

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

GENERAL TEAMSTERS UNION, LOCAL 662

and

CITY OF HUDSON

Case 41
No. 58364
MA-10928

(Health Insurance Grievance dated October 21, 1999)

In the Matter of the Arbitration of a Dispute Between

GENERAL TEAMSTERS UNION, LOCAL 662

and

CITY OF HUDSON

Case 42
No. 58417
MA-10950

(Health Insurance Grievance dated October 22, 1999)

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by **Attorney Jill M. Hartley**, 1555 N. RiverCenter Drive, Suite 202, Milwaukee, WI 53212, appearing on behalf of the Union.

Weld, Riley, Prenn & Ricci, S.C., by **Attorney Stephen L. Weld**, 3624 Oakwood Hills Parkway, P.O. Box 1030, Eau Claire, WI 54702-1030, appearing on behalf of the City.

ARBITRATION AWARD

The General Teamsters Union, Local 662, affiliated with the International Brotherhood of Teamsters, AFL-CIO, hereinafter the Union, with the concurrence of the City of Hudson, hereinafter the City, requested the Wisconsin Employment Relations Commission to designate a member of its staff to serve as Arbitrator to hear and decide two grievance disputes. The disputes concern health insurance benefits for City employees in two separate bargaining units and in accordance with the grievance and arbitration procedures contained within the parties' two collective bargaining agreements. The undersigned was so designated and the grievances were consolidated for purposes of a hearing. On October 24, 2000, and April 5, 2001, a hearing was held in Hudson, Wisconsin. The hearing was not transcribed. On May 10, 2001, and upon receipt of the parties' briefs, the record was closed. The parties waived reply briefs.

On the basis of the record submitted, the Arbitrator issues the following Award.

ISSUES

The parties did not agree on a statement of the issues. The Union would state the issues as follows:

1. Did the City violate the parties' collective bargaining agreements in 2000 by failing to maintain the existing insurance benefits or benefits substantially equivalent to those existing in 1998?
2. If so, what is the remedy?

The City would state the issue as follows:

1. Did the City violate the collective bargaining agreements by not paying 100% of the premiums for those employees who elected the Humana/Emphasis option in the calendar year 2000?

The Arbitrator frames the issues for determination as follows:

1. Did the City violate the parties' 1998-2000 collective bargaining agreements by not paying the entire cost of insurance premiums in year 2000 for those employees electing insurance plans under the Wisconsin Public Employer's Group Health Insurance program that were more than 105% of the lowest qualified plan?

2. If so, what is the appropriate remedy?

PERTINENT AGREEMENT PROVISIONS

Clerical and Library Employees' Agreement

ARTICLE 7

MAINTENANCE OF STANDARDS AND MANAGEMENT RIGHTS

Section 1. Maintenance of Standards. The Employer agrees that all conditions of employment relating to wages, hours and working conditions shall be maintained at not less than the highest standards in effect in the Employer's unit at the time of the signing of this Agreement. Conditions of employment shall be improved wherever specific provisions for improvement are made elsewhere in this Agreement. This shall not apply to inadvertent or bona fide errors made by the Employer if corrected within ninety (90) days of notification by Union to Employer.

. . .

ARTICLE 17

INSURANCE AND RETIREMENT

Section 1. Health Insurance: The group health insurance in effect January 1, 1994, or a substantially equivalent plan, shall remain in force during the life of this Agreement. The Employer has the right to change carriers, provided the level of benefits is substantially equivalent to the existing level of benefits. The Employer will pay 100% of all health insurance premiums.

. . .

Department of Public Works, Waste Water Treatment Plant, and Water Utilities Employees' Agreement

ARTICLE 7

MAINTENANCE OF STANDARDS AND MANAGEMENT RIGHTS

Section 1. The Employer agrees that all conditions of employment relating to wages, hours and working conditions shall be maintained at not less than the highest standards in effect in the Employer's unit at the time of the signing of

this Agreement. Conditions of employment shall be improved wherever specific provisions for improvement are made elsewhere in this Agreement. This shall not apply to inadvertent or bona fide errors made by the Employer if corrected within ninety (90) days of notification by Union to Employer.

