BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

WISCONSIN PROFESSIONAL POLICE ASSOCIATION/LAW ENFORCEMENT EMPLOYEE RELATIONS DIVISION/ALTOONA PROFESSIONAL POLICE ASSOCIATION

and

CITY OF ALTOONA

Case 31
No. 69909
MA-14799

(Retiree Health Insurance Grievance)

Appearances:

Mr. Roger W. Palek, Attorney, Wisconsin Professional Police Association/Law Enforcement Employee Relations Division, 660 John Nolen Drive, Suite 300, Madison, Wisconsin, appearing on behalf of Altoona Professional Police Association.

Mr. Stephen L. Weld, Attorney, Weld, Riley, Prenn & Ricci, S.C., 3624 Oakwood Hills Pkwy., P.O. Box 1030, Eau Claire, Wisconsin, appearing on behalf of the City of Altoona.

ARBITRATION AWARD

Wisconsin Professional Police Association/Law Enforcement Employee Relations Division and the Altoona Professional Police Association, hereinafter "Association" and the City of Altoona, hereinafter "City," mutually requested that the Wisconsin Employment Relations Commission assign Lauri A. Millot to hear and decide the instant dispute in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. The hearing was held before the undersigned on November 10, 2010 in Altoona, Wisconsin. The hearing was transcribed. The Association filed an initial brief and a reply brief. The City submitted an initial brief and advised the Arbitrator on February 11, 2011 that it would not be filing a reply brief, whereupon the record was closed. Based upon the evidence and arguments of the parties, the undersigned makes and issues the following Award.

ISSUES

The parties stipulated that there were no procedural issues in dispute and framed the substantive issues as:

Did the City violate the Collective Bargaining Agreement between the parties when it paid out benefits under Article 20 to the Grievant that were calculated on a single plan premium basis rather than on the basis of the family plan that the Grievant had at the time of his retirement? If so, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE

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ARTICLE 6 – ARBITRATION

Section 1. Any grievance which cannot be adjusted by the procedure of Article 5 may be referred to arbitration by either party within ten (10) days after the meeting between the Employer and the Association. The petitioning party shall request the Wisconsin Employment Relations Commission to appoint a neutral arbitrator. Said arbitrator shall conduct hearings and receive testimony regarding the dispute. The decision by the arbitrator shall be final and binding upon the parties. The arbitrator shall not have the authority to change, alter or modify any of the terms or provision of the agreement. The parties shall equally share the cost of the arbitrator.

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ARTICLE 20 – HEALTH AND WELFARE

Section 1. After thirty (30) days of employment the Employer agrees to cover all employees and their dependents under a group health plan known for convenience purposes and identification purposes only as the "State of Wisconsin Health Insurance Plan" and basic Dental and Vision insurance. In 2008, for employees hired prior to January 1, 2008, the City of Altoona will pay 97% of the premium for the lowest cost qualified plan in the service area. In 2009, for employees hired prior to January 1, 2008, the City of Altoona will pay 96% of the premium for the lowest cost qualified plan in the service area. In 2010, the employees hired prior to January 1, 2008, and thereafter, the City of Altoona will pay 95% of the premium for the lowest cost qualified plan in the service area. For employees hired on or after January 1, 2008, the premium payment shall be 90% of that lowest cost qualified plan. The City of Altoona will pay each employee's full premium for the dental and vision insurance. The Employer shall be named the fiduciary and administrator.

Section 2. The City of Altoona shall reserve the right to substitute alternative coverage equal to or better than that described above by other/alternate insurance(s).

Section 3. If an employee is absent because of illness or off-the-job injury and notifies the Employer of such absence, the Employer shall continue to make the required contribution for such employee for a period of two (2) months in addition to the month in which the illness or off-the-job injury occurred. The Employer shall not be liable for any premium for any employee injured in gainful employment of other employers beyond the month in which such injury occurred.

Section 4. If an employee is absent due to injury on the job of this Employer, the Employer shall continue to pay the required contributions until such employee returns to work, however, such contributions shall not be required for a period of more than twelve (12) months beyond the month of injury.

Section 5. If an employee is laid off, contributions shall be made by the Employer for the full month in which layoff occurred.

Section 6. Employees eligible to remain in the group after termination in accordance with the state and/or federal law may do so for the maximum period allowed by law, subject to their continued payment of all premiums lawfully charged to employees for such post-termination coverage.

Section 7. Upon termination of payment of premiums by the Employer, the Employer shall notify the employee, however, it shall be the employee's responsibility to make his/her own arrangements for continued insurance coverage.

Section 8. All employees covered by this Agreement shall be provided with the Wisconsin State Life Insurance Plan and the Wisconsin State Loss-of-Time Disability Plan (120 day waiting period) at no cost to the employee. In the event the employees, based on the rules and regulations of the Loss-of-time Disability Plan, elect a shorter waiting period, the Employer shall make the necessary payroll deduction.

Section 9. The Employer shall pay fifty (50%) percent of the health insurance premiums including dental and vision for employees that retire in good standing and are eligible for Wisconsin retirement Fund (sic) benefits until such time that the employee is eligible for full Medicare. This is to include all employees who retire at retirement age, as determined by the Wisconsin Retirement System.

