

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

CITY OF SOUTH MILWAUKEE

and

SOUTH MILWAUKEE CITY EMPLOYEES,
LOCAL NO. 833, AFSCME

Case 63
No. 42148
MA-5580

Appearances:

Podell, Ugent & Cross, S.C., by Monica M. Murphy, on behalf of the Union.
Joseph G. Murphy, City Attorney, on behalf of the City.

ARBITRATION AWARD

South Milwaukee City Employees, Local No. 883, AFSCME, herein the Union, pursuant to the terms of its collective bargaining agreement with the City of South Milwaukee, herein the City, requested the Wisconsin Employment Relations Commission to designate a member of its staff as an arbitrator to hear and decide a dispute between the parties. The City concurred with said request and the undersigned was designated as the arbitrator. Hearing was held in South Milwaukee, Wisconsin on December 18, 1989. No transcript of the hearing was taken. The parties completed the filing of post-hearing briefs on March 20, 1990.

ISSUE

The parties stipulated to the following issues:

Is the City of South Milwaukee required by the collective bargaining agreement to provide separate health insurance policies for each spouse of a marriage where each spouse is an employe of the City?
If so, what is the remedy?

RELEVANT CONTRACTUAL PROVISIONS

ARTICLE II
Agreement

The Municipality and Union agree to faithfully and diligently abide and be bound to all of the provisions of this

Agreement. This Agreement shall remain in full force and effect from and after July 1, 1987 and shall terminate on the 30th day of June, 1990 unless extended by mutual agreement.

. . .

ARTICLE XIII
Section 1 - Health Insurance

The Municipality shall provide Health Insurance under the Wisconsin Public Employer's Group Health Insurance Program administered by the State of Wisconsin Department of Employee Trust Funds. The group coverages shall include:

- (a) Standard insured plan with benefits as set forth in the Group Administrative Services Contract.
- b) Optional Health Maintenance Organizations whose service areas include Milwaukee County and whose benefits are set forth in the Master Contracts entered into with the State of Wisconsin.

Should the City decide to withdraw from the Wisconsin Public Employers Group Health Insurance Program during the term of this Agreement, the Municipality shall notify the Union and obtain a signed Agreement from the Union to withdraw from the Wisconsin Public Employer's Group Health Insurance Program. Should the Union agree to the Municipality's withdrawal from the Wisconsin Public Employers Group Health Insurance Program, the Municipality shall provide health insurance benefits equal to or better than the Wisconsin Public Employers Group Health Insurance Program that is in effect on 1/1/88 and the City shall pay the full premiums for the single plan or the family plan for those who require family coverage.

Should the State of Wisconsin Group Insurance Board lower the benefits to be provided under the Standard Plan which were in effect on 1/1/88 or decrease the percentage differential of allowable premium payment for HMO'S, the Municipality agrees to renegotiate group health insurance coverage with the Union, including withdrawal from the Wisconsin Public Employers Group Insurance Program at the earliest allowable date.

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BACKGROUND

The Grievant, Jacqueline Pearce, has been employed by the City on a full-time basis since August of 1988. Also in August of 1988, J. Pearce married Matthew Pearce, who has been employed in the City's Police Department since January of 1985. J. Pearce and M. Pearce each had a dependent child at the time when they were married. M. Pearce already had family health insurance coverage through the City in August of 1988 and amended his coverage to include J. Pearce and her child at that time.

On November 9, 1988, J. Pearce filed a grievance when the City denied her request for a family health insurance plan separate from the plan in which M. Pearce had enrolled. The grievance was processed through the contractual grievance procedure without being settled and is the basis for the instant proceeding.

City employees select a health insurance plan on an annual basis and remain under that plan for the calendar year. Thus, an employee can switch plans only on a calendar year basis.

Apparently there have been no previous similar situations where both spouses were employed by the City. There have been situations where a parent and a child both were employees of the City and the parent and child had separate health insurance coverage through the City. However, said separate coverage was mandated by plan restrictions concerning coverage of a child under a parent's enrollment after the child reached a certain age.

