

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

TOWN OF SOMERS

and

TOWN OF SOMERS EMPLOYEES, LOCAL 71, AFL-CIO

Case 6

No. 65497

MA-13234

(Benefit Elimination Grievance)

Appearances:

Thomas G. Berger, District Representative, Wisconsin Council 40 AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite B, Madison, WI 53717-1903, for Town of Somers Employees, Local 71, AFL-CIO.

Jeffrey J. Davison, Attorney, Davison & Mulligan, Ltd., 1207 55th Street, Kenosha, WI 53140, for the Town of Somers.

ARBITRATION AWARD

The Town and the Union are parties to a collective bargaining agreement which provides for the final and binding arbitration of certain disputes. On January 18, 2006 the Union filed a Request to Initiate Grievance Arbitration with the Wisconsin Employment Relations Commission alleging: "Contract violation unilateral benefit elimination. This has to do with accident and sickness benefits". The Commission designated Paul Gordon, commissioner, to serve as the arbitrator. The Town raised an issue of the arbitrability of the dispute, and the parties agreed to have the arbitrability issue determined on written submissions. After the parties submitted their arguments on that issue the undersigned issued an Order Determining Arbitrability on May 17, 2006, finding the matter arbitrable. Hearing on the merits was held in the Town of Somers on September 24, 2006. No transcript was prepared. The parties filed written briefs and arguments thereafter and the record was closed on November 28, 2006.

ISSUES

The parties did not stipulate to a statement of the issues.

The Union states the issues as:

Did the Town of Somers violate the Labor Agreement in Article 11(A) and Article 16(F) when, after reaching a tentative agreement with AFSCME LOCAL 71 sometime in mid 2002, it eliminated an accident and sickness insurance benefit for all employees after the tentative agreement was reached? If so, what is the remedy?

The Town states the issues as:

Whether the benefits which are complained of by the Union as having been eliminated were negotiated during the course of the bargaining sessions which ultimately resulted in the first collective bargaining agreement, and whether those same issues have been incorporated by the language in the bargaining agreement so as to preclude the argument at this point that they could have been eliminated? If not, what is the remedy?

The Town's statement of the issues is selected as those which best reflect the record.

RELEVANT CONTRACT PROVISIONS

Article 2 – Condition and Duration of Agreement

(A) **Term.** This Agreement shall become effective as of the first day of January, 2002 and shall remain in effect for a period of three (3) years through December 31, 2004, and from year to year thereafter unless either party gives notice to the other by August 1, 2004 or August 1 of any year thereafter, to vacate or amend it.

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Article 5 – Management Rights.

(A) **In General.** The management of the Town of Somers and the direction of the employees in the bargaining unit, including but not limited to, the right to hire, the right to assign employees to jobs and equipment in accordance with the provisions of this agreement, the right to assign overtime work, the right to schedule work, the right to relieve employees from duty because of lack of work or for other legitimate reasons for just cause, except as otherwise provided in this Agreement, shall be vested exclusively in the Town. Each represented employee shall be required to report to and/or take direction from any management designee, who shall include: Town Clerk/Treasurer, Town Administrator, Public Works Coordinator, Office and Financial Manager, Fire chief, Public Works foreman and every member of the Town Board.

(B) **Change in Methods and Equipment.** In the event of change of equipment or methods of operation, the Town shall have the right to reduce the working force subject to this agreement and in the sole judgment of the Town make reductions in the work force as required. Nothing in this Agreement shall be construed to restrict the right of the Town to adopt, install, or operate new or improved equipment or methods of operation. It is further recognized by the Union that the Town of Somers public works department is comprised of

a small group of people, both hourly and salary. As a result, both hourly union members and management may, at times, be required to work physically, hand in hand to insure the welfare of the general public. Management employees will not perform overtime until overtime is first offered to qualified members of the bargaining unit.

(C) Public Health and Safety. Nothing in this Agreement shall be construed to limit the discretion of the Town with regard to matters affecting the public health, safety or general welfare.

(D) Work Rules. The Union recognizes the right of the Town to establish reasonable work rules, subject to the Union's right to grieve such rules, and to enforce applicable work related regulations promulgated by agencies of the State of Wisconsin or United States of America.

(E) Subcontracting. The Union recognizes that the Town has statutory and charter rights and obligations in contracting formatters relating to municipal operations. The right of contracting or subcontracting is vested exclusively in the Town. However, no employee shall be laid off or suffer a reduction in regular hours as a result of subcontracting.

