

BEFORE THE ARBITRATOR

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 In the Matter of the Arbitration :  
 of a Dispute Between :  
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 GREENDALE PROFESSIONAL POLICE : Case 56  
 ASSOCIATION : No. 46127  
 : MA-6882  
 and :  
 :  
 VILLAGE OF GREENDALE :  
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Appearances:

Vanden Heuvel & Dineen, by Ms. Lisa M. Vanden Heuvel, on behalf of the  
 Davis & Kuelthau, S.C., by Mr. Roger E. Walsh, on behalf of the Village.

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ARBITRATION AWARD

The above-entitled parties, herein the Association and Village, are privy to a collective bargaining agreement providing for final and binding arbitration. Hearing was held on October 21, 1991, in Greendale, Wisconsin. The hearing was not transcribed and the parties thereafter filed briefs and reply briefs which were received by February 20, 1992.

Based upon the entire record, I issue the following Award.

ISSUES

The parties have agreed to the following issues:

1. Whether the Village should pay 75% of the total yearly cost of health insurance premiums for retirees including any escalator costs, or whether, instead, there is a cap of 75% for any such premiums based upon the costs of said health insurance premiums in effect at the time of one's retirement.
2. If so, are the claims of former employes Harvey Mueller and Joseph Prusak are time-barred.

DISCUSSION:

This dispute goes back to 1984-85 when the Village first agreed to contract language providing that retired employes could convert one-half of their unused sick leave into health insurance premiums to be applied:

"for the purpose of making payments of premiums toward the Village's group health insurance program on behalf of such retired employees. Payments of such premiums will be on the basis of whatever the premium cost per month is under Section 16.01 or 16.02 until the premium is depleted. . ."

Section 16.01, in turn, required the Village to pay "up to \$202.09 per month toward the cost of the family premium and up to \$77.64 per month toward the cost of the single premium." Section 16.02 mandated in part that "The Village shall pay fifty per cent (50%) of the specific dollar premiums listed in 16.01" and that "Coverage would be in effect until retired employee qualifies for Medicare."

An internal communication dealing with the contract settlement from the Association to its members at that time - which the Village never saw - claimed, "The Village offered parity between the fire department and the Association on retiree sick leave payouts and health insurance plans" and that the Village's premium contribution would increase over time just as it did for its firefighters.

Explaining the Association's stance, Donald H. Bergmann, who sat in on the 1984-85 negotiations leading up to this language, testified: "Our idea was to pattern ourselves after the Fire Department" and that it was his understanding that, "as the premium increased, the Village would pay 50%." However, Bergmann also admitted that the Association then tried, but failed, to obtain contract language expressing the Village's contribution as a percentage as it did in the firefighters' contract, rather than the fixed dollar amounts found here.

The parties thereafter negotiated subsequent contract language raising the Village's contribution to 75% for insurance premiums expressed in specific dollar terms and that is what the present contract now provides.

Over the years, the Village paid varying amounts of such premiums to different employes, depending upon when they retired. Thus, it paid 50% of the premiums for Prusak who retired in 1985; 75% for Mueller who retired in 1986; and 75% for William Bergemann and Jack Bach who both retired in 1990.

Moreover, since insurance premiums have risen since 1984, the Village's contribution for retirees was pegged to whatever the premium was at the time of their retirement. Hence, it has paid monthly premiums of \$106.65 for Prusak; \$162.28 for Mueller; \$223.02 for Bergmann; and \$231.47 for Bach. It has not, however, increased the amount of its contributions even though said premiums have increased substantially, thereby forcing the retirees to pay for all of the increases by themselves.

Former Association President Patrick O'Neill testified that he was on the Association's bargaining team in the 1986 negotiations and that he then specifically asked Village Manager Donald Fieldstad, Jr., whether the Village's contribution for retirees would increase as the premiums increased; that Fieldstad replied, "You are receiving that now"; and that it did not become an issue because, in O'Neill's words, "We were told verbally that we are receiving it." Going on, O'Neill said that the Association raised the issue because "There was some confusion" and because "We knew the language was not clear."

Fieldstad testified that while he did not remember this specific conversation, he in any event would not have told O'Neill that the Village was picking up any increase.

Thereafter, and in response to an inquiry made by Association representative Pat Coraggio, Fieldstad by letter dated January 29, 1988, told Coraggio that the Village's share of a retiree's health insurance premium is fixed at the time of one's retirement and that it does not subsequently increase. The Association at that time did not grieve said interpretation of the contract and the practice which was then being followed.

At the hearing, former Association negotiator Bergemann testified that he sat in on the 1988-1989 negotiations; that it was his understanding that the Village would pick up any increase to keep up with the 75 percent requirement; and that the Association let the matter "slide" because the contract was so clear and because the membership did not want to tie up the contract over it.

During the 1990-1991 contract negotiations for a successor contract,

Bergemann said that the Association tried, but failed, to obtain express contract language like the "fire department clause" requiring the Village to pay for any increased health insurance premiums for retirees in order "To bring (the) language in line with what the Fire Department had".

In support of the grievance, the Association primarily asserts that the contract on its face clearly requires the Village to pay 75 percent of a retiree's premium as it rises over the years; that there is no distinction between the insurance plans offered to regular employees and retirees; that any past practice cannot "prevail in this case because of the unambiguous nature of the contract"; that Association representative Bergemann reasonably believed that the premiums for retirees would not be capped; and that its interpretation is supported by a prior arbitration award involving the Village. 1/

In response, the Village asserts that its position is supported by the contract language itself, negotiating history, and past practice. It also points out that the Association in 1988 "was well aware of the method and basis" utilized by the Village in paying for a retiree's health insurance via Fieldstad's letter to Coraggio and that its failure in the 1988-1989 contract negotiations to even ask for a change in this method evidenced its acquiescence thereto. It hence suggests that if the Association "wants a benefit for retirees that requires the Village to pay 75% of whatever the health insurance premium is, including escalators, the Association will have to propose that benefit and gain it in negotiations."

