

ILRB
#144



**BEFORE
EDWIN H. BENN
ARBITRATOR**

In the Matter of the Arbitration

between

VILLAGE OF OAK BROOK, ILLINOIS

and

TEAMSTERS LOCAL #714

CASE NO.: S-MA-96-73
Arb. Ref. 95.238
(Interest Arbitration -
Insurance Reopener)

OPINION AND AWARD

APPEARANCES:

For the Village: R. Theodore Clark, Jr., Esq.

For the Union: Robert Costello, Esq.

Place of Hearing: Oak Brook, Illinois

Date of Hearing: March 8, 1996

Dates Briefs Received: May 11, 1996 (Village); May 13, 1996 (Union)

Date of Award: August 5, 1996

I. FACTS

This is an interest arbitration held pursuant to Section 14 of the Illinois Public Labor Relations Act.¹ The one economic issue in dispute concerns hospitalization and medical insurance. Tr. 3-4.

Article 12, Section 1 of the 1993-96 Agreement states:

ARTICLE XII

INSURANCE

Section 1. Hospitalization and Medical Insurance Coverage. The Village of Oak Brook's Health and Dental Care Plan in effect on January 1, 1994, shall be continued; provided, however, the Village retains the right to change insurance carriers, third party administrator, or to self-insure as it deems appropriate, so long as the new coverage and new benefits are substantially identical to those which were in effect on January 1, 1994. Employees may select single or family coverage during the enrollment period established by the Village. The Village will continue to pay 100% of the cost of the premiums for both employee and dependent coverage. The provisions of this Section are subject to the reopener provisions of this Agreement if the Village is considering any changes that it desires to be effective during calendar year 1995.

* * *

Article 17, Section 2 of Agreement allowed the Village to reopen on insurance "if the Village is considering changes ... that would be effective during calendar year 1995" The Village exercised that option by letter dated August 16, 1994. Village Exh. 1.²

Reopener negotiations commenced on May 4, 1995. The Village stated a "desire to provide for some modest cost sharing and for a modest increase in deductibles" along with a willingness to "consider adding some provisions that would make the overall plan more attractive from the standpoint of employees" Village Brief at 3.

After six bargaining sessions (including mediation) conducted through September 15, 1995, the parties' negotiating teams reached agreement memorialized in a Memorandum of Agreement dated September 15, 1995 (Village Exh. 7):

MEMORANDUM OF AGREEMENT

* * *

1. Hospitalization, Medical, and Dental Insurance Coverage --

¹ The parties waived the tri-partite panel called for in the Act. Tr. 3.

In its Brief at 1, note 1, the Union withdrew its objection (Tr. 88-89) to my jurisdiction to consider the dispute.

² The Village also exercised its prerogative to reopen the Agreement on drug/alcohol testing—an area also provided for in Article 17, Section 2 of the Agreement. That matter is not before me. Tr. 4.

Village of Oak Brook/IBT Local #714

S-MA-96-73

Page 2

Effective January 1, 1996, make the following modifications to the Village of Oak Brook Health and Dental Care Plan:

- Increase deductible to \$250 for employee only, but maintain the \$300 deductible for employee plus one coverage and \$450 deductible for family coverage
- For the period January 1, 1996 through June 30, 1996, employees shall pay \$13.11 for employee plus one coverage and \$20.77 for family coverage
- For the period July 1, 1996 through June 30, 1997, employees shall pay 7 1/2% of the cost of the differential between employee only and employee plus one coverage or \$14.42 per month, whichever is less, for employee plus one coverage and 7 1/2% of the cost of differential between employee only and family coverage or \$22.85 per month, whichever is less, for family coverage
- For the period July 1, 1997 through December 31, 1998, employees shall pay 7 1/2% of the cost of the differential between employee only and employee plus one coverage or \$15.86 per month, whichever is less, for employee plus one coverage and 7 1/2% of the cost of differential between employee only coverage and family coverage or \$25.14 per month, whichever is less, for family coverage
- The Village shall continue to pay 100% of the cost for employee only coverage.
- Implement a Section 125 plan which will enable employees to tax shelter the amount they pay towards the cost of insurance coverage, as well as tax shelter amounts used to pay for unreimbursed medical expenses and child care/dependent care expenses
- Add well baby care prior to discharge at 100%
- Add annual mammograms for women over 40 and biennially for women 35 to 39; one only prior to age 35
- Provide up to \$300 for a routine physical once every two years for employees only
- Increase the maximum lifetime annual amount per covered person for orthodontia from \$1,000 to \$2,000
- Add a drug card with an employee co-pay of 15% for brand name prescriptions and 10% for generic prescriptions, supplemented by pharmacy by mail with an employee co-pay of \$15.00 for brand name prescriptions and \$7.00 for generic prescriptions for a 90-day supply for maintenance drugs (as opposed to the normal 30 days with the drug card)

