BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

NEW BERLIN PROFESSIONAL POLICE ASSOCIATION

and

CITY OF NEW BERLIN

Case 78
No. 51460
MA-8623

Appearances:

Mr. Patrick J. Coraggio, Labor Consultant, Labor Association of Wisconsin, Inc., 2825 North Mayfair Road, Wauwatosa, Wisconsin 53222, appearing on behalf of the New Berlin Professional Police Association, referred to below as the Association.

Mr. Lowell E. Clapp, Director of Human Resources, City of New Berlin, 3805 South Casper Drive, New Berlin, Wisconsin 53151-8610, appearing on behalf of the City of New Berlin, referred to below as the City.

ARBITRATION AWARD

The Association and the City are parties to a collective bargaining agreement which was in effect at all times relevant to this proceeding and which provides for the final and binding arbitration of certain disputes. The Association requested, and the City agreed, that the Wisconsin Employment Relations Commission appoint an Arbitrator to resolve a dispute reflected in a grievance filed on behalf of Jean A. Morris, referred to below as the Grievant. The Commission appointed Richard B. McLaughlin, a member of its staff. The parties agreed to submit the grievance based on a stipulation of fact. The parties filed briefs, and a reply brief or a waiver of a reply brief by March 16, 1995.

In a letter to the parties dated April 17, 1995, I stated:

> I write regarding the above-noted grievance, to detail what I feel is a dilemma regarding the resolution of the matter. I do not feel I can resolve this dilemma without your mutual input.
>
> Specifically, the dilemma is posed by the scope of the factual stipulation you have submitted. Each of you have argued that your

position is supported by the "clear and unambiguous" language of Section 5.02. You have each done so with considerable persuasive force. After reviewing your arguments and the record, I am convinced that whatever may be said of the second and final sentences of that section in the abstract, the relationship of those sentences cannot be considered clear and unambiguous. This makes interpretative guides relevant to resolving the grievance.

Each of you have entered argument on bargaining history and past practice. Sections 14 and 15 of your stipulation address bargaining history, but each brief contains assertions of fact not included in the stipulation (see Association brief at IV, B, and City brief at page 5, paragraphs 1 and 2). The Association's brief (at page 7) also notes that the language "had never been a problem . . . prior to 1993," and the City's brief notes (at page 5) evidence bearing on past practice.

Bargaining history and past practice are well-known and widely used guides for the resolution of contractual ambiguity. I have used them often, and have stated the following concerning their application:

> Past practice and bargaining history are the most persuasive guides to resolve contractual ambiguity, since each focuses on the conduct of the parties whose intent is the source and the goal of contract interpreta-tion. Walworth County, MA-7431 (3/93).

In sum, past practice and bargaining history are relevant considerations in my analysis of this and prior cases where the underlying language cannot be considered clear and unambiguous.

The dilemma posed here is that your briefs contain assertions of fact not included in your stipulation. I will not treat assertions of fact not contained in your stipulation as evidence unless you authorize me to do so.

I write this letter to highlight the dilemma. I would like the two of you to consider the point. Whether the points I raise indicate hearing may be required, or whether the points I raise can be addressed by stipulation I leave open for your consideration. I will contact you soon, by conference call if possible, to obtain your views on these points.

After discussing the point with the parties, hearing was set for July 20, 1995. On July 13, 1995, the parties submitted a stipulation to cover "the testimony that would have been provided at the hearing" and requested that I "proceed now to issue your ruling." In a letter to the parties dated July 24, 1995, I stated:

> I write to confirm the receipt of your stipulation. If I have any questions, I will call you. If not, I will issue the Award.

ISSUES

The parties did not stipulate the issues for decision. I have determined the record poses the following issues:

> Did the City violate Section 5.02 by refusing to grant the Grievant's selection of single coverage in addition to her City employed spouse's family coverage?
>
> If so, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

ARTICLE V - INSURANCE

. . .

Section 5.02 - Hospitalization & Health Insurance: The City shall pay the monthly premium for hospitalization and surgical care insurance. Employees may select coverage for a single person or for family coverage. . . . In the event an employee has a spouse that is also a City employee, that employee and the employee's spouse will be entitled to only one family health insurance contract between them and the City.

