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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petitions of the	
SHEBOYGAN FEDERATION OF NURSES AND HEALTH PROFESSIONALS, LOCAL 5011, AFT, AFL-CIO,	Case 106, No. 41201, INT/ARB-5049 Decision No. 25907-A
SHEBOYGAN COUNTY ASSOCIATION OF SOCIAL WORKERS,	Case 107, No. 41317, INT/ARB-5069 Decision No. 25906-A
SHEBOYGAN COUNTY LAW ENFORCEMENT EMPLOYEES, LOCAL 2481, AFSCME, AFL-CIO,	Case 108, No. 41358, MIA-1359 Decision No. 25913-A
SHEBOYGAN COUNTY SUPPORT STAFF LOCAL 110, AFSCME, AFL-CIO,	Case 109, No. 41359, INT/ARB-5079 Decision No. 25909-A
SHEBOYGAN COUNTY HIGHWAY EMPLOYEES, LOCAL 1749, AFSCME, AFL-CIO, and	Case 110, No. 41360, INT/ARB-5080 Decision No. 25910-A
SHEBOYGAN COUNTY INSTITUTIONS, LOCAL 2427, AFSCME	Case 111, No. 41361, INT/ARB-5081 Decision No. 25911-A
To Initiate Arbitration Between Said Petitioners and	
SHEBOYGAN COUNTY	

APPEARANCES:

John E. Bowen, Personnel Director, Sheboygan County, on behalf of Sheboygan County

Helen Isferding, Staff Representative AFSCME, and
Robert Russell, Wisconsin Federation of Nurses and health Professionals, on behalf of the Unions

INTRODUCTION

On April 17, 1989, the Wisconsin Employment Relations Commission (WERC) appointed the undersigned to act as Mediator-Arbitrator pursuant to Section 111.70 (4) (cm) 6 of the Municipal Employment Relations Act (MERA) in the dispute existing between the above named Petitioners (hereinafter the "Unions" or the "Employees") and Sheboygan County (hereinafter the "Employer", or "County"). On June 21, 1989, an arbitration hearing was

held between the parties pursuant to statutory requirements and the parties agreed to submit briefs. Briefing was completed on August 5, 1989. This arbitration award is based upon a review of the evidence, exhibits and arguments, utilizing the criteria set forth in Section 111.77 (4) (cm), Wis. Stats. (1985).

ISSUE

Shall the final offer of the Unions or that of Sheboygan County be accepted by the Arbitrator?

THE FINAL OFFERS

The final offers submitted in this arbitration proceeding reflect agreement in some areas. The contract term has been agreed to and can be considered to be settled. Although the final offer language differs in some respects, it appears clear that the benefit levels under the health, dental and life insurance plans will remain as they have been under the previous contract.

The County would increase the cap on major medical benefits to $500,000. The Unions would accept the present contract cap of $250,000.

With the exception of the final sentence in the Unions' final offer relating to pre-existing conditions, the parties agree there will be only one family health insurance plan per family. The Unions' final offer would impliment this action as soon as possible. The Employer's final offer would be subject to interpretation as to the date of implimentation. The Unions have expressed concern that this date could be imposed retroactively to January 1, 1989, requiring families with more than one plan to reimburse the County for the cost of the excess coverage.

The parties agree to institute a pre-admission/certification procedure. The County would also ask for a utilization review program.

The Unions' final offer contains detailed language regarding pre-admission certification. The County's does not. The cost of the program is borne by the Employer under the Unions' offer. The County does not address this question.

Finally, the County's final offer would require Union members to share in any increases in health care premiums. The Unions' offer does not.

At the arbitration hearing and in briefs, a question arose regarding the language in one of the Unions' final offer. The rule here is plain: the arbitrator is bound by the final offers as submitted to the Wisconsin Employment Relations Commission. A review of those documents makes clear that all the final offers of the Unions contain the same language, and they will be dealt with here as a single party.

THE STATUTORY CRITERIA

The Wisconsin Statutes require an arbitrator to consider a series of criteria in arriving at a decision. As frequently happens, many of the factors are not at issue. There is no question regarding the lawful authority of the parties or the stipulation of the parties. Nor have there been changes in circumstances during the pendency of the arbitration proceedings.

The County has argued that it is in interest of the public to keep the costs of the contract down. The Unions counter this argument by urging the benefits realized by the

public from a contented, productive public employee work force. Both positions have merit and may be regarded as equally important. Surely the Employer has the financial ability to meet the costs of the proposed settlement, whichever side may pervail here.

The parties have agreed to most issues relating to compensation and conditions of employment, with health insurance issues remaining to be resolved. Thus, with the exceptions of these issues, there is no need to analyze the over-all compensation of the employees.

It is well established that increased costs of health care and health insurance premiums have recently had a major impact upon consumer orices, helping to drive them steadily upward. The parties do not agree on the long-range impact of the final offers on net premium costs, but it seems clear that the initial premium increases will be in excess of the cost of living under either offer. Therefore, this criterion will not be controlling here.

It is difficult to evaluate the final offers in terms of comparability. The issue here revolves around health insurance and there is so much variety between plans and their costs, offered in different localities and to different public and private sector employee groups, or in the number of alternative insurance plans made available to each work force and the utilization of the plans, that sorting out the various plans is almost impossible. One group of employees who have previously been County employees but have been transferred to another employer is covered by the same health insurance plan as present Sheboygan County employees. Both sides in this dispute are proposing changes in contract language which it appears will not apply to that group. For these reasons, a detailed evaluation of comparable employment will not be made here.