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ARTICLE 33 – MANAGEMENT RIGHTS

The operation, control, and management of the City are and shall continue to be solely and exclusively the right of management. All such rights of management which are not expressly restricted or modified by a provision of this Agreement are reserved and retained exclusively by management. These rights include, but are not limited to, the following:

A. To direct all operations of the City;

B. To establish reasonable schedules of work;

C. To unilaterally establish reasonable work rules;

D. To create, combine, modify, and eliminate positions within the City;

E. To hire, promote, schedule, and assign employees in positions within the City;

F. To suspend, discharge, and take other disciplinary action against employees provided that the discipline is consistent with the terms of this Agreement;

G. To relieve employees from their duties;

H. To maintain efficiency of City operations;

I. To take whatever action is necessary to comply with state or federal law;

J. To introduce new or improved methods or facilities;

K. To change existing methods or facilities;

L. To determine the kinds and amounts of services to be performed as pertains to City operations, and the number and kinds of classifications to perform such services;

M. To determine the methods, means and personnel by which City operations are to be conducted;

N. To take whatever action is necessary to carry out the functions of the City in situations of emergency.

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BACKGROUND AND FACTS

The retirement of Jeffrey Anger precipitated this Grievance. Anger was an employee of the City working in the capacity of Police Officer until his retirement on July 31, 2009. Anger carried the City's family dental, health, and vision insurance at the time of his retirement and following retirement, the City paid fifty percent of the premiums, for the months of August, September and October.

On October 7, 2009, Anger approached Sheila Lehnen, City Human Resources Coordinator, and requested that the City stop paying his insurance premiums. Lehnen told Anger she could not stop his insurance payment because the labor agreement obligated the City to pay fifty (50%) percent of the insurance premiums, but that she would speak to City Administrator Mike Golat about his request.

In follow up to his conversation with Lehnen, Anger directed a letter to Golat on October 8, 2009, which read as follows:

> This letter is to inform you that I no longer wish to participate in the City's State Health Insurance Plan (Health Tradition Health Insurance) and that any funds for my retirement insurance are to be deposited into my HAS Account with North Shore Bank. This request is effective as of 10-08-09.
>
> Again I do not wish to be carried on the City's State Health Insurance Plan. Any questions feel free to contact my wife (Wendy) or myself at Tel. # xxx-xxx-xxxx.
>
> /s/
> Jeffrey Anger

The City, Association and Anger met in November of 2009 to address Anger's proposal to forgo insurance coverage. After an agreement was not reached, the City offered to pay Anger's post-retirement funds to the HAS in exchange for the Association agreeing to cap the contribution at the cost of a single insurance plan premium. The Association did not accept the City's proposal.

In a letter dated December 1, 2009, the City let Anger know that it would no longer pay fifty (50%) percent of a family heath insurance plan for Anger. The City wrote that "[t]here is no provision for the City to pay for additional family members." The City revised its premium calculations and informed Anger that starting in December of 2010, he was responsible for monthly insurance payments of $393.99 which represented one-half of the cost

for single health, dental and vision insurance premium. The City provided Anger a form and requested that he complete it in order to change his coverage from family to single.

On February 19, 2010, Association Steward Charles Wysocky filed this grievance on behalf of the bargaining unit asserting that Article 20 and Article 33 had been violated, as well as, a "citywide past practice." The grievance read as follows:

> ISSUE: Did the city violate the labor agreement, as well as citywide past practice, when it will only pay 50% of the existing single premium at time of Wisconsin Retirement System separation of employment with the employer, until Medicare eligibility? If so, what is the appropriate remedy?
>
> FACTS: In the past, when any city employee, regardless of marital status, retired from city employment, he/she received 50% of the health insurance premium deposited in the employee's post employment health plan the retired employee had in effect at time of separation of service via eligibility for retiree benefits form the Wisconsin Retirement System.

In addition to the grievance, the Association attached the following letter to the grievance:

> Dear Attorney Weld:
>
> Enclosed please find the aforementioned grievance filed on behalf of the Altoona Professional Police Association.
>
> In discussions with City Administrator Mike Golat, it is my understanding that he felt the parties would ultimately end up in rights arbitration concerning this case and that during this process, the city would keep retired Officer Anger "whole" by continuing to fund 50% of the existing family health insurance premium into his personal account.
>
> I feel it is a fair assessment to state that the employer feels it owes 50% of the single premium and the Association's position is 50% of the existing family premium at time of retirement separation. Because of the parties individual stances on this issue, I feel the parties should consider waiving the balance of the grievance process pursuant to the terms of the labor agreement and proceed directly to arbitration, for a possible hearing for late April or early May of this year. Of course, the timing would depend on the parties work schedules. Time as (sic) not been a central issue in this case as the parties do have a verbal agreement for waiver of contractual grievance process time limits, which should continue from my perspective.

Please respond your position on my suggestion to bring this matter to conclusion. Additionally, if you have any questions, please feel free to contact me as well.

Sincerely,

/s/
Gary Gravesen

The City and Association agreed to proceed to arbitration.

