BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
NORTHWEST UNITED EDUCATORS--FLAMBEAU BARGAINING UNIT	Case 30 No. 44911 MA-6455
and	
SCHOOL DISTRICT OF FLAMBEAU--BOARD OF EDUCATION	

Appearances:
Mr. Kenneth J. Berg, Executive Director, Northwest United Educators, 16 West John
Ms. Kathryn J. Prenn, Weld, Riley, Prenn & Ricci, S.C., Attorneys at Law, 715 South Barstow Street, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, appearing on behalf of Flambeau School District--Board of Education.

ARBITRATION AWARD

Northwest United Educators--Flambeau Bargaining Unit (hereinafter Association or NUE) and School District of Flambeau--Board of Education (hereinafter District) were parties to a collective bargaining agreement at all times relevant to this matter. Said agreement provides for arbitration of unresolved grievances by an arbitrator appointed by the Wisconsin Employment Relations Commission (hereinafter Commission) from its staff. On December 13, 1990, the Association filed a request with the Commission to initiate grievance arbitration. The District concurred in said request. On January 15, 1991, the Commission appointed James W. Engmann, a member of its staff, as the impartial arbitrator in this matter. A hearing in this matter was initially scheduled for February 28, 1991, but was postponed upon the request of the District. A hearing in this matter was held on April 16, 1991, in Tony, Wisconsin, at which time the parties were afforded the opportunity to present evidence and to make arguments as they wished. The hearing was not transcribed. The parties filed briefs, the last of which was received on June 7, 1991, and they waived the filing of reply briefs. Full consideration has been given to the evidence and the arguments of the parties in reaching this decision.

STATEMENT OF FACTS

In the 1987-89 agreement between the parties, Article IX, Section A, Subsection 5, stated as follows:

> a.Hospital, surgical and major medical, subject to provisions of the policy in effect.

Although lettered 'a', Subsection 5 did not contain a paragraph lettered 'b'. Said health insurance plan included a $50/$150 deductible for major medical.

In its initial final offer for the 1989-91 agreement, the Association included the following proposal:

> Health, Dental and LTD - District will pay full premium for single and dependent coverage for each of the two years.

The District proposed that the Association contribute 20% of the health

insurance premium and that the Association pay a $100/$300 front-end deductible. The parties had three face-to-face meetings prior to mediation, at which time and after which they did not meet face-to-face.

At some point the District dropped its proposal that the Association contribute 20% of the premium and modified its proposal that the Association pay a $100/$300 front-end deductible. In its preliminary final offer dated March 2, 1990, the District included the following:

> ARTICLE IX - INSURANCE
>
> Effective July 1, 1990, revise the health insurance plan to provide for a $50/$150 front-end deductible.

Sometime after March 2, 1990, NUE Executive Director Kenneth J. Berg (hereinafter Director) and Attorney for the District Kathryn J. Prenn (hereinafter Attorney) negotiated by telephone and reached a tentative agreement, using the District's offer of March 2, 1990, as a basis. At no time did either party say that the $50/$150 front-end deductible was in lieu of or in addition to the major medical deductible.

In a letter dated March 12, 1990, the Director wrote to the District's Superintendent as follows:

> Please be advised that NUE has ratified the above-cited contract.
>
> Your (Attorney) and I reached tentative agreement using the district's preliminary final offer with the following addition and clarifications.
>
> 1. The words "or parents" will be added following or spouse in Article VII, Section B(1).
>
> 2. Insurance premiums are paid in full stated in dollar amounts for 1989-90 and 1990-91.
>
> 3. All salary, extra-curricular and insurance amounts are retroactive to July 1, 1989.

The District also ratified the tentative agreement.

Sometime thereafter, the Administrator for the District's health plan began applying a $100/$300 front-end deductible on the base benefits in addition to the $50/$150 deductible on the major medical. The Association filed a grievance, alleging a violation of the contract both in terms of the amount of the deductible ($100/$300 vs. $50/$150) and in the number of deductibles (base plan and major medical deductible vs. overall deductible). The District's Superintendent corrected the Administrator's error of applying a $100/$300 deductible and made whole those individual's who were assessed in excess of the $50/$150 for the front-end deductible. That matter was therefore resolved and is not an issue in this case.

The matter in dispute before this Arbitrator is the number of deductibles. The Association alleges it agreed to expand the major medical deductible of $50/$150 to include all claims. The District alleges it agreed to add a $50/$150 deductible to the base plan in addition to the major medical deductible. The parties processed the grievance through the procedure and it is properly before the Arbitrator at this time.

PERTINENT CONTRACT LANGUAGE

IX. Insurance

A.Group Health Insurance

. . .

5.Health Insurance Plan:

a.Hospital, surgical and major medical, subject to provisions of the policy in effect

b.Effective July 1, 1990, the health insurance plan will provide for a $50/$150 front-end deductible.

ISSUE

At hearing the parties were unable to stipulate to a formulation of the issue. The Association frames the issue as follows:

Is the District in violation of Article 9, Section 5, when the Administrator of their self-insured health plan applied two separate front end deductibles and, if so, what should the remedy be?

The District frames the issue as follows:

> Has the District violated the collective bargaining agreement by not removing the $50/$150 major illness expenses deductible from the District's health insurance policy effective July 1, 1990? If so, what is the appropriate remedy?

The parties did stipulate to the framing of the issue by the Arbitrator. The Arbitrator frames the issue as follows:

> Did the District violate the collective bargaining agreement by applying a front-end deductible and a major medical deductible? If so, what is the appropriate remedy?

