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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN

BEFORE THE ARBITRATOR

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| In the Matter of the Petition of the<br><br>ADAMS COUNTY HIGHWAY<br>EMPLOYEES UNION, LOCAL 323,<br>AFSCME, AFL-CIO<br><br>To Initiate Arbitration<br>Between Said Petitioner and<br><br>ADAMS COUNTY<br>(HIGHWAY DEPARTMENT) | Case 50<br>No. 39955<br>INT/ARB - 4731<br>Decision No. 25479-A |

APPEARANCES:

David White, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, on behalf of the Union

Charles A. Pollex, Attorney at Law of Hollmen & Pollex, S.C. on behalf of Adams County

## INTRODUCTION

On July 21, 1988, the Wisconsin Employment Relations Commission (WERC) appointed the undersigned to act as Mediator-Arbitrator pursuant to Section 111.77 of the Municipal Employment Relations Act (MERA) in the dispute existing between the Adams County (hereinafter the "Employer" or the "County") and the AFSCME Local 323 (hereinafter the "Union"). On August 11, 1988, an arbitration hearing was held between the parties pursuant to statutory requirements and the parties agreed to submit briefs and reply briefs. Briefing was completed on October 4, 1988. This arbitration award is based upon a review of the evidence, exhibits and arguments, utilizing the criteria set forth in Section 111.77 (6), Wis. Stats. (1985).

## ISSUE

Shall the Labor Agreement between the parties be amended to include the County's Health Insurance language or shall the present language be retained?

## SICK LEAVE

Both Final Offers contain language on this subject. However, there is no dispute between the parties on this matter, and thus the language in either offer will be incorporated in this Award and the issue will not be discussed here.

## HEALTH INSURANCE

The County's Position:

The County's Final Offer contains a change in the present health insurance language. While the level of benefits would remain the same as in the present contract, the County would institute a co-pay provision, with the employee paying 20% of the first $2,000 in covered expenses for each occurrence, with an annual limit of $400 for a single plan and $600 for a family plan. The provision would be effective January 1, 1989.

The County states that the rapid increase in health insurance costs has made this an important bargaining issue akin to wages in importance. It has described its offer here as an attempt to gain a modest improvement in the contractual language relating to health insurance.

The County recognizes that the burden rests with it to justify a change in contract language through arbitration, given the long-established reluctance of arbitrators to impose such changes outside of the collective bargaining process. To sustain that burden, the Employer believes it must show that a legitimate problem exists that requires a change in language and that the suggested change will reasonably address that problem.

Adams County points out that no change in benefit levels will take place if its Final Offer is accepted. It asserts that its proposal will provide those benefits more effectively. It believes that institution of a co-pay provision will cause its workers to utilize the health insurance system in a more responsible fashion because they will have a financial incentive to reduce use of the system, especially in the area of prescription drugs.

The County believes it needs a more cost-conscious work force because of the steadily increasing costs of providing benefits. It realized some cost savings in 1985 when it adopted a self-funded plan. However, most of the savings were due to a run-off liability under its previous policy, and the quick upward trend has resumed and can be anticipated for the future.

Finally, the County argues that its present health insurance program provides its employees with a benefit and cost package that is in excess of that granted to most comparable public employees. It offered testimony that the vast majority of self-funded plans do not provide the same high benefit level as that enjoyed by Adams County Highway workers.

The Employer further argues that its proposal is reasonable. It announced its concern on this issue at the beginning of bargaining and presented a detailed proposal at that time. It has subsequently backed off from its original proposal and all that remains of it is contained in its Final Offer here. Nonetheless, its proposal will impact on what Adams County considers the abuse of over-utilization and does so in a reasonable manner. The maximum exposure of an employee with a family would be $600 per year, or only $.29 per hour. It estimates the 1989 cost of the present benefit will be $2.00 per hour for a worker with a family, with the entire cost to be borne by the Employer. The County submits that this constitutes a reasonable proposal designed to deal with a substantive problem.

The Employer would have preferred to resolve this matter through the collective bargaining process. However, the Union's refusal to consider language changes in bargaining and its filing for arbitration after two negotiating sessions closed this route to them. Furthermore, the fact that Adams County Highway workers presently enjoy a wage scale and benefit package that ranks among the highest in either internal or external comparables prevents the County from offering a quid pro quo that might have induced the Union to accept modification of the present contract language.

Thus the County had no choice but to submit its needed language offer to the arbitration process.

The Union's Position:

All Adams County employees, whether represented or non-represented, presently enjoy the exact same health insurance benefits as Highway workers. The Union believes the County is using the arbitration process as an opening wedge to effect a change for all employees of the County. The Highway employees object to the use of this process for such a purpose.

Moreover, the Union submits the County has failed to carry its burden in this process. It argues that the figures used by the Employer are inflated and that the real health benefit costs are unknown to both parties. Although those costs have been increasing, they have not gone up nearly as much as the County's inflated projections would indicate.

The Union does not believe the County has offered convincing evidence that the present health care delivery system is being abused by its members. Nor does it believe the County's proposal might reasonably be expected to correct abuse, even if abuse had been established.

Even if the County had established a need, the Employees submit that the offered language must be rejected in arbitration because the Employer has failed to show it had presented a satisfactory quid pro quo during bargaining that might have induced a reasonable Union bargaining team to accept the changes. Absent such a showing, they feel it is not proper to alter contract language through arbitration.

The Adams County Highway employees agree they have a competitive wage and benefit package. However, the Union submits that it is not so out-of-line as to eliminate all avenues of improvement. Because none of those avenues were examined during bargaining, the un-cushioned economic effect of the proposed change will be felt by all employees. The refusal

of the Union to consider a change in bargaining is no more serious than the County's insistance upon the change.

