

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**GRAPHIC COMMUNICATIONS INTERNATIONAL UNION,
FOX VALLEY LOCAL 77-P**

and

MIDWEST RUBBER PLATE

Case # 5
No. 54996
A-5569

(Health Insurance Deductibles)

Appearances:

Graphic Communications International Union, 15700 Griffon Court, Apple Valley, MN 55124-7168 by **Mr. Gerald L. Crawford**, International Representative, appearing on behalf of Fox Valley Local 77-P.

Godfrey & Kahn, S. C., Attorneys at Law, 100 West Lawrence Street, Post Office Box 2728, Appleton, WI 54913-2728, by **Mr. James R. Macy**, appearing on behalf of Midwest Rubber Plate Co., Inc.

ARBITRATION AWARD

Pursuant to the provisions of the collective bargaining agreement between the parties, Fox Valley Local 77-P, Graphic Communications International Union (hereinafter referred to as the Union) and Midwest Rubber Plate Co., Inc. (hereinafter referred to as the Employer or the Company) jointly requested that the Wisconsin Employment Relations Commission designate a member of its staff to act as arbitrator of a dispute concerning deductibles on retiree health insurance. The undersigned was designated. A hearing was held on June 30, 1997 in Neenah, Wisconsin at which time the parties were afforded full opportunity to present such testimony, exhibits, other evidence and arguments as were relevant to the dispute. A stenographic record was made of the proceedings and a transcript was received on July 11, 1997. The Union submitted the case on closing arguments, and the Employer submitted a written brief, which was received on August 16th, whereupon the record was closed.

Now, having considered the evidence, the arguments of the parties, the contract language and the record as a whole, the undersigned makes the following Award.

ISSUE

The parties were unable to agree on a joint statement of the issue, and instead stipulated that the arbitrator should frame the issue in his Award. The Company proposes that the issue be stated as:

Did the Company violate Article VIII, §1A when it did not pay health insurance deductibles for a retired employee?

The Union proposes that the issue be stated as:

Did the Company violate the insurance obligations with regard to not paying deductibles for retirees as understood and agreed upon in negotiations?

The issue may be fairly stated as follows:

Did the Company violate the collective bargaining agreement when it did not pay health insurance deductibles for a retired employee?

PERTINENT CONTRACT PROVISIONS

ARTICLE VIII: INSURANCE

1. The Company agrees to pay all premiums and the deductible charges for the WPS Care Shield Medical Insurance Plan, plus pay up to \$1000.00 maximum for each ambulance call. Eligibility for all insurance will begin on the first day of the month following sixty (60) days of employment, not working days. It agrees to pay the premium on the Health and Accident Insurance Policy which covers benefits starting the first (1st) day of accident and the fourth (4th) day of sickness and to be in effect for twenty-six (26) weeks. The Company also agrees to pay the premiums on the group Life Insurance. The carrier for the three (3) different types of insurance shall be mutually agreed upon between both parties. If at any time either party is dissatisfied with any one (1) carrier, he can approach the other to request a change of carrier. Both parties must agree to the change for it to be valid. Existing benefits will remain in effect when and if any change in carrier is made.

a. The Company agrees to pay all premiums for Medical Insurance, as presently furnished to full time employees, to retired employees for three (3) years prior to age 65 for voluntary retirement or in the case of involuntary retirement, up to the time at which the retiree is eligible for Medicare. The company agrees to pay all premiums for Medical Insurance as presently furnished to full time employees' spouses, to retired employees' spouses for six and one-half (6-1/2) years, until the retired employees' spouses reach the age of 65, or the retired employee dies, whichever comes first.

...

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BACKGROUND FACTS

The Company and the Union have been parties to a series of labor agreements addressing, among other things, health insurance. In the negotiations leading to the 1986-88 contract, the Union succeeded in introducing health insurance for retired employees. The original provision permitted a retired employee to receive one year of company paid health insurance, and to purchase insurance coverage for his/her spouse. Unlike regular full-time

employees, the retiree would be responsible for paying the \$500 deductible charged under the then-existing policy:

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1. The company agrees to pay all premiums and the In-Hospital Deductible on the medical insurance...

...
1A. The Company agrees to pay all premiums for medical insurance, as presently furnished to full time employees, to retired employees for one (1) year prior to age 65. The cost of additional coverage for the spouse will be paid by the retiree, and elected at the retiree's discretion. The retiree will be responsible for the \$500 deductible plus the 20% of the 80-20 co-pay on the next \$2000.