...

ARTICLE 17

INSURANCE AND RETIREMENT

Section 1. Health Insurance: The Employer has the right to change carriers or self-fund health care benefits if it elects to do so, provided the level of benefits is substantially equivalent to that existing in 1995, or receives written approval of the Union. The City agrees to pay 100% of the single or family health insurance premium for regular full time employees.

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BACKGROUND

The City is a municipal employer in Hudson, Wisconsin. Hudson is located on the western edge of St. Croix County and is contiguous to the St. Paul/Minneapolis, Minnesota, metropolitan area. The Union represents one bargaining unit comprised of 13 of the City's clerical and library employees. The Union represents another bargaining unit comprised of 19 employees in the City's Department of Public Works, the Waste Water Treatment Plant and the Water Utilities Department. The City and the Union are parties to collective bargaining agreements, one for each of above described units. The term of both collective bargaining agreements is January 1, 1998, through December 31, 2000. The parties have had successive collective bargaining agreements for these units since at least the early 1990s.

On July 31, 1987, the City and its employees began participation in a group health insurance program called the Wisconsin Public Employers' Group Health Insurance, hereinafter the State Plan. The State Plan is administered by the Wisconsin Department of Employee Trust Funds, hereinafter ETF, for state and local government employees. Under the State Plan, employees are able to elect from a qualified list of insurance carriers. ETF determines which plans are qualified and requires that participating employers pay up to 105% of the lowest cost qualified plan in the employer's service area. The City's service area is St. Croix County. The majority of the insurance plans under the State Plan program are Health Maintenance Organizations (HMOs) which require that participants use that HMO network of physicians and facilities for their primary health care. The State Plan became effective for City employees on October 1, 1987.

Since at least 1990, the City has paid up to 105% of the lowest qualified plan in St. Croix County and City employees electing more expensive plans have paid the difference. For example, if XYZ plan is the lowest qualified plan for a particular calendar year at \$100 per month for single coverage and \$200 per month for family coverage, then the City has paid the entire amount of any qualified plan for that year whose premium cost is \$105 or less per month for single coverage or whose cost is \$210 or less per month for family coverage. However, if an employee were to elect a plan for that year whose monthly premiums exceeded \$105/\$210 per month, then the employee would be responsible for paying the difference between the cost of the more expensive elected plan and 105% of the XYZ plan.

Since at least 1993, and in the fall of each year, ETF has distributed a booklet to the City and its employees titled "It's Your Choice," which explained the terms of participation in the State Plan for the upcoming calendar year. These booklets also included a description of qualified health insurance plans as well as the cost of each plan's monthly premium for single and family coverage. These booklets stated that participating employers may pay up to 105% of the lowest qualified plan in the employer's service area. As stated above, the City's service area is St. Croix County.

From 1990 through 1999, the Humana/Emphasis Wisconsin plan, hereinafter the Humana plan, was the lowest qualified plan under the State Plan program in St. Croix County. The Humana plan is an HMO. During this time period, the majority of the employees in the two units at issue elected coverage under the Humana plan. Hence, the City paid the full cost of health insurance premiums for the majority of employees from 1990 and through 1999.

On January 1, 1994, ETF implemented a uniform insurance benefit package as part of the State Plan and in order to help contain the rising costs of health insurance coverage. Under this uniform benefits arrangement, all insurance carriers' plans included in the State Plan were required to provide a comprehensive level of medical benefits and services as set by ETF. A plan could include additional insurance coverage, such as basic dental insurance coverage, so long as it maintained the prerequisite uniform benefits package. The State Plan's utilization of this comprehensive scheme has been continuously maintained since 1994 and has been specifically described in the annual booklets since its implementation.

Effective beginning January 1, 1995, the Humana plan under the State Plan program has included dental insurance coverage in addition to its previously provided health insurance coverage. The following is taken from the 1998 "It's Your Choice" booklet: "100% preventive care; 50% basic care; **SELECT YOUR OWN DENTIST. Additional this year: 50% orthodontic coverage up to individual ortho benefit maximum of \$1200, with coverage limited to each covered dependent child.**" At no time has the State Plan's uniform benefits package included the above dental insurance coverage provided by the Humana plan.

