

**VanDagens #1**

**MICHIGAN EMPLOYMENT RELATIONS COMMISSION  
VOLUNTARY LABOR ARBITRATION TRIBUNAL**

**In the Matter of the Arbitration  
between  
Employer**

**Issue: Hospitalization**

-and-

Union

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**SUBJECT**

Retiree health insurance.

**ISSUES**

Is the grievance arbitrable?

Did the Employer violate the collective bargaining agreement when it failed to provide Grievant with health insurance upon his retirement?

If so, what shall the remedy be?

**CHRONOLOGY**

Grievance Filed in writing: November 3, 2005

Arbitration Hearing: May 3, 2006

Briefs Received: June 13, 2006

Award Issued: August 10, 2006

**APPEARANCES**

For the Employer: Employer's Attorney

For the Union: Union Attorney

**SUMMARY OF FINDINGS**

The Grievant had standing to bring the issue to arbitration, despite his current status as a retiree because his grievance addresses a benefit which accrued to him, if at all, while he was still an active employee and he did not delay in filing a formal grievance. Furthermore, the Employer confirmed its position on Grievant's last day of work, thereby denying him an opportunity to grieve the action earlier. Grievant expressly reserved his right to pursue this claim when he redeemed his workers' compensation claim, so the waiver and release did not preclude this grievance from being arbitrated. While plausible arguments can be made for each side's interpretation of the language at issue, the Employer's interpretation is supported by actual application. Although the grievance is arbitrable, it is DENIED on its merits.

## **BACKGROUND**

Grievant, Bob Brown, began his employment with the Employer (hereinafter “the City” or “the Employer”) as a Police Officer in August, 1977. He remained in that classification until his retirement in October, 2005. Grievant was a member of the bargaining unit represented by the Union (hereinafter “the Union”). The Employer and the Union are parties to a collective bargaining agreement effective July 1, 2004 to June 30, 2007.

On June 22, 2004, Grievant was injured on the job and was placed on workers’ compensation. The parties’ collective bargaining agreement provides health insurance for an employee on workers’ compensation for up to 52 weeks. On April 26, 2005, Grievant was notified by the City that his employer-paid health insurance would cease effective June 23, 2005, but that he could elect continued coverage through COBRA at his own cost.

Grievant contacted his union stewards in order to determine what effect, if any, declining coverage through COBRA would have on his retirement health insurance benefits. Grievant and stewards Fred Black and Peter Blue met with Police Chief Winston White. According to Black’s and Grievant’s testimony, Chief White reviewed the collective bargaining agreement and stated that it was “a no-brainer” that Grievant would have medical benefits upon retirement. While Chief White agreed that he discussed the situation with Grievant and was “under the impression” that Grievant would be eligible for health insurance benefits after retirement, he also stated that the final determination of eligibility is made by the City Manager.

Thereafter, Grievant made a decision not to continue health insurance benefits through the COBRA election, but instead went on his wife’s health insurance policy. On September 7, 2005, Grievant tendered his resignation, effective October 27, 2005. In October, Grievant became concerned that he would not have health insurance upon his retirement, so he asked his union steward to clarify the situation. On October 14, 2005, Black sent a letter to City Manager

Alfred Purple asking for a written response to Grievant's inquiry. Purple testified that he reviewed the collective bargaining agreement and contacted the City's attorneys to determine what response to give to Grievant.

On October 26, 2005, Purple sent a reply to Grievant stating, in part,

The letter I received stated that Officer Brown [sic] has a concern about his medical benefits, but does not elaborate on his concern. Our records indicate that Officer Brown [sic] does not currently have any medical insurance through the Employer.

Grievant testified that when he retired, the City did not provide health insurance benefits to him.

On October 28, 2005, steward Black and the Union representative William White requested a meeting with Purple to discuss Grievant's situation; the meeting was scheduled for November 2, 2005. One day prior, Grievant met with a Workers' Compensation Magistrate, his attorney and the attorney for the City. He agreed to redeem his workers' compensation claim for \$112,000. During the redemption hearing, Grievant's attorney stated, "I have no impact or ability to qualify you for that benefit or right, but it's our understanding, yours and mine, that what we're going through today in fact does not impact on your right to Blue Cross if you have such a right." Later, his attorney stated, "it's your understanding that if we proceed ahead today any vested pension or insurance right, if you have it, would not be affected by this." Grievant agreed with both statements. Thereafter, the City's attorney sent a fax to Grievant's attorney confirming that "the Redemption will not affect vested pension rights."

