/widower and/or upon the dependent survivors reaching the age of twenty-five (25) years.

Eligible retirees as of January 1, 1996 shall not be transferred into the Partnership Health Care Plan as described in Section 1 unless said employee exercises the option to transfer out of the Blue Cross/Blue Shield Series 2000 equivalent. . . .

. . .

POSITIONS OF THE PARTIES

The Union contends that the plain meaning of the language of the collective bargaining agreement requires the City to pay the cost of the Medicare premiums. The contract requires the City to pay medical insurance premiums. The Medicare premium is a medical insurance premium. The parties use the plural reference to premiums to include more than one. The Union contends that Kozina's letter to retirees acknowledges the benefit to be contractual.

The Union points out that the premium has been paid for 40 years. There is no dispute the payment has been made monthly, and knowingly. Regardless of the provisions of the contract, the payment has evolved into a binding practice that cannot be unilaterally repudiated.

The Union urges a reading of the contract as a whole document. Article XIV, 3, addresses the circumstances under which a widow or dependant survivor of a deceased Fire Fighter loses health insurance premium payment. The Union contends that these parties knew how to place limits on receipt of benefits where that was the desired outcome.

The Union points to the employer proposals in the Water and Wastewater departments as evidence that the employer knew the benefits to be contractual, tried and failed to eliminate those benefits. It is the Union's view that the employer is asking the Arbitrator to Award that which it was unable to secure at the bargaining table.

Finally, the Union turns to Article VI, Management Rights, and notes that the parties have committed to be bound by past practice.

It is the City's claim that only Union members may use the grievance procedure. The City notes that retirees are not in the unit, and are not employees. The City concludes that the grievance is not arbitrable. The record reflects that a parallel claim has been filed in Circuit Court.

In the Employer's view nothing in the collective bargaining agreement nor in the health insurance policy, portions of which were made a part of the record, requires it to pay Medicare premium costs. The Employer contends that it has historically encouraged retirees to enroll in

Medicare to avoid loss of coverage due to the health plan carve out. The Employer paid the premiums as a unilateral, voluntary act.

The City contends there is no basis to conclude that any practice has been formed. The act of paying the premiums was unilateral, not negotiated. Whatever practice existed was with retirees, who are not employees, and not with the Union. The collective bargaining agreement requires the Employer to pay the premium of the negotiated medical health insurance plan, and is not ambiguous in this regard.

DISCUSSION

I believe the grievance to be arbitrable. The grievance was filed on, or about November 6, 2003, under the terms of the 2002-03 collective bargaining agreement. The answer, signed by the experienced Human Resource Director, does not raise the issue of arbitrability.

The contract defines a grievance as "...any dispute arising out of this Agreement." It goes on to provide that "any grievance which cannot be settled through the above procedures may be submitted to an Arbitrator to be selected as follows..." The definition of a grievance is broad. These parties have a dispute as to whether or not the Agreement provides for the employer payment of Medicare premiums for retirees. It is an interpretation of the collective bargaining agreement that is sought. There are two classes of potentially impacted benefit recipients. The first is current retirees, who claim entitlement to the benefit by operation of the collective bargaining agreement. The second class is active employees, who claim a contractual right to this benefit upon reaching Medicare age. Each group predicates its claim in this proceeding upon the collective bargaining agreement.

The contract also addresses how disputes as to contractual rights are to be resolved. "Any grievance which cannot be settled...may be submitted to an Arbitrator..." Given the broad definition of a grievance and the similarly broad submission language, I believe the dispute is appropriately before me as an Arbitrator.

Arbitrators and the courts have directed Arbitration under circumstances where employers have committed, by contract, to provide benefits to retirees. CITY OF RACINE (WATER UTILITY), Case 640, No. 61214, MA-11854 (Mawhinney, 6/03), SCHOOL DISTRICT OF BEECHER-DUNBAR-PEMBINE, Case 32, No.57088, MA-10516 (Crowley, 7/99), TEXTILE WORKERS OF AMERICA, AFL-CIO, LOCAL 129 vs. THE COLUMBIA MILLS, INC., 471 F.Supp.527 (1978)

Active employees also have a claim that the employers repudiation of the Medicare premium payment affects a contractual benefit to which they may be entitled upon reaching

Medicare eligibility. The contract instructs that grievances be brought forward “...no later than thirty (30) calendar days from the day of the last cause of such grievance or from the date that the employee knew about the cause of the grievance.” The employer put the Union squarely on notice of its decision to terminate Medicare premium payments. The Union promptly grieved. Had it not done so, the Union risked waiving the claims of active employees to the benefit.

The employer is correct when it notes that the origin of the Medicare premium reimbursement was unilateral. It was an action of the City Council, accomplished by enactment of an ordinance. At least initially nothing was bargained with the Union. In essence, the City argues that the payment of the Medicare premium is unilateral, and has its origin in the ordinance. However, by 1969 the parties had bargained the words of the ordinance into their collective bargaining agreement. To the extent that those words, in the form of an ordinance, were intended to direct payment of Medicare premiums, it follows that the words retain their original meaning when they were contractualized. Once the words were made a part of the collective bargaining agreement, the unilateral character of the Medicare premium payment was altered.

There is no dispute, and the contract is clear and unambiguous, that the employer has committed to pay certain medical insurance premiums for qualifying retirees. The scope and breadth of that requirement forms the heart of this dispute. The words of the contract, standing alone, can be read in more than one way. Article XIV can be read to restrict required payments of premiums to the contractually provided surgical, hospital, and major medical insurance. There is a plan available for active employees and those retirees too young to qualify for Medicare, and a supplemental plan available for Medicare eligible employees. It is equally plausible that the reference to “...pay the premiums...” refers to all such premiums, including the Medicare premium.

In this context the history of Medicare premium payment is compelling. The words of the ordinance became the words of the collective bargaining agreement. Their meaning was demonstrated by the payment of Medicare premiums for retirees for over 40 years. The words of the contract may have a degree of ambiguity. The parties have clarified that ambiguity in how they have administered the words for over 40 years. In light of the long, uniform, uninterrupted history of paying the Medicare premium I believe it has evolved into a binding practice which interprets the words of the contract. As such, it has the same status as do the words it interprets.

I believe that Kozina’s letters to retirees support this conclusion, in that they refer the readers to the Common Council resolution as the basis for the benefit. As noted, that language subsequently became a part of the collective bargaining agreement. Similarly, the letter to the Union terminating the Medicare premium acknowledges the past practice status of the benefit.

AWARD

The grievance is sustained.

REMEDY

The employer is directed to reimburse Medicare recipients the cost of the premium payments as it has historically done. The employer is further directed to reimburse current recipients for those premiums they have paid and not been reimbursed.

Dated at Madison, Wisconsin, this 4th day of January, 2005.

William C. Houlihan /s/

William C. Houlihan, Arbitrator

