

BEFORE THE ARBITRATOR

 In the Matter of the Arbitration :
 of a Dispute Between :
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 PORTAGE COUNTY DEPUTY SHERIFF'S : Case 85
 ASSOCIATION, WPPA/LEER DIVISION : No. 45579
 : MA-6653
 and :
 :
 PORTAGE COUNTY :
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Appearances:

Steven J. Urso, Representative, Wisconsin Professional Police Association/Law Enforcement Employee Relations Division, 7 North Pinckney Street, Suite 220, Madison, WI 53703, appearing on behalf of the Portage County Deputy Sheriff's Association.
Philip H. Deger, Personnel Director, Portage County, 1516 Church Street, Stevens Point, WI 54481, appearing on behalf of Portage County.

ARBITRATION AWARD

Portage County Deputy Sheriff's Association, WPPA/LEER Division (hereinafter Association), and Portage County (hereinafter Employer or County) have been parties to a collective bargaining agreement at all times relevant to this matter. Said agreement provides for arbitration of unresolved grievances by an impartial arbitrator appointed by the Wisconsin Employment Relations Commission (hereinafter Commission) from its staff. On April 3, 1991, the Association filed a request to initiate grievance arbitration with the Commission. The County concurred in said request and on May 31, 1991, the Commission appointed James W. Engmann, a member of its staff, as the impartial arbitrator in this matter. A hearing in the matter was held on September 17, 1991, in Stevens Point, Wisconsin, at which time the parties were afforded the opportunity to present evidence and to make arguments as they wished. The hearing was not transcribed. The parties filed briefs and reply briefs or the waiver thereof, the last of which was received December 10, 1991. Full consideration has been given to the evidence and arguments of the parties in reaching this decision.

STATEMENT OF FACTS

The collective bargaining agreement requires the County to provide disability insurance for the employees covered by the agreement. Originally, the coverage was provided by the Continental Casualty Company (hereinafter Continental). Subsequently the Massachusetts Mutual Life Insurance Company (hereinafter Massachusetts) provided the coverage. The two plans differed in several ways. The Continental plan provided \$300 per month for life for total disability by accident and for two years for total disability by sickness. Under said plan, the waiting period was 30 days. The Massachusetts plan provided \$300 per month for 60 months for total disability due to either injury or sickness. Said plan had a 60 day waiting period and was payable to age 65. In the mid-1980's, the County began to self-fund the policy. The basic terms of coverage under the previous policies were carried through by the County, with the employee covered by the terms of the policy in effect when he or she was hired.

The parties have not disputed the benefits received by employees while still employed. Five employees were receiving disability benefits when they retired from active service. The five employees are Jerry Bartkowiak, Terry

Glodowski, Harold Thobaben, Todd Reilly and Jim Brikowski. Bartkowiak retired on regular disability pursuant to Sec. 40.63, Stats. The other employes retired pursuant to the special disability for protectives, Sec. 40.65, Stats. Upon retirement, the County stopped paying the monthly disability insurance benefit.

The Association grieved the County's action of stopping the payment of disability benefits to these employes. Said grievance was processed through the grievance procedure without being resolved and is properly before this Arbitrator.

PERTINENT CONTRACT LANGUAGE

SECTION XII - INSURANCE

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C.Disability Insurance: The County shall provide Three Hundred Dollars (\$300) a month disability insurance for each protective occupation employee on or off duty. The waiting period for disability due to sickness or injury shall be sixty (60) days and the maximum benefit period shall be sixty (60) months payable to age sixty-five (65). Definitions of disability and the provisions for payment shall be the same as those included in the Massachusetts Mutual Life Insurance Company's Disability account number 27607. The County may self-fund this disability insurance policy if it elects to do so.

NOTE:This language shall apply to all new employees and officers who are currently under this benefit, provided, however, that officers who have additional benefits under the disability insurance program shall maintain those benefits as prescribed in earlier insurance policies.

NOTE:OPTION A - Current employees shall be covered under Continental Insurance. Employees hired after January 1, 1989 shall be covered under the County's new plan, if acceptable to both parties.

OPTION B - Retain status quo.

ISSUE

The parties stipulated to framing the issue as follows:

Did the Employer violate the collective bargaining agreement by not paying disability benefits after retirement to affected employes?

If so, what should the remedy be?