By letter dated September 13, 1999, ETF notified the City that the lowest qualified plan for the year 2000 would be the Compicare Northwest plan, hereinafter the Compicare plan. In addition to the Compicare plan, ETF listed the upcoming 2000 monthly premium rates for other plans, including the Humana plan. However, and unlike 1999, the stated cost for the Humana plan would be in excess of 105% of the lowest qualified plan, i.e., the Compicare plan.

On October 12, 1999, City Administrator Brian Gramentz wrote a memorandum to all City employees which stated:

. . .

The year 2000 Insurance booklets are being distributed to all employees covered by the Wisconsin Public Employers' Group Health Insurance plan. You should be aware of the following:

NOTE: All of the plans offered must conform to the basic uniform benefits coverage found on pages D-1 thru D-38. Extra coverage or benefits are found on pages listed below for each plan.

1. Humana/Emphasis WI monthly rates went up.

Single coverage from \$234.38 to \$267.40, **employee must pay \$28.42 per month toward premium.** City can only pay for \$238.98 by State Law. This is determined by taking the lowest policy available in the County, which is Compicare Northwest at $\$227.60 \times 105\% = 238.98$.

Family coverage from \$591.38 to \$681.40, **employee must pay \$70.40 per month toward premium.** Same reason as stated above but with the following numbers. $\$581.90 \times 105\% = \611.00 . Read page F-26 and F-27 for coverage.

2. COMPCARE Northwest is the lowest cost plan offered to St. Croix County insurance participants. This plan doesn't offer dental coverage. Read page F-26 and F-27 for coverage.
3. Valley Health Plan is another plan available. Price is higher (\$72.90 per month). Some dental coverage offered. Read page F-52 and F-53 for coverage.
4. **Atrium Health Plan will cost employee \$127.12 per month for single and \$317.20 per month for family.** Information found on page F-4 and F-5. Plan does offer some dental coverage.

...

THE CHOICE IS UP TO YOU TO CHOOSE THE PLAN BEST SUITED TO YOUR NEEDS.

1. You can choose COMPCARE and pay nothing toward the premium. This may result in a reduction in the extra benefits (beyond uniform benefits) you currently receive.
2. You can choose Humana/Emphesys [sic] and continue to receive the same benefits but must pay \$28.42 for single, and \$70.40 per month for family toward the premium.
3. You may also choose Atrium Health Plan, Valley Health Plan or the Standard Plan. These also result in additional funds from the employee.

See Page A-4 for specific insurance plan rates, Col. 1 and 2 are for family units without a member eligible for medicare. Col. 3, 4, and 5 are for family units with 1 or 2 eligible for medicare.

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On October 21 and 22, 1999, the Union filed grievances alleging that the City violated Article 17, Section 1, of the respective Agreements by refusing to pay for substantially equivalent insurance benefits for the year 2000. The parties thereafter advanced their dispute to arbitration.

In calendar year 2000, 12 out of 13 Clerical/Library unit employees elected to continue coverage under the Humana plan (2 single coverage, 10 family coverage) and 1 unit employee changed from the Humana plan to the Compcare plan (family coverage). All 19 of the DPW/Waste Water Treatment Plant/Water Utilities unit employees elected to continue coverage under the Humana plan (2 single coverage, 17 family coverage) in 2000. As indicated above, the difference in cost between the Humana plan and 105% of the Compcare plan in 2000 is \$28.42 per month for single coverage and \$70.40 per month for family coverage.

At hearing, the parties agreed that the remedy for the instant grievances, if any, is limited to the calendar year 2000 since the cost of the Humana plan for 2001 is not in excess of 105% of the lowest qualified plan in St. Croix County.

Additional background information is set forth in the Positions of the Parties and in the Discussion below.

POSITIONS OF THE PARTIES

The Union

The Union asserts that the City violated the Agreements by failing to maintain the same level of insurance benefits in the year 2000. Therefore, the grievances should be sustained.

