Zigman #1

IN THE MATTER OF ARBITRATION BETWEEN:

Employer

AND

Union

Introduction

This matter was heard before Louis M. Zigman, Esq., neutral arbitrator, on February 10, 1993. Both parties were afforded an opportunity to present evidence and to examine witnesses. At the conclusion of the hearing both parties made oral closing argument.

Based upon the evidence and contentions of the parties I issue the following decision and award.

Issue

Did the employer violate the collective bargaining agreement when it failed to allow the Employee's wife, a part time employee, to secure dual medical coverage?

If so, what is the appropriate remedy?

Background and Material Facts

This Employee is a full time employee. His wife is a part time employee.

Pursuant to Article 18(W), full time employees are - entitled to medical coverage under Company 1 and the Employer is obligated to pay all premiums for that full time employee and the employee's dependent(s). A spouse is included under the term dependent.

Under Article 21(F)(4) the Employer agreed to pay premiums for part time employees for medical coverage. This provision provides medical coverage only for the part time employee and no coverage for their dependents.

The evidence also disclosed that the Employee had medical coverage and that his wife had her own separate medical coverage as provided by the Employer through the part time provisions. The Employee's wife is currently on maternity leave and by the date of the hearing she had transferred her individual coverage to her husband's medical plan. Apparently the medical coverage is somewhat better for the full time employees than for the part time employees and the Employee's spouse wanted to be under his coverage for her maternity condition.

The Employee maintained however that his wife should have been allowed to have continued her individual coverage as a part time employee and thus his wife would have had dual coverage and her medical expenses would therefore have been covered by two instead of one medical plan. The practical effect of being covered in this dual capacity would insure that the Employee and his wife would effectively incur few, if any, medical costs for the maternity care. In other words, under the full time coverage, employees essentially have an 80/20 split with the insurance covering 80% of the expenses and the employee being responsible for the other 20%. By having a second coverage pursuant to the part time plan, the Employee's spouse would essentially have that policy pick up these additional expenses. Hence the birth of the Employee's child triggered the grievance in this case.

The Employer maintained that the Employee's spouse is entitled to either of these medical plans but not both. As such, the Employee's spouse could use her single individual coverage or she could be covered under her husband's plan as a dependent.

The evidence also disclosed that the Employer has provided medical benefits for the bargaining unit employees ever since the inception of the first collective bargaining agreement over 30 years ago. At some point in the 1970s, a grievance was filed by the union in which it asserted that for married employees, who both worked for the Employer, that they were entitled to coverage under both the dependent plan and the spouses' individual plan. Although neither party had a copy of that arbitration award, the parties acknowledged that the arbitrator denied the grievance and apparently that grievance was denied because at that time Company 1 would not allow dual coverage. As such, the arbitrator found the grievance as being moot inasmuch as even if the arbitrator could have found in favor of the union, the union's remedy would have been impossible to have been achieved.

No further grievances had been filed with respect to this issue until this particular grievance in August 1992.

The evidence also disclosed that in 1985, the Employer was successful in negotiations for excluding medical coverage for new part time employees. Part time employees who had been employed prior to that time were grand fathered in for medical coverage.

In 1987, through negotiations, the union secured medical coverage for part time employees but with no coverage for dependents. The single coverage plan was not as complete as the medical plan for the full time employees.

The evidence also disclosed that the Employer's medical coverage utilized Company 1 for all of its employees throughout the Employer. Over the years the Employer has had a number of employees who are married and where both spouses work for the Employer. As noted above, since the grievance in the 1970s concerning dual coverage for spouses was disallowed, there had been no grievances filed until the instant grievance. During the interim period, however,

whenever married employees would ask about having dual coverage, the Employer would tell them that they were not eligible. Here again, until August 1992, none of these employees ever filed a grievance to protest this denial.

The evidence also disclosed that sometime around 1986 or 1987 that provider, Company 1, announced a change in its position and it indicated that it would no longer disallow claims for dual coverage. As such, it was now possible, under policies provided by Company 1, for an individual to secure dual coverage.

Despite this change in position by Company1 in 1986-87, the union apparently was not apprised of this change.

When the negotiations commenced in 1987 the union sought medical coverage for the part time employees. In securing such coverage there was no discussion or negotiations with respect to "dual coverage" or any discussion with respect to the possibility of part time employees' ability to secure dual coverage if they were married to full time employees of the Employer. That situation was simply not raised nor addressed in those 1987 negotiations.

As noted above, while these part time employees were now eligible for individual coverage, there was no claim by any part time spousal employee, that he/she was entitled to dual coverage under both plans.

Similarly during the 1990 negotiations there was no discussion raised with respect to the possibility and/or legitimacy of dual coverage.

According to the union, this was not raised by any of its bargaining unit members and the union was unaware of the change in Company 1's approach with regard to the question of dual coverage.

As also noted above, there were no grievances filed following the 1990 agreement with respect to this issue until August, 1992.

