BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL #150, AFL-CIO, CLC	Case 3 No. 49979 A-5143
and	
CONCOURSE HOTEL AND GOVERNOR'S CLUB	

Appearances:

Mr. Todd Anderson, Business Agent, Service Employees International Union, Local #150, AFL-CIO, CLC, appearing on behalf of the Union.

Mr. Ed Wood, Personnel Director, Concourse Hotel and Governor's Club, appearing on behalf of the Employer.

ARBITRATION AWARD

Service Employees International Union, Local #150, AFL-CIO, CLC, hereinafter referred to as the Union, and the Concourse Hotel and Governor's Club, hereinafter referred to as the Employer, are parties to a collective bargaining agreement which provides for the final and binding arbitration of disputes arising thereunder. The parties selected the undersigned as arbitrator to hear and decide a grievance over the meaning and application of the terms of the agreement. Hearing was held in Madison, Wisconsin, on January 24, 1994. The hearing was not transcribed and the parties made oral arguments after the presentation of the case.

BACKGROUND:

The parties stipulated to the following facts:

> Prior to August 1, 1993, bargaining unit employees were able to participate in their choice of two HMO style health insurance coverages, U - Care and Group Health Cooperative.
>
> On July 15, 1993, Ed Wood, Concourse Hotel Personnel Director notified Todd Anderson, Business Agent for SEIU Local #150 that effective August 1, 1993, the Hotel would discontinue offering U - Care HMO Heallth (sic) Insurance coverage to the bargaining unit and begin offering a PPO provided by American Medical Securities. The employers (sic) notification to the Union of this change stated that the change was pursuant to Article XXII, Section 22.2 of the collective bargaining agreement.
> On July 28, 1993, the Union delivered notice to the Employer that the change in insurance plans offered was a violation of the collective bargaining agreement Article XXII, Section 22.2 based on the fact that the coverage and benefits provided by the new carrier were not substantially similar to the coverage and benefits previously offered.

A third step grievance meeting was held on August 27, 1993, at which time the Union maintained that the change in carriers violated the negotiated agreement and that the Union's remedy sought was to discontinue offering the PPO and reinstate the U - Care HMO to bargaining unit employees. On August 31, 1993 the Hotel CEO and General Manager, Calier Worrell, notified the Union that the grievance on this matter was denied.

On September 9, 1993, the Union appealed the grievance to binding arbitration.

ISSUE:

The Union stated the issue as follows:

> Was the employers (sic) implementation of a new health insurance carrier, American Medical Security, a violation of the negotiated agreement? If so the employer will discontinue offering this plan and reintroduce the U - Care plan with premiums consistent with the rates that would have been in effect should the Employer never have stopped offering this plan. If violation of the negotiated agreement is found the employer will have forty-five calendar days to come into compliance with the arbitrator's decision.

The Employer stated the issue as follows:

> Did the Employer violate Sec. 22.2 of the parties' collective bargaining agreement when, upon notification to the Union, it retained the coverage and benefit levels of the GHC and U - Care plans but elected to drop the U - Care carrier and offered an additional carrier which provided a PPO plan?

The undersigned frames the issue as follows:

> Did the Employer violate Section 22.2 of the parties' collective bargaining agreement when, upon notification to the Union, it eliminated the U-Care insurance plan and instead provided a PPO insurance plan by American Medical Securities? If so, what is the appropriate remedy?

PERTINENT CONTRACTUAL PROVISION:

ARTICLE XXII - HEALTH, LIFE, AND DISABILITY INSURANCE

22.1 Health Plans. All full-time employees are eligible to choose between two health insurance plans. Insurance becomes effective the first day of the month after the employee's 90 day

probation period is completed. The two plans are as follows:

GROUP HEALTH COOPERATIVE: The employee's monthly premium co-payment shall be equivalent to thirty-two percent (32%) of the total premium for the single or family plan. This premium co-payment will be deducted from the employee's paycheck in equal installments.

U-CARE: The employee's monthly premium co-payment shall be equivalent to thirty-four percent (34%) of the total premium for the single or family plan. This premium co-payment will be deducted from the employee's paycheck in equal installments.

22.2 Change in Carriers. The Employer may, upon notification to the Union, change carriers so long as the coverage and benefits are substantially similar to those currently in effect.

UNION'S POSITION:

The Union contends that the parties' negotiated agreement allows the Employer to change the insurance provided that the coverage and benefits are substantially similar to those currently in effect. It submits that the dictionary definition of the term "substantially similar" means that with regard to the essential elements they are nearly but not exactly the same. It argues that the intent of Section 22.2 is clear that the coverage and benefits need not be exactly the same when carriers are changed but they must be nearly the same. Here, the Union insists an examination of the coverage and benefits shows that a radical change occurred with a change in carrier. It claims that the PPO provides for cost shifting with co-pays at the point of service. It points out that the PPO requires co-payments, whereas U-Care required none. It notes that the out-of-pocket costs under the PPO could be $2,000 per year for single and $4,000 per year for family. The Union asserts that the employes it represents are at the low end of the economic scale and with the PPO co-pays they may not seek medical attention. The Union maintains that the new plan is cost restrictive and not substantially similar to the U-Care plan. It submits that if the Employer wanted to change to a PPO, the Employer should have asked to negotiate it. The Union takes the position that the contract language allows the Employer to change the carrier only where the coverage and benefits of that carrier's plan are substantially similar to the replaced carrier's plan. It submits that the PPO is not substantially similar to U-Care and the Employer violated Section 22.2 of the agreement. As a remedy, the Union seeks the discontinuance of the PPO and that the Employer offer U-Care with premiums consistent with what would have been in effect had there been no change in carrier and that compliance be accomplished within 45 days of the award.

