BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
LABOR ASSOCIATION OF WISCONSIN, INC.	Case 3 No. 45699 MA-6711
and	
CITY OF NEKOOSA	

Appearances:
Mr. Dennis A. Pedersen, Business Agent, appearing on behalf of the Union.
Mr. Richard D. Weymouth, City Attorney, appearing on behalf of the City.

ARBITRATION AWARD

The Labor Association of America, Inc., hereinafter referred to as the Union, and the City of Nekoosa, hereinafter referred to as the City, are parties to a collective bargaining agreement which provides for the final and binding arbitration of disputes arising thereunder. The Union made a request, with the concurrence of the City, that the Wisconsin Employment Relations Commission designate a member of its staff to act as an arbitrator to hear and to decide a grievance over the meaning and application of the parties' agreement. The undersigned was so designated. Hearing was held in Nekoosa, Wisconsin on July 22, 1991. The hearing was not transcribed and the parties filed post-hearing briefs which were exchanged on October 18, 1991.

BACKGROUND

The facts underlying this grievance are not in dispute. Consistent with the terms of Article XXV, Section 1 of the parties' collective bargaining agreement, the City commenced, effective January 1, 1990, paying 100% of the single and family plan premiums for health insurance. Effective on November 1, 1990, the premiums for health insurance benefits were increased. The City paid 100% of the health insurance premium increases which took effect on November 1, 1990 through all of calendar year 1990. There has been no increase in insurance premiums since November 1, 1990. Effective with the January 10, 1991 paycheck, the City commenced payroll deductions for health insurance premiums from employes in an amount equal to 50% of the premium increase which occurred on November 1, 1990. Following this deduction, the instant grievance was filed.

ISSUE

The parties stipulated to the following:

> Did the City violate the terms of the parties' 1990-91 collective bargaining agreement when it commenced payroll deductions for health insurance premiums on January 10, 1991?
>
> If so, what is the appropriate remedy?

PERTINENT CONTRACT PROVISIONS

ARTICLE XXV - INSURANCE

Section 1 - Health/Optical/Dental Insurance:
The City shall provide Health/Optical/Dental Insurance

> for those employees electing to be covered by such insurance. The employer reserves the right to, from time to time, change carriers and/or self-fund such insurance, provided that, should the employer exercise this right, the levels of coverage shall remain substantially equal to those in effect at the time of the change or self-funding. Effective January 1, 1990, the City shall pay one-hundred percent (100%) of the monthly premium for both the family and single plans. Effective January 1, 1991, should insurance premiums increase to a level which is above that paid by the City in 1990, any such excess premium shall be shared equally by the City and the employee.

UNION'S POSITION

The Union notes that the City asserted that during negotiations it changed the effective dates of its health insurance contract such that it ran from November 1 through October 31, rather than January 1 through December 31, but assumed that for the purposes of sharing premiums, the former January 1 date continued notwithstanding the language of Article XXV, Section 1. The Union submits that the City's position ignores the clear and unequivocal language of Article XXV and assumes an erroneous premise. The Union contends that the change in effective date was not an issue which occurred during negotiations, rather the City as well as the Union knew about the change in effective date, and with full knowledge of this change, negotiated the language of Article XXV. The Union claims that the City with knowledge of the change in effective date knew what it was ratifying when it considered the language of Article XXV and after reviewing the language, it ratified it without question or comment. It argues that had the City intended something other than that which was expressed in the language, it would surely have not ratified it.

The Union maintains that the language is clear and the parties knew the full impact of it because the parties agreed to a 2% wage increase which, although below the settlement rate, was acceptable to the Union if and only if the City paid the insurance premium increase unless and until an increase occurred on or after January 1, 1991. The Union insists that the language of Article XXV is clear on its face and must be given the meaning that is expressly stated therein. The Union submits that under this language, the City must continue to pay 100% of premiums until there is an increase in premiums which occurs on or after January 1, 1991. It contends that had the parties intended to simply share the increase on January 1, 1991, they would have so stated in

such terms. The Union points out that this is not the case and no premium increase occurred on or after January 1, 1991 and it asks that the grievance be sustained and appropriate relief be granted.

CITY'S POSITION

The City contends that it did not violate the terms of the parties' agreement. The City asserts that whether it is determined that the language is clear or whether it is determined that it is ambiguous, the City followed the contract.