Notwithstanding the foregoing, the above described changes in the hospitalization and medical insurance program shall not be implemented unless the same changes are implemented for the Village's unrepresented employees, including the unrepresented employees in the Police Department.

The above agreement with respect to modifications to the Village of Oak Brook Health and Dental Care Plan shall be effective through December 31, 1998,

regardless of the term of the successor agreement to the parties' 1993-96 agreement.

2. **Ratification** -- This Memorandum of Agreement is subject to ratification first by the Union and then by the Village Board of Trustees.

* * *

The employees did not ratify the terms of the Memorandum of Agreement. Tr. 16. This arbitration resulted. Jt. Exh. 3.

II. DISCUSSION

A. The Parties' Final Offers

Consistent with the terms of the Memorandum of Agreement agreed to by the bargaining teams, as a result of the reopener negotiations the Village seeks to amend Article 12, Section 1 of the Agreement to read as follows (Tr. 132; Village Brief at 6):

Section 1. Hospitalization and Medical Insurance Coverage. The Village of Oak Brook's Health and Dental Care Plan in effect on January 1, 1994, shall be continued; provided, however, the Village retains the right to change insurance carriers, third party administrator, or to self-insure as it deems appropriate, so long as the new coverage and new benefits are substantially identical to those which were in effect on January 1, 1994. Employees may select single or family coverage during the enrollment period established by the Village. The Village will continue to pay 100% of the cost of the premiums for both employee and dependent coverage through November 30, 1995, and continuing thereafter unless and until there is a

change as a result of the provisions of the next paragraph of this section.

Notwithstanding anything to the contrary in the paragraph immediately above, effective December 1, 1995, implement the following modification to the Village of Oak Brook's Health and Dental Care Plan:

1. Increase the deductible to \$250 for employee only, but maintain the \$300 deductible for employee plus one coverage and \$450 deductible for family coverage.
2. Employees shall pay 7 1/2% of the cost of the differential between employee only and employee plus one coverage and 7 1/2% of the cost of the differential between employee only and family coverage; provided, however, that the percentage increase in the amount paid by the employee for either employee plus one or family coverage shall be capped at no more than 10% in any given insurance year (July 1 to June 30).
3. The Village shall continue to pay 100% of the cost for employee only coverage.
4. Implement a Section 125 plan which will enable employees to tax shelter the amount they pay towards the cost of employee plus one or family coverage, as well as tax shelter amounts used to pay for qualified unreimbursed medical expenses and qualified child care/dependent care expenses.
5. Add well baby care prior to discharge at 100%.

6. Add annual mammograms for women over 40, biennially for women 35 to 39, and one only prior to age 35. This additional coverage shall be extended to employees and an eligible dependent if the employee selects employee plus one or family coverage.
7. Provide up to \$300 for a routine physical once every two years for employees only.
8. Increase the maximum lifetime annual amount per covered person for orthodontia from \$1,000 to \$2,000.
9. Add a prescription card with an employee co-pay of 15% for brand name prescriptions and a co-pay of 10% for generic prescriptions, supplemented by pharmacy by mail with an employee co-pay of \$15.00 for brand name prescriptions and \$7.00 for generic prescriptions for a 90-day supply for maintenance drugs (as opposed to the normal 30 days with the drug card).
10. Notwithstanding the foregoing, the above described changes in the Village of Oak Brook's Health and Dental Care Plan shall not be implemented unless the same changes are implemented for the Village's unrepresented employees, including the unrepresented employees in the Police Department. If the same changes are implemented for the Village's unrepresented employees, including the unrepresented employees in the Police Department, then they shall be implemented for bargaining unit employ-

ees on the same effective date.