(F) Community Service. The Town participates in the Community service program. The Union recognizes the Town's participation in this program and the value of such, and will cooperate with this program and its intent. However, no employee shall be laid off or suffer a reduction in regular hours as a result of the town's participation in a community service program.

Article 7 – Types of Employees.

(A) Regular, Full-time. Any employee who has been hired into a permanent, full-time position and who works a shift of eight (8) hours per day, five (5) day per week. This type of employee is entitled to all the usual and normal Town benefits.

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Article 10 – Employee Rights.

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(F) Sick Leave/Casual Days. Employees shall earn sick leave/casual days at the rate of nine (9) days each January 1st. An employee may not use accrued sick leave hours/casual days or receive sick leave severance pay until completion of the initial probationary period. In addition, first year employees shall earn sick leave/casual days at the rate of nine (9) days per year only if their hire date occurs on or before June 30; first year hires following June 30 shall earn sick leave/casual days in the first calendar year at the rate of four and one-half (4.5) day per year which may not be used or accrued until completion of the employee's initial probationary period.

An employee may use accrued sick leave for absences necessitated by his/her illness, injury or medical appointments, including diagnostic treatment, dental procedures, optical service or other medical care performed by a duly licensed practitioner. An employee is encouraged to be conscience of departmental needs when scheduling medical appointments and to advise his/her supervisor of such appointments as far in advance as possible.

An employee may use sick leave/casual days for non-medical purposes (casual days) so long as the employee notifies his/her supervisor not less than forty-eight (48) hours in advance of his/her intention to use a casual day. No more than one (1) employee per department may be entitled to take off on a given day as a casual day, in the absence of the express advance permission of the employee's supervisor(s). All requests for casual day absences shall be processed by the Town on a first come, first serve basis.

(1) **Sick leave severance pay.** Seventy-five (75%) percent of all unused accumulated sick leave/casual days will be paid to the employee upon termination of employment with the Town, or death, up to a maximum of ninety (90) days and/or seven hundred twenty (720) hours. No more than ninety (90) days of sick leave/casual days may be accumulated.

(2) **Medical verification.** If sick more than three (3) workdays, the employee shall furnish his/her supervisor with a certificate of illness signed by a licensed physician.

(3) **Sick leave for certain family members.** An employee may also use sick leave for the illness or injury of his/her spouse, child, or parent, when care and attendance by the employee is medically required. Sick leave under this section shall be approved by the Department Head and the employee may be required to furnish proof of medical need, if requested by the Town.

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Article 11 – Employee Insurance, Wages and Pension Benefits

(A) Health, Dental and Life Insurance.

(1) Full time employees are eligible to receive family coverage benefits the first of the month following completion of one (1) month of employment. The Town shall maintain all existing insurance benefits other than health insurance. The Current BlueCross dental insurance benefits shall be continued with the entire premiums therefore paid by the Town. As to health insurance, the Town shall maintain existing health insurance benefit in the first year of the contract, paying all premiums therefore.

Effective January 1, 2003, or as soon thereafter as is possible, the current health insurance plan will be terminated, and Employees will be covered under the Wisconsin Public Employees Group Insurance Plan. The Wisconsin Public Employees Group Insurance Plan allows Employees to choose from a menu of qualifying plans available in Kenosha County, and pursuant to such plan, the Town shall pay one hundred five (105%) percent of the lowest cost qualified HMO premium with the Employee paying the difference, if any. The Town will continue term life insurance policies on the lives of all Employees in the face amount of Ten Thousand (\$10,000.00) Dollars and shall pay all premiums therefore. Upon beginning coverage under the Wisconsin Public Employees Group Insurance Plan, the Town will obtain term life insurance coverage for each Employee in the face amount of fifteen Thousand (\$15,000.00) Dollars and pay the premiums therefore.

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Article 16 – Miscellaneous

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(F) Modification and Execution in Counterparts. This Agreement may be executed by the signators hereto in one or more originals by the undersigned representatives of the parties hereto. By executing this contract at the space indicated below, each of the signators hereby warrants and represents to the other that such signator has full authority to bind his or her principal to the terms and conditions of this agreement without requiring the other party to look beyond the terms of this agreement to determine the authority of such signator to bind its principal. In the case of the Town, the undersigned representatives of the Town hereby warrant and represent that this agreement was approved by a majority of a quorum at a duly noticed and conducted meeting of the Town Board of the Town; furthermore, no modification of this agreement may take place unless it is in writing and approved under the same standards as was required for the approval by the principals to this agreement of the original agreement.