The differences between the 2000 Humana plan and the 2000 Compcare plan are significant. The Humana plan allows employees to choose from a broad range of physicians both in Wisconsin and in the St. Paul/Minneapolis area, while the Compcare plan restricts the use of physicians to Wisconsin. Given the proximity of Hudson to the St. Paul/Minneapolis area and the level of care available in a large metropolitan area, this difference is large. In addition, the Humana plan has dental coverage while the Compcare plan has none. The Humana plan's dental coverage includes 100% of preventive care, 50% of basic care, the freedom of choice for the selection of a dentist, and 50% of orthodontic coverage up to an individual maximum of \$1,200. With these significant differences in mind, the Union makes two arguments.

First, the City violated Article 17 of the Agreements. Article 17, Section 1, of the Agreements contain relatively similar language allowing the City to change carriers provided the level of benefits is substantially equivalent. The change from the City paying in full for the Humana plan, which included dental, to the Compcare plan, which does not include dental or the broad selection of doctors, constitutes a change in benefits which are not substantially equivalent. From 1990, and through 1999, all but a few of the City's employees had insurance coverage through the Humana plan. Therefore, the City is obligated to provide health insurance benefits in 2000 that are substantially equivalent to those provided from 1990 through 1999.

The Union does not dispute that the City is restricted from contributing more than 105% of the lowest qualified plan under the State Plan, nor that the City lacks control over ETF's selection of qualified insurance carriers through the State Plan. In addition, the Union does not dispute that the City had no control over the Compcare plan bid in 2000 or that 105% of the Compcare plan premium rates for 2000 did not cover the cost of the Humana plan premium rates for 2000 under the State Plan. Nevertheless, the City's contractual obligations under Article 17 exist separate and apart from the State Plan's requirements.

The City is not prohibited from purchasing supplemental health insurance coverage in 2000 so as to replace the benefits employees would have lost had they chosen to switch from the Humana plan to the Compcare plan. Nor is the City prohibited from compensating employees for their out of pocket costs to remain with the Humana plan in 2000 so as to provide substantially equivalent coverage. For example, the City could have extended additional dental insurance coverage comparable to the Humana plan's dental coverage to maintain the same level of benefits. When the City failed to avail itself of these options, it violated Article 17 of the Agreements.

Second, the City violated Article 7 of the Agreements. Article 7, Section 1, otherwise known as a Maintenance of Standards clause, requires that all conditions of employment be continued at not less than the highest standards in effect at the time that the Agreements were executed. Once City employees received dental coverage under the Humana plan, then they are entitled to maintain those benefits in 2000.

The fact that the uniform benefits under the State Plan do not provide for dental insurance coverage is irrelevant since the Maintenance of Standards clause requires that dental coverage be maintained. Further, the Maintenance of Standards language at issue does not contain any restrictive component such as a requirement that the highest standards in effect be negotiated.

The case of *STOKELY-VAN CAMP, INC.*, 74 LA 691 (STERN, 1980), is illustrative of this point. In that case, the union asserted that the employer's refusal to continue a longstanding benefit of free housing for migratory seasonal employees violated a maintenance of standards clause provision in the parties' agreement. That maintenance of standards clause stated:

The Company agrees that all conditions of employment in his individual operation relating to wages, hours of work, overtime differentials and general working conditions shall be maintained at not less than the highest minimum standards in effect at the time of the signing of this Agreement, and the conditions of employment shall be improved wherever specific provisions for improvement are made elsewhere in this Agreement. Id. at 694.

The arbitrator held that the company had violated the maintenance of standards clause despite there being no specific reference to the longstanding benefit in the contract. Similarly, the City has violated the Agreements' Maintenance of Standards clause, despite that dental insurance coverage is not specifically referred to in the Agreements and despite that that longstanding coverage is not a mandatory benefit under the State Plan.

It is irrelevant that in the past some bargaining unit employees have elected non-Humana plan health insurance coverage under the State Plan and that they have made out of pocket payments for that election. In 1990, DPW Union Steward Esanbock chose a qualified plan for the year 1991 whose cost exceeded 105% of the lowest cost premium because he and his family wanted to be treated by certain physicians. Esanbock did not file a grievance because he made a choice to elect a plan whose premium was not fully paid by the City. That circumstance is inapposite from the current grievances.