The Union seeks no change from the current levels of contribution specified in Article 12, Section 1 of the Agreement ("The Village will continue to pay 100% of the cost of the premiums for both employee and dependent coverage."). Tr. 110, 130; Union Brief at 3.

B. The Merits Of The Parties' Positions

This is an unusual case. The point that stands out most prominently is the fact that the bargaining teams reached agreement along the lines of the Village's proposal, but the employees did not ratify that result. That failure to ratify by the employees required the holding of this proceeding.

Because the bargaining teams reached a tentative agreement, the Village argues that the burden in this case should be heavily placed on the Union. Village Brief at 8. That position is supported by authority cited by the Village.³

³ See *Board of Education of the Borough of Manasquah and Manasquah Education Association* (Alteri, 1970) (Appendix 1 attached to Village's Brief) at 7 ("... [T]he burden is upon the Board [the party whose negotiator reached agreement which was not ratified] to demonstrate why the provisions agreed upon in the December 10th contract should not be followed"); *Village of* [footnote continued on next page]

The Union argues that because the Village seeks a change in the *status quo* with respect to insurance, the burden properly rests with the Village to justify the change in insurance it seeks. Union Brief at 4. That position is also supported by cited authority.⁴

Discussion along the lines as argued by the parties of who bears the burden and the degree of that burden is, in this case, an academic exercise. For all purposes, the parties' well-framed arguments which are supported by authority serve to negate each other—the Village argues that the Union's bargaining team agreed; the Union argues that

[continuation of footnote]
Schaumburg and Schaumburg Lodge No. 71, Illinois Fraternal Order of Police Labor Council, S-MA-93-155 (Fleischli, 1994) at 34 ("... [T]he terms of the tentative agreement should be viewed as a valid indication of what the parties' own representatives considered to be reasonable and given some weight in the deliberations"); *City of Alton, Illinois and International Association of Firefighters, Local No. 1255, FMCS No. 95-00225 (O'Reilly, 1995) (Appendix 3 attached to Village Brief) at 3* ("... [T]he Neutral Arbitrator can find no compelling reason that he would be able to render an Award which would be more reasonable than the parties were able to achieve during the collective bargaining process.").

⁴ See my award in *City of Countryside and Fraternal Order of Police Lodge No. 37, S-MA-92-155 (1994) at 27* (with respect to a proposed insurance change which had the potential of increasing payments by some bargaining unit employees "[t]he burden is on the City to justify that change.").

the Village must demonstrate why a change of the *status quo* is required. From a practical standpoint, that really is of little help to me in attempting to ascertain which offer should be adopted.

Consistent with Section 14(h)(4) of the IPLRA, the Village argues that comparison of the Village with comparable communities favors its offer. The Village argues that Bensenville, Burr Ridge, Hinsdale, LaGrange Park, Westchester, Western Springs and Willowbrook are comparable communities. Village Brief at 13-14; Village Exh. 12. The Union argues that Glencoe, Hinsdale, Lake Forest and Winnetka are the comparable communities. Union Exh. 2. The parties therefore only agree upon Hinsdale as being comparable to the Village.

