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| Interest Arbitration | * | |
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| SHEBOYGAN COUNTY | * | |
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| and | * | ARBITRATION AWARD |
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| LOCAL 2841, AFSCME, AFL-CIO<br>(Sheboygan County Law Enforcement) | * | |
| | * | |
| re | * | |
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| WERC Case 156 No. 47664<br>MIA - 1731 | * | Decision No. 27593-A |

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## ISSUE

The sole issue in this dispute is the health insurance program for 1992 and 1993. The final offers of the parties are attached. The Union proposes the continuation of the existing managed health care plan without an employee contribution. Essentially, the Employer proposes to add a preferred provider plan with an employee contribution to the monthly premium along with other changes to offset employee costs such as a Section 125 Tax Reduction plan and employer payment for an annual physical up to a maximum of $150.

## INTRODUCTION

The arbitration hearing in the above identified dispute of Sheboygan County, hereinafter called the Employer, and Local 2481, AFSCME, AFL-CIO, representing Law Enforcement Personnel, hereinafter called the Union, was held on November 4, 1993 by the undersigned arbitrator selected by the parties from a panel submitted to the parties by the Wisconsin Employment Relations Commission in accordance with Section 111.77. Appearing for the Employer was Louella Conway, Personnel Director; appearing for the Union was Helen Isferding, Business Representative. The hearing was not transcribed. Post-hearing briefs were exchanged through the arbitrator on December 27, 1993. Rebuttal briefs were exchanged by the arbitrator on January 19, 1994.

Pursuant to Section 111.77(3) of the Municipal Employment Relations Act, the Employer filed a petition for arbitration on June 25, 1992. An informal investigation was conducted by a WERC Commissioner on September 1st and November 6th, 1992 and February 16th, 1993. The Commissioner informed the Commission on March 10, 1993 that an impasse existed. The Commission issued an order for arbitration on March 16, 1993 and provided the parties with a panel from which to choose an arbitrator. The parties notified the Commission that they had selected the undersigned as arbitrator in this dispute on June 24, 1993, and the Commission so appointed him in an order dated June 30, 1993.

**BACKGROUND**

The schedule described in the introduction of this opinion and award shows that the arbitrator is being asked to choose in January, 1994 one of two insurance plan arrangements for calendar 1992 and 1993. Choice of the Union offer would mean a continuation of the status quo. Choice of the Employer offer would have the same status quo effect for 1992 and 1993 because of the impracticality of applying its offer retroactively. In its post-hearing brief, the Employer recognizes this fact and states:

> As noted in the testimony given by Mr. Daniel LeMahieu, Personnel Committee Chairman, the employer does not intend to go back more than a year and request a contribution. The intent, which was clearly enunciated, is that the terms of the selected final offer will be implemented as soon as possible after receipt of that award. This issue arises in nearly every arbitration. In this case the deductible toward insurance claims, the return of savings, the utilization of the 125 plan and the participation in the life insurance program cannot be retroactive. The only alternative is to implement the provisions after the award and progress from there. If this would have any bearing on the decision, it would certainly prove to be a concession on the part of the employer in that no payment for premium contributions back to January 1, 1993 would be required.(Post-Hearing Brief, page 14)

Given that the choice of offers has no impact on the period to which the offers apply, the significance of the choice is primarily that it establishes the status

quo in 1994 for the period until the parties determine the insurance provisions for 1994 and subsequently.

External Comparables: Both parties agree that the five adjoining counties (Calumet, Fond du Lac, Manitowoc, Ozaukee and Washington) are comparable and also include three others on the basis of similar population size (Eau Claire, Marathon and La Crosse). In addition, the Union proposes the inclusion of five more counties (Brown, Dodge, Kenosha, Racine and Rock) on the grounds that they, like Sheboygan, are among the twenty largest counties in the state and have been used as comparables in previous arbitrations before Arbitrators Rice, Gunderman and Stern. The Employer believes that these additional five counties are either much larger or much smaller than Sheboygan County and should not be considered comparable because their populations differ substantially from that of Sheboygan County.

Internal Comparables: None of the other Employer bargaining units, most of which are also represented by AFSCME, has settled its insurance dispute for 1992 and 1993. Like the unit involved in this dispute, each has submitted final offers to arbitration. In those disputes, the Employer is submitting the same final offer as in this dispute. The union offers in the other disputes differ slightly from the Union offer in this dispute. Daniel LeMahieu testified that each of them is proposing employee contributions of $5 per month single and $10 per month family coverage.

Other Local Comparables: The AFSCME represented police officers of the City of Sheboygan agreed to employee contributions of $6 per month for single or family coverage for 1993 (Er. Ex. 17). Employer Exhibit 16 shows that other City units as well as the Sheboygan Falls police unit have agreed to employee contributions to the health insurance premium. However, in its brief (p.7) the

Union notes that the Sheboygan City police employee contribution was for 1993 only on a non-precedent setting basis. The Union states that, in 1994, those parties will go back to an employer contribution to cover 105% of the lowest cost plan thereby eliminating the employee contribution.

