FF 9/2/92

IN THE MATTER OF FACT FINDING)
)
between)
)
ARENAC COUNTY ROAD COMMISSION) MERC CASE NO. L90 A-0821
) Asgd. 17 April 1992
and)
)
TEAMSTERS LOCAL UNION NO. 214)

APPEARANCES

For the Union:

Anthony F. Marok, Business Representative
Lon Shaffer, Steward
Dave Berry, Steward

For the Commission:

Leon G. Arnst, Management Consultant
Robert G. Caltrider, Engineer-Manager

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Pre-hearing and Hearing held at Omer, Michigan

on

30 June 1992

before

Leo S. Rayl, Fact Finder

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Union post-hearing brief received 17 August, timely postmarked, and forwarded to Employer on 21 August 1992.

Employer brief not received.

Recommendations issued on 2 September 1992

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Arenac County Road Commission

9/2/92

INTRODUCTION

At the pre-hearing conference it was determined that but one issue remained to be settled. If settled, there would be complete agreement between the Parties. According to the amended petition for fact finding dated 2-3-92, that single issue involved only Article 23, Section 2, paragraph (b) - 23.2.b, health insurance for retirees. The question was whether the dates indicated should have been changed to reflect the dates of the new Agreement. The Employer maintained that it was not a mistake and that the benefit ended with the specified date. The Union claimed the Employer never notified them of intent to let the benefit expire, and that the dates should automatically be changed to that of the Agreement duration since all items not changed should remain as in the previous Agreement.

It was agreed that witnesses would be sworn but not sequestered. The Union first went forward. Cross-examination and rebuttals were made by both Parties. Briefs were allowed - the Union submitted (timely after extension) - the Employer apparently declined the opportunity.

EXHIBITS

Joint 1 — Tentative Labor Agreement between the Parties dated February 10, 1991 through February 9, 1994

Joint 2 — Previous Agreement dated February 10, 1988 through February 9, 1991

Union Exhibits — (Union Exhibit 1 was mentioned in the Union brief but was not submitted to the Fact Finder - not indicated in notes as were all other exhibits. Union Exhibit marked "3" was the first submitted, then "2", then "4" --- and not necessarily in calendar order. However, as mentioned in the Union brief, the main point made was "non-mention" by the Employer of change, deletion, or expiration of the retirees' insurance benefit. The Fact Finder accepted the statement - being verified by other evidence submitted.)

2. Previous Agreement dated December 4, 1983 to December 3, 1986

3. Contract demands (by Union) dated November 7, 1990

4. Commission proposals dated December 21, 1990

5. New pages to final proposal (by Comm.) dated June 25, 1991

6. Letter Arnst to Marok re proposals, dated May 8, 1991

7. Contract Demands (by Union) dated November 7, 1990 **and** December 21, 1990

8. Notice of Election with dates July 12 thru 23, 1991

9. Letter Arnst to Caltrider dated July 14, 1991

10. Fax, Marok to Amar dated August 6, 1991

11. Items from Comm. Original Proposal tentatively resolved as of January 14, 1991

12. Ballot sample, December 9, 1991

* 13. Letter Caltrider to Marok dated January 24, 1992
* **Note:** By endorsement hereon dated June 30, 1992, the **Parties agreed** to accept the recommendations of the Fact Finder as binding on the one issue of Section 23.2 (b).

14. Letter Marok to MERC dated February 19, 1992

15. Letter Marok to Caltrider dated December 10, 1991

16. Letter Marok to Caltrider dated February 3, 1992

17. Union petition for FF dated 2-3-92

Company Exhibits

None.

ISSUE

Should the dates that appear in the tentative new Agreement, 1991-1994 (Joint Exhibit 1) remain as is, or should they be amended to coincide with the dates of the new Agreement's duration --- in regard to Article 23.2 (b)?

UNION POSITION

1. The Article was in the previous Agreement. The Union proposed enhancement of the provisions. There was no need to propose the obvious desire for continuance.

