BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
CITY OF BLACK RIVER FALLS	Case 19 No. 47497 MA-7287
and	
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 953	

Appearances:

Weld, Riley, Prenn & Ricci, S.C., by Mr. James M. Ward, on behalf of the City.

Mr. James D. Greenwood, International Representative, International Brotherhood of Electrical Workers, AFL-CIO, on behalf of the Union.

ARBITRATION AWARD

The above-captioned parties, hereinafter the City and the Union respectively, are signatories to a collective bargaining agreement providing for final and binding arbitration. Pursuant to said agreement, the parties requested the Wisconsin Employment Relations Commission to appoint a member of its staff to hear the instant dispute. The undersigned was designated by the Commission to hear the matter. Hearing was held on November 5, 1992, in Black River Falls, Wisconsin. No stenographic transcript was made. The parties concluded their briefing schedule on November 18, 1992. Based upon the record herein and the arguments of the parties, the undersigned issues the following Award.

ISSUE:

The parties at hearing stipulated to the following:

> Did the City's change in health insurance carriers in 1989/1990 constitute a violation of the collective bargaining agreement? If so, what is the appropriate remedy?

The parties further stipulated that the change in carriers was a midterm change in 1989 for certain employes.

RELEVANT CONTRACT PROVISIONS:

1991-1992 Agreement:

ARTICLE XVI

INSURANCE

> **Sec. 1. Health Insurance.** The Utility agrees to pay 100% of the total premiums on health insurance. The present medical and hospitalization benefits will not be reduced, nor will the present deductible level of $100.00 per person with a maximum of $300.00 per family, per year be increased, but the Utility may from time to time change the insurance carrier if it elects to do so. Medical insurance shall be provided to all employees when they are eligible to participate as determined by the insurance carrier. No employee shall make any claim against the Utility for additional

compensation in lieu of or in addition to his insurance premiums paid because he does not qualify for the family plan.

1990 Agreement:

ARTICLE XVI

INSURANCE

Sec. 1. Health Insurance. The Utility agrees to pay 100% of the total premiums on health insurance. The present medical and hospitalization benefits will not be reduced, nor will the present deductible level of $100.00 per person with a maximum of $300.00 per family, per year be increased, but the Utility may from time to time change the insurance carrier if it elects to do so. Medical insurance shall be provided to all employees when they are eligible to participate as determined by the insurance carrier. No employee shall make any claim against the Utility for additional compensation in lieu of or in addition to his insurance premiums paid because he does not qualify for the family plan.

1988-89 Agreement:

ARTICLE XVI

INSURANCE

Sec. 1. Health Insurance. The Utility agrees to pay 100% of the total premiums on health insurance. The present medical benefits provide a choice of coverage under the Greater Marshfield Plan or the Q-Care Plan. An employee may choose either plan and the choice will be binding for the duration of this contract. The present medical and hospitalization benefits will not be reduced, but the Utility may from time to time change the insurance carrier if it elects to do so. Medical insurance shall be provided to all employees when they are eligible to participate as determined by the insurance carrier. No employee shall make any claim against the Utility for additional compensation in lieu of or in addition to his insurance premiums paid because he does not qualify for the family plan.

BACKGROUND:

Prior to January 1, 1989, the City offered two insurance plans to its employes, Q-Care (provided by Wisconsin Physicians Service Insurance Corporation) and the Greater Marshfield Plan. The City determined to change carriers midterm in the collective bargaining agreement. It switched to MNIC Insurance Company. For the remainder of the contract term, the City picked up all additional costs resulting from the switch in carriers because it believed that failure to do so would constitute a breach of contract. The City did, however, bring health insurance to the negotiations over the 1990 collective bargaining agreement. By letter dated December 21, 1989, the parties agreed to the following amendments to the 1988-1989 contract.

1. Article IX. Section 1.

Reflect to show one year agreement.

2. Article XI. Section 1(A).
Reflect to show increase from 150 days to 175 days maximum accumulation.

3. Article XVI. Section 1.
Delete "The present medical benefits provide a choice of coverage under the Greater Marshfield Plan or the Q-Care Plan. An employee may choose either plan and the choice will be binding for the duration of this contract."

