BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
TEAMSTERS, LOCAL 662	Case 46 No. 43937 MA-6120
and	
STANLEY-BOYD AREA SCHOOL DISTRICT	

Appearances:
Mr. Kurt C. Kobelt, Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, appearing on behalf of the Union.
Mr. Roger E. Walsh, Davis & Kuelthau, S.C., Attorneys at Law, appearing on beh

ARBITRATION AWARD

The Union and the Employer named above are parties to a 1986-1988 collective bargaining agreement which provides for final and binding arbitration of certain disputes. The Union made a request, with the concurrence of the Employer, that the Wisconsin Employment Relations Commission appoint an arbitrator to resolve the grievance of Leonard Burzynski. The undersigned was appointed and held a hearing on August 31, 1990, in Stanley, Wisconsin, at which time the parties were given full opportunity to present their evidence and arguments. Post-hearing briefs were exchanged on November 8, 1990.

ISSUE:

The parties have framed the following issue:

> Did the School District violate Article 16 of the 1988-1990 Contract by causing the grievant, Leonard Burzynski, to be covered, together with his wife, Janet Mickelson, under one family health insurance contract through the School District's health insurance program provided through the Wisconsin Education Association Insurance Trust? If so, what is the appropriate remedy under the contract?

The Union would stipulate to the issue as framed above except to note that the issue should state "... through one of the School District's..." (Emphasis added for the change).

CONTRACT PROVISION:

ARTICLE 16 1/

HEALTH AND WELFARE

The Employer agrees to pay for each employee, excluding Cooks and Laundry Help, exclusive of wages, the full cost of the current Health and Welfare program currently available to each employee.

. . .

BACKGROUND:

The Teamsters Union represents support personnel in the District in three separate bargaining units -- aides and clerical employees in one unit, bus drivers in another unit, and maintenance, custodians, cooks and laundry workers in the bargaining unit involved in this grievance. Teachers in the District are represented by WEAC. The District has different insurance carriers for its employees, with teachers being covered by the WEA Insurance Trust or WEAIT, and the bargaining unit in this grievance being covered by WPS.

The Grievant, Leonard Burzynski, has been a custodian in the District for six years. His wife, Janet Mickelson, is a teacher in the District, and is covered by a collective bargaining agreement between WEAC and the District. Thus, the Grievant was provided health insurance through WPS, and his wife had health insurance with WEAIT, until December 1, 1989, when the District placed the Grievant under the family policy of his wife.

On April 25, 1989, District Administrator Charles Poulter sent the following letter to the Grievant and his wife:

1/ The parties stipulated that the successor contract had been concluded through interest arbitration, and that the successor contract contained the same language in Article 16.

> It has come to my attention again that you are each carrying family health insurance. Len is carrying a family policy through WPS with the custodian group and Jan is carrying a family policy through WEA with the teacher group. Both of these policies are paid by the district. I feel this is an unwarranted expense on the part of the district since it is duplicated coverage. I am sure there are other options which will meet your insurance needs and be of considerable less cost to the district. Each family policy costs the district over $3,000.00 per year and I feel that the same coverage could be provided with one family policy. There may be other alternatives available also and I would encourage you to look into them.

The Grievant talked to Poulter about the above letter and told him that he had to check out some things, but that he was not considering changing insurance arrangements. On September 25, 1989, Poulter sent separate but identical letters to the Grievant and his wife, stating the following:

> I am writing to clear up the issue of Health Insurance. I have asked on a couple of occasions in the past that you and your spouse select one insurance carrier. By each of you having family coverage with a different carrier, the district is paying out a lot of money for no reason. Please make a selection before October 6, 1989. You may select family coverage from either WPS or WEA or individual coverage each from a different carrier.
>
> If you do not make a selection by that date beginning December 1, 1989, you will be placed with WEA family coverage.

The Grievant and his wife sent Poulter this response on October 4, 1989:

> We are writing in response to your letter of September 25, 1989 on the issue of Health Insurance. We had Bud Johnson, Len's Union Representative, make you an offer to which you gave a negative response. Therefore, we wish to leave our family coverage as it is at the present time. If you reconsider our offer please contact Mr. Johnson and he will get back to us.

The following day, Poulter sent his response:

> I have received your letter of October 4 in which you express your desire to continue as you have been in reference to your health insurance coverage. I have never been very clear on your "offer" and Bud was not very specific either. You make reference to out of pocket expenses which you could have had if you did not have double coverage. Again I have no idea as to what these potential expenses could have been.
>
> I refer back to my letter of September 25 1989. "If you do not make a selection by that date beginning December 1, 1989 you will be placed with WEA family coverage" The date in the letter was October 6. I feel I have given you ample opportunity to make a decision. You received a letter dated April 25 1989 asking you to look into this and I have talked to Lenny personally on a number of occasions before and after the April letter.
>
> Beginning December 1, 1989 you will be covered by WEA Family coverage.

