

IN THE MATTER OF GRIEVANCE ARBITRATION BETWEEN

AFSCME Council 5, Local 2454
Union

and

BMS Case No. 10-PA-1057

City of Lexington

Employer

NAME OF ARBITRATOR:	George Latimer Assistant Faith Latimer
DATE AND PLACE OF HEARING:	May 4, 2010 Lexington, Minnesota
BRIEFS RECEIVED:	None
DATE OF AWARD:	May 20, 2010

APPEARANCES

FOR THE UNION:
Allen Lehrke, Business Representative
Mary Vinzant, Administrative Coordinator
Travis Schmid, Public Works
Tina Northcutt, Union Steward

FOR THE EMPLOYER:
Paul M. Floyd, Attorney
Barbara Mahr, City Council Member
Dot Heifort, City Administrator

INTRODUCTION

This is a grievance arbitration between the American Federation of State, County, and Municipal Employees Council 5, Local 2454 (AFSCME or Union) and the City of Lexington Minnesota (Employer or City). The parties are signatory to a Collective Bargaining Agreement (CBA) effective May 1, 2009 to April 30, 2012, which was signed and ratified in October 2009. This was a successor agreement to one dated May 1, 2006 to April 30, 2009. The new agreement contained a change in the Employer contribution to the cost of employee health insurance. The 2006-2009 agreement provided that the Employer pay 100% of the cost of health and dental insurance for an eligible employee, and 75% of the cost of dependent coverage. The 2009-2012 agreement provided that the Employer contribute up to \$1,000 per month toward the cost of these coverages. Both CBAs provided for the right of individual employees to 'opt out' of the Employer provided plan, during the 30 day period following ratification, and instead use alternative insurance coverage. The 2009-2012 agreement provided that the City subsidize the cost of that coverage up to the \$1,000 monthly amount.

In 2009 two employees chose to opt out. The Employer maintains the two employees owe the City the difference between the monthly \$1,000 contribution required by the new agreement, and the amount paid by the Employer for their coverages from May 1 to the ratification date. The Union grieved, maintaining the CBA does not specify the change in insurance contribution rates would be retroactive. This grievance went through the grievance process set forth in the CBA and was appealed to arbitration. There were no jurisdictional disputes. The hearing was held May 4, 2010 in the City of Lexington. Both parties had full opportunity to submit evidence and examine witnesses. The parties chose to make oral closing arguments and the record was closed on May 4.

STATEMENT OF THE ISSUE

Did the Employer violate the CBA by applying the terms of Article 16, Insurance retroactively to May 1, 2009? If so, what shall be the remedy?

RELEVANT CONTRACT LANGUAGE

Article 16 Insurance

16.01 The Employer shall offer group health and dental insurance meeting the requirements of state law for regular employees and their dependents. The Employer shall contribute up to \$1,000.00 per month per employee during the first, second and third years of the term of this Agreement and any subsequent terms of this Agreement for premiums for all such coverage. Any excess shall be paid by the employee by means of payroll deductions...

16.02 During the thirty (30) day period following ratification of this Agreement, each Regular Employee may elect, in lieu of participation in the Employer's group hospitalization, medical and dental insurance plan, to have the amount of the Employer's cost for such coverage for the electing employee, to be paid as premium payments to another medical, dental, or HMO plan selected by the employee. This amount paid to the alternative insurance would be up to a total of \$1,000.00. The election of this alternative shall be irrevocable for one (1) year. The Employer may permit the employee to change his/her election during one 30-day period each year, subject to the employee's eligibility for coverage under the Employer's plan.

Article 27 Duration

This Agreement shall be effective May 1, 2009 and shall remain in full force and effect for a period of three (3) years (i.e., until April 30, 2012), and from year to year thereafter unless either party gives notice, not more than ninety (90) days and not less than sixty (60) days prior to the expiration date of its intent to terminate, alter, or amend the Agreement.

Article 11 Call Back/Emergency Response

11.01 Employees who are recalled to work by the City Administrator or the City Administrator's designee, after their regularly scheduled work hours shall be paid for a minimum of two (2) hours at the appropriate overtime rate (excluding holidays).