Type & Cost of Plans: The Employer proposes a preferred provider option (PPO) under the auspices of SEARCH, a group of area employers which has contracted with the Wisconsin Preferred Provider Network. The Employer claims that this arrangement will dampen increases in health care costs. The Union contends that the Employer has not established a need to institute a preferred provider plan nor provided a quid pro quo for the change (Union Brief, p.4). It states that Sheboygan health care costs are relatively low. The arbitrator notes that the 1993 monthly premium for family coverage of this unit is $395, a figure that puts it roughly in the middle of the eight agreed upon external comparables listed above. It is above Washington county, the low Eau Claire and La Crosse plans, and Marathon county. It is about the same as the Calumet country premium and is below the high Eau Claire and La Crosse plans and Fond du Lac, Ozaukee and Manitowoc counties.

Only one of these eight counties, Fond du Lac, has a PPO. The Union notes with approval that the Fond du Lac PPO has a positive incentive to reduce costs. Under that plan, non-use of service can result in restoration of portions of the maximum lifetime benefit. Also, the 80/20 co-pay arrangement for use of a non-preferred provider is changed to a 90/10 share if the employee uses a preferred provider (Un.Ex.34). The Union contrasts that reward with the penalty which is invoked under the Employer offer if an employee receives service from a non preferred source. The Union contends that, it is unclear under the Employer plan, whether use of a non-preferred source would result in a 70/30 split rather than

the 80/20 split under the PPO (Un. Brief, page 9).

Employee Contribution in Eight Comparable Counties: Using the employee contribution to the family coverage as the measuring stick, the arbitrator finds that in all five of the adjoining counties, there is an employee contribution ranging mainly from 5% to 10%. In the three non-adjoining counties of similar population, two have no employee contribution to family coverage and the third has two plans, one of which requires an employee contribution and one which does not. Clearly a plan under which there is an employee contribution for family coverage is more prevalent among the external eight comparable counties than one which does not (See Employer Exhibits 13 & 14).

## DISCUSSION

Comparables: In this dispute, the arbitrator will use as external comparables the eight counties relied on by both the Employer and the Union. In doing so, the arbitrator realizes that he is excluding five other counties proposed by the Union. Also, the arbitrator may be departing from comparables accepted by the parties in the past and used by Arbitrators Rice, Gunderman and Stern. None of those decisions were furnished to the arbitrator. Therefore the arbitrator is unable to ascertain which of the Employer units were involved in those disputes. Nor is he aware of the issues that were involved. He does not know whether it was wages, health insurance or other matters.

Given the absence of this information, the arbitrator is forced to rely in this instance on those external comparables proposed by both parties. The arbitrator wishes to make clear, however, that he is not proposing a new set of comparables for use in other disputes. The relevant comparables should continue to be those that the parties have agreed upon and which have been accepted by the parties because of past arbitration awards.

When a dispute is about health insurance, the weight given to internal comparables increases relative to the importance of external comparables. Wages of county employees vary by classification consequently income within and among units differs. Despite the differences in wages, health insurance plans and employee contributions tend to be the same across units for all employees. Under those circumstances it makes sense for the unions representing the major units to join in one bargaining format to resolve health insurance issues. It appears that although health insurance negotiations have been consolidated in the past, the Employer now believes that it should negotiate health insurance separately for each unit because of the award of Arbitrator Baron (INT/ARB - 5819). The Employer did not furnish this arbitrator with the Baron award. Therefore he can not comment on the Employer claim that the award necessitates the abandonment of consolidated negotiations. However, regardless of that award, no evidence was introduced to show why this unit should have health insurance arrangements that differ from those of the other Employer units. The arbitrator therefore will give considerable weight to the internal comparisons.

Type & cost of Plan: The Employer did not persuade the arbitrator that the PPO it proposed was a big step forward. Currently, there is in place a managed health care plan and costs under that plan are not out of line with the costs of the comparables. Furthermore, as was stated previously, only one of the external county comparables has a PPO. Perhaps the adoption of the PPO will help keep costs down but it also will impose some costs for employees who stick with doctors affiliated with the Sheboygan Clinic (See Union Ex. 19 and Employer Ex. 39). The Section 125 tax reduction plan and the Employer payment of up to $150 for an annual physical makes its offer more attractive. On balance, the arbitrator favors the Employer offer on this point by a slight margin. However,

the arbitrator believes that the relative merit of the positions of the parties on the matter of an employee contribution outweighs the relative merit of their positions on the type and cost of the plans.

