BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

AFSCME DISTRICT COUNCIL 48, LOCAL NO. 742

and

CITY OF CUDAHY

Case 106
No. 65983
MA-13392

(Lynde Health Insurance Grievance)

Appearances:

Teresa Mambu-Rasch, Attorney, Sweet and Associates, 2510 East Capitol Drive, Milwaukee, Wisconsin 53211, appearing on behalf of the Union.

Jason Kunschke and **Robert Mulcahy**, Attorneys, Michael, Best and Friedrich, 100 East Wisconsin Avenue, Suite 3300, Milwaukee, Wisconsin 53202-4108, appearing on behalf of the City.

ARBITRATION AWARD

AFSCME District Council 48, Local 742, hereinafter referred to as the Union, and the City of Cudahy, hereinafter referred to as the City or Employer, were parties to a collective bargaining agreement that provided for final and binding arbitration of disputes arising thereunder. The parties requested a list of five staff arbitrators from the Wisconsin Employment Relations Commission from which to select an arbitrator to hear and decide the instant dispute. The undersigned was selected to arbitrate the dispute. A hearing was held on October 28, 2010 in Milwaukee, Wisconsin. Thereafter, the parties submitted briefs on January 14, 2011. The record was closed on January 25, 2011 when the undersigned was notified that neither party would be filing a reply brief. Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following Award.

ISSUE

The parties stipulated to the following issue:

Did the City violate Article 22 of the contract by denying the grievant medical and hospital coverage when the grievant retired from City employment on July 6, 2007? If so, what is the appropriate remedy?

PERTINENT CONTRACT PROVISIONS

The parties' 2006-2007 collective bargaining agreement contained the following pertinent provisions:

ARTICLE VII – SENIORITY

1. Definition: Seniority means an employee's length of continuous service with employer since his date of hire. . .

. . .

ARTICLE XII – VACATION

1. Schedule: The vacation plan shall allow employees:

A. Two (2) weeks vacation after one (1) year of service.
B. Three (3) weeks vacation after seven (7) years of service.
C. Four (4) weeks vacation after fifteen (15) years of service.
D. Five (5) weeks vacation after twenty-three (23) years of service.

. . .

ARTICLE XXII – MEDICAL BENEFIT PLAN FOR EARLY RETIREES

Medical and hospital insurance coverage shall be available to all retired full-time employees who have completed fifteen (15) years of service with the City and are at least age 60. This coverage shall be the Wisconsin Public Employees Group Health Insurance (For Participating Local Government Employees and Annuitants) or such other carrier that provides substantially equal benefits that were in effect on 1/1/98. The City shall pay 100% of the Plan (self-insured). Effective for new retirees on or after July 1, 2003, the City shall pay 100% of the lowest cost qualified plan in the Milwaukee County area. The City will continue to pay the amount specified until the employee is eligible for Medicare or five full years following the retirement.

Effective July 1, 2006, for all full-time employees hired on or after July 1, 2006, the City shall pay 95% of the lowest cost qualified plan in the Milwaukee County area for such employees who retire at or above the minimum retirement

age and who have completed fifteen years of service with the City, and not less than age 60, as outlined under the Wisconsin Retirement System.

. . .

ARTICLE XXX- LONGEVITY

The City agrees to pay longevity pay to employees as follows:

A. After five (5) years - $5.00 per month longevity pay.
B. After ten (10) years - $10.00 per month longevity pay.
C. After fifteen (15) years - $15.00 per month longevity pay.
D. After twenty (20) years - $20.00 per month longevity pay.
E. After twenty-five (25) years - $25.00 per month longevity pay.

Longevity payments shall commence at the end of the closest payroll period ending after the anniversary date of hire.

. . .

BACKGROUND

The Union represents certain employees of the City. Prior to his retirement in 2007, the grievant in this case, Clayton Lynde, was in the bargaining unit.

