BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

AFSCME, COUNCIL 40, AFL-CIO

and

CITY OF MERRILL

Case 65
No. 62550
MA-12333

(Heath Insurance Grievance)

Appearances:

Mr. Phil Salamone, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 7111 Wall Street, Schofield, Wisconsin, appearing on behalf of Local 2492-E, Office and Technical Employees Union.

Mr. Thomas Hayden, City Attorney, City of Merrill, 1004 East First Street, Merrill, Wisconsin, appearing on behalf of the City of Merrill.

ARBITRATION AWARD

Council 40, hereinafter "Union," requested that the Wisconsin Employment Relations Commission appoint a staff arbitrator to hear and decide the instant dispute between the Union and the City of Merrill, hereinafter "City," in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. Lauri A. Millot, of the Commission's staff, was designated to arbitrate the dispute. The hearing was held before the undersigned on November 10, 2003, in Merrill, Wisconsin. The hearing was not transcribed. The parties submitted post-hearing briefs, the last of which was received on December 15, 2003, with the option to file reply-briefs. Reply briefs were not filed and the record was closed on December 31, 2003. Based upon the evidence and arguments of the parties, the undersigned makes and issues the following Award.

ISSUES

The parties agreed at hearing that there were no procedural issues in dispute, but were unable to agree on the substantive issue.

The Union proposed the following issue:

> Did the Employer violate the collective bargaining agreement when it charged and is continuing to charge married couples with no children the family rate of health insurance premium contribution? And if so, what is the appropriate remedy?

The City proposed the following issue:

> Did the Employer violate the contract when it charged married couples the same premium, co-pay and deductible as provided in the contract for a family plan pursuant to policy #780282?

There is no evidence in the record to establish the co-pay or deductible charged to married couples, thus I cannot accept the City's issue. Having considered the arguments of the parties and the evidence, I accept the Union's issue.

BACKGROUND AND FACTS

The parties agree that this is a contract interpretation case arising out of the City's implementation of Article 13 – Insurance. Article 13 in the 2001-2002 collective bargaining agreement read as follows:

> A) The City agrees to pay 100 percent of each employee's premium under the City's group hospital and surgical insurance plan. The insurance provided shall be Security Health Plan No. 780282 or equivalent coverage, and there shall be no change in insurance benefits unless agreed to by the Union. Effective January 1, 2002 the insurance plan will include $300 Single/$600 Couple/$900 Family Annual Deductible. The prescription co-pay costs will be $5.00 for generic, 10.00 for preferred brands and, $25.00 for non-preferred brands, with the City paying for the first $250.00 of employee out-of-pocket prescription co-pay costs. During 2001, the above insurance plan will be in effect, but members will submit for reimbursement any deductible and prescription costs above 2000 insurance plan.

During negotiations for the successor agreement, the Union agreed to pay a portion of the health insurance premium costs and Section A of Article 13 was modified as follows:

> A) The insurance provided shall be Security Health Plan No. 780282 or equivalent coverage, and there shall be no change in insurance benefits unless agreed to by the Union. Effective January 1, 2003, the employees will pay $6.00 – single/$9.00 – couple/$12.00 – family per pay period and the City agrees to pay the remaining amounts of the hospital premiums for family, couple and single coverage of the Security Health Plan. Masterhealth Flex (or, equivalent or better coverage) with a $300 Single/$600 Couple/$900 Family Annual Deductible. The prescription co-pay costs will be $8.00 for generic, $16.00 for preferred brands and, $40.00 for non-preferred brands, with the City paying for the first $250.00 of employee out-of-pocket prescription co-pay costs. Effective January 1, 2004, the employees will pay $12.00 – single/$18.00 – couple/$24.00 – family per pay period and the City agrees to pay the remaining amounts of the hospital/surgical insurance premiums for family, couple and single coverage of the Security Health Plan, Masterhealth Flex (or, equivalent or better coverage) with a $300 single/$600 couple/$900 family annual deductible. The prescription co-pay costs will be $8.00 for generic, $16.00 for preferred brands and $40.00 for non-preferred brands with the City paying the first $250.00 of the employee out-of-pocket prescription co-pay costs.

