

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration :
of a Dispute Between :
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LOCAL 2085-A and LOCAL 2387-A, : Case 34
WCCME, AFSCME, AFL-CIO : No. 43046
 : MA-5882
and :
 :
CITY OF RICHLAND CENTER :
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Appearances:

Mr. Laurence S. Rodenstein, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 5 Odana Court, Madison, Wisconsin 53719, appeared on behalf of the Unions.
Mr. Paul A. Hahn, Boardman, Suhr, Curry & Field, Attorneys at Law, One South Pinckney Street, Suite 410, P.O. Box 927, Madison, Wisconsin 53701, appeared on behalf of the City.

ARBITRATION AWARD

On October 31, 1989 the City of Richland Center and Local 2085-A and Local 2387-A, WCCME, AFSCME, AFL-CIO jointly requested the Wisconsin Employment Relations Commission to provide an Arbitrator to hear and issue a final and binding award on two pending grievances. On November 17, 1989 the Commission appointed William C. Houlihan, a member of its staff, to hear and decide the matters. A hearing was conducted on January 17, 1990 in Richland Center and on March 8, 1990 in Madison, Wisconsin. Briefs and reply briefs were submitted and exchanged by May 21, 1990.

This award addresses the City's decision to partially self fund its health insurance benefit.

BACKGROUND AND FACTS

The City of Richland Center has, for several years, provided health insurance benefits for its employes through a contract with Wisconsin Physicians Service. The specific plan provided was the Health Maintenance Plan, a plan offering a generous range of benefits. The City has paid the full WPS-HMP premium.

Premiums for the plan have increased substantially in recent years. In September 1986 the family premium was \$236.42 per month. By January 1988 the premium had risen to \$262.25 and by August 1988 was at \$314.65. In response to these increases the City began to explore possible alternatives to WPS-HMP. It contacted Randall Grimes, it's insurance consultant, to determine what alternatives existed. Mr. Grimes was directed to match benefits currently being paid under WPS-HMP. By the Fall of 1988 no acceptable alternative could be identified and the matter was deferred.

Negotiations between the City and the Union on behalf of both locals concluded in January 1989. The contract for Local 2085-A (Police) was executed on April 17, 1989. The contract for Local 2387-A (DPW) was executed on May 5, 1989. The health insurance language was continued without modification.

In the Spring of 1989, Mr. Grimes informed the City that it might be looking at a higher than anticipated premium increase. In response, the City directed its clerk, Jude Elliott to once again explore alternatives to WPS-HMP, including a previously considered self-funded or partially self-funded plan. It was Elliott's conclusion that such plans were operating successfully in other communities.

In July 1989 WPS notified the City that its WPS-HMP premium would be \$434.22 as of September 1. The City's insurance committee directed Mr. Grimes to find a plan that would lower premium costs without reducing benefits. It was determined that the only way that would be accomplished was through self-funding. Local insurance agents were contacted and recommended National Benefit Consultants (NBC) as a plan administrator. NBC, located in Green Bay, administers plans for more than 200 public and private employers, covering 100,000 individuals, primarily in Wisconsin. NBC was selected to administer the self-funded plan. North American Insurance Company was selected to provide aggregate stop-loss coverage for the plan.

The Union was not notified of the change prior to its implementation. Once the change had been accomplished, the City informed its employes by the following memo, issued in late August:

To all City Employees:

Your new health insurance is in place with the benefits matching those of the WPS policy. Claims will be paid the week of October 16th, 1989 and every other week thereafter.

Edwin Lee /s/
Edwin Lee
Insurance Committee
Chairman

Darlo D. Wentz /s/
Darlo D. Wentz
Mayor

There was no bargaining between the Union and the City relative to this change. Shortly after the change was implemented, the Unions filed the grievances which led to this proceeding.

A number of witnesses were called. Their testimony, in summary fashion, is set forth below.

The Union called Mary Michal, former Director of the Bureau of Complaints and Market Conduct, Office of the Commissioner of Insurance (O.C.I.) as an expert witness. Ms. Michal testified that O.C.I. regulates Insurance Companies within the state of Wisconsin. As a part of that regulation, the office handles complaints against regulated companies, monitors marketing and underwriting practices of those companies. The office compels companies to pay legally mandated payments and to provide legally mandated coverage. It requires that companies provide all enrollees with outline of coverage documents, and provides an appeal forum for resolution of disputed provisions. Ms. Michal indicated that ambiguous procedures, documentation, or communications are interpreted in favor of enrollees. The office enforces the statutory 1/ 30 day claim payment provision. The Commissioner's office can invoke disciplinary action involving substantial sanctions.