After that round of negotiations, the Company switched its insurance coverage to WPS-HMP. In the 1988-90 contract, the period of coverage was extended to three years for retirees. The language on deductibles was eliminated, as none were charged under the WPS insurance plan:

1. The company agrees to pay all premiums and the In-Hospital Deductible on the medical insurance...

...
1A. The Company agrees to pay all premiums for medical insurance, as presently furnished to full time employees, to retired employees for three (3) years prior to age 65. The cost of additional coverage for the spouse will be paid by the retiree, and elected at the retiree's discretion.

In the 1990-92 bargain, the parties extended the retiree health insurance benefits to include paid coverage for spouses, with three years of coverage for a voluntary retirement and coverage through social security eligibility for involuntary retirement:

1. The Company agrees to pay all premiums and the In-Hospital Deductible on the medical insurance...

...
1A. The Company agrees to pay all premiums for medical insurance, as presently furnished to full time employees, to retired employees and spouses for three (3) years prior to age 65 for voluntary retirement, or until social security is awarded for involuntary retirement.

Although the language for full-time employees continued to speak of an obligation to pay the in-hospital deductible, the Company was still purchasing the WPS-HMP plan, with no deductibles.

In the 1992-93 contract, the retiree insurance language was changed to reflect a limitation on the provision of spousal insurance to age 65 or the death of the retiree:

a. The Company agrees to pay all premiums for Medical Insurance, as presently furnished to

full time employees, and (sic) to retired employees for three (3) years prior to age 65 for voluntary retirement or until social security is awarded for involuntary retirement. The Company agrees to pay all premiums for Medical Insurance as presently furnished to full time employees' spouses, and (sic) to retired employees' spouses until they reach the age of 65, or the retired employee dies, whichever comes first.

In 1993, the Company proposed to switch to the WPS Care Share Plan, which featured a \$1,000 deductible. The purpose of changing the plan was to save money on

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premiums, while keeping the benefits as close to the HMP plan as possible. The Company's negotiators said that they would pay the deductible for employees, and the Union agreed to make the change. The contract language on full-time employees was changed to reflect these changes:

1. The Company agrees to pay all premiums and the deductible charges for the WPS Care Shield Medical Insurance Plan, plus pay up to \$1000.00 maximum for each ambulance call...

The language regarding retiree health insurance was not changed in this round of negotiations.

In the 1995-98 contract, the Union succeeded in extending the length of the retiree health insurance benefits for the spouses of retirees, to the earlier of 6-1/2 years, age 65 or the retired employee's death:

1. The Company agrees to pay all premiums and the deductible charges for the WPS Care Shield Medical Insurance Plan, plus pay up to \$1000.00 maximum for each ambulance call...

a. The Company agrees to pay all premiums for Medical Insurance, as presently furnished to full time employees, to retired employees for three (3) years prior to age 65 for voluntary retirement or in the case of involuntary retirement, up to the time at which the retiree is eligible for Medicare. The company agrees to pay all premiums for Medical Insurance as presently furnished to full time employees' spouses, to retired employees' spouses for six and one-half (6-1/2) years, until the retired employees' spouses reach the age of 65, or the retired employee dies, whichever comes first.

In 1996, the Company had its first retirement. In December of 1996, it became clear that the parties were in disagreement over the retiree health insurance benefit. The Company took the position that the retired employee was responsible for the deductible, while the Union objected that this had never been mentioned when the Care Share plan was put in place. The parties could not reach agreement, and submitted the matter to arbitration.

Additional facts, as necessary, will be set forth below.

POSITIONS OF THE PARTIES

Position of the Union

The Union takes the position that the Company is obligated to pay the deductible costs for retired employees. The contract does not mention retiree payment of the deductible, and there is no dispute that the Company did not raise this issue when it asked the Union to agree to the switch to Care Share. They asked for the change in order to save money, and the Union agreed, based on the Company's pledge to pay the \$1,000 deductible. No one agreed to make retired employees pay the cost for the Company's desire to save on insurance premiums. This is a very significant change, and it should not be accomplished through silence. The only time that the parties agreed to have retirees pay the cost of the deductible was ten years ago, when the benefit was first added to the contract. At that time, they specified that the retired employee should pay the cost.

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Since the parties never agreed to impose this cost on retirees, and since the contract does not clearly obligate them to pay this cost, the arbitrator should grant the grievance and give retired employees the full benefit that was bargained.

