BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

GENERAL TEAMSTERS UNION LOCAL 662

and

VILLAGE OF BALDWIN

Case 6
No. 58005
MA-10806

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggman, S.C., by **Attorney Jonathan M. Conti**, 1555 North Rivercenter Drive, Suite 202, Milwaukee, WI 53212, appearing on behalf of the Union.

Weld, Riley, Prenn & Ricci, by **Attorney Stephen L. Weld,** 4330 Golf Terrace, Suite 205, Eau Claire, WI 54702-1030, appearing on behalf of the Village.

ARBITRATION AWARD

The General Teamsters, Local 662, hereinafter the Union, with the concurrence of the Village of Baldwin, hereinafter the Village, requested the Wisconsin Employment Relations Commission to appoint a member of its staff to serve as Arbitrator to hear and decide the instant grievance. The undersigned was so designated and a hearing was held in Baldwin, Wisconsin, on November 30, 1999. The hearing was not transcribed. On January 19, 2000, upon receipt of the last of the parties' written briefs, the record was closed.

ISSUE

The parties were unable to stipulate to a statement of the issue.

The Union would state the issue as follows:

> Did the Village violate Article 17 of the collective bargaining agreement when it changed the health insurance plan provided for in the agreement; and if so, what is the appropriate remedy?

The Employer would state the issue as follows:

> Did the Village violate "Article 17 – Health and Welfare" when its health insurance provider discontinued the plan in place in 1998 and employees were subsequently covered under the most comparable plan offered by the same provider; and if so, what is the appropriate remedy?

The Arbitrator frames the issue for determination as follows:

> Did the Village violate Article 17 of the collective bargaining agreement when it changed the level of health insurance benefits provided by the existing insurance carrier during the term of the Agreement; and if so, what is the appropriate remedy?

PERTINENT CONTRACT PROVISIONS

ARTICLE 17 – HEALTH AND WELFARE

> The Village shall pay 100% of the premium costs for the health and dental insurance for full time employees. Any change in health and dental care providers shall provide benefits substantially equivalent to those previously in place unless the Union agrees in writing to reduce benefits.

BACKGROUND

The facts in this case are not in dispute. The Village is a municipal employer with individuals in its Public Works Department in Baldwin, Wisconsin. The Union represents employees in that department. The Village and Union are parties to a collective bargaining agreement dated January 1, 1998, through December 31, 1999, hereinafter the Agreement. Wausau Insurance Companies has underwritten the health insurance coverage for the Village since January 1, 1995, in its Wausau Preferred Health Plan-West managed care network, hereinafter Wausau Insurance.

On October 30, 1998, Wausau Insurance wrote to the Village that upon renewal of its policy, effective January 1, 1999, it was changing the group insurance coverage. It encouraged the Village to carefully review the attached changes with its employees as they would become effective January 1, 1999. Wausau Insurance offered five specific schedules of benefits from which to choose. These were the only five options available. The previous schedule of benefits was not available and could not have been purchased even if the Village had wanted it. Wausau Insurance made this offer to its Small Employer accounts, i.e., those employers with 2 to 50 employees, who renewed on or after October 1, 1998. The Village

went ahead and chose the option which had the broadest level of coverage for its employees. The Village did not consider switching to another insurance carrier. The option chosen by the Village was the most expensive of the five offered by Wausau Insurance. The Village's reason for its choice was that the chosen option had the closest level of benefits to the previous plan. There is no evidence in the record of the date that the Village made this decision, but it did not inform the Union at the time that its decision was made.

On December 7, 1998, Village Administrator Cynthia Deringer informed the Village's affected employees by memorandum that Wausau Insurance was making health insurance benefit changes effective January 1, 1999. With that memo, the Village attached information regarding a listing of changes in exclusions, other changes in benefits, a pharmaceutical formulary and a Summary of Benefits. Deringer made handwritten circles around the areas that changed on the schedule of benefits. The memorandum also noted that there were many changes, including increased annual out-of-pocket deductible and coinsurance costs, and it directed the affected employees to compare the changes to the current policy.

On January 1, 1999, the Wausau Insurance benefit changes went into effect. The Village continued to pay 100% of the cost of Wausau Insurance's health insurance premiums for its employees covered by the new plan.