In advance of the arbitration hearing, the parties entered into the following Stipulation of Facts:

1. The parties frame the issue as: "Did the City violate the collective bargaining agreement between the parties when it paid out benefits under Article 20 to the Grievant that were calculated on a single plan premium basis rather than on the basis of the family plan that Grievant had at the time of his retirement, and if so, what is the remedy?

2. The grievance is properly before the arbitrator.

3. The Grievant, Jeff Anger was a member in good standing of the Wisconsin Professional Police Association and was an employee of the City of Altoona within its law enforcement bargaining until his retirement on July 31, 2009.

4. At his retirement the Grievant was in good standing and was eligible for normal protective service retirement benefits under the Wisconsin Retirement System as defined by Article 20 of the 2008-2010 collective bargaining agreement (CBA).

5. At the time of his retirement the Grievant was receiving family insurance benefits.

6. The Grievant is the first law enforcement bargaining unit member to retire under the language of Article 20 since at least 1996.

7. The City of Altoona law enforcement unit was represented by the Teamsters union from at least 1996 until the WPPA began representation of the unit commencing with the 2003-2005 CBA.

8. The language of Article 20 Section 9 was first negotiated into the 1997-1998 CBA.

9. The language of Article 20 was modified in the 2003-2005 negotiations.

10. The language of Article 20 was modified in the 2006-2007 negotiations.

11. The City of Altoona Department of Public Works bargaining unit has been continuously represented by the Teamsters union since at least 1996.

12. The language of Article 20 Section 6 of the City of Altoona and the Teamster represented Department of Public Works bargaining unit was first negotiated into the 1996-1998 CBA and has not been subsequently modified.

13. Since at least 1996, with the exception of Department of Public Works bargaining unit retiree Pat Rowen, no employees from the law enforcement or Department of Public Works bargaining units have retired under the terms of their respective Article 20 absent some individual modification or eligibility issue.

At hearing, the parties agreed to the following Stipulations:

1. The amount of money owed to a retiree as determined by this grievance shall be paid toward the retiree's health insurance premium under the City's group health insurance plan.

2. The remedy in this case shall be applied prospectively to Anger and future retirees who qualify under Article 20, Section 9 of the collective bargaining agreement.

Additional facts, as relevant, are contained in the **DISCUSSION** section below.

ARGUMENTS OF THE PARTIES

Association

The Association maintains that the language is clear and unambiguous and should be administered as written. The contract states that the City will pay fifty percent of "the health insurance premiums" and the only criteria is that the employee is in good standing and eligible for WRS benefits. There are no additional descriptors. This language does not state nor allude to a limitation that the payment is for a single plan only. Rather, it is limited to "the" plan that the employee has selected since employees are provided insurance benefits for themselves and "their dependents." The City is therefore obligated to pay fifty percent of whichever insurance plan the employee has upon retirement.

While it is unnecessary to consider extrinsic evidence, the bargaining history and past practice are consistent with the Association's position. Deeply rooted bargaining history establishes that when the language was first negotiated, the intent was to have the City pay fifty percent of the premium of whatever plan the employee had at the time of his or her retirement. Charles Wysocky testified that the fifty percent figure was discussed in negotiation and that it meant fifty percent of the premium of the plan that was in place at the time of retirement. This testimony was bolstered by Wysocky's explanation that the parties discussed what would occur in a situation where an employee's family status changed after retirement. This contextual discussion establishes that the parties intended for employees to have a family plan available "*since if the single plan was the only option, there would be simply no need to discuss the ramifications of the status change*." Italic in Association brief. The City's former Administrator participated in negotiations and his recollection echoes precisely that of Wysocky even though his desire at that time was to protect the City from additional insurance liability.

The testimony of Pat Rowen further personalized the parties' discussions. Rowen testified to a situation where the dependent of a DPW employee had brain cancer and would be without insurance coverage for her because he did not meet the eligibility requirements. Rowen stated the fifty percent language was negotiated in order to provide insurance coverage for both the employee and his or her dependent spouse until eligibility for Medicare coverage. It was developed not only to provide retiree health insurance, but also to address the insurance dilemma of a dependent spouse in need of health insurance coverage.

The City did not provide any relevant evidence to contradict the testimony of the witnesses which supported the Association's position. The only witness that could have done this, had he been present, was the City's attorney. The City did not produce this witness and while it is possible to conclude that his testimony would be adverse to the City – otherwise why not have him testify – that is an unnecessary inference given the lack of evidentiary support for the City's position.

Moving to the parties' practice, there was only one employee that retired since this language was adopted, but he was in a different bargaining unit. A practice from another bargaining unit is not generally binding on a different bargaining unit, but in this instance, since the language was bargained for both units and has remain unchanged since its initial adoption, it has evidentiary value.

The City has offered no relevant evidence to rebut the Association's application of the language. All parties to the dispute, except the lone City Administrator, understood the intent of this language and it should have been applied as written.