Following ratification of the 2003-2004 agreement, the County began withholding $6.00 for all employees with single coverage and $12.00 for employees with covered dependents, regardless of whether it was a dependent spouse or dependent spouse and child(ren).

Security Health Care provides health insurance coverage to City employees pursuant to policy 780282. Policy 780282 does not provide a plan for "couples." Rather, it is a two tier plan, single and family.

Vincent L. Conrad, 13 year street department employee and bargaining committee member, testified at hearing that the employees had not ever paid anything toward their health insurance premium, but that as a result of the Police bargaining unit's agreement to pay a portion of the premiums, it was discussed during bargaining for the 2003-2004 agreement. Conrad stated that at all times three plan options were discussed, but that he did not recall the parties ever defining the terms, "family," "couple" or "single." Conrad testified that at no time was he ever told that there was the possibility that there would not be a "couples" rate. Conrad is married with no children and believes he is entitled to the "couples" rate. Conrad knew that the City's insurance carrier was Security Health. Conrad filed the pending grievance after noticing that the family rate was deducted from his first paycheck following ratification.

Douglas C. Williams, Jr., current mayor and former 26-year employee of the City, testified that the City has never offered a "couples" health insurance plan.

Further facts will be set forth in the DISCUSSION section below.

POSITIONS OF THE PARTIES

The Union

The Union argues that the contract language is clear and unambiguous; single means an employee that is unmarried with no children, family refers to a single or married employee with children covered by the City insurance plan; and couple was intended by the parties to reference to a married couple with no children covered by the City insurance plan. This definition is supported by Websters' Ninth New Collegiate Dictionary. Since the language of the contract is clear, the expressed meaning is entitled to its full effect and City's failure to recognize a couple premium deduction is in violation of the agreement.

During bargaining of the 2003-2004 labor agreement, the City proposed to shift the cost of the health insurance premium and represented to the Union that there were three levels of contribution. The employees ratified the agreement with the understanding that couples with no children would pay $9.00 per month for 2003 and $18.00 per month for 2004. At no time did the City indicate that the deduction for all non-single health plan participants would be the family rate.

The City's argument that the current insurance plan does not offer a couple rate is not credible. Security Health would allow the City to create a couple rate, but the City has chosen to create its insurance plan with only the single and family tier for economic reasons. This is not a situation where the City is unable to offer the plan that it negotiated, rather it is unwilling to offer the plan that it negotiated.

For all of the above reasons, the Union asserts that grievance should be sustained.

The City

The City maintains that it cannot provide a benefit to the Union that does not exist. During negotiations of the 2003-04 collective bargaining agreement, no discussion occurred as to defining single, family or couple. The City's health insurance plan, as specifically referred to in the labor agreement, does not contain a couple rate, rather it is a two-tier plan. The City argues that the reference to the policy number in the labor agreement effectively negates the validity of the grievance since by including the policy number in the agreement the terms of the policy are incorporated into the agreement. Moreover, the Union was under the obligation to

review the content of the policy and had it done so, it would have known that "couple" was not in the plan. The Union's failure to review the health insurance plan is to its own detriment and not the fault of the City.

The City points out that the Union has not asserted that the parties failed to bargain in good faith or that there was "non-clarity" in the contract language that was bargained.

For all of the above reasons, the City asserts that grievance should be dismissed.

DISCUSSION

The issue in this case is whether married employees who desire health insurance coverage for themselves and their spouses are responsible for the "couple" premium contribution or the "family" premium contribution. The parties agree that the contract clause at issue is Article 13, Section A. Consistent with the principles of contract interpretation, if the meaning of Section A is apparent from the plain language of agreement, no further inquiry is appropriate. If the language is ambiguous and subject to more than one meaning, then extrinsic evidence is utilized to determine the intent of the parties.

The specific language that addresses the employee premium contribution is found in the second sentence of Section A. This is the language that changed the status quo as it relates to the introduction of employee premium contributions in the 2003-2004 agreements. The sentence reads:

> Effective January 1, 2003, the employees will pay $6.00 – single/$9.00 – couple/$12.00 – family per pay period and the City agrees to pay the remaining amounts of the hospital premiums for family, couple and single coverage of the Security Health Plan.

