BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

BIMETALIX, A DIVISION OF SPIREX CORPORATION

and

DISTRICT LODGE NO. 10, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO

Case 1
No. 63676
A-6116

Appearances:

Don Carins, Lindner & Marsack, S.C., Attorneys at Law, 411 East Wisconsin Avenue, Milwaukee, WI 53202, on behalf of Bimetalix, a Division of Spirex.

Matthew Robbins, Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, 1555 North Rivercenter Drive, Suite 202, P. O. Box 12993, Milwaukee, WI 53212, on behalf of District Lodge No. 10, International Association of Machinists and Aerospace Workers, AFL-CIO.

ARBITRATION AWARD

According to the terms of the 2002-2005 labor agreement between Bimetalix (hereafter Bimetalix or Company) and District Lodge No. 10, International Association of Machinists and Aerospace Workers, AFL-CIO (hereafter Union), the parties jointly requested that Wisconsin Employment Relations Commission Arbitrator Sharon A. Gallagher hear and resolve a dispute between them regarding insurance premium rates for 2004. Hearing in the matter was held by joint agreement on September 24, 2004, at Milwaukee, Wisconsin. A stenographic transcript of the proceedings was made and received by October 4, 2004. The parties agreed that they would postmark their initial briefs to the Arbitrator on November 1, 2004, for her exchange. However, the parties thereafter jointly agreed to submit their initial briefs postmarked November 15, 2004, and that reply briefs, if any, would be submitted ten days from the date on which the initial briefs are received by the parties. All briefs in this case were received by December 15, 2004, whereupon the record was closed.

FACTS CONCERNING THE PROCEDURAL ISSUE

The Union filed the instant grievance on March 25, 2004, which read as follows:

. . .

Nature of Grievance: The Company is in violation of Article XIII (Group Insurance), Section 13.02 and any other pertinent language contained within the labor agreement. The Company made unilateral changes to the bargaining unit insurance coverage and failed to properly notify the Union in advance of these changes.

Remedy Requested by Union: Return all employees to the previous level of benefits until such time as the Union has had an opportunity to negotiate any appropriate changes. Make affected employees whole for all losses incurred as a result of this violation.

. . .

On March 26, 2004, the parties entered into an agreement entitled "Resolution Procedure for March 25, 2004 Grievance" and it read as follows:

A dispute having arisen regarding the Company's right to initiate a change in health insurance pursuant to section 13.02 of the current labor agreement, it is the intention of the parties to resolve such dispute as follows:

1. The Company will offer to employees health insurance coverage described as Option 2 on the attached Health Insurance Comparisons chart to bargaining unit employees with a premium co-payment of sixty-five percent (65) by the Company and thirty-five percent (35%) by the Employer.

2. The Company will also offer to employees the option of staying in the current plan "72D", paying the current premium co-payment of seventy percent (70%) by the Company and thirty percent (30%) by the Employee.

3. The parties agree to process the March 25, 2004, grievance expeditiously, including resort to arbitration if necessary for resolution of the following dispute pursuant to Article V of the parties' 2002-2005 labor agreement.

Would the Company's implementation of the health plan described as "72 D" on the attached Health insurance Comparisons on or about March 25, 2004, have violated the parties' labor agreement?

If an arbitrator rules that the Company would not have violated the labor agreement by so doing, Option 2 will continue for those employees who elected Option 2 with the employees paying thirty five prevent (sic) 35% of the premium and the Company paying sixty five percent (65%)

If on the other hand, an arbitrator rules that the Company would have violated the labor agreement by doing so, Option 2 will nevertheless continue for those who elected Option 2 except that the Company will henceforth pay seventy percent (70%) of the premium and the employee will pay thirty percent (30%) of the premium and the Company will reimburse the employees for the five percent (5%) difference in premium which they paid from the date on which they began participating in Option 2 and the date on which the arbitrator rules against the Company.

4. As the Company and the Union have reached a mutual agreement for resolving their dispute, the Union agrees further to withdraw the two (2) unfair labor practice charges filed with the National Labor Relations Board on or about March 25, 2004.

. . .

Despite its agreement to the above-quoted "Resolution Procedure," Bimetalix argued herein that the grievance was not timely processed by the Union, because the Union failed to timely request that the WERC issue a panel of arbitrators, pursuant to Section 5.07 of the effective agreement. The parties agreed that this procedural issue must be dealt with by the Undersigned before she may reach the substantive issue stated in the "Resolution" agreement quoted above in this case.

RELEVANT CONTRACT PROVISIONS REGARDING PROCEDURE

. . .

ARTICLE V
GRIEVANCE AND ARBITRATION PROCEDURES

5.01 – Definition. As used in this Agreement, the term "grievance" means a claim by an employee (referred to as the "aggrieved employee") that the Company has violated a bargaining unit employee's right(s) established by an express provision of this Agreement. Should such differences arise, an earnest effort shall be made to settle such difference at the earliest possible time by the use of the following procedure.

5.02 – Grievance Procedure. A grievance shall be processed as follows:

> **Step 1:** The aggrieved employee shall take the grievance up orally with his/her immediate supervisor within two (2) working days of the act or omission which is claimed to have violated the Agreement, and when doing so, he/she may exercise the option of being accompanied by a union steward, provided, however, that if the steward's assistance involves the use of "working time", the steward shall first obtain permission from his/her supervisor to be absent from work. The aggrieved employee's supervisor will respond orally within two (2) working days of the initial oral presentation.
>
> . . .
>
> **Step 2:** If the supervisor's verbal response is not satisfactory, the grievant must be reduced to writing, be signed by the aggrieved employee, and be submitted to the supervisor within three (3) working days of the supervisor's oral response. The written grievance shall also meet four additional requirements:
>
> (i) it shall contain a statement of the alleged complaint; and
>
> (ii) it shall identify the aggrieved employee by name; and
>
> (iii) it shall list the articles and sections of the Contract alleged to have been violated; and
>
> (iv) it shall state the specific relief being sought (hereinafter "the remedy").

