

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**ONEIDA COUNTY**

and

**ONEIDA COUNTY HIGHWAY EMPLOYEES  
LOCAL UNION No. 79, AFSCME, AFL-CIO**

Case 172  
No. 64971  
MA-13069

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**Appearances:**

**Carey L. Jackson**, Personnel Director, P.O. Box 400, Rhinelander, Wisconsin 54501, appearing on behalf of the County.

**Dennis O'Brien**, Staff Representative, AFSCME Council 40, 5590 Lassig Road, Rhinelander, Wisconsin 54501, appearing on behalf of the Union.

**SUMMARY OF BENCH AWARD**

At the joint request of the parties, the Wisconsin Employment Relations Commission designated the undersigned Marshall L. Gratz as arbitrator to conduct an expedited arbitration to resolve the ISSUE noted below which arose under the parties' 2002-2004 Working Agreement (Agreement).

The Arbitrator convened a hearing in the matter on August 12, 2005, at the Oneida County Courthouse in Rhinelander, Wisconsin. By agreement of the parties, after the parties presented their evidence and arguments, the Arbitrator issued a bench award in the matter. This written summary confirms the outcome and basic rationale issued orally by the Arbitrator at the conclusion of the hearing.

**ISSUE**

The parties agreed to authorize the Arbitrator to resolve the following issue:

Did the County have the right to change the health insurance plan on, or about, June 1, 2004 without bargaining such changes with the Union?

The Union affirmed on the record that it is not requesting restoration of the status quo ante and that the only monetary relief the Union is seeking is for out of pocket costs resulting from the change to the stand-alone drug card system. The County affirmed on the record that it remains willing to reimburse any documented drug card related losses regardless of the Arbitrator's determination on the ISSUE, above. And the parties both agreed that they would attempt to resolve any remaining disputes regarding unreimbursed drug card losses, with the Arbitrator retaining jurisdiction to resolve any such disputes at a later date at the request of either party.

### **BACKGROUND**

In late May of 2004, during the term of the Agreement which nominally expired at the end of 2004, the County decided to make a variety of changes in the health insurance arrangements affecting employees in its various bargaining units including the highway unit represented by AFSCME. Some of the contemplated changes were favorable to employees, some were not. The County announced most of the contemplated changes to the highway unit at a meeting of highway unit employees convened on short notice on May 23, 2004. No agreement to the changes was requested or given by the employees who gathered at that meeting. At a further meeting on or about June 24, 2004, the County informed a gathering including the highway unit bargaining team and other members of the bargaining unit that the County also intended to change to a stand-alone drug card (from the existing system in which drugs were subject to a common deductible and co-payment with many other covered benefits). The County advised the Union at that time that to obtain the improvements for the highway unit, the Union would need to approve the changes that day. After polling the employees present, the Union advised the County that it did not agree to the changes and that the Union preferred that any bargaining about the changes be deferred until negotiations reopened regarding a successor to the Agreement.

The County then immediately issued a memo to the Union and the highway unit employees informing them that it had changed to a fully insured health plan and offering "to negotiate with the Union the impact of making this change." The Union filed a grievance challenging the changes which bears a received-by-management date of July 7, 2004. The Union also filed a prohibited practice complaint with the WERC challenging the changes. The complaint was ultimately resolved based on an agreement between the parties that they would submit the above ISSUE for expedited arbitration. The County has, at all times, expressed a willingness to make employees whole for out of pocket losses experienced as a result of the change to a stand-alone drug card, and the County has reimbursed five highway unit employees in amounts ranging from \$208.80 to \$682.28 in that regard.

### **DISCUSSION**

The Arbitrator has concluded that the answer to the ISSUE is "no," for the following reasons.

The ISSUE, above, calls for a determination of whether the Agreement or the Union's conduct waived what would otherwise be the underlying statutory requirements that the County bargain collectively with the Union about health insurance changes and refrain from unilateral changes during the term of the Agreement. Proof of such a waiver must be clear and unmistakable.

The Management Rights language in Art. 10 vests various rights in the County Highway Committee and Highway Commissioner. However, those rights do not specifically include making unilateral changes in health insurance or other mandatory subjects of bargaining.

The Agreement does not specify the plan design of the health insurance applicable to highway unit employees. Article 9 does provide as follows:

Section B - Hospital and Health Insurance Premiums: The County shall pay 95% of the cost of the health insurance premium for both the family and single plan. The employee shall pay 5% of the cost of the health insurance premium for both the family and single plan.

Section C - Review of health Plan: The County and the Union further agree that the cost containment measures previously developed by the County's reinsurer under such partially self-funded program together with a hospital bill review cost containment measure may be implemented by the County. Further, the County agrees to meet with representatives of the Union and with representatives of the other bargaining units to review the partially self-funded employee group health insurance program, including actual administrative expenses and the overall cost of actual claims incurred, or to which the County is obligated, as well as projected or quoted administrative expenses, anticipated claims expenses projected for the next calendar year, and the continued development of a prudent reserve account.