Kenneth Auz, a member of the law enforcement bargaining unit, testified that he was continuing to receive unpaid medical bills. Mr. Auz testified that he had not previously received such bills under the WPS plan. On cross examination Mr. Auz indicated that he brought unpaid bills to the attention of Jude Elliott, the City Clerk, who assured him that the bills would be paid. It appears that all bills were paid within a 60 day period.

Mr. Carwin Schwanz, a member of the law enforcement bargaining unit, testified that he received a series of explanation of benefits forms from NBC which listed the services rendered, amount charged, amounts paid and co-pay amounts. Each such form had a co-pay amount indicated. The forms each contain the following directive "You are responsible for paying the amounts listed in the deductible and co-pay column." Mr. Schwanz paid the co-pay amounts. According to Mr. Schwanz he received the same medical treatment while covered by WPS and was not subject to co-pays. Mr. Schwanz also testified that since NBC took over administration of the health plan, one provider is requesting, and he is paying, monies in advance, subject to refund. On cross examination Schwanz indicated that he was aware that employes had taken unpaid portions of their claims to Mr. Elliott but that he was unwilling to do that since he regarded it as a form of begging.

Steve Hansen, President of the Public Works Union, testified that he received a bill for a routine physical exam which was accompanied by an explanation that routine physicals are not covered. Such physicals were covered by WPS. Under cross examination Hansen indicated that he had taken the bill to Jude Elliott, that Elliott was handling it, and that he (Hansen) had not paid any of the charges. It took in excess of 90 days to pay the claim.

John Annear, former President of the Police unit, testified. Mr. Annear testified that the Richland Family Prescription Center had expressed dissatisfaction with NBC's claims payment to individual subscribers. This dissatisfaction stemmed from late and unitemized remittances. The Center had sent Annear an unpaid bill around the first of the year and asked for payment. On cross examination Annear testified that he had not paid the bill. The difference between the claims processing of WPS and NBC is that the employes currently receive bills from providers.

James Dawson, WPS Manager of Labor Accounts, testified on behalf of the Union. According to Dawson WPS has two methods of provider payment available. The first is a site draft. Under that system the provider has a WPS checkbook on site and writes him/her self a check immediately upon rendering a service. The second method of payment is capitation. Under that system the provider is paid monthly, in advance, a set amount of money for each person who signed up for his/her services. The physician is audited quarterly and annually. According to Dawson, other providers such as a pharmacy, are given itemized accounts of what is being paid, at the time of payment. Dawson testified that WPS is regulated by the Office of the Commissioner of Insurance, that WPS has

1/ Sec. 628.46, Wis. Stats.

an internal appeals process, that all medical information is confidential, including to the employer. According to Dawson, additions or deletions to the plan, including mandated changes, were reduced to writing (a change application) and signed by the City Clerk.

On cross examination Mr. Dawson indicated that there might be times when WPS would pay claims not covered on the face of the policy. Mr. Dawson also indicated that there is always the possibility of problems during a transition period.

Richard Wilson, a member of the Street Department bargaining unit, testified to having to fill out a coordination of benefits form (Worker's Compensation) for his 13 year old son and having to repeatedly call NBC to get a dental bill paid.

Roger Swiggum, a Cemetery Department employe, testified that medical bills incurred in September were not paid until late December. On cross examination Mr. Swiggum indicated that he was aware of the fact that the City Insurance Committee met in October, and authorized payment of bills under circumstances where the City intended to pursue collection against a third party. Swiggum also indicated that he tried to make contact with NBC without success, but that Mr. Elliott worked with him.

James Jewell, a Street Department employe, testified to having bills 60 and 120 days overdue.

Ed Lee, an Alderman who sits on the Insurance Committee, testified as to the background surrounding the decision to replace WPS. Additionally, Mr. Lee indicated that, sometime in late November or early December, it became apparent, with the number of complaints, that NBC was not using the same document to pay claims that WPS had used. The local WPS agent, Dick Beggs, was contacted. Beggs indicated that amendments and endorsements existed and upon request furnished those documents to the City.