When the Grievant and his wife were being covered by the two carriers, one of the carriers would pick up expenses left uncovered by the other carrier. Also, there are differences between the carriers in coverage. If the Grievant or his wife had a physical, which was not covered by WEAIT, WPS would pay for it. The Grievant estimated that he incurred about $150.00 in out of pocket expenses after he was placed on the WEAIT plan.

The Grievant filed a grievance on October 6, 1989, alleging a violation of Article 16 of the labor agreement.

THE PARTIES' POSITIONS:

The Union:

The Union asserts that Article 16 requires that the Grievant receive

health care coverage, regardless of coverage provided to his spouse. The labor contract has no "coordination of benefits" clause discussing whether insurance plans apply to spouses of employees who have separate insurance coverage. In the absence of coordination of benefits language, the Arbitrator must give Article 16 its plain meaning. The Grievant is an employee and entitled to have the District pay the full cost of his insurance coverage. The District's argument that the Grievant is disqualified from coverage because his wife happens to be a teacher receiving health insurance coverage under another collective bargaining agreement amounts to rewriting to contract to include a coordination of benefits clause. The Union asks, what would then stop the District from applying this policy to all employees whose spouses have health insurance policies.

The Union states that the Grievant and his wife have suffered a reduction in benefits resulting from the elimination of the Grievant's coverage. The Union contends that the WPS plan is superior to the WEAIT plan in many respects, as shown by a comparison chart prepared by an insurance expert (Union Ex. #1). Just as an employer may not unilaterally reduce benefits by changing carriers, it may not reduce these benefits by eliminating the WPS coverage for the Grievant by forcing him to accept the WEAIT plan, the Union argues. Moreover, the plans are not duplicative.

Anticipating the District's arguments, the Union claims that the Grievant did not waive his right to grieve this dispute by refusing to pick one plan over the other, as his refusal to do so was consistent with his contractual right to be covered by the WPS plan. Nor did the Union have an obligation to raise the issue in contract negotiations during the summer of 1989 based on the April letter to the Grievant.

As a remedy, the Union asks that the District be ordered to place the Grievant under the WPS plan and make him whole for any additional expenses he has incurred. The Union also contends that the District has received a windfall by not paying WPS premiums for the Grievant, and that the District will have saved about $3,000 by the time this award is rendered. Therefore, the Union asks that the Grievant be compensated for the amount of the District's savings in premiums or some other remedy to deprive the District of its ill-gotten gains.

The District:

The District asserts that it is complying with the provisions of Article 16, as Article 16 does not provide that the District pay the full cost of the current WPS program, but merely provides that it pay the full cost of the current health and welfare program currently available to each employee. When the District stopped paying the WPS plan for the Grievant, WEAIT was a current health and welfare program currently available to the Grievant.

The District contends that Article 16 does not require the District to maintain any specific level of benefits or maintain the plan in effect at the execution date of the labor contract. If the "current" plan meant to refer to a plan in effect at a particular current date, the parties would have stated that. And if the Union wants the District to maintain a particular level of benefits, it will have to negotiate that type of provision. Therefore, the District argues that Union Exhibit #1, which compares WPS and WEAIT plans, is irrelevant.

Both the Grievant and his wife are covered by a fine family health insurance program through WEAIT, and if the Grievant felt that the WPS family plan provided better coverage, the District was willing to give the couple that option, as well as the option for both to have separate single plans under the two carriers. However, the Grievant and his wife insisted on keeping two separate family insurance plans, which is pure greed on their parts, the District asserts.

The District submits that since Article 16 does not require that the District must provide the Grievant with a separate WPS family plan, and since the District is providing the Grievant with very adequate health insurance, upholding this grievance would amount to unjust enrichment for the Grievant. Therefore, the District asks that the grievance be dismissed.

DISCUSSION:

If logic and reason were the only matters at stake in this case, the District would clearly win. It makes no sense for two employees working for the same employer to both claim two separate family health insurance policies. These employees are taxpayers and, presumably, are well aware of the problems the public employer has in maintaining high standards for employee benefits while the public is concerned about rising property taxes. And, presumably, these employees have probably heard a widely reported figure that some 37 million Americans are without any health insurance at all, while two employees here want an employer to pay for more coverage than they could possibly need or collect upon. Finally, the Union presumably is aware that benefit costs are part of total package costs, and money spent on unnecessary insurance could be better spread out to the entire bargaining unit as wages. However, this is not

solely a matter of logic, but it a matter of contract language. And arbitrators have been cautioned by the U.S. Supreme Court against dispensing their own brand of industrial justice. 2/

Under Article 16, the Grievant is entitled to a WPS plan. Article 16 states: "The Employer agrees to pay for each employee, excluding Cooks and Laundry Help, exclusive of wages, the full cost of the current Health and Welfare program currently available to each employee." (Emphasis added.) The current health and welfare program available to the Grievant -- and available to each employee in this bargaining unit -- is WPS (or was WPS at the time of the hearing).

