

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

LOCAL 1625-A, AFSCME, AFL-CIO

and

BUFFALO COUNTY

Case 55
No. 51928
MA-8780

Appearances:

Mr. Daniel Pfeifer, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.

Mr. Richard Ricci, Weld, Riley, Prenz & Ricci, S.C., Attorneys at Law, appearing on behalf of the County.

ARBITRATION AWARD

The Union and County named above jointly requested that the Wisconsin Employment Relations Commission appoint the undersigned to hear the grievance of Marlene Klebig. A hearing was held on February 14, 1995, in Alma, Wisconsin. The parties completed filing briefs by June 15, 1995.

ISSUE:

The parties ask:

Did the County violate the collective bargaining agreement by eliminating the Grievant's benefits and reducing the Grievant's salary when she was returned to her Benefits Specialist II position?
If so, what is the appropriate remedy?

CONTRACT LANGUAGE:

ARTICLE 17 - JOB POSTING

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Section 2 - Selection

Vacancies or new positions shall be awarded to the most senior applicant qualified to perform the work available. The successful applicant shall be considered on trial up to thirty (30) days to qualify; however, the Director may, at his discretion, extend the trial period an additional thirty (30) calendar days.

Section 3 - Trial Period

Employees not able to satisfactorily perform the work of an awarded position shall be returned to the position formerly held without loss of benefits, wages, or seniority. If the successful applicant is not satisfied with the new position, he/she may return to the position formerly held within thirty (30) days.

. . .

BACKGROUND:

The Grievant is Marlene Klebig, who started working for the County's Human Services Department in January of 1990 as a Benefit Specialist I. About two and a half years ago, she became a Benefit Specialist II. The position of Benefit Specialist II is a part-time position of 31 hours per week.

The labor contract does not provide benefits for part-time employees.

The Grievant signed a job posting for a vacant Secretary II position, was awarded that position, and started the job on March 28, 1994. The Secretary II position was a full-time job, 40 hours per week. Right after the Grievant started that job, she signed up for the County's benefits, including health insurance, with the County Treasurer Sandra Ebert. Neither Ebert nor anyone from the County told the Grievant that she would lose insurance benefits if she did not pass the trial period. The Grievant was aware that part-time employees did not get benefits.

The labor contract calls for a 30-day trial period, with an extension of 30 days at the discretion of the Director of the Department. The Department's Administrative Assistant, Beth Sass, supervised the Grievant when she was in the trial period. Sass recommended to the Director, Jerome Benson, that the trial period be extended because the Grievant was having some difficulties in performing the duties of the job, and the trial period was extended for another 30 days. Sass talked with the Grievant about her difficulties in learning the tasks on at least four occasions during the two trial periods. The final conversation took place about May 16 or 17, 1994, as the extended trial period was about to end.

The Grievant was returned to her former job of Benefit Specialist II on May 23, 1994. During the time she was a Secretary II, from March 28 to May 23, 1994, she received all fringe benefits.

The Grievant is especially concerned about health insurance. She and her husband dropped their private insurance when she got on the County's plan. Private insurance would now attach new riders to the policy because she and her husband have had health problems in the

interim.

The Union has previously attempted to bargain for part-time benefits, but has been unsuccessful. The issue was part of an interest arbitration award in 1989, in which the Union proposed that part-time employees who work 20 hours a week receive benefits on a pro-rata basis, but the Union ultimately lost the decision because of that proposal. The parties agree that there is no past practice relevant to this case.

THE PARTIES' POSITIONS:

The Union:

The Union argues that the language of Article 17 is clear and unambiguous, and that employees go back to their former positions without a loss of benefits, wages or seniority. The Union believes that Klebig should have been returned to her former Benefit Specialist II position without loss of benefits, wages or seniority. The hourly rate is the same between the Secretary II position and the Benefit Specialist II position, but Klebig lost wages due to the number of hours worked (40 versus 31). The Union notes that there is no previous situation where an employee was returned to a part-time position from a full-time position during a trial period.

The Union asserts that the principle of estoppel applies. When Klebig was awarded the Secretary II position, the County told her that she would be eligible to participate in the County's health insurance. She went to the County Treasurer to sign up for insurance. No one from the County ever informed her that if she were returned to her previous position, she would lose that health insurance and other fringe benefits.

The Grievant and her husband dropped their private health insurance policy because they were covered by the County's insurance. When the County returned her to her previous position and discontinued her insurance and fringe benefits, the Grievant and her husband were unable to buy private health insurance because of their pre-existing conditions. The cost of private health insurance would have been prohibitive and contained riders for the pre-existing conditions.