Jude Elliott, City Clerk, testified on behalf of the City. Mr. Elliott recounted how he had worked to successfully resolve coverage/payment problems of numerous employes under the NBC administered plan.

The transition from WPS to NBC was not smooth. A number of employes complained about the new claims handling procedures and those complaints were directed to Mr. Elliott. It appears that Mr. Elliott was able to successfully resolve those matters brought to his attention. There was a good deal of confusion over what was to be paid. Payment was slow; slower than under WPS and consistently beyond 30 days. Employes received numerous coordination of benefits forms, a number of which requested information already provided on enrollment cards. Employes were unhappy with the change and at times were uncooperative and confrontational. As time passed some problems were corrected, all parties became more accustomed to the new system, and the number of complaints declined.

ISSUE

The parties stipulated to the following:

(D)id the City violate its Collective Bargaining Agreements with Local 2085-A and 2387-A when it replaced the WPS-HMP health insurance program with a third-party administered partially self-funded health plan. If so, what is the appropriate relief?

Subissues to be resolved include:

- (1) whether or not a third-party administered self-funded plan is an insurance carrier;
- (2) whether or not the benefits provided under the third-party administered self-funded plan duplicate the benefits provided by WPS; and
- (3) whether the administration of those benefits by the third-party administrator (National Benefits Consultants) duplicates the administration under WPS.

RELEVANT PROVISIONS OF THE APPLICABLE COLLECTIVE BARGAINING AGREEMENTS

ARTICLE XIV INSURANCE

14.01 The Employer shall provide for payment

of the premium for Wisconsin Physicians Service HMP hospital and medical insurance for all regular employees, single plan for employees without dependents and family plan for employees with dependents. The Employer shall have the exclusive right to determine insurance carriers as long as there is no reduction in benefits, for the duration of this Agreement.

14.02 Each employee shall receive life insurance coverage, Wisconsin Group Life Insurance for Municipal Employees. The employees and the Employer's premium cost shall be paid by the Employer. Employees shall be provided an opportunity to participate in the dependent life insurance program offered under the life insurance plan cited herein. The additional cost of the dependent life insurance coverage shall be assumed by those employees who choose to participate in same.

14.03 An employee who exhausts his/her sick leave and is on a medical leave of absence can continue to be covered by the hospital and surgical insurance programs provided the employee pays the entire premium by submitting payment to the City Clerk two weeks in advance of the due date.

14.04 The Health Insurance Corporation Medical Salary Income Continuation Program will be provided for the employees in the bargaining unit.

POSITIONS OF THE PARTIES

The parties submitted lengthy briefs and reply briefs, which are summarized below:

In the view of the Union, NBC is not an Insurance carrier within the meaning of the contract. It is both unlicensed and unregulated. One consequence of this is the loss of the Office of the Commissioner of Insurance as an oversight body and employe advocate. The Union cites Madison Metropolitan School District v. WERC, 133 Wis.2d 462, 395 N.W.2d 825 (Ct. App. 1986) for the proposition that the City has a duty to bargain such changes with the Union.

The City failed to contract for insurance services with an independent agent i.e., an insurance carrier. A contract relationship is required to create an independent carrier relationship. The City was not free to name itself as a carrier absent agreement of the Union. The City considered this type of change while the contract was open and could easily have put the Union on notice. The Union cites Great American Stageline 88 LA 927 for the proposition that a self funding mechanism ". . . was not an independent insurance carrier." The Union points to the testimony of Robert Hergenrader, President and C.E.O. of National Benefit Consultants who acknowledged on cross examination that NBC is not an insurance carrier.

It is the position of the Union that the new plan failed to duplicate the benefits provided under the WPS-HMP. The Union contends that the loss of O.C.I. regulation is substantial. The burden of proof relative to disputed ambiguous benefits changes. Arbitrators lack the expertise possessed by O.C.I.

The Union alleges that the NBC plan failed to duplicate WPS' administration of Insurance Benefits. Claims were paid late on a regular basis. Providers regularly sent individuals statements of unpaid claims. Individuals were subjected to more paperwork and forms as a condition of having claims paid. Coordination of benefits information was commonly sought despite the fact that NBC was already in possession of the requested information. Unhappy providers changed their policies, complained, and "harassed" employes because of the delinquent payment pattern of NBC. The difference between the claims payment systems is that under NBC an employe became directly involved on each claim before payment.