2. The Employer never indicated during all collective bargain-

ing that the benefit would disappear.

3. It was agreed through Mediation that all non-amended items would stay the same.

4. The Union assumed continuance of the benefit and that Article 32.4 protected against a change in insurance benefits.

5. Provisions such as Articles 26, 27.15, 28.4 and 28.5 appear in the last three Agreements. Dates automatically change with the Agreement - benefits continue, only dates change.

6. Mistakes were made. Article 32.5 slipped away; there was not a trade-off. Not changing all dates was an error also. The Employer admits making errors in some proposals.

7. The Employer changed the dates in Article 32.1 to the current duration of the Agreement - it had both effective and end dates.

8. The Employer bargained in bad faith. There is a two-way obligation to make the intention of a proposal known and understood at the bargaining table. There was no meeting of the minds.

9. Request that the Fact Finder recommend in favor of the Union by amending the dates in Article 23.2 (b) to reflect the current contract dates thereby extending the benefit.

EMPLOYER POSITION

1. The Employer disagrees with the Union Position. There was no mistake. The Commission proposed language (not necessarily the idea) as it appears in the previous and current Agreements. The provision remained in effect for a specified time --- it had an effective date and an expiration date within the Article itself.

2. There was no Employer proposal to change Article 23.2 (b) language or dates. The provision does appear in the new Agreement without change (even though no one is affected).

3. It is common practice in collective bargaining that a Party desiring change must propose it. The Union proposal to change Article 23 via enhancement was later withdrawn. It never mentioned a desire for new dates. It was the Union responsibility to propose continuance - if the Employer had agreed, it would appear in Commission proposals or rejections.

4. Provisions which have an effective date but no expiration

date within an article may well continue into a new Agreement if no change is proposed and there is a general agreement on continuance for all items not changed. But provisions which contain both an effective date and an expiration date create a situation that is separate from contract duration even though dates may be the same.

5. Absent agreement, when the expiration date of an Agreement arrives it is the end of the total Agreement. Unless there is agreement to extend, a new effective date and expiration date is found in the next Agreement.

6. The reference to Article 32.5 being inadvertantly omitted is not at issue. There was no advantage to the Commission; after 1990 there was no effect.

7. The Union has not sustained its position. There was never a proposal to extend dates. The language of the provision was clear with a start and stop date included. The Union erred in not proposing continuance. The Union ratified for "no change" and there was no change. The first and only mention by the Union was in February 1992.

8. After contention, there were Commission and Union proposals re settling 23.2 --- each rejected by the other Party.

9. Request that the recommendation favor the Commission.

DISCUSSION

The Fact Finder was not present during collective bargaining to note the nature of exchanges, if any, regarding the Union proposal for enhancement of a benefit, lack of response by the Employer, and/or later withdrawal of the proposal by the Union. Judgment must be based on exhibits and oral evidence and argument submitted. The issue of whether or not the benefit of Article 23.2 (b) should continue into the new Agreement involves an economic matter now separated from what is normally an "economic package." There is no way of telling what the effect of the Parties' positions had on earlier settlement of all other economic items. The Union may have relaxed its demand while the Employer may have been more generous. The dollar impact nor the persons affected cannot be the criterion for determination of the issue. The Parties have far more leeway in adjustment than does the Fact Finder.

The Parties' positions were extracted from their oral and/or written presentations. They are reviewed, with comments, in the order listed.

The Article was in the previous Agreement. 23.2 (b) also appears in the new Agreement (Jt1) without change. There was a record

of a Union proposal for enhancement, and a later record of the Union dropping same. There was no record of the Employer rejection although the Union claimed that as reason for withdrawal. The Union emphasized repeatedly that the Employer never responded to their proposal. There is no record of any proposal by the Employer concerning the Article. In retrospect, there was a need for a proposal to put the matter on record. The clause contained a specific end date **within** the Article. Most provisions **do not**. The Parties are sophisticated and must have had reason to **emphasize** the point - even though the end date of the section happened to coincide with the Agreement termination. In the press of business, it could simply have been an error on the part of the Union. It might have been "a failure by one Party to read carefully the terms of a written agreement or to understand the implications of particular contract language" as noted at the top of the page (1710) in the MASON case included in the Union's brief.

