

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

SEIU LOCAL 180, AFL-CIO

and

CITY OF LA CROSSE

Case 285
No. 54101
MA-9551

Appearances:

Davis, Birnbaum, Marcou, Seymour & Colgan, Attorneys at Law, by Mr. James G. Birnbaum, appearing on behalf of the Union.

Mr. James W. Geissner, Director of Personnel, appearing on behalf of the City.

ARBITRATION AWARD

The above-captioned parties, hereinafter the Union and the City, respectively, are signatories to a collective bargaining agreement providing for final and binding arbitration of grievances. Pursuant to a request for arbitration, the Wisconsin Employment Relations Commission appointed the undersigned to hear a grievance. A hearing, which was transcribed, was held on August 20, September 3 and October 22, 1996, in La Crosse, Wisconsin. The parties completed their briefing schedule on January 14, 1997. Based on the entire record, the undersigned issues the following Award.

STIPULATED ISSUES:

Did the City of La Crosse violate ARTICLE #3 - HEALTH INSURANCE and MEMORANDUM OF UNDERSTANDING #5 by:

- 1) Changing the definition of dependent used in determining eligibility for inclusion in the City's medical benefit plan, and
- 2) Denying coverage for dependents of Daniel A. Stremcha, Gloria A. Molzahn, Roland Pataska, Richard Schroeder, and Ronald Amundsen, and,

- 3) Eliminating the names of dependents from the identification cards used by covered employees and dependents when seeking medical services, and, if so,

What is the remedy?

FACTUAL BACKGROUND:

Bargaining History

Around 1978, the current language which establishes a minimum base of insurance coverage was placed in the collective bargaining agreement of the instant bargaining unit represented by the Union. This maintenance of standard language has remained through the present date.

Over the years the issue of health insurance has been the subject of a number of issues and disputes between the Union and the City.

In the fall of 1995, the Union and the City held negotiations which resulted in a voluntary collective bargaining agreement between the parties for 1996 and 1997. Those negotiations resulted in the current language in the collective bargaining agreement regarding Article 3 and Memorandum of Understanding #5. The Union was particularly concerned during the aforesaid negotiations that there be no reduction in the health benefits that the parties enjoyed prior to the negotiation. Therefore, the parties specifically negotiated a Maintenance of Standards provision which not only specifically addressed UCR concerns of the Union, but generally indicated that if the City was to alter any provision or entitlement that the parties had received, then that item would have to be specifically negotiated.

The predecessor agreement for 1994 and 1995 contained identical language with respect to the Memorandum of Understanding concerning the maintenance of health insurance standards. The only difference between the two Memorandums was that the date of 1994-1995 had been changed to 1996-1997.

Legislative History

In 1992, the City changed its policy administrator and entered into a management contract with WPS. In entering into that contractual relationship, the City specifically obligated by contract and resolution, that WPS was to administer the City's Health Insurance Plan, as described in the resolution. More particularly, the resolution engaging WPS as an administrator specifically

attached the benefit booklet which included the following definition of dependent:

A. Dependent means:

1. Your legal spouse; and
2. Your unmarried children. This includes legally adopted children and children for whom You are the legal guardian. Dependent includes Your spouse's children if Your spouse is responsible by decree of divorce for their medical insurance or claims them as a Federal tax deduction. Children stop being Dependents at the end of the month in which they marry. They cannot regain Dependent status. Unmarried children are covered until the end of the Calendar Year in which they reach age 25; and

. . .

Dependent Interpretation by the City

Various benefit booklets from 1979 to 1996 have contained the following definitions of dependent:

WISCONSIN LIFE INSURANCE COMPANY
(Plan Effective May 1, 1997 and Revised April 29, 1979)

DEFINITION OF A DEPENDENT

Your Dependents are Eligible on the date you are eligible or on the date you acquire a dependent, whichever is later. Dependents are defined as your wife or husband, if living with you, and your unmarried children from birth to twenty-five years of age who are legally residing with you in a normal parent-child relationship and are principally supported by you, provided they are not eligible as employees and are not in the Armed Forces.