Section 5.03 - Insurance out of Pocket Costs: On or after January 1, 1994, the City's standard health insurance program will be the Blue Cross/Blue Shield Tradition Plus PPO and non-PPO, with a $200.00 per person, $400.00 per family annual deductible, an 80%/20% co-insurance provision, and an annual out-of-pocket

maximum payment of $600.00 per person and $1,200.00 per

family. The specific provisions of the Blue Cross/Blue Shield Tradition Plus Plan are as listed in the plan document initialed by both parties.

. . .

ARTICLE XIII - GRIEVANCE PROCEDURE

. . .

Section 13.03: The decision of the arbitrator shall be final and binding. . . . The arbitrator shall, in his decision, neither add to, detract from nor modify any of the provisions of this Agreement.

. . .

ARTICLE XVIII - SAVINGS CLAUSE

Section 18.01: Should any term or provision of this Agreement be in conflict with any State or Federal statute or other applicable law or regulation binding upon the City, such law or regulation shall prevail. In such event, however, the remaining terms and provisions of this Agreement will continue in full force and effect.

BACKGROUND

The parties filed the following Stipulation of Fact:

> The parties to this grievance are the City of New Berlin, hereinafter referred to as the "City" or the "Employer" and Officer Jean A. Morris, hereinafter referred to as the "grievant" represented by the New Berlin Professional Police Association, hereinafter referred to as the "Association".
>
> The parties have agreed to enter into a stipulation detailing the facts of the grievance. The stipulated facts are as follows:
>
> 1 . THAT Jean A. Morris is a police officer with the City of New Berlin and represented by the New Berlin Professional

Police Association.

2. THAT the City of New Berlin and the Police Association have a collective bargaining agreement in full force and effect for all times material herein. (A copy of the collective bargaining agreement was submitted to the Arbitrator with a Petition for Arbitration.)

3. THAT no procedural objections have been raised by the grievant, the City or the Association relative to this matter.

4. THAT on Thursday, July 7, 1994, the grievant was advised by Tamara Potkay, Human Resources Coordinator for the City of New Berlin, that the City was canceling her single person coverage for hospitalization and health insurance and placing the grievant on a family plan which her spouse carried.

5. THAT her spouse, Steven Morris, also works for the City of New Berlin.

6. THAT on July, 13, 1994, the grievant received a letter from Tamara Potkay dated July, 11, 1994 notifying her that effective June 4, 1994, her health insurance would be terminated. A copy of this is enclosed herein as Joint Exhibit A.

7. THAT Tamara Potkay informed the grievant that the reason the City was terminating the coverage on the insurance was due to the fact that she was now married to another City employee who had family plan insurance and as a result of the language in the New Berlin Professional Police Association Labor Agreement, Article V, Section 5.02 - Hospitalization and Health Insurance.

8. THAT Article V, Section 5.02 - Hospitalization and Health Insurance reads as follows: "The City shall pay the monthly premium for hospitalization and surgical care insurance. Employees may select coverage for a single person or for family coverage. The City shall have the right to change carriers for its standard health insurance program provided the coverage is substantially equivalent to that in effect on

December 31, 1990, except as modified below in Section 5.03, and there is no lapse of coverage. In the event an employee has a spouse that is also a City

employee, that employee and the employee's spouse will be entitled to only one family health insurance contract between them from the City."

9. THAT the grievant informed Tamara Potkay she did not wish to be on her spouse's family plan, but wanted to maintain her own single coverage health insurance plan.

10. THAT the grievant filed a grievance with the City dated July 21, 1994 which consisted of three pages. A copy of same is attached as Joint Exhibit B.

11. THAT the grievance proceeded through the steps of the grievance procedure and on July 21, 1994, Lowell E. Clapp, Director of Human Resources denied the grievance in writing. A copy of which is attached as Joint Exhibit C.

12. THAT the Association, on behalf of the grievant, filed for arbitration to resolve the matter on August 24, 1994.

13. THAT on October 4, 1994, the Wisconsin Employment Relations Commission appointed Arbitrator Richard B. McLaughlin to resolve the matter.

14. THAT during the bargaining that took place to negotiate a collective bargaining agreement in effect at all times material herein, the Association proposed a modification to Article V, Section 5.02, which read as follows; "In the event an employee has a spouse that is also a City employee, the couple will be entitled to one family plan, one family plan and one single plan, or two single plans. They will not be entitled to take two family plans unless the family insurance coverage taken does not cover the dependent children of one of the spouses."

15. THAT subsequently during the give and take of bargaining, the Association withdrew a proposed language change set forth in paragraph 14 above.