While the Union states that the labor contract has no coordination of benefits clause, coordination of benefits is generally a clause in insurance policies intended to prevent an insured who has coverage under another insurance plan from collecting more money from the two plans combined than his actual or allowable expenses. 3/ While the evidence on the record does not clearly show whether either WEAIT or WPS or both contain coordination of benefits policies, the Grievant's testimony would indicate that they did, as he stated that during the time both he and his wife had both policies, a claim was not paid double, but one insurance company would pay the difference of anything that the other company did not pay. For example, the Grievant noted that if a bill was $120 and not all paid by WPS, then WEAIT would pick up the rest. Or if his wife had a physical which was not paid by WEAIT, then WPS would cover it. In this manner, the Grievant and his wife were able to avoid out-of-pocket expenses incurred, until the District placed the Grievant under the WEAIT plan.

The District argues that WEAIT is a program available to the Grievant, and therefore, there is no contract violation. But the WEAIT insurance plan is only available to the Grievant by virtue of his marriage to a teacher in a different bargaining unit. If the Grievant's wife were employed by a different employer or not employed at all, there would be no question but that the Grievant was entitled to WPS. In the absence of contract language providing for the non-duplication of benefits, arbitrators generally recognize dual insurance coverage when there are two separate employers. 4/

In this case, we have a somewhat unique situation where there is only one employer, but two employees in different bargaining units with different insurance plans and coverage. The language of Article 16 calls for the Employer to pay the full cost of the "current Health and Welfare program currently available to each employee." The current health and welfare program available to the Grievant is WPS, because the Grievant is a member of this bargaining unit. That is what these parties bargained for. The language further refers twice to "each employee," and the District cannot, under Article 16, refuse to pay the costs of the current insurance program for one member of the bargaining unit under these circumstances. Therefore, the District violated the collective bargaining when it stopped paying for the Grievant's WPS plan and placed him on a WEAIT plan with his wife.

However, having said that the Grievant is entitled to insurance with WPS does not mean that the Grievant is necessarily entitled to have the District pay for a family plan while the District is paying another family plan for the Grievant's wife. This is not what the parties bargained for, and this is an issue that will be addressed as part of the remedy.

The Union asks that the District be ordered to place the Grievant under the WPS plan and make him whole for any additional expenses he has incurred. This part of the Union's request is reasonable, as the District will be required to reimburse the Grievant for his expenses incurred as a result of the breach of contract. Since I have already determined that the Grievant is entitled to the WPS insurance, the District is to place the Grievant under the WPS plan.

The Union also asks for a remedy that, in addition to making the Grievant whole, would deprive the District of the savings it realized by not paying the premiums for the Grievant, an amount of approximately $3,000. Such a remedy goes beyond compensatory damages and approaches the realm of punitive damages.

Punitive damages are generally inappropriate in arbitration, without a showing of willful repetitive violations of a collective bargaining agreement or where a penalty is necessary to act as a deterrent to recurring violations. A breach of contract requires such relief as necessary to give restitution to the injured party. 5/

2/ United Steelworkers of America v. Enterprise Wheel and Car Corp., 363 U.S. 593 (1960), at 597.

3/ Dorsey Trailers, Inc., 69 LA 334 (Williams, 1977).

4/ See Wayne-Westland Community School District, 64 LA 756, at 759 (Roumell, Jr., 1975).

5/ See Aetna Portland Cement Co., 41 LA 219, 222-23 (Dworkin, 1963).

Any punitive remedy is inappropriate in this case, as there is no evidence on the record that the District deliberately breached the contract. The District was attempting to control its costs, and was apparently acting in good faith. The District gave the Grievant and his wife other options, which they declined.

The critical language of Article 16 at issue here basically deals with who pays the freight for the insurance. The contract is silent regarding the eligibility of employees to single or family policies. As noted previously, if the Grievant's wife were not employed by the District, the Grievant would be entitled to a family plan due to the absence of language regarding the non-duplication of benefits. But if the Grievant's wife were a member of this same bargaining unit, the couple would not be entitled to two family plans, given the silence of the contract regarding the eligibility for single or family plans. Indeed, if the District had placed the Grievant on a single WPS plan instead of taking away his WPS coverage, there would have been no contract violation. A prospective remedy must take into account the contract's silence in this area.