Insurance Terminates on . . . the date you are no longer eligible . . . Your dependent's insurance will terminate on the date he ceases to be a dependent as defined

This definition of dependent was contained "as is" in the February 1, 1981 booklet provided by Wisconsin Life Insurance Company. This definition remained a part of the City's booklet which described the employee benefit plan until February 1, 1988, when the Central Life Assurance Company became the City's health insurance claims administrator.

The Central Life benefit booklet, dated February 1, 1988, contained the following definition of dependent:

DEPENDENTS . . . Your Dependent's coverage will Terminate on the earliest of:

(1) the date he/she ceases to be a Dependent as defined; or . . .

DEPENDENTS . . . Your natural children who are unmarried and less than 25 years of age. . . . A "child" includes Your natural born child, legally adopted child, stepchild or foster child who is dependent upon You for his/her main care and support.

This remained the definition of dependent until 1990 when Blue Cross Blue Shield was hired to administer the City's employee benefit plan. Blue Cross Blue Shield defined the term in its booklet as follows:

A Dependent means:

1. Your legal spouse; and
2. Your unmarried children. This includes legally adopted children and children for whom You are the legal guardian. Dependent includes Your spouse's children if Your spouse is responsible by decree of divorce for their medical insurance or claims them as a Federal tax deduction. Children stop being Dependents at the end of the month in which they marry. They cannot regain Dependent status. Unmarried children are covered until the end of the Calendar Year in which they reach age 25; and

The above described language remained a part of the City's booklet until 1992 when Wisconsin Physicians Service Insurance Corporation (WPS) prepared an undated version of the document. The WPS definition of dependent contained the following:

Dependent means:

1. Your legal spouse; and
2. Your unmarried children. This includes legally adopted children and children for whom You are the legal guardian. Dependent includes Your spouse's children if your spouse is responsible by decree of divorce for their medical insurance or claims them as a Federal tax deduction. Children stop being Dependents at the end of the month in which they marry. They cannot regain Dependent status. Unmarried children are covered until the end of the Calendar Year in which they reach age 25; and

The above-described language remained in effect from 1992-1995. In January of 1996, WPS prepared an updated version of the document:

ELIGIBLE DEPENDENTS

You may also elect to cover your immediate family members including:

1. your spouse;
2. your unmarried natural child, adopted child, child placed for adoption with you, step-child or legal ward under age 25; and
3. an unmarried natural child of a dependent child (as described in 2. above) until the dependent child is 18 years of age.

A child is not an eligible dependent if he/she provides 50% or more of his/her support as determined by the City of La Crosse dependent questionnaire.

The following eight (8) dependent questionnaires are representative of those used by the City and its claims administrators over the years. These dependent questionnaires have been used on a City-wide basis for all City employees including those in the bargaining unit. Although dependent questionnaires have been used at all times material herein to help determine eligibility

claims, administrators administered them differently. Sometimes an administrator only sent out a questionnaire to verify dependent status whenever they received a claim. Other times, the administrator sent the questionnaire out on a regular basis (twice annually, for example) to verify whether a dependent was still eligible to remain on the policy.

Some examples of questionnaires used for bargaining unit employees include the following 1990 and 1991 Blue Cross Dependent Questionnaire which contains in part:

ID#: _____ DEPENDENT: _____

Subscriber Name:

1. Dependent's marital status: Single ____ Married ____ Divorced ____
Date Married ____
2. Do you provide 50% or more support for this person? Yes ____ No ____
3. Does this person work full-time? Yes ____ No ____
If Yes: Employer Name _____
4. Does this person have other insurance coverage? Yes ____ No ____
If yes, with whom? _____
5. Does this person reside with you? Yes ____ No ____
If No: Address _____

The 1992 WPS Dependent Questionnaire contained the following:

3. Is the child principally supported (more than 50%) by you or his/her other natural or adoptive parent. () Yes () No
If no, when did such principal support cease? Date: _____

The City's dependent questionnaire used on December 10, 1992, by bargaining unit employee Wyatt Wolfe to add his daughter to the insurance coverage contained the following statement:

2. The child must be dependent upon you according to standards employed by the Internal Revenue Service. This means that you as the City employee or the spouse of a City employee are providing majority support for the child, which typically includes that fact that he/she is claimed on your taxes as a

dependent, and

3. The minor/child must be unmarried, and under 25 years of age.

The City of La Crosse and/or WPS will investigate your request and make a final determination.

