BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

MONROE COUNTY ROLLING HILLS EMPLOYEES, LOCAL 1947, AFSCME, AFL-CIO

and

COUNTY OF MONROE

Case 181
No. 65499
MA-13236

Appearances:

Daniel R. Pfeifer, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 18990 Ibsen Road, Sparta, Wisconsin 54656-3755, for Monroe County Rolling Hills Employees, Local 1947, AFSCME, AFL-CIO, referred to below as the Union.

Ken Kittleson, Monroe County Personnel Director, 14345 County Highway B, Room 3, Sparta, Wisconsin 54656-4509, appearing on behalf of County of Monroe, referred to below as the County.

ARBITRATION AWARD

The Union and the County are parties to a collective bargaining agreement which was in effect at all times relevant to this matter and which contains a provision providing for the arbitration of certain disputes. As detailed below, the County did not agree that a grievance filed by the Union in March of 2004 was arbitrable under the contractual grievance procedure. This led to the Union's filing of a complaint of prohibited practice seeking to compel the arbitration of that grievance. That complaint produced two decisions: DEC. NO. 31346-A (EMERY, 9/05), and DEC. NO. 31346-B (WERC, 1/06). The latter decision ordered the County to:

> Take the following affirmative action that the Commission finds will effectuate the policies of the Municipal Employment Relations Act:
>
> (a) Participate (including presentation of the timeliness defense) in grievance arbitration on the March 2004 grievance filed by Rolling Hills Employees' Local 1947, AFSCME, AFL-CIO.

The parties jointly requested that the Commission appoint Richard B. McLaughlin, a member of its staff, to serve as Arbitrator. Hearing on the matter was conducted on April 5, 2006, in Sparta, Wisconsin. No transcript was prepared of that hearing, and the parties filed briefs by May 5, 2006.

ISSUES

The parties did not stipulate the issues for decision, although the Union does agree that "the timeliness issue is appropriately included in this case." The Union states the issues thus:

> Did Monroe County violate the CBA between the parties when Heather Schmitz's family/estate did not receive the life insurance payment after her death? If so, what is the appropriate remedy?

The County states the issues thus:

> 1) Threshold issue - Did the Union violate the time limits in Article 4, Section 5 of the collective bargaining agreement? If so, what is the appropriate remedy?
>
> 2) Primary issue - Did the County violate the coverage provisions of Article 15, Section 3 of the collective bargaining agreement? If so, what is the appropriate remedy?

As I understand the parties' positions, the County's statement of the timeliness issue is stipulated regarding the procedural issues. I also adopt the County's statement as that appropriate to the grievance's substantive issues.

RELEVANT CONTRACT PROVISIONS

ARTICLE 4 - GRIEVANCE PROCEDURE

> Section 3. Time Limitations: If it is impossible to comply with the time limits specified in the procedure because of work schedules, illness, vacations, or other acceptable reasons, these limits may be extended by mutual consent in writing.

Section 4. Settlement of Grievance: Any grievance shall be considered settled at the completion of any step in the procedure, if all parties concerned are mutually satisfied. Dissatisfaction is implied in recourse from one step to the next.

Section 5. . . . The Grievance Committee shall present the grievance to the Personnel and Bargaining Committee at i(t)s next regular meeting and the Personnel and Bargaining Committee shall answer within ten (10) calendar days in writing. If the grievance is not settled at this step, the Union shall have fifteen (15) calendar days from the receipt of the Personnel and Bargaining Committee's decision to present the grievance for arbitration.

Section 6. The County and the Union representatives shall attempt to select a mutually agreeable arbitrator from the Wisconsin Employment Relations Commission (WERC). If a mutually agreed selection cannot be achieved, the WERC shall appoint an arbitrator. . . .

ARTICLE 13 – PROBATION

. . .

Section 2. Employees who have completed the 1040 hour probationary period satisfactorily and are continued thereafter shall have a regular status and shall be entitled to all rights, protection, and benefits granted by the Agreement. . . .

ARTICLE 15 - INSURANCE

. . .

Section 3.

Life Insurance

The County shall provide each regular full-time employee covered by this Agreement with a $10,000* term life insurance policy with Accidental Death and Dismemberment effective at the same time the health insurance becomes effective for new employees. This coverage will be provided to regular part-time employees who may qualify under the guidelines as established by the insurance carrier.