The Union does not contend that the City must pay the full premium of any plan chosen by an employee. Rather, the Maintenance of Standards clause in Article 7 of the Agreements obligates the City to maintain the highest level of benefits in effect in December, 1998, and at

the time the Agreements were executed. Those benefits included dental coverage. Thus, the City violated the Agreements when it failed to provide dental coverage to employees, or to reimburse them for their cost to maintain that coverage in the year 2000.

The Union's requested remedy is that the City reimburse any employee who remained with the Humana plan in 2000 for their out of pocket costs to maintain that coverage.

The City

The City asserts that the grievances should be denied.

The State Plan gives employees an opportunity each October during an open enrollment period to elect an insurance plan for the following calendar year which meets their individual needs. This selection is based upon information contained within ETF's annual "It's Your Choice" booklet and which outlines the medical benefits and providers available, the cost of each plan, the uniform benefits for that upcoming year, and any changes in the uniform benefits. In addition, the booklet contains changes such as the addition or deletion of benefits voluntarily offered by the individual plan's insurance carriers as well as changes in the insurance carriers participating in the State Plan. The City provides the State Plan, the State Plan gives employees options, and employees elect an insurance plan within the State Plan. The City has not stopped providing the State Plan to its employees since 1987 and the City continued to offer the State Plan in 2000. There has been no change in the City providing the State Plan. Therefore, there is no violation of the Agreements.

Article 17, Section 1, of the two Agreements provide "change of carrier" language that is intended to protect employees in the event the City elects to change insurance carriers. That portion of the DPW/Water Utilities Agreement requires that if the City changes carriers or self funds its health insurance, then the City must offer "substantially equivalent" benefits to those in 1995. Similarly, the Clerical/Library Agreement requires that the City offer benefits "substantially equivalent" to "[t]he group health insurance in effect January 1, 1994." It is undisputed that the City offered the same State Plan in 1994 and 1995, as it did in 2000. Therefore, the "substantially equivalent" language in Article 17 is not triggered and there is no violation of the Agreements.

Alternatively, Article 17, Section 1, of the Agreements is ambiguous. That language could be construed that the City must pay 100% of the most expensive option under the State Plan. It could also be construed to require that the City pay only 100% of the lowest cost option under the State Plan. However, and since 1991, it has been the past practice for the City to fully pay for any plan elected by an employee that was up to 105% of the lowest cost option. Moreover, and also during this time period, it has been the practice for employees choosing a plan which exceeds 105% of the lowest cost option to pay the difference between

that cost and the cost of the higher priced plan. For example, and during the 1991-1992 contract, DPW/Water Utility Union Steward Esanbock paid the difference between the cost of his elected higher priced plan and the cost of 105% of the lowest qualified plan. The same occurred for those employees who elected the Humana plan in the year 2000. Therefore, the parties' past practice supports the Union's position.

It is noted that Union Steward Esanbock is in a leadership position. It is further noted that employees received their ETF booklets each year stating: "Your employer pays between 50% and 105% of the premium rate of the lowest cost qualified plan in the employer's service area for either single or family coverage for employees who are participants under the Wisconsin Retirement System (WRS)." Thus, the Union at least had constructive notice of this past practice.

There is also evidence of prior bargaining history which supports the City's position. Esanbock, who has been a member of the Union's bargaining team since the early 1990's, testified that he knew the historical "full premium" language in the 1990-1991 Agreement and the "100%" of all premiums language in the 1994-1995, 1996-1997 and 1998-2000 Agreements did not mean 100% of all premiums. Further, Clerical Union Steward Darlene Fraser, who has represented the Clerical/Library unit at the bargaining table for the last nine years, testified that in her opinion the disputed language has always meant that the City pays up to 105% of the lowest cost plan.

The Union's reliance on the Maintenance of Standards language in Article 7 does not have merit. Since the City continues to offer the same benefit of health insurance under the State Plan in 2000, the maintenance of standards clause is not violated and the grievances should be dismissed.