The Company's Plant Manager (or his designee) will respond in writing to the designated Union representative within five (5) working days of the supervisor's receipt of the written grievances.

Step 3: Where the Company's Step 2 written answer is unacceptable, the Union shall notify the Company in writing within five (5) working days of his response that it wishes a meeting to discuss the grievance. Such meeting shall be held within ten (10) working days of the receipt of the Union's request, unless mutually agreed otherwise. Any settlement or resolution reached in such meeting by and between the Company and the Union shall be reduced to writing and be binding upon the Company, Union, and the grievant.

Step 4: If the grievance is not resolved at the Step 3 meeting, the Company's Step 2 answer, as modified at the Step 3 meeting, shall be final and binding upon the parties and the affected employee unless the Union, within fifteen (15) working days of the meeting, initiates arbitration in accordance with Section 5.07 below.

5.03 – Effect of Time Limits. The parties agree to follow each of the foregoing steps in processing a grievance and if in Step 1, Step 2 or Step 3, the Company's representative fails to give an answer within the time limit set forth, the grievance shall automatically be transferred to the next step. The Company shall be required to process only those grievances that are initiated within the time limits set forth above and any grievance that is not moved to Step 2 or Step 3 within the stated time periods will be considered to have been settled on the basis of the Company's last answer.

5.04 – Extension of Time Limits. Extensions to answer or to move a grievance may be extended by mutual agreement confirmed in writing.

. . .

5.07 – Selection and Powers and Duties of Arbitrator. Only the Union may initiate arbitration and to do so it must, within the fifteen (15) day period referenced in Section 5.02, Step 4, notify the Company in writing of its intent to arbitrate the dispute, and (2) file a written request with the Wisconsin Employment Relations Commission (WERC) asking for a panel of nine (9) arbitrators above. Service of the WERC request form upon the Company within the prescribed time limits shall satisfy the notice requirement to the Company.

The WERC shall be notified of the selection by a letter from the Company or the Union that requests written notification from the arbitrator as to the dates on which the arbitrator is available for a hearing.

. . .

POSITIONS OF THE PARTIES CONCERNING PROCEDURE

Union

The Union argued that in its view, the outcome of this case depends upon credibility resolutions and it urged that its witnesses were clearly more credible than the Company's. There is no question that the Company made unilateral changes in the health insurance coverage in March, 2004, and that the Union filed a grievance and two unfair labor practice charges with the NLRB all involving the same set of facts involved in the grievance. The parties settled the ULPs by entering into a written agreement to arbitrate the underlying grievance in exchange for the Union's agreement to withdraw its ULPs. The Union noted that the settlement agreement made no mention of the Company's wish to preserve any procedural objections/arbitrability issues.

The Union asserted that the Company's witnesses lied when they stated that there was no discussion at the 3rd Step meeting of the Company submitting a written response to the Union after the meeting. The Union noted that at the close of the 3rd Step meeting, it requested that the Company send the Union its written position and that all Union witnesses confirmed that O'Connor made this request. Furthermore, O'Connor's testimony was also supported by the submission of Union Representative O'Connor's notes of that meeting. The Union queried that if the Company's version were true, why had it not submitted its notes of the 3rd Step meeting. The Union then argued that because the Company did not offer any notes of the meeting, its version of what occurred at the meeting, (confirmed by its witnesses and its meeting notes) should be credited.

In addition, the Union observed that O'Connor's April 29th letter also supported the Union argument on this point as it refers to the assumption that the Company position had not changed. Nonetheless, the Union argued that the April 29th letter clearly notified the Company that the Union intended to proceed to arbitration. The Union contended that David Hotchkiss' May 5th letter further supports the assertion that O'Connor had asked for the Company's 3rd Step position to be put in writing.

The Union noted that this was the first grievance between the parties to go to arbitration so that past practice is not available in this case. In regard to bargaining history, the Union contended that no discussion was held regarding Section 5.07. Rather, the testimony made clear that the Company merely read its proposals to the Union, including Section 5.07. As the Company proposed the language of Section 5.07, the Union urged the Arbitrator to construe it against the Company.

Regarding the proper interpretation of Section 5.07, the Union argued that the 15 working day time limit refers only to notice of intent to arbitrate; that because of the position of the commas and the lack of a "(1)' in the Section, Section 5.07 should be interpreted broadly to allow the instant grievance to be resolved on its merits. The Union essentially argued that the principal "no harm, no foul" should be applied here, as the Company (admittedly) received timely notice of the Union's intent to take this case to arbitration by is April 29th letter.

Company

The Company argued that the Union failed to initiate arbitration within the contractually required 15 working day period stated in Section 5.07 and that therefore the Company's Step 2 answer constitutes the final and binding resolution of this case. In this regard, the company noted that the 15 working day time limit for appeal to arbitration is clear and unambiguous, that the Union had to initiate arbitration in this case on of before May 7, 2004, to meet this requirement.

The Union's argument that there is no time limit for it to request a WERC panel of arbitrators is not supported by either logic or by any evidence of record. On this point, the Company observed that there are time limits in all other parts of the grievance procedure. The fact that the commas in the Section are placed before each of the acts necessary to initiate arbitration and although a subsection (1) does not precede the "(2)" in Section 5.07, it is reasonable to conclude that there are two steps necessary to initiate arbitration that must be completed in the 15 day period. The omission of the "(1)" must have been a typo.

In bargaining, the Company noted that the Union failed to ask any questions or seek to discuss the 15 day time limit contained in Section 5.07; that David Hotchkiss testified that he went through every line item at bargaining and that he emphasized that there would be two steps to initiate arbitration and that time limits were intended to be strict; that in regard to Section 13.02, David Hotchkiss told the Union that the Company needed flexibility on insurance; and that both acts — notice to the company and a request for a WERC panel — had to be accomplished during the 15 day period (Co. Br. Pp.7 and 16).

The Company noted that Union witness Nickel did not dispute David Hotchkiss' testimony on these points. The Company argued that the faxed request for a WERC panel dated May 18, 2004, was the "first notification to the Company that the Union had, in fact, requested arbitration (Co. Br. p. 14), citing David Hotchkiss' testimony at the hearing, page 32 of the transcript. Therefore, the Company urged that the grievance be dismissed as untimely processed.

