Stratton #1

STATE OF MICHIGAN

VOLUNTARY LABOR ARBITRATION TRIBUNAL

Employer,

-and-

Union

Health care premiums

ARBITRATOR'S OPINION AND AWARD

A grievance arbitration hearing for the above captioned grievance was conducted on February 8, 2007, in Employer before Arbitrator Steven B. Stratton. Each party had the opportunity to present evidence and testimony relating to the grievance. The hearing was closed February 23, 2007, upon receipt of written post-hearing briefs which were simultaneously exchanged by the arbitrator. Both parties put forth thoughtful arguments which have been carefully considered by the arbitrator even though every detail will not be re-stated in the following Opinion and Award.

BACKGROUND

The Employer and the Union are parties to a collective bargaining agreement dated January 1, 2005 through December 31, 2007 (Joint Exhibit 1). The Union represents all employees of the Employer Sheriffs Department excluding the Sheriff, undersheriff and matrons. This dispute involves the increase in annual health insurance premiums and whether, pursuant to

the language of the collective bargaining agreement, the Employer is obligated to reopen the Agreement relative to health care, upon request of the Union.

The grievance was not resolved and the parties mutually agreed to submit the dispute directly to arbitration by-passing the usual steps of the grievance procedure. Your arbitrator was selected by mutual agreement and there is no official demand for arbitration. The parties stipulated to the issue to be decided by the arbitrator. Since there are no procedural arguments, the grievance is properly before the arbitrator for disposition.

STIPULATED ISSUE

Did the Employer violate the collective bargaining agreement by refusing to reopen the Agreement relative to health care and if so, what shall be the remedy?

PERTINENT CONTRACT LANGUAGE

ARTICLE 8- Arbitration

C. Arbitration Hearing: The Arbitrator selected shall meet with the parties as soon as a mutually agreeable date can be established to review the evidence and hear testimony relating to the grievance. Upon completion of this review and hearing, the Arbitrator shall render a written decision as soon as possible to both the Employer and the Association which shall be final and binding upon both parties.

D. Costs: The costs of the Arbitrator shall be shared equally by the parties. Each party however, shall bear their own costs for witnesses and all other out-of-pocket expenses including possible attorney's fees. The Employer shall pay the salary of those employees who are required to testify or otherwise participate during arbitration proceedings that take place during working hours.

E. Decision of Arbitrator: The decision of the Arbitrator shall be limited to the subject matter of the grievance and shall be restricted solely to interpretation of the contract in the area where the alleged violation occurred. The Arbitrator shall not modify, add to, or delete from the express terms of the Agreement.

ARTICLE 36- Hospitalization Medical Coverage

Effective January 1, 2006, the Employer agrees to provide the employees with four options and a waiver of medical coverage with a cash in lieu of payment, namely:

Option -I "Core" Plan (Suffix 002)
Community Blue Plan 4, PCM $250, MHP, $30 OV Copay, U.P. Blue Rider $10/40 RX MOPD, AFA Hospital GAP $1500. No Dental/Vision.

Monthly Cost: None except for Family Continuation $207.57 per dependent.

Option 2 (Suffix 003)
Community Blue Plan 4, PCM $250, MHP, $30 OV Copay, U.P. Blue Rider $10/40 RX MOPD, AFA Hospital GAP $1500.
Traditional Plus Dental 50/50/50 $800 no Orthodontia Vision, A80

Monthly Cost: Single $17.18 Two Person $38.65
Family $46.38 Family Continuation $216.16 per dependent

Option 3 (Suffix 4)
Community Blue Plan 10, PCM $250, MHP, $30 OV Copay, U.P. Blue Rider $10/20 RX MOPD
Traditional Plus Dental 50/50/50 $800 no Orthodontia, Vision A80

Monthly Cost: Single $56.36 Two Person $131.17
Family $148.81 Family Continuation $245.77 per dependent

Option 4 (Suffix 5)
Community Blue Plan 10, $30 OV Co-pay, PCM $250, MHP $10/20 RX MOPD Dental 50/50/50 $1000 with Orthodontia (for dependents to age 19) with $1000 maximum, Vision A80

Monthly Cost: Single $96.89 Two Person $222.40
Family $258.26 Family Continuation $266.04 per dependent

Waiver

Employee may elect to waive BCBSM coverage and request the "cash in lieu or payment. Payment to be 40 percent (40%) of the Blue Cross premium based on 2002 rates and based on specific plan employee would qualify for at the time of application. Employee shall verify and identify coverage under spouse's Group Medical Insurance plan.