The City insists that it followed the clear terms of Article XXV. It maintains that the anniversary date for health insurance premiums was changed during the course of negotiations from January 1 to November 1. It points out that Article XXV required it to pay 100% of the premiums the first year which began on January 1, 1990 and "effective January 1, 1991," the parties share equally premium increases above the levels "paid in 1990." It notes that the City paid $357.17 a month for 10 months in 1990 and $423.61 a month for two months in 1990 and $423.61 thereafter, thus the level in 1991 was above the level paid in 1990 and effective January 1, 1991, the City was entitled to collect half the increase in premium from the employes. The City argues that the language does not require premiums to increase in 1991, it only requires that half the increased premium be shared after January 1, 1991. The City asserts that Article XXV states that effective the second year, the employes shall equally share any premium increase above the level of premiums paid in 1990 and does not state that premiums must increase after January 1, 1991.

Alternatively, the City contends that the language is ambiguous and must be construed against the Union. The City submits that the disputed language is susceptible to more than one construction as the phrase "effective January 1, 1991" could refer to either the phrase or clause that follows it. The City applies the phrase "effective January 1, 1991" to the clause "any such excess premium shall be shared equally by the City and the employee," and the Union applies the phrase "effective January 1, 1991" to the phrase "should insurance premiums increase to a level which is above that paid by the City in 1990... ." The City claims that the Union's interpretation is ungrammatical and makes no sense, but in any event, the two possible interpretations make the language ambiguous. The City alleges that as the Union drafted this language, it must be construed against the Union's interpretation as the Union knew that the effective date of any premium increase had been changed to November 1 and it had the burden of explaining what it contemplated or of drafting language that made its interpretation clear. The City suggests that the Union could have proposed language which stated "if premiums increase after January 1, 1991, the City and employes will share the increase premiums" and this would have made the Union's position, clear but it did not. The City submits that its interpretation is appropriate and requires employes share the costs in the second year of the contract of any increase over the 1990 premium, whenever it occurred.

DISCUSSION

Article XXV of the parties' collective bargaining agreement provides, in part, as follows:

> Effective January 1, 1991, should insurance premiums increase to a level which is above that paid by the City in 1990, any such excess premium shall be shared equally by the City and the employee.

The Union drafted the above language and maintains that this language is clear and unambiguous and means that any premium increase in health insurance on or after January 1, 1991 will be shared equally by the parties. It is undisputed that the parties knew that the insurance premiums were scheduled to change on November 1, 1990. If it was the parties' intent and agreement to share any increase in premiums which became effective on or after January 1, 1991, they could have done so in direct and unequivocal terms. A review of the language set out above is not clear and unambiguous. It does not expressly speak to any increase in the monthly premium occurring on or after January 1, 1991 but speaks to an increase to a level which is above that paid by the City in 1990. Is this a monthly or yearly level? It would appear that by the use of the yearly designation "1990," the parties were speaking of the level paid by the City in the entire year of 1990. Additionally, it is not clear that the sharing of the premium becomes effective on January 1, 1991 or that the premium increase must occur on or after January 1, 1991. As a general rule, the drafter of the language has a duty to explain language which is ambiguous or to draft language which is clear and unambiguous, and if an ambiguity cannot be removed by rules of construction, then it will be construed against the drafter.

Had the clause read "Effective November 1, 1990, should premiums increase, the increase will be shared equally" or "should premiums increase on or after January 1, 1991, the increase will be shared equally," there would be no dispute. Here, the language speaks in terms of an effective date in 1991 and the level of premiums paid in 1990, when both parties knew an increase was likely on November 1, 1990. The undersigned finds that the language of Article XXV does not support the Union's position or the City's position.

The undersigned finds that the language states that any increase in the level of premiums above that which the City paid in 1990 will be shared equally beginning on January 1, 1991. This means that the City was required to pay 100% of the premiums for 1990. Whenever the premiums increased, if the level was higher in 1991, the City employes would share the difference. For example, using the Full Coverage (Family) plan, the premium was $409.08 on January 1, 1990 and $478.63 on November 1, 1990. 1/ Under the language of Article XXV, the level paid by the City in 1990 was $409.08 x10 months + $478.63 x 2 months = $5048.06. $5048.06 divided by 12 months = $420.67/month. The level beginning January 1, 1991 was $478.63 which was greater than that paid in 1990. Thus, the amount shared beginning January 1, 1991 would be $478.63 - $420.67 = 57.96 divided by 2 = $28.98 each for the City and employe. Thus, the City could deduct amounts by payroll deductions in accordance with the above calculation.

Based on the above and foregoing, the record as a whole and the arguments

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1/ Ex-5.

of the parties, the undersigned issues the following

AWARD

The City did not violate the parties' 1990-91 collective bargaining agreement when it commenced payroll deductions for health insurance premiums on January 10, 1991. However, the City could only deduct 1/2 of the increase in premiums over the level of premiums paid in all of 1990. Thus, any excess of these premiums deducted must be credited to employes.

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

By _____
Lionel L. Crowley, Arbitrator

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