City

The City maintains that the language of Article 20, Section 9, is clear and unambiguous and establishes that the City's contribution is limited to fifty percent of the single premium "for

employees" with insurance coverage. In order to interpret the language as the Association asserts, it is necessary to read the clause as if the two words, "for employees," were not part of the provision. It is a fundamental role of contractual construction to give all words meaning in a text and therefore the Association's interpretation must fail.

There is no past practice. No police officer has retired under the contract language since it was negotiated over 14 years ago. While the City acknowledges that a DPW employee retired in January 2003, his situation was unique. Not only was he a management employee that had been demoted to a bargaining unit position, but he was a member of a different bargaining unit. As Arbitrator Jay Grenig stated in NORTHCENTRAL TECHNICAL COLLEGE, WERC A/P M-01-18 (Grenig, 6/6/01):

> In order for a past practice to be binding on both parties, it must be equivocal, clearly enunciated and acted upon, easily ascertainable of a reasonable period over time, and consistently accepted by the parties as the required response over a reasonable period of time. The more times the conduct has been repeated without protest from the other party, the stronger the implication that the prior conduct represents a mutually accepted resolution of a particular problem and the greater the likelihood that the parties reasonable expect that such conduct will continue in the future. A past practice has a contractual significance only as a mutual response to a particular set of circumstances. *(Emphasis added by City.)*

This was one instance, outside of the police unit, involving a former department head who was demoted. One instance does not establish a past practice.

The bargaining history supports the City's interpretation of the language. The early retirement incentive provision appeared in the Public Works and Clerical employees' 1996-1998 labor agreement. Identical language, except for the eligibility requirements, was added to the Police unit in their 1997-1998 contract. There was little, if any, discussion regarding the meaning of the language creating the early retirement incentives. The fact that the parties did not discuss the meaning of the retirement incentive is understandable given the type of health insurance coverage which the City offered. At the time the early retirement incentive was negotiated, the City's group health insurance coverage was through a Teamsters health plan which had a "composite" insurance rate. This meant that the rate was the same for every enrolled employee, regardless of whether they desired single or family coverage. Because of the composite rate, the parties had no reason to discuss whether the fifty percent applied to single or family coverage since the rates were the same.

When the City changed health insurance providers in 2001, they did not discuss the retirement incentive and Article 20, Section 9, was not modified. The Association was obligated at that time to propose to the City that the City contribute fifty percent of the cost of the family plan coverage if that is what the Association desired. The Association did not propose to amend Article 20, Section 9. The Association's failure to negotiate alternate terms

when the City changed health insurance providers supports the City's position that the parties intended for retirees to only have access to single insurance coverage upon retirement.

It wasn't until 2006 that the Association proposed to increase the City's contribution to one hundred percent. At the same time that this was proposed, the Association also specified that the one hundred percent was for "family, family plus one or single" insurance plans. The City submits that the Association's proposed amendment to Section 9 was an acknowledgement that retirees were limited to single coverage.

Finally, the City points out that former City Administrator Greg LaFond departed the City on less than acrimonious terms. His testimony must be discounted given those circumstances.

For all of the expressed reasons, the City urges the dismissal of the grievance.

Association in Reply

The fact that the original Teamster insurance plan had a "composite" premium rate is completely irrelevant. The concept of the composite rate preoccupied the City in its original brief, yet those rates meant absolutely nothing in terms of the parties' negotiating history. No one discussed the composite rates during negotiations. The employees signed up for their insurance based on their appropriate family status and the City paid the full amount of the premium, regardless of how the Teamster insurance fund allocated the premiums. The intent of Article 20, Section 9, was for the City to pay fifty (50%) percent of the insurance premium of whatever plan the employee had in place at retirement.

The parties practice supports this conclusion. Both Pat Rowen's testimony and the manner in which the City handled Anger's retirement occurred after the parties switched from the Teamster plan. If the composite rates were relevant to interpreting Article 20, Section 9 then there would have been a discussion on how the non-composite rates would impact the language. No discussion took place and therefore the Teamster composite rate is not relevant to resolving this issue.

The City pointed to the Association's 2006 language proposal as evidence that the Association knew that it did not have family insurance coverage inherent in the old language. The Association proposed the inclusion of " …single, employee plus one, or family coverage…" in an attempt to help the City reduce its health insurance costs and allow a retiring couple without covered children the ability to carry a less expensive premium. At the time of the Association's proposal, the negotiators knew that the *status quo* for premium payment was based on whatever plan the employee had at retirement. The Association was only attempting to make the language clearer and add the "employee plus one" category. The Association points to Arbitrator Schiavoni's analysis in CITY OF MARSHFIELD, WERC MA-6705 (Schiavoni, 12/91) of the evidentiary value of a withdrawn bargaining proposal:

> While the 1984 bargaining proposal is somewhat supportive of the City's position, it is insufficient to overcome the inference of the language itself and the early bargaining history and past practice. The proposal may have been withdrawn for any number of reasons. Without additional evidence as to [the] Union's intent in proposing and removing said language, the undersigned is unwilling to turn the case on this point.

As to why the Association did not make a similar proposal to modify Section 1, the provision which addresses active employee's health insurance coverage, it is obvious. The proposal to move to three rather than two tiers was an initial proposal. The City already was paying the full premium costs and therefore an modifications to Section 1 would have made the status quo worse, not better.