In its reply brief the Union claims that there is no enforceable commitment to pay new mandated benefits and that the City's promise of confidentiality has been breached.

The City argues that both benefits and administration are substantially equivalent. The benefits are the same. Any administrative difference are de minimis, transitional and temporary, and have not resulted in a loss of benefits. The term insurance carrier as used in the collective bargaining agreement does not prohibit the City from adopting a self funded employe health benefit plan. The Union is alleged not to have met its burden of demonstrating a contrary interpretation. Wisconsin Insurance Law, Section 600.03 Wis. Stats.

does not define carrier or insurance carrier.

Wisconsin caselaw draws no distinction between regulated insurers and self funded plans. The Madison Metropolitan School District case, cited above, decided that the identity of an insurance carrier is a mandatory subject of bargaining, but did not address the question of whether a self funded plan is encompassed by the term insurance carrier contained in a collective bargaining agreement. In Milwaukee Teachers Education Association (Dec. No. 23208-A, WERC, 2/27/87) the Commission applied the Madison Metro insurance carrier criteria to a school district's decision to self insure, rejecting the Boards argument that the decision merely involved a change of funding mechanisms.

The City contends that its self funded plan involves a regulated reliable traditional insurance carrier. North American Insurance Co., the aggregate stop loss carrier, is a regulated company. The plan merely changed to create a self insured deductible of \$10,000 per person, \$204,000 aggregate with traditional coverage above that amount. North American audits NBC's operation and also establishes the City's funding "premium."

The City contends that there is no practical distinction between self funded and traditional plans which justifies the Union's hypertechnical interpretation. Ms. Michal's testimony shows that there are problems with regulated providers. Madison Metro shows that insurers administer plans differently. The differences are a product of the unique character of each insurer, not whether the entity is subject to regulation. There are always transitional problems. Regulated companies do go bankrupt. It is rare for a self funded employer to go under leaving unpaid claims. This is particularly true of a City, which has access to resources to pay claims.

A variety of appeal mechanisms continue to be available. The new City plan document will have an appeal provision. There exists the grievance procedure contained in the collective bargaining agreement. The City Clerk has resolved a number of claims. North American is subject to O.C.I. regulation. The City has recourse against both NBC and North American.

There is no evidence that the City's self-funded plan is not financially stable or would fail to conform to O.C.I. regulations if they applied. There is no guarantee that WPS-HMP benefits will not change. The legislature could regulate Municipal self-funded plans if it felt that were necessary.

The City contends that employees have suffered no loss of benefits because of the self funding. The plan commits to maintaining benefits. When disputes arose the City paid the claims. Employees who brought claims forward were paid. The City has committed to matching state mandated benefits.

The Union has no cognizable breach of contract claim relating to plan administration. Administrative differences are snags associated with the transition, are temporary and for the most part have been eliminated. The City plan guarantees confidentiality. Few people handle insurance claims or forms.

Finally, the City contends that employe resistance has aggravated the transition problems.

DISCUSSION

The parties have both pointed to Madison Metropolitan School District v. WERC, 133 Wis.2d 462 in support of positions advanced. As the Union argues, the case does stand for the proposition that there exists a duty to bargain over the benefits, administration, and specific carrier-administrator. However, Article XIV, cited above is evidence of the fact that the parties have engaged in bargaining in this area. This dispute centers on the issue of whether or not the agreement between the parties has left the City with the discretion to partially self fund, utilizing a third party administrator.

The City correctly argues that Madison Metro does not address the question of whether or not a self-funded plan is encompassed within the term insurance carrier. The Commission decision in Madison Metro declares the carrier to be a mandatory subject of bargaining based upon the record which indicated that there are unique aspects of each carriers' plans which are altered upon a change of carrier.