The City has permitted employees to receive family coverage through the City even if the employee's spouse has family coverage through a different employer.

POSITION OF THE UNION

The contract requires that the City provide its employees with health insurance. This is a benefit which applies to employees as a right under the contract. Because J. Pearce is being denied her own health insurance, she is being denied her right to a benefit to which she is entitled as a

full-time permanent employee covered by the contract. All other employees covered by the contract get their own health insurance.

J. Pearce has earned her right to her own health insurance policy. She also is being denied the benefit of choosing the plan under which she is covered, since that choice was granted to her husband under his contract.

The City is attempting to benefit from the fact that J. Pearce is married to another City employee. J. Pearce is seeking nothing more than what the City must provide to every other full time employee whose spouse does not work for the City. The City does not deny family coverage to other employees whose spouses have family coverage from other employers. J. Pearce should be able to take advantage of coordination of benefit plans, just as the other employees can do.

POSITION OF THE CITY

Article XIII, Section 1 of the current contract specifically states the insurance to be provided by the City is that provided under the Wisconsin Public Employers Group Health Insurance Program administered by the State of Wisconsin Department of Employee Trust Funds. At the time when the current contract was negotiated, the State Health Insurance Plan included a provision which stated that where two spouses were employed by the same entity they would not be entitled to two family health insurance plans. Rather, the program limited the eligibility of two employed spouses to a single family plan. Further, the final two paragraphs of Section 1, Article XIII demonstrated that the plan to which the parties agreed was the plan in effect on January 1, 1988.

The State Plan was changed on September 22, 1988 to allow municipalities, at their option, to offer two family plans to married employees. The parties had entered into the current contract prior to said date. Therefore, J. Pearce has been denied nothing to which she is entitled under the contract as negotiated by the parties.

DISCUSSION

The clear and specific language of Article XIII, Section 1 of the current contract, under which the instant grievance was filed, states that the City will provide health insurance for its employees under the Wisconsin Public Employers Group Health Insurance Program administered by the State of Wisconsin Department of Employee Trust Funds. At the time said provision was agreed to and implemented, the State Health Insurance Program did not permit spouses, when both were employed through the State, to have more than one family policy. In fact, if one spouse elected family coverage, the other spouse could not elect even separate individual coverage. While said language refers to the State as the employer, the limit on coverage applied to any employer providing health insurance to its employees through the State program. Such a conclusion is based both on the absence of any evidence to the contrary, and, on the minutes of the meeting on

September 2, 1988 of the Group Insurance Board which stated in part "that the plan for local government was patterned after the state plan". The minutes of that meeting then continue and set forth the Board's decision to change the program so as to permit a local unit of government, at its option, to allow married employees both working for the same participating employer to each have separate family plans.

Thus, prior to September of 1988, the State program prevented the City from allowing J. Pearce to have a family plan separate from the family plan of her spouse. When the Group Insurance Board modified the State program in September of 1988 to permit married employees to have separate family plans, it was expressly stated that an employer was not required to grant the separate family plans and that it was the employer's option to determine possible eligibility. Accordingly, it is obvious the Board did not intend that an employer participating in the State plan automatically had to allow its married employees to have separate family plans.

Both the second and third paragraphs of Section 1, Article XIII refer to the insurance program or plan in effect on January 1, 1988. Those references support the City's contention that, during the negotiations culminating in the current contract, the parties agreed the plan in effect on January 1, 1988 was the applicable standard. The undersigned is not persuaded that the contract requires the City to implement optional, as compared to mandatory, changes in the State plan.

The Union submitted two arbitration awards in support of its position. The language of the disputed provisions in each of those cases differed considerably from the language at issue herein. Therefore, said awards are distinguishable from the instant matter. Based on the foregoing, the undersigned enters the following

AWARD

That the City of South Milwaukee is not required by the collective bargaining agreement to provide separate health insurance policies for each spouse of a marriage where each spouse is an employe of the City; and that the grievance filed by J. Pearce is denied and dismissed.

Dated at Madison, Wisconsin this 24th day of April, 1990.

By _____
Douglas V. Knudson, Arbitrator