16. THAT the parties have agreed that this Stipulation of Fact shall be placed before the Arbitrator along with the parties memorandum briefs and that the Arbitrator shall

make a decision which shall be final and binding on the

> parties and shall either dismiss the grievance in its entirety or rule in favor of the Association and present an appropriate remedy to resolve the dispute.
>
> . . .

Joint Exhibit A, referred to in Paragraph 6, reads thus:

> As we discussed, effective June 4, 1994, the City will terminate your health insurance coverage and place you on the health insurance contract of Steve Morris. This change is a result of the language in the agreement between the City of New Berlin and the New Berlin Professional Police Association, Article V, Section 5.02.

The July 21, 1994 grievance form states the following as the "essential facts:"

> On Thursday, July 7, 1994 I was advised by Tamara Potkay, Human Resources Coordinator for the City of New Berlin, that the City was cancelling my single person coverage for hospitalization and health insurance, and placing me on the family coverage contract of my spouse, Steven Morris. (My spouse is a City employee.) On or about July 13, 1994 I received a letter from Ms. Potkay, dated July 11, 1994, confirming the termination of my hospitalization and health insurance. (Effective June 4, 1994)
>
> During my discussion with Ms. Potkay on July 7, and in her letter of July 11, Ms. Potkay stated that the City was terminating my coverage as "a result of the language in the agreement between The City of New Berlin and the New Berlin Professional Police Association, Article V, Section 5.02."
>
> . . .
>
> My spouse and I do not seek two family health insurance contracts. We seek only one family health insurance contract and only one single person contract.

> I do not wish to be on my spouse's contract, nor do I seek a family health insurance contract. It is my desire to have my own, single person coverage, health insurance contract. As a full-time City employee, covered by the agreement between the City and the Association, I am entitled to that.
>
> I also request that the Association and its counsel investigate and advise me as to the legality of the City's action to terminate my insurance contract. Issues that I have concerns about are: 1.) Has the City, by unilaterally terminating my insurance contract, deprived me of property without due process, and 2.) Has the City discriminated against me based upon my marital status? The City's action to terminate my health insurance is predicated solely on the fact that my marital status changed from "single" to "married."

Clapp's July 21, 1994 denial of the grievance reads thus:

> The central issue of this grievance is the complaint by grievant Morris that the city has discriminated against her in providing health care coverage.
>
> The facts apparently are not in dispute. Grievant Morris historically had been provided with single coverage as a single person. When she married another city employee, the city invoked the provisions of Article V, Section 5.02 which permits one family health insurance contract between the two employees and any eligible dependents. Since the city provides a selection of two distinct plans, the grievant and her spouse were compelled to make a selection between the two plans. Notification that the grievant was being provided health care coverage under the provisions of the spouses's plan was conveyed in a letter to her dated July 11, 1994.
>
> The issue of the city providing multiple health care contracts was discussed during labor negotiations in 1994. During these discussions, the union requested issuance of two contracts under circumstances described in this grievance, citing what they considered it to be an illegal or discriminatory policy. Although the language of Article V, Section 5.02 remains unchanged in the 1994-1995 agreement, the city has investigated the discriminatory contention posed by the union and has concluded the charge is without merit. Based upon the facts as currently represented, the

grievant's request for an individual health care contract must be denied.

The parties, in response to my letter of April 17, 1995 submitted the following supplemental stipulation of fact:

. . .

1. Prior to January 1, 1985, the Labor Agreement contained the following Health Insurance language:

   Hospitalization and Surgical Care Insurance. The City shall pay the monthly premium for hospitalization and surgical care insurance. Employees may select coverage for a single person or for family coverage. The City shall have the right to change carriers provided the coverage is substantially equivalent to that in effect on December 31, 1982, and there is no lapse of coverage.

2. On and after January 1, 1985, the Labor Agreement contained the following Health Insurance language:

   Hospitalization and Surgical Care Insurance. The City shall pay the monthly premium for hospitalization and surgical care insurance. Employees may select coverage for a single person or for family coverage. The City shall have the right to change carriers provided the coverage is substantially equivalent to that in effect on December 31, 1982, and there is no lapse of coverage. In the event an employee has a spouse that is also a City employee, that employee and the employee's spouse will be entitled to only one family health insurance contract between them from the City.