The City points to Milwaukee Teachers Education Association (Dec. No. 23208-A, WERC, 2/27/87) as analogizing self funding to a change of carrier for collective bargaining purposes. The Commission in Milwaukee Teachers is not asked to address the question posed here; i.e. does the term carrier encompass self funding, or partial self funding. The decision applies the Madison Metro "unique aspects of each carrier-administrator" standard to the self funding option and finds that if the change impacts the benefits/administration the change is a mandatory subject of bargaining. Perhaps the only clue to be found in Milwaukee Teachers on the carrier question presented in this arbitration lies in the Commission's framing of the issue in that case:

The record herein demonstrates that the provision of health care benefits through self insurance under Sec. 120.13(2), Stats., 9/ as opposed to a cost plus or conventional insurance carrier may have the following consequences: (1) a change in the entity that interprets the provisions of the plan; (2) the loss of state mandated benefits; and (3) the risk that incurred claims would not be paid in the event of employer insolvency. 2/

9/ Footnote omitted.

The Commission appears to draw a substantive distinction between self insurance and an insurance carrier. However, this comment represents the framing of the issue to the Commission and can hardly be viewed as dispositive of the issue raised in this proceeding.

The Union cites Great American Stageline, 88 LA 927, in support of its claim. I do not regard Great American Stageline as particularly helpful. The contractual language in Great American Stageline is significantly different. That arbitrator was asked to obligate the employer to pay unpaid medical claims following the collapse of what was described as a "third party administrator."

None of the cited authority sheds meaningful light on the proper construction of the term carrier as used in this contract.

In framing the issue to be decided, the parties have stipulated to three sub-issues. The sub-issues have been set forth to create an analytical framework to be used in addressing the ultimate issue.

With respect to the first sub-issue there is no statutory definition of insurance carrier. There is no bargaining history available which sheds light on what the parties meant by their use of the term carrier. There is no practice of the City having periodically changed the entity which provided health insurance. WPS has provided coverage for as long as anyone can recall.

The parties disagree over whether or not "insurance carrier" is a term of art, but there is no evidence, expert testimony, etc. with respect to industry practice and/or understanding.

NBC is not an insurance carrier. Any doubt in that regard was resolved by Mr. Hergenrader's testimony. The City points to North American Insurance as a traditional, regulated carrier and contends that its retention of the reinsurer satisfies the "carrier" requirement of the Agreement. I disagree. North American's role is a highly limited one. To read the contractual requirement that the City provide "hospital and medical insurance" and "benefits" as applicable solely to a reinsurer whose financial obligations do not materialize until the individual has incurred \$10,000 in medical fees or the group has experienced \$204,000 in medical costs is to emasculate the clause of all practical meaning. The average person's experience with an insurance carrier is in the handling of the day to day claims, which rarely exceed \$10,000.

The question is whether the City is a carrier within the meaning of the contract. At the time this language was negotiated it may well be that self funded insurance was never a part of either party's mindset. Nothing in the record suggests to the contrary. Whether the term should be read narrowly, to reflect the relative absence of self funded plans at the time, or more expansively to reflect the recent evolution of self-funding and third party administrators is a debatable matter.

I believe that insurance carrier is capable of either interpretation. What should control this issue is what the parties intended the term to mean, and I am unable to determine that from this record.

The second issue raised is whether or not the benefits have been duplicated. The City has repeatedly made clear its intention to match all benefits. That theme has pervaded its actions in this matter. Article 14.01 permits a change of carrier provided there "is no reduction in benefits." Notwithstanding the City's good intentions, I believe benefits have been reduced. One aspect of insurance protection that was lost was O.C.I. regulation. I find this loss substantive. According to Ms. Michal's uncontradicted testimony an employe who has a dispute with a regulated insurance provider over an ambiguous benefit is entitled to a presumption of coverage before the O.C.I. No such presumption exists in any alternative forum identified in this proceeding. The existence of the O.C.I. as a forum is itself a benefit absent with an unregulated insuring entity. The Union has

2/ Milwaukee Teachers, supra, p. 110-111.

complained of systematic late payment of claims and of the unavailability of a plan document. The City characterizes these allegations as transitional and de minimis. If the City and NBC were regulated these complaints could be submitted to O.C.I. for investigation and determination. That forum does not now exist, and instead this grievance arbitrator is asked to decide whether or not the City is in compliance with the 30 day claims payment requirement and the obligation to supply each employe with a summary of benefits.

A transitional period is to be expected, and is reasonably contemplated by the contract. The parties agreed to allow for a change of carrier under certain circumstances. If Madison Metro stands for anything relevant to this proceeding it is that there are inherent differences between carriers. If that is true, differences will surface during any transition period. By permitting a change of carrier, the contract must be read as accommodating a transitional period.