DISCUSSION – PROCEDURAL ISSUE

Section 5.02 states that if the grievance is not settled at Step 3, the Company may modify its Step 2 answer/position at the Step 3 meeting, and this "modified position" will be "final and binding" upon the parties and the affected employee unless the Union initiates arbitration in accord with Section 5.07. Although the language of Section 5.02 is clear, on its face, Section 5.07 is ambiguous. This is so because of the appearance of "(2)" without a (1) appearing before it and due to the use of the comma and the conjunction "and" in the Section. The proper interpretation of Section 5.07 is therefore at the center of the parties' procedural dispute.

Where contract language is ambiguous, evidence of past practice and bargaining history becomes relevant to fill in the contractual ambiguities. As this is the first labor agreement between the parties and they have never before taken a grievance to arbitration, no evidence of past practice was available.

In regard to bargaining history, the following evidence was offered. The Company (represented by David and Forbes Hotchkiss) proposed the language that became Article V of the effective labor agreement. The Union only proposed to change the Company's language to use the WERC, not the FMCS (as proposed by the Company) as the agency to provide grievance arbitrators. David Hotchkiss stated herein (Tr. 25-26) his impression of what occurred in negotiations concerning Article V:

. . .

MR. CAIRNS: Well, I – my question to the witness is essentially whether or not he can explain why there's a paren 2 and not a paren 1.

MR. ROBBINS: That's argument. Let's testify about something that was actually said.

THE ARBITRATOR: I agree. Was it discussed, sir, No. 2?

THE WITNESS: Between the – in the union negotiations?

THE ARBITRATOR: Yes.

THE WITNESS: There was two items here, so at –

THE ARBITRATOR: What was said and by whom? What was discussed?

THE WITNESS: During the negotiations they had to follow two steps: File a written request and notify the company of its intent to arbitrate.

THE ARBITRATOR: And that was said to the union at some point?

THE WITNESS: Yes.

THE ARBITRATOR: Who said it?

THE WITNESS: I did.

THE ARBITRATOR: Do you remember your exact words?

THE WITNESS: This is two years ago. But we went through every line item, so I would have gone through this whole thing with the union.

. . .

BY MR. CAIRNS:

Q: Was that explained to the Union?

A. Yes. Again, this is two years ago, so we went through every line item, yes.

. . .

Under cross-examination by Attorney Robbins, David Hotchkiss also stated (Tr. 30):

Q When you say you went through your proposal, I wanted to know, that means you read each line of the proposal to the union?

A Yes.

Q And the only thing that the parties discussed about 5.07 was that you had proposed the FMCS and they wanted the WERC, correct?

A That's correct.

. . .

David Hotchkiss admitted herein that the Company had no bargaining notes to support his testimony (Tr. 31). Former Union Business Representative Steve Nickel, who was the lead Union negotiator on the effective agreement, stated that both parties simply read their

proposals to each other in bargaining; and that there was really no discussion of Section 5.07 with one exception: The parties did discuss the use of FMCS or WERC as the appointing agency for arbitration. Nickel stated that he had no idea why Section 5.07 contains a subsection (2) but not a subsection (1) and that he could not recall ever seeing a Company proposal which contained a subsection (1). 1/

1/ The Company failed to submit any documents showing its bargaining proposals that lead to the 2002-2005 agreement.

The above evidence is insufficient to explain or clarify the parties' agreement to the specific language of Section 5.07. Therefore, the Undersigned must determine the meaning of the disputed language, applying accepted principles of contract interpretation. As a general rule, arbitrators interpret contract language so as to give full meaning to all of the language agreed upon by the parties while avoiding the forfeiture of contract rights.

The time limits in Article V are consistently stated in terms of "working days." The Section 5.07 time limit is "within 15 days of the (Step 3) meeting." Clearly, the 15-day period in Section 5.07 must be read to mean 15 working days as is the case with all other references to days in that Section and in Section 5.02, Step 4. In addition, Section 5.07 strongly implies that following the Step 3 meeting, the Company has the responsibility to identify the position which shall become "final and binding" on the parties if the Union fails to appeal the case to arbitration.

Section 5.07 then expressly requires the Union ". . . to notify the Company in writing of its intent to arbitrate the dispute, and (2) file a written request with the Wisconsin Employment Relations Commission asking for a panel of nine (9) arbitrators above." This portion of Section 5.07 does not contain a subsection "(1)." Given the fact that there is no subsection (1), that there is a comma and the conjunction "and" before the "(2)" in this portion of 5.07, and that there is no clear time limit stated for the request for a panel, this language is susceptible to more than logical interpretation.

The record evidence showed that the Step 3 meeting was held on April 16, 2004. At this meeting, the parties discussed the substance of the grievance but they could not agree to resolve it on the merits. The parties strongly contested what occurred at the end of this meeting. The Union by its witnesses herein that were present at the meeting (O'Connor, Kowalkowski and Justman) stated that Union Representative O'Connor asked the Company to send the Union a written response/position on the grievance, presumably based upon the Step 3 meeting/discussions. The Company representatives present at the April 16th meeting-David and Forbes Hotchkiss-specifically denied that O'Connor ever made such a request of them on April 16th. Only O'Connor had notes of the April 16th meeting and those notes read as follows: 2/

. . .

Notes: from 4/16/04 mtg.
D.H. & F.H. Bill White & Sam on conference call. P.O., K.K. and D.J. were in attendance.

P.O. explained the Union's position that we agreed to move to the Anthem Plan back in Jan. with the full understanding that that Plan ran through Dec. 31, of 2004.
Union explained that costs associated with Health care premiums were reduced by 37.5% from the UHC 2003 rates.

The contract states that if premium costs increase by more than 10% in any 12 month period then the Company may cancel such policy or select another carrier provided it notifies the Union first and seeks to obtain equivalent insurance coverage at the then existing rates.