Prior to his retirement, Lynde worked for the City for a total of 38 years. The 38 years just referenced were not continuous though. As will be noted below, he had a break in service where he worked for a different employer. This case ultimately involves that break in service.

Here's a short factual overview of this case. As will be noted below, in March, 2006 – while he still worked for the City – Lynde "sought clarification from the City as to whether he was entitled to receive health insurance benefits when he retired." It was his view that he was entitled to same. The City's Personnel Committee decided otherwise. It concluded that Lynde did not qualify for early retiree health insurance because of his break in service time, so it denied his request for early retiree health insurance. The Union grieved that action. After a lengthy delay, an arbitration hearing was held.

. . .

At the arbitration hearing, the parties stipulated to certain facts. The facts which they stipulated to were identified in the following document:

STIPULATIONS OF FACT

The Parties to the Dispute.

1. AFSCME District Council 48 and its affiliated Local 742 is the certified and exclusive bargaining agent for the bargaining unit that includes "all regular full-time and regular part-time employees in the Department of Public Works, the Water Utility, Janitorial, and all regular full-time and regular part-time clericals in the office of the Assessor, City Clerk, Treasurer, Engineer, Water Utility, Health Department, Police Department, and all regular full-time and part-time dispatchers excluding supervisory, managerial, confidential, professional, seasonal, casual and temporary employees."

2. At all relevant times, the Complainant and Respondent have been parties to a series of collective bargaining agreements covering employees in a bargaining unit represented by Complainant, with the most recent contract having a term of January 1, 2006 through December 31, 2007. (Exhibit 2)

Facts Relevant to the Prior Dispute.

3. Clayton Lynde was employed by the City of Cudahy from June 25, 1968 to October 15, 1996 and from February 25, 1997 until his retirement date of July 6, 2007.

4. Lynde's date of birth is August 18, 1946; he was sixty years of age upon his retirement from the City of Cudahy.

5. For approximately four months, from mid-October 1996 until February 1997, Lynde was employed by the School District of Cudahy as its Athletic Director, a position that was outside the jurisdiction of the Union's bargaining unit at the City of Cudahy.

6. Shortly after becoming Athletic Director, Lynde reapplied for his old position with the City of Cudahy, was deemed the only qualified candidate, and was hired into his former position.

7. As a new hire, the City placed Lynde on the first step of the wage schedule for his position and placed him on a six-month probation period. However, the City and the Union reached an agreement to place Lynde at Step 5, the top step of the pay grade, pursuant to Article XI – Rates of Pay, Section 2(a). (See Exhibits 2 and 3)

8. Other than the wage adjustment, no other benefits or working conditions were addressed in the agreement between the City and the Union.

9. Subsequent to his reemployment with the City in 1997, Lynde filed two grievances, the first of which was related to the City's decision to deny him credit for his prior accumulated service for purposes of determining his vacation benefit; the second grievance related to the City's denial of longevity pay benefits. (Exhibits 5 and 4, respectively)

10. The parties were unable to resolve either dispute, resulting in the submission of both grievances to Arbitrator Douglas V. Knudson on February 26, 1998. (MA-10024 and MA-10025) (Exhibit 6) The hearing in Case 87 No. 55489 MA-10024 and Case 88 No. 55490 MA-10025 involved the City of Cudahy and AFSCME District Council 48, and its affiliated Local No. 742.

11. During the arbitration hearing, the parties stipulated on the following substantive issue to be decided by Arbitrator Knudson:

> Is the City violating Articles 12 and 30 of the contract by denying the grievant five weeks of vacation pay and twenty-five dollars per month longevity pay? If so, what is the remedy?

12. On December 4, 1998, Arbitrator Knudson issued his decision, which denied Lynde prior service credits for vacation and longevity pay. (Exhibit 6) The Union did not appeal Arbitrator Knudson's decision.

Facts Relative to the Current Dispute.

13. In March, 2006, in contemplation of retirement, Lynde sought clarification from the City as to whether he was entitled to receive health benefits when he retired.