The Company 1 policy with respect to dual coverage was stated in a letter to the Employee's spouse on February 4, 1993. In that letter it states:

> "Company 1 works with each employer to enroll their employees in a medical plan to comply with state regulations and within the guidelines of their Employer policy. Since group medical coverage is contracted to employers, Company 1 will enroll members only when authorized in writing by the contracted employer group. It is not Company 1's intent to encourage or discourage dual membership (coverage by two Company 1 plans for one person) but to provide medical coverage for every employee and dependent that the employer has authorized."

As noted above the union maintained that the Employee's wife is entitled to dual coverage; the coverage under her husband's full time dependent plan and the coverage under her individual part time medical plan. On the other hand, the employer denied that any of its employees are entitled to dual coverage.

Because the parties were unable to resolve this grievance in the grievance procedure it was referred to the undersigned for arbitrations.

Pertinent Contractual Provisions

> ARTICLE 18 - GENERAL AND MISCELLANEOUS
>
> W. The Employer will pay all premiums for employee and employee dependent coverage under Company 1 and the Dental Service Plan for all employees covered by this agreement.
>
> ARTICLE 11 - Part-Time Employees
>
> PREAMBLE
> It is understood by the parties that Article XXI governs work rules, rates of pay, benefits and conditions for part-time employees. In addition, they shall also be covered under the following provisions of the Agreement...Articles...18...

F. Benefits

4. Part-Time employees shall be eligible for medical and dental coverage (employee only). Premiums will be paid by the Employer.

Positions of the Parties

Union's Position

The union asserted that the Employer violated the collective bargaining agreement when it denied the Employee's spouse coverage under both the part time employee's medical provisions and coverage as a dependent under her spouse's medical plan.

In pointing to the language in Article 18(W) the union maintained that she is entitled to coverage as a dependent of her husband and that she is also entitled to her own individual coverage pursuant to Article 11(F)(4).

While acknowledging that no employees prior to this grievance have been allowed dual coverage, the union pointed out that the employees had been denied coverage essentially because of the arbitration in the 1970s. However, the union asserted that this decision is not applicable in this situation inasmuch as the arbitrator denied dual coverage because Company 1 did not allow dual coverage at that time. Inasmuch as that restriction was lifted by Company 1 and would no longer bar dual coverage, the union maintained that the basis for the denial is no longer applicable.

While recognizing that no other married employees filed grievances prior to 1992 over this issue, the union maintained that these employees were told by the Employer that they were not eligible for dual coverage and these employees "accepted" at face value the Employer's representations. Here again, according to the union, these representations were not based upon fact and therefore

the Employee in this case should not be denied his legitimate rights merely because other employees chose not to fight the Employer's representations.

In view of this history, the union maintained that one could not ascribe waiver or assent by the union to the Employer's interpretation.

According to the union, the language in the agreement is clear and provides that a full time person may have dependent coverage and that a part time person may have individual coverage. In denying the Employee's spouse her right to individual medical coverage, the union maintained that the Employer was not only violating the Employee's rights and his spouse's rights but also that it was discriminating against married people by denying them equal coverage.

For all of these reasons, the union maintained that the Employer violated the collective bargaining agreement and therefore asserted that the Employer should provide individual medical coverage to the Employee's wife irrespective of her coverage as a dependent. Similarly the Employer should provide individual medical coverage to other similarly situated spouses.

Employer's Position

The Employer denied that its action constituted a violation of the collective bargaining agreement.

In this respect the Employer maintained that it negotiated with the union medical coverage for its employees and that the Employee's spouse is entitled to medical coverage. The Employee's wife, as a part time employee, therefore has an option of having coverage under the individual part time medical program or choosing to be covered as a dependent under her spouse's medical plan. Medical coverage yes, but dual coverage no.

In support of its position, the Employer noted that this same issue of dual coverage was litigated before another arbitrator in the 1970s and that the decision was adverse to the union and more particularly the decision upheld the Employer's position that dual coverage was not provided under the agreement.

While acknowledging that neither party could find a copy of that award and while not specifically disagreeing with the union's representation of the arbitrator's analysis, nevertheless the Employer maintained that the position of Company1 to accept and to allow dual coverage is not relevant in this case. As the Employer asserted, it chooses the type of coverage it offers through the medical provider, Company 1, and the Employer has never included the dual coverage option. That option was not allowed in the prior arbitration award and no employees have filed grievances since that time until August, 1992.

According to the Employer, the employees and the union knew and understood that married spouses are entitled to medical coverage and to a choice as to whether to be included under the individual part time plan, where applicable, or under the dependent coverage. This interpretation, according to the Employer, is supported by the failure to have protested and/or to have filed any grievances for so many years.

Even assuming arguendo, that the Company 1's changed position is somewhat relevant to this case, the Employer pointed out that there were no grievances nor attempts by the union to enforce dual coverage after Company 1 changed its position on dual memberships in 1986/87. Not only were there no grievances, but the union did not even raise this issue in the 1987 negotiations or in the 1990 negotiations. As such, the Employer maintained that the union is seeking to now gain additional benefits through the arbitration process, i.e. dual coverage, which it had unsuccessfully sought through its 1970(s) grievance and which it had not sought in

subsequent negotiations. Had the union wanted to secure dual coverage it could have negotiated for such coverage.