EMPLOYER'S POSITION:

The Employer contends that Section 22.2 states that it may change carriers if the coverage and benefits are substantially similar. It points out that GHC and U-Care are substantially similar and that the GHC plan has some benefits that are better than the U-Care plan. It submits that when it changed the U-Care plan, the level of benefits and covered were maintained because

those on U-Care could get the same or better benefits from GHC. The Employer does not refute the fact that the AMS PPO plan is not similar to GHC or U-Care. It points out that an HMO and a PPO are different types of policies. It claims that the PPO plan was added partly so people could have a wider choice of doctors and have some coverage for routine care outside Madison. It notes that an HMO requires that covered individuals must go to the HMO's physicians and under the PPO, there is a choice of PPO providers and some coverage by non-PPO providers. It argues that this choice allows divorced employes to keep insurance for children outside the HMO coverage area and allows them to get routine care in another state. It submits that this is a benefit.

The Employer argues that prior to the change, employes had essentially identical HMO's and after the change, employes had the choice of an HMO and a PPO with a greater benefit package with a voluntary add-on dental plan, additional life insurance, long-term disability and a Section 125 plan. The Employer insists that Section 22.2 was put in the contract to deal with the complicated area of health insurance and to keep costs down. It claims that if it could only change to a carrier similar to GHC or U-Care, then Section 22.2 becomes null and void. It alleges that the contract must be interpreted by looking at what employes had and what came with the change in carrier. It insists that after the change, the employes have the same level of benefits with the HMO and employes could maintain the choice by selecting GHC. On the other hand, it submits that the employe could choose the PPO plan. It concludes that the coverage and benefits did not decrease; rather the employe was given another choice if it better met his/her needs. It maintains that no one was hurt or inconvenienced as the employes could still choose an HMO with substantially similar benefits and at less cost. It takes the position that it tried to improve the package and it met the requirements of Section 22.2. It asks that the grievance be denied.

DISCUSSION:

Section 22.2 of the parties' agreement provides that the Employer may, upon notification to the Union, change carriers so long as the coverage and benefits are substantially similar to those currently in effect. "Substantially similar" means that the plans need not be identical or the same but must be alike. There is no dispute that the AMS PPO is not substantially similar to the U-Care plan. A review of the two plans indicates that there are substantial co-payments under the PPO plan and, except for drugs and medical equipment, there are no co-payments under the U-Care plan. 1/ The Employer has argued that the coverage and benefits after the change to the AMS PPO are substantially similar to the coverage and benefits that were in effect when U-Care was in effect. It bases this on the similarity of the GHC and U-Care plans such that by eliminating U-Care, employes can go to GHC and the coverage and benefits are similar, if not better, so the adoption of the PPO gives employes further options and the overall plan is even more advantageous to employes.

The Employer's argument is ingenious but not persuasive. The Employer has interpreted Section 22.2 as encompassing a single plan because GHC and U-Care are similar. Section 22.2 must be read in conjunction with Section 22.1 which states that employes can choose between two health insurance plans and the two plans are listed as GHC and U-Care. Section 22.2 allows a change in carrier so long as the coverage and benefits are like those currently in effect. (Emphasis added). The PPO's coverage and benefits are not substantially similar to "those currently in effect." What the Employer has done is substitute GHC for U-Care and then provide the PPO. That leaves

1/ Compare Ex. 5A with Ex. 5B.

employes with only one choice of a health insurance plan that was substantially similar to the two previously in effect. The change to the PPO does not allow employes to choose between two plans where the coverage and benefits are substantially similar to the GHC and U-Care plans. In other words, Section 22.2 allows a change in carrier or carriers so long as the resulting plan(s) are substantially similar to the plan that has been replaced. The change to the AMS PPO fails to meet this requirement and the Employer violated Section 22.2 when it eliminated the U-Care plan and provided the AMS PPO in its place. Contrary to the Employer's argument, this interpretation does not render Section 22.2 null and void. Section 22.2 allows the Employer to change to a carrier that provides benefits similar to U-Care or GHC where the premiums are less.

The appropriate remedy for this violation is to obtain a carrier that provides coverage and benefits substantially similar to those provided by U-Care. If the Employer wants to provide a PPO, it must negotiate such a change with the Union before implementing such a plan.

Based on the above and foregoing, the record as a whole and the arguments of the parties, the undersigned makes and issues the following

AWARD

The Employer violated Section 22.2 of the parties' collective bargaining agreement when, upon notification to the Union, it eliminated the U-Care insurance plan and instead provided the AMS PPO insurance plan. The Employer is directed to obtain a carrier within the next 45 calendar days that will provide the coverage and benefits which are substantially similar to those provided by the U-Care plan and the rates to employes shall not exceed those that would have been in effect had the Employer never dropped the U-Care plan. The undersigned will retain jurisdiction for a period of 45 days solely for the purpose of resolving any disputes with respect to the remedy herein.

Dated at Madison, Wisconsin, this 8th day of March, 1994.

By Lionel L. Crowley /s/
Lionel L. Crowley, Arbitrator

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