The Union asks the Arbitrator to uphold the grievance and order that the City cease and desist in its application of the language and make the Grievant whole for any lost benefits.

City in Reply

The City declined to file a reply brief.

DISCUSSION

This is a case of first impression. Anger is the only employee that has retired under the terms of Article 20 under the collective bargaining agreement. The City maintains he is entitled to single health insurance coverage while the Association argues that retiring bargaining unit members are entitled to continue the same health insurance plan that he/she had immediately prior to retirement.

This is a contract interpretation case. The parties' dispute arises out of the meaning of Article 20, Section 9, of their labor agreement. Contract interpretation is the ascertainment of meaning. Elkouri & Elkouri, *How Arbitration Works*, 6th Ed. p. 430 (2006). Language is clear when it is susceptible to one convincing interpretation, but may be deemed ambiguous if there is more than one plausible interpretation. Id. at 434. If the plain meaning of the language is clear, it is unnecessary to resort to extrinsic evidence. Id. Extrinsic evidence and rules of contract interpretation aid in ascertaining meaning and those relevant to this discussion include bargaining history and the custom and practice of the parties.

Article 20, Section 9, of the labor agreement provides:

> Section 9. The Employer shall pay fifty (50%) percent of the health insurance premiums including dental and vision for employees that retire in good standing and are eligible for Wisconsin retirement Fund (sic) benefits until such time that the employee is eligible for full Medicare. This is to include all employees

> who retire at retirement age, as determined by the Wisconsin Retirement System.

Both the Association and City conclude that this language is clear and unambiguous and further, that it supports each of their respective views of this case.

I start with the Association's position. The Association focuses on the City's obligation to pay the "health insurance premiums" concluding that the obligation to pay fifty (50%) percent of the health insurance premium exists, regardless of whether the retiree seeks single or family coverage. This is a reasonable conclusion. In looking to the language, there is no reference to whether the premium contribution that the City will pay is for family or single coverage. Rather, the language states that the City will pay the "health insurance premiums" and therefore Association's position is a reasonable reading of the language.

I move to the City's interpretation. The City posits that the language is clear and unambiguous and that the clause "for employees" is limiting language establishing that the City's obligation to pay half of the insurance premiums is for employees only. The City contrasts Section 9 with Section 1 pointing out that Section 1 provides that "Employer agrees to cover all employees and their dependents." Section 9 addresses insurance benefits for retirees and Section 1 defines insurance benefits for current employees. While it is true that the first sentence of Section 1 specifically states that coverage will be extended to "employees and their dependents," subsequent sentences which delineate the payment obligations use the terms "for employee's" and "each employee's full premium for dental and vision insurance" when identifying the City's payment obligation. Section 1 is not definitive nor instructive in ascertaining the meaning of Section 9.

The language of Section 9 is neither clear nor unambiguous. I therefore move to the bargaining history and the parties' manner of dealing for interpretive guidance.

BARGAINING HISTORY

1996-1998 DWP and Parks Collective Bargaining Agreement

In 1996, there were at least three bargaining units in the City represented by the Teamster labor union and Bargaining Agent Christel Jorgensen; the Clerical unit, the DPW and Parks unit, and the Police unit. Of the three, the DPW and Parks Unit was the first to negotiate a retiree insurance provision. Present during the DPW and Parks negotiations were Jorgensen and Gary Schlewitz for the Union and then City Administrator Richard Krueger, Mayor Larry Sturz, and Attorney James Ward for the City.

On behalf of the bargaining unit, Jorgensen proposed the retiree insurance benefit:

ARTICLE 20 HEALTH AND WELFARE

ADD: The Employer shall pay health insurance premiums for employees that retire in good standing and are eligible for WRF benefits until such time that the employee is eligible for full medicare.

The City modified the language which was ultimately agreed upon by the parties. That language read:

The Employer shall pay fifty percent (50%) of the health insurance premiums for employees that retire in good standing and are eligible for WRF benefits until such time that the employee is eligible for full medicare; provided that the employee is at least sixty (60) yeas of age and that the sum of his/her age and years of service for the City totals at least eighty (80).

The record establishes that the parties did not specifically address whether the post-retirement insurance benefit was for single or family coverage. Parks employee and Union Steward Gary Schlewitz was asked about the 1996-1998 negotiations:

Q: What do you recall about the discussion with the 50 percent?

A: Just other than – it was decided that, you know, when – retirement, insurance would be paid at the 50 percent.

Tr. 42.

And further:

Q: Okay. Did you ever have any discussion about single or family coverage at that time.

A: No. No. We were just happy to – it was -- we just assumed it was the – the plan. There was no discussion at all on single or family.

Tr. 44

Former City Mayor Larry Sturz held office from 1992 to 1996 and 2002 to 2006 and was present for the DPW and Parks negotiations and the Police unit negotiations. Sturz could not differentiate between the two bargains and testified as follows:

Q: Okay. And based on you being aware of that [that 50 percent of health insurance would be paid], what was your understanding of what that meant?