The Village is right on every single point.

Thus, Section 17.02 of the contract provides in pertinent part that:

"The Village agrees that employees with ten or more years of service who retire under the Wisconsin Retirement System at age 54 or older during the life of this contract and employees who retire during the life of this contract, under a disability retirement under Chapter 40, Wisconsin Statutes, shall be continued for the balance of their lives as members of the group health insurance plan applicable to the collective bargaining unit under the following conditions:

A. The Village will pay seventy-five percent (75%) of the specific dollar premiums listed in Section 17.01."

Section 17.01 of the 1990-1991 contract, in turn, provides that the Village shall pay "up to" \$308.63 per month toward the cost of the family premium and "up to" \$120.89 per month toward the cost of the single premium.

There is nothing in any of this language, however, expressly addressing the narrow issue herein - i.e., whether the 75 percent referred to in Section 17.02 is to be permanently based upon the fixed dollar premiums at the time of one's retirement or the subsequent premiums which thereafter increase.

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1/ Village of Greendale (Fire Department) and Greendale Professional Firefighters Local 1777, IAFF, Dec. No. 24000-A (Arbitrator Neil F. Gundermann, (1988)) However, the portion of said Award relied upon by the Association was not part of Arbitrator Gundermann's rationale; it instead was part of the Union's claim in that case. Hence, it has no probative value here.

To be sure, the Association makes a plausible case as to why this language supports its claim by asserting that the specific dollar premiums provided for in the contract "are negotiated for both employees and retirees at each and every round of contract negotiations", thereby reflecting that the parties recognized that retirees would be treated just like other bargaining unit members "on a contractually changing basis". However, it in fact is not that clear, as O'Neill himself testified that the Association sought clarification of this issue in the 1986 negotiations because, "There was some confusion" and because "We knew the language was not clear."

I agree; for if it was unclear then, it is also unclear now. That is why it is necessary to look at the past practice as to how the language has been applied. As to that, it is undisputed that the Village ever since 1985 has not picked up the proportional increase in a retiree's health insurance premiums. The fact that it has followed this practice since 1985 without any prior grievance from the Association strongly indicates that the Association at that time agreed with the Village's interpretation. 2/

The Association nevertheless argues that Fieldstad during the 1986 negotiations told its representative that the Village was paying for such increases. Since Fieldstad at that time knew that it was not, it is unclear as to why he would make such a false misrepresentation. 3/

However, even assuming arguendo that he did so, the Association most certainly knew in 1988 that the Village was doing otherwise via Fieldstad's January 29, 1988, letter to Coraggio revealing that fact. By failing to then grieve or to even raise the matter in the next negotiations, the Association thus clearly showed that it did not disagree over how the Village was computing its costs for retiree's health insurance.

Lastly, there is no proof that the Village in negotiations ever agreed to the Association's interpretation. The Association argues otherwise, pointing to former Association negotiator Bergmann's testimony that when he participated in the 1984-85 negotiations, "My understanding was that as the premium increased, the Village would pay 50 percent of any such increase" and that, "Our idea was to pattern ourselves after the Fire Department."

The Fire Department contract, however, since 1984 has contained language different from that found here, as it provides in pertinent part:

Section 17.02: The Village agrees that employees with ten or more years of service who retire under the Wisconsin Retirement System at age fifty-three (53) or older during the life of this Contract and employees who retire during the life of this

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2/ Indeed, Bergemann testified that future retirees attended the Association's ratification meeting for the 1984-1985 contract. Since Prusak did not thereafter complain about the Village's fixed payment for his own insurance premiums, it appears that he agreed with the Village's policy.

3/ The Association at that time, after all, need only have checked with Mueller and Prusak to find out that the Village was not paying for such increases. Moreover, if Fieldstad made this statement, there would not have been any need for the Association to again question the Village about this matter a few years later.

Contract, under a disability retirement under Chapter 40, Wisconsin Statutes, shall be continued for the balance of their lives as members of the group health insurance plan applicable to the collective bargaining unit under the following conditions:

A. The Village will pay seventy-five percent (75%) towards the cost of the premium.

This language, of course, differs from the language here because it pegs the Village's contribution to a percentage which automatically rises as the health premiums increase. The contract here, on the other hand, refers to a fixed dollar amount because the Association in the 1984-1985 negotiations tried, but failed, to obtain language akin to that found in the Fire Department contract.

That being so, it therefore is clear that the Village never agreed to pick up increased insurance premiums, as both parties have understood since that time that there is a significant difference between the language found in the Police and Fire Department contracts and the Village's different responsibilities thereunder.

Reviewing, we therefore see that the Association over the years failed to get the identical language found in the Fire Department contract which contains an escalator clause; that the contract language here is in fact ambiguous as acknowledged by one of its own representatives; that a well-developed past practice has arisen since 1985 under which the Village's contribution has remained fixed; that Fieldstad in 1988 expressly informed the Association of this practice without any Association objection; and that the Association thereafter failed in negotiations to secure contract language altering said practice. Altogether, these facts establish that the Village's interpretation and practice under the contract are correct.

In light of the above, it therefore is my

AWARD

1. That there is a fixed cap as to how much of a retiree's health insurance premium the Village must pay which is based upon what the premiums are at the time of one's retirement and that the Village has properly complied with its contractual obligations by not increasing its share of such premium contributions.

2. The grievance therefore is denied and dismissed.

Dated at Madison, Wisconsin this 9th day of April, 1992.

By Amedeo Greco /s/  
Amedeo Greco, Arbitrator