The Union explained that even after the premium increases effective March 15, 2004 rates were 18.7% less than the 2003 UHC premiums.

The Company does not agree with our assessment of the numbers and claimed we were made aware of the March renewal back in Jan.

Both Keith and Doug disagreed with Forbes on this issue.

D.H. ask (sic) the Union if there was a way to resolve this issue without spending unnecessary money on attorneys. The Company can't afford this.

P.O. stated the Company could agree to stand by the 30% premium cost sharing for employees as the contract stipulates.

David Hotchkiss replied we can't afford to do that. The Company will stand by its previous response to this grievance.

The Union requested a copy of the Company's response be forwarded to our office.

2/ O'Connor used the initials of those present at the April 16th meeting, as follows: P.O., Pat O'Connor; D.H., David Hotchkiss; F.H., Forbes Hotchkiss; K.K., Keith Kowalkowski; D.J., Doug Justman.

After the April 16th meeting, O'Connor sent the Company the following letter dated April 29, 2004, notifying the Company that the Union intended to arbitrate the instant grievance:

. . .

> On Friday, April 16, 2004, the Company and the Union met (3rd step) to further discuss the March 25, 2004-health insurance grievance.
>
> At the conclusion of this meeting, the parties were unable to reach agreement on a resolution in this matter.
>
> If the Company's 2nd step response (dated March 30, 2004) reflects the Company's final position in this matter, then please be advised that the Union intends to proceed to arbitration for a final and binding decision regarding this dispute.
>
> If you have any questions regarding this notice, please feel free to contact my office.

. . .

David Hotchkiss responded to O'Connor's April 29th letter on May 5, 2004, indicating that the Company's position had not changed from that taken at Step 2, as follows:

. . .

> I am confused by your inquiry as to the Company's position on the grievance following the April 16, 2004 Third Step grievance meeting. We made clear at that meeting that our position had not changed from that which was expressed in our Second Step written response of March 30, 2004.

. . .

In these circumstances the head-to-head credibility issue raised by the parties herein concerning whether the Union requested a written position from the Company at the end of the April 16th meeting need not be determined. This is so because the documentary evidence showed that O'Connor was unsure what the Company's position was after the Step 3 meeting on April 16, 2004. Although it could have been more clearly written, O'Connor's April 29th letter was clear enough to get the above-quoted response from David Hotchkiss on May 5th, stating that the Company's position on the instant grievance had not changed following the Step 3 meeting. Thus, it is not necessary to determine whether or not the Union actually requested a written response from the Company at the Step 3 meeting. The Union's letter of April 29th

requested same and David Hotchkiss responded to that request on May 5th.

Furthermore, in my view, the Union had a right, under Section 5.02, to receive a clear statement of the Company's position after the Step 3 meeting took place. David Hotchkiss recognized that the Union had this right by his letter of May 5th. I note that David Hotchkiss also stated herein that he knew that the Union intended to go to arbitration on this case when he received its April 29th letter.

In addition, it was not unreasonable for the Union to expect the Company to make its position clear following the Step 3 meeting before the Union paid its half of the WERC arbitration fee and requested that the WERC issue a panel of arbitrators in this case. I note that the Company's letter was dated and received by the Union on May 5th and that the Union's request for a WERC panel was dated May 17th, at most, eight working days after the Company made its Step 3 position clear. 3/

3/ ***In any event, the facts showed that the Union did not delay in requesting a WERC panel.***

Also, the language of Section 5.07 fails to clearly require the Union to file its request for a WERC panel at the same time it notifies the Company of its intention to proceed to arbitration. The way that Section 5.07 is written and punctuated, specifically, the omission of a subsection "(1)," the use of a comma and a conjunction prior to the insertion of a subsection "(2)," and the comma used after the word "must" prior to the word "notify", all show an intent to separate the 15-day Company notiace requirement from the request for a panel. As this interpretation avoids a forfeiture of contract rights, and gives full effect to the language of the agreement, I find that based upon the facts and circumstances of this case, the Union timely processed the instant grievance to arbitration. 4/

4/ The parties entered into a "Resolution Procedure" concerning this grievance (quoted above) which, in my view, did not clearly state that procedural problems would be waived by the parties. Rather, that agreement specifically refers to the requirement of processing the grievance "expeditiously" and "pursuant to Article V of the parties' 2002-05 labor agreement."

However, in his letter dated March 30, 2004, David Hotchkiss acknowledged that the Union agreed to change to a new Option 2 Anthem policy on March 25th "subject to resolution of the . . . dispute through grievance arbitration . . ." (Jt. Exh. 4) As there was no mention in this letter of a reservation of the Company's right to the contest procedural issues, this Exhibit further supports my conclusion on the procedural issue herein.

THE SUBSTANTIVE ISSUE

I turn now to the merits of this dispute. The relevant contract provision reads as

follows:

RELEVANT CONTRACT PROVISIONS REGARDING THE MERITS

. . .

ARTICLE XIII
GROUP INSURANCE

13.01 – Group Benefits Package Generally. The Group Benefits Package (health insurance, dental insurance, S&A disability coverage, and life insurance) and the Plans providing such benefits shall be administered by the insurance carriers' contractors and/or administrative agents with whom the Company enters into contractual relationships for the purpose of providing and/or administering the coverages contemplated under such plans. No question or issue arising under the administration of such Group Benefits Package or the Plans or the contracts or administrative agreements identified therewith shall be subject to the grievance procedure or arbitration provisions. Claims for benefits under any such Plans shall be governed by the rules, regulations, and/or limitations established by the Plans as interpreted by the particular Plan Administrator. Employees and their dependents shall look solely to such Administrator for the payment of any and all such benefits.

13.02 – Health Insurance. Regular full-time employees may, upon completion of their first full calendar month of employment, apply for coverage for themselves and their dependents under the Company's Group Health Insurance Plan. Eligible employees who make application after the initial eligibility period under such Plan may be granted benefits limited by the rules and regulations of the specific Plan. The Company reserves the right to change the insurance company, health care contractor, and/or administrative agents during the term of this Agreement, provided, however, that the benefits (excluding administrative procedures and requirements) remain reasonably equivalent.