*Subject to group life amount deductions as follows . . .

ARTICLE 21 - PART-TIME EMPLOYEES

. . .

Section 3. All regular part-time employees shall participate in the fringe benefits provided for the employees covered by this Agreement as follows:

. . .

C. Health, Life and Welfare: The County will pay health insurance premiums for part-time employees prorated against the amount paid by the County for full-time employees. The basis for the prorated amount shall be the average number of hours worked per week in the previous two (2) month period.

The portion of the premium paid by the employer shall be adjusted for the following two (2) month period and shall subsequently be adjusted each (2) months if necessary. The payment shall be as follows:

Average of less than 10 hours per week. . . Nothing
Average of 10-19.99 hours per week 1/4
Average of 20-29.99 hours per week 1/2
Average of 30-30.99 hours per week 3/4
Average of 40 hours per week . . . . . Full portion

Newly employed part-time employees shall be eligible for the health and life insurance coverage after completion of sixty (60) days of employment . . . and the County will pay a prorated share of the premiums cost based upon the average number of hours per week worked in the first sixty days as per the above hourly schedule.

BACKGROUND

The Procedural Issue

The parties stipulated at the arbitration hearing that the file from the complaint hearing, including the transcript, exhibits and briefs could be used to address the timeliness issue. In Dec. No. 31346-B at 2, the Commission adopted Examiner Emery's Findings of Fact and Conclusion of Law. That portion of Emery's decision which is relevant here reads thus:

FINDINGS OF FACT

. . .

5. In March 2004, the Union filed a grievance with the County concerning a claim for death benefits for a deceased bargaining unit member. The County denied the grievance and the grievance thereafter proceeded through the steps of the contractual procedure.

6. On May 13, 2004, Ken Kittleson, the County Personnel Director, sent an e-mail to Union Representative Dan Pfeifer, advising him that the Personnel Committee had denied the grievance, pursuant to Step 3 of the contractual grievance procedure.

7. On or about May 13, 2004, Pfeifer responded to Kittleson via e-mail to the effect that the Union intended to arbitrate the grievance. Kittleson did not receive the e-mail due to problems with the County's computer system.

8. On June 14, 2004, Pfeifer sent an e-mail to Kittleson asking his preference for an arbitrator to hear the grievance. Kittleson responded suggesting Arbitrator Richard McLaughlin.

9. On August 12, 2004, Pfeifer forwarded a Request to Initiate Grievance Arbitration to the Wisconsin Employment Relations Commission, along with the Union's share of the filing fee. Subsequently, the County submitted its share of the filing fee, as well.

10. On August 26, 2004, Kittleson contacted Arbitrator McLaughlin and informed him that the County challenged the arbitrator's jurisdiction and refused to arbitrate the grievance on the basis that the request to arbitrate was untimely under the deadlines established in the collective bargaining agreement.

11. On September 2, 2004, McLaughlin notified the parties that he was closing the file and reimbursed the filing fees to the parties.

12. The County's refusal to arbitrate the Heather Schmitz grievance violated its contractual obligation to arbitrate disputes concerning the interpretation or application of the collective bargaining agreement.

Based upon the foregoing Findings of Fact, the Examiner herewith makes and issues the following

CONCLUSION OF LAW

The County's refusal to arbitrate the Heather Schmitz grievance constitutes a prohibited practice, contrary to Sec. 111.70(3)(a)5, Wis. Stats. . . .

With the parties' stipulation as background, the material quoted above sets the factual background to the timeliness issue.

The Substantive Issue

The grievance, dated March 29, 2004, alleges, "Article 15, section 3 was denied to Heather Schmitz's family" and seeks a make whole remedy for them. Gene Schwarze, the Administrator of Rolling Hills, answered the grievance in a memo to the Union dated April 5, which reads thus:

> This employee approached our payroll person during the month designated as an open enrollment period -- November. . . .
>
> The employee signed the waiver to refuse the group life coverage at that time, following the explanation by the payroll clerk as to her entitlement under the coverages provided. . . .
>
> We would all like to go back and rewrite that occasion, as this is the type of situation that sad stories are made of. However, the employee exercised her right . . .
>
> Under the circumstances management is obligated, with regret, to deny the grievance. Local 1947 does not represent the family of an employee.

