

IN THE MATTER OF ARBITRATION BETWEEN

<hr/>)	
PROFESSIONAL EMPLOYEES ASSOCIATION,)	ARBITRATION AWARD
)	
Union,)	
)	HEALTH INSURANCE CONTRIBUTION GRIEVANCE
and)	
)	
CITY OF ST. PAUL,)	BMS CASE NO. 09-PA-0239
)	
Employer.)	
<hr/>)	

Arbitrator: Stephen F. Befort

Hearing Date: December 19, 2008

Post-hearing briefs received: N/A

Date of decision: January 16, 2009

APPEARANCES

For the Union: Mike Wilde

For the Employer: Steven Barrett

INTRODUCTION

The Professional Employees Association (Union) brings this grievance as exclusive representative claiming that the City of St. Paul (City) violated the parties' collective bargaining agreement by failing to contribute \$100/month on behalf of five unit employees who elected the single employee health insurance with \$1500 deductible plan for 2008. The Employer denied the grievance and this matter 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. The parties decided not to submit post-hearing briefs.

ISSUES

- 1) Did the City violate Article 12.3 of the parties' collective bargaining agreement by declining to contribute a \$100 monthly benefit for employees who elected single employee health insurance coverage for 2008 under the Open Access with \$1,500 deductible plan?
- 2) If so, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE

ARTICLE 12 - INSURANCE

12.3 Effective for the January 2008 insurance premiums, for each employee covered by this Agreement who is employed full-time and who selects single employer health insurance coverage provided by the Employer, the Employer agrees to contribute the following amounts:

Open Access with \$1,500 Deductible:	\$427.25, plus \$100 (to be deposited in an account determined by the LMCHI)
Primary Clinic with \$500 Deductible:	\$525.51
Distinctions:	\$457.54

FACTUAL BACKGROUND

This grievance concerns the extent of the City's obligation to contribute to employee health insurance coverage under the parties' collective bargaining agreement. The City and the various labor organizations representing City employees have established a Labor Management Committee on Health Insurance (LMCHI) that discusses and makes recommendations with regard to City-sponsored health insurance plans. During the summer of 2007, the LMCHI reached consensus on health plan designs and City contributions for calendar years 2008, 2009, and 2010. The LMCHI recommended that the City offer three health plan options for each of these years. One of

the plan recommendations was to enhance cost containment by providing an incentive for employees to enroll in the high deductible (\$1,500) plan option. In accordance with the LMCHI proposal, the City would provide a contribution of \$100/month for those single-coverage employees who selected the lower cost, high-deductible option..

The LMCHI proposal was then referred to the separate bargaining units for negotiation. On August 21, 2007, the City and the Union executed a Memorandum of Agreement (MOA) adopting the LMCHI recommendation. The MOA provided as follows:

The City of Saint Paul (Hereinafter “City”) and the Professional Employees Association, Inc. (hereinafter “Union”) agree to the terms of this Memorandum of Agreement (Hereinafter MOA) for the purposes of establishing the City’s contribution rates to health insurance premiums for City employees who are eligible for such contributions. . . .

8. The City will make the following monthly contributions for health insurance in 2008:
 - a. Open Access with \$1,500 Deductible

Single: \$427.25 + \$100 (to be deposited in an account determined by the LMCHI)

Family: \$1,040.75

The LMCHI later determined that the City’s contribution would be deposited in a flexible spending account (FSA) on behalf of each participating employee.

The parties subsequently incorporated the MOA language into the collective bargaining agreement (as Appendix B) executed on March 26, 2008. In addition, Section 12.3 of the agreement set forth the following provision relating to the City’s health insurance contributions for single employees under each of the three plan options:

Effective for the January 2008 insurance premiums, for each employee covered by this Agreement who is employed full-time and who selects single employer

health insurance coverage provided by the Employer, the Employer agrees to contribute the following amounts:

Open Access with \$1,500 Deductible:	\$427.25, plus \$100 (to be deposited in an account determined by the LMCHI)
Primary Clinic with \$500 Deductible:	\$525.51
Distinctions:	\$457.54

The open enrollment period for the new health insurance options occurred from October 1 to October 19, 2007. The City, for the first time, conducted this open enrollment process in an online format. In the past, employees filled out paper enrollment forms and could consult with benefit counselors as they were filling out their forms. During the 2007 enrollment process, the City provided enrollment guides and training sessions, but the employees were required to select their insurance options by individually designating selections via computer on the Benefit Ready web site (www.BenefitReady.com).

