BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

DEPERE POLICE BENEVOLENT ASSOCIATION

and

CITY OF DEPERE and CHIEF DEREK BEIDERWIEDEN

Case 78
No. 62632
MA-12375

Appearances:

Parins Law Firm, S.C., by **Attorney Thomas J. Parins,** 422 Doty Street, Green Bay, WI 54305, appearing on behalf of the Union.

Attorney Judith Schmidt-Lehman, 335 South Broadway Street, DePere, WI 54115, appearing on behalf of the City of DePere and Captain Janz.

ARBITRATION AWARD

The DePere Police Benevolent Association, hereinafter referred to as the Union or the Association, and the City of DePere, hereinafter referred to as the City or Employer, are parties to a collective bargaining agreement (CBA) which provides for final and binding arbitration of certain disputes, which agreement was in full force and effect at all times mentioned herein. The Union initially filed a Prohibited Practices complaint (Case 73; No. 61116; MP-3817) against the City relative to the issues herein. At hearing, the parties agreed to defer the case to binding arbitration and agreed to allow the undersigned to sit as the Arbitrator. The City's motion to amend the caption to reflect the name of the new Chief of Police was granted. The undersigned held a hearing into the matter in DePere, Wisconsin, on February 18, 2003, at which time the parties were given the opportunity to present evidence and arguments. The hearing was transcribed. The parties filed post-hearing briefs by May 1, 2003, and reply briefs by June 25, 2003, marking the close of the record. Based upon the evidence and the arguments of the parties, I issue the following decision and Award.

ISSUE

The parties were not able to stipulate to a statement of the issue.

The Union states the issue as follows:

> Is the City required to pay under its health insurance plan benefits at the second tier of coverage in an amount equal to 80% for all covered charges, and if so what is the appropriate remedy for the City's failure to do so?

The City states the issue thus:

> Whether the medical insurance plan implemented April [sic], 2002, is "equivalent" to that provided on June 1, 1979, as required by the Collective Bargaining Agreement between the parties?

The Arbitrator accepts the City's statement of the issue.

RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 17

Hospitalization, Dental, and Long-Term Disability Insurance

The City shall provide hospitalization and medical insurance coverage equivalent to that provided on June 1, 1979, or as otherwise mandated by the laws of the State of Wisconsin.

. . .

BACKGROUND

The City provides health insurance benefits to the employees in the DePere Police Benevolent Association pursuant to the Collective Bargaining Agreement. The pertinent language requires that hospitalization and medical insurance coverage be "equivalent" to that which was provided on June 1, 1979.

Prior to April 1, 2002, the City's health insurance plan provided for, among other things, three tiers of coverage. The first tier provided for the plan to pay 100% of the covered expenses up to the, first $2,000, 80% of covered expenses of the next $3,000 and 100% of the

balance of covered expenses up to a maximum of $245,000. These percentages and limits were the same as those existing on June 1, 1979. On April 1, 2002, the second tier coverage was modified to 60% of $2,000, and the lifetime maximum limit was raised from $250,000 to $1,000,000. At the same time "usual and customary" charges for participants using PPO providers were eliminated.

The Union filed a prohibited practice complaint alleging that the City had instituted these changes in the policy unilaterally without bargaining them. At the hearing, the parties stipulated to defer to arbitration.

THE PARTIES' POSITIONS

The Union

The word "equivalent," as defined by Black's Law Dictionary, means "equal in value, force, amount, effect or significance" and, therefore, the City should have provided benefits at the second tier of coverage at 80%, not 60%. In other words, "equivalent" means "equal."

The Union points to the City's letter to the Association of February 3, 1999, as indicative of the City's understanding that coverage provided must maintain the levels as they existed in 1979. (The letter refers to 1989 but this is a typographical error.) This letter also refers to the City's understanding that it could "take away" benefits which had been added through the years which exceeded those in force in 1979 but could not reduce benefits below the 1979 levels. While additional benefits are not at issue in this arbitration, the Union notes that it has historically objected to the City's unilateral implementation of additional benefits as well. The existence of additional items of coverage or benefits does not support the City's argument that it has the right to unilaterally *reduce* the 80% benefit level in the second tier. Such an argument would change the meaning of Article 17 from "equal" to "more or less equal." Also, such a finding by the undersigned would amount to an amendment to the terms of the CBA and would then allow the City to provide coverage which is "comparable" rather than "equivalent." The City's argument that the additional benefits offset the reduction in the payout in the second tier and thus the value of the plan is the same must be rejected because it belies the understanding set forth in the February 3, 1999 letter. There, the City took the position that it reserved the right to unilaterally take away *additional* benefits but specifically admitted that it could not take away *existing* benefits. In effect, the "statement of interpretation" by the City in 1999 was that its obligation was to provide "equal or better" coverage.