There is also no dispute that the life insurance policy maintained by Prudential for Rolling Hills provides the following benefit:

Basic Term Life Insurance and AD&D 100% Employer Paid

- Basic Term Life: you are automatically enrolled for $10,000.
  AD&D: you are automatically enrolled for $10,000.

There is no dispute that Schmitz started County employment as a Certified Nursing Assistant on July 16, 2002. She died in an automobile accident in March of 2004.

The bulk of the evidentiary background is undisputed. Schmitz began work as a CNA at Rolling Hills at the age of sixteen. She was then living at home and covered by her parents' insurance. At her time of hire, she went through an orientation regarding County benefits and other conditions of employment. After that session, she executed a written waiver of County-provided benefits. This had the effect of raising her wage rate. The waiver form she signed on July 16, 2002, reads thus:

> I elect the no-benefit C.N.A. wage. Effective payroll period beginning 07-16-02 (Hire)

On November 15, 2002, she exercised the option of moving into the part-time benefit rate. This lowered her wage rate, but made her eligible for vacation and sick leave benefits as well as certain premium rates. She signed the payroll form documenting her decision on November 10, 2002. On November 15, 2002, she signed two waiver forms, one covering health and dental insurance and one covering life insurance. The waiver form for life insurance reads thus:

LIFE INSURANCE REFUSAL FORM

> I, Heather Schmitz /s/, an employee of Monroe County have been offered group life insurance under the Monroe County Group Life Plan. I understand the coverage but hereby choose to refuse participation.

Effective June 1, 2003, Schmitz posted into a full-time CNA position. She did not, however, apply for any benefits.

On September 26, 2003, Schmitz met with a County payroll representative to enroll in the County's health insurance plan. The change of status form executed by the payroll department for that change consists of three separate columns headed: "HEALTH"; "LIFE"; and "DENTAL". The only column containing any entry is the "HEALTH" column, which notes that she is a full-time employee and states the deduction necessary to fund her portion of the health insurance premium. Schmitz never executed an application for life insurance, nor any document rescinding the November, 15, 2002 refusal of life insurance.

The balance of the background is best set forth as an overview of witness testimony.

Frances Schmidt

Schmidt is the President of the Union. She assumed that Schmitz was covered by life insurance at the time of the car accident, since the accident occurred after she had become a full-time employee. Because full-time employees do not contribute to the premium for the minimum level of life insurance, there is no reason for an employee not to take the insurance. When Schmidt discovered Schmitz' family had not received a payout of the life insurance/ accidental death benefit, she brought the matter to the Union, thus prompting the March, 2004 grievance. Schmitz had, at one point in her employment, asked Schmidt if it she was covered by life insurance, and Schmidt answered that she was as a full-time employee. Schmidt did not, however, refer Schmitz to the payroll department nor did she ask the payroll department. This reflected Schmitz' understanding that a full-time employee was automatically covered by life insurance. She was not aware, at the time Schmitz approached her, that Schmitz had executed a waiver of life insurance form.

Shelley Bohl

Bohl has served the County as a Payroll Accounts Payable Bookkeeper for six years. Bohl gave the same benefit orientation to Schmitz as a new part-time employee that she gives to any employee, full or part-time. In July of 2002, after an explanation of County benefits, Schmitz waived all County benefits. The County does not provide a benefits orientation subsequent to this, but will review County benefits with an employee who opts to change benefits. When Schmitz met with Bohl in September of 2003, Bohl again reviewed County benefits with her. After this review, Schmitz indicated she wanted only health insurance, but would like the benefits' paperwork sent home to her mother, so that her mother could review it. This paperwork included a summary, which states:

INSURANCE (Monthly Premiums)

. . .

LIFE ($10,000) Basic

Full-Time	$0
3/4-Time	$0.44
1/2-Time	$0.87
1/4-Time	$1.31

If interested, please contact payroll, Shelley Bohl (ext: 814)

Bohl did not execute the September, 2003 payroll forms until Schmitz had taken the forms home and returned, repeating her desire to sign up for health insurance only. Bohl did not complete the forms until she had completed a benefits presentation which covered the options available to Schmitz.

As a matter of course in her benefit presentations, Bohl emphasizes that the employee must sign a form to initiate a benefit. Any full-time employee who receives life insurance must sign a form requesting it. The form includes optional coverage beyond $10,000.00, which cannot be put into effect without a formal request. Similarly, the Prudential forms require an employee to indicate their beneficiaries. Since Schmitz had passed the open enrollment period which extends thirty days from date of hire, she would have to have demonstrated insurability to be covered by the Prudential life insurance policy.