For the first 2 or 3 months of NBC's administration of the plan it is clear that NBC was administering an incomplete plan. Legitimate claims were not being paid. In my view the City is responsible for the difficulties arising out of the fact that NBC lacked a complete plan document to administer.

It was the City that made the decision to utilize a third party administrator in lieu of WPS. That decision was made without consultation with WPS or the Unions. It was the uncontradicted testimony of Mr. Dawson that all plan amendments took effect only upon the signature of the City Clerk. It was the testimony of Mr. Grimes, that "City fathers did not keep very good insurance records." This record supports a finding that the City was provided with all plan amendments and simply misplaced those documents.

The City argues that the early failure to pay certain claims was a transitional problem. That may well be true. However, that problem was aggravated by the failure of the City to accurately transmit a plan document to NBC. Employes who brought unpaid claims forward were paid. Employes who did not bring unpaid claims forward were not paid. I believe the transition period was unduly long. As of the second day of hearing, March 8, 1990 no plan document was in the hands of employes. Testimony was that such a document would be forthcoming as soon as it was prepared. However, it was not available six months following implementation of the partially self funded plan. The existence of that document constitutes a benefit of sorts and I believe the City is responsible for the non-existence of the document.

The Union asked Mr. Elliott about perceived differences in the supplemental accident benefit and the second surgical opinion benefit. Mr. Elliott was unable to indicate whether or not those benefits were equivalent between plans. The Union asked Mr. Grimes the following series of questions, and received the following answers:

Q Now, you indicated you weren't familiar with the differences between the plan represented in Employer No. 10 which is the self-funded document and the WPS document.

So if I ask you specifically about specific areas where there are differences between those two you wouldn't be able to respond with any assurance one way or the other?

A What I would respond to you is if there is any differences NBC has assured me that they will correct them.

Q But those differences, some of the differences are with the difference between incurred and paid claims, a difference with respect to the Medicare benefit for retirees, a difference with respect to the hold-harmless of the UCR, usual, customary and reasonable, a difference in the preexisting conditions, those kinds of differences which may or may not appear in here. Wouldn't they be reasonable for the fact that in Employer No. 20 there is \$4,000 in ineligible charges; isn't that possible?

A Without knowing what the ineligible charges are I can't answer.

Q If in fact there are differences between the plans and if in fact NBC operated with the earlier one, isn't it possible that already people have lost payments because they were declared ineligible claims even though WPS-HMP would have covered them had the proper

information been used?

A The only way to find that out is to get an actual claims list from WPS and compare them, see what they paid and what we paid.

Q Isn't it possible?

A Anything is possible, yes. 3/

The inability to identify the benefits schedule is at least partially a product of the fact that the plan document had not been issued. The record is left with a promise that NBC will see to it that benefits are duplicated.

As a regulated entity, WPS is required to include new state mandated benefits, and levels of benefits, as they are mandated. The record makes references to prior mandated benefits having been made a part of the WPS plan.

Neither the City nor NBC are required to include prospectively mandated benefits within the health insurance plan. In its post-hearing brief the City contends that such benefits will be included. However, I do not find that claim supported by the record. The basic contract between the City of Richland Center and WPS contained the following clauses:

CONFORMITY WITH WISCONSIN LAW

If a law becomes effective which requires that a participant have certain coverage and/or rights under this policy, this policy shall be deemed automatically amended to conform with the minimum requirements of that law.

APPLICABLE LAW

This policy is issued for delivery, and was delivered in, the State of Wisconsin. All terms, conditions and limitations of this policy shall be interpreted, governed by and subject to the laws of the State of Wisconsin. (Joint Exhibit 9, at p. 5-6.)

I found no similar clause in the first draft plan document issued by NBC which was to duplicate the benefits contained in the WPS agreement. The absence of such a commitment lends little support to the claim that the City is committed to providing future mandated benefits. The City points to the testimony of Mr. Elliott and Mr. Grimes in support of its claim that it will pay future mandated benefits. What both Elliott and Grimes indicated was that the City would pay state mandated benefits if or because the City would be so mandated.

Those answers beg the question presented since both the City and NBC are unregulated. Neither would be required to provide those prospective benefits.

The NBC plan document does include the following:

PLAN AMENDMENTS

This Document contains all the terms of the Plan and may be amended from time to time by the City. Any changes so made shall be binding on each Covered Participant and on any other Covered Persons referred to in this Plan Document.