3. Richard Motola, a police officer for the City of New Berlin and a member of the New Berlin Professional Police Association, has been provided one family plan contract under the City's health care program since 1985. The family contract for health care that he has been provided also covers his wife Connie, as a dependent. His wife, Connie, is a City employee who is represented by another labor union.

4. Connie Motola, wife of Richard Motola, through her union, initiated a grievance protesting the denial of health insurance coverage for herself. This resulted in a grievance being filed and a subsequent challenge to the Equal Opportunity Commission of the Department of Industry, Labor and Human Relations in the State of Wisconsin. The decision on this challenge is still pending.

The evidentiary record consists of the stipulated facts and the documents incorporated into them.

THE PARTIES' POSITIONS

The Association's Brief

The Association phrases the issues posed by the grievance thus:

> Did the City of New Berlin violate the expressed and implied terms of the collective bargaining agreement when it placed the grievant on her husband's family plan and canceled the grievant's single health insurance plan effective June 4, 1994?
>
> If so, what is the appropriate remedy?

The Association's initial line of argument is that the grievance is governed by "the clear and unequivocal language found in the collective bargaining agreement." Section 13.03 underscores, according to the Association, that this clear language must be given its intended effect. The Association further asserts that arbitral and judicial precedent highlight the significance of granting clear language its bargained effect.

Focusing on Section 5.02, the Association contends that the second sentence of the provision has not been modified by the final sentence, as the City asserts. The Association puts the point thus:

> There is no specific language in the collective bargaining agreement that precludes a married couple from being able to choose one

> family plan and one single plan, or two single plans. The only limitation is one family plan per married couple.

The City's reading of Section 5.02 "narrow(s) the intent and purpose of Section 5.02."

The Association's next major line of argument is that bargaining history supports its view of Section 5.02. Acknowledging that the Association proposed, without success, language which would have specifically addressed the entitlement asserted by the Grievant, the Association argues that this proposal cannot persuasively be viewed as a waiver of its position here. The Association asserts this is based on the following facts: that neither advocate involved in the bargaining for a 1994-95 contract was involved in the bargaining for the contract which first included the language now codified as Section 5.02; that no member of the Association's bargaining team has ever acquiesced to the City's view of Section 5.02; that the Association dropped its proposal during the bargaining for a 1994-95 contract for settlement purposes only, expressly noting it was not abandoning its view that Section 5.02 grants what the Grievant seeks here; that a prior arbitration decision involving the City and another bargaining unit involved legal, not contractual issues; and that the City's failure to procure the testimony of the Personnel Director involved in that litigation should be viewed as adversely impacting the persuasive force of the City's arguments.

Beyond this, the Association argues that the doctrine of "ejusdem generis" should be given effect. More specifically, the Association argues that this doctrine establishes that "the reference to married couples only entitled to one family plan can not be broadened to include their options under single plan coverage." The City's view of the final sentence of Section 5.02 effectively renders the second sentence meaningless. Beyond this, the Association notes that the City's position could lead to absurd results. To illustrate, the Association notes that a married couple who sought to elect two single plans would be forced, under the City's view of Section 5.02, into a single family plan, at a higher cost to the City.

The Association then contends that the principle of "Expressio unius est exclusio alterius" applies to the grievance. More specifically, the Association notes that the authors of Section 5.02 "expressly excluded married couples from having two family health insurance plans and did not address any exceptions regarding single plan insurance coverage." It follows, according to the Association, that the maxim noted above dictates the conclusion that "the parties never intended to exclude the availability of single coverage to married persons."

The Association concludes that the Grievant's attempt to elect a single plan in addition to her husband's family plan is well grounded in Section 5.02. The Association asks that "the Arbitrator conclude that the City did violate the collective bargaining agreement and award an appropriate remedy."

The City's Brief

The City phrases the issues posed by the grievance thus:

> Did the City violate the contract by following specific and unambiguous language contained in Section 5.02 of the contract?
>
> If so, what is the appropriate remedy?

After a statement of the stipulation of fact, the City sets forth "BACKGROUND FACTS." In that section, the City notes that the contract was modified, on January 1, 1985, "to consider spousal coverage in the event both covered persons were employed by the City." This language change was prompted, the City notes, by its determination to offer an HMO option "as an alternative health care delivery method." The change relevant here is the addition of the final sentence of Section 5.02. A provision identical to this sentence appears in the collective bargaining agreements of the City's two other bargaining units as well as in the City's Civil Service Code "which applies to all non-represented employees." The City concludes that "all employees of the City of New Berlin are subject to the same provision that is contained in the last sentence of Section 5.02 . . ." Several families are affected by this language including, the City notes, an employe of this unit other than the Grievant.