Bohl noted that there is a fair amount of change in employment status between full and part-time. If an employee has executed the request for life insurance, then the County will automatically deduct for the premium if the employee changes from full to part-time, and will automatically cease premium deduction if the employee changes from part to full-time. This occurs with some frequency and Bohl checks hours every two months. The County will not act to provide insurance coverage in the absence of a documented employee request. This meant that Schmitz' waiver of life insurance remained effective at the time of her fatal accident, since she had not taken any action to rescind it by making a formal application. A change between full and part-time status does not trigger an open enrollment period.

Further facts will be set forth in the **DISCUSSION** section below.

The Union's Position

The Union notes that the parties have stipulated the "transcript, exhibits and briefs relative to the Complaint case on timeliness." A review of that record establishes "no reason for this arbitrator to deviate from Examiner Emery's rationale."

The Union contends that the fundamental difference between the Union and the County is that the County argues that the entitlement for full and part-time employees to life insurance is the same. This ignores that the "premium contribution is different and the language is different." Because full-time employees have "no cost" for life insurance, there is "no reason for a full-time employee not to have the life insurance."

The language of Article 15, Section 3 clearly and unambiguously affirms this by mandating that the County "shall provide" the life insurance coverage. Since Schmitz moved from part-time to full-time in June of 2003, she automatically should have been provided full-time insurance by the County. To the extent any doubt exists regarding this language, coverage language for part-time employees addresses it. Subsection 3C of Article 21 further underscores this by noting that newly hired part-time employees "shall be eligible" for health and life insurance coverage after sixty days. That the County may have treated Schmitz in the

same way as other employees does not establish a past practice. Schmidt did not share the County's view, and informed Schmitz that she need not apply for life insurance since it cost nothing. Nor can the Union be forced to contribute for requested coverage, since the contract places the burden of providing coverage solely on the County. In any event, past practice is of no effect where contract language is clear.

The County does not ask for an insurance election from an employee who moves from full to part-time or vice-versa. Rather, it either takes a contribution or not as the employee's hours change. That Bohl testified that Schmitz told her she did not want the insurance is irrelevant. The testimony is hearsay and if considered, cannot override Schmidt's testimony that Schmitz asked about life insurance coverage, demonstrating that she wanted it. If there is a conflict in the testimony, Schmidt's should be credited.

That Schmitz signed a waiver of life insurance does not make it applicable forever, nor does Prudential's requirement of insurability have a bearing on the grievance. Schmitz could have applied and probably would have qualified. This would have been done had the County simply fulfilled its obligation to apply on her behalf. That there has been no beneficiary designation is of no significance, since the County should pay the estate.

The Union concludes that "the family/estate of Heather Schmitz be awarded the $20,000 life insurance benefit." Since the County had to be ordered to arbitrate, "the Union is seeking interest on the award."

The County's Position

The County stands by the timeliness arguments made in the complaint proceeding. The evidence and those arguments establish that the Union "took 91 days to file for arbitration while the grievance procedure clearly states that it has 15 days to present the grievance for arbitration." Contract provisions permitting extensions of the time limits have no bearing here, since the Union did not request one. The violation of the contractual time limits is "egregious" and if the Union's position is accepted, would undercut language beyond that contained in the grievance procedure.

A review of the record, including the complaint, establishes that Schmitz "signed a waiver that she did not want coverage." She neither revoked that waiver, nor applied for life insurance. It follows that the "waiver dated November 15, 2002, remained in force on the date of her death, March 20, 2004."

If viewed solely on its emotional appeal, the grievance favors the Union. That emotional appeal cannot, however, withstand scrutiny of the Union's position on the merits. If the benefit applies without regard to an individual election, the entire benefit section of the contract is thrown into doubt. If life insurance should be granted full-time employees because

there is no reason not to take it, why should the same logic not be applied to life insurance for a half-time employee who would pay "only 87 cents per month?" The logic cannot turn on what the Union believes is too good a deal for an individual to pass up. Rather, the logic must turn on individual choice, and Schmitz never chose to apply for life insurance.