Position of the Company

The Company takes the position that the grievance is without merit and should be denied. It is clear from the bargaining history that the parties have never agreed to pay deductibles for retirees. At one point the contract expressly stated that such deductibles would not be paid for retirees but would be paid for active employees. Later the contract was changed to silence on the issue of deductibles when the parties' insurance plan had no deductibles. Still later, deductibles were re-introduced and the contract was again changed to provide payment of the deductible for active employees, but no such language was added for retirees. The parties agree that the issue of paying deductibles for retirees was never even discussed when the new insurance was put in place. Bargaining history shows that when deductibles were to be paid by the Company, the parties have included contract language to that effect. There is no such language in the current contract for the retirees and their spouses, and thus there can be no inference that the Company agreed to make deductible payments for them.

DISCUSSION

This is a case of inferences. The contract is silent on the subject of who is responsible for the deductible payments required of retirees under the Care Share insurance plan. The dispute arises from a conflict between the parties' reading of their bargaining history. Both agree that there was no discussion in the 1993 negotiations of what impact the deductible under Care Share would have on retirees and their spouses. The Union's view is that the Company, as the moving party in changing to the high deductible plan, had an affirmative obligation to say that it intended to make retirees pay, just as it had when the retiree

insurance benefit was introduced in 1986. The Company's view is that, since the parties did not bargain Company payment of retired employees' deductibles, but did bargain payment for active employees, the logical conclusion is that there is no obligation to make such payments.

In assessing bargaining history, the fact that the parties once had an express provision requiring the retirees to pay the deductible and then removed that language would generally lead to the reasonable inference that they intended to have the Company thereafter pay the deductible. If those were the only facts in the record, the Union's argument would be persuasive. However, there is no dispute that the reason for removing the language was that the insurance plan changed to eliminate all deductibles, making the old language misleading and unnecessary. The 1988 change was not the result of some express agreement that the Company would thereafter pay deductible charges for retirees. Instead, it reflected the fact that deductibles were no longer an issue. Deductibles remained a non-issue from 1988 to 1993.

When insurance deductibles again became an issue with the switch from HMP to Care Share in 1993, the parties recognized the problem, and they changed the language for active employees, while leaving the retiree language unchanged:

1. The Company agrees to pay all premiums and the deductible charges for the WPS Care Shield Medical Insurance Plan, plus pay up to \$1000.00 maximum for each ambulance call...

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a. The Company agrees to pay all premiums for Medical Insurance, as presently furnished to full time employees, to retired employees for three (3) years prior to age 65 for voluntary retirement or in the case of involuntary retirement, up to the time at which the retiree is eligible for Medicare...

The two contract sections define what the Company will pay towards medical insurance for two different groups. The retiree language commits the Company to provide retirees with the same insurance provided to active employees and to pay their premiums. The Company has paid the premiums and has provided retirees with the insurance provided to active employees. That insurance includes a deductible payable by the individual. While the contract separately provides that the Company pays this deductible on behalf of active employees, it says nothing about paying the deductible for retirees.

As noted above, this is a case of inferences. In order to prevail, the Union must show that the Company had an affirmative obligation to pay the deductible for retirees. Neither the bargaining history nor the language of the contract allows the arbitrator to infer that the Company ever agreed to pay retiree deductibles. The bargaining history shows that the retirees were initially obliged to pay deductibles when they were an issue in 1986-87. They were not an issue from 1988 through 1993. When they again came into play in 1993 with the Care Share plan, the parties were well aware of the deductible and made specific

arrangements to deal with it. Those arrangements did not extend to paying the deductible for retirees.

I have no doubt that the Union never intended to make the retirees liable for the \$1,000 deductible when they agreed to the Care Share plan. Neither is there any reason to think that the Company intentionally misled the Union's bargainers by not mentioning the retirees when it promised to pay the deductible for active employees. The fact remains that the parties agreed to switch to Care Share, knowing that an individually paid deductible is an integral part of that insurance plan. Inasmuch as no provision was made for someone other than the individual retiree to pay that deductible, I conclude that the Company did not violate the contract when it did not pay health insurance deductibles.

On the basis of the foregoing, and the record as a whole, I have made the following

AWARD

The Company did not violate the collective bargaining agreement when it did not pay health insurance deductibles for a retired employee. The grievance is denied.

Dated at Racine, Wisconsin this 17th day of November, 1997.

Daniel Nielsen /s/

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