14. At the time of his proposed retirement, Lynde and the Union asserted that Lynde met the two criteria for qualifying for retiree health benefits in that he had "completed fifteen (15) years of service with the City and are [was] at least age 60. . ."

15. On Tuesday, April 11, 2006, the City, by its Personnel Committee, voted to deny Lynde the health benefit. (Exhibit 7)

16. On April 17, 2006, the Union filed a grievance on behalf of Lynde challenging the City's decision to deny Lynde the early retiree health benefit. (Exhibit 8)

17. On April 19, 2006, the City denied the grievance, determining that Lynde did not qualify for the medical benefit plan for early retirees due to a break in service time, thereby causing him not to have accumulated the requisite 15 years of service. (Exhibit 9)

18. On April 24, 2006, the Union appealed the City's denial of the grievance. (Exhibit 10)

19. The City failed to hold a hearing within the 20 working days specified in the grievance procedure Step 3 as described in Article X, and by letter dated May 21, 2007, confirmed the City's denial of retiree health benefits to Lynde. (Exhibit 11)

20. On or about May 26, 2006, the Union appealed the grievance to arbitration. (Exhibit 12)

21. Relative to the Union's initiation of arbitration, on December 15, 2006, the City filed a prohibited practice complaint with the WERC, Case 108 No. 66544 MP-4314.

22. The Union responded by filing a prohibited practice complaint with the WERC on September 19, 2007, Case 112 No. 67307 MP-4383, relative to the City's refusal to process Lynde's grievance to arbitration.

23. Lynde retired from City service effective July 6, 2007 and has not been receiving retiree health benefits through the City.

24. To the parties' knowledge, no employee member of Local 742 has ever received early retiree health insurance without having completed fifteen (15) continuous years of service.

25. The WERC consolidated both cases, and subsequently issued a decision ordering the City to arbitrate the grievance regarding the Lynde health insurance issue.

. . .

At the hearing, the parties addressed the following bargaining history. During contract negotiations for the 2006-2007 collective bargaining agreement, the City proposed a number of changes to Article 22 (the early retiree health insurance provision). One proposal introduced a

new paragraph to that article which included a reduction in the percentage of retiree health insurance paid by the City for full-time employees hired on or after July 1, 2006 from 100% to 95%. This new paragraph also included the word "continuous" in the phrase "fifteen continuous years of service." Later in bargaining, the Union submitted a proposal which modified the City's proposed language. The Union's proposed language would have agreed to reduce the amount of insurance paid for by the City from 100% to 95%, but it also would have created a new eligibility rule. Under the Union's proposed language, from July 1, 2006 to December 31, 2006, any employee hired would need only fifteen years of service to be eligible for retiree health benefits, but for employees hired on or after January 1, 2007, they would be required to have fifteen years of continuous service. At the hearing, AFSCME staff representative Penni Secore testified that the Union's proposal was specifically made in an attempt to have Lynde not be subject to the requirement of having fifteen continuous years of service. Said another way, the Union's proposal gave Lynde the opportunity to receive early retiree health insurance. The City responded to the Union's proposal by striking the language indicating that the fifteen years of service would need to be continuous effective January 1, 2007. In a letter dated August 15, 2006, the City's labor attorney, Rob Mulcahy, said that the City would not agree to the Union's proposed language because Lynde had a pending grievance on this issue and there was a prior grievance arbitration award relevant to this benefit eligibility. At the hearing, Mulcahy testified that the City's proposed language "would have had no impact on [anyone who was hired prior to January 1st of 2006] and that would have included Mr. Clayton Lynde." Mulcahy also testified that he thought the Union's proposal was "absolutely contrary to what Arbitrator Knudson had said" and "that is why he struck that language."