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Section F - Section 125 Plan: The County will implement a Section 125 Plan for highway Bargaining Unit employees. Participation in the Plan shall be voluntary. The County shall have the right to modify and/or eliminate the Plan as it deems fit.

The parties' inclusion of express language in Art. 9.C. and 9.F. authorizing the County to implement the insurance plan changes specified in 9.C. and authorizing the County to modify or eliminate the Sec. 125 Plan strongly implies that the parties did not intend to authorize the County to unilaterally implement the additional changes that it implemented in or about June of 2004. Rather, those provisions, and the contract interpretation principle of *expressio unius est exclusio alterius* (to express one thing is to exclude another), indicate that

that the parties did not intend to authorize the County to modify the health insurance arrangements in effect without bargaining with the Union to an agreement in those regards during the term of the Agreement or without meeting its statutory duty to bargain regarding those changes as regards time periods in and after 2005.

The parties' 1993-95 agreement specified that, ". . . [t]he plan shall be equivalent to the Co-Pay Aggregate Liability Plan by Blue Cross/Blue Shield, a copy of which is attached to this agreement as Addendum 1-A and which is further explained in that certain letter dated June 12, 1984 from . . . Blue Cross/Blue Shield to [the then County] Personnel Director, a copy of which is attached to this agreement as Addendum 1-B." The parties' elimination of that language from agreements applicable in and after 1996 left their agreements without specific language about health insurance plan design and without language about whether the County has the right to unilaterally modify most aspects of the plan. However, the record shows that in the 2001 negotiations leading to the Agreement, the County's proposals included new language that would have established a stand-alone prescription drug plan. The Union did not agree to that proposal, and the County agreed to the Agreement without that change. In the context of the 2001 negotiations history, the 1996 elimination of the above-quoted language does not persuasively establish that the parties intended to authorize the County to unilaterally change the health insurance plan design.

The record establishes that, historically, the parties have always bargained changes in the health insurance arrangements affecting the highway unit employees. Bargaining has addressed both the nature of the funding of the benefits and the plan design of those benefits. The Union has never previously acquiesced in unilateral changes of any kind by the County regarding the health insurance arrangements. For example, in 1995, when the County informed that Union that it was contemplating cessation of employer and employee contributions to remedy an over-funded insurance reserve, the Union threatened to file a prohibited practice complaint and the parties eventually reached an agreement on how to address the over-funded condition.

The evidence regarding the events of May and June of 2004 does not persuasively establish that the Union, by its conduct, authorized the County to implement the specific changes implemented by the County in and about June of 2004. While the employees who were convened on May 23, 2004, did not expressly object to the changes outlined during that meeting by County representatives, that group was assembled on very short notice, it was not the Union's bargaining team, it was not asked to state a position regarding the changes, and it was not advised at that time that the changes would include a stand-alone drug card. At the subsequent meeting on June 23 or 24, 2004, when the County for the first time informed the Union that the contemplated changes would include a stand-alone drug card, the Union polled those employees present and then clearly and unequivocally informed the County that the Union did not agree to the implementation of the changes during the term of the Agreement. The Union further informed the County that it preferred, instead, that the parties bargain about the changes in the course of negotiations about a successor to the Agreement. The fact that the grievance on the subject has not been shown to have been received by the County until July 7,

2004, does not persuasively establish that it was reasonable for the County to conclude that the Union was agreeing to authorize the County to make the changes in question. The Union had informed the County unequivocally to the contrary at the June 23 or 24 meeting on the subject. Furthermore, any County objection to the procedural arbitrability of the above-noted ISSUE was waived by the County when it unconditionally agreed to submit that ISSUE to arbitration during the course of the settlement of the Union's prohibited practice complaint.

The record establishes that the County's actions in this case were in response to substantial increases in the costs of its health insurance over a period of several years; that the County received cost information and options very shortly before County action was necessary to take advantage of the significant cost savings that the changes would provide; that the changes implemented were favorable to the employees in many, but not all, respects; that the County has offered to bargain with the Union about the impact of the changes on highway unit employees; that the Union has not, to date, entered into detailed negotiations regarding the impact of those changes; and that despite the Union's reluctance to bargain about impact, the County has taken affirmative steps to make whole employees adversely affected by the drug card change and remains willing to make further reimbursements in that regard if and when presented with documented instances of unreimbursed drug card related losses. However, those facts did not give the County the right to implement the changes unilaterally as it did in this case.

The Arbitrator has therefore concluded that the answer to the ISSUE, above, is "no." This declaration will presumably allow the Union to argue, in bargaining and interest arbitration about the terms of a successor to the Agreement, that the status quo regarding health insurance against which the parties' stipulations and final offers should be compared is that in existence before the unilateral health insurance changes were implemented by the County in or about June 2004.

### **DECISION AND AWARD**

For the foregoing reasons, and based on the record as a whole, the decision and award of the Arbitrator -- as orally issued at the hearing -- was and is, as follows:

No. The County DID NOT have the right to change the health insurance plan on, or about, June 1, 2004 without bargaining such changes with the Union?

Dated at Shorewood, Wisconsin this 16th day of August, 2005.

Marshall L. Gratz /s/

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Marshall L. Gratz, Arbitrator

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