Add the following language: "The present medical and hospitalization benefits will not be reduced, nor will the present deductible level of $100 per person with a maximum of $300 per family per year to be increased, but the Utility may from time to time....."

4. Schedule "A".
Wage increase of 5.25% to all classifications.

The Union, in a letter to the City dated July 13, 1990, regarding its proposals for a successor agreement listed possible change of carriers because of all the problems with the present carrier. In negotiations, the City maintained the position that no change in carriers would occur unless the Union took the initiative in finding a better insurance plan. The Union was unable to or chose not to seek another carrier. The 1991-1992 contract was settled without any change in insurance plans or carriers.

The instant dispute over usual and customary charges did not come to light until after the signing of the 1991-1992 collective bargaining agreement. Employes were, however, aware that there were some deviations in the plan from the Greater Marshfield Plan, namely the chiropractic coverage.

It is undisputed that the Greater Marshfield did not limit its coverage to usual and customary rates. Q-Care does provide for payment of allowable expenses as defined. The definition of "allowable expense" is a "usual, customary and reasonable item of expense. . ." MNIC does limit its payments to usual and customary charges for services provided. Usual and customary cutback, in insurance parlance, means that the insurance companies have a set schedule of charges for services provided by the doctors, hospitals and clinics in the area. Their payments are premised upon what the majority of facilities charge for services rendered. When there is a cutback on a medical bill, this usually means the doctor, hospital or clinic involved is charging more for that treatment or surgery than other doctors in the area are charging for the same treatment. The insurance company will only pay in accordance with the usual and customary guidelines. The usual, customary, and reasonable allowance is not designed to allow 100% payment of all fees. The standards used are based upon surgical profiles.

POSITION OF THE PARTIES:

Union

The Union stresses that it has always been its contention that all benefits provided under the MNIC insurances agreement must be the same as those provided by the previous carriers when the insurance was changed in 1990. The only exception was the maximum of a $300 deductible which the City agreed to

pay when the insurance switch was made from Greater Marshfield to MNIC. It claims that it was assured in the insurance bid that after the standard deductible, the MNIC Plan would pay one hundred per cent. According to the Union, it made its positions that benefits remain the same clear to the City during the collective bargaining negotiations in 1989.

The Union maintains that it is virtually undisputed that the present medical and hospitalization benefits were reduced because the former carriers and policies did not have usual and customary charges or policy provisions. Such a provision when applied to affected employes results in a reduction of benefits.

The Union relies primarily upon language in Article XVI, Section 1 of the Master contract, which provides that "present medical and hospitalization benefits will not be reduced..." It is the Union's position that this language along with a December 29, 1988 memorandum from the Utility, obligates the City to maintain levels of benefits at the same level as those offered in the Greater Marshfield and Q Care Plans.

In response to the City's arguments that the City had worked with the insurance company to inform employes of the difference in coverage and that various attempts have been made to remedy problems incurred, the Union does not dispute these contentions. However, it asserts that the agreement has been violated because usual, customary, and reasonable provisions were not part of the care offered by the Greater Marshfield or the "Q" Care plans.

City

The City, in response to Union arguments, makes two points. It asserts that the parties were aware as early as 1988 that the MNIC Plan was not equal to one of the two plans currently in effect in all respects, pointing to the memorandum on the chiropractic coverage. The second argument, not as obvious but more telling, is that consistent with the literal terms of the memorandum referred to above, it is uncontroverted that the City discontinued paying the chiropractic cost differential as soon as the new contract term began in 1990, without incurring a grievance from the Union.

Moreover, the City maintains that the assumption at the beginning of 1990 of certain medical costs by bargaining unit employes also belies the Union's version of the bargaining history in 1989, culminating in the 1990 collective bargaining agreement. Contrary to the Union's contentions that the deletion of any reference to specific insurance carriers is insignificant because the City had simultaneously agreed not to reduce "present medical and hospitalization benefits", the City claims that the concept of "present medical and hospitalization benefits" relates to the MNIC Plan rather than any plan previously in effect.