as well as the following question:

4. How much support are you giving? \$ _____ per week _____ per month _____. Are you providing over 50% support for this child? Yes ____ No _____. (If "no", on what basis are you adding this child as a dependent on your health insurance? Explain _____)

The 1993 through present WPS Dependent Questionnaire is as follows:

3. Does the child provide more than 50% of his/her own support? () Yes () No
If yes, please provide the circumstances and the date that the child began providing more than 50% of his/her own support?
Date: _____

A WPS Group Enrollment Application signed on December 13, 1993, by Richard Sargent, contained the following question:

Are any dependents proposed for coverage over age 18 attending school full-time and not providing 50% or more of their own support? () Yes () No
If yes, who and what school: _____

A City Dependent Questionnaire dated December 22, 1993, and completed on January 17, 1994, also by Sargent, included the following statement:

Please keep in mind that any child you wish to add as your dependent must meet all of the following conditions to be considered as a dependent:

2. The child must be dependent upon you according to standards normally employed by the Internal Revenue Service. This means that you as the City employee or the spouse of a City employee are providing majority support for the child, which typically includes that fact that he/she is claimed on your taxes as a dependent, and
3. The minor/child must be unmarried, and under 25 years of age.

and the following questions:

3. Are you claiming the child as a dependent on your federal income tax return? Yes ___ No ___ (If "no", why not?)
4. How much support are you giving? \$_____ per week ___
_____ per month _____. Are you providing over 50%
support for this child? Yes ___ No ___. (If "no", on what
basis are you adding this child as a dependent on your health
insurance? Explain _____)

A WPS Dependent Questionnaire completed on November 9, 1994, by bargaining unit employe James Sieber contained the following questions:

3. Does the child provide more than 50% of his/her own support? () Yes () No
If yes, please provide the circumstances and the date the child began providing more than 50% of his/her own support: _____

Sieber's wife received a phone call from WPS on October 10, 1995, wherein the aforesaid question was asked.

Finally, a WPS Dependent Questionnaire completed on April 1, 1996, by Alan Tauscher, contained the following question:

3. Does the child provide more than 50% of his/her own support? () Yes () No
If yes, please provide the circumstances and the date that the child began providing more than 50% of his/her own support?
Date: _____

Ex-Union Vice-President, Donald Brague (December 19, 1995), Ex-Union President, Steven Reget (February 15, 1995), as well as bargaining unit members Sandra Howe (June 15, 1992) and David Goyette (February 19, 1996) all filled out questionnaires that included a question concerning whether the dependent proposed for coverage provided 50% or more of their own support.

Past Practice

Denied Coverage

The following bargaining unit employes were denied coverage for claimed dependents because they failed to complete Dependent Eligibility Questionnaires:

Connie Doerre was denied coverage on January 22, 1991, for her dependent daughter, Monica Howe.

Kathryn Gillen was refused coverage for her son, Randall, on March 30, 1992.

The following bargaining unit employes were denied coverage for claimed dependents because their dependents did not "meet the policy definition of an eligible dependent" under the medical plan:

On February 1, 1994, Terry Athnos was denied coverage for his son, Robert, effective June 30, 1993.

On February 17, 1994, Robert D. Bott, was denied coverage for his daughter, Vicki, effective December 31, 1993.

On January 10, 1996, the WPS Claims Department wrote bargaining unit employe William Wood informing him that his daughter, Jodee, was "no longer eligible for benefits under your group coverage with WPS," effective August 13, 1993. A telephone questionnaire on November 28, 1995, had found that Jodee had been providing her own support as of August, 1993.

Coverage Extended

On November 13, 1990, Kathryn Gillen, secretary to the Chief of Police and bargaining unit member, asked to include her son Dan as a Dependent. Gillen wrote to City Personnel Director, Beth BaDour, informing her that:

My son, age 20, recently graduated from an electronics school in Madison and is presently employed at a full-time job with a small company that does not have good insurance benefits.

We will be able to claim him as a dependent on our 1990 taxes, but not in 1991.

My question is - how long can he remain on my insurance?

