

**IN THE MATTER OF ARBITRATION BETWEEN**

<b>MINNESOTA NEWSPAPER GUILD</b>	)	
<b>TYPOGRAPHICAL UNION</b>	)	<b>ARBITRATION</b>
<b>CWA LOCAL NO. 37002,</b>	)	<b>AWARD</b>
	)	
<b>Union,</b>	)	
	)	
<b>and</b>	)	
	)	<b>HOUKE</b>
	)	<b>INSURANCE</b>
	)	<b>GRIEVANCE</b>
<b>ST. PAUL PIONEER PRESS,</b>	)	
	)	
<b>Employer.</b>	)	<b>FMCS NO. 070327-59736-3</b>
	)	
	)	

Arbitrator: Stephen F. Befort

Hearing Date: June 3, 2008

Post-hearing briefs received: July 10, 2008

Date of decision: August 4, 2008

**APPEARANCES**

For the Union: Ronald L. Rollins

For the Employer: Alec J. Beck

**INTRODUCTION**

Minnesota Newspaper Guild Typographic Union, CWA Local 37002 (Union), as exclusive representative, brings this grievance claiming that the Employer violated the parties' collective bargaining agreement by declining to provide Scott Houke with health insurance benefits following a disabling on-the-job injury. The grievance proceeded to

an arbitration hearing at which the parties were afforded the opportunity to present evidence through the testimony of witnesses and the introduction of exhibits.

### ISSUES

- 1) Did the Employer violate the parties' collective bargaining agreement when it declined to provide the grievant with health insurance coverage following a disabling on-the-job injury?
- 2) If so, what is the appropriate remedy?

### RELEVANT CONTRACT LANGUAGE

#### LEAVES AND BENEFITS

##### **Section 24.**

Upon dismissal of any employee covered by this agreement for causes other than proven dishonesty or deliberate self-provoked dismissal, the Publisher shall pay said employee as dismissal compensation a lump sum of money to be determined in accordance with the following schedule, computed at the highest weekly rate received by the employee during the twelve months immediately preceding dismissal:

One week's pay after six months employment and one additional week's pay for each additional 26 weeks of continuous service or major fraction thereof, up to a maximum of 38 weeks' pay.

\* \* \*

##### **Section 53.**

\* \* \*

All full-time employees are eligible for health care benefits after they completed three (3) months of continuous service. All part-time employees who work regular schedules of fifteen (15) or more hours per week are eligible for health care and dental insurance benefits upon completion of the equivalent of six (6) months continuous full time service (1040 hours). . . .

**LETTER # 10**  
**GUILD SICK LEAVE AGREEMENT**

\* \* \*

. . . During disability periods, and for so long as three years from the start of a disability, the employer agrees to continue to pay its portion of the health care premium for the affected employee. . . .

**FACTUAL BACKGROUND**

The facts in this matter are largely undisputed. The Employer hired Mr. Houke as a full-time receiving clerk on November 6, 2006. On his fifth day of employment, Mr. Houke suffered a serious injury when his toes and lower leg were caught in a power roller. He subsequently underwent seven surgeries, and he has been unable to return to work. Mr. Houke has received workers' compensation benefits since the injury, including wage loss, medical, and rehabilitation benefits.

Mr. Houke asked to be added to the Employer's health insurance plan in February 2007. Ms. Yia Song from the Employer's Human Resources Department initially expressed the opinion that Mr. Houke likely would be eligible for coverage. She discussed the matter with Marc Chrismer, the Employer's Director of Labor Relations, who, in turn, contacted the Employer's employee benefits consultant to see if Mr. Houke could be covered under the company's plan. The consultant, Bill Bishop, replied in the negative, stating his belief that an employee is not eligible under the plan until he had engaged in 90 days of continuous work activity with the Employer.

In November 2007, Mr. Houke was scheduled for his seventh injury-related surgery when a medical examination revealed a heart problem. Mr. Houke had heart surgery shortly thereafter and received three stents. Because the heart surgery was not

related to the work injury, the cost was not covered by workers' compensation benefits. Mr. Houke incurred approximately \$10,000 in hospital bills relating to the heart surgery.

The Employer terminated Mr. Houke's employment on February 28, 2008. The Employer's termination letter stated, "it is our understanding that you will not be able to return to full-duty in your position in the near future." The Union subsequently filed a grievance on Mr. Houke's behalf. The grievance does not challenge the discharge, but instead attacks the Employer's refusal to provide health insurance coverage. That grievance worked its way through the contract grievance procedure and has now proceeded to arbitration.

### **POSITIONS OF THE PARTIES**

#### **Union:**

The Union contends that the Employer violated the parties' agreement by not affording health insurance coverage to Mr. Houke. The Union makes two principal arguments in support of this contention. First, it argues that Letter 10 appended to the parties' agreement provides that the Employer will provide health care coverage for up to three years for any period of disability experienced by an employee without any waiting period pre-requisite. Second, the Union asserts that Section 53, which obligates the employer to provide full-time employees with health care benefits after three months of "continuous service," should be read to apply to 90 days of continuous employment as opposed to 90 days of actual work activity. In this instance, Mr. Houke's status as an employee continued from November 6, 2006 until his termination on February 28, 2008. Finally, the Union maintains that the Employer's unilaterally promulgated Summary Plan

Description (SPD) of its employee benefit plan should not be interpreted as creating an exception to the terms of the parties' collective bargaining agreement.

**Employer:**

The Employer counters that the three months "continuous service" requirement in Section 53 should be read as requiring an employee actually to perform work over a three month period in order to qualify for health insurance coverage. The Employer asserts that this interpretation is more consistent with the use of such terminology in the contract read as a whole. The Employer also argues that the Section 53 language should be read in a manner that is consistent with the terms of the SPD which lays out employee eligibility for health insurance coverage. The Employer maintains that the adoption of the Union's interpretation of the contract not only would conflict with the SPD, but would jeopardize the Employer's compliance with the Employment Retirement Income Security Act (ERISA) in its administration of its employee benefit plan.