Turning to the merits of the grievance, the City notes that the Association, unlike the Grievant, has not asserted Section 5.02 violates existing law. If such an assertion is advanced, the City contends it "would . . . question the arbitrator's jurisdiction over the issue . . ."

As a contractual matter, the City argues that the Association seeks, through the grievance, "to gain language and practice they were unsuccessful in persuading the City to agree to give them during contract negotiations." This is, on the present facts, a significant point to the City:

> Clearly, the union knew or should have known that the application of Section 5.02 was to provide one insurance contract to employees married where both work for the City. Richard Motola, a member of the Professional Police Association and Connie Motola, a member of AFSCME and both City employees have been issued one health insurance contract each year since 1985.

Stressing that there has been no adverse impact on the Grievant through its application of Section 5.02, the City asserts that granting the grievance would afford the Grievant "a significantly greater benefit level opportunity than other employees being provided health insurance by the City." The options available to the Grievant would, the City contends, yield a greater benefit level through a combination of traditional and HMO options "than was intended by the plans operated

separately." This is, the City concludes, the precise situation the final sentence of Section 5.02 addresses and should preclude.

The City's final position is that if the Association prevails, it will have been prejudiced by being denied access to interest arbitration. More specifically, the City notes the Association's realization of this benefit enhancement in arbitration prevents "the City from negotiating other cost savings provisions relating to health insurance to compensate for the savings . . . that would not be realized due to a change in language."

The City concludes that the grievance should be dismissed.

The Association's Reply Brief

The Association limits its reply to "one issue which the City has repeatedly stated in error." That issue is the City's contention the Association effectively abandoned in negotiations the position it asserts here. The Association notes that it "did propose a clarification in the language found in Section 5.02." That clarification was, the Association argues, based on the City's determination to challenge the right of employees "to have two single health insurance plans." Its withdrawal of that proposal was, the Association stresses, accompanied by a clear statement that the Association continued to believe Section 5.02 grants the Grievant and other unit employes the benefit sought here. The dispute, according to the Association, reflects not a change in the Association's view, but a change in the City's view, adopted long after 1985.

The City's Reply Brief

The City chose not to file a reply brief.

DISCUSSION

Section 5.02 governs the grievance, and the issue for decision adopted above focuses the interpretive issue on that section.

The second and the final sentences of Section 5.02 state the interpretive issue posed by the grievance. The second sentence stood alone until the final sentence became effective on January 1, 1985. The City asserts the last sentence came into the labor agreement with its implementation of an HMO plan. This link is not established by the stipulations. The reference to "one family health insurance contract" in Section 5.02 would, however, appear to acknowledge the existence of different insurance options.

The second and final sentences of Section 5.02 are not free from ambiguity. The second sentence, viewed in isolation, affords strong support for the Association's contention that any employe may select either a family or a single plan. The sentence does refer to "(e)mployees,"

however, when stating the selection right. This does introduce some ambiguity into the sentence, since it refers to a collective right. The City's contention that married spouses share the right of selection has support in that reference. If the section granted the selection right through a singular reference such as "an employee" or "any employee," the City's contention would be less plausible. Nevertheless, the second sentence, viewed in isolation, supports the Association's interpretation.

The second sentence does not, however, stand alone. The final sentence makes the ambiguity in Section 5.02 unmistakable. The final sentence is broad enough to support either party's interpretation. The Association's view that the "only one family health insurance contract between them" reference serves solely to deny a married couple two family plans is plausible. No less plausible, however, is the City's contention that the reference states the full entitlement of a married couple. Neither the final sentence standing alone, nor the relationship of the second and the final sentences can, therefore, be considered clear and unambiguous.

Past practice and bargaining history are the most persuasive guides to resolve contractual ambiguity, since each focuses on the conduct of the parties whose intent is the source and the goal of contract interpretation.

The essence of the binding force of past practice is the agreement manifested by the conduct of the bargaining parties. In this case, however, no such agreement can be found. The stipulations note that a unit-member's spouse has been denied an individual plan since 1985. She has, however, separately challenged that denial. Against this background, no binding practice can be said to exist.