Under the Benefit Ready program, employees selecting the single coverage, high deductible option would not automatically be entitled to receive the City's \$100/month incentive contribution. The program, instead, required such employees additionally to enroll in a medical FSA in an amount of at least \$1,200. City Risk Manager Ron Guilfoile and Employee Benefits Manager Joanne Lempke both testified that it was their understanding that federal law requires employees to make an affirmative annual enrollment in order to participate in a FSA.

The City provided notice to employees in a number of formats indicating that they would need to make an affirmative enrollment election in a FSA in order to receive the City's \$100/month contribution. The three most prominent notices were as follows:

- 1) September 17, 2007 letter from Risk Manager Guilfoile to all City employees' homes. In explaining the single Open Access with deductible health plan, the

letter stated:

The City will also contribute \$100/month into a medical flexible spending account for this plan, single coverage only. To receive this contribution, Employee must enroll in a medical flexible spending account and elect up to \$1200. Employee can elect additional pre-tax deductions up to \$2800 for a total maximum election of \$4000/year.

- 2) City of Saint Paul Open Enrollment Brochure. The brochure, distributed by the City on September 27, 2007, stated as follows:

If you select single Open Access with Deductible (\$1500) the City will contribute \$100/mo. (\$1200/yr.) into a medical flexible spending account. However, YOU MUST ENROLL in this flex program with a minimum of \$1200. You may add up to \$2800 of your own pre-tax payroll contribution to attain max of \$4000.

- 3) 2008 Medical Plan Rate Sheet. The City posted a health insurance rate sheet on its Intranet site for employees to access. The rate sheet contained the following notice for employees who enroll in the single Open Access with high deductible plan:

The City will also contribute \$100/month into a medical flexible spending account for this plan, single coverage only. To receive this contribution, Employees must enroll in a medical flexible spending account and elect up to \$1200. Employees can elect additional pre-tax deductions up to \$2800 for a total maximum election of \$4000/year.

The Benefit Ready enrollment program also provided special instructions to employees as they elected the single Open Access high deductible health plan. Upon such an election, the program provided those employees with the following alert:

PLEASE NOTE: All employees, except Non-Represented Management and Elected Officials, who elect single coverage under the HealthPartners Open Access with Deductible (\$1500) plan for 2008 are eligible to receive a City contribution into their medical flexible spending account in the amount of \$100/month. To receive the City contribution, employees must enroll in a medical flexible spending account and elect up to \$1200.

A total of 904 City employees selected the single Open Access with high deductible plan during the open enrollment period. Twenty-five of those employees did not also enroll in the \$1,200 FSA. Five of the non-enrollees are members of the PEA unit. The City did not provide the \$1,200 contribution for any of these employees due to their failure to enroll in the separate FSA.

The Union solicited testimony from three unit employees who selected the high deductible single employee option but who did not enroll in a FSA. Amber Adam testified that she attended a City-sponsored enrolment training session where she was told that she would receive a \$1,200 City contribution if she signed up for the high deductible plan. Adam testified that the benefit counselors she consulted with at this session never told her that she had to enroll in a FSA in order to receive the City's contribution. Ellen Stewart testified that she believed the high deductible plan was a package that automatically included the City's \$1,200 contribution. Marsha Panos testified that she had contributed to a FSA in the past, so that when she saw the tab about enrolling in such an account in conjunction with the high deductible plan, she thought that such was unnecessary in her circumstances.

All three of the unit employees testified that they signed up for the high deductible plan with the intention and expectation that they would receive the City's \$1,200 contribution. Each employee also testified that they suffered economic losses because of the City's decision not to provide the \$1,200 contribution.

Paul Hogrefe, a technology systems consultant employed by the City, correctly signed up for the FSA benefit but also testified that he found the Benefit Ready program to be confusing in its design. Mr. Hogrefe stated that while the program notified those

employees selecting high deductible coverage that they also should enroll in a FSA, it did not specifically indicate that employees must enroll in a \$1,200 FSA plan or lose their entitlement to the City's contribution.

On May 13, 2008, the Union filed a grievance challenging the City's implementation and interpretation of the single Open Access high deductible plan. The City denied the grievance, and the matter proceeded to arbitration.

POSITIONS OF THE PARTIES

Union:

The Union contends that the City violated Article 12.3 of the parties' collective bargaining agreement by not contributing \$100/month during 2008 for those employees selecting the high deductible option. The Union points out that the agreement simply obligated the City to provide the contribution to those electing the high deductible option without any specified precondition or limitation that additionally required those employees to enroll in a FSA. The Union maintains that the obvious intent of the contract provision was to entice employees to sign up for the high deductible plan in order to obtain the City's contribution and that it would be implausible that any employee who signed up for the plan did not desire to receive the City's promised contribution. In addition, the online enrollment process utilized by the City did not adequately explain the need for a separate FSA enrollment. Since the City's imposition of this unspecified condition precedent was unwarranted, imprecise, and resulted in economic harm, the City should be ordered to provide \$1,200 in compensation to each of the five aggrieved unit members.