Ultimately, the parties agreed to add the following new language to Article 22:

> Effective July 1, 2006, for all full-time employees hired on or after July 1, 2006, the City shall pay 95% of the lowest cost qualified plan in the Milwaukee County area for such employees who retire at or above the minimum retirement age and who have completed fifteen years of service with the City, and not less than age 60, as outlined under the Wisconsin Retirement System.
>
> All employees shall pay any premium costs in excess of the designated City contribution based on the lowest cost qualified plan.
>
> If the retired employee secures employment with another employer and/or is eligible for health insurance coverage while gainfully employed, he shall not be eligible for coverage under the City's group health insurance program. All of the above are subject to the rules and regulations of the insurance company.
>
> The City will continue to pay these premiums for retired employees for five (5) years or to the age of Medicare whichever comes first, provided said employee is not employed elsewhere and receiving hospital and surgical care paid for by another employer.

> If a retiree is eligible for the lowest cost qualified plan, as an alternative to the Wisconsin Public Employer's Group Health Insurance Program, the City will issue a check to a health insurance company of the retiree's choice for the lesser amount of the retiree's actual current health insurance premium or the amount of the premium the City would otherwise have paid for the retiree pursuant to this paragraph. The retiree shall comply with such reasonable procedures as may be adopted by the City for processing such payments. Such payments are subject to the same terms and conditions as set forth in the paragraphs above.
>
> . . .

A review of this language reveals that it does not contain the word "continuous" anywhere in it.

POSITIONS OF THE PARTIES

Union

The Union contends that the City violated Article 22 of the collective bargaining agreement when it denied the grievant medical and hospital insurance coverage when he retired from City employment. The Union maintains that given his total years of service to the City (i.e. 38 years) and his age at the time of retirement (i.e. 60), he met both of the qualifications set in that language for that benefit, so he was entitled to receive the early retiree medical and hospital coverage established in Article 22. It elaborates as follows.

The Union notes at the outset that the parties have negotiated a contract provision which specifies that under certain conditions, early retirees can qualify for medical and hospital insurance coverage. The language the Union is referencing is the first sentence in Article 22. According to the Union, that sentence says, in clear and unambiguous terms, that if an employee has 15 years of service with the City and is at least 60 years old, then they qualify for early retiree health insurance. It cites Elkouri for the proposition that when the contract language is plain and clear, there is no need for the arbitrator to look outside the contract or to resort to technical rules of interpretation to determine its meaning.

It's the Union's view that Lynde met both of the above-noted qualifications when he retired in 2007. As the Union sees it, the phrase "years of service" refers to total years of service – not continuous years of service. It notes in this regard that Lynde had 38 total years of service with the City when he retired – 28 years of service, followed by a break of four months, followed by another 10 years of service. With regard to Lynde's four-month break in service when he worked for another employer, the Union implies it is irrelevant. In its view, there is no requirement in Article 22 that the "years of service" has to be continuous. Since Article 22 doesn't specifically include the word "continuous" in it, the Union maintains that the City is reading a word into that contract provision that simply is not there.

To support its interpretation, the Union cites the arbitration award of CITY OF CHEHALIS, 121 LA 38 (Schwendiman, 2005). In that case, a police officer, after 16 years of employment, quit his employment and then was re-hired by the same employer eight months later. When he returned, he negotiated his pay rate. Later, a dispute arose concerning his eligibility for longevity pay. The arbitrator found that the longevity pay provision, which referred to "years of service" did not mean continuous years of service, but rather meant total years of service. The Union asks this arbitrator to reach the same conclusion herein.

With regard to Arbitrator Knudson's 1998 award concerning Lynde's eligibility for vacation and longevity pay, the Union argues that both those contract provisions (i.e. Article 12 – Vacations and Article 30 – Longevity Pay) "contain qualifiers that do not appear in Article 22." What the Union is referring to is this: Article 12, section 2, refers to seniority, which is defined in Article 7 to mean "continuous years of service", while Article 30 says "commenc[ing] at the end of the closest payroll period ending after the anniversary date of hire." As the Union sees it, that "can only be interpreted to apply to the most recent period of employment, if the employee had a break in service."