If the Arbitrator concludes that the Agreements have been violated, then any remedy will result in either the City being required to violate State regulations, ETF 40.10, Wis. Admin. Code (over which the City has no control), and/or the City withdrawing from the State Plan.

In the fall of 1999, employees were given the option of staying with the Humana plan, which requires employees to pay a portion of the premiums, or switching to the Compcare plan and paying no premium contributions for health insurance in 2000. One employee did so. All other employees should bear the consequences of their decision to upgrade their coverage, just as Union Steward Esanbock did in 1991.

DISCUSSION

The Union argues that the City violated the "change of carriers" language in Article 17 of the Agreements because the change from the Humana plan to the Compcare plan for the year 2000 does not provide "substantially equivalent" benefits.

Article 17, Section 1, of the Clerical/Library Agreement states that “[t]he Employer has the right to change carriers, provided that the level of benefits is substantially equivalent to the existing level of benefits.” Article 17, Section 1, of the DPW/Water Utility Agreement states that “[t]he Employer has the right to change carriers or self-fund health care benefits if it elects to do so, provided the level of benefits is substantially equivalent to that existing in 1995.” These provisions both contain conditional language. Thus, if the City changes insurance carriers, then the analysis shifts to whether the result of that change provided a “substantially equivalent” level of health insurance benefits to employees covered by the Agreements. If the City did not change insurance carriers, as the City asserts, then this language does not apply.

I do not agree that the circumstances in this case equate to the City changing insurance carriers. In the fall of 1999, the State of Wisconsin, the Department of Employee Trust Funds, determined that the Compcare plan would be the lowest qualified plan in the City’s service area for the year 2000 under its State Plan program. This resulted from Compcare’s bid for inclusion in the State Plan program being the least expensive in St. Croix County. Concurrently, Humana’s bid for inclusion was more than 105% than the Compcare plan. The end result was that City employees who elected the Humana plan under the State Plan for 2000 were required to pay the difference between 105% of the Compcare plan and the cost of their election of the Humana plan. The City then notified employees of this pending change.

In my opinion, this “change” was not an action brought about by the City. Rather, this was something done by the ETF Administrator of the State Plan and the insurance carriers that priced the available plans, including the Compcare plan and the Humana plan. There is no evidence that the City caused this change or that it otherwise had a hand in bringing about this change. Further, there is no evidence that the parties intended this employer’s-right-to-change-carriers language to encompass circumstances like those occurring in the fall of 1999. The Union’s analysis overly broadens the meaning of “[t]he Employer has the right to change carriers.” Because I do not find that the City changed insurance carriers, this language does not apply. I agree with the City that the “substantially equivalent” language in Article 17 is not triggered and I do not reach an analysis of whether the Compcare plan provided “substantially equivalent” insurance benefits to that of the Humana plan in 2000.

I also agree with the City that it has not violated that part of Article 17 of the Agreements which require the City to “pay 100%” of health insurance premiums. The parties’ uniform practice since 1987 of the City paying 105% of the lowest qualified plan under the State Plan program, as well as the testimony of Union Stewards Esanboch and Fraser confirming this practice and as referred to in the City’s position, lead me to conclude that the “pay 100%” means that the City is required to pay 100% of the maximum employer contribution permitted under the State Plan. There is no dispute that the City has done so in this case.

I agree with the Union that the City is not prohibited from purchasing additional health insurance coverage, such as dental benefits comparable with the 1998 Humana plan. Nor is the City prohibited from compensating employees for their out of pocket costs for continuing with the Humana plan in 2000. However, I disagree with the Union that the City is required to do so because of Article 17 of the Agreements or that the City has violated Article 17 of the Agreements.

The Union also argues that the City violated the Maintenance of Standards clause in Article 7, Section 1, of the Agreements because the change from the Humana plan to the Compcare plan for the year 2000 does not maintain those benefits in place at the time that the Agreements were executed in December of 1998.