On November 14, 1990, BaDour responded that "Dan is eligible for dependent status until EOY, end of year, he is 25 or when married." This same information was conveyed to Gillen in response to inquiries by Captain Schmidt, head of administration in the Police Department and by someone named Erin at Blue Cross. Dan was subsequently covered as a dependent.

On February 8, 1991, Gillen requested that her daughter Barbara be covered as a dependent. Gillen wrote on the Dependent Eligibility Questionnaire that she did not provide 50% or more of Barbara's support, and was not able to claim an exemption for her on her federal income tax. Blue Cross wrote a letter dated April 15, 1991, to Gillen informing her that Barbara was covered as a dependent while noting that "Barbara is covered until the age of 25 as long as she is a full time student and is not married."

Finally, on January 23, 1992, Gillen testified that her son Randall was added to her coverage even though he was out of school and had his own job at the time.

Bargaining unit member Donald Brague testified that in January or February of 1996, a question was raised about whether or not at least one of his children was covered as a dependent. According to Brague, WPS raised an issue about the children being covered by other insurance but did not raise an issue regarding said children providing more than 50% of their own support. Brague stated WPS subsequently covered the children.

Steven Reget has three children, Travis, Tracy and Andrew, who are presently covered by the City's health insurance plan. Reget does not declare any of them on his income taxes, and does not provide at least 50% of their support. In 1994 and 1995, WPS paid benefits to Travis and Tracy even though at times neither of them were dependent on him "for more than 50 percent of their livelihood." However, Pamela K. Ghouse, Personnel Specialist for the City, did write the following to Reget on September 7, 1995, in response to a request to have Tyler Mitchell, his daughter Tracy's son, covered:

2. The child must be dependent upon you according to standards normally employed by the Internal Revenue Service. This means that you as the City employee or spouse of a City employee are providing majority support for the child, which typically includes the fact that he/she is claimed on your taxes as a dependent, and . . .

Alan Tauscher, a bargaining unit employe with the City's Parking Utility, was notified on May 22, 1996, that his son Philip was retroactively added to his coverage effective January 1, 1992, even though Tauscher "did not provide more than 50 percent of his support at that time." Tauscher currently does not "provide 50 percent of his care," even though he marked the questionnaire "No" in response to a question of whether the child provided more than 50 percent of his own support.

Cards

From 1977 to 1990, dependents were not named on I.D. cards. From 1990 through 1995, WPS listed dependents on the I.D. cards. In 1996, WPS no longer listed dependents on the I.D. cards.

Events Leading Up to the Current Dispute

On January 29, 1996, the City sent a letter to Union President Ken Iverson transmitting an advance draft copy of a newly revised WPS summary plan or benefit booklet. The letter stated: "There are no reductions in benefits, however, you will notice several benefit enhancements." The City's letter invited the Union to attend a meeting with a WPS representative to discuss the new benefit booklet.

On January 31, 1996, the City sent the Union a letter confirming that the newly revised WPS benefit booklet would not result in a reduction of benefits. Specifically, the City agreed that:

The level of . . . benefits . . . have not been reduced . . . and are at least the same as . . . those in existence . . . 1994-1995 collective bargaining agreement . . .

Upon reviewing the booklet, the Union discovered what it believed was a change in the definition of dependent by adding financial conditions before employe dependents would be covered. In particular, the Union noted under dependent additional language in the new booklet which provided: "The child must be dependent upon you for 50% or more of his/her maintenance, care and support as determined by the City of La Crosse dependent questionnaire."

On February 23 and February 26, 1996, the City and the Union met to discuss the new health insurance booklet.

On March 5, 1996, Paul Gilbert and Carla Marcou of WPS wrote a memo to the Union discussing the results of the aforesaid February meetings and making the following observation:

1. Eligibility standards were discussed. The new booklet reflects language utilizing the words, "provides 50% or more of his/her support". This reference, while not specifically spelled out in the old booklet, has been utilized by WPS and the City in the past and is therefore no change.

On March 14, 1996, the Union filed a grievance over the matter "of changes made in the language of the Health Benefit Booklet." The grievance stated that Article 3 Health Insurance and Memorandum of Understanding #5 had been violated and requested, in relevant part, that the language of the previous health insurance booklet be restored concerning "Eligibility" of dependents.