The Union reminds the Arbitrator that the adoption of the City's arguments would result in the Arbitrator having to "write into the contract a right of the City to unilaterally implement changes in the health insurance plan by way of making trades of specific benefits at its whim, leaving the Association to some kind of burden of proof to show that it was not a fair trade." Such a result would render the contractual references to the 1979 policy superfluous.

The Union argues that it has not waived its right to bargain regarding coverage and benefit levels simply because it accepted additions to benefit levels over the years. Attorney Thomas J. Parins' letter dated February 15, 1999, to the City Administrator makes it clear that the Union did not acquiesce to benefit level changes and has maintained the position that such changes must be the subject of collective bargaining. At the same time, it accepted the additions in benefits and informed the City that it considered them to be incorporated into the CBA.

The Union established a *prima facie* case through the testimony of its president, Dahl, who testified that the reduction in the benefit level at tier two was, indeed, a reduction in benefits.

The Union says that the appropriate remedy is to reimburse Association members the difference between what they would have received at the 80% level and what they actually received at the reduced 60% level. In the future, the City should pay at the 80% level in tier two.

The City

The City's initial brief renewed its motion to dismiss which it had made following the Union's case at hearing. The City argues that the Union failed to present any evidence that it, the City, had violated the terms of the agreement between the parties.

The City maintains that the case turns on whether the health plan implemented in April of 2002 is "equivalent" to the plan in force in 1979. It says that the history between the parties shows that the City has made unilateral changes in the plan without bargaining them and this history may be viewed as an indication that the word "equivalent" allows such unilateral changes.

Black's Law Dictionary (7th Ed. 1999), defines the term equivalent as follows:

> 1. equal in value, force, amount, effect or significance. 2. Corresponding in effect or function; nearly equal; virtually identical.

The American Heritage College Dictionary (3rd Ed. 1997), defines it as:

> 1a. equal, as in value, force or meaning; b. having similar or identical effects.
> 2. Being essentially equal, all things considered.

It says that the plan implemented in 2002 is "almost identical, all things considered" to that in place in 1979. It points out that the Union does not take issue with the fact that the deductible change from $25 per 90-day per person per illness to $100/300 max or the fact that the routine health benefit of $250 per covered person was instituted or that the lifetime maximum was increased from $250,000 to $1,000,000.

All services covered in 1979 are still covered and provider freedom of choice is the same. The only complaint of the Association is that the change in the second tier of coverage may result in an additional $200 expense to the covered person. It poses the question "Does the mere potential payment of an additional $200, when coupled with out-of-pocket savings associated with freedom from usual and customary charges mean the coverage provided is not "equivalent"?" The City says that this potential must be viewed in conjunction with the unlimited savings a person could realize by not paying usual and customary fee overages. If one couples that potential savings with the first dollar wellness benefit of $250 per covered person, the $200 loss potential is "wiped out."

While one minor component of the entire plan has been altered, coverage in terms of services remains identical. Out of pocket expenses are "equal in value" and, hence, the coverage implemented in 2002 is "equivalent" to that in force in 1979.

In its reply brief, the City takes issue with the Union's assertion that changes in health plans since 1979 which amounted to increases and which had been accepted by the Union had become "part of the Collective Bargaining Agreement."

The letter attached to the Union's brief and identified as "Brief Exhibit A" does not establish a precedent between the parties that benefits would remain unchanged. On the contrary, it indicates that the City's interpretation of the contract was that modifications could be, and were, made with the benefit levels being maintained.

The Association fails to recognize that the 1979 tier two was 80% of $3,000 as opposed to 80% of $2,000 and that the unilateral implementation and subsequent unilateral withdrawal of the WPPN PPO in 1998 and 1999 did not reduce benefit levels. The City acknowledges that if it had done so, it would have been bargained.

"Usual and customary" charge savings of the Association in the amount of $3,569 compared with tier two charges for the same group in the amount of $1,822 shows that the modifications to tier two resulted in a net savings for the Association members. The plan is "not only equivalent, but is superior to the health insurance provided as of June 1, 1979." The City should not be faulted for realizing cost savings for everyone, including the Association, while at the same time maintaining and improving upon coverage previously in place.