On April 21, 1999, representatives of the Union and Village met to discuss the changes in health insurance coverage. The Village took the position that the options offered by Wausau Insurance did not allow the Village to keep the same level of coverage and that the Village would continue with the option which gave employees the closest level in coverage to the prior coverage. On May 24, 1999, the Union wrote to the Village and stated that such changes, without the Union's consent, violated the Agreement. On May 27, 1999, the Village responded in writing and stated that its position was the same as stated on April 21, 1999. The Village also stated that since it continued to pay 100% of the premium costs, and since there was no change in providers, then there was no violation of Article 17 of the Agreement.

On June 1, 1999, the Union filed its grievance stating that the Village violated Article 17 of the Agreement when the level of insurance benefits were reduced without written agreement from the Union. The requested remedy was for the Village and Union to enter into immediate negotiations to find an insurance carrier capable of providing benefits substantially equivalent to those previously in place, and for the Village to make all affected employees whole for any losses. The parties then advanced the grievance to arbitration.

POSITIONS OF THE PARTIES

The Village

The Village maintains that there has been no violation of the Agreement. The first sentence of Article 17 requires that the Village pay 100% of the insurance premium costs. The

Village emphasizes that it has continued to pay 100% of the premium costs. The second sentence of Article 17 requires that any change in health and dental care providers shall result in benefits which are substantially equivalent to those previously in place unless the Union agrees to reduce benefits. (Emphasis by the Village.) Since there was no change in providers, and only a change in the level of benefits under the same provider, then Article 17 is not triggered. Had there been a change in providers, it would have triggered the requirement in Article 17 that the new insurance carrier provide benefits "substantially equivalent" to those previously in place, unless the Union agrees otherwise.

The Village points out that it did not have a role in the health insurance benefit changes. Rather, Wausau Insurance changed the available schedule of benefits. The Village has continued to offer the same Plan, albeit with a different level of coverage, and has continued to pay 100% of the premiums. Furthermore, the Village stresses that it had only five options to choose from. Moreover, it selected the one with the most extensive coverage and which was the closest in the level of benefits to the prior coverage.

The Village cites cases for the proposition that where contracts do not place specific restrictions on health insurance benefit changes, employers have the right to implement changes. Further, the Village asserts that a past practice supports this interpretation. Specifically, in January, 1997, Wausau Insurance increased the cost of diabetic co-pay amounts for affected employees without complaint or claim by the Union that the Agreement had been violated.

The Village argues that it was stuck between the proverbial rock and a hard place. It received notification from Wausau Insurance that the existing plan was being discontinued. The Agreement barred the Village from switching to a different provider, and the Union gave no indication of a willingness to accept lesser benefits. Further, finding a plan which offered substantially equivalent benefits was, particularly given the time constraints, problematic if not impossible. The only viable option available to the Village was to stay with the current provider and to provide the most expensive alternative offered by that provider.

Sustaining the Union's position would require the Village to do the impossible, i.e., to maintain a health plan that was no longer available to it. Arbitrators are to avoid harsh and absurd results. In addition, it should be kept in mind that it was Wausau Insurance, and not the Village, who changed the benefits. The Village went so far as to ask whether it was possible for Wausau Insurance to retain its same plan if the Village was willing to pay for the higher premiums. The answer was no. This is not a case in which the Village set out to save money by reducing benefits or curtailing coverage. To the contrary, it was the provider that changed the coverage. (Emphasis by the Village.) The Village had no say, no choice, in the matter. The Village has fulfilled all of its contractual obligations.

The Union

The Union maintains that the Village's chosen option of health insurance coverage, from the same provider, has resulted in substantial changes in the level of benefits employees. Such a change, without the Union's consent, violates Article 17 of the Agreement.

The Union lists some of the changes to include the following: The per calendar year deductible for non-preferred providers went from $150 per person and $450 per family, to $300 per person and $600 per family. The per calendar year maximum out-of-pocket expense for preferred providers went from $150 per person and $450 per family, to $400 per person and $800 per family. The per calendar year maximum out-of-pocket expense for non-preferred providers went from $650 per person and $1450 per family, to $1800 per person and $3600 per family. The employee's co-pay after the deductible has been met went from 0% for preferred providers and 20% for non-preferred providers, to 10% for preferred providers and 30% for non-preferred providers. The employee's prescription drug costs went from $6 for those within and $11 for those outside the formulary, to $15 for those within and $30 for those outside the formulary. The Union characterizes these changes as major changes.

