

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

LOCALS 1972, 2769 and 3108,
AFSCME, AFL-CIO

and

CRAWFORD COUNTY

Case 56
No. 45781
MA-6748

Case 57
No. 45782
MA-6749

Case 58
No. 45783
MA-6570

Appearances:

Mr. Bruce F. Ehlke, Attorney at Law, for the Unions.
Mr. Dennis M. White, Attorney at Law, for the County.

ARBITRATION AWARD

Pursuant to the terms of three collective bargaining agreements, the undersigned was designated by the Wisconsin Employment Relations Commission to hear and decide health insurance grievances filed by Locals 1972, 2769 and 3108, AFSCME, AFL-CIO, against Crawford County. Hearing was held on July 24 and 25, 1991, in Prairie du Chien, Wisconsin. The hearing was not transcribed. The parties filed post-hearing argument, the last of which was received on August 23, 1991.

STIPULATED ISSUE:

The parties stipulated to the following statement of the issue to be resolved through this proceeding.

Did the Employer violate the three collective bargaining agreements by unilaterally terminating the WPS health insurance plan in April, 1991, and entering into a contract with HMO-Wisconsin to replace it? If so, what is the appropriate remedy?

CONTRACT PROVISIONS:

Local 1972

Section 22.01. The Employer shall pay one hundred percent (100%) of the premium for a Health Maintenance Plan for all employees; single plan for employees without dependents and family plan for employees with dependents. Any change in coverage shall be by mutual agreement. The Employer shall have the right to change insurance carriers for the plan, provided that coverage is substantially equal to or greater than the previous plan.

Local 2769

29.01 The Employer shall pay 100 percent of the premium for a Health Maintenance Plan for all employees; single plan for employees without dependents and family plan for employees with dependents. Any change in coverage shall be by mutual agreement. The Employer shall have the right to change insurance carriers for the plan, provided that coverage is substantially equal to or greater than the previous plan.

Local 3108

19.01 The Employer agrees to maintain the health maintenance plan currently available and further agrees to pay 100% of the premium for single coverage for employees without dependents and 100% of the premium for family coverage for employees with dependents. Any change in coverage shall be by mutual agreement of the Employer and Union. The Employer shall have the right to change insurance carriers for the plan, provided that coverage is substantially equal or greater than the previous plan.

BACKGROUND:

The County presently provides health insurance benefits to employees represented by the Unions through a health maintenance plan which is administered by WPS and self-funded by the County. In November, 1990, the County learned that the family rates used to fund the WPS plan would increase from \$320.72 per month in 1990 to \$474.58 in 1991, with single funding rates increasing from \$117.47 to \$189.83 per month. Based upon this rate increase, the County then sought bids from other insurance providers who were instructed to match the WPS benefits currently received by employees. Following the bidding process, the County selected HMO-Wisconsin as the new provider of health insurance benefits effective June 1, 1991.

On May 31, 1991, the Unions sought and received a preliminary injunction in

Crawford County Circuit Court which prevented the County from proceeding with the insurance change pending the outcome of this grievance arbitration proceeding.

DISCUSSION:

The parties disagree over how the relevant contract language should be interpreted and what the record reveals when the WPS-HMP plan and the HMO-Wisconsin plan are compared.

As to the question of how the contract language should be interpreted, the Unions on the one hand argue that the County is contractually obligated to maintain the WPS-HMP plan (citing the references to "a Health Maintenance Plan" in two contracts and "the health maintenance plan currently available" in the other) while on the other hand conceding that the County can change plans so long as the County honors the contractual obligation to provide "coverage" which is "substantially equal to or greater than the previous plan."

Reading the contractual language as a whole and giving meaning to all portions thereof, it is apparent that the first sentence of the contract language cannot reasonably be interpreted as requiring continuance of the WPS-HMP plan, as the Unions initially argue. 1/ Such an interpretation would render meaningless the last and most recently added sentence of the contract provisions in question. This last sentence makes it clear that the County can "change insurance carriers" so long as "coverage is substantially equal to or greater than the previous plan."

As to the question of how "substantially equal" should be interpreted, the Unions contend that under a "substantially equal" standard, "coverage" under the new plan cannot be inferior in any respect to that provided previously. In this regard, the Unions cite the contractual requirement that "any change in coverage shall be by mutual agreement" and the parties' use of the word "greater" for its belief that coverage must be "on the continuum of comparability, closer to actually the same as, if not 'greater' than that previously provided." The County counters by arguing that "substantial" should be defined as "being largely but not wholly that which is

1/ To the extent that the Unions are arguing that the County cannot contract with HMO-Wisconsin because HMO-Wisconsin does not provide a "health maintenance plan" (HMP) within the meaning of the bargaining agreements, the record does not support such a conclusion. Reference to an HMP first appeared in the 1981 Sheriff's Department contract (Local 1972) when an HMP option to the standard WPS plan was offered to the employees. An HMP is most readily defined by the "health maintenance" concept which focuses on prevention, detection and treatment of illnesses through care managed by a primary physician. Comparison of the WPS-HMP Group Master Plan and the HMO-Wisconsin Group Master Contract establishes that both entities subscribe to this basic "health maintenance" focus. Thus, I conclude that HMO-Wisconsin is "a health maintenance plan" as that phrase is generally used in the three bargaining agreements.

specified," thus allowing for changes in coverage which are more than minimal.