Next, the Union argues that if the arbitrator finds that the phrase "years of service" is not clear and unambiguous, but rather is ambiguous, he should review evidence external to the collective bargaining agreement to help him interpret the meaning of the phrase "years of service". The external evidence which the Union is referencing is the parties' bargaining history.

The Union argues that the parties' bargaining history supports its position here. What the Union is referring to is this: In bargaining for the 2006-2007 labor agreement, the City proposed inserting the word "continuous" into Article 22, but that proposed change was not adopted. As the Union sees it, the City's proposal to include the word "continuous" in Article 22 shows that it knew it was "vulnerable" to having to provide Lynde with Article 22 early retiree health insurance coverage since the phrase "years of service" was not qualified. According to the Union, this bargaining history establishes that the "years of service" under Article 22 does not have to be continuous. The Union maintains that if the arbitrator interprets Article 22 to require 15 years of continuous service, he will be giving the City something that it was not successful in getting through negotiations (i.e. the insertion of the word "continuous" into Article 22).

The Union therefore asks the arbitrator to sustain the grievance and find a contract violation. As a remedy, the Union seeks a make-whole order for Lynde.

City

The City contends that it did not violate Article 22 of the collective bargaining agreement when it denied the grievant early retiree health insurance when he retired from City employment. According to the City, because of his break in service when he came back to work for the City as a new employee, the grievant did not have the requisite number of years of service required by Article 22. It elaborates as follows.

The City begins by reviewing the following facts. In its view, these facts provide important context for this case. The City notes that back in 1996, the grievant left his position with the City. Almost immediately afterwards, he regretted his decision to leave, and he talked to City officials about returning to his former job. The City cites testimony from the parties' 1998 arbitration hearing for the proposition that when that happened (i.e. when Lynde talked to City officials about returning to his former job), he was told that if that happened – and he came back to work for the City – he would come back as a new employee. The City emphasizes that it was specifically explained to Lynde at the time that as a new employee, he would have "no seniority as far as vacation selections, longevity or any other benefits." In other words, Lynde would essentially be starting over with the City in terms of benefits. The City argues that these facts establish that Lynde knew that if he came back to work for the City, he was being rehired as a new employee with no benefits. Knowing this, Lynde decided to come back anyway. He was rehired by the City in February, 1997. Immediately after he was rehired in 1997, Lynde appealed his pay rate to the City's Personnel Committee. That committee agreed to place Lynde at the top of the pay scale (i.e. his old pay rate). The parties subsequently drafted a side letter that memorialized Lynde's wage increase. Shortly after Lynde signed that side letter which dealt with his pay, he sought to change his longevity and vacation benefits. Specifically, he requested that his longevity pay and vacation benefits include his prior period of service with the City. That is what led to the arbitration before Arbitrator Knudson. Now, in this case, he has raised another benefit issue, namely retiree health insurance. Specifically, Lynde requests that his total years of service with the City be counted (so that he become eligible for retiree health insurance).

The City contends that Arbitrator Knudson's 1998 award directly addressed the same issue which the Union has raised in this case, namely the meaning of the term "years of service." As the City sees it, the Union is trying to relitigate the Knudson award. The City avers that in that decision, Arbitrator Knudson reviewed, and rejected, the Union's argument that the term "years of service" should mean "total employment with the City" in situations where an employee was employed by the City, left the City's employ, and later returned to work for the City. Here's why. First, he found that the longevity article did not include the grievant's service prior to being rehired by the City in 1997 because that provision referenced the employee's "date of hire". Thus, Knudson found that the grievant's eligibility for longevity pay started to run from his second date of hire (1997) – not his first date of hire (1968). Second, with regard to vacation pay, Knudson found thus:

> There is no support in that language for the Union's interpretation that Lynde should get credit for a prior period of employment with the City. The undersigned is not convinced that the parties intended vacation eligibility to be computed in a different manner than longevity is computed, i.e., that an employe who is rehired should be given credit for prior periods of employment for computing vacation benefits.