Article 7, Section 1, of the Agreements are identical and state that the City “agrees that all conditions of employment relating to wages, hours and working conditions shall be maintained at not less than the highest standards in effect in the [City’s] unit at the time of the signing of this Agreement . . .” This maintenance of standards language prohibits the City from changing conditions of employment relative to health insurance which were in existence at the time the Agreements were executed in 1998.

I do not find that the City has changed conditions of employment relative to health insurance for two reasons. First, the State Plan program continues to require that carriers included in its program provide uniform benefits. Uniform benefits have been described by ETF as a guaranteed “comprehensive level of benefits regardless of which plan [employees] select or what their medical needs are.” (Jt. Ex. 30). Thus, no matter what carrier an employee selects each year, that carrier provides an insurance plan with a comprehensive level of benefits. In addition to these benefits being comprehensive, they also include a minimum level of benefits. This has been described in detail in the booklets each year since at least 1993. The booklets inform employees that “[u]niform benefits do not mean that all plans will treat all illnesses in an identical manner. Treatment will vary depending on the needs of the patient, the physicians involved and the managed care policies and procedures of each insurance plan.” (Jt. Ex. 9). ETF extended these uniform benefits effective January 1, 1994 (Jt. Ex. 28), and they have been maintained since that date and in 2000.

Second, the City continues to pay the entire amount of the lowest qualified plan with employees paying for any elected plan whose cost exceeds 105% of the lowest qualified plan. The evidence shows that in 1991 (Esanboch), 1992 (Esanboch), and 1996 (Rohl), employees paid the difference for a non-Humana plan whose premium exceeded 105% of the lowest qualified plan. (Jt. Ex. 19 and 32) Union Steward Esanboch testified that he elected a plan which required additional out of pocket payment because that plan provided medical services at a particular hospital in Baldwin, Wisconsin. I disagree with the Union’s contention that this circumstance is inapposite, or that it is otherwise irrelevant, to the current grievances. Rather, the above examples, and the failure to file grievances over their respective circumstances, indicate the parties’ understanding that out of pocket payments for non-Humana plans is a maintenance of standards regarding payment for those elected plans. Therefore, when

employees were required to make payment for the Humana plan in 2000 because its cost exceeded 105% of the lowest qualified plan, the standard for the maintenance of health insurance was maintained.

If I were to accept the Union's argument that Article 7 requires the City to pay for the continuation of nonuniform benefits in 2000, such as the Humana plan's dental benefits, then every employee, whether that employee elected the Humana plan or another qualifying plan whose cost exceeded 105% of the lowest qualified plan for 2000, would be able to maintain each and every nonuniform benefit in perpetuity. In other words, those employees would accumulate prior year's nonuniform benefits and carry them forward making the City's use of the State Plan unwieldy, if not impossible to continue in its existence. In my opinion, this interpretation of Article 7 produces a nonsensical result which is to be avoided.

The case of *STOKELY-VAN CAMP, INC.*, 74 LA 691 (STERN, 1980) is distinguishable. In that case, Arbitrator Stern enforced a longstanding work benefit despite there being no specific reference to it in the parties' agreement via a maintenance of standards clause. In this case, however, and as stated above, the benefit which is being maintained is the continuation of uniform benefits under the State Plan and the City's continuation of paying 105% of the lowest qualified plan.

It should be noted that there is no evidence that the total uniform benefits provided in 1998 have changed and in comparison with those total uniform benefits provided in subsequent years, including in 2000. Had the uniform benefits in 2000 been a reduction from those provided in 1998, then it could be argued that the City has not maintained them in violation of Article 7. However, there is no evidence and there has been no argument on this point and, therefore, I do not make any findings on this point.

AWARD

Based upon the foregoing and the record as a whole, it is the decision and award of the undersigned Arbitrator that the City did not violate the parties' 1998-2000 collective bargaining agreements by not paying the entire cost of insurance premiums in year 2000 for those employees electing insurance plans under the Wisconsin Employer's Group Health Insurance program that were more than 105% of the lowest qualified plan. Therefore, the grievances are denied.

Dated at Eau Claire, Wisconsin this 30th day of July, 2001.

Stephen G. Bohrer /s/

Stephen G. Bohrer, Arbitrator