The parties stipulated that there are no procedural issues, and that the "listed disputes" are properly before the Arbitrator for a decision on the merits pursuant to the terms of the agreement. The record is also clear that the City denied coverage in early 1996 for claimed dependents of the aforesaid grievants listed in issue "2)" based on their inability/failure to satisfy the financial standard required by the City.

PERTINENT CONTRACTUAL PROVISIONS:

**ARTICLE 2
GRIEVANCE PROCEDURE**

...

The arbitrator shall not add to, or subtract from the terms of this agreement.

...

**ARTICLE 3
HEALTH INSURANCE**

...

G. **Level of Benefits**

The health insurance benefits shall be no less than the level of benefits quoted by WPS on May 2, 1978.

...

**Memorandum of Understanding #5
Health Insurance**

This letter is to confirm the understandings reached by the parties during negotiations for the 1996-97 collective bargaining agreement.

The parties both believe that additional discussions regarding the health insurance provisions contained in the 1996-1997 collective bargaining agreement may need to take place. The parties further agree that the level of health insurance benefits, generally, and the practices concerning UCR charges as of 12/31/93, specifically, shall not be altered or reduced unless any such changes are negotiated in the contract.

UNION'S POSITION:

The Union basically argues in its brief that the City violated Article 3, Section G. and Memorandum of Understanding #5 when it reduced benefits in the new health insurance booklet

issued in 1996, when it denied coverage for dependents of certain bargaining unit members, and when it eliminated the names of dependents from the identification cards used by covered employees and dependents when seeking medical services. The Union's main complaint is that the City altered the definition of dependent without negotiating or agreeing to same with the Union by introducing into the booklet additional conditions such as actual financial dependency before employee dependents would be covered. The Union adds that clear contract language, past practice and bargaining history support its position that the definition of dependent includes any child who is unmarried, under the age of 25, without any additional requirement of establishing IRS dependency. The Union concludes by contending that the reasons articulated by the City for its actions are "specious" because one, the City's actions not only violated the collective agreement and the Municipal Employment Relations Act but also its own City Council resolution; two, its questionnaires and phone inquiries on the subject were illegal; three, its survey of what other employers do with regard to dependent coverage is irrelevant; four, its attempt to prove that the Union's definition of dependent was unreasonable misses the point and belongs more appropriately at the bargaining table, not before the Arbitrator; and five, the City acted in bad faith when it denied employees their dependent coverage rights under the agreement and when it attempted to mislead the bargaining unit regarding these rights up to and including the arbitration hearing.

In its reply brief, the Union makes the following principal arguments. One, the express language of the contract establishes the definition of dependency as the Union maintains. That definition (of dependent) is contained in the Benefit Booklet of Blue Cross and Blue Shield and does not require a financial standard for "dependent" children under 25. The Union adds that the City's attempt to "selectively delete, to misquote, and affirmatively misinterpret the clear language of the definition of 'dependent'" in order to prove otherwise does not defeat the clear language defining "dependent" as noted above. Two, if the Arbitrator does not enforce clear contract language supporting the Union's position then the past practice of the parties clearly establishes the Union's definition of dependent. In this regard, the Union cites the testimony of Union members Kathy Gillen, Steven Reget and Alan Tauscher as being more persuasive than "the unsupported conclusory testimony of Pamela Ghouse," the City's reliance on questionnaires that it used to establish its version of the definition of dependency, the parties' practice on the subject prior to 1990, and the practice of other bargaining units. Three, the City violated Memorandum of Understanding #5 when it unilaterally deleted the names of dependents on health insurance cards because at the time of the adoption and immediately prior to the adoption of said Memorandum, the practice was to include names of dependents on the health insurance cards. The City's reliance on the fact that over the past 20 years the practice has differed is not relevant since the practice at the time the Memorandum was adopted was to include the names of dependents on the health insurance cards.

For a remedy, the Union requests that the Arbitrator sustain the grievance and order the City to retroactively and prospectively use the definition of dependent coverage as articulated in Joint Exhibit No. 2, to cover the dependents of the grievants, to make each dependent who was inappropriately not covered by the City's plan whole by requiring the City to pay those items

which would have been paid but for the City's improper denial of coverage, and to require its administrator to list the names of dependents on the insurance cards for the medical carrier.