In support of this position that the MNIC Plan represents the status quo rather than the previous plans, the City points to its discontinuation of the chiropractic care in 1990 without any grievance having been filed. It also cites the next round of bargaining as evidence that the Union was clearly dissatisfied with the MNIC Plan from the outset, proposing to change carriers, but ultimately settled with retaining MNIC as the insurance carrier. According to the City, the bargaining on health insurance focused conspicuously on cost with no mention of any assurance by the City that the far less expensive MNIC Plan was fully comparable to the previous plans. The Union, by acquiescing in the continuation of MNIC as the insurance carrier, knew or should have known that its plan was not as advantageous to the employes as the previous plans; but it constructively waived any claim arising out of a differential in coverage vis-a-vis those previous plans.

Finally, the City suggests that the usual, customary, and reasonable differential may not be characterized as a reduction in benefits at all for purposes of Article XVI, Section 1. Even under the Q-Care Plan employes were not invariably shielded from responsibility for a UCR differential. As with the current UCR differential, employes could avoid the problem by merely choosing an alternate provider. For all of these reasons, the City requests that the grievance be dismissed.

DISCUSSION:

This dispute, in the view of the undersigned, involves two key issues: whether the imposition of a usual, customary, and reasonable cutback under the MNIC Plan constitutes a reduction in medical and hospitalization benefits in the instant circumstance and whether the current language forbidding a reduction in benefits requires that benefit levels remain keyed to the 1989 Greater Marshfield and Q Care Plans.

The undersigned agrees with the City's contention that there is some question as to whether the MNIC Plan's imposition and continuous application of its usual, customary, and reasonable differential/cut-back can be properly characterized as a reduction in benefits for purposes of Article XVI, Section 1. In light of similar language contained in Joint Exhibit 4, a portion of the Q Care carrier agreement, specifically Section B. Definitions, Subsection 3, relating to Allowable Expenses being defined as a "usual,

customary and reasonable item of expense; at least part of which must be covered under one or more of the plans covering the person for whom claim is made," Q-Care at least inferentially contained a UCR proviso. She is, however, willing to find that imposition of the UCR differential by MNIC is a reduction in benefits, under the circumstances, because there is no evidence that Q Care ever imposed the differential or made such a determination in the payment of claims. It should be noted that Q Care may have made such an adjustment with the care provider but neither the employer, employes, or the Union had knowledge of any such cutback being implemented. Moreover, as the Union notes, under the MNIC plan, the cost to the employe as a result of MNIC's utilization of the UCR cutback has been substantial.

The more difficult question to address is whether or not such a reduction is permitted under the applicable contract language. It is undisputed that the 1989 contract language specifically named the insurance carrier and pegged the benefit levels to that carrier. It is also clear that when the City made the midterm change, it picked up any expenses for differences in coverage for the duration of that contract term.

The express language of Article XVI, Section 1 of the current contract favors the City's interpretation. It provides that "the present medical and hospitalization benefits will not be reduced, nor will the present deductible level of $ 100.00 per person with a maximum of $ 300.00 per family, per year be increased, but the Utility may from time to time change the insurance carrier if it elects to do so." (emphasis added) The carrier is not named and there is no language in effect which keys the benefit level to previous carriers. By including the word "present", with nothing more, there is a strong inference that the parties sought to insure that benefit levels not be reduced from those provided by the current carrier, not a previous carrier.

Bargaining history as set forth above also supports the City's position. In 1990, at the time the present language was negotiated, MNIC was the carrier, not Q Care and Greater Marshfield. It was incumbent upon the Union to negotiate language pegging benefit levels to the previous carrier at that time to insure that benefit levels were not reduced. This is especially the case where the Union had knowledge that at least in the area of chiropractic coverage the MNIC policy was not equal. Yet it failed to grieve the City's action when the City discontinued paying to maintain the equivalent coverage at the end of the 1989 agreement.

Verbal statements by the Union that it would agree to the new carrier only if the benefits were maintained at the same levels were not sufficient under the circumstances. Accordingly, it is my decision and

AWARD

That the City's change in health insurance carriers in 1989/1990 did not constitute a violation of the collective bargaining agreement.

That the grievance is denied and dismissed in its entirely.

Dated at Madison, Wisconsin this 5th day of January, 1993.

By Mary Jo Schiavoni /s/
Mary Jo Schiavoni, Arbitrator