BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

PARDEEVILLE EDUCATION ASSOCIATION

and

PARDEEVILLE AREA SCHOOL DISTRICT

Case 29
No. 66481
MA-13539

Appearances:

John Horn, UniServ Director, Wisconsin Education Association Council, appearing on behalf of the Association.

Barry Forbes, Staff Counsel, Wisconsin Association of School Boards, appearing on behalf of the District.

ARBITRATION AWARD

The Union and Employer named above are parties to a 2005-2007 collective bargaining agreement which provides for final and binding arbitration of certain disputes. The parties asked the Wisconsin Employment Relations Commission to appoint an arbitrator to hear and resolve the grievance of Patti James. The undersigned was appointed and a hearing was held on February 7, 2007, in Pardeeville, Wisconsin, at which time the parties were given the opportunity to present their evidence and arguments. The parties completed filing briefs on May 14, 2007.

ISSUE

The parties ask:

> Is the District's failure to pay full benefits to Patti James a violation of Article 15 of the Professional Agreement? If so, what is the appropriate remedy?

BACKGROUND

This is a dispute over a part-time employee's benefits. The collective bargaining agreement states in Article 15:

> Teachers initially hired after January 1, 1986, who are or become part-time teachers shall have their insurance benefits prorated.
>
> All full or part-time employees who were initially hired prior to January 1, 1986, and who are eligible for insurance benefits shall have full benefits during their term of employment with the district.

The parties stipulated to the following facts:

1. Patti James was initially hired by the Pardeeville Area School District in the fall of 1976.
2. Patti James was laid off, effective for the first semester of the 1981-82 school year.
3. Patti James was recalled from layoff for the second semester of the 1981-82 school year (January 1982).
4. Patti James received full insurance benefits from 1976 to 1984.
5. Patti James resigned, effective at the end of the 1983-84 school year.
6. Patti James returned to teach for the Pardeeville Area School District in the fall of 2001. Patti James did not take health insurance benefits. She was led to believe by the District that the health insurance would be pro-rated.
7. Since being rehired in the fall of 2001, Patti James has had a single dental policy and the District has not been paying the full premium, but rather a pro-rated percentage that is based on her assignment.
8. Patti James' assignments since 2001 have been one-half (1/2) to five eights (5/8ths).
9. After the 12 month waiting period Patti James began to receive health insurance in the 2005-2006 school year. The District is not paying 100% of the premium, but rather a pro-rated percentage that is based on her assignment.
10. The Pardeeville Education Association became aware of the above circumstances in #7 and #9 above in the fall of 2006 and filed a grievance.

James' seniority date is listed as August 21, 2001. Her break in service was for 17 years. Article 13 of the collective bargaining agreement states:

> Seniority accumulation and the employment relations shall be broken and terminated if the teacher (1) resigns or quits, (2) is discharged, (3) is retired, (4) is on layoff for more than two years.

THE PARTIES' POSITIONS

The Association

The Association contends that the language of Article 15 is clear and unambiguous. Article 15 uses the word "initially" in both sentences regarding this issue concerning both those who retain full benefits and those who have prorated benefits. The Grievant was initially hired prior to January 1, 1986, so her benefits must be fully paid by the District. The District wants to read the sentences without the word "initially" in them, but it is there and must be given its appropriate meaning.

The Association urges that the dictionary definition of "initially" must be used. The Random House College Dictionary defines initial as "…of or pertaining to the beginning; first: the initial step in a process," and indicates that "initially" is the adverb form of "initial." Webster's New World Dictionary defines initially as "…at the beginning; at first." Since the definition of "initially" is as being the first time, it follows logically that after the first, there can be a second or more. In this case, the parties contemplated that there can be more than one time of hire. James' first hire, her initial hire in 1976, is controlling, not her subsequent second hiring in 2001.

While the District seems to believe that the word "initially" is an excess word or irrelevant, the word cannot be ignored. Parties intend the words they use to have meaning. An interpretation that gives meaning to all words used is favored over an interpretation that does not. It is only when no reasonable meaning can be given to a word that it may be treated as surplusage. The Association also notes that Article 13 regarding seniority accumulation does not apply to this case, and Article 15 does because it deals specifically with the proration of insurance premium payments for part-time employees. The specific language governs over the general language. The parties included specific language about insurance benefit proration based on the initial date of hire and did not rely upon the general resignation and loss of seniority language for this issue.

The Association asks that the Grievant be made whole by having the District immediately begin paying the entire health and dental insurance premium for her and that it pay her premiums retroactive to October of 2006.

The District

The District asserts that the Grievant's employment relationship with the District was broken and terminated when she resigned at the end of the 1983-1984 school year. As such, her term of employment started when the District hired her in the fall of 2001. There is no basis to determine that the District intended to give a lifetime guarantee of full insurance benefits to employees who had been hired and quit before the parties inserted the contested language into the contract.

The District believes that language to be clear and unambiguous, and emphasizes the phrase "term of employment" in Article 15, as well as "employment relations shall be broken and terminated if the teacher (1) resigns or quits" in Article 13. In order to qualify for full benefits under Article 15, the Grievant must be in the midst of a "term of employment" with an initial hiring date for that term prior to January 1, 1986. The Grievant terminated her employment in 1984, and was not in a "term of employment" with an initial hiring date prior to January 1, 1986.