Employer:

The City argues that it did not violate the parties' agreement by declining to provide the \$1,200 contribution to those employees who did not affirmatively enroll in a FSA because the MOA limits that benefit to "employees who are eligible for such contributions," and that an employee who does not enroll for a particular benefit cannot be "eligible" for that contribution. The City contends that Article 12.3 supports its position since it provides that the City's contribution is to be deposited in an account to be determined by the LMCHI. In this instance, the LMCHI determined that the contribution should be deposited in a FSA and, according to the uncontroverted testimony of City witnesses, federal law requires that employees may participate in such an account only by means of an affirmative annual enrollment. Here, the City provided clear and ample notice to employees of the need to make the requisite FSA enrollment. The fact that over 97% of all employees signing up for the high deductible option successfully complied with these instructions demonstrates that the process was not unclear.

DISCUSSION AND OPINION

Each party has a legitimate equity claim in this grievance. The Union asserts that the intent of Article 12.3 was to trade a \$1,200 City contribution for increased participation in the high deductible health insurance plan. The aggrieved employees in this case legitimately expected that they would receive the City's contribution as a consequence of signing up for the high deductible program.

On the other hand, the City had a good faith belief that participating employees needed to affirmatively enroll in a FSA in order to receive the \$1,200 contribution.

Accordingly, the City made special efforts to provide employees with notice of the need to enroll in a FSA with a minimum of \$1,200.

Although both parties have presented cogent arguments, I do not believe that the pertinent contract language permits a compromise solution. Only two readings of Article 12.3 are plausible in this matter. One plausible reading is that the employees in question automatically are entitled to receive the City's contribution upon enrolling in the high deductible plan. The alternative plausible reading is that the employees are entitled to the City's contribution only if there is a properly established account into which the funds can be deposited. Based on the analysis set out below, I believe that the latter construction is more appropriate.

First, both the MOA and Article 12.3 of the collective bargaining agreement provide that the City's \$100/month incentive contribution is "to be deposited in an account determined by the LMCHI." Although the record does not detail exactly how the LMCHI decided on the type of account to be used, the July 31, 2007 LMCHI meeting minutes contains a report by Risk Manger Guilfoile stating, "In 2008, we will use FSA (Flexible Spending Account) for the \$1200. . . . For employees who choose the \$1500 Single deductible, employees have to be sure to sign up for the FSA with at least \$1200." Accordingly, it appears that the FSA vehicle was chosen in a manner consistent with provisions of the two agreements.

Second, according to the testimony of Mr. Guilfoile and Employee Benefits Manager Joanne Lempke, federal law requires an annual affirmative enrollment by an employee in order to participate in a FSA. In the LMCHI meeting minutes of September 25, 2007, Ms. Lempke is cited as stating, "Joanne stated that employees must enroll each

year in the FSA. The City cannot elect FSA for employees.” Based upon this understanding - which was not disputed by the Union as inaccurate - the City could not automatically enroll employees in the high deductible plan, but instead could only facilitate employees to self-enroll in the FSA option.

Third, the MOA entered into by the parties reserved the City’s contribution for “employees who are eligible for such contributions.” Based on the foregoing, it is apparent that an employee who did not enroll in a \$1,200-minimum FSA is not eligible to receive the City’s contribution.

Finally, the City provided ample notice of the need for enrollment in the FSA as well as an adequate process by which employees could effectuate the enrollment option. The City took numerous steps to notify employees that if they selected the single coverage, high deductible option, they would receive the City’s \$1,200 contribution only if they also enrolled in a FSA. In addition, the Benefit Ready online screen specifically instructed employees electing the Open Access with \$1,500 deductible plan that, “to receive the City contribution, employees must enroll in a medical flexible spending account and elect up to \$1200.” The fact that more than 97% of effected employees successfully complied with this instruction demonstrates that the process was not critically flawed.

Based on this analysis, I conclude that the Union has not carried its burden of establishing that the City violated Article 12.3 of the parties’ collective bargaining agreement. I do urge the parties, nonetheless, to work together to minimize the potential for employees to inadvertently fail to obtain the intended City contribution in future years

AWARD

The grievance is denied.

Dated: January 16, 2009

Stephen F. Befort
Arbitrator