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BACKGROUND AND FACTS

This case involves the first collective bargaining agreement between the parties and its initial implementation. Of particular concern are certain sickness and accident provisions. The agreement is for the period January 1, 2002, through December 31, 2004. It was ratified and adopted on November 12, 2002 and signed by the parties on November 14, 2002 and November 19, 2002. It was retroactive to January 1, 2002. Bargaining unit members received copies of the signed agreement about a week or two after it was signed.

The parties negotiated the agreement starting at least by June, 2001 and continuing through September, 2002. An AFSCME Wisconsin Council 40 Business Agent and members of Local 71 were present at each bargaining session. At the sessions both parties made proposals, including a Union proposal, among others, as to sick leave. At the several bargaining sessions the parties reached tentative agreements on various parts of the agreement. These were each then copied and circulated between the Town and the Union through their representatives, and dated as to the date of the session the particular tentative agreement was reached. On or about October 17, 2001 and December 17, 2001 the parties reached tentative agreements concerning provisions of certain sickness and accident benefits. These were copied, dated and circulated along with all other provisions tentatively agreed upon as the negotiations progressed.

Prior to the start of negotiations the Town had in effect a sickness and accident policy and a Casual Time Off policy that applied to the employees. They were enacted or re-enacted by the Town in 2000 and repealed by the Town Board in August 27, 2002. The policies along with several others, such as Holidays, Workman's Compensation, Bereavement Time, Vacation, Pension, Health and Dental Insurance, Life Insurance, and Call-In Pay, were reflected in a document called 2000 EMPLOYEE BENEFITS, and provided:

Sickness and Accident

In the event of sickness or accident away from the job, full time employees shall be paid as follows:

10 weeks at two-thirds regular wages;

4 weeks at one-third regular wages;

There will be 0 day waiting period for accident or illness when hospitalized for at least 48 hours. There will be a seven (7) day waiting period for illness or accident when treated at home under physician's care. A doctor's release will be required before returning to work.

. . .

Casual Time Off

Forty (40) hours annually for full time employees and twenty (20) hours for regular part time employees. Unused casual time will be paid at the end of the year. 48 hour notice shall be given when requesting time off. New employees' casual time shall be computed only for the months they work and are eligible during probationary period. Casual time shall be taken in no less than two (2) hour segments.

The above noted benefits, besides sickness and accident and casual time off, all resulted in paragraphs in the collective bargaining agreement with some changes in their respective terms and conditions.

On August 27, 2002 the Town Board also adopted a new Employee and Procedures Manual for represented employees, which replaced the 2000 EMPLOYEE BENEFITS document as to represented employees. The bargaining unit employees received the new Employee and Procedures manual on or about November 4 and 5, 2002. Each acknowledged receipt in writing which was on a form provided by the Town that included a statement indicating agreement to the provisions therein. But, each employee added a statement of their own to the receipt to the effect that they each reserved the right to agree. Bargaining unit members had not reviewed the Manual in any detail prior to that time. The benefits which had been in the 2000 EMPLOYEE BENEFITS document had been negotiated by the parties and, as indicated above, sickness and accident benefits had been tentatively agreed to by December 17, 2001. Sickness and accident benefits were not addressed in the new Employee and Procedures Manual. Rather, sickness and accident benefits were included in the parties' first ratified, adopted and signed collective bargaining agreement. Those provisions, as revised through the process of negotiations, are contained in the agreement in Article 10 (F), as set out above. The Employee and Procedures Manual which had existed in the year 2000 did not contain the specific benefits' details which were contained in the 2000 EMPLOYEE BENEFITS document, but the that Manual referred to that document for the specifics.

The last time a Town employee has requested and received sickness and accident benefits under the 2000 document was an April 29, 2002 request which was honored for the requested period between May 11, 2002 and July 25, 2002. No requests or claims for sickness and accident benefits were made by any Town employees after that and prior to the filing of the instant grievance.

While the parties were negotiating a successor agreement the Union became aware that an employee and procedures manual for non-represented Town employees contained references to certain health insurance benefits that are not the same as those in the collective bargaining agreement. Bargaining unit members had actually performed work on that document's preparation. In reviewing the manual for the Town's non-represented employees the Union came to the conclusion that the Town had eliminated the previous sickness and accident benefit to which the bargaining unit members felt they were entitled.

After attempting to bargain the issue of the 2000 sickness and accident provision in a successor agreement, on or about May 19, 2005 the Union filed the instant grievance, contending that the Town of Somers changed/deleted an accident and sickness benefit without bargaining the effects of such change/deletion with the Union. The grievance cited Article 7(A), Article 16(F), Article 11(A), and "all other relevant articles of the contract". The grievance was denied by the Town and this arbitration followed.