This arbitration between the County and its employees will be analyzed under the so-called "other factors" section of the statutory criteria and the balance of this award shall focus upon the proposed alterations in contract language contained in both final offers.

CHANGES IN CONTRACT LANGUAGE

Both parties here are proposing changes in contract language. The issue given the most attention by the parties in hearing and in briefs related to what is termed pre-admission review and certification. Both the Unions and the County have offered language in their final offers on this question (Unions section 2, County section 2). In such a situation it might normally be appropriate to dispense with the customary analysis relating to proposed language changes. However, under the final offers being considered here, it appears that such an analysis would be useful.

In the past, I have applied these criteria when considering changes in contract language:

(1) Does the present contract language give rise to conditions that require change?

(2) Does the proposed contract language remedy the situation?

(3) Does the proposed language impose an unreasonable burden upon the other party?

The purpose of this standard is to impose a substantial burden upon the party proposing the language. Arbitrators have been reluctant to impose alteration in contract language in the arbitration process, preferring that the parties resolve such issues at the bargaining table. Imposition of this standard allows the arbitrator to address the question without having to evaluate a "quid pro quo." If the parties resolve their differences at the table, the question of adequacy will never be placed before the arbitrator. Of course, from time to time, one or another party will prove so intransigent as to make such a judgment necessary.

In this case, since both parties have addressed the same issue, the final offers may be reviewed without reliance upon the adequacy of a "quid pro quo."

One final thought before turning to a review of the final offers. The issue here is health insurance and its costs. No one with any perception of our present heath delivery system could be unaware of the crisis facing employers, workers and citizens of all ages at this time. The fact that neither final offer attempts to remedy the national situation at the expense of this employee group speaks well for the responsible positions taken by both the County and the Unions.

The unreasonable conditions do not arise from the contract language itself. They are, as stated above, the result of outside influences over which the contract itself has no control. Yet, it is entirely proper for the parties to address the issues, and both final offers can be said to satisfy the first of the criteria to be applied here.

THE UNIONS' FINAL OFFER

The Unions' final offer addresses the health care cost issue in three separate areas. The first is relatively non-controversial, in that it removes the name of a single insurance carrier from the contract and allows the employer to select any carrier so long as the benefit levels remain the same as those available under the present contract. By allowing this flexibility, the Unions have made a step toward remedying the situation. This language will benefit the employer and cannot be said to impose an unreasonable burden upon it.

The second area concerns a language change that will limit each Union member to one family health plan per family. It appears that the County will achieve a financial benefit from eliminating duplicate coverage and the cost of providing that coverage. Therefore, this proposal may also be said to assist in remedying the condition without imposing an unreasonable burden upon the other party.

The contract language proposed by the Unions is the same as that proposed by the County except for adding a provision regarding pre-exising medical conditions. This wording does not directly address the health cost issue, but it appears to be a reasonable addition which would not hurt the process and could be instituted without placing an unreasonable burden upon the County.

As was stated earlier, the date of implimentation is of concern to the Unions. The language regarding implimentation in their final offer would appear to be reasonable and not burdensome, and therefore will be found to satisfy the criteria in this respect.

The pre-admission review/certification language offered by the Unions represents the most important effort by the Unions to reduce the impact of rising health care costs. They have used language similar to that contained in other labor agreements dealing with pre-admission procedures. It gives the County the right to choose the review/certification firm, gives the workers the protection of confidentiality and imposes a penalty not to exceed $150 per hospitalization upon any employee who fails to follow the required procedure.

Both parties here agree that this area would have the most substantial impact upon costs. The detailed provisions of this final offer would appear to address the issue squarely in language that can be easily interpreted. Therefore, it would not be unreasonably burdensome upon Sheboygan County.

THE COUNTY'S FINAL OFFER

Sheboygan County has offered language relating to the single policy per family issue virtually identical to that of the Unions. It would have the same beneficial impact upon insurance costs as the Unions' language and would thus satisfy that criterion.

In itself this language would not impose an unreasonable burden upon the employees. However, there is no firm date for implimemtation of the program, and thus the potential for some burden does exist.

The County's briefs and arguments at the hearing contained a detailed description of a pre-certification/utilization program. However, their final offer consists of a single line asking for the implimentation of such a program. It is, therefore, extremely difficult to evaluate the impact of such wording upon the health cost issue. It is probable that the program to be implimented would be similar to that contained in the Unions' final offer, but unfortunately that is speculation beyond that which would permit an arbitrator to find that either of the two new language criteria under analysis here would be satisfied.

DISCUSSION

The two final offers relating to duplicate family health plans are substantially the same and either might be chosen. In selecting between them, preference must be given to that language which reduces the chances for conflict between the parties over interpretation. The weakness of the County's final offer language is that it fails to make clear the date of implimentation. Although no specific date is set forth in the Unions' language, it is clear that the reduction plan will go into effect subsequent to this award and that the question of reimbursement will not arise. For this reason, the Unions' final offer language must be preferred.

As the above discussion of the County's final offer states, the County's language is not complete on the issue of pre-admission review and certification. At the hearing and in briefs, the County set forth a penalty regarding an employee's failure to comply with the program. The Unions correctly criticized this as being outside the terms of the final offer. Adoption of the County's language would surely raise issues of interpretation as to the nature of the program and penalty. It is in the best interest of the parties and the arbitration process itself to select that language which both satisfies the criteria relating to alterations in contract language and can be more easily interpreted by the parties in administering the contract provisions.

AWARD

For the reasons set forth in the foregoing analysis and discussion, the Unions' final offer shall be incorporated in the labor agreement between the parties.

Dated this 12th day of January, 1990.

ROBERT L. REYNOLDS, JR., Arbitrator