Effective January 1 of each subsequent year of this contract, the Health Insurance Options page will be updated for any increases or decreases in plan rates. In the third year of the agreement, either party reserves the right to reopen the agreement relative to health car (sic) -if- premium increases reach 7.0% or higher. ***Emphasis added by arbitrator****.*

The Employer will also offer family continuation coverage with a premium share of 50/50 with the employee. The employees maximum payment per month for each child covered shall be $100. The shift Sergeant hired 1/13/78 shall be grand fathered into his payment position of paying not more than $100 per month for any and all family continuation rider payments for the duration of this contract.

This coverage shall be applied to all seniority employees. New hires shall be covered under the hospitalization plan after being employed ninety (90) days. The Union further agrees that the Employer may change the insurance provider, with the Union's consent, providing that said new coverage is equal to or better than the coverage now provided its employees.

Effective January 1, 1991 upon retirement of an employee the Employer agrees to pay fifty percent (50%) of the hospitalization premium up to a maximum of two hundred dollars ($200.00) per month. ***Emphasis added by arbitrator****.*

The hospitalization supplement paid by the Employer shall cease upon attainment of age sixty-five (65) or upon becoming eligible for medicare payments. In the event of death or retirement of an employee, the employee's spouse and/or immediate family shall be continued under the hospitalization supplement plan paid by the Employer until the employee's spouse reaches age sixty-five (65) or, is remarried.

When an employee attains age sixty-five (65) and is eligible for medicare, the employee's spouse shall be continued under the hospitalization supplement until the employee's spouse reaches age sixty-five (65) or, is remarried.

SUMMARY OF THE FACTS

The first witness for the Union was Employee 1. Employee 1 has been employed by Employer since 1997. He's currently a road patrol deputy and is serving his second year as president of the bargaining unit. Employee 1 testified that the he was involved in the negotiations of the current collective bargaining agreement. Health care was a significant issue during the bargaining and an Act 312 arbitrator helped the parties set a 7% threshold on the premium increases. He stated that Option 1 is the Core Plan and the Employer pays 100% of the cost. There is no employee co-pay with Option 1. Options 2 through 4 do require employee co-pays.

Employee 1 personally chose Option 3 at the family rate of $148.81. He was informed

that his rate for 2007 was being increased to $208.45; an increase of over 40%. Because his increase exceeded 7%, he requested that the Employer reopen the agreement relative to health care, relying upon the language of Article 36. Employee 1 believed that the language in the agreement referred to the increase in the employee's payment only.

Under cross-examination the witness acknowledged that the phrase "premium increases" was used in the language in dispute while the portion of the language he was relying upon with the employee's payment is fisted under "Monthly Cost". Union Exhibit 1 outlines how the health care costs increased from the 2006 to the 2007 renewal rates.

The second witness for the Union was business agent Employee 2. Employee 2 was also involved in bargaining the current agreement. He testified that it was his understanding that the 7% increase referred to in the language encompassed increases in health care generally. It was the Union's intention that the contract would reopen if the associated costs of health care increased 7%; they just referred to it as a "premium" in bargaining and contract language. He stated that the main concern of the Union was the cost that each employee had to pay, not the cost the Employer had to pay.

On cross-examination Employee 2 testified that it was the Union that authored the language. The term "Monthly Cost" meant the employee's monthly cost. He stated that a minority of employees in the bargaining unit experienced a monthly cost increase for the 2007 benefit year.

The witness for the Employer was the Employer Controller, Employee 3. The Employer Controller is the chief financial officer of the Employer. Employee 3 has been in the position for about three years. The witness described Employer Exhibit 1 as a document that was prepared by the Employer's health insurance agent. He stated that the overall increase in health insurance

premiums was .66%. This was reflected in line item "R" on Employer Exhibit 1.

