BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

LOCAL UNION 953, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

and

CITY OF BLACK RIVER FALLS (MUNICIPAL UTILITIES)

Case 28
No. 60030
MA-11490

(Insurance Benefit Grievance)

Appearances:

Mr. James S. Dahlberg, International Representative, Sixth District, IBEW, on behalf of the Union.

Weld, Riley, Prenn & Ricci, S.C., by **Mr. James M. Ward**, on behalf of the City.

ARBITRATION AWARD

The above-captioned parties, herein "Union" and "City", are signatories to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in Black River Falls, Wisconsin, on December 18, 2001. The hearing was not transcribed and the parties filed briefs that were received by February 5, 2002.

Based upon the entire record and arguments of the parties, I issue the following Award.

ISSUE

Whether the City violated Article XVI, Section 1, of the contract when its health insurance carrier in February, 2001, increased the out-of-pocket expenses that employees must pay for prescription drugs and, if so, what is the appropriate remedy?

BACKGROUND

The City in 1997 changed its health insurance carrier to the basic Wisconsin Public Employers Group Health Insurance Plan ("State Plan"), which provides for uniform benefits and uniform costs for all of its participants. The City pays for all of its health premiums. In 1997, employees had to pay a maximum of $80 per year for a single and $160 per year for a family under the State Plan's prescription drug benefit. Employees at that time also had to pay $4 for generic drugs and $8 for brand-name drugs.

In January, 1998, the State Plan increased the out-of-pocket drug maximums from $80 to $130 per individual and from $160 to $260 per family. The co-pays remained the same. Those increased costs were passed along to bargaining unit members. No grievance was filed over that unilateral change.

In February, 2001, the State Plan raised the maximum out-of-pocket drug expenses from $130 to $240 per individual and from $260 to $480 per family. The co-pays for drugs were raised from $4 to $5 for generic drugs and from $8 to $10 for prescription drugs. Those increased costs were passed along to bargaining unit members. The Union grieved those changes, hence leading to the instant proceeding.

Throughout this time, part of the contractual language relating to medical benefits has remained substantially the same by providing in Article XVI, Section 1: "The present medical and hospitalization benefit will not be reduced." The parties never discussed any changes to that language in the last round of contract negotiations.

However, the parties have negotiated over other parts of the insurance provision. Thus, the 1995-1996 contract stated in pertinent part: "The present medical and hospitalization benefits will not be reduced, nor will the present deductible level of $100.00 per person with a maximum of $200.00 per family, per year, be increased. . ." (Joint Exhibit 5). This quoted language was subsequently deleted in successor contracts. (Joint Exhibits 1 and 4).

Union Assistant Business Manager Arlin Ziemann testified about the 2001 changes and said that the Teamster's contract covering other City workers (Joint Exhibit 15) does not have the identical language found here relating to a reduction of benefits.

Gavin J. Johnson, who serves as Union steward and who formerly served on the Union's bargaining team, said that out-of-pocket drug expenses went up "almost every year"; that co-pays never went up before 2001; and that his wife is already "maxed out". On cross-examination, he added that this is the first time co-pays have gone up and that he every year receives from the City a booklet describing the State Plan (Joint Exhibit 10).

POSITIONS OF THE PARTIES

The Union asserts that the City violated Article XVI, Section 1, of the contract after the costs for prescription drug co-pays were raised from $130 to $240 per individual and from $260 to $480 per family effective February 1, 2002. It argues that Article XVI, Section 1, prohibits the City from reducing drug benefits in that fashion; that the previous change in drug co-pays "does not nullify the language"; and that it is immaterial whether other City employees have agreed to the 2001 changes since they are represented by a different union under different contract language. As a remedy, the Union requests that the City be ordered to "return to the benefit level in effect on 1/01/01 and to make the participants whole . . ." for any added drug expenses they have incurred as a result of the unilateral changes.

The City contends that it did not violate the contract because "carrier-dictated prescription drug cost increases. . ." cannot be equated with a reduction in health insurance benefits; because the City never agreed to maintain drug deductibles after 1997; and because the Union "slept on its rights by neither filing a grievance in 1998 nor bringing up that matter when the parties. . ." bargained a successor to the 1997-1998 contract.

DISCUSSION

This case turns on the application of Article XVI, entitled "Insurance", which provides:

> Sec. 1. Health Insurance. The employer and employee are obligated to pay the share of the insurance premium as established by the Wisconsin Public Employers Group Health Insurance Plan. Medical insurance shall be provided to all employees when they are eligible to participate as determined by the insurance carrier. No employee shall make any claim against the Utility for additional compensation in lieu of or in addition to his insurance premiums paid because he does not qualify for the family plan. The present medical and hospitalization benefit will not be reduced. The Utility may, from time to time, change the insurance carrier if it elects to do so.
>
> . . .

While there is no direct reference to drug benefits in this proviso, it is generally accepted that drugs are included when parties refer to health insurance benefits in their collective bargaining agreements.

However, the record establishes that the City in 1998 unilaterally increased the drug co-pays without any grievance being filed, thereby leading the City to reasonably believe that drug co-pays could be unilaterally raised under Article XVI, Section 1.

More importantly, the present contract does not contain the prior prohibition on raising deductibles that was found in the prior 1995-1997 contract and which stated: "The present medical and hospitalization benefits will not be reduced, nor will the present deductible level of $100.00 per person with a maximum of $200.00 per family, per year be increased. . ." (Emphasis added). This underlined language shows that the parties viewed "benefits" and "deductibles" as two different matters which is why they are separately referenced, and that the level of "deductibles" is separate and distinct from the level of other health insurance benefits. After all, as the City correctly points out in its brief at pp. 7-8, "If deductibles were merely seen as one of the benefits that could not be reduced during the contract term, there would have been no reason to insert protective language ensuring that deductibles would not increase."

By deleting the prior language relating to the level of deductibles, the parties thus agreed that deductibles could be increased. That is why the City did not violate the contract when the drug co-pays were increased by the State Plan in February, 2001.

Hence, if the Union wants to prevent that from happening again, it will have to obtain contract language in negotiations which limits such increases.

In light of the above, it is my

AWARD

1. That the City did not violate Article XVI, Section 1, of the contract when its health insurance carrier in February, 2001, increased the out-of-pocket expenses that employees must pay for prescription drugs.

2. That the grievance is therefore dismissed.

Dated at Madison, Wisconsin this 14th day of February, 2002.

Amedeo Greco /s/
Amedeo Greco, Arbitrator

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