POSITION OF THE PARTIES

The Association argues that this is a matter the contract clearly addresses; that the Employer must supply the employees with disability insurance coverage; that while the actual benefit levels are not stated in the contract, it is clear that the Employer's self-funded plan benefit levels must be equal or comparable to those benefits provided in the Massachusetts Mutual Life plan; that while the Employer can evaluate a disability claim, it can not alter the duration of payments due to employment status; that the County must stand in the shoes of the former carriers and provide equal or comparable coverage; that the Continental plan had a maximum benefit period of life and the Massachusetts plan had a maximum benefit of 60 months; and that if the parties have not mutually agreed to a change in benefits, the Employer cannot unilaterally alter the benefits. The Association request the Arbitrator to order the County to resume payments to the affected employees retroactive to the date of separation from service.

The Employer argues that unless explicitly specified in the agreement, employee benefits do not continue post-termination of employment; that an employer's obligation to provide wages, hours and conditions of employment, including benefits, ceases when an employee's seniority terminates unless there is a clear and explicitly exception under the agreement; that under the agreement, seniority terminates when an employee quits or retires; that bargaining history indicates no intent to pay the disability benefit post-termination of employment; that the intent of the Section XII (C) Disability Insurance was to provide a form of salary continuation, especially for off-the-job incidents not covered by Worker's Compensation; that, thus, this benefit payment may be construed as a form of supplemental sick leave and, as such, is taxable income; that this benefit was to be paid only in lieu of other payments; that a determination in favor of the Association would lead to potentially absurd results; that payment of the benefit would negatively impact payment currently received by the employees under the Wisconsin Retirement System; and that the benefit would also cease under certain conditions and within certain time parameters. The County requests the Arbitrator to deny the Association's grievance.

DISCUSSION

The County argues that unless specified in the Agreement, employee benefits do not continue post-termination of employment. Resolution of this case involves clearing up confusion over the distinction between payment of premium and payment of benefit, confusion that may be caused partly by the fact that the County self funds the disability insurance policy.

If the County did not self fund this disability benefit but, instead, was providing it through Massachusetts, the County would pay a premium to Massachusetts and, if an employee became disabled, Massachusetts would pay the \$300 per month disability benefit to the employee. Indeed, once the employee became disabled, Massachusetts would waive any further payment of premiums by the County. 1/ Massachusetts would continue to pay the \$300 per month

1/ The Massachusetts policy provides as follows:

WAIVER OF PREMIUMS

If the insured has been disabled to the end of the Waiting Period, the Company will:

1. Waive payment of any premium which becomes due after the Waiting Period and during the continuance of a period of disability, including any part of such period which extends beyond the time for which

disability benefit until the disability ceased, the employe turned 65 years old or 60 months had elapsed, whichever came first.

If an employe retired, the County's contractual obligation to pay the premium to Massachusetts for that employe's disability insurance would end. If a retired employe became disabled, Massachusetts would have no obligation to pay any benefit to said employe. If an employe retired while on disability, the County's obligation to pay the premium, waived by Massachusetts while the employe is disabled, would end. This is true even if the disability should cease later on, causing an end to the waiver of premium.

But if an employe retires on disability, Massachusetts would not be free to stop paying the \$300 per month benefit since payment of the benefit is controlled by the insurance policy. In this case, Massachusetts would continue to pay the disability benefit for 60 months, until the employe turned 65 years old, or until the disability ceased, whichever came first. 2/ This is true even though the employe retired. Nothing in the Massachusetts policy limits payment of the disability benefit to employes who are employed. If Massachusetts had wanted to limit the benefit to employes or to deny said benefit to employes who retire, it could easily have done so. It did not.

The same analysis holds true for the Continental policy which had a benefit payable for life. Certainly the "payable for life" aspect of the benefit under the Continental policy would mean little if it was capped by a requirement that the employe be employed. But again, the Continental plan does not limit payment of the benefit to the employment of the employe.

The County argues that disability insurance, like life insurance, is not paid, accrued or otherwise utilized when employment is terminated. In the case of life insurance, the County's confusion about the distinction between payment of premium and payment of benefit becomes clearer. The County must make the payments of life insurance premiums required by the Agreement while the employe is employed. Said payment of premiums is made to the provider of the life

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- income payments are payable.
 - 2. Waive payments of any premium which became due during the Waiting Period or refund any such premium which has been paid.
 - 3. Waive payment of any premium (except the first) which became due within 31 days prior to the beginning of the Waiting Period or refund any such premium which has been paid.