I find the County's position in this regard to be more persuasive. The more recently bargained third sentence of the contract language clearly allows for some change in coverage and thus modifies the second sentence's requirement barring "any" change. Further, as "substantially" is the word which modifies "equal," "substantially" rather than "greater" is the word whose definition best expresses the parties' intent as to the degree of change which is allowable. Given the foregoing, I conclude that the parties' agreements allow for unilateral change in carriers by the County so long as coverage is "largely" the same as that previously provided.

Lastly, the parties disagree over how the word "coverage" should be defined. The Unions contend that "coverage" should be interpreted broadly to include not only the "benefits" available to employees, but also matters involving employee access to those benefits. Thus, the Unions assert that "coverage" should be understood to include the ability of employees to maintain existing doctor-patient relationships, the convenience of locations where benefits are to be provided, and any administrative burdens placed on employees prior to their receipt of benefits. The Unions also generically argue that the financial structure of any HMO raises quality-of-care issues which must be considered when "coverage" is compared. The County contests the Unions' assertions and cites arbitral authority for the proposition that the concept of "coverage" does not encompass administrative matters such as infringement on physician choice. The County further argues that the Unions' quality-of-care argument must be rejected because the record does not contain a comparison of the quality of WPS versus HMO-Wisconsin physicians.

The Unions are correct when they argue that terms such as "coverage" and "benefits" generally have distinct meanings as expressions of parties' intent regarding insurance matters. However, absent persuasive evidence to the contrary, it is also generally presumed that parties want the words they choose to express their intent to be given their commonly accepted meaning. "Coverage" in an insurance context commonly means the risks and procedures covered by the insurance plan or policy. Here, because there is no evidence which would support a contrary intention or definition, I conclude that "coverage" should be given this commonly accepted meaning. Thus, I reject the Unions' argument that "coverage" has a more expansive meaning than that conveyed by the word "benefits." Like Arbitrator Nielsen in his Beaver Dam Schools award,^{2/} I conclude that "coverage" is more restrictive than "benefits" in its scope.

Having found that the contract language in question only requires that the risks and

2/ In Beaver Dam he held:

. . . Use of the term `coverages' rather than the broader terms `benefits' or `plans' indicates a comparison of the indemnification for specific risks and procedures under the two plans, . . .

procedures covered by HMO-Wisconsin be largely the same as those covered by WPS, I must also conclude that the restriction on physician choice under HMO-Wisconsin does not fall within the meaning of "coverage" as used in the contract language. It is the extent of covered risks and procedures which is determinative, not the identity of the physician providing the service. This is particularly so where the record provides no persuasive objective basis for concluding that the quality of care which will be provided by a physician under HMO-Wisconsin when meeting a risk or performing a procedure will be any less than that provided under WPS. Thus, while the issue of physician choice is clearly a matter of great importance to employees, this "benefit" is outside the scope of "coverage" addressed and protected under the parties' contract language.

Related to the issue of physician choice is the matter of geographic and administrative access to medical care to meet covered risks and provide covered procedures. The Unions persuasively argue that if access becomes geographically or administratively more difficult, employees will incur greater expenses and inconvenience acquiring care. To at least some extent, the County's arguments herein concede that "coverage" encompasses some consideration of these matters. However, as a general matter, it has not been demonstrated that access expenses will necessarily increase under HMO-Wisconsin. As argued by the County, travel time and telephone costs may even decrease for employees who switch from a LaCrosse clinic to a Prairie du Chien provider. Further, as determined earlier herein, some increase in cost and inconvenience can exist without violating the "substantially equal" standard. Thus, based on this record and my interpretation of the contract language, no violation is found as to this Union argument.

Remaining for determination is the broad question of whether the HMO-Wisconsin plan largely covers the same risks and procedures as the WPS plan. In this regard, the Unions contend and the County denies that significant differences exist as to coverage for dependent students, out-of-state medical care, therapy for spina bifida, in-patient psychiatric service, extraction and replacement of natural teeth, emergency care, and fertilization procedures.

As a general matter, it is difficult to compare coverage in a factual context where HMO-Wisconsin's coverage decisions cannot be evaluated based upon actual implementation. Further difficulty is added by the reality that both WPS and HMO-Wisconsin representatives had a direct financial incentive to be as liberal as possible when testifying about the risks and procedures they cover. However, on balance, I am persuaded there is presently insufficient evidence to support a conclusion that HMO-Wisconsin and the County will not honor the requirement that coverage be "substantially equal."

HMO-Wisconsin representatives credibly testified that without further evaluation of medical records, etc., they could not definitively determine whether they would cover the spina bifida therapy and fertilization procedures presently covered by WPS. This uncertainty is understandable, and in my judgment cannot fairly be equated with an absence of coverage.

As to in-patient psychiatric services, I am satisfied that coverage is either the same or

"substantially equal." It is noteworthy that as to this coverage, there is no track record against which WPS's assertions of superiority in this area can be measured and further that WPS's contentions rely on a very strained interpretation of the WPS policy.

Arbitrator