A: From what I recollect, there was no high priority as far as whether it should be single or – or family or whatever, from my memory. I don't remember anything other than that. We didn't make it – make it a high priority because it didn't make a difference.

Tr. 47.

. . .

And further, Sturz testified on cross-examination:

Q: Mayor, when you say it didn't make a difference at that time, is that because the rates were the same for single and family coverage?

A: That's the way I remember it, yes.

Tr. 48.

It is noteworthy that when the language of Section 9 was negotiated, it was unnecessary to differentiate between single and family coverage as it related to the level of City contribution since the Teamsters health insurance plan applied a composite rate to each plan rather than a single or family plan. This likely explains the parties' failure to discuss or include any language that specifically stated which insurance plan a retiree would be entitled to retain upon retirement. But, the fact that a composite rate caused the parties to neglect to discuss whether the benefit applied to single and family coverage upon retirement does not definitively establish that the parties did not intend for retirees to have the option to carry family insurance. When employees enrolled in the Teamster health insurance plan, they completed forms which required that they select between single or family coverage. The City therefore still enrolled employees based on single or family coverage, regardless of how the premium costs were assessed. Both sides fully understood that if an employee with family health insurance retired during the term of that labor agreement, that retiree would receive family insurance coverage and the City would pay fifty (50%) percent of the premium upon retirement. Similarly, if an employee with single coverage retired, then the City would pay fifty percent of that retiree's single insurance premium. The parties therefore understood and intended that retiring employees would be entitled to continue enrollment in the City's health insurance coverage plan – single or family - and that the City would pay half of the premium costs.

This reading of the parties' intent is supported by the content of a letter that Ward sent to Jorgensen on January 4, 1996 which reviewed the agreed upon language. Inclusive to that letter was confirmation of the terms of the parties' tentative agreement and the following paragraph:

> Joe Hayden's situation also needs to be addressed. Although Joe literally does not qualify for continued health insurance premium payments for early retirees

> under Article 20, Section 4 (see below), the parties agreed to a special arrangement whereby, retirement notwithstanding, he will be able to remain covered under the current health insurance plan at his sole expense until he qualifies for Medicare. It should be emphasized that this is a one-time accommodation designed to cover Joe's unique situation only. It should not be considered precedential in any other manner whatsoever.

Hayden's "unique situation" was explained at hearing. Hayden was a Parks Department employee who had not worked for the City long enough to be eligible for the retiree insurance benefit. Hayden continued to work in order to maintain health insurance coverage for his spouse who suffered from a serious medical condition and she needed continuing insurance coverage. The DPW and Parks Department bargaining committee discussed Hayden's situation and concluded that they did not want to have to work in order to retain insurance benefits for their family upon retirement.

Hayden's situation and Ward's reference to Hayden is relevant to the extent that it establishes that the parties – the City and the DPW and Parks Department bargaining unit - discussed continued insurance coverage for the non-employee family members of retiring employees. Hayden did not meet the age and number of years of employment with the City eligibility requirements contained in the new retiree insurance benefit. As a result, the City and the Teamster represented DPW and Parks bargaining unit agreed to a "one-time accommodation" which would allow Hayden the post retirement family health insurance. It is reasonable to conclude that the benefit extended to Hayden replicated the newly negotiated benefit for the bargaining unit members and further, is evidence that there was an expectation by both the City and the bargaining unit that retirees were not limited to single health insurance coverage upon retirement.

1997-1999 Police Collective Bargaining Agreement

The Hayden situation and the negotiations leading to the creation of the retiree health insurance provision (Article 20, Section 6 in DPW and Parks Department 1996-1998 collective bargaining agreement) served as the precursor to Jorgensen seeking the same benefit for the bargaining unit members in the Police Department. The City was again represented at the negotiations table by Mayor Sturtz and Attorney James Ward. Present for the bargaining unit was Jorgensen and Charles Wysocky. The City agreed to the bargaining unit's proposal and the following language was adopted:

> Section 9. The Employer shall pay fifty (50%) of the health insurance premiums for employees that retire in good standing and are eligible for Wisconsin Retirement Fund benefits until such time that the employee is eligible for full Medicare; provided that the employee is at least fifty-three (53) years of age and that the sum of his/her age and his/her years of service for the City totals at least seventy-five (75).

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The only difference between the language agreed to with the DPW and Parks unit and the Police unit were the eligibility requirements. Again, the parties did not discuss whether retiree insurance was for single or family coverage.

Charles A. Wysocky testified that after the DWP and Parks unit received the retiree health insurance benefit with the City paying fifty (50%) percent, the Police unit also bargained for the same benefit although with a different eligibility retirement and combined age. Wysocky was asked what he recalled from the negotiations:

> **Q:** Okay. And do you recall any discussions during that initial negotiation about what 50 percent reflected?
>
> **A:** The -- there was discussion of the 50 percent, and it was discussion of 50 percent of the employee's plan at the time of retirement.
>
> Tr. 17-18.