Bohl counseled Schmitz on the life insurance benefit three times, including sending life insurance information home with Schmitz. Schmidt's testimony will not undercut Bohl's. Schmidt never referred Schmitz to the payroll department, but told her coverage was automatic, even though Schmidt did not realize Schmitz had signed a waiver of such coverage. In fact, the Union submitted no evidence that Schmitz ever applied for life insurance. The evidence thus establishes that Schmitz chose not to apply for dental or life insurance coverage. This "was a personal choice that both employer and union should honor and not question." The grievance should not turn on the emotions left in the wake of an untimely death and should be denied for procedural or for substantive reasons.

DISCUSSION

The County's statement of the timeliness issue focuses on Article 4, Section 5, but calls on other provisions of Article 4. More specifically, the County urges that the absence of a written extension of the time limits under Article 4, Section 3, demands that the grievance cannot be arbitrated because of the Union's failure to comply with the requirements of Article 4, Section 5.

This contention can reflect either that the Union failed to timely "present the grievance" due to an e-mail problem or that the Union failed to "present the grievance" to the proper body, which under the County's view, should have been the WERC.

Either aspect of the argument highlights that the labor agreement is silent on what is the appropriate sanction for an untimely processed grievance. The County's assertion that forfeiture is the appropriate sanction has considerable persuasive force under the language of Article 4, Section 3, which goes to some detail to specify the "acceptable reasons" for a failure to comply with Article 4 time limits. Under any view of the grievance, considerable time passed before the Union presented the grievance to the WERC. Presumably, the County's argument should have support in Article 4, Section 4, which implies "dissatisfaction" in "recourse from one step to the next." If the Union fails to timely process a grievance from one step to the next, a forfeiture is arguably appropriate because the grievance should be considered "settled" at the last step at which timely expression of dissatisfaction occurred.

As noted in DEC. NO. 31346-A, it is difficult to view the County's position regarding strict compliance with Article 4 as reconcilable to its conduct in this grievance. Like that decision, I view the County's conduct to constitute a waiver of strict compliance with Article 4 timelines. From my perspective, this interpretation flows less from arbitral authority regarding

waiver or forfeiture than from the provisions of Article 4. Section 4 of Article 4 highlights this. Just as it can support an argued forfeiture of a grievance, it supports a finding of waiver of such an argument. In this case, the County initially agreed to arbitrate the Schmitz grievance, then withdrew its agreement after the selection of a "mutually agreeable arbitrator" and after the Union paid a filing fee to the Commission under Article 4, Sections 5 and 6. From my perspective, Section 4 of Article 4 points away from the forfeiture the County seeks. If the County's position was that the grievance was so flawed under Section 5 that it should never have progressed to Section 6, then it was under some obligation to communicate its dissatisfaction on the point to work the forfeiture it seeks by having the Union's position become that of a settlement based on the Personnel and Bargaining Committee decision under Section 5.

Thus, even if the County is correct that the Union was obligated under Section 5 to "present the grievance" to the WERC, it has by its conduct and through the operation of Article 4, Section 4, waived on these facts a contention that the Union's conduct should work a forfeiture of the grievance. This leaves the "present the grievance for arbitration" reference of Article 4, Section 5, ambiguous. That ambiguity, if it is to be addressed in arbitration, should arise on more appropriate facts. More significantly, it leaves the point to the parties to address in the first instance through bargaining if possible.

Thus, from my perspective, the County's timeliness concerns must be taken up in the consideration of the issues on the merits rather than as a bar to such consideration.

The issue thus turns to the merits of the grievance. I have adopted the County's statement of the issues, but there is no meaningful difference between it and the Union's. The Union's view focuses on the benefit payable to Schmitz' family or estate. County arguments indicate that it views this statement to unduly highlight the emotional aspect of the case. The point has no evident significance under the agreement. If the County had a duty to provide the benefit stated in Article 15, Section 3, then it failed its duty by not paying the benefit to Schmitz' estate. The County's focus on the governing contract provision more clearly focuses the dispute, and is thus the statement of the issues I adopt above.

The first level of the parties' dispute is whether the language of Article 15, Section 3 clearly and unambiguously supports either party's view. The language of the provision cannot be considered clear and unambiguous. Each party acknowledges that it states a mandate through the use of "shall provide". The parties' arguments regarding timeliness form a somewhat ironic background to this point. The Union's emphasis on the "shall" in Article 15 differs from the emphasis it placed on that term in Article 4. The County's assertion that Union arguments on timeliness stray from the language of the agreement ignores that the portion of Article 15, Section 3 dealing with a "full-time employee" mentions nothing else as a prerequisite to coverage. The County's view strays beyond that sentence.