Ordinarily, at this point in the analysis, I would go through a series of steps to attempt to determine which of the disputed communities are comparable with the municipal employer.⁵ However, that analysis

⁵ See e.g., *Countryside, supra* at 5-18; *City of Naperville and F.O.P. Labor Council, S-MA-92-98 (1994) at 5-23*; *Village of Libertyville and F.O.P. Labor Council, S-MA-93-148 (1995) at 3-40*; *Village of Algonquin and Metropolitan Alliance of Police, S-MA-95-85 (1996) at 2-22*.

is not necessary in this case. For the purpose of discussion, I shall assume (but, for purposes of future disputes between the parties, I do not find) that the municipalities offered by the Village constitute comparable communities and the Union's proposed municipalities are not comparable. I will also assume (because the Village's unchallenged exhibits sufficiently demonstrate) that the changes proposed by the Village with respect to single +1 and family coverage which require some payment by the employees do not substantially change the Village's ranking with respect to the comparable communities offered by the Village.⁶ In short, for the purpose of discussion, I will assume that external comparability favors the Village's position. Because the Village's offer is conditioned upon other Village employees receiving the same type of coverage, I will also assume for purposes of this case that internal comparability favors the Village's offer. Finally, I will assume that cost of living considerations favor the Village's offer.

⁶ See Village Exhs. 19-22.

But, even with those assumptions, the Village's offer cannot be adopted in this case.

Ultimately, through weighing and balancing the factors in Section 14(h), the interest arbitrator selects the more reasonable offer. The offer selected often is the logical result of where the parties' negotiations were going.⁷

The Village recognizes that determination of reasonableness is the ultimate goal of the interest arbitrator (Tr. 50):

We think what the Village has proposed is eminently reasonable.

If the ultimate task of the interest arbitrator is to determine which offer is more "reasonable", the premise of a party's argument must be that its offer is "reasonable". The question in this case really is whether the Village's offer is "reasonable"—*i.e.*, is there a "rational basis" in fact underpinning

⁷ The eighth factor in Section 14(h) of the IPLRA appears to encompass this point. Interest arbitrators must also consider:

(8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

the Village's offer?⁸ If I am to properly perform my function in this case of selecting the more reasonable offer, then, in the end, I must in some fashion be persuaded that there is a "rational basis" for the Village's position in this case. It seems to me then, that if there is a burden in this unique case, that burden rests with the Village to demonstrate that its offer is "reasonable" and has a "rational basis". If the Village can make that demonstration and because of the previous agreement by the bargaining teams, it follows in this case that the Village's offer should be adopted.

I find in this case that I agree in concept with everything the Village argues. The changes the Village proposes in insurance are modest cost increases for the employees. Using the Village's uncontested data, for single +1 coverage, the

Village's proposal will cost an employee \$13.11 per month, which is 3.77% of the premium costs. Village Exhs. 19-20. For family coverage, the Village's proposal will cost the employee \$20.77 per month, which is 4.6% of the total premium. Village Exhs. 21-22. These are all "modest". To soften the small economic blow, the Village has offered to increase or add other insurance benefits, such as addition/modification to well baby care, mammograms, routine physicals, increased orthodontia, changes in prescription drug coverage, along with offering a Section 125 plan for tax savings purposes.

Given the assumptions made on the Section 14(h) factors of comparability and cost of living favoring the Village's position, under ordinary circumstances I would adopt the Village's offer. In addition to the modest changes and attempted offsets with added benefits, the Village's offer takes these public sector employees into the "real world" where the notion of fully paid insurance benefits by an employer is on the wane.⁹

⁸ The appropriate analogy would be to determining whether an employer engaged in arbitrary conduct—*i.e.*, conduct which was not "reasonable". In those cases, arbitrators look to the existence of a "rational basis" for the employer's actions. *South Central Bell Telephone Co.*, 52 LA 1104, 1109 (Platt, 1969) (unreasonable conduct exists where such conduct is "without consideration and in disregard of facts and circumstances of a case, without rational basis, justification or excuse.").

⁹ See BNA Daily Labor Report (August 29, 1995) in Village Exh. 27:
[footnote continued on next page]

But, notwithstanding all of the above, in this case I am unable to select the Village's offer. That offer cannot be selected because, ultimately, the Village's proposal to change the insurance provision does not have a rational factual basis and, hence, is not reasonable.