Having failed to sustain its burden, the arbitrator must reject the County's Final Offer language and accept the Union's support of continuing the status quo.

## DISCUSSION

Arbitrators are reluctant to impose contract language changes because they see their role as being supportive of the collective bargaining process. Arbitration is not a means of supplanting that process, only of supporting it.

The County argues that the negotiating process failed due to the Union's failure to respond to its proposed language, even after the original proposal had been scaled back to the terms set forth in its Final Offer. It cites the Union's rush to the arbitration process after only two bargaining sessions as an indication that the negotiating process broke down because of Union intransigence.

This argument must fail. It appears that the Union made its position on this issue clear from the start and there is no requirement that a party's failure to agree on the need for contract changes constitutes a failure to support the bargaining process. Here the Union saw no need for a change and it is entitled to continue in that posture.

Nor is it possible to argue that the negotiating process was unproductive as between these parties. The Final Offers contain a rather substantial list of stipulated contract language changes which point to a good faith give and take between the parties during bargaining.

On the other hand, the County's failure to offer a quid pro quo on the health insurance issue does not operate against its right to bring the matter to arbitration. Standing alone, such a failure does not go directly to the merits of the Employer's position. And the issue here is the merits of the County's Final Offer, not the negotiating process that resulted in the latest contract offer.

This Arbitrator has subscribed to a three-prong test to be used to evaluate whether a party desiring to alter contract language has met its burden. Here the burden is upon the County to show:

(1) That the present contract language has given rise to conditions that require amendment;

(2) That the proposed language may reasonably be expected to remedy the situation; and

(3) That alteration will not impose an unreasonable burden on the other party.

There is no doubt that moving to a co-pay system will expose Union members to potential increased costs. Yet, a member who does not use the benefit will not absorb an increase. Any increase may be un-wanted, but that does not necessarily mean the cost is unreasonable. Co-pay provisions exist in the labor agreements of other comparable bargaining units and no showing was made here that they have found the burden un-reasonable as their contracts have continued to contain these provisions. In and of itself, it is difficult to determine that the County's proposed language would impose an unreasonable burden on the other party.

The opposite determination applies to the second test. Without going into the merits of the County's rationale, the proposed language is intended to reduce the cost of providing medical benefits by controling abuse of the system through giving the unit members a financial stake in cost control. It would "provide those benefits more effectively" (County's Brief, page 3) and reduce "bad health care habits encouraged by the present system" (Ibid, page 4).

It is important to understand that Adams County has not asked to institute a deductible system which would tend to reduce preventive medicine or prescription use more substantially than the co-pay provisions being described here and to increase the out-of-pocket costs to the workers.

However, one of the bad health care habits cited by the County is abuse of prescription drugs. Testimony was given at the hearing to show that the average cost of drugs purchased by unit members was substantially in excess of what it ought to be. Drugs are prescribed by physicians to prevent, cure, or control a condition. The patient has little control over

the type of drug, amount of drug prescribed, or its cost. The County's concern ought to be directed toward the physicians attending workers and their families, not toward the workers themselves.

The Employer has also pointed to substantial excessive costs resulting from a series of illnesses that have resulted in large insurance claims. No detail was given regarding the specific nature of those claims. However, it would appear from testimony that such claims arose from costly illnesses or accidents and that the co-pay system would have little effect upon such large claims. As the Union has argued, the County's proposal would tend to increase such costs by discouraging preventive medicine, such as periodic physical examinations or use of drugs to cure, prevent or control a health condition. The proposed language does not appear to reasonably remedy the situation.

The final test is whether the present contract language has given rise to conditions that require amendment. The County submits that the present contract, containing both the present health insurance language and a COLA provision, has placed it in a position where it is subject to rapidly increasing costs without the ability to reduce the impact of those increases. It finds this condition to be sufficiently onerous as to require language adjustment here.

Both parties point to health insurance as an emerging critical issue in collective bargaining. Even the most casual observer of the media must be aware of the fact that rapidly rising costs of health care constitute an important public problem and it is not surprising that the issue may become of over-riding importance to employers and workers generally. One can foresee a time when parties present sophisticated analyses of benefits and costs in comparable bargaining units much as they have come to do in dealing with wage issues. Although comparable contract language is available for review here, there is a paucity of information on cost/benefit levels as they apply to the public employers or employees. There is no information on lost work days under other plans, or on average employee costs or on drug or hospital use. Were such information available, one might reach a conclusion as to whether the current contract language has given rise to conditions that require amendment.

It may well be that health insurance cost increases warrent attention. The issue, however, is whether this contract language has given rise to the condition. The culprit here is the health care system, not the contract. Cost increases will probably occur irrespective of the contract language. The costs will go up under a deductible system, a co-pay system, or the present system. The parties cannot agree on the basic premium cost of this system nor have they presented information that would enable an arbitrator to compare the reasonableness of other systems. One is sure that such information is not available to either party. Another difficulty they face is the timing of premium and loss information. At the time of the hearing and briefs, both sides were forced to speculate on costs for the first year of the contract, much less the second. Such a condition makes it very difficult, if not impossible, to ascertain whether the contract language contains provisions that put it so out of the ordinary that amendment is required.

Based upon the clear perception that the County's cost increases are due to the general increase in health care costs, and without a base of data unavailable to either party in this proceeding, it is not possible to find that the present contract provisions have given rise to conditions that require contract amendment.

## DECISION

Based upon the foregoing discussion, it is determined that Adams County has failed to carry its burden sufficiently to accept a change in the present contract language relating to the payment of health insurance.

## AWARD

The terms of the Union's Final Offer shall be incorporated in the labor agreement between the parties, together with the stipulations agreed to by parties.

Dated this 22d day of November, 1988.

ROBERT L. REYNOLDS, JR., Arbitrator