Other matters appear as in the discussion.

POSITIONS OF THE PARTIES

Union

In summary, the Union argues that the Town changed or deleted an accident and sickness benefit that had been in effect at the time of negotiations and ratification of the initial labor agreement. The Union submits its grievance is timely filed and that it followed the agreement within the time constraints. The Union argues that the language in the agreement as to Article 11(A) (1), Health, Dental and Life Insurance, is one of the sections violated. And, nothing in Article 5, Management Rights, allows this action. A benefit was taken away after negotiations when an initial labor agreement had been completed. The Town did not notify the Union of its intent or action.

The Union contends that an action taken after the fact by the Town cannot change the terms of the agreement absent mutual agreement. Article 16(F) requires the Town to notify the Union as to elimination of accident and sickness benefits. The Union accidentally became aware of the change and did not know of the change prior to getting the non-represented employee manual. The Town's public notice of its August 27th, 2002 public meeting is not notice to the Union of a change in the agreement, and does not render Article 11(A) inoperative.

The Union also argues that the labor agreement was not executed until November 14, 2002 and cannot be considered final and in effect until that date. The Union points out that retroactive pay bargained under that agreement was not issued until after the labor agreement was signed by all parties. The issue of enforceability of labor agreements has only been a problem for the Union. This issue was another attempt by the Town to demean the Union and discourage non-represented employees from joining a Union. Loss of the benefit has caused severe hardship on a bargaining unit member.

The Union contends the Town violated Article 11 Employee Insurance, Wages and Benefits, Subsection (A) Health, Dental and Life Insurance when it eliminated an accident and sickness insurance benefit. The Town also violated Article 16 Miscellaneous, Subsection (F) Modification and Execution in Counterparts. The Union requests reinstatement of the accident and sickness insurance benefit as it was in effect at the time of the ratification of the labor agreement.

Town

In summary, the Town argues that during the time leading up to the ratification of the collective bargaining agreement it continued to grant such wages and benefits as were previously offered. All benefits, wages and terms and conditions of employment were negotiated. Once tentative agreements were reached it became necessary to undertake logistical actions to harmonize prior practices with prospective requirements of the agreement. This included a new employee hand book for the bargaining unit among other documents, such

as retirement and health insurance. These activities tie up loose ends not directly addressed by the agreement but impacted by the agreement. And the bargaining unit employees had physical access to the manual prior to adoption since the agenda for the public meeting of the Town was typed by a Union member and copies of the manual itself which were distributed at the meeting were made by Union members.

The Town argues that the Union position that it was unaware that the old benefits had changed is unsupported by fact and reasonable inferences. Union witnesses acknowledge that as tentative agreements were reached they were memorialized and circulated. It is remarkable that neither Union employee remembered the October 25, 2001 and December 17, 2001 specific agreements incorporating sickness and accident benefits into the contract. Both witnesses acknowledged all other of the 2000 Employee Benefits package subparagraph (f) "Sick Leave/Casual Days" ended up in the contract. These are the same type of benefits which improved the benefits. Union witnesses acknowledged that the other benefits that were negotiated also differed from the prior Town policy and required preparation of documents extraneous to the agreement to implement the agreement. And they signed written acknowledgements of receipt of the Manual without questioning it for over 3½ years. Although the Union members may have forgotten how the issue was negotiated or want the old policy, the undisputed facts cannot give rise to a reasonable inference that the benefit was not negotiated into the original contract.

The Town also argues that the Union attempts to equate the 2000 accident and sickness pay subsidy to insurance and then argues the Town violated the contract by deleting insurance coverage. The Article the Union alleges was violated does not raise the issue. And, the previous benefit did not constitute insurance, nor was it administered in a fashion resembling insurance. The benefit does not meet the dictionary definition of insurance, there being no contract, premium or benefit while the Town has simply continued to pay a reduced rate.

The Town contends the Union's arguments go mostly to arbitrability rather than evidence as to the merits of the case. The Union had notice of the changed provisions of the accident and sickness policy given the circulation of tentative agreements reached on October 25 and December 17, 2001, the presence of bargaining unit members at negotiation sessions, an improved benefit, the agenda and meeting notice of the Town Board meeting and revised manual copied and collated by bargaining unit members, and signed acknowledgments of the membership of receipt of the manual. The only reasonable conclusion is that the benefits which the Union claims were unilaterally changed were negotiated by the parties at an early stage. For the old benefit to somehow slip through the cracks and be replaced by a benefit which was not negotiated strains the limits of plausibility. The Town asks that the grievance be dismissed.

