BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
SHAWANO COUNTY (MAPLE LANE HEALTH CARE CENTER)	
and	Case 96 No. 43563 MA-6002
LOCAL 2648, AFSCME, AFL-CIO	

Appearances:
Mulcahy & Wherry, S.C., by Mr. Dennis W. Rader, on behalf of the County.
Mr. James W. Miller, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CI

ARBITRATION AWARD

The above-captioned parties, hereinafter the County and the Union, are signatories to a collective bargaining agreement providing for final and binding arbitration. Pursuant to said agreement, the parties requested the Wisconsin Employment Relations Commission to appoint a member of its staff to hear the instant dispute. Arbitrator Stuart Levitan was appointed by the Commission to hear the matter. Hearing was held on April 16, 1990 in Shawano, Wisconsin. The stenographic transcript was received on April 27, 1990. Arbitrator Levitan recused himself on May 10, 1990 and the undersigned was designated impartial arbitrator by the Commission on May 16, 1990. The parties completed their briefing schedule on June 25, 1990. Based upon the record herein and the arguments of the parties, the undersigned issues the following Award.

ISSUE:

The parties at hearing agreed to the following as an issue:

Did the County violate the collective bargaining agreement when it failed to provide hospital benefits to the grievant? If so, what is the appropriate remedy?

The County also raises the following as a threshold issue:

Is the County a proper party in the dispute regarding Blue Cross-Blue Shield's rejection of the grievant, Diane Kamke, for insurance coverage under the Group Plan?

RELEVANT CONTRACTUAL LANGUAGE:

Section XI

Insurance

A) The Employer agrees to pay ninety percent (90%) of the family premium, and one hundred percent (100%) of the single premium of the employees' hospital-surgical group insurance plan.

B) To be eligible for hospital/surgical insurance, an employee must be a regular employee with six (6) months or more seniority.

C) An employee on a leave of absence or laid off shall pay the full cost of the premium of the hospital-surgical insurance.

D) The present hospital-surgical insurance may not be changed by the Employer or the Union, except by mutual agreement.

E) The Employer agrees to maintain the same percentage of payment as is currently in effect for the term of this Agreement. The Employer agrees that if during the term of this Agreement the insurance rates go up, the above figures shall be adjusted upward to reflect percentage increases.

Section XIII

Grievance Procedure

. . .

Step 5:

. . .

> Each party shall bear equally the cost of the third arbitrator. The decision of the arbitrators shall be submitted to the parties in writing, and shall be final and binding upon both parties, provided that the arbitrators shall have no authority to alter in anyway or add to the provisions of this Agreement.

FACTS:

The County has had an insurance agreement with Blue Cross-Blue Shield for approximately twenty years. The scope of insurance coverage and the terms and conditions of coverage with this carrier have not changed in any significant respect with a few exceptions not germane to the instant dispute.

The County's agreement with the insurance carrier requires full-time employes and their dependents who apply for insurance more than 31 days after completion of the employes' probationary period to submit evidence of insurability.

Since 1986, five bargaining unit employes have applied for coverage after completion of their probationary periods. Four were found to be insurable and received coverage.

The fifth employe, Diane Kamke, who is the grievant in the instant dispute, has been denied coverage. Kamke was hired by the County as a nursing assistant in 1982. In 1984 she had the opportunity to gain insurance coverage under the County's group policy and she opted for the single plan for three months. Because Kamke's husband was also receiving insurance coverage from another employer under a different plan, and there was some disagreement as to which insurance would cover certain of her medical expenses, Kamke withdrew from the County's plan.

In 1989, Kamke's husband changed jobs. She then followed Blue Cross-Blue Shield procedures in reapplying for the County's insurance coverage. In February of 1989, she was denied coverage as being medically uninsurable. The reason provided by Blue Cross-Blue Shield for the denial was Kamke's height and weight and two incidents of high blood pleasure while pregnant. Kamke submitted another application a year later in 1990 and was once again denied because of a past history of cesarean sections. Kamke then filed the instant grievance upon receipt of her second rejection.

POSITION OF THE PARTIES:

Union:

The Union argues that the language set forth in Section XI, Paragraph B is clear and unambiguous. According to the Union, Paragraph B means that to be eligible for insurance coverage the employe must have six (6) or more months of seniority; nothing more is or can be required of the employe pursuant to the collective bargaining agreement.

The Union stresses that the language in the labor agreement does not say that the employe must also abide by unilateral conditions set up by the employer and the insurance carrier. Only one condition exists for regular employes which must be met for coverage, i.e., completion of the six months of seniority. If the County is permitted to enter into an agreement with the carrier which changes the terms of the collective bargaining agreement, the collective bargaining agreement, it asserts, is meaningless.

The Union notes that Section XIII, Step 4 on page 18 provides that "the decision of the arbitrators shall be submitted to the parties in writing, and shall be final and binding upon both parties, provided that the arbitrators shall have no authority to alter in anyway or add to the provisions of this Agreement." The contract between the carrier and the County is not open for interpretation nor is it part of the collective bargaining agreement. It requests that the grievant be made whole and reimbursed for expenses incurred in connection with health insurance payments made and that the County be ordered to cover the grievant with hospital/surgical insurance.

In reply to County arguments that the agreement with the insurance carrier is the controlling factor, the Union contends that if the County entered into an agreement with the carrier which is not in accord with the collective bargaining agreement, it is the County's problem and employes cannot suffer or lose benefits due to the County's negligence. The Union urges the arbitrator to reject the idea that the County merely pays the premiums, noting that neither party can change the present health insurance without mutual agreement. According to the Union, both benefits and the carrier are negotiable items and the County has changed the collective bargaining agreement unilaterally.