The City suggests a remedy in the event the undersigned finds the plan to not be equivalent to the 1979 plan. The City should refund the $1,822 paid by Association members in the second tier of coverage and the Association members who benefited from the removal of

usual and customary fees for which they would have been responsible prior to the change should reimburse the City in the amount of $3,569. The net result being that the Association returns $1,747 to the City.

DISCUSSION

Both parties agree, as do I, that the answer to this dispute lies in an analysis of the meaning of the word "equivalent" as it is used in the Collective Bargaining Agreement. Unfortunately, that word is not defined in the agreement. Both sides have made compelling arguments for their respective positions. On the one hand, the Union maintains that "equivalent" means "equal" and the City, on the other, says it means "almost identical, all things considered." In the absence of evidence of a mutual understanding to the contrary, words will be given their usual and ordinary meaning as defined by a reliable dictionary. Both sides agree on a definition found in Black's Law Dictionary (7th Ed. 1999), which defines the word as meaning equal in value, force, amount, effect or significance and corresponding in effect or function; nearly equal; virtually identical. The undersigned accepts this definition of the word equivalent. The CBA requires equivalency of "coverage." Like Arbitrator Nielsen in his BEAVER DAM SCHOOLS, CASE 19, NO. 45546, MA-6639 (NIELSEN, 5/91) award, I find that "coverage" is a more restrictive term in its scope than "plan" or "benefits." In short, the new *coverages* must be "equal in value" and "virtually identical." I find that they are not.

The City's argument that the overall "package" is equal to or better than the 1979 package is rejected because it is based upon a comparison of items in the plan other than "coverage." The usual and customary fee determinations are not coverages since they do not afford protection against a specific risk and the increase of the lifetime maximum from $250,000 to $1,000,000 is an acknowledgement of the effect of inflation since 1979. While the record does not contain any actuarial evidence in this regard, I suspect that this increase does not add value to the plan but rather places the insureds in the same relative position they were in in 1979 with the $250,000 lifetime max.

The second tier of coverage is "coverage" in the sense that it affords protection from incurring out of pocket expenses in an amount exceeding 20% of $3,000, or $600. The new plan tier two coverage protects the insured from incurring out of pocket expenses exceeding 40% of $2000, or $800. The question then becomes whether the additional exposure to the insured of $200 is insignificant enough for one to conclude that it is "equal in value" or "virtually identical." The undersigned finds that this change in coverage is not "equal in value" and is not "virtually identical."

In the past, the City has made some changes to the plan which have resulted in some betterment to the overall package. The City argues that these changes evidence the fact that "equivalent" does not mean "equal" and, consequently, it has the authority to unilaterally implement changes. It also says that because the Union failed to object to prior changes which

enhanced the package, it has waived its right to object here. The undersigned is not persuaded by either of these arguments. First, the Union's argument is that changes in the plan must be bargained for if the coverages differ from those in effect in 1979. If the City voluntarily *adds* a benefit or *increases* coverage in some way, the Union is free to accept the change as though it had been bargained. The new or changed plan then modifies the 1979 plan and becomes the new standard. In this case, however, coverage was *decreased*. Upon review of the evidence, the exhibits, the past practice of the parties, and the arguments of the parties, I am satisfied that the party's definition of "equivalent" coverage is really "equal or better" coverage. It is certainly not "equal or less" coverage. The dismissal of this grievance would allow the City to slowly and methodically chip away at the coverages afforded by the plan, just a little at a time, until, theoretically, there would be nothing left.

This is not to suggest that the undersigned believes the City would do such a thing nor do I believe there is any union animus in this matter. Indeed, the City's motivation would, under the terms of the contract, be irrelevant. That said though, I do believe that the City has made a good faith effort to improve upon the insurance plan while, at the same time, hold the fiscal line in the face of drastically rising health insurance costs.

In light of the above, it is my

AWARD

1. The medical insurance plan implemented in April, 2002, is not "equivalent" to that provided on June 1, 1979, as required by the Collective Bargaining Agreement between the parties.

2. The plan's second tier shall be modified to the pre-existing coverage levels of 80% of $2,000.

3. To the extent that any members were not reimbursed at the 80% level, they shall be made whole by the City.

Dated at Wausau, Wisconsin, this 27th day of August, 2003.

Steve Morrison /s/
Steve Morrison, Arbitrator

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