As the City sees it, Arbitrator Knudson's analysis is directly applicable to the medical benefit plan for early retirees language that is the subject of this case because both that provision and

the vacation provision include the term "years of service." The City avers that Knudson found that the prior period of service is not included as "years of service" for purposes of the parties' contract. It further opines that the exclusion of the prior period of employment by Arbitrator Knudson kept the term "years of service" in line with the contract definition of "seniority" found in Article VII (i.e. using continuous service with the employer since date of hire) and the longevity language that specifically calculated longevity pay starting from the anniversary date of hire. The City therefore maintains that the grievant is not entitled to retiree health benefits. It argues that if the arbitrator finds otherwise (i.e. that Lynde is eligible for retiree health benefits because of his total years of employment with the City), that result will be inconsistent with the Knudson award as well as the principle of collateral estoppel.

Next, the City anticipates that the Union will likely argue that Arbitrator Knudson's decision occurred ten years prior to the grievant retiring, and, as a result, Arbitrator Knudson's decision could not have an impact on grievant's current claim. In the City's view, this argument would be incorrect because Arbitrator Knudson specifically ruled on the meaning of the term "years of service", and that same contract term is at issue in the present case. Also, while the Union will likely argue that Arbitrator Knudson's decision was only in regards to the vacation and longevity articles, it's the Employer's view that Arbitrator Knudson's decision "had much broader import, as he specifically referenced and defined the term 'years of service' as used in those Articles, and therefore as used in the Contract as a whole." The City argues that it simply makes no sense for the term "years of service" to have one meaning in two Articles of the contract (12 and 30), but have a completely different meaning in a third (22). The City characterizes such a result as "absurd".

Next, the City cites Stipulated Fact 13 which says that in March, 2006, Lynde "sought clarification from the City as to whether he was entitled to receive health benefits when he retired." The City asks rhetorically if Lynde was already entitled to fringe benefits over and above those of a new hire, why would he have needed to seek the "clarification" and approval of the Personnel Committee? As the City sees it, if the grievant truly believed he was already entitled to the early retiree health benefits, he would have simply retired and filed for them. Instead, he "sought from the City, for the third time, benefits he was not entitled to." The City asserts that its denial of his third request (for retiree benefits) should have come as no surprise based on Arbitrator Knudson's prior finding of no support for the assertion that the grievant should get credit for a prior period of service.

Finally, the City makes the following arguments concerning the parties' 2006-2007 bargaining history. It contends that the reason it wanted to add the word "continuous" to Article 22 was "an attempt to be consistent with Arbitrator Knudson's prior decision." In its view, the addition of the word "continuous" in this new paragraph would have had no direct impact or effect on Lynde because he was hired prior to 2006, and therefore would not have been subject to the new language. As the City sees it, its proposed new language would have made the new paragraph terms consistent with the arbitration decision of Arbitrator Knudson, so its attempt to "clarify" the contract language based on Arbitrator Knudson's decision should not lead to any finding that the interpretation sought by the City was wrong. In contrast

though, the City contends that the language which the Union proposed (after the City made its proposal) was intended to have an effect on Lynde. To support that contention, it cites Union Representative Secore's testimony from the hearing that the Union's proposal was intended so that Lynde "would have been able to not be counted" under the continuous years of service requirement. Thus, it's the Employer's view that "this was the Union's specific attempt to avoid the impact of Arbitrator Knudson's prior decision." Building on that premise, the City avers that it is the Union that is now attempting to obtain through arbitration what it could not obtain in bargaining. According to the City, it was only seeking to clarify language by adding in the term (i.e. "continuous") that Arbitrator Knudson had already found appropriate, while the Union was seeking to overrule Arbitrator Knudson's finding. Thus, the City maintains that its actions were appropriate under the circumstances, while the Union's actions were not.

The City therefore asks that the grievance be denied. With regard to the make-whole remedy sought by the Union, the City opines that "it is the City's belief that grievant was covered under his spouse's health insurance since his retirement from the City, and therefore may have no damages at all, making this entire matter moot."