In cases where both husband and wife are employees and eligible for coverage, only one (1) of the employees may provide dependent coverage; a person may not be covered as a dependent of more than one (1) employee. No person may be covered both as an employee and as a dependent. Moreover, benefits for persons who are eligible for Medicare benefits under the Federal Health Insurance for the Aged shall be reduced by the amount of the benefits specified in Plan A and Plan B of Medicare, or amendments thereto, whether or not they elect Medicare coverage.

The Company shall pay an amount equal to seventy percent (70%) of the monthly premium towards health insurance and shall likewise pay an amount

equal to seventy percent (70%) of any increase in the monthly premium during

the term of this Agreement; the employee shall be responsible for paying the remaining thirty percent (30%) of the existing monthly premium and any increases thereto.

It is specifically agreed that if premium cost or rates for insurance coverage should be increased by more than ten percent (10%) in any twelve-month period or the insurance carrier imposes terms and conditions beyond those on the effective date of this Agreement, then and in either event, the Company may cancel any such policy or select another insurance company or carrier or make any other appropriate changes, provided, however, that in doing so, it shall first notify the Union and thereafter seek to obtain for the employees reasonably equivalent insurance benefits and coverage at the then-existing cost or rates. If reasonably equivalent insurance coverage and/or benefits cannot be secured at the then-existing cost or rates, the Company may modify the medical program (including benefits, co-pay and deductible provisions) in order to secure insurance coverage at or reasonably near the cost or rates in effect prior to the announced increase.

. . .

The instant grievance arose after the Company unilaterally changed insurance carriers in March, 2004, without giving the Union any prior notice or an opportunity to request information or negotiations regarding the change. The facts concerning the situation are as follows.

The Company manufactures heat exchange cylinders for the plastics industry at its plant in Sullivan, Wisconsin, where it employs 22 employees. 5/ After the Company executed its first labor agreement with the Union in March, 2002, the owners of the Company, David and Forbes Hotchkiss, negotiated and agreed upon a merger of the Company with the Spirex Corporation. Spirex then had two plants: Its main plant which employed 120 employees was located in Youngstown, Ohio, and its Gainesville, Texas, plant employed 20 employees manufacturing screws. The Youngstown and Gainesville plants were then and are now non-union.

5/ Twelve of the 22 employees of the Company employed at the Sullivan plant are in the Union's bargaining unit.

Prior to the merger with Spirex and since 2001, the Company's health insurance carrier was United Healthcare (UHC). From at least 2001 through 2003, the annual renewal date for

the Company's UHC policy was January 1st. During this period, UHC premium increases were only 10% per year. In December 2003, UHC notified the Company that premiums to cover its Sullivan employees would rise by 24% for calendar year 2004. After receiving this notice, the Company did not notify the Union thereof, nor did it share any information it had received regarding insurance premiums/carriers with the Union. The Company simply changed insurance carriers and policies, effective January 1, 2004, from UHC to Spirex's corporate carrier, Anthem, the Anthem Option 2 insurance plan.

In early January 2004, Union Representative O'Connor received a call from Local Representative Keith Kowalkowski indicating that the Company had changed insurance carriers. The change in carriers resulted in the Company saving $45,480 on its share of insurance premiums (70%) in 2004, a decrease of 37.5% in premiums from what UHC would have charged in 2004 premiums (Company Exhibit 3, Union Exhibit 8). The 22 Company employees (who paid 30% of the premiums) were expected to save $19,728 in premiums in 2004 with the Anthem Option 2 plan.

The Union did not file a grievance over this change but Union Representative O'Connor requested information and he fully investigated the situation and then he met with the Company on January 20, 2004. The Union ultimately agreed to the Company's implementation of the Anthem Option 2 plan because it resulted in significant savings on premiums for employees without a substantial decrease in benefit levels or an increase in deductible and out-of-pocket costs. At no time during the discussions with the Company or at the January 20th meeting did the Company inform the Union that the annual renewal date for the Anthem plan was March 15, 2004. O'Connor stated that the Union did not ask about the renewal date of the Anthem plan; that the Union assumed that the Option 2 Plan would be in effect until January 1, 2005.

On March 18, 2004, Union Representative O'Connor received the following letter from the Company by facsimile:

. . .

> This letter is to inform you of the changes in our insurance policy. The policy for the Wisconsin plant expired at the end of the year 2003 at which time we switched to the Spirex national carrier, Anthem (Blue Cross). This Spirex policy corporate wide is renewed every March 1st.
>
> Spirex has negotiated with Anthem to minimize the costs as much as possible. I don't need to tell you the dramatic increases in health coverage we are seeing, nor the financial burden it is putting on the health of our company as well as thousands of others.
>
> The new plan was is [sic] in effect now and we met with the employee's to explain the coverage options and are asking them to choose between two

different choices. For the vast majority of the employee's, [sic] the premiums are still below the levels we had with United Healthcare in 2003. The major differences in 2004 are the deductibles and maximum out of pocket expenses. I have attached a summary of the coverage's [sic] in a separate sheet. Each employee will choose either Option 72D or Option 71D.

I don't have any solutions to this national problem. In the future, all I can suggest is we have you try to shop the insurance for the Wisconsin plant using your connections. We have found that combining the Wisconsin plant with all the Spirex plants and employee's, [sic] we have far more negotiating power and lower cost insurance.

Please call either myself or Forbes Hotchkiss if you have any questions.

. . .

Attached to this letter was a table showing 2004 health care renewal costs for the Anthem Option 2 plan (the then-current plan) as well as two less costly Anthem plans (72D and 71D) that had substantially decreased benefit levels and greater out-of-pocket and deductible costs:

	Anthem Options 2004		
	Before renewal Anthem Option 2	**After Renewal Anthem Option 72D**	**After renewal Anthem Option 71D**
Deductible	$500/$1000	$500/$1000	$1000/$2000
Co Pay %	80/20	70/30	80/20
Max out of pocket	$2000/$4000	$5000/%10000	$4000/$8000
Office visit co pay	$15	$30	$20
Drug card ($50 min/	10/20/30	10/30/50% ($50 min/ $100 max)	10/30/50% $100 max)
Premium cost before renewal	$492		
	$138		
Employee pays:	$148/ (month)	$167/ (month)	$172/ (month)
	$41/(month)	$47/ month)	$48/(month)
Renewal premium cost	$638	$556	$574
	$178	$156	$161
Premium cost increase**Family	$146	$64	$82
	Single 640 (sic)	$18	$23

. . .