Previously, I noted that in United Steelworkers of America v. Enterprise Wheel and Car Corp., 363 U.S. 593 (1960), that arbitrators have been cautioned not to dispense their own brand of industrial justice. The full quote is noted here for its language regarding the fashioning of a remedy:

> When an arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgment to bear in order to reach a fair solution of a problem. This is especially true when it comes to formulating remedies. There the need is for flexibility in meeting a wide variety of situations. The draftsmen may never have thought of what specific remedy should be awarded to meet a particular contingency. Nevertheless, an arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award.

Certainly, a fair solution to this problem requires some flexibility. The parties have not negotiated over the ramifications of providing dual family insurance up until the time this grievance was filed. The contract is silent as to the manner in which employees are provided with family or single insurance.

This arbitrator, like many others, is not inclined to grant dual family insurance where one employer is involved, not at least without contractual language or other circumstances demanding it, because it is such an economically significant item that it ought not to be inferred into contract language. 6/ It is true that arbitrators have on occasion granted dual family insurance, but those cases are the exception. In Union Welding Co., 49 LA 612 (Blistein, 1967), the arbitrator held that an employer was obligated to provide dual coverage for both husband and wife, due to the language requiring the employer to provide insurance coverage for "employee's families." There is no such specific grant of coverage in the contract at issue here. In Checkers Motors Co., LP, 89-2 CCH ARB Para. 8379 (Lipson, 1988), the arbitrator reluctantly allowed dual insurance based on ambiguous contract language and the past practice.

In another case, Monroe Board of Education, 71-2 ARB CCH Para. 8592 (Roumell, Jr., 1971), the factual setting was somewhat similar to the instant case, with a teacher in one bargaining unit with one insurance policy and her husband in another bargaining unit. The husband was a bus driver and represented by the Teamsters. The employer paid a contribution into the Teamsters Health and Welfare Fund for all employees covered by the Teamsters' contract, and the contribution was the same whether the employee was single or married or had dependents. The employer offered the teacher options similar to the instant case, but when the husband asked if he could drop out of the Teamsters' plan, he was advised that he could not. Thus, the arbitrator found that the teacher's option were limited by the Teamster's contract, which was an intervening event creating an impossibility in requiring the teacher to drop her family plan, as it would deprive her of her right to exercise her options under her contract language.

6/ See Michigan Consolidated Gas Co., 85-2 CCH ARB. Para. 8384 (Daniel, 1985); and Lapeer Metal Products Co., 87-1 CCH ARB. Para. 8058 (Daniel, 1986).

However, more recent cases indicate the trend of arbitrators to deny dual family insurance where one employer is involved. See Wayne-Westland Community School District, 64 LA 756 (Roumell, Jr., 1975); Michigan Consolidated Gas Co., 85-2 CCH ARB Para. 8384 (Daniel, 1985); Lapeer Metal Products Co., 87-1 CCH ARB. Para. 8058 (Daniel, 1986); Independent School District, 68 LA 325 (Conway, 1977) (one family plan, and one spouse cannot have separate single coverage or attribution of a portion of a premium for a single coverage); Gibraltar Board of Education, 87 LA 1067 (McDonald, 1986) (employer could not deny two single policies for married teachers); San Francisco Unified School District, 87 LA 1248 (Concepcion, 1986); City of Cincinnati, Ohio, 76 LA 403 (Goldstein, 1981); Sheboygan Area School District (WERC unpublished Case 79, MA-5004, Buffett, 1988); Board of Education of School District of Elkhart Lake-Glenbeulah (WERC unpublished Case 18, MA-4775, McLaughlin, 1988); Plymouth Joint School District (WERC unpublished Case 33, MA-5092, Mawhinney, 1988); and Milwaukee County (WERC unpublished Case 289, MA-6168, Mawhinney, 1990).

Because the contract is silent on the eligibility of employees to received family or single coverage, and it is a fact on the record that the District is currently paying a family premium for the Grievant's spouse, I find that the appropriate remedy is for the District to offer the Grievant a single plan with WPS at this time, given the fact that the Grievant's wife has other insurance paid by the District. Such a remedy allows both parties the benefit of their bargain. Additionally, the District must reimburse the Grievant for any and all out-of-pocket expenses incurred between December 1, 1989, and the date of this award, due to the breach of the contract.

AWARD

The grievance is sustained.

The District is ordered to reimburse the Grievant, Leonard Burzynski, for any and all expense the Grievant incurred between December 1, 1989, and the date of this award, due to the loss of the WPS insurance plan. The District is further ordered to place the Grievant on the WPS plan and offer him, at a minimum, a single plan coverage with WPS. 7/

Dated at Madison, Wisconsin, this 17th day of December, 1990.

By Karen J. Mawhinney /s/
Karen J. Mawhinney, Arbitrator

7/ All references to WPS in this award are in accordance with the "current Health and Welfare program" (per Article 16). The Arbitrator recognizes that the parties could have changed carriers after the hearing in this case, that the current carrier could be a company other than WPS, and the Grievant would be entitled to the latter company's insurance plan.