BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
LOCAL 2241, RUSK COUNTY MEMORIAL HOSPITAL AND NURSING HOME EMPLOYEES, AFSCME COUNCIL 40, AFL-CIO	Case 54 No. 44013 MA-6149
and	
RUSK COUNTY (MEMORIAL HOSPITAL)	

Appearances:
Ms. Margaret M. McCloskey, Staff Representative, on behalf of the Union.
Weld, Riley, Prenn and Ricci, S.C. by Mr. James M. Ward, on behalf of the County.

ARBITRATION AWARD

The above-entitled parties, herein the Union and the County, are privy to a collective bargaining agreement providing for final and binding arbitration before a Wisconsin Employment Relations Commission staff arbitrator. Pursuant thereto, I heard this matter on July 17, 1990 in Ladysmith, Wisconsin. The hearing was not transcribed and both parties, following unsuccessful efforts to settle this matter, filed briefs which were received by January 30, 1991.

Based upon the entire record, I issue the following Award.

ISSUE:

Since the parties were unable to agree upon the issue, I have framed it as follows:

> Did the County violate Articles 2 and/or 11 of the contract when it denied insurance coverage to grievant Donna Haasl after its two (2) insurance carriers refused to insure her and, if so, what is the appropriate remedy?

DISCUSSION:

The County for several years prior to 1987 offered health insurance to its employes via Blue Cross/Blue Shield and the Greater Marshfield Community Health Plan. The latter plan for about 4-5 years provided for an open enrollment period which permitted non-newly hired employes to obtain insurance without taking a physical examination. This open enrollment practice was not provided for in either the collective bargaining agreement or the County's contract with the Plan. Open enrollment for anyone but new employes stopped in 1987 and any non-newly hired employes since then have been required to take physical exams in order to be covered.

The Union was told of this change in 1987-1988 and the parties subsequently bargained over the identity of the insurance carriers in the present contract. The Union in these negotiations never proposed language seeking to establish the open-enrollment periods provided for before 1987.

Haasl worked as a part-time employe for the County from 1987 to 1989, during which time she never sought to be covered under the County's medical plans which were available to her. Had she done so, she would have been required to pay much of the monthly insurance premium because of her part-time status. She became a full-time employe in 1989 through the contractual posting procedure and she then sought coverage under the County's medical plans --- one was an HMO offered by Greater Marshfield Community Health Plan and the other was provided through WPS.

After both of these carriers stated that they would not underwrite Haasl under the family plan because of her husband's pre-existing medical condition, the County told her that she would not be covered under the family plan. She was told, however, that she could submit another insurance application for only herself under the single plan. She filed the instant grievance on March 7, 1990, claiming that she had been denied the full-time benefits which are available to all full-time employes.

In support thereof, the Union primarily argues that the County is responsible for the carriers' refusals to provide Haasl with family insurance; that if the carriers refuse to cover Haasl, the County itself must do so; that neither the Union leadership nor employes really focused on the open-enrollment issue when they met and discussed insurance with the County in the past; and that while the open-enrollment period was not specifically spelled out in the contract, "it was in place over many years," hence establishing a term and condition of employment which could not be changed without its consent. As a remedy, it requests that the County either find another carrier which will

insure Haasl, that it pay for all of Haasl's medical bills, or that it give her the dollar equivalency to let her find her own insurance.

The County, in turn, maintains that Article 11 does not "guarantee insurance coverage for the grievant without regard to her insurability under the rules of the carriers"; that the Union is estopped from raising this issue given its prior notice and acquiescence to dropping the open enrollment period for non-newly hired employes; that the grievant's prior failure to obtain insurance through prior open enrollment periods precludes her from now grieving over the situation in which she has placed herself; and that it should not be required to provide either insurance or a cash equivalent to her.

The resolution of this issue must start with Article 2 of the 1989-1991 contract, entitled "Definition of Employees", which provides in pertinent part: "Full-time employes shall be eligible for all benefits as specifically provided under this Agreement."

One of those benefits is health insurance, as Article 11 of the contract, entitled "Insurance and Pensions", provides:

> A. Regular Full-Time Employees: The Employer will pay one hundred percent (100%) of the cost of the single premium or $292.01 towards the cost of family premium of the standard Greater Marshfield Community Health Plan (GMCHP), and will provide termination benefits as provided by law, for regular full-time employees, with part-time employee benefits as set forth below; provided, however, that in the event an employee elects to be included in the Wisconsin Physicians Service Health Incentive Program (WPS - HIP) in lieu of the standard (GMCHP) program, the Employer will contribute the same dollar amounts toward WPS-HIP. Employees selecting the WPS - HIP may be required to authorize a payroll deduction if an additional amount applies.