The stipulations do state facts concerning bargaining history, but those facts afford less than determinative insight. The Association did drop a proposal which would have addressed the dispute posed here. In the absence of further evidence, however, the significance of the dropping of that proposal is impossible to assess. The City contends that it can be inferred from the Association's drop of the proposal that the Association seeks in arbitration what it failed to secure in negotiation. However, the Association's inference is no less persuasive. There is no supporting evidence which could clarify whether the proposal was advanced to clarify what the Association believed it already had or whether the proposal was advanced to secure a right the Association had never secured. In the absence of such evidence, it is impossible to choose between the conflicting inferences advanced by the City and the Association.

The interpretive issue focuses, then, on the ambiguous terms of Section 5.02. Because the language of Section 5.02 slightly favors the City's interpretation, the grievance must be denied.

The structure and the language of Section 5.02 slightly favor the City's view. The second sentence states a general right of selection, and the final sentence specifically limits that right. The specific limitation must be granted meaning. The Association urges that it acknowledges a limitation, but that the limitation addresses only the provision of "family" plans. This is difficult

to square with the structure of the final sentence. The sentence does not address the choice of "single" or "family" coverage, but the entitlement of "an employee (who) has a spouse that is also a City employee" to "only one family health insurance contract between them . . ." The contingency which the final sentence addresses, "the event an employee has a spouse that is also a City employee," is broad, while the limitation urged by the Association is narrow. It is unclear why the bargaining parties would state a broad contingency, then leave many of the possible variations unspecified as the Association urges. The City's view treats the final sentence as a fully contained and specific limitation of the broad entitlement created in the second sentence. This is better founded in the structure of the provision than is the Association's view.

The language of Section 5.02 read alone also slightly supports the City's view. The reference to "only" is arguably superfluous under either party's interpretation. Under the Association's view, the reference is superfluous, since the limitation to "one family health insurance contract between them" would have the same meaning with or without it. Its insertion, however, would appear to underscore the City's view that "only one . . . insurance contract" is permitted to the spouses, with the reference to "family health insurance" specifying that neither spouse would be denied coverage. Its insertion, then, underscores that the final sentence fully addresses the rights of City-employed spouses. The insertion of "between them" underscores this point. It appears to emphasize that the final sentence does not contemplate the provision of a variety of insurance options to City employed spouses.

Nor does the reference to "family" appear to have the independent significance the Association grants it. Drawing from various interpretive axioms, the Association contends that the specific reference to a "family health insurance contract" implicitly leaves the right to select a "single health insurance contract" available. This ignores that deleting the word "family" from the final sentence produces an absurd result. If City employed spouses were entitled to "only one health insurance contract" it could not be a single plan without leaving one spouse uninsured. The reference to "family," then, clarifies that City employed spouses are both insured as a family. It is, against this background, difficult to conclude the term "family" was included in the final sentence to preserve one spouse's right to select a single plan. Rather, it appears to underscore that two spouses are insurable as one family.

The provisions of Section 5.03 read together with those of Section 5.02 also slightly favor the City's interpretation. The reference to a "health insurance contract" in the final sentence of Section 5.02 would seem to contemplate traditional or non-traditional, HMO-type coverage. Section 5.03 does refer to a "PPO and non-PPO" option. Whatever the insurance options afforded to City employes may be, the final sentence of Section 5.02 does point to the making of a clear choice between options by City employed spouses. The reference to "contract" would appear to contemplate a single choice between types of insurance options as opposed separate spousal choices for single or family coverage.

In sum, the language and structure of Section 5.02 slightly favor the City's interpretation.

Before closing, it is necessary to clarify the scope of this conclusion. Each party has restricted its arguments to the labor agreement, and has cautioned against bringing in issues of outside law. The grievance points to statutory and constitutional considerations in its references to "discrimination" and to "due process." No legal issue is posed by the grievance. The conclusion stated above turns only on the terms of the labor agreement and the parties' stipulations.

It should also be stressed that the interpretive issue posed by Article V is a close point. The conclusions stated above must, then, be restricted to the unique language and facts posed by the grievance.

AWARD

The City did not violate Section 5.02 by refusing to grant the Grievant's selection of single coverage in addition to her City employed spouse's family coverage.

The grievance is, therefore, denied.

Dated at Madison, Wisconsin, this 21st day of September, 1995.

By Richard B. McLaughlin /s/
Richard B. McLaughlin, Arbitrator

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