

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
MILWAUKEE POLICE ASSOCIATION, LOCAL 21, IUPA-AFL-CIO
and
CITY OF MILWAUKEE

Case ID: 251.0005

Case Type: MA

AWARD NO. 7913

Appearances:

Jonathan Cermele, for the Union.

Thomas J. Beamish, for the City.

ARBITRATION AWARD

The Milwaukee Police Association, Local 21, IUPA-AFL-CIO, and the City of Milwaukee selected the undersigned to serve as an arbitrator pursuant to the terms of a 2010 - 2012 collective bargaining agreement between the parties. A hearing was held on May 19, 2015, in Milwaukee, Wisconsin. A transcript of the hearing was prepared and the parties filed written argument, the last of which was received by July 20, 2015.

ISSUE

The parties could not agree on how to best frame the issue to be resolved in this proceeding but did agree that I could do so after giving consideration to their views on the subject. Having done so, I conclude the following statement of the issue is appropriate:

Did the City violate the collective bargaining agreement by not providing insurance to the grievant and, if so, what remedy is appropriate?

DISCUSSION

The grievant was receiving "injury pay" pursuant to Article 25, subsection 1, of the collective bargaining agreement. Article 25, subsection 3, provides that once the "injury pay" has been exhausted, an employee "shall have the option of accepting sick leave benefits or

accepting worker's compensation temporary disability benefits." Prior to the exhaustion of his "injury pay" benefits, the City advised the grievant of his Article 25, subsection 3, option to use sick leave or worker's compensation temporary disability benefits (TTD). The grievant opted for TTD. In response, the City advised the grievant that: (1) use of TTD "removes you from the payroll" and current contractual health and dental benefits would end; and (2) he could change his mind and use sick leave "which continues your health & dental insurance" and "keeps you on the payroll for insurance purposes." The grievant maintained his TTD choice and filed a grievance over the loss of insurance benefits.

The Union, contrary to the City, asserts that the grievant was in "active service" while on TTD and thus was entitled to continue to receive insurance benefits. The City also points to contractual language referencing "Police Department payroll" as support for its position.

There are several contractual provisions that are directly relevant to the resolution of this dispute as follows.

ARTICLE 9

DEFINITIONS

1. "Active Service"
Active Service," as used herein, shall mean the performance of assigned duties in accordance with the HOURS OF WORK provision of this Agreement and shall include time spent by employees on paid leave as provided for herein but shall not include any time spent by employees on leave without pay. ...

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ARTICLE 21

HEALTH INSURANCE

* * *

1. Benefits

* * *

- e. Provisions Applicable to All Plans:

* * *

- (5) An employee's health/dental insurance benefits provided by this Article shall terminate on the last day of the calendar month in which the employee is removed from the Police Department payroll

* * *

2. Eligibility for Benefits.

a. Employees in Active Service

- (1) Basic Plan and Health Maintenance Organization (HMO) Plans[.] Employees in active service shall be entitled to health insurance benefits under either the Basic Plan or the HMO Plan at their option so long as they remain in active service.

These contractual provisions convey potentially conflicting eligibility requirements. Assuming for the sake of argument that a TTD employee is on "paid leave" because the City is providing the employee with a check, then the TTD employee has "active service" status and insurance entitlement pursuant to Article 9, subsection 1 and Article 21, subsection 2(a)(1). However, Article 21, subsection 1(e)(5), specifies that insurance benefits are lost if (as was the case here) the employee is removed from "the Police Department payroll."

When contract provisions potentially conflict, evidence of past practice is an appropriate tool to use when resolving any such conflict. Here, it is clear that the City (consistent with its communications to the grievant) has not provided insurance benefits to TTD employees. Based on this past practice, I conclude that the City did not violate the collective bargaining agreement by not providing insurance benefits to the grievant.

Signed at the City of Madison, Wisconsin, this 17th day of August 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter G. Davis, Arbitrator