The Union contends that Klebig relied, to her detriment, on the word of the County that she would be covered by the County's health insurance plan. Therefore, the County should be estopped from discontinuing her insurance. The Union points out that since the County's plan is self-funded, there is no problem in re-enrolling her in the County's plan.

The County:

The County asserts that the language of Article 17 is clear and unambiguous and that the interpretation made by the Union is illogical and without merit. Section 2 of Article 17 provides for an internal applicant to hold a vacant position on a 30-day trial basis, which may be extended

for another 30 days, and Section 3 provides that the employee may be returned to his/her formerly held position. The position is not permanent until the employee proves he/she is capable of performing the duties.

The County contends that the language in the first sentence of Section 3 protects an employee from losing the benefits, wages or seniority earned in the position the employee previously held, in the event that the employee does not complete the trial period for the new position.

Even if the language were deemed to be ambiguous, the Union's interpretation should not prevail under arbitral guidelines used in resolving ambiguities. The Union would have the employee who is unable to do the job return to a former position but yet retain the benefits, wages or seniority earned in the position for which the employee was unable to satisfactorily perform the work.

Contracts are to be given a reasonable construction and to avoid absurd results. The Union's interpretation would allow a part-time employee to take a full-time position for 30 days, get the wages and benefits of a full-time employee, and return to a part-time position but still maintain full-time benefits and wages. The County finds that interpretation to be absurd and preposterous.

The County maintains that neither bargaining history nor past practice support the Union. The parties agreed that there is no relevant past practice, and they stipulated that part-time employees are not entitled to fringe benefits under the bargaining agreement. The County points out that the Union sought benefits for part-time employees and the parties went to interest arbitration for a 1988-89 collective bargaining agreement where the Union proposed language to secure such benefits. The Union lost that arbitration and has not gained benefits for part-time employees since, but now would suggest that part-time employees can get benefits by completing a 30-day trial period for a full-time position. A party should not gain through arbitration that which it failed to achieve through bargaining.

DISCUSSION:

The County's interpretation of the contract language at issue here is clearly the better interpretation. The language says:

Employees not able to satisfactorily perform the work of an awarded position shall be returned to the position formerly held without loss of benefits, wages, or seniority. If the successful applicant is not satisfied with the new position, he/she may return to the position formerly held within thirty (30) days.

The phrase "without loss of benefits, wages, or seniority" refers to those benefits, wages and seniority connected with the "position formerly held," not the awarded position that the employee is leaving, either voluntarily or not. This type of contract language is intended to give employees the chance for promotions without starting all over if they do not make it in the new job or just want to return to their old jobs. They may return -- or be returned -- without having to start all over on the wage scale or benefits.

The Union's interpretation of the language would not make sense, because it would allow a part-time employee to post into a full-time job and then return to a part-time job, but keep the wages and benefits of the full-time position. Surely this is not what the parties intended, and such an interpretation would create an absurd result. The parties have fought long and hard over benefits for part-time jobs, and the Union has been unable to obtain them for part-timers. When the Grievant went back to her part-time job, she was aware that part-time employees did not get benefits. She was part-time before being awarded the Secretary II position, and she was aware of the situation then. In fact, she and her husband bought private health insurance because she did not receive any through her part-time employment. It was most unfortunate that the Grievant and her husband dropped their private insurance when the Grievant took the Secretary II position, as it ultimately resulted in severe losses to them.

However, the County did not cause the Grievant's losses. The County was required to offer the Grievant benefits such as health insurance that are commensurate with the full-time position. And it offered her the insurance because she was full-time when she took the Secretary II position and she was entitled to the benefit at that time.

The Union claims that the Grievant relied on the County's word, to her detriment. But on what did the Grievant rely? Only that she was entitled to health insurance when she became a full-time employee. The County never promised her that she would retain the benefits of a full-time employee if she went back to a part-time position. There can be no detrimental reliance on something never promised. It would have been unreasonable for the Grievant to assume that the County meant she would always keep full-time benefits if she went back to a part-time position, particularly where the Grievant had previously held a part-time job and knew that she had no benefits with it.

Accordingly, the grievance must be denied.

AWARD

The grievance is denied.

Dated at Elkhorn, Wisconsin, this 14th day of July, 1995.

By Karen J. Mawhinney /s/
Karen J. Mawhinney, Arbitrator