The Employer submitted Exhibit 2 which also was prepared by the health insurance agent. Employee 3 testified that it was his understanding from the negotiations that the total health care premiums of the Employer had to increase by 7% or more in order for either party to reopen the agreement relative to health care premiums. He indicated that the premium rates are determined by the outside vendor and not by the Employer. The net effect on bargaining unit members for the 2007 premium year showed that less than half of the employees experienced an increase in their monthly cost while employees who had either the Core Plan or Option 2 had a decrease in monthly cost.

POSITIONS OF THE PARTIES

The Union states that health care was a significant issue for the Employer and employee during negotiations due to the tremendous increase in health-care costs. Employers have attempted to pass some of the costs onto its employees either by limiting the level of coverage or requiring the employee to contribute to the cost of a health-care plan. In this case, the parties have negotiated different levels of health-care coverage: a core plan that is no cost to the employee; and options 2 through 4 which provide for the employee to pay out-of-pocket expenses for the increased costs of that particular coverage.

The Union further states that because of the uncertainty of health-care costs, both parties agreed in the contract that either side had the right to reopen negotiations relative to health care if the premium increase reached 7% or higher (Article 36, see underlined language above). From the standpoint of the employee, the only relevance of this language pertains to the options for which the employee incurs a monthly out-of-pocket expense.

In the case of Union President Employee 1, his monthly out-of-pocket expenses increased

a little over 40%. The Union maintains that this is exactly the type of increase that the language of the collective bargaining agreement was designed for. In other words, since the employee's monthly cost increased more than 7% the Employer is obligated to reopen the contract relative to health care, upon request of the Union.

The Employer maintains that the language of the agreement is clear, unless the total premiums increased by more than 7% there is no obligation to reopen the agreement. The Employer points to Employer Exhibit 1 which shows that the group rate for the health insurance increased by .66%. Since this is the premium that is paid by the Employer and since the increase was less than 7%, there is no obligation of the Employer to reopen the agreement relative to health care.

The Employer opines that the monthly cost of the employee is not the same as the premium for the health-care insurance. Since the language of the agreement does not refer to the increase of the monthly cost but rather refers to the increase in the premium, there is no violation of the contract by refusing the request of the Union to reopen the agreement.

ANALYSIS AND OPINION

The question for your arbitrator to answer is; what did the parties intend when they agreed upon the phrase "premium increases"? Under the Union's theory, a premium includes the total cost as well as the employee's monthly cost. Under the Employer's theory, the premium is the amount paid per month for the total coverage and does not include the employee's monthly cost.

The language in dispute is new to this contract so there is no bargaining history nor is there a history of the application of the language to assist the arbitrator in determining the meaning of the word "premium". Likewise, the evidence is scant as to how the language was

constructed. The arbitrator therefore, must begin his analysis by looking to other areas of the collective bargaining agreement to see if "premium" is used elsewhere and, if so, can a reasonable interpretation of its use be made. There is one other use of the word "premium" and it is within the same Article 36 where the disputed language resides. That is the reason the arbitrator emphasized it when quoting the contract language above.

In that paragraph, the Employer has committed to pay 50% of the "hospitalization premium" up to the stated maximum upon retirement of an employee. Clearly, the use of the word "premium" in this instance refers to the total monthly cost of the insurance. It is reasonable to conclude that the word "premium" as used in the disputed language should also refer to the total monthly cost of the insurance.

Parenthetically, your arbitrator believes that the commonly accepted definition of the word "premium" when used in the context of health insurance costs is the monthly amount that is paid to obtain the insurance coverage.

I say this drawing from my past experience as a negotiator and purchaser of health insurance as well as having served for many years on a regional health insurance advisory committee and as member of the board of directors of a health insurance company. While this standing alone would not be dispositive, it is consistent with how the language is interpreted in this instance.

Having said that, the evidence is clear that the premium paid by the Employer increased by .66%. Therefore, since the premium increase was less than 7%, there is no obligation upon either party to reopen the contract relative to health care.

AWARD

Since there is no contract violation, the grievance is denied.

_____ DATED: 3/26/2007

Steven B. Stratton