COUNTY

The County stresses that the definition of eligibility is not synonymous with coverage. According to the County, to be eligible for insurance coverage does not mean that one is automatically covered. Rather eligibility is a preliminary step in the process of obtaining insurance coverage. Pointing to the ordinary dictionary definition of eligibility, the County asserts that the definition merely denotes prior qualification to be chosen.

The County emphasizes that in an insurance context, eligibility is obviously the first consideration to be met in order for a person to be considered for insurance coverage. The County points to its agreement with Blue Cross-Blue Shield in defining the traditional meaning of eligibility as it relates to insurance coverage. In this context, there is no question that the grievant is eligible since she is a regular employe with six (6) months or more seniority. According to the County, Section XI, Paragraph B is perfectly consistent with subscriber eligibility criteria under the County's contract with the insurance coverage. Section B deals exclusively with eligibility to apply for coverage. The insurance agreement, however, controls the next step in the procedure, the County insists. Some eligible employes must submit evidence of insurability and this is the case with the grievant.

The County argues that the fact that she is required to submit evidence of insurability does not make her ineligible since she can be considered for coverage. Rather the grievant's problem is her insurability which the County argues the collective bargaining agreement does not guarantee.

It maintains that the grievant should have known that she would have to be medically underwritten if she did not accept and maintain the insurance when she first entered the group. The County claims that it should not be held liable for a circumstance in which the grievant voluntarily placed herself at a prior date.

According to the County, bargaining unit employes have in the past followed the County's interpretation of eligibility in securing coverage. In all past cases, it was the carrier which made the determination as to acceptance of employes for coverage, not the County. The County notes that if the collective bargaining agreement were an automatic guarantee of coverage, there would be no reason for the application process as employes would be automatically guaranteed open enrollment after completing their initial six months.

The County emphasizes that it is neither an insurer nor guarantor under the collective bargaining agreement. It points out the collective bargaining agreement does not list any medical or health benefits available under the insurance contract. There is no mention of the County guaranteeing coverage or open enrollment at any time, nor does the County participate in any of the risks providing the benefits.

The County stresses that it is not insensitive to the grievant's position, but asserts that the matter should be subject to contract negotiations if the Union wants the benefit. Lastly the County argues that because it is not the insurer, the grievance is not arbitrable.

DISCUSSION:

Both the stipulated and threshold issues in the instant dispute involve a determination as to whether Section XI, Paragraph B of the parties' collective bargaining agreement, requires the County to provide the grievant with hospital/ surgical insurance under the premium specified in the labor agreement. The undersigned is empowered to rule on a dispute involving the proper interpretation of the parties' collective bargaining agreement and limits her ruling to this labor agreement. The County is a proper party for purposes of determining its obligations pursuant to said labor agreement.

Union assertions to the contrary, Section XI, Paragraph B is neither clear nor unambiguous. The term "eligible" is subject to many differing interpretations. One interpretation may be that six or more months of seniority possessed by a regular employe is the only requirement for eligibility for hospital/surgical insurance, as the Union argues. An equally reasonable interpretation is that Paragraph B merely states that to be considered by the carrier for hospital/surgical insurance coverage, an employe must first be a regular employe with six or more months of seniority, which is the County's claim. The County also stresses that it is its agreement with Blue Cross-Blue Shield which defines the phrase "eligibility" as it should be interpreted in the collective bargaining agreement.

The undersigned rejects this contention that the County's agreement with the insurance carrier defines the term "eligibility" as it is set forth in the collective bargaining agreement. This rejection is premised upon the fact that the Union had nothing to do with negotiating the insurance policy with the carrier and cannot be bound by the terms of the County's agreement with the carrier.

The Union's argument, however, that "eligibility" somehow guarantees coverage is also rejected. The Union is demanding that Paragraph B be

interpreted such that the possession of six or more months of seniority by a regular employe is the only requirement for health/surgical insurance coverage. Moreover, the Union is arguing that Paragraph B requires the County to guarantee coverage to any and every regular employe who meets this one prerequisite. This interpretation goes far beyond the fair meaning of the actual words and phrases. It requires the arbitrator to insert or inject phrases, meanings, and conditions into the applicable language, which she is unwilling to do.

The plain meaning of the phrase "To be eligible for hospital/surgical insurance, an employe must . . ." is to be able to qualify for the hospital/surgical insurance benefit provided by the collective bargaining agreement, an employe must . . . . Eligibility as utilized in Paragraph B does, not guarantee coverage. It does, however, restrict coverage to those employes who meet the qualification set forth in Paragraph B. The undersigned recognizes that this interpretation does not reach an equitable result. The grievant upon completion of her probationary period has become "entitled" to nothing tangible. Moreover, the parties may not have contemplated that there would be employes in the grievant's position, i.e., unable to reap the contractually-offered insurance benefit due to medical uninsurability. Furthermore, this interpretation may even operate to the County's economic detriment as employes will be reluctant to drop duplicate coverage if they experience difficulty in regaining coverage should they desire to re-enter the plan.

Nevertheless, nothing in Section XI guarantees coverage or provides continuous open enrollment. The parties must address the grievant's dilemma at the bargaining table because the current language merely qualifies her to be considered under the terms of the County's current policy with the carrier.

Accordingly, based on the above, it is my

AWARD

1. The County is a proper party to the instant dispute.

2. The County did not violate the collective bargaining agreement when it failed to provide Diane Kamke with the hospital/surgical insurance benefits set forth in the collective bargaining agreement.

3. The grievance is denied and dismissed.

Dated at Madison, Wisconsin this 5th day of September, 1990.

By _____
Mary Jo Schiavoni, Arbitrator