11.02 When employees are required to be available for pager or cellular calls to respond to emergencies or after hour's service requirements, employees responsible for the primary pager or cellular phone shall receive \$30.00 per day in standby pay, in addition to their regular compensation. For each holiday falling on the day of required standby, the employee will receive \$45.00 in addition to their regular compensation.

11.03 Employees called to work by the City Administrator or their designee prior to their regularly scheduled shift shall be paid at the appropriate overtime rate until their regular shift begins provided that the employee shall receive a minimum payment equal to one (1) hour at straight time or the time worked at the appropriate overtime rate, whichever is greater. Employees shall work the balance of their regular shift at their regular rate of pay.

Memo of Understanding Between City of Lexington and
American Federation of State, County and Municipal Employees,
Council No. 5 Local 2454

This Memorandum of Understanding (MOU) is made and entered into between the City of Lexington ("City" or "Employer") and the American Federation of State, County and Municipal Employees, Council 5, Local 2454 ("Union" or "Association") regarding the mutually agreed extension of the parties' collective bargaining agreement executed on or about June 26, 2006 (the "Current CBA") until such time as the parties' have formally approved and adopted a new collective bargaining agreement.

WHEREAS, the City and the Union are currently in negotiations regarding the terms and conditions of the parties' collective bargaining agreement going forward; and

WHEREAS, the termination date for the parties' Current CBA is April 30, 2009 ("Termination Date");

WHEREAS, the parties' negotiations will extend beyond the Termination Date; and

WHEREAS, the parties have agreed that all of the terms and conditions of the Current CBA continue in full force and effect until such date as the parties' have a new collective bargaining agreement that has been formally approved by both the Union and the City.

NOW THEREFORE, the parties agree as follows:

- 1.) All of the terms and conditions of the Current CBA continue in full force and effect until such date as the parties' have a new collective bargaining agreement that has been formally approved by both the Union and the City; and
- 2.) To the extent necessitated by law, the parties' Current CBA is amended to incorporate the terms and conditions of this MOU.

The effective date of this MOU is May 1, 2009.

UNION POSITION

The Union argues that if retroactivity was to be part of the parties' agreement concerning insurance contributions, it must be bargained. It asserts there was no discussion during bargaining of the language being retroactive. There was specific bargaining about a change in the effective dates for certain wage provisions, but none regarding the insurance provisions. The Union points to a Memorandum of

Understanding signed by the parties in April, 2009 which provides “All of the terms and conditions of the Current CBA continue in full force and effect until such date as the parties’ have a new collective bargaining agreement that has been formally approved by both the Union and the City...”(Union Exhibits and oral arguments).

Both employees who are adversely affected by the insurance language change testified that had they been permitted to opt out of the City’s insurance plan in May of 2009, they would have. This option was not available to them until the contract was ratified in October. Both employees understood the insurance contribution changes would not take effect until the new contract was ratified. (Testimony of Mary Vinzant and Travis Schmid)

The Union steward present at bargaining testified that during the bargaining process, careful analysis was done of the net economic effect of various proposals and packages. The insurance agreement was reached with the expectation that although there would be no across the board wage increases, other changes in the wage agreement would make up for the increased insurance cost. (Test of Tina Northcutt)

EMPLOYER POSITION

The Employer argues that its position is consistent with the plain language of the contract. Article 27 states “This Agreement shall be effective May 1, 2009 and shall remain in full force and effect for a period of three(3) years...” The City agrees that the question of retroactivity was not discussed during bargaining. It argues there is no reason it would have been discussed, since contract language changes have had the same May 1 effective date for four previous rounds of contract negotiations. It was therefore reasonable to assume the Union knew that insurance provisions would be retroactive to that date.

Council member Barbara Mahr testified that changes in the insurance article of the contract have always been retroactive to the effective date of the contract. Referring to this retroactivity she stated ‘I see it as implementation of the contract’. In the past, the City has always implemented its increases in contribution rates retroactively, and implementation of this language change is no different.

