

September 20, 1995

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Mr. Todd J. Liebman
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Sauk County
Sauk County Courthouse
515 Oak Street
Baraboo, WI 53913

Re: Sauk County (Health Care Center)
Case 112 No. 50192 MA-8181
(Sharon Radke grievance)

Gentlepersons:

This letter is written to confirm an "expedited arbitration decision and Award with some supporting rationale" rendered by the undersigned in the above-entitled matter pursuant to an agreement by the parties at hearing on September 8, 1995 at the Highway Department conference room, Baraboo, Wisconsin.

On October 7, 1994, the undersigned issued an Arbitration Award in the above-entitled matter which provided in material part:

1. That the grievance is sustained.
2. That the County shall immediately reinstate the grievant to her former position with all seniority and rights she had under the collective bargaining agreement at the time of her discharge.
3. That the County is not obligated to make the grievant whole for any wages and benefits lost because of the discharge.
4. The Arbitrator will retain jurisdiction over the application of the remedy portion of the Award for at least (sic) sixty (60) days to address any issues over remedy that the parties are unable to resolve.

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Thereafter, a dispute arose over the grievant's longevity pay for the year 1994 which the parties agreed to submit to the undersigned for decision as noted above. The September 8th hearing was not transcribed. The parties completed their briefing schedule on September 12, 1995.

At issue is whether the grievant is entitled to longevity pay for 1994. The Union argues that the County should pay her said longevity pay while the County takes the opposite position.

Section 18.01 of the Agreement provides one of the two requirements for longevity pay. "Each employee who has completed three (3) or more years of employment as of December 1st of any year shall be entitled to longevity pay. . . ." (Emphasis Supplied) Said section also provides: "Such longevity pay shall be paid to each eligible employee . . .". (Emphasis Supplied) The Union argues that said language "is clear and unequivocal," and applies to "each" employe requiring only that the employe have three or more years of employment as of December 1 to obtain said benefit. The Arbitrator does not agree. Said Section does not define what is meant by employe. Nor does any other part of the Agreement provide a definition of the term. Since the contract is ambiguous as to what constitutes an employe for purposes of this benefit, the Arbitrator may look to past practice to interpret the term.

Past practice is undisputed regarding which employes are eligible for longevity if they have "completed three (3) or more years of employment as of December 1st of any year." Marla Kluge, a Payroll Accounting Technician since March, 1980, who handles the payroll for all departments of County government, testified unrefuted that in order to get longevity payments, an employe must have worked three years, commencing from December 1 following initial hire. Kluge also testified that the County requires that the employe work at least one-half the number of hours worked by a full-time employe. Kluge stated that the method by which longevity payments have been calculated has not changed since 1983. According to Kluge, the grievant was not eligible for longevity pay for 1994 because she was not an employe of record on December 1, 1993 and because for the most part she did not work from the period December 1, 1993 through and including December 1, 1994.

The Union argues against the above result stating there is no contractual basis for the claim that some minimum number of hours must be worked each year in order to qualify for longevity. In particular, the Union maintains that it is inappropriate to rely on Section 9.01 of the Agreement for this practice. Section 9.01 provides that part-time employes who work at least 80 hours per month are entitled to "fringe benefits on a pro-rata basis." Since the grievant is not a part-time employe, the Union opines, this section does not apply.

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Assuming arguendo that the grievant was an employe during this period of time, the Union's contention still must fail. Section 9.01 also recognizes that there may be situations "where full-time employes would not be eligible for such benefits." As noted above, Section 18.01 contemplates situations where a full-time employe may not be eligible for longevity pay. And, as also noted above, based on past practice the grievant, even though she is a full-time employe, is not entitled to longevity pay for 1994.

The Union rejects the County's reliance on the past practice that an employe must work at least fifty percent time in a given year to earn longevity pay because "each and every case cited (by the County) was of a part-time employe." (Emphasis Supplied) More significant, in the Arbitrator's opinion, is the fact that the County applied this standard no matter what the employe's status or reason for absence from work. Also significant is the fact that the County applied this standard in more than one bargaining unit with the same contract language as well as to all unrepresented employes.

Finally, the Union cites several rules of contract construction in support of its position. However, as noted above, past practice determines the outcome of this particular case since the contract does not provide a clear answer to the question of whether the grievant is entitled to longevity pay for 1994.

Therefore, based on all of the above, and absent any persuasive evidence to the contrary, the Arbitrator finds that the answer to the issue as stipulated to by the parties is NO, the grievant is not entitled to longevity pay for 1994. Such a conclusion is consistent with the Arbitrator's Award dated October 7, 1994 wherein the Arbitrator found that the "County is not obligated to make the grievant whole for any wages and benefits lost because of the discharge."

In view of all of the foregoing, it is my

AWARD

That the grievance filed in the instant matter be, and the same hereby is dismissed.

Dated at Madison, Wisconsin this 20th day of September, 1995.

By Dennis P. McGilligan /s/
Dennis P. McGilligan, Arbitrator

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