CITY'S POSITION:

The City in its brief first argues that it has not changed the definition of "dependent" which is used by the City and/or its claims administrator to determine eligibility in the medical benefit plan for children of City employees. In support thereof, the City relies on the testimony of City Personnel Specialist Pamela Ghouse who testified that eligibility for inclusion in the City's medical benefit plan has always been subject to a determination of financial support as evidenced by the definition of dependent contained in the various benefit booklets from 1979 to 1996 as well as the various Dependent Questionnaires used by the City and the health insurance group enrollment applications used from 1992 through the present. The City concludes that all of the aforesaid evidence supports a finding that it "has had a clearly defined definition of dependent requirement in which children of City employees are only eligible to receive City paid health insurance if their parents are providing at least 50% of their support."

Second, the City argues that, contrary to the Union's assertion, a twenty (20) year practice from 1977 through today exists which demonstrates that "some years the names are included and in other years they are not." The City adds that this mixed practice has merely been continued. The City points out that the need for names on I.D. cards is no longer practical as providers now use computers to check eligibility. Finally, the City cites the testimony of Carla Marcou, WPS Service Representative, who testified that "WPS's computer could not print names of dependents on the I.D. cards but could provide periodic updates as was done on August 13, 1996."

Third, the City argues that the contract language is not as clear as suggested by the Union. In this regard, the City maintains that the collective bargaining agreement's only requirement is to maintain the level of benefit in effect as quoted by WPS on May 2, 1978, and that the aforesaid Memorandum of Understanding simply requires "the level of health insurance benefits, generally, . . . shall not be altered or reduced unless any such changes are negotiated in the contract." (Emphasis supplied) The City points out that the guaranteed level of benefits are those quoted by WPS on May 21, 1978, which are contained in the summary plan document or benefit booklet dated April 29, 1979, as administered by the Wisconsin Life Insurance Company. The City claims that "these guaranteed level of benefits relating to the definition of dependent are contained in the original benefit booklet . . . as follows: . . . Dependents are defined as . . . and you (sic) unmarried children from birth to twenty-five years of age who are legally residing with you in a normal parent-child relationship and are principally support (sic) by you, . . ." (Emphasis supplied) The City argues that it has maintained this same definition of dependent over the past twenty (20) years, "all be it, with different language, BUT with the same meaning." In the City's opinion, the words "principal support" means the same thing as "main support" or "50% support." The City adds that such an interpretation is consistent with the industry standards practiced by

other public employers which use financial support as a criteria. The City concludes that the Union's standard that all biological dependents are covered without regard to parental financial support is ridiculous. As an example, the City notes: "at the hearing, the former Union President and Vice President each testified that even the owner of Gander Mountain, if a biological dependent (24 year old son/daughter), who made in excess of \$70,000 annually should still be eligible for the City's medical benefit plan."

Fourth, the City argues that it imposed a dependency test with regard to the individual employees that were mentioned in the stipulated issue. The City adds that much of the Union's evidence to the contrary involves post grievance conduct by former Union President Steven Reget and should be disregarded by the Arbitrator.

Finally, the City concludes by stating that it has routinely updated the level of benefits to keep up with industry standards even beyond that required by its collective bargaining responsibilities, that it has a practice of responding to employee concerns and complaints about health care claims problems, that it has a track record of administering the collective bargaining agreement with a strong commitment to the collective bargaining process and living with the bargain as evidenced by the arbitrator's decision in ten cases, and that no other bargaining unit has challenged the terms of the 1996 summary plan document as has the Union herein.

In its reply brief, the City makes the following principal arguments. One, the Union's allegation that the City has violated clear and unambiguous language of the agreement misses the point for a number of reasons. For example, both the standard English language dictionary and the professional labor relations dictionary of terms define dependent like the City as someone who relies on someone else (his/her parents) for support. This is the requirement required by the agreement and the aforesaid memorandum which specifically requires only that the City maintain the level of benefits in existence in 1978. References to "definitions of dependent" found in the summary plan together with "dependent questionnaires" utilized by the City and its various claims administrators and the health insurance group enrollment applications all demonstrate that the City has always had a financial support aspect to the definition of the term "dependent."

