

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**LINCOLN COUNTY HIGHWAY EMPLOYEES,
AFSCME, LOCAL 332**

and

LINCOLN COUNTY

Case 182
No. 57401
MA-10610

Appearances:

Mr. Philip Salamone, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.

Mr. John Mulder, Administrative Coordinator, Lincoln County, appearing on behalf of the County.

ARBITRATION AWARD

Lincoln County Highway Employees, AFSCME, Local 332, herein the Union, requested the Wisconsin Employment Relations Commission to designate a member of its staff as an arbitrator to hear and to decide a dispute between the parties. Lincoln County, herein the County, concurred with said request and the undersigned was designated as the arbitrator. Hearing was held in Merrill, Wisconsin, on July 12, 1999. No transcript was made of the hearing. Post-hearing briefs were exchanged on September 8, 1999.

ISSUES

The Union framed the issues as follows:

Did the County violate the intent of the parties when they entered into the 1996 consent award when they refused to continue reimbursing employees the \$10 office visit co-pay when they reached the out of pocket maximum? If so, what is the appropriate remedy?

The County framed the issues as follows:

Did the County violate the collective bargaining agreement when it refused to reimburse employees for the \$10 co-pay after the employees had reached the out of pocket maximums after December 31, 1997? If so, what is the appropriate remedy?

The parties stipulated that the undersigned would frame the issues in his award. The undersigned believes the County's statement of the issues to be an accurate statement of the issues.

BACKGROUND

The current collective bargaining contract between the parties covers the period of January 1, 1998 through December 31, 1999. The prior contract between the parties covered the calendar years of 1995, 1996 and 1997. Said contract was reached during an interest-arbitration proceeding when the parties agreed to a consent award. The County prepared a draft of the consent award, which draft was sent to the Union on March 15, 1996, and to the arbitrator on March 22, 1996. Said draft included the following provisions:

A. All previously agreed-upon tentative agreements between Lincoln County and Lincoln County Highway Employees Local Union 332 are incorporated into the successor Labor Agreement covering calendar years 1995, 1996 and 1997 (see attached Exhibit A).

B. The Arbitrator orders that the following language, as it relates to Article XXIII-Insurance, be incorporated into the Labor Agreement between the parties, which provides for the implementation of a Preferred Provider Option for health care benefits, a Prescription Drug Card Benefit, an increase in deductibles to a \$200 per person, with 3 per family per year, and a family maximum of \$1,000, and the implementation of a pre-certification program with a \$150 penalty for noncompliance.

C. The Arbitrator orders that for the term of the successor Labor Agreement (through December 31, 1997), bargaining unit employees who have satisfied the \$600 single maximum and the \$1,000 family maximum payment for medical services and expenses, shall be entitled to reimbursement from the County of the \$10 preferred provider co-pay payment required of employees for doctor visits

under the terms of the Preferred Provider Option. This reimbursement will be made by the County based upon documentation (Explanation of Benefits forms from Administrator) provided by the employee, showing that the employee has satisfied the single or family maximum. The employee shall also provide the County with receipts documenting any payments made under the Preferred Provider Option co-pay requirements after satisfying the single and family maximum payments for the health care benefits.

The Union proposed that the draft be modified by deleting the phrase “(through December 31, 1997)” in paragraph C.

On March 25, 1996, the County sent a revised proposed Consent Award to the arbitrator with a copy of same to the Union. Said draft deleted the phrase “(through December 31, 1997)” in paragraph C. On March 28, 1996, the arbitrator issued the Consent Award, which award included the wording contained in the draft sent by the County on March 25, 1996.

On April 17, 1998, the Union filed a grievance over the County’s failure, after December 31, 1997, to reimburse employees for the \$10 co-pay after the employees had reached the out of pocket maximums.

POSITIONS OF THE PARTIES

The Union argues that the deletion of the expiration date, i.e., December 31, 1997, was intended to mean the benefit was to be continued under the current contract. If such an outcome was not the intent, then there would have been no point in making the deletion. The contract should be interpreted broadly so as to reflect the intent of the parties and to give meaning to their intent. The focus should seek to determine the parties’ intent rather than rely on a narrow interpretation of the language. The clear intent of the parties in this matter was to continue the co-pay reimbursement in successive contracts until it was eliminated by negotiations. The grievance should be sustained.

