

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

ROCK COUNTY

and

**LOCAL 1077, AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES, WCCME, AFL-CIO**

Case 362
No. 64173
MA-12827

Appearances:

Thomas Larsen, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 1734 Arrowhead Drive, Beloit, Wisconsin 53511, appeared on behalf of the Union.

Thomas Schroeder, Corporation Counsel, Rock County, Rock County Courthouse, 51 South Main Street, Janesville, Wisconsin 53545, appeared on behalf of Rock County.

ARBITRATION AWARD

On November 17, 2004 Rock County and Local 1077, American Federation of State, County, and Municipal Employees, WCCME, 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, as Arbitrator to hear and decide a grievance pending between the parties. A hearing was conducted on February 15, 2005, in Janesville, Wisconsin. No record was made of the proceedings. Post hearing briefs were filed by February 17, 2005.

This Award addresses whether or not the Union is obligated to bargain over health insurance matters in the negotiations for a successor collective bargaining agreement.

BACKGROUND AND FACTS

The origin of this dispute arose from the terms of the parties 2000-2001 collective bargaining agreement. Among the terms negotiated into the voluntary 2000-2001 collective bargaining agreement were the following two Memoranda:

MEMORANDUM OF UNDERSTANDING
Between
ROCK COUNTY
And
AFSCME LOCAL 1077

The parties agree that for the duration of the 2000-2001 contract and for any interim period prior to the ratification of a successor agreement, the County will continue the practice of paying employees who are performing Union business through the County payroll system and then bill the Union for the wages and benefits. This is not an acknowledgement by the County that this constitutes a binding past practice, but that the parties agree to negotiate the issue prior to any change.

MEMORANDUM OF UNDERSTANDING

The County specifies that for the duration of this agreement, which expires on December 31, 2001, and the subsequent collective bargaining agreement, the County will not propose or seek any health insurance benefit reductions or employee premium share.

The first memorandum was the renewal of a long standing arrangement that had existed in memo form and been re-executed with each contractual term. The second memorandum, applicable to health insurance proposals, was an element of the substantive agreement between the parties. The County had secured health insurance concessions, and had committed not to seek further concessions into the identified future. This commitment was a part of the consideration given to secure the health insurance concessions in the 2000-2001 agreement. One was a portion of the quid pro quo for the other.

In the negotiations leading to a successor agreement to the 2000-2001 collective bargaining agreement, the County proposed changes to the premium contribution levels for certain employees. The Union, pointing to the memorandum, objected. The County acknowledged the contractual restriction, and promptly withdrew the proposal. During the course of that negotiation, which ultimately led to the 2002 – 2003 collective bargaining agreement, the subject of the Memorandum applicable to health insurance never came up. There were no proposals to extend it. There were no proposals to delete it from the text of the contract. The same is true for the memorandum applicable to Union business. In the 2002 – 2003 agreement, both memoranda appear, updated. Specifically, the memorandum relating to health insurance appears as follows:

MEMORANDUM OF UNDERSTANDING
Between
ROCK COUNTY And AFSCME LOCAL 1077

The County specifies that for the duration of this agreement, which expires on December 31, 2003, and the subsequent collective bargaining agreement, the County will not propose or seek any health insurance benefit reductions or employee premium share.

Once the parties reached a tentative agreement on their successor agreement, the County prepared the document used to proof the agreement. The revised memorandum was a part of that document. There was no testimony as to how the memorandum came to be re-titled, and updated. The County prepared a summary of the agreement which Management used to ratify. That document, and the certified resolution ratifying the contract do not contain the renewed health insurance memorandum. The document the Union used for ratification was not introduced into the record.

The employer believes the revision to have been clerical error. The clerical employee who would have prepared the proofing document is no longer with the County, resides out of state, and was not called to testify. Both Management and Union participants reviewed the document before it was signed and printed as the collective bargaining agreement.

ISSUE

The parties stipulated to the following:

Is the Union required to bargain with the County relative to health insurance benefits in negotiations for a successor agreement to the 2002 – 2003 collective bargaining agreement ?