At no time did the Village negotiate with the Union regarding the plan change, or as to whether a change in providers might be a viable option. The Union never agreed to these options.

Although Article 17 refers to a change in "providers" rather than "plans," the provision must be read in its entirety. Village cannot focus simply on the term "provider" and ignore the rest of the language in the provision. This is because a collective bargaining agreement should be construed, not narrowly and technically, but broadly so as to accomplish its evident aims. The purpose of Article 17 is to protect the Union and employees from unilateral changes made by the Village which adversely impact their health care benefits. And since Article 17 requires the Village to provide benefits "substantially equivalent to those previously in place," it secures the Union's agreement to reduce those benefits.

The Union further argues that the Agreement must be construed as a whole, that full faith and credit should be given to all of the language agreed upon, and that single words, sentences, sections or portions cannot be isolated from the rest of the Agreement. The intent of Article 17 is to insure that the Union has a role in determining whether and to what extent health insurance benefits will be substantially changed. Thus, any change that results in a substantial change in benefits may not be unilaterally instituted, whether it is a change in the provider *or* the plan. (Emphasis by the Union.)

If the Village's interpretation were to stand, it could conceivably change plans at will, without regard to whether the benefits are substantially reduced, and without consultation from the Union. Agreements should be given a reasonable construction so as to avoid harsh, illogical or absurd results. Further, parties to a labor agreement do not intend to have negotiated provisions to be meaningless. The Village's strict interpretation that Article 17

applies only to a change in provider would not be a reasonable construction and would render Article 17 essentially meaningless. Such an interpretation would allow the Village to unilaterally decrease employee benefits by simply changing health plans.

The only interpretation which reflects the intent of Article 17 is that the Village must get the Union's approval whenever it makes *any* change in health care that results in a failure to provide substantially the same benefits as were available under the previous plan (emphasis by the Union). Therefore, the Village violated the Agreement by unilaterally changing the health care plans without the Union's consent.

There were no reply briefs filed in this matter.

DISCUSSION

The issue is the interpretation the above quoted provision of Article 17 and to what extent, if any, this language prohibits the Village from changing the level of health insurance benefits for those affected employees. Since this case is one of contract interpretation, it is the arbitrator's role to interpret the parties' intent of this language and to render a decision consistent with that intent. As a general rule, arbitrators determine the intent of the parties from various sources, including the express language of the agreement, statements made at precontract negotiations, bargaining history and past practice. Elkouri and Elkouri, How Arbitration Works, 5th Edition, at 479 (1997).

In this case, there are very few sources and little evidence other than the express terms from which to determine the parties' intent. The parties' intent of the first sentence is not in dispute and the parties agree that it means that the Village shall pay the entire cost of the insurance premiums for its full-time employees covered by the Agreement. Further, the Village has done and continues to pay 100% of the premiums. The second sentence, which is in dispute, has two parts. The first part states that if there is any change in health and dental care providers, then that provider's benefits shall be substantially equivalent to those benefits previously in place. This part is based upon a contingency, i.e., it is language conditioned upon the occurrence of some future event. Thus, this outcome does not come into effect unless and until there has been the occurrence of the event stated. The latter part of the second sentence begins with the word "unless" and operates as an exclusion. It means, and the parties implicitly agree, that if the Union consents in writing, then the Village is authorized to reduce health and dental care benefits. However, this still leaves open what was intended by the parties' use of the word "provider," which is discussed below.

With regard to statements made at precontract negotiations and the parties' bargaining history, there is very little evidence that sheds light upon the parties' intent. The Union's evidence is testimony from its local steward who had no recollection of discussions of any specifics of Article 17 during bargaining. He "sat in" on the negotiations and could not testify as to any statements made or any bargaining history of the disputed language. The Village did

not provide evidence on this point and its sole witness, the Administrator/Clerk – Treasurer, was not involved in the Agreement's bargaining process. Although there were probably some statements made at precontract negotiations over the meaning of Article 17, and/or there was probably some evidence of bargaining history, there is no such evidence in the record.