DISCUSSION

The parties stipulated that the specific question to be answered here is whether the City violated Article 22 of the collective bargaining agreement when it denied the grievant medical and hospital coverage when he retired. The Union answers that question in the affirmative, while the City answers it in the negative. Based on the rationale which follows, I answer that question in the negative, meaning I find that the City did not violate Article 22 by its actions herein.

My discussion is structured as follows. First, I will address the relevant contract language. As part of that discussion, I will address the Knudson arbitration award and decide whether it is applicable to this case. Finally, I will address the parties' bargaining history.

In their stipulated issue, the parties identified Article 22 as the contract provision involved herein. That provision is entitled "Medical Benefit Plan for Early Retirees". While that provision is quite long, in the context of this case, just the first sentence is involved. Here's what it says:

> Medical and hospital insurance coverage shall be available to all retired full-time employees who have completed fifteen (15) years of service with the City and are at least age 60. . . .

Broadly speaking, that sentence says that under certain conditions, early retirees can qualify for medical and hospital coverage. The conditions are as follows: 1) the employee has to "have completed fifteen (15) years of service with the City"; and 2) the employee must be "at least age 60". I'm going to characterize these two criteria as a years of service requirement and an age requirement. In this case, there's no dispute about whether the grievant met the age

requirement. Instead, what's disputed is whether the grievant met the years of service requirement. Specifically, did he have "fifteen (15) years of service" with the City?

It was noted in the beginning of the **BACKGROUND** section that Lynde worked for the City for a total of 38 years. 38 years is obviously more than 15 years, so it would appear at first glance that Lynde more than satisfied the 15 years of service requirement specified in the first sentence of Article 22.

However, in this case, there's a complicating factor. It's this. The grievant's 38 years with the City were not continuous; he had a break in service. As noted in the facts, Lynde worked for the City for 28 years at which point he left the City in 1996. When that happened, he did not take a leave of absence. Instead, he quit. He then went to work elsewhere. However, he didn't like his new job, so he asked to return to the City and fill his old position which was still open. The City granted his request and rehired him in 1997. When that happened, Lynde was specifically told that he was starting over as a new employee. He then worked for the City for another ten years at which point he retired in 2007.

The foregoing facts present the following question: since Lynde quit the City in 1996, and was rehired as a new employee in 1997, did he satisfy the "fifteen (15) years of service" requirement established in the first sentence of Article 22 when he retired in 2007? The Union answers that question in the affirmative because, in its view, that language should be interpreted to mean 15 years of total service. The City answers that question in the negative because, in its view, that language should be interpreted to mean 15 years of continuous service.

Before I proffer my opinion, I'm going to consider the following: Sometimes, when an arbitrator reviews contract language, another arbitrator has already done so in a prior case. That's the situation here. I'm referring, of course, to the Knudson arbitration award from 1998. In that case, Lynde sought to have both his longevity pay and vacation pay based on his total years of service with the City. Arbitrator Knudson found otherwise. First, he found that the longevity article (Article 30) did not include Lynde's service prior to being rehired by the City in 1997 because that provision referenced the employee's "date of hire". While Lynde had two dates of hire (the first on June 25, 1968 and the second on February 25, 1997), Knudson found that the one that applied to the longevity matter was the second hire date. Lynde's first hire date became inapplicable when he quit his job with the City in 1996. Second, building on that conclusion, Knudson opined as follows on the vacation matter:

> There is no support in that language for the Union's interpretation that Lynde should get credit for a prior period of employment with the City. The undersigned is not convinced that the parties intended vacation eligibility to be computed in a different manner than longevity is computed, i.e., that an employe who is rehired should be given credit for prior periods of employment for computing vacation benefits.

After considering the foregoing, Knudson did not credit Lynde's work time with the City prior to his break in service. Knudson therefore denied Lynde's request for his longevity pay and vacation benefits to include his prior period of service with the City.