Why does the Village seek the change? According to the arguments made at the hearing by the Village (Tr. 21, 47-48):

... [W]e were seeking to have employees obtain small ownership interests in their insurance through modest cost sharing arrangements, ...

* * *

[continuation of footnote]

Among covered full-time employees working for medium and large private employers with 100 or more workers, 61 percent were required to pay part of the premium for single coverage in 1993, up from 27 percent in 1979 ... It said the proportion required to contribute to family coverage increased from 46 percent in 1980 to 76 percent in 1993 and that the average monthly contribution in 1993 was \$31.55 for employee-only coverage and \$107.42 for family coverage.

* * *

See also, *Daily Labor Report* (December 6, 1995) (*id.*):

One of the biggest cost-containment measures taken by employers in 1994 was to shift health-care costs to employees Shifting part of the burden onto employees has the positive effect of making them more aware of the enormous costs associated with health care,

... [O]ver the last 10 to 15 years, because its really been in the last 10 to 15 years that employees have started to pay a share of the costs for either employee and/or family dependent coverage, that where that is instituted and in situations where the employer used to pick up 100 percent of the costs, there is frequently a dramatic change in the attitude of employees toward insurance from one where the employer is paying 100 percent of the costs, where they say "We don't care; that's your responsibility.", to "We want it to-- How can we help hold down the costs? How can we make the program more efficient? Can we reduce what the costs might be if we were to restructure the program, if we were to rebid it?" Et cetera.

What it does in my experience is provide employees with an ownership interest in the program and incentivizes them along with the employer to take a more active interest in the efficient and economical provision of health insurance. We think, and excuse the pun, that that's a healthy development.

Thus, the basis for the Village's argument for imposing the cost sharing concept is a desire to "hold down costs." It follows, then, that the logical underpinning for such an argument is that the Village had an adverse experience with its insurance costs and, in order to hold down those costs, the Village sought to enlist better employee cooperation through the use of employee contributions—be that through employee contributions to premium or through employee co-payments. I agree with the Village that such a

method is perhaps the best way to convince employees to hold down the costs by using their insurance coverage only when it is necessary and which serves to avoid abuse of the benefit. The less the employees use the benefit, the smaller the premiums, the less the employees have to pay out of pocket—in theory, a simple proposition.

Those are most attractive arguments for finding that an offer to require employee contributions is reasonable. But, this is where the whole premise of the Village's argument fails. There is no evidence before me to show that the Village had an overall adverse experience with respect to insurance costs. On the contrary, the evidence strongly suggests that, in many respects over the course of the Agreement, the Village's costs have gone *down*. See Village Exh. 16 showing 1996 premium costs per month per sworn police employee at \$172.69 (single), \$347.52 (single +1) and \$449.62 (family). Compare Union Exh. 1 showing 1994 premium experience at \$183.55 (single), \$356.34 (single +1) and \$402.38 (family).

The key as to why the Village's position cannot be sustained comes from examination of what happened with premiums comparing the

Village's experience over the life of the Agreement. While the monthly premium for family coverage went up from 1994 to 1996 (from \$402.38 to \$449.62), the evidence in the record shows that premium costs per month went *down* for single and single +1 coverage. In 1994, single coverage was \$183.55, while in 1996 that coverage was \$172.69. In 1994, single +1 coverage was \$356.34 while in 1996, that coverage was \$347.52.¹⁰

I recognize that there was some discussion at the hearing concerning the accuracy of the figures in Union Exh. 1 (a document prepared by the Village) in that it was not entirely clear from the Village's perspective that the document included premium payments for dental and life insurance. Tr. 78-80. But, in the end, that is not material. What is material is that there is no evidence to show that, over the life of the Agreement, the Village has experienced an overall *increase* in premiums to an extent which could justify the Village seeking assistance from the employees through em-

¹⁰ See also, Tr. 77 (where the Village's counsel states "... I think they were slightly less than what they were in the preceding year, that's correct.").

ployee contributions in an effort to control spiraling insurance premium costs.