On March 25, 2004, the Company sent the following letter to the Union regarding the on-

going insurance issue between the parties:

. . .

> This letter is to inform you of the latest proposal we are making to try to resolve this insurance issue. We have offered the 72D plan to all the employee's (sic) but would like to offer an alternative plan.
>
> At the conclusion to our phone call on 3/24/04 we were offering the Option 2 plan for $248 for family and $82 for single coverage which was the allowable 10% increase in the premiums (then $224 for family, $75 for single) we had for 2003 contract with United Healthcare.
>
> Today, 3/25/04, in an effort to resolve this, Spirex is offering to pay 65% of the premium and 35% paid by the employee. This equates to the same premium dollars on average that everyone paid last year ($224 and $75).
>
> As you well know, we must give a response to our insurance carrier today for each employee's insurance plan election. Please call me immediately so we can get this option available to the employee's. [sic]

. . .

The Union filed the instant grievance and two unfair labor practice charges with the NLRB on March 25, 2004. On March 26, 2004, the parties entered into the "Resolution Procedure," (quoted at p. 2-3 hereof) wherein the Union agreed, *inter alia*, to withdraw the ULP charges and proceed to arbitration in this case. Thereafter, the parties continued to process the instant grievance. The Step 3 meeting was held on April 16, 2004, at which time the Union presented the following document to the Company comparing insurance plans:

SPIREX "2003" HEALTH CARE RATES
UNITED HEALTH CARE UHC "AGE RATES"

FAMILY		EMPLOYEE/SPOUSE/CHILD		SINGLE	
Employee #1	$854.00	Employee #10	$253.00	Employee #19	$198.00
Employee #2	$1177.00	Employee #11	$534.00	Employee #20	$258.00
Employee #3	$874.00	Employee #12	$427.00	Employee #21	$279.00
Employee #4	$721.00	Employee #13	$1378.00	Employee #22	$258.00
Employee #5	$889.00	Employee #14	$836.00		
Employee #6	$749.00	Employee $15	$246.00		
Employee #7	$721.00	Employee #16	$474.00		
Employee #8	$588.00	Employee #17	$723.00		
Employee #9	$577.00	Employee #18	$1132.00		

TOTALS	$7450.00	$6008.00	$993.00

AVERAGE MONTHLY PREMIUMS	$828.00	$668.00	$248.00

COMBINED FOR COMPARISON PURPOSES OF EMPLOYEES #1 - #18 $748.00

Total monthly premium paid to UHC "2003"	$14,451.00 (22 employees)
Company paid 70% premium	$10,115.00
Average monthly premium	$657.00

FAMILY $826.00	EMPLOYEE/SPOUSE/CHILD $668.00	SINGLE $248.00
Company pays 70% ($580.00)	Company pays 70% ($468.00)	Company pays 70% ($174.00)
Employee pays 30% (248.00)	Employee pays 30% ($200.00)	Employee pays 30% ($74.00)

COMBINED FOR COMPARISON PURPOSES OF EMPLOYEES #1 - #18 $224.00

Renewal rates for 2004 UHC were 24% higher.

Effective January 1, 2004, the Company implemented the Anthem (Option 2) Plan.

Family (17) $492.00

Single (5) $138.00

FAMILY $492.00 (17)	SINGLE $138.00 (5)
Company pays 70% ($344.00)	Company pays 70% ($97.00)
Employee pays 30% ($148.00)	Employee pays 30% ($41.00)

Total monthly premium paid to Anthem - $9037.00 (22 employees)
Company pays 70% of the premium - $6326.00
Average monthly premium - $ 411.00

As a result of moving to Anthem (Option 2) Plan, the Company saved $3789.00 per month in premium cost. (37.5% reduction)

Effective March 15, 2004, Anthem increased health care premiums for Option 2 Plan by 30%.

FAMILY $638.00 (17)	Single $178.00 (5)
Company pays 70% ($447.00)	Company pays 70% ($125.00)
Employee pays 30% ($191.00)	Employee pays 30% ($53.00)

Total monthly premium paid to Anthem - $11,736.00 (22 employees)

Company pays 70% of the premium - $8224.00
Average monthly premium - $ 533.00

Had the Company renewed the Anthem Option 2 Plan it was still 18.7% less than the 2003 UHC premiums.

The plans ultimately offered to Sullivan plant employees can be compared 6/ as follows:

			2004 Options	
	United Healthcare 2003	Anthem (1st Qtr)	72D	Option 2
Premium (30% only)				
Family	224*	148	166	224
Single	75	41	47	75
Deductible	0/300	500/1000	500/1000	500/1000
Copay	80/20	80/20	70/30	80/20
Max. Out of Pocket	1500/3000	2000/4000	5000/10,000	2000/4000
Office Visit Copay	20	15	30	15
Drug Card	10/25/50	10/20/30	10/30/50	10/20/30
	25% increase in rates for 2004	Spirex renewal date is March 15th every year		

_____

6/ This comparison was attached to the "Resolution Procedure" agreement.

_____

It is undisputed that in discussions and meetings between the parties over the Company's change in insurance carriers in January, 2004, the Company never stated that it believed that the 12 month period referred to in Article XIII was a rolling 12-month period.