In either event, the language cannot be considered clear and unambiguous. Each parties' arguments are plausible and establish that Article 15, Section 3 is not clear on whether the County is obligated to provide a benefit or to provide the opportunity to obtain it through a third party. The language of Article 15, Section 3 does not support a conclusion that the County agreed to provide the benefit as the insurer. The mandate is to provide "a . . . term life insurance policy". There is no dispute the County does not have and never has had a policy to provide. Beyond this, the Union asserts the County must provide an accidental death benefit of $10,000. While the language of Section 15.3 refers to "Accidental Death and Dismemberment", the amount of that benefit is a feature of the Prudential policy. The second sentence of the section further underscores the point, by noting that the "coverage . . . guidelines" provided for part-time employees are established by the insurance carrier." This reference is to a third-party provider, not to the County.

This prefaces the next level of the dispute, which is more subtle and turns on the Union's contention that even if the County is not required to provide the benefit, it is obligated to supply the coverage. This seeks to make the failure to apply for coverage the County's responsibility, rather than Schmitz'. Under this view, even if Article 15 does not mandate County provision of the benefit, it must provide the benefit as the remedy appropriate to its failure to make application to cover Schmitz. This argument is the strength of the Union's case. It acknowledges that the provision is not clear and unambiguous by using the terms of the second sentence of Article 15, Section 3 to clarify the first. This view has support in the first sentence of the section, which mandates the provision of a policy to full-time employees. As the Union points out, there is no cost to such employees, and there is no mention of insurer guidelines other than in the second sentence, which applies to part-time employees.

The Union's arguments, although forceful, are not persuasive. The Union's view cannot account for the anomaly of employees whose status changes from full-time to part-time or vice versa. As Bohl's testimony and the provisions of Article 21, Section 3C establish, there can be considerable movement in this area. It is undisputed that the County deducts the premium contribution from an employee whose status changes from full to part-time, and stops the deduction when an employee moves from part to full-time. No authorization beyond the request for insurance is necessary. It is not clear how this could be applied to an employee such as Schmitz, who never applied for the insurance. There would be no authorization for the County to take a deduction from her paycheck. That the benefit may be cost-free to a full-time employee has no bearing on this. An analogy can assist to illustrate the point. If a fair share contribution equals the amount of dues deducted from a union member, it does not follow that a fair-share employee is a union member simply because there is no difference in cost, even if added benefits apply to the member. Rather, individual authorization is required.

This analogy prefaces the more significant point. The Union's view strains the language of Article 15, Section 3 to apply to Schmitz not as a full-time employee, but as a full-time employee who never applied for insurance. It does this by asserting the two sentences must be given a different meaning regarding coverage. This is ultimately an unpersuasive

reading since the two sentences refer to the same policy and establish the same duty, which is to make coverage available, subject to policy requirements set by the carrier. The second sentence establishes this by the use of "This coverage", which refers to the first sentence, and means the two sentences must be read together and not opposed to each other. Thus, the same policy applies to all employees. The remaining issue is how much, if anything, an employee contributes. The reference to "guidelines" in the second sentence may well extend to requirements such as evidence of insurability, but presumably includes the level of hours set by "the insurance carrier" necessary to make a part-time employee eligible to be a member of the insured group. The Union's citation of Article 21, Section 3C underscores this point. It does not underscore a contrast between the first and second sentences of Article 15, Section 3. Rather, it states the point in time at which a part-time employee is provided the opportunity to receive the life insurance benefit. The first sentence of Article 15, Section 3 accomplishes the same result for full-time employees, by its reference to "the time the health insurance becomes effective for new employees." The reference presumably refers to the provisions of Article 13, Section 2. In any event, the first sentence of Article 15, Section 3 does not provide a benefit different from that afforded part-time employees. Rather, the provision, like Article 21, Section 3C, establishes the point at which the benefit will be available. Neither section eliminates the need to apply. The record establishes that Schmitz was provided the opportunity to apply for the life insurance benefit when she took the opportunity to apply for the health insurance benefit.