Going on, Section "D" of the same article states in part:

> "The Employer may from time to time change the insurance carrier, provided the benefits remain equal to or become greater than, those presently in existence."

By virtue of this language, there is no question but that Haasl as a general proposition is entitled to receive medical insurance under the contract.

The question then becomes whether she can be deprived of such a benefit when, as here, she declined coverage and did not enroll in prior open periods and when the two insurance carriers refused to insure her because of her husband's pre-existing medical condition.

The County's contracts with the carriers clearly enable the carriers to decline such coverage, as they both provide in substance that all employes must apply within 31 days of when first eligible and that in all other situations the employe must be medically underwritten.

This language is hardly unique, as contracts between employers and insurance carriers routinely contain similar restrictions for employes who do not enroll in prior open periods. The reason for such restrictions is easy to see: without them, healthy employes could deliberately refuse to join a health plan and thereby save the premiums they otherwise would pay, only to join later on when they, or members of their families, face extensive medical services and expenses, thereby substantially raising an insurance carrier's monetary outlay. That, in turn, can translate into higher monthly premiums which employers and/or employes must pay. That is why such restrictions are reasonable and why neither the carriers nor the County here can be faulted for having such procedures in place.

Hence, this case turns upon whether Haasl should be held to such restrictions and thereby be denied a significant contractual benefit.

In this regard, the record shows that the County in September, 1988, informed all of its employes in its newsletter RxTRA, which was disseminated to all of its employes, that:

> HEALTH CARE PROGRAM
>
> HEALTH INSURANCE DUAL OPTION
>
> In the past October has been the month in which employees have been given the opportunity to enroll in

> a health insurance plan if they had not previously done so. However, "open enrollment" with WPS and Greater Marshfield will no longer give that option. For a January 1, 1989 effective date. employees who are currently enrolled in one of our plans can exercise the "dual option" that is, change from one plan to the other.
>
> Any employee who does not carry insurance through the facility can apply for coverage at any time. However, acceptance into the plan is not automatic - you will need to complete a medical history and perhaps have a physical.
>
> Anyone interested in changing health insurance plans for next year, inquire in Personnel. At this point, we do not have our renewal rate information to give you. (Emphasis added.)

Contrary to the Union's claim, I find that this did put the Union and employes, including Haasl, on express notice over the change regarding the unavailability of any more open enrollment periods for then-current employes, as nothing could be clearer than the information contained therein.

Futhermore, the Union was told of this situation as far back as 1988, when the parties had to bargain over the question of insurance and who the carrier or carriers would be. That being so, it is simply unfair to now require the County to provide the benefit sought herein -- i.e. the availability of an open enrollment period for non-newly hired employes -- when the Union itself in the past tacitly agreed could be eliminated under the contractually provided insurance benefits.

Once this change occurred, it therefore was incumbent upon the Union to regain this benefit at the bargaining table since it was a mandatory subject of bargaining. But, it in fact did not do so in the subsequent 1989 negotiations leading up to the present contract.

Hence, the language here must be interpreted and applied within a context which shows that there has not been an open enrollment period for non-newly hired employes since 1987 and that the Union and employes either knew of should have known of that situation since that time. That is why the County is quite correct when it points out that the "Union assented in bargaining to a state of affairs where neither of the two carriers offered open enrollment beyond the first 31 days of regular employment."

It thus follows that Haasl and similar employes are not entitled to receive health insurance benefits if they do not pass medical underwriting, as that is an integral part of the health insurance provided for by the County and accepted by the Union. 1/

It similarly follows that the County is not required to either pay for any of Haasl's medical bills or to provide her with a cash equivalent to the monthly premium so that she can go out and get her own insurance, as that would be a significant benefit which the parties have not agreed to. That being so, it would be inappropriate for an arbitrator to grant such a benefit when the contract itself does not provide for it. That is why the Union's requests on this score must be rejected.

In light of the above, it is my

AWARD

1. That the County did not violate Articles 2 or 11 of the contract when it denied insurance coverage to grievant Donna Haasl after its two (2) insurance carriers refused to insure her.

2. That the grievance is hereby denied.

Dated at Madison, Wisconsin this 26th day of June, 1991.

By Amedeo Greco /s/
Amedeo Greco, Arbitrator

1/ Nothing herein should be construed as criticism of the Union over this matter, since it was only reflecting the views of its members, including Haasl, who themselves failed to address the issue in a timely fashion.