The Continental policy also provides for waiver of premiums as follows:

PART VII. WAIVER OF PREMIUMS

After total disability for which indemnity is payable under Part III or Part IV of this policy has continued for three consecutive months while this policy is in force, the Company will waive the payment of any premium due during any further continuous period of such disability for which indemnity is payable and the policy shall remain in force during the renewal period for which premium has been waived, subject to all its conditions except as to the payment of premium.

2/ In addition, Massachusetts would continue to waive payment of the premium as noted in Footnote 1 above.

insurance benefit. Once the employe retires, the County's obligation to pay the premium ceases, absent a contractual agreement to the contrary. 3/ If the employe dies after retirement, it is obvious that the provider of the life insurance benefit, including the County if the life insurance policy is self funded, is not required to pay any life insurance benefit. 4/

If the employe dies while employed, the County's obligation to pay the premium ceases. This does not mean, however, that the provider of the life insurance benefit does not have to pay said benefit, even though, arguably, the employe is no longer employed. Of course the provider would have to pay the benefit, even if the provider of the life insurance benefit is the County through self funding of its life insurance policy. Upon the death of the employe, the County would make no more payment of premiums to the life insurance fund on behalf of that employe, but it would have to pay the life insurance

3/ No such contractual agreement exists in this case.

4/ This assumes that the life insurance policy is a standard term policy, and that the employe has not made arrangements to continue the life insurance policy in force.

benefit. The County could not successfully argue that since the employe is no longer employed (or alive for that matter), it does not need to pay the benefit. Acceptance of such an argument would lead to absurd results.

The same is true here. The County's contractual obligation to pay the premium for disability insurance ceases when an employe retires. But the basis for providing the benefit is determined by the disability policy. The Continental policy provides for a waiver of premium and payment of \$300 per month for life, while the Massachusetts policy provides for a waiver of premium and payment of \$300 per month for 60 months. Nothing in either plan limits payment of the disability benefit to employes who have not retired.

The agreement is clear that the County is free to self fund the disability insurance, but the agreement is also clear that if it does so, employes are covered by the terms and conditions of the policy in force when they were hired. The County has chosen to self fund its disability insurance policy. Therefore, the County determines the premiums it pays to fund said policy. But the benefits paid from said policy are determined by the policy in effect at the time of the employe's being hired, not by the County. Once the employe is disabled, the County must pay \$300 per month for 60 months for those employes hired under the Massachusetts' policy and for life for those employes hired under the Continental policy. The County can waive any payment of premium once an employe is disabled, as both the Massachusetts and Continental policies provided, but nothing in either policy allows the County to discontinue payment of the benefits under those policies if an employe retires.

The retirement of the employe does not change the requirement that the County pay the appropriate disability benefit to these employes, even though it no longer has to pay a premium on behalf of these employes.

The County also argues that bargaining history in this case indicated no intent to pay the disability benefit post-termination of employment. At best, my review of the record indicates that the bargaining history indicated no intent to pay the disability premium after termination of employment. As to whether this benefit is taxable income for the recipients or whether receiving said payments will impact negatively upon payments received by the Grievants under the Wisconsin Retirement System, as argued by the County, said issues are not relevant in this matter where the issue is whether said payments are required by the agreement. I find that said payments are required by the agreement and I order them to be paid. The question of whether said payments are taxable or impact upon benefits received by the Grievants will be resolved, if necessary, in some other forum.

In sum, by incorporating the terms of the Massachusetts and Continental disability insurance policies into the agreement of the parties, the County is bound to provide the benefits those policies provided. As such policies made no distinction between employes who were or were not retired, the County failed to provide the benefits of said policies when they discontinued payment of \$300 per month once the employe retired. By said action, the County violated the collective bargaining agreement.

For these reasons, based upon the foregoing facts and discussion, the Arbitrator issued the following

AWARD

1. The Employer violated the collective bargaining agreement by not paying disability benefits after retirement to affected employes.

2. The Employer shall make affected employes whole within 30 days for all past disability benefits owed to said employes.

3. The Employer shall pay affected employes disability benefits forthwith consistent with the policy in effect when each employe was hired.

Dated at Madison, Wisconsin, this 7th day of February, 1992.

By _____
James W. Engmann, Arbitrator