Two, the City admits that it has denied dependent coverage to the dependents of Molzahn, Stremcha, and Pataska, as alleged by the Union, simply because they DID NOT FILL OUT the required dependent questionnaire. (Emphasis supplied) The City states that it cannot find any reference in the record that Richard Schroeder appeared or testified at the arbitration hearing so denies any Union claim regarding him. (Emphasis supplied)

Three, the City did not commit an "ultra vires act" as alleged by the Union when it implemented the rewrite of the benefit booklet in January of 1996 because its administrative services agreement with WPS permitted it to do the aforesaid rewrite.

Four, what other districts do is relevant because it shows how other public employers interpret the word dependent, which is precisely what this case is all about.

Five, the Arbitrator should deny the grievance because to grant it would give the Union something that they didn't get at the bargaining table and this is prohibited by Article 2 which states that the arbitrator "shall not add to, or subtract from the terms of this agreement."

Based on all of the foregoing, the City requests that the grievance be denied.

DISCUSSION:

The main issue in dispute is whether the City violated Article 3 and/or Memorandum of Understanding #5 by changing the definition of dependent used in determining eligibility for inclusion in the City's medical benefit plan. The Union argues the City violated said agreements by changing the definition of dependent while the City takes the opposite position. For the reasons discussed below, the Arbitrator agrees with the City's position.

The Union initially argues that the appropriate definition of dependent is contained in Joint Exhibit No. 2 (WPS Health Maintenance Plan for the City) which states that a dependent means "Your unmarried children" who "are covered until the end of the Calendar Year in which they reach the age 25." The Union adds that this definition of dependent is the only definition adopted by the City Common Council in adopting and hiring WPS as the Insurance Administrator. The Union maintains that this definition of dependent is clear and unambiguous and does not contain any requirement of actual financial dependency.

The problem with the above argument is that the resolution which was adopted by the City Common Council and which approved "the attached health insurance claims administration contract with Wisconsin Physicians Service (WPS) for the period January 1, 1992 through December 31, 1994" 1/ referencing the aforesaid definition of dependent was only in effect for a specified and limited period of time. (Emphasis added)

More important, in the Arbitrator's opinion, is what the parties' current collective bargaining agreement says about the definition of dependent. Neither Article 3 nor Memorandum of Understanding #5 makes any reference to the WPS definition of dependent in 1992. Nor do they specifically define the term. Article 3 states that "health insurance benefits shall be no less than the level of benefits quoted by WPS on May 2, 1978." (Emphasis added) Memorandum of Understanding #5 confirms an understanding reached by the parties during negotiations for the 1996-97 collective bargaining agreement regarding health insurance as follows: "The parties further agree that the level of health insurance benefits, generally, and the practices concerning UCR charges as of December 31, 1993, specifically, shall not be altered or reduced unless any such changes are negotiated in the contract." (Emphasis added) Based on the foregoing, the

1/ Union Exhibit No. 20.

Arbitrator believes that the definition of dependent used by WPS on May 2, 1978, is controlling as to the current definition of dependent.

Applying the above standard to the facts of the instant dispute, the Arbitrator first turns his attention to the various benefit booklets introduced into the record by the parties. ^{2/} In particular, the Wisconsin Life Insurance Company booklet in effect on May 1, 1977, and revised

^{2/} The applicable policies themselves were not introduced into the record.

April 29, 1979, defined dependent as: "Your unmarried children from birth to twenty-five years of age who are legally residing with you in a normal parent-child relationship and are principally supported by you . . ." (Emphasis added) A conclusion by the Arbitrator that the above phrase means that eligibility of dependents for inclusion in the City's medical benefit plan was subject in May, 1978, to a determination of financial support is supported by the dictionary definition of the term dependent. The American Heritage Dictionary, Second College Edition, (1985) at page 382 defines dependent as: "3. Relying on or requiring the aid of another for support: *dependent children.*"

A conclusion that such financial support should be more than 50% is supported by the Roberts dictionary definition of dependent cited by the City in support of its position. According to the City, Roberts' Dictionary of Industrial Relations, Fourth Edition, 1994, BNA, page 168, defines dependent in the following manner:

An individual who relies on someone else for support. Under income tax laws, dependent individuals receive more than half of their support from another person related by blood, marriage, adoption, or legal guardianship.