2001-2002 Police Collective Bargaining Agreement

Greg LaFond was the City Administrator from August 1999 to February of 2003. LaFond, in consultation with the City Council, proposed changing the health insurance carrier and instituting premium contributions by employees. Ultimately, the Teamster represented Police bargaining unit agreed to change from the Teamster health insurance to the State of Wisconsin Insurance Plan, but did not agree to employee premium contributions. No changes were made to Section 9, the retiree health insurance provision, although the impact of changing from the Teamster plan to the State of Wisconsin Insurance Plan was the elimination of composite rates and introduction of single and family insurance premiums.

The City argues it was incumbent on the Police bargaining unit to negotiate into Section 9 language that specified that retirees were entitled to either single or family insurance coverage. That did not occur, although the record suggests that the parties discussed the impact of the change in insurance on the Section 9 fifty (50%) premium contributions. LaFond testified that the City's position was that "it will apply to 50 percent of whatever your premium level is when you retire." Tr. 51. There is no question that Section 9 would have been more clear if the bargaining unit proposed to add "single or family" language, but is also true that the City could have proposed to add "single" to the language. Neither side offered any modifications to this portion of Section 9, therefore their prior understanding of the intent of the language is relevant.

The City challenges LaFond's credibility given his "acrimonious" departure from the City. LaFond colorfully and enthusiastically offered his displeasure with the terms and conditions of the Teamster health insurance plan, the composite rate and the fact that employees were not contributing to the costs of the health insurance premiums. LaFond does not personally benefit from any interpretation of Section 9. Ultimately, the record is void of

any evidence which legitimately challenges his testimony and therefore I conclude that Lafond's testimony is trustworthy and the intent of Section 9 was to allow retirees to retire with health insurance benefits, regardless of whether they carried single or family coverage.

2003-2005 Police Collective Bargaining Agreement

Sometime during the 2001-2002 collective bargaining agreement, the Police Department employees replaced the Teamsters labor association with the Wisconsin Professional Police Association. The Association represented the bargaining unit was involved in bargaining the 2003-2005 collective bargaining agreement with the City. As a part of that bargain, the language of Section 9 was modified to read:

> Section 9. The Employer shall pay fifty (50%) percent of the health insurance premiums including dental and vision for employees that retire in good standing and are eligible for Wisconsin Retirement Fund benefits until such time that the employee is eligible for full Medicare; provided that the employee is at least fifty-three (53) years of age and that the sum of his/her age and his/her years for the City totals at least seventy-five.

The clause "including dental and vision" was added to the section. The new language was proposed by the Association. Wysocky testified it was added in order to clarify that vision and dental was included. There is no evidence to contradict Wysocky's testimony.

Wysocky and LaFond also recalled discussions on the limitations of Section 9 after an employee retired. Wysocky testified that if a retiree retired with family coverage, then it could not be changed to single and vice versa. LaFond's testimony was specific to if a retiree retired with single coverage explaining:

> Q: Do you recall him [Wysocky] testifying about some discussion about what would happen if you retired with a single plan and then got married?
>
> A: Yes.
>
> Q: What do you recall about that conversation?
>
> A: It wouldn't be allowed. If you – if you were a single employee, or if you're single at the time that you were employed, guess what, it didn't matter what happened after you were married, you were going to get 50 percent of the single premium. If you got married or had a family or something of that nature afterwards, that was your problem, not the City'. And that was very, very clear at that time.
>
> Tr. 53.

Wysocky and LaFond's testimony establish that it was the parties' understanding that retiring employees had the option to carry family or single coverage with the City paying fifty (50%) of the premium at retirement. If they did not, it would have been unnecessary to have this conversation since retiring employees would not have been concerned about a change in status if the were solely limited to single coverage at retirement.

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2006-2007 Police Collective Bargaining Agreement

Both the City and the Association proposed modifications to Section 9 in the 2006-2007 negotiations. The Association proposed to increase the City's payment toward retiree health insurance premiums from fifty (50%) to one hundred (100%) percent and to modify [single, employee plus one, or family plan], dependent on the employee's marital or family status. The City proposed to remove the age and service requirements for employees desiring to retire from the City. The final version of Section 9 included the City's proposal, but not the Association's.

Wysocky testified that the reason the Association proposed the language "single, employee plus one, or family plan," was because the Association wanted to add the "employee plus one" tier to the insurance plan options. Wysocky testified that the Association wanted the City to "get out of the state plan that had only the single and the family plan, i.e., the reason for putting those three tiers in there, which would save us both money in the long run ..." Tr. 25. Wysocky testified that there was no discussion of what the fifty (50%) percent meant.

The City argued that the Association's reason for proposing the "single, employee plus one, or family plan" was to expand the retirement insurance options from just single to family. Wysocky's testimony directly contradicts this assertion and there is nothing in this record to challenge Wysocky's version. He was the only witness to testify regarding the 2006-07 labor agreement and although there were certainly instances when his testimony was designed to bolster the Association's position, those instances do not detract from the clarity of his testimony.

The bargaining history establishes that the parties understood in 1996 that when an employee retired, the Section 9 retiree insurance benefit was available for either single or family insurance coverage. There is nothing in this record to indicate that that understanding ever changed. While there were modifications to the language, those changes did not impact the City's obligation to pay fifty (50%) percent of a retiree's continued health insurance premiums, whether it be single or family.

