

<b>In the Matter of Arbitration between</b>	)	
	)	<b>OPINION AND AWARD</b>
<b>INTERNATIONAL BROTHERHOOD OF</b>	)	
<b>TEAMSTERS, Local 120, Union</b>	)	
	)	
<b>And</b>	)	<b>BMS Case No. 08-RA-0552</b>
	)	
<b>BROWN-WILBERT, Employer</b>	)	

**Appearances:**

For the Union: Martin J. Costello, Hughes & Costello, St. Paul, Minnesota

For the Employer: David J. Duddleston, Jackson Lewis, Minneapolis, Minnesota

**Procedures:**

The undersigned was selected as Arbitrator in the present matter through the procedures of the Minnesota Bureau of Mediation Services, as provided in the collective bargaining agreement. A Hearing was held in the main floor conference room of Landmark Towers, 345 St. Peter Street, St. Paul, Minnesota on December 15, 2008, commencing at 9:30 a.m. With the simultaneous exchange of post-Hearing briefs on February 6, 2009, the Record in this matter was closed.

**The Parties**

The employer is a manufacturer of funeral vaults and related products, sold throughout the upper Midwest, whose business is suffering due to the increased popularity of cremation. Medical insurance costs are also a serious concern. The Union is a local of the International Brotherhood of Teamsters, representing some 20 employees. The Parties are signatories to a

collective bargaining agreement running from September 12, 2004 through July 31, 2009. It is noted that this Agreement was reached after a strike in which testimony indicated that health cost sharing was a key and “contentious” issue.

### **Central facts**

In fall 2007, the Employer, facing a variety of cost pressures and sagging demand, notified all employees that major changes would be made in the health plan. Most notably, a large number of small deductibles for specific items would be replaced by a single annual deductible and the maximum out-of-pocket cost would be reduced rather substantially. Thus, for example, under the first change, the \$15 co-pay for an office visit and the \$10 co-pay for a generic drug prescription would be replaced by a deductible of \$1700 annually (\$3400 for family coverage). Under the second change, those deductible levels were set as the new “maximum out-of-pocket” expenses, after which the plan paid 100%. The previous “out of pocket maxima” had been \$2500 and \$7500. There is much more fine print, but these examples give the general idea.

### **Relevant contract language**

The outcome of the negotiations in 2004 and the settlement of the strike led to the language of Article 22 of the collective bargaining agreement:

Article 22

Health and Welfare

Section 22.1. Employees are eligible for participation in the Employer’s insurance plan on the same basis as the Employer’s non-bargaining unit employees. Specific detail of the insurance coverage can be found in the Summary Plan Description booklets.

Section 22.2. Employees will pay the following weekly health insurance premium amounts:

Year	1	2	3	4	5
The insurance premium participation to be paid by	\$0	\$20	\$30	\$40	\$50
	Per Week				

The change in insurance coverage and the insurance premium participation is anticipated to start on the first day of the second month following the date this Agreement is signed.

**The Employer’s Response to Hard Times**

On October 4, 2007, the Employer’s CEO, Christopher C. Brown, sent a letter to all employees (not just the members of this bargaining unit) listing some half-million dollars in “unanticipated expenses” which had cropped up at Brown-Wilbert over the previous twelve months, at the same time as revenues from vault sales had shrunk by three-quarters of a million dollars. He reviewed a number of options which he thought were available to offset the economic challenges facing the company and then announced the two major modifications discussed above to the health and medical insurance plan. [Tab 10, Union exhibits]

Evidently the Union was not notified directly of these changes but had the letter brought to its attention by a member. On October 10, 2007 the Union wrote to CEO Brown and president Bruce Bratton, objecting to the planned changes and demanding negotiations. [Tab 11, Union exhibits] A meeting “for discussion only” between Union and Employer representatives ensued. [Tabs 13 and 14, Union exhibits]. The Employer then implemented the new health insurance plan on November 1, 2007. At the Hearing, the Parties stipulated that there are no procedural issues and that the matter is properly before the Arbitrator.

### **Discussion**

The Employer’s post-Hearing brief picks up on Union witness and business agent Tom Ohlson’s testimony that these out-of-pocket costs are unacceptable and seeks to have that recognized as the framing of the Issue in this matter. If that were to be the case, the Employer then maintains that there is no issue, because the out-of-pocket maximum has been greatly reduced. The latter point may be correct, but it does not address the real issue, properly framed. The central issue is whether the Employer’s action in modifying the health and medical insurance plan is in violation of the Agreement, violating “an express provision of [the] Agreement” [CBA, section 7.7], viz. Article 22.

Although Elkouri and Elkouri, *How Arbitration Works*, 6<sup>th</sup> edition, states flatly that “The terms of a health insurance plan are a mandatory subject of bargaining” (page 1181), it is later noted that the “most common contractual provision governing health insurance changes allows a unilateral change in health insurance coverage as long as the benefits of the new plan are

“substantially similar” or “comparable” to the previous benefits” (page 1184). We note that no such language appears in the agreement between these Parties. But in general, if the changes should represent a minor adjustment, where the basic parameters of the plan remain intact, then an arbitrator might permit the Employer to act on its own. In the present case, however, the Employer’s actions are not of the minor adjustment category. In an example put forward by the Union, the employee who has five visits to the doctor’s office would have paid five \$15 co-pays, totaling \$75. In the current Employer-imposed health and medical plan, that same employee would pay five full-cost visits at \$150, for a total of \$750 out-of-pocket. It seems likely that many employees will be hurt financially by the new system, although some may be helped by the lower out-of-pocket maximum (cf. the family of three shown in Union exhibit, tab 12, who reached the \$3400 maximum during a contract year and for whom anything additional would have been free). And the more successfully the new plan shifts costs to the employees, the more successful will be the Employer’s approach to Brown-Wilbert’s economic plight.

It is not just the replacement of limited co-pays (e.g., ten percent of actual costs for office visits) by payment up front of full costs that argues for a violation of the collective bargaining agreement. Article 22 was negotiated as a comprehensive settlement of the contentious issue of health insurance cost sharing. It was, of course, negotiated in the context of the whole Agreement (so wages and pension contributions may have been affected by decisions about Article 22, for example). But the major parameters of the medical and health insurance plan must have been known to the Parties when the schedule of weekly insurance contributions was agreed on. The very last sentence of Article 22 practically says so: “The change in insurance

coverage and the insurance premium participation is anticipated to start on the first day of the second month following the date this Agreement is signed.” The fact that the subject of the sentence (“The change”) is singular only confirms the argument that the package was envisioned to last the life of the contract. (Brave souls, to sign a five year agreement in a world of rapidly rising health costs!)

Parenthetically, the Arbitrator notes that section 31.1 of the Agreement provides an annual opportunity for either Party to reopen (apparently) any subject in the Agreement.

The Union has requested that the Arbitrator retain jurisdiction for thirty days to ensure successful implementation of this Award. This seems a reasonable request.

**AWARD**

The Grievance is sustained. The Employer is directed to resume compliance with Article 22 of the Agreement, reinstating the insurance plan envisioned by the Parties in crafting the language of that Article. Employees who have suffered losses are to be made whole.

The Arbitrator will retain jurisdiction for thirty days after the likely receipt of this Opinion and Award, through Wednesday, March 25, 2009.

**Given at St. Paul, Minnesota this twentieth day of February 2009.**

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**James G. Scoville, Arbitrator**