The County contends that there is no language in the contract dealing specifically with the issue presented by the grievance. Neither is there any relevant past practice. Thus, the arbitrator should look to the language of the Consent Award. The phrase “for the term of the successor Labor Agreement” limits the benefit to the time span of the successor contract, even without the phrase “(through December 31, 1997).” When that successor contract expired on December 31, 1997, the employees were no longer eligible for the benefit. While the Union argues that such a result was not its intent, the Union never voiced a different intent to either the arbitrator or the County until the grievance was filed in April of 1998. The County never agreed with the intent expressed by the Union in that grievance.

RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 22 INSURANCE

A. Group Coverage: All regular full-time employees shall be eligible for the County's group hospitalization-surgical care insurance plan. The County shall pay 100% of the single monthly premium and family monthly premium for the health insurance plan, with deductible provisions of one hundred dollars (\$100) per person per year (maximum of three (3) per family per year). Effective January 1, 1996, the deductible amount, payable by the employee, shall be two hundred dollars (\$200) per person per calendar year (maximum of three (3) per family per year with six hundred dollars (\$600) maximum single per year and one thousand dollars (\$1,000) maximum per family per year).

B. Carrier: The present medical and hospitalization benefits will be maintained until there is a negotiated change, but the County may from time to time change the insurance carrier or self-fund, if it elects to do so. The County agrees to notify the Union before any such change is implemented and the terms of the proposed change.

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DISCUSSION

Section A of the Consent Award specifies that the successor labor agreement covers the calendar years of 1995, 1996 and 1997. The deletion of the phrase "(through December 31, 1997)" in the revised Consent Award did not alter the time period covered by the successor contract as specified in the Consent Award. Therefore, the clear language of paragraph C of the Consent Award must be interpreted to apply only to the contract covering the calendar years of 1995, 1996 and 1997, which contract expired on December 31, 1997.

The Union argues that it is important to consider the inclusion and exclusion of certain words in the agreement and that the exclusion of the phrase "(through December 31, 1997)" from the final draft of the Consent Award should be found to mean the parties intended to have the co-pay reimbursement continue until the parties negotiated an end to the reimbursement, rather than limiting the reimbursement to the 1995-1997 contract. However, since Section C of the Consent Award was not included in the contract, it is concluded that the revised Consent Award did not establish a mutual intent of the parties to have the co-pay reimbursement continue after December 31, 1997. Such a conclusion is supported by the fact that, while Section B of the Consent Award specifies the language in Section B is to be incorporated into

the contract, there is no similar language in Section C of the Consent Award. Further, since the order directing the County to continue the co-pay reimbursement was not placed in the contract, it was not reasonable for the Union to think that such reimbursement would continue automatically under the contract succeeding the 1995-1997 contract. Even if the Union believed that the intent of the revised language of the Consent Award was to continue the benefit until the benefit was bargained out of a contract, there is nothing in the record to show that the County either intended, or agreed to, the same result. Rather, the County asserts it believed the intent of the language was that the benefit would expire at the end of the 1995-1997 contract. In the absence of evidence showing a mutual intent to continue the co-pay reimbursement after December 31, 1997, there is no basis to ignore the clear language of paragraph C of the Consent Award and to require a continuation of the co-pay reimbursement after said date.

The Union argues that the jurisdiction of the interest arbitrator was limited to the term of the 1995-1997 contract and, therefore, the arbitrator had no authority to extend the co-pay reimbursement beyond December 31, 1997, which was the expiration date of the successor contract. Said argument ignores the fact that in paragraph B of the Consent Award the arbitrator did mandate a change in the contract without limiting the change to the term of the 1995-1997 contract.

Based on the foregoing and the evidence as a whole, the undersigned enters the following

AWARD

That the County did not violate the collective bargaining agreement when, after December 31, 1997, it refused to reimburse employees for the \$10 co-pay after the employees had reached the out of pocket maximums; and, that the grievance is denied and dismissed.

Dated at Madison, Wisconsin, this 6th day of December, 1999.

Douglas V. Knudson /s/

Douglas V. Knudson, Arbitrator