In the employment context, dependents may include an employee's spouse, and with age limitations, the employee's unmarried children, adopted children and stepchildren, and children under legal guardianship who are eligible for insurance, medical, and other benefits under health and welfare plans. (Emphasis supplied and added)

The above conclusion is also supported by past practice. 3/ In this regard the Arbitrator notes that the aforesaid definition of dependent contained in the Wisconsin Life Insurance Company booklet in May, 1978, remained a part of the City's booklet which described the employe benefit plan until February 1, 1988. "Dependent questionnaires" utilized by the City and its various claim administrators and health insurance group enrollment applications also demonstrate that the City has always had a financial support aspect to the definition of the term "dependent." 4/

3/ Although both parties rely on bargaining history to support their position, the Arbitrator finds bargaining history unpersuasive in determining the outcome of this dispute.

4/ Including 1992, the year the Union feels is determinative of the outcome of this case.

Finally, although the record is clear that some ineligible dependents were provided coverage, in the opinion of the Arbitrator, this does not constitute a change in the policy and practice noted above whereby since 1978 the City has required financial support of more than 50% in order for dependents to be covered. 5/

Based on all of the above, and absent any persuasive evidence to the contrary, the Arbitrator finds that the answer to the first issue as stipulated to by the parties is NO, the City of La Crosse did not violate Article 3 - Health Insurance and Memorandum of Understanding #5 by changing the definition of dependent used in determining eligibility for inclusion in the City's medical benefit plan. Since the answer to the first issue is NO, and since the City denied coverage to the grievants' dependents based on the aforesaid definition of dependent, and based on the lack of any persuasive evidence to the contrary, the Arbitrator finds that the answer to the second issue as stipulated to by the parties is also NO, the City of La Crosse did not violate Article 3 and Memorandum of Understanding #5 by denying coverage for dependents of Daniel A. Stremcha, Gloria A. Molzahn, Roland Pataska, Richard Schroeder, and Ronald Amundsen based on their

5/ The Arbitrator reaches this conclusion, in part, based on the testimony of Kathy Gillen and Steven Reget. Gillen testified her son Randall was covered even though she did not provide 50% support, while the City provided written evidence that Randall was denied coverage. Reget testified his three children were covered even though he did not provide 50% support or claim them on his income tax. However, he refused to answer a telephone call from WPS regarding his children's dependency status. Tr. Vol. I at 91-92. In the Arbitrator's opinion, Reget's failure to be forthcoming with WPS regarding his children's eligibility and his vague and often conflicting testimony regarding his financial support of his children raises questions as to whether WPS had all the facts when it extended coverage. Also, in the Arbitrator's opinion, this may have been partially responsible for WPS extending coverage despite Reget's children's failure to meet the City's financial standard. The Arbitrator also notes that the City provided some examples of ineligible dependents denied coverage based on the financial support standard advocated by the City.

failure to satisfy questions concerning their financial eligibility. A question remains as to the matter of eliminating the names of dependents from the identification cards used by covered employees.

The agreement does not provide an express answer to the question of whether the City is required to list all dependents on the aforesaid identification cards. It is true, as the Union expressly points out, that at the time of the adoption and immediately prior to the adoption of said Memorandum, the practice was to include the names of dependents on the health insurance cards. However, the record is clear that in May of 1978, the City's health insurance administrator, did not list dependents on the I.D. cards. Based on same, and the fact that for 14 of the past 20 years dependents were not listed on the identification cards, and absent any persuasive evidence to the contrary, the Arbitrator finds that the answer to the third issue agreed

to by the parties is NO, the City of La Crosse did not violate Article 3 and Memorandum of Understanding #5 by eliminating the names of dependents from the identification cards used by covered employes.

In light of the above, it is my

AWARD

That the grievance is denied and the matter dismissed.

Dated at Madison, Wisconsin, this 14th day of April, 1997.

By Dennis P. McGilligan /s/
Dennis P. McGilligan, Arbitrator