**DISCUSSION AND OPINION**

This grievance presents a matter of contract interpretation, specifically alleging that the Employer violated the benefit provisions of the parties' collective bargaining agreement. As such, the Union bears the burden to establish the existence of such a violation. In this instance, the Union alleges that the Employer's failure to provide the grievant with health insurance benefits violates two separate provisions of the contract. Each alleged violation is analyzed below.

**A. Letter # 10 – Health Benefits for Disabled Employees**

The Union first relies on Letter # 10 appended to the parties' agreement which states that "during disability periods, and for so long as three years from the start of a

disability, the employer agrees to continue to pay its portion of the health care premium for the affected employee.” The Union claims that this provision obligates the Employer to provide health benefits for up to three years from the onset of disability.

The problem with this argument is the fact that Letter # 10 refers to the Employer’s obligation to “continue” to provide health care benefits. The use of this term suggests that an employee must already be eligible and receiving benefits in order for Letter # 10’s continuation language to become operative. Since Mr. Houke was not eligible for health care benefits at the time of his disabling injury under either party’s interpretation of the contract, Letter # 10 simply is not applicable.

**B. Article 53 – Initial Eligibility for Health Care Benefits**

The Union alternatively argues that Mr. Houke is entitled to health insurance coverage under the terms of Article 53 of the parties’ contract. That provision states that “all full-time employees are eligible for health care benefits after they have completed three (3) months of continuous service.” The Union urges that the term “continuous service” refers to a period of employment rather than to a period of actual work activity. In support of this position, the Union’s post-hearing brief asserts, “if the parties had wanted to require actual work, they would have said that so many ‘days worked’ were required and certainly they would not have used the term “months” which connotes only the passage of time. Since Mr. Houke was employed for more than three months when he applied for health coverage in February 2007, the Union claims that the Employer violated Article 53 by declining to provide him with coverage.

The Employer, in contrast, contends that the term “continuous service” refers to a period in which an employee was actively performing work on behalf of the employer.

Although the issue is not free from doubt, I find that the Employer has the better of this argument for the following reasons.

First, the Employer's position is more consistent with the language used by the parties when the contract is viewed as a whole. Most significantly in this regard, Section 53 itself ties eligibility for health insurance to the number of days worked for part-time employees. Section 53 states that "part-time employees who work regular schedules of fifteen (15) or more hours per week are eligible for health care and dental insurance benefits upon completion of the equivalent of six (6) months continuous full time service (1040 hours)." This language clearly contemplates an active work requirement since it goes beyond a six months benchmark to require that an employee actually work a total of 1040 hours. Since that portion of Section 53 pegs benefit eligibility to an hours worked requirement, it is reasonable to presume that the "continuous service" language in that same section applicable to full-time employees also embodies an actual work prerequisite.

Similarly, Section 24 of the parties' agreement uses language encompassing both the passage of time and hours worked concepts in computing eligibility for severance pay. That section provides that employees earn "one week's pay after six months employment and one additional week's pay for each additional 26 weeks of continuous service or major fraction thereof, up to a maximum of 38 weeks' pay." This language clearly uses the term "continuous service" to refer to a period of actual work service as opposed to the initial period of eligibility which may be established simply by a period of employment.

Second, prior to 2002, Section 53 of the contract conditioned eligibility for health insurance benefits upon the completion of a term of “continuous employment.” Pursuant to a company proposal asserted in negotiations that year, the parties agreed to amend Section 53 to contain the current language conditioning eligibility upon the completion of a term of “continuous service.” Although there is little in the way of bargaining history to explain this change, the new language generally is consistent with a move in emphasis from a period of employment (“continuous employment”) to a period of actual work service (“continuous service”).

Finally, the Employer argues that the Union’s interpretation of the contract would conflict with the SPD and potentially place the Employer in violation of ERISA. ERISA obligates plan sponsors to prepare a SPD that describes the terms of employee benefit plans. In this instance, the SPD applicable to the Employer’s health care plan states that an employee, in order to be eligible for coverage, must be “actively at work” for 35 hours per week and complete “90 days of active work with the employer.” The SPD defines “actively at work” as “the time period in which an employee is customarily performing all the regular duties of his/her occupation at the usual place of employment or business.” Interpreting this language, employee benefits consultant Bill Bishop testified that Mr. Houke was not eligible for health care coverage under the terms of the SPD because he was not actively performing work for the required 90-day minimum period. He also testified that the Employer’s provision of health care coverage in spite of the contrary provisions of the SPD might violate ERISA’s non-discrimination provisions and result in the disqualification of the Employer’s plan for tax purposes.

The union argues that the terms of the unilaterally promulgated SPD should not trump the terms of the bilaterally established collective bargaining agreement. While that objection is well taken, the two documents should be read in a consistent fashion if possible. That principle, in this instance, favors the Employer's proposed construction of the contract.

The role of an arbitrator in a dispute such as this is to ascertain the parties' intent as expressed in their contractual agreement rather than to dispense his own brand of industrial justice. *See Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960). While an employer is responsible for the income and medical losses associated with a work-related injury under the statutory workers' compensation system, the employer's responsibility for additional non-injury related expenses is a matter subject to the parties' agreement. Here, the pertinent interpretative aids support the Employer's construction that the contract language does not extend general health care coverage to an employee who has not engaged in active work for a minimum of 90 days. As a result, the Union's grievance must be denied.

#### **AWARD**

The grievance is denied.

Dated: August 4, 2008

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Stephen F. Befort  
Arbitrator