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

ARTICLE IX – GRIEVANCE PROCEURE

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9.06 Limits on Arbitrators. The Arbitrator shall have jurisdiction and authority to interpret the provisions of the Agreement and shall not amend, delete or modify any of the provisions or terms of this Agreement.

...

MEMORANDUM OF UNDERSTANDING

Between

ROCK COUNTY

And

AFSCME LOCAL 1077

The parties agree that for the duration of the 2002-2003 contract and for any interim period prior to the ratification of a successor agreement, the County will continue the practice of paying employees who are performing Union business through the County payroll system and then bill the Union for the wages and benefits. This is not an acknowledgement by the County that this constitutes a binding past practice, but that the parties agree to negotiate the issue prior to any change.

FOR THE COUNTY

FOR THE UNION

DATE

DATE

...

MEMORANDUM OF UNDERSTANDING
Between
ROCK COUNTY And AFSCME LOCAL 1077

The County specifies that for the duration of this agreement, which expires on December 31, 2003, and the subsequent collective bargaining agreement, the County will not propose or seek any health insurance benefit reductions or employee premium share.

Thomas Larsen, Representative,
AFSCME, Local 1077

Victor J. Long
County Negotiator

Date

Date

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POSITIONS OF THE PARTIES

It is the view of the Union that the MOU was appropriately included in the successor agreement. There exists no evidence that this was the product of error. The Union notes that neither side raised the issue of termination of the MOU. It was renewed just as its companion MOU was renewed, without discussion. The County prepared the draft of the agreement, and so was not misled by the Union in the drafting of the document.

It is the view of the County that the extension of the MOU was an error. There were no negotiations surrounding the extension of the MOU. The Union submitted a preliminary final offer which did not contain a reference to the MOU. The tentative agreement reached by the parties did not contain an extension of the MOU. The document ratified by the County Board did not contain the MOU.

The County argues that the subject matter of the MOU is a mandatory subject of bargaining. In the absence of bargaining, it would be unlawful to impose this health insurance provision on the Union unilaterally. The County goes on to argue that health insurance is an issue of such magnitude that common sense dictates that no employer would voluntarily waive the right to bargain on the topic without a significant quid pro quo, which was not present in 2002 -2003.

The County distinguishes the union business MOU on the basis that it is relatively minor, has been renewed for years with and without bargaining, and was included in the documents ratified by the parties. The County concludes by citing authority for the proposition that I may reform the agreement in the face of mistake.

DISCUSSION

This was a mistake. There was no evidence of any willful intent to extend the health insurance memorandum. The record suggests it was an inadvertent clerical error. All testimony, including that of three Union committee members was to the effect the matter was never discussed. Under the terms of the 2000-2001 memoranda, the restrictions on health insurance negotiations reach through the 2002 - 2003 collective bargaining agreement. On its face, the provision would then lapse, unless modified to some other result.

Here, there was a modification, but one that was a clerical error, and not the product of conscious decision making that is the product of collective bargaining.

The single sentence memoranda amounts to a waiver of the right to bargain over significant aspects of health insurance. A waiver of this magnitude should not be lightly implied or found. Such waivers of bargaining have been historically disfavored. Health insurance is a topic that has consumed bargaining in recent years. An employer waiver in this area must be knowing. There is no evidence that such is the case here.

I do not regard the two Memoranda as equivalent. The Union business Memo reflects a historic understanding between the parties. It regulates payment of bargaining unit members who perform certain union business. It extends into any hiatus, and requires negotiation prior to change. On its face it would appear to continue in the absence of specific negotiation. It did so, as it has done in years past.

I am sensitive to the direction, found in Article IX, that I "...not amend, delete or modify any of the provisions of this Agreement." The memoranda was not bargained. Its inclusion in the agreement was not ratified by the employer. It is my conclusion that it is not a part of the contract. Its physical inclusion is the product of error. The alternative is to conclude that there has been no meeting of the minds as to the agreement, which does greater violence to the agreement.

AWARD

The grievance is denied. The Union does have an obligation, consistent with the law, to bargain over health insurance benefits for the successor agreement to the 2002-2003 collective bargaining agreement.

Dated at Madison, Wisconsin, this 18th day of February, 2005.

William C. Houlihan /s/

William C. Houlihan, Arbitrator