Black, White and Grievant met with Purple on November 2, 2005, and tried to negotiate a deal whereby Grievant would receive health insurance from the City, but came to no resolution. Purple's position was that the collective bargaining agreement states that a retiree gets only the health insurance benefits the employee had at the time of retirement. A written grievance was filed on November 3, 2005, alleging violations of Article 23, Section 6 and Article 24, Section 2.

The City's response, dated November 11, 2005, denied the grievance and raised Grievant's status as a retiree as a procedural objection. The matter was processed through the steps of the grievance procedure and a demand for arbitration was made. Arbitrator Kathryn A. VanDagens was selected by the parties through the Michigan Employment Relations Commission. A full evidentiary hearing was held on May 2, 2006 in a City, Michigan. Both parties had full opportunity to present testimonial and documentary evidence, examine and cross-examine witnesses and to file post hearing briefs.

### **UNION'S POSITION**

The Union contends that the grievance was timely filed because the event which triggered the grievance occurred on October 26, 2005, before Grievant had retired. As such, the Union contends, the issue is subject to the grievance and arbitration procedures because Grievant was denied retiree health insurance benefits while he was still an employee.

The Union contends that the workers' compensation redemption did not waive Grievant's right to retiree health insurance benefits, because it was acknowledged on the record that the settlement would not affect whatever rights he had. Further, the Union contends that because the City did not raise the redemption as a bar to this grievance in its answer, thereby allowing the fifteen day appeal period to pass, it estopped from raising the claim now.

As to the merits, the Union contends that Grievant, as a thirty-year employee, has earned his retiree health insurance benefits and the collective bargaining agreement provides that he should have them. The Union contends that the parties negotiated a procedure whereby a retiree is entitled to whatever health insurance benefits the bargaining unit is receiving. The Union contends that the employee need not be a participant in the health insurance plan in order to receive benefits upon retirement. The Union contends that the Employer failed to give notice to

Grievant that he would not be eligible for retiree health insurance if he failed to elect coverage through COBRA.

The Union contends that when Grievant checked with the Chief of Police, even he interpreted the collective bargaining agreement to provide retiree health insurance even if Grievant elected not to continue coverage through COBRA. The Union contends that the City is estopped from denying benefits to Grievant because it failed to give notice to Grievant that he would lose his retiree health insurance benefits by failing to continue coverage through COBRA.

### **EMPLOYER'S POSITION**

The Employer contends that the grievance is not arbitrable, both because Grievant, as a retiree, had no standing to file a grievance and because the release Grievant signed when he redeemed his workers' compensation claim waived any claim to retiree health insurance coverage.

As to the merits of the claim, the Employer contends that because the Grievant did not have health insurance benefits through the City at the time he retired, he is not eligible for benefits after retirement. The Employer contends that the Union's witness, former City Manager Thomas Green, confirmed that the practice was that in order to have retiree health insurance benefits, an employee must be receiving health insurance benefits from the employer at the time of retirement.

### **DISCUSSION AND FINDINGS**

The first issue that must be addressed is the arbitrability of the grievance itself. An arbitrator's authority is granted only by the collective bargaining agreement and the arbitrator has no authority to rule on matters which the parties have not agreed to arbitrate. Article 13, "Grievance Procedure," of the collective bargaining agreement defines a grievance as "a disagreement arising under and during the term of [the] Agreement, concerning the interpretation

and application of the provision of [the] Agreement. In Section “A” it provides that a grievance must be presented orally to the immediate supervisor within seven working days “of the date the **Employee or Employees** should have reasonably become aware of the conditions giving rise to the grievance...in order for the matter to be considered grievable under the Agreement.” [emphasis in original]. Article 1, “Recognition” Section 1 provides that the Union is the “exclusive bargaining representative for the employees in the defined bargaining unit” and Section 2 of Article 1 provides that the “bargaining unit will consist of all full-time police officers below the rank of Sergeant of the Employer Police Department.”

As the Employer points out, “As a general rule, persons not parties to a collective bargaining agreement have no standing to compel arbitration under the agreement. Courts have ruled that... retirees, for example, have no standing to seek arbitration either independently or through the union.”<sup>1</sup> The Employer cites numerous arbitration decisions in support of its argument that once retired, Grievant had no standing to file the instant grievance.<sup>2</sup> In addition to those arbitrators cited by the Employer, numerous others have ruled that once the employment relationship has terminated, the former employee is barred from the grievance procedure.