With regard to past practice, the Union provided no evidence. The Village provided testimony that once, in 1997, Wausau Insurance initiated a change and reduced benefits by increasing the cost of diabetic co-pay amounts. Village concludes that this is a past practice which supports its interpretation of Article 17. The evidence shows that the Village had no prior input with regard to this change and it was implemented as part and parcel of continued coverage under the Wausau Insurance plan. I disagree that this establishes a past practice for several reasons. First, one occasion of a benefits reduction of this type is not numerous enough in frequency nor extensive enough in severity to make a determination of a past practice. Second, the Village's act of increasing the cost of employees' diabetic co-pay amounts in January of 1997 occurred during a prior contract period and, thus, is of questionable value. Third, it is not clear to me that the Union knew that the Village had made this change in benefits and, thus, this dilutes the Village's argument of a past practice. Therefore, the evidence is insufficient to warrant a finding of a past practice.

Having found no guidance or evidence of the parties' intent from precontract negotiations or from bargaining history, and having found no evidence that establishes a past practice, I turn again to the express language and interpret the parties' intent of the words "provider" and "plan" by their ordinary meanings. An ordinary and usual meaning of the word "provide" is to make, procure or furnish for future use. Black's Law Dictionary, (5th Ed. 1979) at 1102. Thus, the ordinary meaning of the word "provider" in this provision of Article 17, and in an insurance context, is an entity which furnishes dental or health care insurance. The word "plan," on the other hand, means a delineation; a design; a draft, form or representation. Black's, supra, at 1036. The phrase "insurance plan" is defined as a contract generally agreed to between an insurance company and the employer which covers the employees of a company. Roberts' Dictionary of Industrial Relations, (1966) at 164. Thus, the ordinary meaning of the word "plan" in this provision of Article 17, and in an insurance context, is a specific schedule of benefits from an insurance provider.

I am persuaded by the Village's argument that the word "provider" should not be construed or broadened in its plain definition to mean "plan." As indicated above, the record is vacant with evidence that the parties intended the word "provider" to mean anything other than its ordinary and usual meaning. As it stands, the word "provider" means provider. The Union's argument that such an interpretation is unreasonable, or that such an interpretation leads to a harsh, illogical or absurd result, is not persuasive. As a general rule, when one interpretation of an ambiguous contract would lead to harsh, absurd or nonsensical results, while an alternative interpretation, equally consistent, would lead to just and reasonable results, the latter interpretation will be used. Elkouri and Elkouri, supra, at 495. The Union's argument, therefore, is premised on the assertion that the provision in question is ambiguous or not clear. I am not persuaded, based upon the parties' express terms, that the language in

dispute is unclear. To conclude as the Union asserts, i.e., that the word "provider" implies and/or includes the word "plan" would be to read something into this language which is not there. Further, I am constrained to read additional meaning into this language, especially where the Agreement prohibits me, in Article 6, from changing, altering or otherwise modifying any of its terms or provisions.

In hindsight, it may have been preferable and good labor relations for the Village to have informed the Union earlier about the impending insurance changes. This may have allowed the Union an opportunity to suggest alternatives prior to the Village's ultimate decision or for the Union to shop around for "substantially equivalent" coverage. Nevertheless, the plain meaning of the express terms does not obligate the Village to do so. In addition, I do not find it particularly convincing for the Village to argue that its only viable option was to stay with the current provider when its one witness admitted that the Village never considered switching to another insurance carrier. Assuming that the Village is saving money under the implemented plan, the Village's position would have been better postured if it had considered alternative carriers. Again, however, and based upon the evidence that was presented to me, there is nothing in the express language that requires the Village to consider other carriers.

In conclusion, the language in dispute does not prohibit the Village from changing its insurance plan while keeping the same provider. It only prohibits the Village from changing providers without affording substantially equivalent benefits. If there has not been a change in insurance providers, then the disputed language in Article 17 does not come into play and the Village is allowed to change from one specific insurance plan to another with the same carrier. Since the Village has not changed providers, then there can be no violation of the Agreement.

Based on the foregoing, and the record as a whole, I have made the following

AWARD

The Village did not violate Article 17 of the parties' collective bargaining agreement when it changed the level of health insurance benefits provided by the existing insurance carrier during the term of the Agreement.

Dated at Eau Claire, Wisconsin, this 28th day of April, 2000.

Stephen G. Bohrer /s/
Stephen G. Bohrer, Arbitrator

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