The District asserts that to get full benefits, employees must have had continuous bargaining unit employment dating back to an initial hiring date before January 1, 1986. The correct interpretation of Article 13 and Article 15 leads to the conclusion that the Grievant has had two separate "terms of employment" with the District. The first one began in 1976 and ended in 1984. This term of employment ended before the contested language entered the contract. Her second term of employment began in 2001 and continues to run. When the Grievant resigned in 1984, she erased her date of hire for this position and eliminated her term of employment. There is nothing in the contract that would lead one to believe that the Grievant's hiring date in 1976 would survive 17 years of unemployment from the District and attach to the position she took in 2001, especially since Article 13 states that seniority accumulation and the employment relationship shall be broken and terminated. While the Association argues that the critical words are "initially hired," that is an overly broad and unreasonable interpretation of that phrase because employees can only receive full benefits during their "term of employment." The Grievant broke and terminated her employment relationship with the District, and her initial date of hire was August 21, 2001. The contract does not allow for full benefits during terms of employment.

The District submits that the Association's interpretation of the contract leads to unreasonable results that were not intended 20 years ago. That interpretation would allow anyone who worked only part-time for a few months in the years before 1986 to get full benefits now. The impetus to bargain this language was to save the District money. To balance the competing interests of the District and employees, this kind of compromise language is often bargained. It insulates current employees from benefit reductions and allows the District to prorate benefits for employees hired after 1986. The District's obligation was also capped because it only offered full benefits during the employee's "term of employment." The Association's interpretation would foreclose the District's willingness to hire individuals such as the Grievant in the future.

If an employee who has resigned later takes another position with the District, there is a new "initial hire" date and a new "term of employment." The Grievant has only four years of District service now. The Association cannot say that the initial hire date attaches only to the first position taken and not to subsequent positions taken after the employee resigns and takes a new position after a 17-year absence.

In Reply, the Association

The District erroneously contends that the last part of the sentence in Article 15 which says "during their term of employment" weakens the Association's case. The phrase simply means during the time that the teacher works for the District. It is possible to have more than one term of employment. The District also attempts to add the word "continuous" into Article 15 but that word is not there. The language does not say continuous employment.

In Reply, the District

The Association fails to recognize the major limitation in Article 15, that employees shall only receive full benefits during their term of employment with the District. Considering the Grievant's 1984 resignation and 17-year absence, there is no way the Association can claim that the Grievant was in a term of employment with an initial hiring date prior to January 1, 1986. The most reasonable interpretation of the language is that an employee had to be an employee on December 31, 1985. The language of Article 13 (seniority) makes it clear that the term of employment is broken when an employee resigns or quits. Thus, the Grievant's first term of employment was broken and terminated in 1984. Arbitrators should interpret language in a manner that avoids absurd results. The Association would have the District provide full health insurance benefits to all past teaching employees, with the only requirement that the employee come back to work at some point after January 1, 1986.

DISCUSSION

There is a saying about bad facts making bad law, and the same is probably true in arbitration. This case has unusual facts, not likely to be seen again by these parties. The parties may never have imagined what could happen under Article 15 when they grandfathered employees in for full benefits. However, they created this language and can always change it if it really becomes a problem. It is not necessarily in the best interests of the Association to have part-timers get full benefits because the cost of such results in less money available for salaries.

The Grievant has only one initial date of hire. While she has had two terms of employment, her initial date of hire always will go back to 1976, well within the class of employees grandfathered in for full benefits. Even though she resigned in 1984, the parties did not say anything in Article 15 about having to remain on staff up to the date of January 1, 1986, in order to get full benefits. They only said that those who were initially hired before January 1, 1986, would get full benefits. The Grievant was initially hired before January 1, 1986, and therefore, is entitled to full benefits.

The District would have the phrase "during their term of employment" mean that a part-time teacher would have to be in the middle of a term of employment as of December 31, 1985, to be eligible for full benefits. But the language doesn't say anything about that. It does not say anything about a term of employment being continuous. The parties may well have considered that people come and go and come back. The Grievant herself was laid off in 1981. No one could anticipate that someone could have a 17-year break in service and come back part-time with full benefits, but the parties did not limit the language to avoid anything this unusual either. There is no bargaining history on this record and it is useless to speculate what the parties intended when they used the phrase "initially hired." The District has argued that the Grievant has a new initial hire date when she returned in 2001, but there can only be one initial date of hire. To hold otherwise would be to ignore the term "initially hired" in Article 15.

The Grievant is entitled to full benefits under Article 15 of the collective bargaining agreement, retroactive to October of 2006 when this grievance was filed.

AWARD

The grievance is sustained. The District is ordered to make the Grievant whole for benefits retroactive to October of 2006. The Arbitrator will retain jurisdiction until July 31, 2007, solely for the purpose of interpreting any disputes that arise regarding the application of this remedy.

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

Karen J. Mawhinney /s/
Karen J. Mawhinney, Arbitrator

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