

STATE OF WISCONSIN
WISCONSIN EMPLOYMENT RELATIONS COMMISSION

FOREST COUNTY
DEPUTY SHERIFF'S ASSN.
LOCAL 114 OF THE
LABOR ASSN. OF WISCONSIN

And

Case 100
No. 66450 MIA-2744
Dec. No. 32213-A

FOREST COUNTY
(Sheriff's Department)

Appearances:

For the Union: Thomas A. Bauer,
Labor Consultant

For the Employer: John J. Prentice, Esq.
Simandl & Murray

DECISION AND AWARD

The undersigned was selected by the parties through the procedures of the Wisconsin Employment Relations Commission. A hearing was held on January 28, 2008 in Crandon, Wisconsin. The parties were given the full opportunity to present evidence and testimony. At the close of the hearing, the parties elected to file Briefs and the County filed a Reply Brief. The Arbitrator has reviewed the testimony of the witnesses at the hearing, the exhibits and the briefs of the parties in reaching his decision.

BACKGROUND

Forest County is located in Northern Wisconsin. Its population is just over 10,000 with an average per capita income of roughly \$24,000. Its revenue in 2006 was \$1.84 million. The total General Fund for the County is slightly less than \$3 million.

One of the Bargaining Units consists of the employees that work in the Sheriff's Department. The Labor Association of Wisconsin, Local 114 represents the employees in this Unit. In addition to this bargaining unit, there are two other bargaining units in the County. They are the Courthouse Employees and the Highway Employees.

The parties resolved almost all of the issues in their negotiations. There is only one issue remaining¹. It involves Health Insurance:

County:

Article XI (Insurance), is amended to reflect:
Increase Health Insurance Deductibles to \$1000 (Single) \$1500 (Employee + 1) \$2000 (family). Increase Wellness Program to \$500 and waiving deductible for routine mammograms, pap smears and prostate exams.

Employees will pay the difference between the cost of brand name or formulary drugs and generic drugs when a generic drug equivalent is available, unless the treating physician certifies the brand or formulary drug is medically necessary. This co-pay is not subject to the cap.

¹ The proposals of the parties includes a salary increase of 3% for 2007 and 2008 and two-year agreement. This issue is not in dispute as the parties agree on these terms. They will be incorporated into the final offer that is adopted.

The County shall establish and fund Health Reimbursement Accounts (HRA) as follows:

- a. Forest County will implement a Health Reimbursement Account (HRA) plan effective upon implementation of select plan design changed, but no later than January 1, 2008.
- b. HRA monies will be allotted for each employee participating in the health insurance plan at Forest County annually: \$800 (single plan), \$1,100 (employee +1 plan) and \$1,400 (family plan).
- c. HRA monies can be used to pay for deductibles incurred above \$200 – single plan; \$400 – employee +1 plan; and \$600 – family plan. Current year HRA monies can also be used to reimburse employees for linked and coordinated health plan expenses.
- d. Unspent HRA monies will roll over from calendar year to calendar year with no maximum cap.
- e. Roll over HRA monies may be used to reimburse employees for expenses identified in #3 above, and for eligible IRC Section 213 medical claims.
- f. Upon separation of employment from Forest County, there will be no HRA monies deposited into the employee's account in subsequent years and there will be no cash payout of accumulated HRA monies. Employees with five more years of consecutive employment with Forest County at the time employment separation occurs will be eligible to utilize the post employment benefit portion of the HRA plan under the following scenarios:
 - i. Employee termination/resignation: The former employee, spouse, and dependents can only use for eligible IRC Section 213 medical claims and Forest County health insurance premium under COBRA upon termination/ resignation. Any administrative fees of the HRA program would be the responsibility of the former employee upon termination/resignation.
 - ii. Employee retirement: Retiree can use for eligible IRC Section 213 medical claims and individual health insurance premiums upon retirement. Any administrative fees of the HRA program would be the responsibility of the retiree.
 - iii. Death of employee: HRA monies can be used to pay for the deceased employee's medical bills, eligible spouse and dependent eligible IRC Section 213 medical claims, and individual health insurance premiums, or Forest County health insurance premiums under COBRA. Any administrative fees of the HRA program would be the responsibility of family upon the employee's death,
 - iv. Death of single employee with no dependents: HRA monies can be used by the estate to pay for the deceased employee's medical bills incurred before the death.

The Union proposes maintaining the Status Quo.

Deductibles and the HRA

Background

The County indicated that it had solicited bids for insurance coverage for the current plan year. The amount of the bid varied as the deductibles changed. The higher the deductible was set, the lower the cost of the premium. The current deductibles are \$200/\$400/\$600. The savings each month to the County if the deductibles in its proposal were adopted would be over \$93 for single coverage and over \$333 for family coverage.

The County has also proposed the inclusion of a HRA. The County would contribute pre-tax dollars to the HRA. These funds could be used to cover the deductible. Under the County Plan, the County would contribute \$1600 to the HRA for those with family coverage. That would cover the difference between the current \$400 deductible and the proposed \$2000 deductible for family coverage. The same would be true for single and single plus 1 coverage. The funds could also be used to cover insurance premiums for those who retire. Employees leaving employment after five years would also be able use the funds to cover COBRA payments or other insurance or medical needs. Consequently, there is no cost to the employee from this proposal.