Here again, in pointing to the Company 1 position against allowing dual membership, and while maintaining that this argument had no relevance, nevertheless the Employer also pointed out that any argument based on that issue was weakened by the fact that no employee ever sought dual coverage by having one spouse be covered under the Company 1 plan while the other spouse be covered under another Company 1 plan. For even if the group employees believed that they were prohibited from dual coverage by virtue of Company 1's position disallowing dual Company 1 plans, nevertheless the Employer noted that the Company 1's position would not have precluded one spouse from having one plan while the other spouse had a separate plan. Therefore, if the employees and if the union truly believed that they were entitled to coverage under the two different plans pursuant to the contractual language as applied to the full time and part time employees, surely the employees and the union would have sought-this alternative dual coverage as there would be no additional payments for the employee and their spouses.

The failure of the employees and the union to have sought that type of dual coverage over the years, i.e. medical coverage for the part time/spouse employee, demonstrated once again that the parties did not intend nor did they bargain for the Employer to cover both employees under their own separate medical plans.

As a further basis for this position, the employer pointed out that it had to provide separate coverage for both employees; its payments for premiums would be higher as it would have to make premium payments on behalf of each employee. That additional expenditure was not agreed to by the Employer and to now grant the union's interpretation would not only provide

additional benefits which were never agreed on but it would also create additional expenses to the Employer which it never agreed to pay.

In view of the foregoing, the Employer maintained that the union failed to present persuasive evidence to establish that the Employer violated the collective bargaining agreement when it denied dual coverage in this case. As such, the Employer asserted that the grievance should be denied.

Analysis and Conclusion

After considering the evidence and contentions of the parties, I found the Employer's position as more persuasive.

In this respect I note that there was an arbitration award previously rendered which essentially denied the claim of dual coverage. Although the award itself was not presented in evidence, because has a copy of the award, in view of the fact that both parties agreed that this issue was presented to an arbitrator and that the decision was adverse to the union's position at that time, I found that there was "some basis" for establishing at least a presumption that dual coverage was not permitted.

Although that award was issued many years ago and while the contractual language has changed over the course of the years, nevertheless the evidence demonstrated that the language has not yet changed significantly or dramatically. Apparently part time employees were afforded individual coverage in those years and full time employees were given dependent coverage. While that situation changed between 1985 and 1987, the evidence disclosed that as a result of the 1987 negotiations part time medical coverage came back into the agreement and that the situation with respect to married employees was similar to the situation in the 1970s.

While I note the union's assertion for the arbitrator's award in the 1970s having to do with the fact that Company 1 would not allow for dual Company 1 coverage, nevertheless I was impressed with the Employer's arguments to the effect that this award did not necessarily preclude a spouse from securing a separate Company 1 plan while the other spouse was presumably eligible under a Company 1 plan. As such, the fact that none of the married employees ever sought such coverage gives greater weight to the Employer's assertion that the decision to deny dual membership was not predicated solely on that basis, i.e. the refusal of Company 1 to allow it.

Even if the arbitrator's award could be construed as narrowly as the union asserts, i.e. Company 1's refusal to allow dual coverage of spouses, nevertheless the fact that no employees have ever sought dual coverage as described in the example postulated by the Employer, gives credence to the Employer's position that dual coverage was never intended under the language of the other agreements nor of the 1987 and 1990 agreements.

Turning again to the language in the 1987 and 1990 agreements, I note that even though Company 1 changed its position in 1986/87, there was still no attempt by any employees to secure dual coverage. The absence of any attempt to secure coverage by those affected employees is additional support for the Employer's argument that the parties never intended nor expected that the part time spouses were to receive dual coverage. Moreover, the fact that the union was not aware that Company 1 changed its position with respect with dual coverage, adds additional weight to the argument that the union itself never intended that the part time spouses were to receive dual coverage.

Even assuming arguendo, that the parties were in error in their assumption about Company 1's position with respect to dual membership, nevertheless the fact remains that neither party

believed, during those negotiations, that the part time spouses were eligible for dual coverage and therefore one can hardly find that the parties intended them to have dual coverage.

And finally, while acknowledging that one could argue with logic that the language in the agreement does provide a basis for the union's contentions, nevertheless, for all of the reasons indicated above, I found considerable weight in the Employer's position that the parties never intended that dual coverage be afforded to those married couples.

That argument was further supported by the fact that neither the employees nor the union sought such coverage for the past five years and as such, the argument of waiver, estoppel and detrimental reliance is quite strong.

For all of these reasons, I did not find that the evidence was persuasive to have established a contractual violation.

Should the union wish to include dual coverage as an option for the part time spouses, it is free to negotiate for that benefit in the ensuing negotiations.

I therefore find and conclude that the grievance is denied.