Reducing the burden of its health insurance costs was an important priority for the Employer. However the Employer maintains the intent in bargaining was to offset the cost increase for employees with increases in the wage article. Although there was no across the board increase agreed to, there were special step increases attached to particular skill/training sets for various employees. There was also an agreed increase in call back pay. One change was agreed to start on June 1. All other changes were retroactive to May 1, just as the insurance contribution changes were. The Employer also points out the contract language is clear that the Employer's obligation was a contribution of \$1,000 per month, regardless of whether any given employee chose to 'opt out' of the City plan. (Testimony of Barbara Mahr, Employer oral argument and written summary)

With respect to the Memorandum of Understanding, the Employer's position is that the MOU only codified the requirement of PELRA that existing terms and conditions remain in effect, while bargaining a successor agreement.

ARBITRATOR ANALYSIS

The facts of this case are undisputed. Two witnesses for the Employer testified controlling medical costs was a prime objective. The previous contract (2006-2009) required the Employer to pay 100% of the employee's premium and 75% of the employee's dependents. The Employer proposed to cap its contributions at \$1,000 per month for each employee. Following lengthy negotiations the parties signed the present agreement in October 2009. Employees were permitted 30 days following ratification to obtain coverage from an insurance plan other than the Employer's, with the Employer required to pay \$1,000 toward that premium (Section 16.02) Two witnesses testified that they made that election. The Employer also agreed to increases in steps and call back pay.

The Union argues that by execution of the MOU the Employer contributions to medical coverage contained in the 2006-2009 CBA remained in effect till ratification of the new agreement. The Union points to the MOU language, " WHEREAS, the parties have agreed that all of the terms and conditions of the Current CBA continue in full force and effect until such date as the parties' have a new collective bargaining agreement that has been formally approved by both the Union and the City." Therefore the Union asserts

that the Employer did not state, nor did the Union understand, that the cap on insurance premium contributions would be retroactive to May 1, 2009. The Union believed that the cap would not apply until after October.

The Employer rejects this reasoning, pointing out that the Union ‘wants to have it both ways’ by retroactively applying the benefits in steps and call back language, but demanding that ‘give-back’ of a premium cap not be retroactive, but prospective only, following the approval date of the 2009-2012 contract.

The testimony of the parties was candid and uniform. Neither party claims to have been misled by the other. It is clear that there has been no meeting of the minds in this matter. As the Union representative aptly stated, there was a ‘failure to communicate’ in this dispute.

The Arbitrator must look first to the plain meaning of the contract. The pertinent provisions of the 2009-2012 CBA are Article 16 Sections 1, 2 and 3 (above) and Article 27: “this Agreement shall be effective May 1, 2009 and shall remain in full force and effect for a period of three(3) years...”. This language is convincingly clear. The plain meaning rule would lead to the conclusion that May 1 is the date on which the cap commences.

In addition, Ms. Mahr testified and the Employer argued that in implementing past contracts, changes in the insurance article (for example, increases in the Employer contributions) have always been retroactive to May 1. The record indicates this would have occurred following the ratification of every past agreement, since none but the first were signed before May 1. This evidence was not rebutted by the Union. Therefore the history of the parties’ bargaining relationship supports a plain reading of the duration article of the contract. It is also undisputed that without explicit discussion at the bargaining table, wage changes which benefited employees were assumed to be retroactive to May 1. The City in fact implemented those retroactively. This evidence also supports the Employer’s position.

Notwithstanding the plainness of the CBA on this issue the Union raises the question of whether the language of the CBA is overridden by the equally plain language of the MOU, which states “all of the terms and conditions of the Current CBA continue in full force and effect until such date as the parties’ have a new collective bargaining

agreement that has been formally approved...”. There is no dispute that this language obligates the Employer to provide certain benefits during the pendency of the new agreement. However to this Arbitrator, the plain meaning of the MOU’s language is that it was intended to be replaced by the CBA on the date of formal approval. The MOU signed in April/May 2009 is superseded by the contract signed in October 2009.

AWARD

The Grievance is denied.

Arbitrator George Latimer