Discussion

The Statute requires an interest arbitrator to consider several factors in rendering a decision. As is always the case, not every factor is relevant in any particular proceeding. The Arbitrator shall only address those issues that he feels are relevant here or that need explanation given the arguments of the parties.

Internal Comparables

The new deductibles have already been implemented for the non-represented employees. The Courthouse employees have an Agreement for 2008 and have also accepted these new terms. There is some disagreement as to whether the Highway employees settled their agreement. An Exhibit offered by the County indicates that the Union representing those employees voiced no disagreement with the concept during negotiations. The County has subsequently indicated the Highway Agreement has been settled with these changes included. The Association argues that there is no evidence that this is so. The County assertion together with the Exhibit persuades the Arbitrator that there most likely has been an agreement reached with the Highway Employees.

The Union contends that settlement in the other Bargaining Units occurred after all three units filed for arbitration. It believes under this scenario the Arbitrator should not consider this information. The Arbitrator must disagree. Section 111.77 (6) provides that the Arbitrator “in reaching decision give weight” to certain factors. Sub-section (g) lists as a factor:

Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

An agreement reached by other bargaining units prior to the issuance of this Decision would fall under that category. Thus, consideration of those settlements is consistent with the dictates of the Statute.

This is the only group that appears to have rejected the insurance changes. When it comes to disputes over benefits, arbitrators generally look more to

internal than external or other factors. Given that the others have accepted the change, the Arbitrator finds that this factor favors the County.

External Comparables

The Parties are in agreement as to which Employers form the appropriate pool of comparables. They have agreed that Florence, Langlade, Marinette, Oconto, Oneida and Vilas Counties shall make up the list of comparables. Florence and Oconto have provisions similar to what is proposed here. The exact amount of the deductible varies, but it is supplemented by an HRA. It is unclear whether that is also true of Vilas County. Langlade and Marinette deductibles are similar to the present level in this County. They have no HRA to supplement it. It is unknown at this time what occurs in Oneida. Given the disparity, no clear pattern has been established. Some are like the present situation and some do as the County proposes. Thus, this factor favors neither side.²

Other Factors

The Union has indicated that some of the information offered as exhibits at the hearing regarding the HRA and the level of insurance coverage was never provided to it at negotiations. The Arbitrator has no knowledge as to what transpired during negotiations. Obviously, all parties should be as forthcoming as possible during negotiations so that the parties can reach a fair resolution on any issues in dispute and do so themselves. However, the Arbitrator here must reach a decision based on the record before him and weigh the proposals based on that record. The Exhibits of the Employer that show how the HRA

² The Union introduced evidence regarding the wages here and in the comparables and argued that the 3% proposed is in line with the other jurisdictions. As the Parties have already agreed on this amount, the Arbitrator does not find this information relevant to this discussion.

works in conjunction with the insurance plan and how the HRA can be used to offset the deductible increases or for other purposes are important pieces in that record. The Arbitrator must then consider them when evaluating the proposals of each side. They add weight to the County proposal.

Summary

Internal Comparables favor the County. The External Comparables favor neither side. No other factor is relevant. Therefore, the proposal of the County on this issue is favored.

Prescription Drug Changes

There currently is no co-pay on the prescription drug plan. It makes no distinction between whether a generic drug or brand name drug is chosen. The County proposal provides where there is a generic drug and the physician has not indicated that it should not be used, the employee must pay the difference in price between the generic and brand name drug. The employee under those circumstances could use the HRA to cover the extra cost or could simply choose to pay the difference out of pocket.

This proposal could only result in additional cost to the employee if the employee or their family member chose to use a brand name drug even though it was not required by the physician and if the employee chose not to use the HRA to pay the difference. However, that would be the employee's choice. This type of proposal is not unique. Steering employees to lower medical or prescription costs is characteristic of most plans. The absence of such a provision is in the Arbitrator's experience unique. It is the norm rather than the exception. Therefore, the Arbitrator does not find this provision

unreasonable. Even more importantly, it is what has been accepted by the other units and is part of the internal pattern that has been established.

CONCLUSION

The County proposal regarding the deductibles and HRA as has already been indicated has no cost factor to the employees in this Bargaining Unit. The deductible increase is matched by the contributions to the HRA made by the County. Perhaps, the issue raised by the Union regarding the alleged failure to exchange information explains why the case is before this Arbitrator rather than resolved through voluntary settlement. Voluntary Settlement was reached in the other Bargaining Units. The County Proposal on this issue saves funds for the County through lower premiums, with no adverse impact on the employees. The proposal regarding prescription drugs could have cost to the employee but whether that occurs lies solely in the employee's own hands. Based on the settlements already reached and on the fact that there is the potential for no cost to the employee by the adoption of the County proposal, the Arbitrator finds that the County proposal should be adopted.

AWARD

The County Proposal together with all tentative agreements is adopted.

Dated: May 14, 2008

Fredric R. Dichter,
Arbitrator