POSITIONS OF THE PARTIES ON THE MERITS

Union

Concerning the merits of the case, the Union argued that the Company violated the contract when it imposed the 72D insurance plan in March 2004. In this regard the Union noted that the United Health Care (UHC) plan traditionally ran from January to January each year and the Company never told the Union that it could expect insurance renewals in the middle of a calendar year when the parties reached agreement on their first contract in March of 2002. However, in December, 2003, the Company was notified that UHC 2004 premiums were expected to rise 19%. The Company changed insurance carriers in January, 2004, and premiums went down 37% (with Anthem Option 2) from the 2003 UHC premiums. No

mention was made during meetings between the parties at this time that annual renewals for Anthem were in March of each year.

The documents given to the Union in January 2004, made no reference to first quarter premiums or rates and they did not contain a column 3 (U. Exh. 2, 3). The handwritten notations contained on Company Exhibit 3 do not appear on Union Exhibit 2. It is unreasonable to conclude that the Company would have given the Union the same document twice in January 2004, with different notations thereon. Therefore, Company Exhibit 3 and Union Exhibit 9 must have been produced in March, 2004, after the Company made the second change in insurance coverage. The Union noted that there was no evidence that Company Exhibit 3 was ever received by the Union, only that it was faxed from Spirex on December 5, 2003. Union witnesses confirmed that this exhibit and Union Exhibit 9 were not received by the Union until after the instant dispute arose in March, 2004.

The Union also argued that the Company was not entitled to change contractual health coverage in March, 2004, as Section 13.02 requires that there be an increase in premiums in excess of 10% before such action may be taken and no such increase was expected. On this point, the Union urged that 2003 UHC rates in effect in March, 2003, must be used as the floor for calculating the necessary 10% increase across a 12-month period, and Anthem Option 2 premiums constituted a decrease of 18.7% from UHC 2003. Here, if the Arbitrator rules in favor of the Company, the Company will gain almost a 19% savings in health care costs from its 2003 costs while unit employees will suffer dramatically decreased benefits and increased out-of-pocket costs. The Union asserted that such a conclusion should not be reached unless there is "the clearest demonstration that this was the intent of the parties." The Union contended that the record clearly showed that the Company "is just greedy" and it urged the Arbitrator to sustain the grievance and order the Company to comply with the remedy stated in the "Resolution Procedure" (Jt. Exh. 2).

Company

Regarding the merits of the dispute, the Company argued that its implementation of the Anthem Option 72D plan on or about March 25, 2004, did not violate the parties' labor agreement and that the grievance must be dismissed in its entirety. The Company noted that the clear language of Section 13.02 allows it to do as it did in changing insurance carriers/coverage if there is an increase in premiums in excess of 10% "in any 12 month period." The Company also urged that Union Exhibit 2 was sent to the Union on January 16, 2004, and that at the January 20,2004, meeting regarding the first insurance change, the Union received Company Exhibit 3.

The Company argued that based upon the record facts it faced an insurance rate increase of more than 10% from rates in effect as of January 1, 2004, and it asserted as follows (page 18,Company Brief):

> A search for insurance coverage with premiums comparable to those

existing in January 2004 led to the Company's considerations of Anthem Options 72D and 71D. The monthly premiums for family and single coverage

under Option 72D would be $556.00 and $156.00, respectively, while the premiums for the same coverage under Option 71D would be $574.00 and $161.00 respectively. The premiums for both options represented amounts at or reasonably near the pre-March 15, 2004 Anthem Option 2 monthly premiums of $492.00 and $138.00 respectively.

. . .

There is no dispute that as of March 25, 2004:

(1) premiums for health insurance were scheduled to rise by more than 29%;

(2) a single increase of 29% on a single day satisfied the requirement that insurance premiums increase by more than 10% in any twelve-month period;

(3) the Company sought comparable insurance at comparable coverage at comparable costs but such efforts did not succeed;

(4) the Company sought and secured an insurance option (Anthem 72D) that provided coverage with monthly premiums at or reasonably near the cost of rates "in effect prior to the announced March 15, 2004 increases"; and

(5) the Company provided advance notice to the Union before implementing any change in health insurance.

Accordingly, as each prerequisite for implementing Option 72(D) was satisfied as of March 25, 2005, the Company was indeed privileged by express contract language to implement Option 72D on that date. (footnote omitted)

. . .

DISCUSSION — SUBSTANTIVE ISSUE

The parties strongly disputed whether the Union knew in January, 2004 (when the Union agreed after the fact to the Company's change from the UHC plan to the Anthem Option 2 plan) that the renewal date for the Anthem policy was March 15, 2004. The Company argued that Union Exhibit 2 and Company Exhibit 3 put the Union on notice regarding the

testimonial evidence also fails to support a conclusion that the Union was aware of the annual Anthem renewal date in January, 2004. In this regard, I note that none of the documents submitted herein which were proven to have been received by the Union prior to March 15, 2004, show the March 15, 2004 Anthem renewal date. Rather, all of the record documents which list an insurance renewal date are from UHC and list a January 1, 2004, renewal date, with one exception: Company Exhibit 2 shows a March 15, 2004, renewal date for the Spirex corporate-wide Anthem policy. However, no evidence was submitted herein to show that Company Exhibit 2 was ever shared with the Union. Indeed, the testimony regarding this Exhibit, given by Spirex Comptroller Piacquadio, indicated only that he received this Exhibit from Spirex' corporate insurance broker (Tr. 78-79). Piacquadio did not state herein that he ever shared Company Exhibit 2 with the Union. 7/

7/ Piacquadio stated herein that he works for the owners. He essentially refused to give specifics regarding the Company's financial condition, put to him by Company Counsel, on this basis (Tr.84).

It is significant that when the parties negotiated the first collective bargaining agreement between them (Jt. Exh. 1) in 2002, the Sullivan plant unit employees had been covered by UHC insurance for several years with an annual renewal date of January 1st each year. Contract negotiations concerned only UHC and its premiums and renewal date. No mention was made at this time of the corporate-wide Anthem renewal date because the merger between Spirex and the Company was not then completed. Thus, the only experience employees and the Union had with insurance renewals prior to 2002 and thereafter, was with a January 1st renewal date.

In addition, when the Company changed insurance carriers in mid- January, 2004, it did so effective January 1, 2004. At this point, the Union was entitled to assume that the new coverage would be for a one year period (as had been the case each year in the past both before and after the Union became the employees' representative), absent specific statements/notification to the contrary by Company representatives.