These are words of limitation. The City has reserved the right to make changes. Newly mandated benefits are incorporated at the discretion of the City, not as a matter of right.

As of the hearing, no City witness indicated that all benefits had been duplicated. Grimes comment that NBC would correct differences came closest. Assuming, for purposes of this award, that NBC does make all appropriate corrections, I regard the loss of O.C.I. regulation as a reduction in benefits.

Specifically the loss of comprehensive regulation, the appeals process with accompanying expertise and presumptions, the mandates, and the administrative enforcement have been lost. Promises made by the City are not the equivalent of the contractual and statutory obligations which bind WPS.

The third question raised is whether or not the third party administrator duplicated WPS' administration. It is uncontradicted that the method of payment is different. I believe that the differences in method of payment are such that the administration has not been duplicated.

One consequence in the changed method of bill paying has been that

3/ Transcript, 3/8/90, p. 115-117.

employees are sent copies of bills under NBC where they were not under WPS. WPS' system of payments eliminated the need to send such billings. The bills directed employe payment. Upon receipt of the bills some employes believed themselves responsible for payment. The confusion that arose led to problems.

I believe much of that confusion is a part of the transition that should or has dissipated. However, what will not go away is the involvement of the individual in the payment process. Providers expect to be paid, and if they become impatient with NBC, make demand upon the individual. When that occurs, as it did frequently, the individual is drawn into the process. Individual actions varied. Some attempted to contact NBC. It appears that both employes and NBC were dissatisfied with this approach. A number of employes brought their concerns to Jude Elliott, who managed to resolve most, possibly all, claims brought forward. At least one employe simply paid the amounts he was billed. This systematic involvement of employes in the bill paying process constitutes a substantive difference in plan administration.

At least some of the providers were dissatisfied with the change in the way they were paid. The Richland Family Prescription Center appears to have found it particularly difficult working with NBC. As of March 8, 1990, the pharmacy still had unpaid billings submitted in September. 4/ The fact that the provider was inconvenienced is of little consequence in this proceeding until that dissatisfaction impacts upon unit employes. The pharmacy's reaction was to post the entire amount of the prescription against the employe's account, instead of accepting a \$2.00 co-pay, until such time as it had been paid by NBC. A variety of potential problems are created by this situation; not the least of which are a loss of good will and the possibility, which materialized, that the employes are asked to pay overdue accounts.

At least one employe has been required to replicate the WPS site draft method of payment by his provider. Employe Carwin Schwanz testified 5/ that he has regularly used a certain health care center for 7 or 8 years and never paid a bill. With the change from WPS to NBC the provider has asked that Schwanz forward monies each month, in advance to pay for anticipated care. When the provider is paid, it provides Mr. Schwanz with a refund. The consequence that Mr. Schwanz bear responsibility for the "float" is a direct result of the changed method of bill payment. This required outlay of money is substantive.

I have a concern about confidentiality of medical records, notwithstanding the City policy. Two or three City employes now have access to those records. That was not previously the case. A subrogation issue arose involving a substantial medical bill. Elected officials decided to pay the bills and seek recourse from a third party. Whether or not those elected officials had access to the medical bills is unclear from the record. The record does indicate that providers sent bills to employes at their place of work. The issuance of bills is a direct result of the changeover. While individuals can control this by giving home addresses to their providers they cannot be assured that the providers will always use the home address. While the award does not turn on this, it is nonetheless a matter of concern.

AWARD

The grievance is sustained. I believe that the City did violate the collective bargaining agreement when it replaced WPS-HMP with a partially self funded health plan. I make no finding as to whether or not the implemented plan is a carrier within the meaning of the contract. I do find that neither the benefits nor the administration have been duplicated.

REMEDY

The City is directed to return to WPS-HMP as soon as is administratively possible, and restore the plan in effect immediately prior to the conversion to partial self funding. This relief is directed because Section 14.01 names WPS-HMP as the level of insurance and conditions the City's right to change carriers on there being no reduction in benefits. That condition has not been satisfied and the City therefore has no right to make a change.

Dated at Madison, Wisconsin this 25th day of October, 1990.

By _____
William C. Houlihan, Arbitrator

4/ Trans. 3/8/90, p.37.

5/ Trans. 1/17/90, p. 54.