On the other hand, it has also been said that “Retirees do have standing, however, to enforce their contractual rights to receive retirement benefits, such as medical benefits, under a collective bargaining agreement.”<sup>3</sup> For instance, in *South Lyon Board of Education*, 86 LA 398 (Frost, 1985), arbitrator Elaine Frost quoted from an early decision by Mark L. Kahn, *Hudson Tool & Mach. Co.*, 21 LA 431, 433-34 (1953), cited in *How Arbitration Works*, 5th Edition (BNA 1997), pp 226, to wit:

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<sup>1</sup> *Fairweather’s Practice and Procedure in Labor Arbitration*, 4th Edition, Ray J. Schoonhoven (BNA 1999) pp 85-86. (footnotes omitted).

<sup>2</sup> *Van Dyne Crotty, Inc.*, 46 LA 338, 345 (Teple, 1976); *Crown Zellerbach Corp.*, 84 LA 1195 (Nicholas, 1985); *E-Systems, Inc.*, 86 LA 441 (Traynor, 1986).

<sup>3</sup> *Fairweather’s*, p. 86, footnote 251 (citations omitted.)

A dismissed employee is clearly a “former” employee; yet, for the specific purpose of determining whether or not a former employees rights under the collective bargaining agreement have been violated by this dismissal, he is clearly entitled to Union representation in his behalf. Except in the fact of specific language to the contrary, similar reasoning must apply in the case of former employees in” \* \* \* any disputes which may arise as to wages, rates, etc.

Arbitrator Frost also cites to *In re Reyco Industries, Inc.*, 74 LA 819 (R. Davidson, 1980), writing, “the arbitrator found that it would be inconsistent to have retirement benefit provisions and then not allow retirees to grieve if those sections were violated. He decided, therefore, that a grievance brought by a former employee was arbitrable since the retirement provision ‘implies there existed yet a relationship between the retiree and the Company.’”<sup>4</sup>

In *South Lyon Board of Education*, Arbitrator Frost concluded,

non-employees sometimes have access to the grievance procedures under the collective bargaining contracts where the provisions in dispute concern rights or benefits which the former employees accrued during the time of their employment. Specifically, this arbitrator concludes that retirees are entitled to file grievances under a collective bargaining contract where they allege a benefit or interest which accrued to them by virtue of their prior employment and, of course, that whatever their claim is, it is filed within the appropriate period of time.<sup>5</sup>

After careful reading of each of the cases presented here, including those identified by the Employer, I conclude that this dispute is distinguishable from the cases cited by the City for a number of reasons. Grievant is not seeking to challenge a decision made after his retirement, but to enforce a right he claims accrued while he was an employee. Furthermore, Grievant sought clarification regarding the issue prior to his retirement, but the City delayed significantly in its response to him, answering him on his last day of work. Two days later, Grievant’s union representatives requested a meeting with the City Manager in accord with Step One of the grievance procedure. The grievance was then submitted in writing in compliance with the timelines set forth in the agreement. The parties’ collective bargaining agreement does not limit

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<sup>4</sup> 86 LA at 402.

<sup>5</sup>*Id.*

who may file a grievance in any respect, stating only, “The grievance shall first be presented to the immediate supervisor within seven (7) working days...” Finally, Grievant’s decision not to continue his health insurance benefits through a COBRA election, which is arguably what triggered the denial of benefits, occurred in June, 2005, well before his retirement. But for that decision, made in reliance upon the opinion of the Chief of Police, Grievant argues he would be entitled to health insurance benefits. Therefore, I find that Grievant has standing to have his grievance heard.

The Employer also challenges the arbitrability of the grievance based on the waiver that Grievant signed when he redeemed his workers’ compensation claim on November 1, 2005. The Resignation, Release and Waiver of Seniority states, in relevant part, that he “releases any and all claims of any type or sort under any and all Common, State and/or Federal Law which he/she may have as a result of his/her employment...” On the record of the redemption hearing, however, Grievant’s attorney expressly stated that the settlement was based on the understanding that the redemption would not affect Grievant’s pension or Blue Cross benefits, if he was entitled to them. Furthermore, the City’s attorney provided a confirmation that the redemption would not affect “vested pension rights.”

Grievant is not seeking to initiate a claim based on common, state and/or federal law but to enforce rights he believes had already vested in him at the time of his retirement under the terms of the collective bargaining agreement. Furthermore, the Union argues, the only “vested rights” in dispute were Grievant’s right to health insurance paid for the by the City, so the claim herein was adequately preserved. The transcript of the redemption hearing illustrates that Grievant and his attorney expressly sought to preserve the claim at issue in this grievance and did not waive his right to pursue the matter to arbitration.