In his award, Knudson limited his findings to just Articles 12 and 30 (the vacation and longevity articles). He made no pronouncements about other sections of the collective bargaining agreement. Specifically, he did not address the language contained in Article 22.

While Knudson did not address the language in Article 22, the question herein is whether the findings about Article 12 and 30 are applicable to Article 22. I find that they are for the following reasons. First, both Article 22 (the early retiree health insurance article) and Article 12 (the vacation article) contain the term "years of service". Thus, that same term is found in both articles. As noted above, Knudson considered, and rejected, the Union's argument that the term "years of service" meant "total employment with the City" in situations where an employee was employed by the City, left the City's employ, and later returned to work for the City. By rejecting the Union's contention, Knudson implicitly found that the term "years of service" meant continuous years of service. Second, that finding (that the term "years of service" meant continuous years of service) is consistent with the contract definition of "seniority" found in Article VII (where seniority is defined as "an employee's length of continuous service with the employer since the date of hire"). Third, were I to find otherwise (i.e. find that "years of service" means total years of service rather than continuous years of service), that would result in the term "years of service" having a different meaning for Article 22 than Arbitrator Knudson found that same term had for Article 12. That makes little sense. Arbitrators generally try to avoid such inconsistencies. Accordingly then, I find that Arbitrator Knudson's ruling on the meaning of the term "years of service" in Article 12 applies as well to Article 22.

Next, I find that the parties' 2006-2007 bargaining history does not affect the outcome of this case. Here's why. Both sides made language proposals that were not ultimately adopted. The following shows this. The Employer initially tried to add the word "continuous" to Article 22, so that a new paragraph (which it was trying to add), included the phrase "15 continuous years of service." While the Employer was not successful in getting that word added into Article 22, I'm not persuaded that the City was trying to get something that changed the contract's meaning. As already noted, Arbitrator Knudson had found, about eight years before, that the term "years of service" in the vacation article did not mean total years of service; rather, it meant continuous years of service. This arbitrator surmises from the record that one reason the City made this part of its bargaining proposal (i.e. its proposal to add the word "continuous" to the new part of Article 22), was because the Union had already filed a grievance seeking early retiree health insurance for Lynde (based on his total years of service and overlooking his 1996 break in service). When that grievance was filed, the City faced, as Yogi Berra used to say, "déjà vu all over again". In my view, it's not surprising that the Employer tried to nip that grievance in the bud, so to speak, by inserting the word "continuous" into the new part of Article 22. Again, from the City's perspective, all it was trying to do was make the language in Article 22 comport with Arbitrator Knudson's finding.

That commonly happens in labor negotiations. Conversely, it's not surprising that when the City tried to get the word "continuous" added to the new part of Article 22, the Union tried – via its own proposal – to make Lynde eligible for the Article 22 early retiree health insurance notwithstanding the contract interpretation Knudson made in his 1998 award. In the end though, the Union did not get what it was trying to get either (i.e. express language which made Lynde eligible for early retiree health insurance). Since the bargaining history just noted cuts both ways, so to speak, I've decided to not use it as a basis for deciding this case.

Instead, the outcome of this case is essentially driven by the Knudson arbitration award and the finding he made therein. As previously noted, he found that the term "years of service" in the vacation article did not mean total years of service. Consistent with his finding, I find that the term "years of service" in the early retiree health insurance article does not refer to total years of service; instead, it refers to continuous years of service. Because of his 1996 break in service, Lynde did not have the requisite 15 years of (continuous) service when he retired in 2007. Accordingly, he was not entitled to early retiree health insurance when he retired.

I therefore issue the following

AWARD

That the City did not violate Article 22 of the contract by denying the grievant medical and hospital coverage when the grievant retired from City employment on July 6, 2007. Therefore, the grievance is denied.

Dated at Madison, Wisconsin, this 15th day of March, 2011.

Raleigh Jones /s/
Raleigh Jones, Arbitrator

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