This sentence specifies a date certain, January 1, 2003, when employees will pay a per pay period dollar amount. It further references three tiers of coverage; single, couple and family and specifies the amount of payment. There is no ambiguity in this language; this sentence obligates a couple to pay $9.00 per pay period in 2003 for health insurance plan participation.

The City does not dispute the content of the second sentence, but rather argues that the City "cannot provide a benefit that does not exist." The City's group policy is two-tier; single and family, and not three-tier; single, family and couple. The City contends that even though Section A identifies a couples' rate, since the insurance policy does not include a couples' rate, the City is not in violation of the collective bargaining agreement. The City is in error. In the context of labor relations as stated by Arbitrator John F. Sembower:

> In innumerable arbitration and court decisions it has been held that the union-company contract always controls in these instances, and that the Company is acting as an agent of the parties to secure insurance coverage consistent with the terms of the Agreement so that the Agreement always controls and if the insurance policy is inconsistent therewith, it is subordinate." GEORGIA PACIFIC CORP. 66 LA 353, 353-354 (SEMBOWER, 1976).

The City, as the agent for its employees when contracting for health insurance benefits, is duty-bound to facilitate the provision of insurance benefits consistent with the labor agreement. This record establishes that the City did not do this. Moreover, this is not a situation where the inclusion of a couple tier in the health insurance plan is an impossibility, but rather is a situation where the City has chosen to not modify its group insurance plan to include a couple tier because it would increase the City's insurance costs. Although this decision is economically logical, is inconsistent with the labor agreement.

The City contends that the Union is bound by the terms of the Security Health Plan because the Plan is incorporated by reference into the parties labor agreement. The first sentence of Section A states "[t]he insurance provided shall be Security Health Plan No. 780282 or equivalent coverage, and there shall be no change in insurance benefits unless agreed to by the Union." Where a collective bargaining agreement specifically identifies a health insurance plan, the terms of the insurance contract have been held binding on the employer and the union. ELKOURI & ELKOURI, How Arbitration Works, 6th Edition, p. 466 (2003). Lacking the "or equivalent coverage" component to this sentence, I would find merit in the City's argument. These three words allow the City to change the insurance provider which would effectively change the policy number. The only limitation on the City in this arena is that it must provide a plan with the same benefits. Thus, it is the benefits that the parties intended to remain stagnate and not the plan number. As such, I do not find that the parties, by including the specific plan number, intended to incorporate the insurance contract into the labor agreement.

The City next argues that the Plan was available for the Union to review and its failure to do so should be to its own peril, rather than on the back of the City. I find this argument to be intriguing, and ultimately not persuasive, for multiple reasons. First, by 2002 the City and the Union had bargained language that established a couple deductible distinct from the family and single deductible. The Union had no reason to believe that the inclusion of a couple tier had not occurred in 2002. Second, unless the City is admitting that it reviewed the insurance plan prior to ratification, noticed the non-existence of a couple tier, failed to inform the Union, and knowingly ratified an erroneous labor agreement, it too was derelict in its review of the content of the insurance agreement. Third, there is no evidence in the record to establish when the City was aware that its insurance plan design did not recognize a couple. As the City points out, the Union has not argued or asserted that the City has breached its implied covenant of good faith and fair dealing. Given that there is no such allegation, I reach no such conclusion.

In conclusion, the language of Section A of Article 13 clearly establishes that the parties bargained a monthly premium contribution of $9.00 for 2003 and $18.00 for 2004 for a couple health insurance plan. The City's decision to charge couples the family premium contribution was in violation of the agreement.

Based on the above and foregoing, the record as a whole and the arguments of the parties, the undersigned issues the following

AWARD

1. Yes, the City violated the violate the collective bargaining agreement when it charged and is continuing to charge married employees who carry City health insurance coverage for themselves and their spouses the family rate of health insurance premium contribution.

2. The appropriate remedy is to make all married employees who participate in the City health insurance coverage for themselves and their spouses whole retroactive to January 1, 2003.

Dated at Rhinelander, Wisconsin, this 10th day of June, 2004.

Lauri A. Millot /s/
Lauri A. Millot, Arbitrator

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