DISCUSSION

The central question is to determine if the Town unilaterally eliminated the sickness and accident benefit without notice to the Union in violation of the collective bargaining agreement. The benefit has been in the Town policy reflected in the 2000 EMPLOYEE BENEFITS document. The Union maintains it did not negotiate away this benefit and that the agreement, within Article 12(A) 1 requires that benefit be maintained in that the Article require that the Town shall maintain existing health insurance benefit(s). The Union contends that under Article 7(A) full time employees are entitled to all the usual and normal Town benefits, which includes the sickness and accident benefit.

Essential to an understanding of this case is the fact that this was the first collective bargaining agreement between the parties. Before this agreement the employees had only those benefits which the Town extended to its employees at the Towns discretion. As the Town noted, during negotiations and bargaining the Town could not eliminate or change any benefits. The record demonstrated that it did not. Once the parties entered into their collective bargaining agreement, that agreement defines what the bargaining unit members' benefits are. Whatever benefits the Union was able to negotiate into the agreement is what the members have a right to. There is no clause in the agreement here which maintains any existing practices that may have existed before the agreement, and the parties have not argued prior practices. There is an argument made by the Union as to insurance which is discussed below. But that argument does not contend there was a practice, as opposed to the written sickness and accident benefit that existed before the agreement. Unless there is a specific provision in the agreement which refers to some other benefit, whatever benefits the Town may have extended to the employees under the 2000 EMPLOYEE BENEFITS document, the then existing Employee Procedures Manual, or anything else, is not a benefit under the collective bargaining agreement. Bargaining unit members have no claim under their agreement to any benefits which non-represented employees may have that are reflected in an employee manual for non-represented employees or elsewhere – absent a specific provision in the collective bargaining agreement.

The overwhelming evidence in this case is that the parties specifically negotiated all the benefits which had been contained in the 2000 EMPLOYEE BENEFITS document, and in those negotiations reached agreements on provisions for each one in a modified form, including the sickness and accident benefit. These are all reflected in the collective bargaining agreement. Sickness and accident provision as well as casual days are provided for in both documents. Those provisions in the agreement reflect the give and take of the negotiations process in terms of number of days, no provision for the reduction in amount of pay, carryover or accrual, and a severance payout, which supports the conclusion that they were negotiated over. Some of the new provisions appear to favor the employees, some appear to favor the employer. The bargaining proposals brought to the negotiations by the Union contained sick leave provisions. The parties circulated written, dated, tentative agreements with each other as of the dates provisions were agreed to, which included the sick leave/casual days tentative agreements of October 25 and December 17, 2001. Even though the Union witnesses may not

have had a recollection at the September, 2006 hearing as to specifically negotiating the sickness and accident benefit, the undersigned is persuaded from all of the evidence that the benefit as it had existed in the 2000 EMPLOYEE BENEFITS document was negotiated by the parties and, in a modified form as a result of the negotiations reflected by the tentative agreements, became part of Article 10(F). Once ratified, adopted and signed by the parties Article 10(F) contains the benefit and the old Sickness and Accident provisions from the 2000 EMPLOYEE BENEFITS document no longer apply. The Town did not unilaterally change anything, particularly that benefit.

It is true that the 2000 EMPLOYEE BENEFITS document was repealed by the Town on August 27, 2002 at its noticed Town Board meeting where it also adopted the new Employee and Procedures Manual for represented employees. That Manual does not take the place of the labor agreement. It can not and does not eliminate any benefit which is otherwise contained in the agreement. While the Town did repeal the 2000 EMPLOYEE BENEFITS document at that time, it did so in preparation of implementing the new agreement, which would require a new Manual to comply with the terms of the labor agreement for the represented employees. Importantly, no bargaining unit member was denied a request or claim for benefits under the sickness and accident provisions of the 2000 EMPLOYEE BENEFITS document before the agreement was signed, or even thereafter. It is impossible for there to have been a breach of agreement as to that provision, notwithstanding the fact that it is no longer a benefit under the agreement.

This lack of request or claim perhaps underscores the Union argument that it is not necessary to application of the benefit which it complains of, but rather the elimination of a benefit provision which it feels is a right under the agreement. But, as noted above, that particular benefit has, in effect, been negotiated away and replaced by Article 10 (F).