Further considerations complicate the Union's view of the agreement. As the County points out, the Union's view leaves beneficiary designations unmade. This is more than a simple omission. It is almost impossible to understand why an individual would wish to buy life insurance but not wish to name a beneficiary. This omission cannot be made more palatable by assuming the proceeds can be paid to an estate. It highlights the need for the expression of individual application for the benefit. The Union's assertion that Schmitz can be presumed to meet evidence of insurability similarly obscures the need for an application. Under the Union's view, an insurer, whether Prudential or the County, would have little, if any, control over an open enrollment period. It is unlikely either would assume such an obligation in the absence of clearer language than that asserted by the Union.

The difficulty in the Union's view is highlighted by Schmidt's testimony. If individual application for the benefit is unnecessary, it is difficult to understand why Schmitz' reliance on Schmidt's statement that coverage was automatic could not be made a basis for payment to the estate. The Union asserts that this misplaces the County's obligation under Article 15, Section 3, and improperly relies on hearsay. The statement is not necessarily hearsay. Even assuming it is ignores that hearsay is commonly admitted in arbitration. More significantly, the reliance argument against the Union is unpersuasive for the same reason as the Union's attempt to impose a similar duty on the County. That reason is an individual application for the benefit. It is not reasonable for an individual to conclude that a life insurance benefit can be claimed in the absence of any expression of interest to the entity providing the insurance and in the presence of an executed form refusing it.

Before closing, it is appropriate to touch on certain arguments made by the parties. The County's insistence that the Union seeks no more than to play the sympathy card ignores the force of the Union's contractual arguments. Broad social policy issues are not, under the agreement, entrusted to the arbitrator. The need to respect individual choice advocated by the County is a fine social policy tenet. So is the provision of assistance to the dead and the grieving advocated by the Union. Speculation on why Schmitz should have applied affords no more reliable guidance. She did not apply originally for health insurance due to coverage under her parents' policy. The same may have been true for life insurance. It may not. She may have been unwilling to contribute if her hours fell below full-time. She may have. The difficulty remains that the only certainty on the point is her individual application, and she declined on every occasion available to her to make that application. This case must turn on the strength of the parties' contractual position, rather than broad policy issues or speculation on what she "should" have done. Ultimately, the language of Article 15, Section 3 favors the County's view over the Union's.

The Union questions whether a waiver can be made indefinite. Even if Schmitz' November, 2002 refusal of life insurance coverage was not as clearly stated as it is, a fundamental problem remains. That problem is the absence of an application. The difficulty is not just that she waived the opportunity to receive life insurance but also that she never applied for it.

To interpret ambiguous language, I believe bargaining history and past practice are the most reliable guides, since each focuses on conduct of the parties whose intent is the source and goal of contract interpretation. Here, there is no evidence of bargaining history. Past practice evidence is, in a sense, relevant but is not controlling. Schmitz' situation was unprecedented, and it is impossible to say the Union agreed that an individual application was necessary for the benefit. Schmidt's testimony was candid and establishes that she, on behalf of the Union, made no such agreement. It is, however, worthy of note that Bohl's testimony was no less credible, and she testified that she informed any employee, whether full or part-time, that it was necessary to apply for the insurance each time she gave a benefits presentation. Schmitz received three such presentations. Bohl's testimony that she understood in September of 2003, that Schmitz had expressly declined all coverage except health even after taking the forms home is not, in my view, hearsay. At a minimum, it explains what prompted Bohl to complete the forms as she did. However, treating the testimony as inadmissible hearsay does not change the conclusions noted above. Even ignoring Bohl's recall of Schmitz' response, it is evident that County practice alerts employees as a matter of routine regarding the availability of benefits and the need to apply to receive them. This may not bind the Union as a matter of contractual past practice, but reflects administrative practice consistent with the terms of labor agreement. There is no persuasive evidence that the County ever gave any employee the impression the life insurance benefit was available except on application.

This cannot obscure that the issuance of this Award gives me no greater pleasure than it gave Schwarze when he denied the grievance.

AWARD

Even assuming that the Union violated the time limits in Article 4, Section 5 of the collective bargaining agreement, the County waived strict application of the provisions of Article 4, and the Union has not forfeited the right to a determination of the merit of the Schmitz grievance.

The County did not violate the coverage provisions of Article 15, Section 3 of the collective bargaining agreement.

The grievance is, therefore, denied.

Dated at Madison, Wisconsin, this 21st day of July, 2006.

Richard B. McLaughlin /s/
Richard B. McLaughlin, Arbitrator

RBM/rb
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