Because the grievance is found to be arbitrable, its merits must be addressed. The parties' collective bargaining agreement provides, at Article 24, "Retirement," Section 2, "On normal or disability retirement, the **Employer** shall furnish and pay the premium or [sic] current hospitalization insurance in effect at that time or as improved for the **Employee** and qualified family members." When the parties negotiated the current collective bargaining agreement, similar language was added to Article 23, "Hospitalization and Life Insurance," Section 6: "On normal or disability retirement, the **Employer** shall furnish and pay the full premium on current hospitalization insurance in effect at the time of retirement for the **Employee** and qualified family members."

The parties disagree as to whether the term "in effect" means the benefit in effect for the bargaining unit or in effect for the individual employee. Plausible arguments can be made in support of either interpretation; therefore, the language is ambiguous, as argued by the Union. The use of the term "or as improved" in Article 24 seems to support the Union's argument. Only the bargaining unit's benefits would be "improved" after an individual's retirement.<sup>6</sup> Furthermore, as pointed out by the Union, the collective bargaining agreement does not state that an employee must be a participant in the Employer's plan at the time of retirement in order to receive the benefit of its terms. Finally, the intent of Article 23, Section 6 and Article 24, Section 2 was to provide Employer-paid health insurance benefits to retirees (and their surviving spouses.)

However, the Employer's position is supported by the testimony of the former City Manager, Thomas Green, who was called by the Union as a witness. Green testified that he was the City Manager for approximately 28 years prior to his own retirement and took part in the negotiations which led to the language in Article 24, Section 2. The Union characterized his

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<sup>6</sup> No explanation was given as to why this term was omitted from Article 23.

testimony on direct examination as confirming that “in effect” referred to the bargaining unit’s status, but it was more ambiguous than that. What was not ambiguous was his decision, prior to his own retirement, to stop taking advantage of the “opt out” provision in the health care coverage and to switch back to the Employer’s policy so that he would have employer-paid health insurance upon his retirement.<sup>7</sup> He agreed that in order to get health-insurance benefits paid for upon his retirement, he needed to be on the City’s policy at the time of his retirement. In contrast, the record does not contain a single example of an active employee who was not carried on the Employer’s policy who received Employer-paid health insurance benefits upon retirement.

When the words chosen by the parties can express more than one meaning, the goal of an arbitrator is to discern the intent of the parties at the time the language was ratified, if possible. While one incident would rarely be construed as “past practice,” Green provided the only evidence with respect to the application of the language in the past. Furthermore, the parties clearly negotiated a stop point of Employer-paid benefits for employees on certain leaves of absence, as expressed in Article 23, Section 3. In Grievant’s case, he was no longer eligible for employer-paid benefits after 52 weeks of workers’ compensation leave. It would be unlikely that the parties agreed to resurrect those benefits upon the employees’ retirement. Considering all the factors, including the burden of proof, I find that the Employer’s interpretation is the more plausible one.

The Union claims that Grievant’s decision to not to continue his health insurance through a COBRA election was not fully informed because the City did not warn him he might be jeopardizing his retiree health care benefits. It also complains that the Chief of Police misled

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<sup>7</sup> Clearly, Abernathy was not a member of the bargaining unit represented by the POLC, so the terms of the collective bargaining agreement would not have applied to him. However, no evidence was presented to show his employment contract as a supervisor differed from that applied to the bargaining unit in this regard.

Grievant into thinking his decision would not affect his retiree health insurance benefits. It is unfortunate that the Chief appears to have told Grievant and his stewards that it was a “no-brainer” that he would get health insurance upon retirement. Regardless, however, under the City’s interpretation of the language, Grievant would not have been eligible for employer-paid benefits upon retirement no matter which choice he made. Whether he elected coverage through COBRA or his wife’s insurance policy, he was no longer receiving employer-paid health care benefits after the expiration of the 52 weeks of workers’ compensation leave. Once Grievant began the workers’ compensation leave, he did not return to work as an active employee. If the individual employee’s status is controlling, then Grievant would not have been eligible for employer-paid health care benefits after his retirement irrespective of the choice he made in June, 2005. Therefore, I need not decide whether the City is estopped from denying Grievant benefits based on the Chief’s statements in June, 2005.

**AWARD**

For all the foregoing reasons, the grievance is arbitrable, but is DENIED on its merits.

\_\_\_\_\_  
August 10, 2006

Date

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Kathryn A. VanDagens, Arbitrator