The Union argues that the agreement does extend, in two ways, to the old sickness and accident provision. The Union points to Article 11 for the point that the Town shall maintain all existing insurance benefits other than health insurance. However, this argument is somewhat out of context. The Union's statement is part of an article which specifically deals with health, dental and life insurance. It states in pertinent part:

(A) Health, Dental and Life Insurance.

- (1) Full time employees are eligible to receive family coverage benefits the first of the month following completion of one (1) month of employment. The Town shall maintain all existing insurance benefits other than health insurance. The current BlueCross dental insurance benefits shall be continued with the entire premiums therefore paid by the Town. As to health insurance, the Town shall maintain existing health insurance benefit in the first year of the contract, paying all premiums

therefore. Effective January 1, 2003, or as soon thereafter as is possible, the current health insurance plan will be terminated, and Employees will be covered under the Wisconsin Public Employees Group Insurance Plan. . . . The Town will continue term life insurance policies on the lives of all Employees in the face amount of Ten Thousand (\$10,000.00) Dollars and shall pay all premiums therefore. Upon beginning coverage under the Wisconsin Public Employees Group Insurance Plan, the Town will obtain term life insurance coverage for each Employee in the face amount of fifteen Thousand (\$15,000.00) Dollars and pay the premiums therefore.

The Union's argument, as the Town notes, equates the sickness and accident provision with insurance. However, the sickness and accident provision is not insurance. It is a reduced wage benefit. It has none of the hallmarks of insurance and cannot be generally understood to be insurance. There is no evidence that the Town is self insured as to that or any other benefit. It is not a supplemental income insurance policy. Article 11(A) (1) is addressing health, dental and life insurance. It specifically provides for the changing of health insurance providers with varying benefits, but requires all other existing insurance benefits be maintained. It then maintains the dental insurance and term life insurance (actually with an increased face amount after changes in the health insurance provisions are complete).

The Union also points to Article 7(A) as an agreement reference to the old sickness and accident provision. The Article provides:

(A) Regular, Full-time. Any employee who has been hired into a permanent, full-time position and who works a shift of eight (8) hours per day, five (5) day per week. This type of employee is entitled to all the usual and normal Town benefits.

The Union contends that the usual and normal Town benefits include the old sickness and accident benefits. However, usual and normal Town benefits cannot be understood here to include benefits otherwise negotiated and contained in the collective bargaining agreement. A usual and normal benefit, whatever that may actually be, from a municipal employer which is not contained in a collective bargaining agreement, is usually and normally subject to unilateral change or elimination by the employer. Article 7(A) cannot be read out of the context of the entire collective bargaining agreement. Within that context, it is the usual and normal Town benefits which are reflected in that very agreement which is what the regular, full-time employee is entitled to. The recognition clause in the agreement identifies only all full-time represented employees. Article 7(B) goes on to define other than full-time bargaining unit employees, and references seasonal workers. Article 7 clearly differentiates full-time regular employees from others, and it is only the regular full-time employees who are entitled to the usual and normal Town benefits. Set in this context, those usual and normal Town benefits

must be in reference to those contained in the collective bargaining agreement. It would be too great of a stretch to extend that reference in Article 7(A) to include the old sickness and accident benefit as having been within the intent of the parties. Article 7(A) does not entitle the employee to the 2000 EMPLOYEE BENEFIT document sickness and accident benefits or any other benefit provided therein. Any other arguable or conceivable usual and normal Town benefit has not been presented by this case and speculation as to what effect there may be thereon, if any, is not required to decide the issue here.

Having determined that the Town did not change or eliminate any benefit in the agreement without the Union's agreement, it would be unnecessary for the Town to give the Union notice of anything. The Union had the collective bargaining agreement and the new Employee Procedures Manual for represented employees along with other documents needed to implement the new collective bargaining agreement. There was nothing else to provide. The changes to the manuals were adopted in open session of the Town Board after public notice and concerned documents were handled by bargaining unit members. Nothing was hidden from anyone. Similarly, the provisions of Article 16(F) referred to by the Union as to modification of the agreement do not apply here. The agreement was not modified. There is no modification to be put into writing and approved under the same standards as was required for the approval by the principals to the original agreement.

The Town did not eliminate any benefits that had been negotiated into the labor agreement. Accordingly, based upon the evidence and arguments in this case, I issue the following

AWARD

The grievance is denied in its entirety and dismissed.

Dated at Madison, Wisconsin, this 7th day of June, 2007.

Paul Gordon /s/

Paul Gordon, Arbitrator