PAST PRACTICE

An additional aid in determining the intent of parties to a collective bargaining agreement is any relevant past practice. In this instance, there is no past practice, but there is prior conduct. Although Anger is the first bargaining unit employee to retire since the language in question was negotiated, Pat Rowen, a DPW and Parks Department employee

retired on 2002. Rowen, who had been hired to a management position, but later moved to the bargaining unit on January 17, 1992, was provided a memorandum dated January 7, 2003 that reviewed his benefits and obligations upon retirement:

To: Pat Rowan, Parks & Rec Maintenance

From: Scott Rasmussen, Director of Finance

Subject: RETIREMENT ISSUES

As promised, below is a written summary of the issues we discussed last Friday afternoon:

1) Per your contract, the City will pay 50% of your health/dental/vision insurance until you reach medicare age. For 2003, the premiums are as follows:

	Monthly Premium	**Your Portion**
Group Health	$1,032.90	$516.45
Dental	$56.24	$28.12
Vision	$13.12	$6.56
	$1,102.26	**$551.13**

Since the full portion of the monthly Group Health payment will be deducted from your Wisconsin Retirement payment, the City of Altoona will reimburse you $481.77 ($526.45 less $28.12 and $6.56; your portion of dental and vision premiums) each month. This amount will change as the premiums change each year; we will keep you informed of any changes as we become aware of them. Since you are covered through February 2003, your first reimbursement payment will come in March.

2) Your remaining vacation and sick time will be paid to you on a separate payroll check dated 2/21/03. We will verify these hours with you prior to issuance of this check.

Please contact me if you have any additional questions or comments. Thank you.

The City points out that Rowan had been a management employee who moved to a bargaining unit position inferring that his prior management situation could have impacted the

benefits he was offered. [1] Regardless of what positions Rowen held in the past, the City was obligated to comply with the terms of the DPW and Parks collective bargaining agreement and since the retiree health insurance provision in the Association's agreement with the City is virtually the same as the language contained in the DPW and Parks agreement, this serves as evidence of the City's understanding of the meaning of the Section 9.

I next look to the manner in which the City addressed Anger's retirement. Anger informed the City of his intent to retire and Lehnen and City Finance Director Pfeilsticker calculated his benefits. Lehnen directed a letter to Anger on August 7, 2009 that read as follows:

> Dear Jeff,
>
> Your monthly portion of the premiums for dental, health vision insurance is $831.00a month. Your check should be payable to the city of Altoona and remitted by the 10th of month (sic). I have paid the August premiums so you will need to issue a check to the city by the August 31, 2009.
>
> Adjustments will be made when/if your health insurance carrier changes.
>
> If you have any questions please call me.
>
> Sincerely,
>
> /s/
> Sheila Lehnen
> H.R. Coordinator

The City paid fifty (50%) percent of Anger's family insurance premiums until October 2010 when the Grievant requested a modification to the retiree insurance benefits. Had the Grievant not requested a modification, I am confident we would not be where we are today. Anger's request prompted Golat's review of the collective bargaining agreement and the City Council's decision to "put Mr. Anger on notice that we would be paying the single rate." Tr. 87.

Lehnen is a 15 year employee of the City and an experienced human resource professional. Lehnen acted in the same manner when presented with both Anger and Rowen's retirement. Lehnen cannot be faulted for being consistent, especially given her history with the City.

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[1] The City argues that Rowen was a management employee who was demoted. There is no evidence to support this assertion in the record and even if there was, it is highly unlikely that the City was extend an enhanced benefit on retirement to an employee that had been demoted 10 years prior,

The evidence establishes that the City implemented Section 9 of the collective bargaining agreement one time since its inclusion in the parties' labor agreement. The City provided Anger the benefits which the Association argues the membership is entitled to and is required under the labor agreement. I agree. While one instance does not make a practice, this instance, coupled with the manner in which Rowen retired support the Association's position.

Conclusion

The undersigned is persuaded that at the time Section 9 was negotiated, neither the City nor the Association considered a time when the family and single health insurance premium were not the same. The bargaining history shows the language in 1996 was to provide retirees health insurance coverage with the City paying one-half of the premium and the retiree paying one-half of the premium. That intent did not differentiate between family and single health insurance coverage and when the health insurance provider changed, and therefore the premium rates changed from composite to single and family, neither side sought a change in the language to address the difference in premium at both the single and family premium. This bargaining history supports the Association's position as does the City's actions when Rowen and Anger retired. Moreover, nothing in this record supports the City's interpretation of Section 9.

AWARD

Yes, the City violated the Collective Bargaining Agreement between the parties when it paid out benefits under Article 20 to the Grievant that were calculated on a single plan premium basis rather than on the basis of the family plan that the Grievant had at the time of his retirement.

The appropriate remedy it to provide future Altoona Professional Police Association retirees the same health insurance plan that they enjoyed on the day in which they retire.

Dated at Rhinelander, Wisconsin, this 7th day of June, 2011.

Lauri A. Millot /s/
Lauri A. Millot, Arbitrator

LAM/gjc
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