Employee Contribution: So far as the comparable counties are concerned, the arbitrator has already pointed out that plans with employee contributions are found to be more common than plans without an employee contribution. The typical employee contribution for family coverage is five to ten percent in the comparable counties that require an employee contribution. Under the Union offer, employees would make no contribution while under the Employer offer they would contribute five percent. Clearly, the Employer offer is closer to the pattern existing in comparable counties and for that reason is preferable under the statutory criteria.

Although the Sheboygan police agreed to a $6 per month contribution for 1993, the absence of a required contribution in 1994 supports the Union position in this dispute. The arbitrator believes that the Sheboygan City police settlement is a proper comparable under the statute. However, the arbitrator believes that it carries less weight than the settlements of the external county comparables and the final-offer positions of the internal comparables.

Win or lose in the interest arbitrations of each of the other units, there will be an employee contribution to the monthly health insurance premium. If the Unions prevail the family contribution will be $10 per month; if the Employer prevails it will be five percent which in dollar terms will be about twice as much. Why should the county police unit be the only Employer unit in which employees do not make a contribution to the monthly health insurance premium? The arbitrator believes that, unless the retroactivity question governs the choice of offers, the statutory criteria support the choice of the Employer offer and

will choose it because of the prevalence of contributory plans among internal and external comparables and the lack of a contribution in the Union offer in this dispute.

Retroactivity: Finally, there is the question of retroactivity. The Union contends that the Employer offer is flawed and can not be implemented because benefits can not be implemented retroactively. Furthermore, the Union contends that the statute prohibits the Employer from amending its offer to eliminate the retroactivity problem. On those grounds, the Union contends that the arbitrator should choose the Union offer.

In the abstract, this argument has some plausibility but it ignores reality. Statutory criteria g and h, providing for consideration of changes in any of the foregoing circumstances during the pendency of the arbitration and such other factors which are normally taken into consideration in these disputes, give the arbitrator the right to take into account the passage of time. Just as time has made it impractical to implement the Employer offer retroactively, so also has time made it impossible to carry out the third item in the Union offer. Although no mention was made of the fact at the hearing or in the briefs, selection of the Union final offer would place the arbitrator in the position of ordering, as of February, 1994, negotiations for 1994 health insurance to begin in August, 1993.

The arbitrator assumes that the January 1, 1993 implementation date for the Employer offer was made at about that time because it recognized then that it was impracticable to implement its offer retroactively to the start of the 1992-1994 contract. So also, at the hearing and in its briefs the Employer has stated that it is impractical to implement its offer retroactively and that if the arbitrator chooses its final offer, it will implement it prospectively upon receipt of the

award. The arbitrator does not consider this to be an amendment to the Employer final offer but simply a practical interpretation of its offer. The Employer recognizes the impossibility of making benefits retroactively and therefore has stated that both benefits and costs tied to those benefits will not be implemented retroactively.

**AWARD**

With full consideration of the statutory criteria in Section 111.77, the arbitrator hereby selects the Employer offer.

2/2/94
February 2, 1994

James L. Stern
Arbitrator

Appendix A

SHEBOYGAN COUNTY FINAL OFFER
FOR
INSURANCE NEGOTIATIONS

STATUS QUO FOR 1992

EFFECTIVE JANUARY 1, 1993 the following provisions will apply:

5% Contribution toward the cost of single and family coverage with the cost based on actual claims experience ending with the 12 months ending on October 31 of the prior year.

Implementation of a Section 125 Tax Reduction Plan

Implementation of a Preferred Provider Option

10% Co-Pay of services by non-participating providers to a max of $350.00 for single coverage and $1,000.00 for family coverage.

~~The Sheboygan Clinic would be exempt from the co-pay requirement through December 31, 1993.~~

An employee in continuing treatment for the same illness for the previous six (6) months, shall continue treatment for six (6) months after the provider leaves the network without payment of the 10% co-pay.

Payment for annual Physicals by member providers to employee and their dependents to a maximum of $150.00 per physical.

A return of 50% of the savings to those employees using preferred providers to a maximum of $100.00 for single and $300.00 for family. These savings will be placed in the Section 125 Plan for use by the employee for other uncovered medical expenses.

Participation in the Supplemental and Additional Life Insurance programs through the Wisconsin Retirement System.

Sheboygan County reserves the right to amend, add to, delete or modify these proposals.

~~January 20, 1993~~
Feb. 16, 1993
Lucella Conway

# UNION FINAL OFFER

## LOCAL 2481, AFSCME, AFL-CIO

## SHEBOYGAN COUNTY LAW ENFORCEMENT EMPLOYEES

1. January 1, 1992 - Insurance status quo.

2. January 1, 1993 - Insurance status quo.

3. The parties agree to begin negotiations for 1994 health insurance in August of 1993.

Submitted on behalf of Local 2481, AFSCME, AFL-CIO

Helen Oppeding

DATE: March 4, 1993