POSITION OF THE PARTIES

The Association argues that the District violated the agreement when it allowed the Administrator of the self-insured plan to apply two separate $50/$150 front-end deductibles to several teachers covered by the plan; that through negotiations for the 1989-91 contract, two basic changes were agreed to regarding the provisions of health insurance coverage; that one change was the amount of the premium to be paid by the District which increased and continued to be fully paid by the District; that the second change was that the front-end deductible would be applied to all medical expenses; that the Association never agreed to two separate $50/$150 front-end deductibles; that if the District had wanted two separate deductibles, it should have requested two and stipulated to two separate deductibles; that the language to which the parties agreed to is very clear; that the language states, "Effective July 1, 1990, revise the health insurance plan to provide for a $50/$150 front end deductible."; that the parties agreed to "a $50/$150 front-end deductible" in the contract; and that "a" is singular and can mean only one. The Association requests that all persons who had double deductibles be made whole.

The District argues that the clear and unambiguous contract language supports the District's position and precludes reference to parol evidence; that the Association focuses only on subsection (b) of Article IX(A)5 of the agreement, ignoring the effect of subsection (a); that the health insurance plan in effect during the 1987-89 agreement provided for a $50/$150 deductible on major illness expenses; that the only change in the agreement was the addition of subsection (b); that the effect of subsection (b) was to add a $50/$150 front end deductible; that since subsection (a) remained in force, all other aspects of the health insurance plan remained unchanged, including the $50/$150 major medical deductible; that subsection (b) says nothing about deleting the existing major medical deductible; and that parol evidence supports the District's interpretation of the contract.

DISCUSSION

This is a tough case. The parties are sincere in their belief that the agreement was as they believe it was. The following appears to be what happened. The District's preliminary final offer proposed to revise the health insurance plan by providing for a $50/$150 front-end deductible. From the District's point of view, this was a new deductible, a deductible in addition to the $50/$150 deductible for major medical. The Association saw the $50/$150 deductible proposed by the District, the same deductible amount as provided for major medical, and assumed that the proposal meant changing the deductible from one of major medical only to an overall deductible. To the Association, this was not a new deductible; it was an old deductible with expanded coverage. Thus, the District thought the quid pro quo for continuing full payment of health insurance was a new up-front deductible while the Association thought the quid pro quo was the broadening of the scope of the current deductible.

Both sides argue that the contract language is clear on its face, and that said language supports its position. Obviously the language is not as clear as the parties allege or they would not have reached different results regarding that language, nor would this Arbitrator be put in the position of determining what this language, allegedly clear on its face, means. While the contract language is not nearly as clear as both parties would like the Arbitrator to assume, a closer examination does give a clear meaning to it.

In its final offer, the District clearly states as follows:

> Except as provided in this Final Offer, the terms and conditions of the 1987-89 Agreement shall become the terms and conditions of the 1989-91 Agreement."

If nothing else had taken place, the language for the health insurance plan in 1989-91 agreement would have remained the same as it was in the 1987-89 agreement. Said agreement provided as follows:

> a.Hospital, surgical and major medical, subject to provisions of the policy in effect."

It is not disputed that the policy in effect for the 1987-89 agreement included a $50/$150 deductible for major medical. Thus, if nothing else had taken place, the major medical would have been subject to a $50/$150 deductible.

But something else did take place. As part of its preliminary final offer for a 1989-91 agreement dated March 2, 1990, the District made the following proposal:

> ARTICLE IX - INSURANCE
>
> Effective July 1, 1990, revise the health insurance plan to provide for a $50/$150 front-end deductible.

The parties reached tentative agreement on this and other issues, using the District's final offer as a basis of discussion. The contract language to implement this proposal reads as follows:

> b.Effective July 1, 1990, the health insurance plan will provide for a $50/$150 front-end deductible.

The Association agreed to this language.

Nothing in the language of subsection (b) states that this deductible is

in lieu of or modifies the deductible in subsection (a) above. It does not say that the health insurance plan will be changed to a $50/$150 front-end deductible. The language does not say that the $50/$150 major medical deductible is deleted and a $50/$150 front-end deductible is put in its place. It does not say that the $50/$150 major medical deductible is broadened to include all medical expenses.

The language is specific. It says that the health insurance plan will "provide for a $50/$150 front-end deductible". The Association argues that the use of the article "a" indicates singular and can mean only one front-end deductible. In a sense, the Association is correct for there is only one "$50/$150 front-end deductible". The other deductible, contained in subsection (a), is a major medical deductible, a separate and distinct deductible from the front-end deductible specified in subsection (a).

The District stated that except as provided in its final offer, "the terms and conditions of the 1987-89 Agreement shall become the terms and conditions of the 1989-91 Agreement." Subsection (a) provided for hospital, surgical and "major medical, subject to provisions of the policy in effect." Said policy in effect provided for a $50/$150 major medical deductible. The District proposed to revise the health insurance plan "to provide for a $50/$150 front-end deductible." The Association agreed that, effective July 1, 1990, "the health insurance plan will provided for a $50/$150 front-end deductible." As the language does not specify modifying or deleting the major medical deductible in any fashion, the language must be read as providing a front-end deductible in addition to the major medical deductible.

For these reasons, based upon the foregoing facts and discussion, the Arbitrator issued the following

AWARD

1. The District did not violate the collective bargaining agreement by applying a front-end deductible and a major medical deductible.

2. The grievance is denied and dismissed.

Dated at Madison, Wisconsin, this 18th day of December, 1991.

By _____ James W. Engmann, Arbitrator