

BEFORE THE ARBITRATOR

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 In the Matter of the Arbitration :  
 of a Dispute Between :  
 : Case 73  
 POLK COUNTY JOINT COUNCIL : No. 46648  
 LOCAL 774, AFSCME, AFL-CIO : MA-7035  
 :  
 and :  
 :  
 POLK COUNTY :  
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Appearances:

Mr. Michael J. Wilson, Staff Representative, on behalf of the Union.  
Mr. Joseph P. Guidote, Jr., Corporation Counsel, on behalf of the County.

ARBITRATION AWARD

The above-entitled parties, herein the Union and County, are privy to a collective bargaining agreement providing for final and binding arbitration. Hearing was held on June 4, 1992, in Balsam Lake, Wisconsin. The hearing was not transcribed and the parties thereafter filed briefs which were received by June 15, 1992.

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

ISSUE

The parties agreed to the following issue:

Whether Golden Age Manor regular part-time employes are entitled to prorated payment of health insurance premiums based upon hours paid or hours worked.

DISCUSSION

The County since at least 1986 has not offered prorated health insurance benefits to its Golden Age Manor employes based upon hours paid - which would include such matters as holidays, sick leave, time off for workers' compensation, vacation, etc. - even though it does so for all other employes whose departments also are covered under the collective bargaining agreement. Instead, it offers prorated benefits to those employes based upon actual hours worked. Since hours worked is less than hours paid, employes receive smaller prorated benefits than they would if the benefits were pegged to hours paid.

In support of its May 8, 1991, "class action grievance", the Union argues that this is improper because Section 22.01 of the contract dealing with health insurance benefits should be applied here just as it is applied to other work locations where the County pays prorated benefits based upon hours paid. It therefore argues that there is nothing in this language "which justifies singling any one (1) subgroup of employes out for different treatment" and that the County's reliance on Section 13.02 of the contract is misplaced because it is ambiguous and confusing.

The County, in turn, maintains that the grievance should be denied because Section 13.02 expressly provides that Golden Age Manor part-time employes are to receive benefits based upon hours worked, and not hours paid; because the contract is clear and unambiguous and that, as a result, no parol evidence can contradict its terms; and because it in fact is treating its employes "in an equitable manner".

The resolution of this issue must start out by looking at Section 13.02 of the contract which provides:

Section 13.02 Regular Full-Time Employees: (Class I)  
An employee who is scheduled to work the full hourly work day and work week in a permanent position.

Section 13.02 Regular Part-Time Employees: (Class II)  
An employee who is scheduled to work 1,020 hours annually, or more, in a permanent position, and who is not a regular full-time employee. This employee, except for Golden Age Manor employees, is entitled to receive fringe benefits granted by this Agreement on a prorated basis. Regular part-time employees of the Golden Age Manor shall be entitled to receive the fringe benefits granted by this Agreement and prorated to actual number of hours worked. (Emphasis added)

. . .

On its face, the last sentence of this section and its reference to "actual number of hours worked" certainly support the County's position.

Section 13.02, however, cannot be read alone; it must be considered alongside Section 22.01 which states:

Section 22.01 The County agrees to pay ninety percent (90%) of the family health insurance premiums and one hundred percent (100%) of the single health insurance premiums for eligible employees. Part-time employees entitled to health insurance benefits as are set forth in Article XIII will receive full insurance benefits, but premiums will be prorated on the amount of time worked during the pay periods in the previous month for payment on the portion of the contributions made by the County. However, a union-management committee shall be formed during the life of this agreement to study cost-containment measures. The Union will name a member to the committee from each bargaining unit. The County will name four (or less) members to the committee. If cost-containment measures can be determined and agreed upon, they shall be implemented during the 1991 fiscal year. (Emphasis added)

. . .

This language shows that Golden Age Manor employees are to be treated the same as all other employees in other bargaining units for the purpose of paying prorated insurance premiums.

The Union thus claims that the phrase "time worked" in Section 22.01 has in fact been interpreted by the County to mean "hours paid"; that this makes the contract ambiguous and "the situation more confusing. . ." because the phrase "hours worked" in Section 13.02 should mean the same as the phrase "time worked" in Section 22.01 - i.e., to mean "hours paid".

That normally would be a good assumption. But the reference in Section 13.02 to Golden Age Manor employees must reflect something, and that

something is that the parties agreed at some time to treat Golden Age Manor employes differently than all other employes covered under the contract.

Past practice bears this out, as the County since 1986 has always pegged prorated health insurance benefits for Golden Age Manor employes based upon "hours worked". The prior Nancy Bader grievance settlement cited by the Union for its contrary claim does not contradict this practice because that grievance centered on a different issue - i.e., whether she was improperly reduced to "limited part-time status" and hence ineligible for prorated benefits, which is not the issue we have here. This past practice thus establishes that this ambiguous language has been clarified through the parties' own past practice and that it fully supports the County's position.

The Union also asserts that Golden Age Manor employes should be treated the same as all other employes covered under the contract regarding this issue.

A good case can be made for this view, as they probably are among the lowest-paid employes covered under the contract and hence may need this added economic benefit more than other employes. But that is not what the parties have agreed to in Section 13.02 and that is not something I can unilaterally grant because of any personal idea of what is right or wrong. Hence, if this situation is to change, it must be through the collective bargaining process - and not here.

In light of the above, it is my

AWARD

That Golden Age Manor regular part-time employes are not entitled to prorated payments of health insurance premiums based upon hours paid; the grievance is therefore denied.

Dated at Madison, Wisconsin this 25th day of September, 1992.

By Amedeo Greco /s/  
Amedeo Greco, Arbitrator