The Village essentially concedes the point that incentive-type monetary relief was not necessary based upon an adverse premium experience resulting in increased premiums. See Tr. 21:

... [B]ut in terms of the discussions with the Union we tried to indicate that this was not purely an effort on the part of the Village to save money.

So the bottom line here is that the Village is asking me to find as reasonable a cost sharing concept ultimately designed to hold down premium costs when the Village has not shown that its overall premium costs have significantly risen. From the evidence before me, the Village's position is, at best, a theoretical one. Cost sharing is a good idea to hold down premium costs. But, there is no rational basis demonstrated in fact to justify that position in this case.¹¹

¹¹ The Village's reliance upon *Schaumburg, supra* does not change the result. Village Brief at 22. In that case, the arbitrator was not persuaded by the Union's argument that "the Village should not be permitted to make this change in the absence of a showing of financial need." *Id.* at 36-37. That argument was rejected because "[t]hat argument ignores the evidence showing that health insurance costs were spiraling up-
[footnote continued on next page]

But I must return to the fact that, as the Village so strenuously argues, the Union's bargaining team agreed with the Village's offer only to have that offer rejected in ratification by the employees. In the end, does not the fact that the Union's bargaining team agreed to the Village's proposal indicate the reasonableness of that proposal? In this case it does not.

The pre-condition for implementation of the tentative agreement was ratification by both sides. See Village Exh. 7 at par. 2 ("This Memorandum of Agreement is subject to ratification first by the Union and then by the Village Board of Trustees"). That pre-condition is a common part of the product of the collective bargaining process. That pre-condition was not met in this case. There is nothing to suggest bad faith by the Union's bargaining team. All this indicates to me is that the Union's bargaining team misread its membership's desires. If I were to accept the Village's argument which locks in the Union in this proceeding because the Union's

[continuation of footnote]
ward until the Village began to negotiate provisions designed to contain costs." *Id.* at 37. There is no similar showing in this case.

bargaining team agreed, then I have, for all purposes, changed the terms of the Memorandum of Agreement which required ratification as a condition precedent to implementation of the Village's proposal. That is not my role in this process. My role is to apply the general factors in Section 14 of the IPLRA to an impasse situation. To a great degree, then, how the parties got to this point is not determinative. The relevant consideration is that they are here.¹²

Thus, the fact that the Union's bargaining team reached agreement with the Village does not change the bottom line. When all the smoke clears, the Village must still demonstrate that its offer is "reasonable". Here, that requires the Village to demonstrate that its premium experience requires assistance from the employees as an incentive to hold

down spiraling insurance costs. That has not been done in this case.

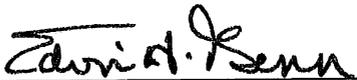
It may be that the Village will experience the type of premium increases which will then (assuming its other Section 14(h) factors are correct) justify its position and the Union will not be able to avoid the inevitable trend. Given the passage of time and the fact that the parties are back in negotiations, that may even be the present situation. The parties will have to thrash that out across the bargaining table knowing the outline of what needs to be shown for such a change to be implemented by an interest arbitrator. However, in this case, the Village only presents a theory which is not supported by sufficient facts. The Village has premised its argument for implementation of cost sharing upon the idea that cost sharing holds down premium costs. The Village has not factually demonstrate its premise. There is no evidence that the Village has experienced increased premium costs over the life of this Agreement. Without more, the Village's offer cannot be found to be reasonable. There is simply no factual underpinning for me to find that there is a rational basis to justify the change the

¹² The other side of the coin was a distinct possibility in this case as well—*i.e.*, that the Village trustees had the right to reject the negotiated deal. In that situation, had the Village Trustees rejected the tentative agreement, I am certain that the parties would have simply changed hats with the Union arguing that great weight should be attached to the Village's bargaining team's agreement and the Village arguing that its actions were not binding. Such is the nature of collective bargaining and interest arbitration.

Village seeks. The Union's *status quo* offer is therefore adopted.

III. AWARD

The Union's offer to maintain the *status quo* for insurance is adopted.



Edwin H. Benn
Arbitrator

Dated: August 5, 1996