Not knowing the collective bargaining climate between the Parties, it is difficult to assess Union Position 2. There may well be suspicion that the Employer was "sandbagging" but there is no proof. Perhaps they felt that the clear language of the Article was sufficient. And then there is the question --- How helpful must one Party be in bargaining to the other Party?

In regard to 23.2 (b), this non-amended item **did** stay the same. The Fact Finder did wonder why the first paragraph was kept if it were **not** an error in the dates. There are several **possible** motives but no way to identify which. If (a) is unchanged from the previous Agreement, it is needed. Part (b)(1) is still needed. If (a) is changed, it might not be needed. Part (a) was changed, but that was not at issue. Of course, to comply with that agreed, the language of this non-amended item had to be retained. Language, not interpretation of the language, is the control. The Employer might want to rethink the change in (a).

Article 32.4 contains conditional words involving a **change** into collective group or self-insured programs. There was no evidence submitted to indicate such a change occurred. It does not appear to protect against the change in benefit at issue. An assumption often precedes difficulty.

Union Position 5 (for exhibits submitted) indicates provisions that may have effective dates, but no end dates specified therein. As mentioned before, the Parties must have had reason to emphasize the shutoff date of a provision.

Mistakes were made, but the Employer denies that the issue in question involved an error or their part.

The dates indicating duration of the Agreement were changed as noted in Union 8 (Election) and Union 11 (Proposals). This

appeared to be a Union proposal from page 7, followed by the July election data.

Did the Employer bargain in bad faith? There was no record of any proposal by the Employer concerning 23.2 (b) - substantially confirmed by the Union. If there is no proposal, there can be no explanation of it. Surely the Union cannot expect the Employer in bargaining to go down the list and ask - don't you want this? The provision, with its uncommon end date, should have been sufficient warning to "pin this down." "Meeting of the minds" does not seem to be a proper defense in this case.

With regard to Employer Position statements, many of the comments pertinent have been made above. The difference between open-end provisions and closed-end provisions is significant. A closed-end provision is independent of the expiration date of the entire Agreement. (1 & 4) The Employer made no proposals concerning 23.2 (b) - apparently it was content to let it die as clearly indicated by its end date. It is the responsibility of the Union to propose renewal if it so desires. (2 & 3) In regard to provisions not amended, the language stays the same. The language of 23.2 (b) remained the same. It appears to be a simple error by the Union in not "pinning down" an issue of importance to it. (7)

Inasmuch as both Parties attempted to alleviate the effect of the incident, it is strongly urged that effort be made to accommodate any person immediately affected. For the future, and for continuing good relations between the Parties, it is suggested that some modification in an already agreed economic benefit be made to allow retirees some benefit. However, an official recommendation cannot be made for humanitarian reasons alone. (8)

FINDINGS

1. The effective date and the closing date of the Article in issue (23.2 b) is clear. It is independent from the Agreement duration dates in 32.1. (Previous Agmt. 88-91)

2. Substantially, the language and dates in the current Agreement (Jtl 91-94) are the same.

3. The Employer made no proposals concerning 23.2 (b).

4. The Union made no proposal to amend the dates.

5. There was no proof of bad faith bargaining by the Employer.

CONCLUSIONS

1. The closing date of the provision and end of the benefit was February 9, 1991. (88-91 Agmt.)

2. Neither Party made any move toward extending the benefit by amending the dates through proposals.

3. The agreement that all non-amended provisions of the Agreement would remain the same was substantially fulfilled.

RECOMMENDATION

Article 23.2 (b) should remain as-is in the 91-94 Agreement (Jtl).

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2 September 1992

Leo S. Rayl
Fact Finder