The question then arises whether by its written or oral communications to the Union in January, 2004, the Company made clear that the Anthem renewal date was March 15, 2004. Initially, I note that although Company witnesses asserted that they made the March 15, 2004, Anthem renewal date clear to the Union in mid-January, 2004, after the Company unilaterally changed insurance carriers, these witnesses offered no specifics on this point. An analysis of the documentary evidence supports a conclusion that the Company never made the March 15, 2004 Anthem renewal date clear to the Union in January, 2004. In this regard it is significant that David Hotchkiss' letter to the Union dated March 18, 2004, was sent 3 days after the expiration of the Anthem Option 2 policy (U. Exh. 4) and in that letter, Hotchkiss wrongly

stated the Anthem renewal date therein as March 1st. These facts show that the Company neither considered or shared the March 15th renewal date with the Union until after the Anthem

Option 2 plan had expired. In addition, if, as the Company's witnesses asserted, they made it clear to the Union in January, 2004, that Anthem's annual renewal date was March 15, 2004, why did David Hotchkiss' March 18th letter contain the following sentence?

> The Spirex policy corporate wide[sic] is renewed every March 1st.

This unadorned statement tends to support a conclusion that the Company never informed the Union of the Anthem renewal date 8/

8/ I find it highly unlikely that the Union knew of the March 15, 2004 Anthem renewal date in January, 2004, as the Union failed to propose or to attempt to discuss (as it most certainly would have had done had it known the actual Anthem renewal date) any economic or other issues on January 20, 2004, when the parties met to discuss the Company's change of insurance carries.

The Union has argued that Forbes Hotchkiss' notations which appear on Company Exhibit 3 do not appear on Union Exhibit 2 and that there is no evidence to show that the Union ever received Company Exhibit 3. The testimonial and documentary evidence supports these arguments. In my view, whether or not Company Exhibit 3 contained Forbes Hotchkiss' note, "1Q 2004," the significance of this note was never explained to the Union at any time. Indeed, this note on its face could have merely referred to the applicable insurance rates for the first quarter of 2004, and nothing more. In addition, the other handwritten material on Company Exhibit 3, stating the expected employee family and single health insurance contributions, stated an incorrect amount for the family contribution ($14, not $148). This error might have caused the Union to disregard the handwritten notes on the document, even assuming the Union had received it, as the Company claimed.

Furthermore, Union representative O'Connor's notes (U. Exh. 8) also support the Union's assertion herein that in January, 2004, the Company never informed it that the Anthem renewal date was every March 15th. Finally, although Company Exhibit 6 lists insurance costs for the "1st Qtr" of 2004, the evidence showed that the Union did not receive this document until some time in March, 2004. Based upon the above analysis, it is clear that the first notice the Union had of the Anthem renewal date was David Hotchkiss' (erroneous) statement in his March 18, 2004, letter.

The question remains what is the proper interpretation of the phrase "in any twelve month period" contained in Section 13.02 of the effective labor agreement. The Company has argued that this language allows it to change carriers/benefit levels whenever "premium costs or rates" increase "by more than 10%" at any time during any 12-month period of time. In

contrast, the Union has argued that one must make an overall calculation (including savings and increases in premiums) across the 12 month period to determine whether there has been a 10% increase.

I note that the record in this case demonstrates that the parties did not discuss the meaning of the disputed portion of Section 13.02 which was proposed by the Company. Indeed, the evidence showed that at most, the Company read the proposed contractual language to the Union and that there was no discussion of it as the Union did not ask any questions about the language. As this is the first contract between the parties no evidence of past practice was proffered herein on this point.

As detailed above, the parties were accustomed to one year insurance contracts which expired every January 1st and they entered into their initial labor agreement effective March 27, 2002, knowing that across the three year term of the agreement, insurance premiums would increase each January 1st, or three times across the term of the agreement. The evidence is undisputed that in the several years prior to 2002, the Company had received minimal (5%) increases in UHC premiums. This was the parties' experience as of 2002. These facts form the context in which this dispute arose.

Clearly, Section 13.02 was intended to allow the Company some flexibility in case premiums increased in excess of 10% at times when the contract was not open for negotiation. I note that Section 13.02 does not use the terms "calendar year" or "fiscal year." The use of the word "any" requires a conclusion that the 12-month period referred to in Section 13.02 is a rolling 12-month period and the use of the word "in" demonstrates an intention to calculate the total increase in premiums across the entire 12-month period used.

Therefore, for the calculation of a rate increase in excess of 10% in any 12-month period, one must calculate a total increase/decrease in all premiums charged during the 12-month period used. I note that the UHC premiums as of March 15, 2003, were $657/Family and $248/Single; that the change to Anthem Option 2 as of January 1, 2004, resulted in premiums lower than UHC's by over 35% ($492/Family, $138/Single). As of March 15, 2004, Anthem Option 2 premiums were expected to rise approximately 30%, to $638/Family and $178/Single. These undisputed facts show that in the 12-month period from March 15, 2003, to March 15, 2004, premiums covering bargaining unit employees actually decreased by 3% Family and 28% Single. Therefore, as premium costs or rates have not increased in excess of 10% overall from March 15, 2003, to March 15, 2004, I issue the following

AWARD

The Company's implementation of the health plan described as 72D on or about March 25, 2004, violated the parties' labor agreement. The Company is, therefore, ordered to perform the following acts contained in the "Resolution Procedure," Joint Exhibit 2 at paragraph 3:

> . . . Option 2 will nevertheless continue for those who elected Option 2 except that the Company will henceforth pay seventy percent (70%) of the premium

> and the employee will pay thirty percent (30%) of the premium and the Company will reimburse the employees for the five percent (5%) difference in premium which they paid from the date on which they began participating in Option 2 and the date on which the arbitrator rules against the Company.

Dated at Oshkosh, Wisconsin, this 22nd day of February, 2005.

Sharon A. Gallagher /s/

Sharon A. Gallagher, Arbitrator

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