

BUREAU OF MEDIATION SERVICES

ARBITRATION AWARD

_____)	
IN THE MATTER OF ARBITRATION)	
)	
Between)	
)	BMS# 11-RA-0788
USEM CHEVROLET)	
)	
and)	
)	John Remington,
)	Arbitrator
UAW LOCAL #867)	
)	
_____)	

THE PROCEEDINGS

The above captioned parties, having been unable to resolve a grievance over the interpretation of the provisions of their collective bargaining agreement, selected the undersigned Arbitrator John Remington, pursuant to the provisions of their collective agreement and under the rules and procedures of the Minnesota Bureau of Mediation Services, to hear and decide the matter in a final and binding determination. Accordingly, a hearing was held on May 25, 2011 in Austin, Minnesota at which time the parties were represented and were fully heard. Oral testimony and documentary evidence were presented; no stenographic transcription of the proceedings was taken; and the parties requested the opportunity to file post hearing arguments which they did

subsequently file on June 6, 2011. The parties subsequently granted the Arbitrator an extension in the filing of this award.

The following appearances were entered:

For the Employer:

Stephen T. Rizzi, Jr.

Adams, Rizzi and Sween, P.A.

Thomas Sherman

Owner, Usem Chevrolet

For the Union:

Mike Krumholz

International Representative

Wayne Bonnes

President, Local #867

THE ISSUE

DID THE EMPLOYER VIOLATE ARTICLE XIII OF THE PARTIES COLLECTIVE BARGAINING AGREEMENT WHEN IT DEDUCTED \$80.89 PER MONTH FROM THE \$300 MONTHLY PAYMENT TO EMPLOYEES WHO OPTED OUT OF THE HEALTH INSURANCE PLAN AND, IF SO, WHAT SHALL THE REMEDY BE?

PERTINENT CONTRACT PROVISION

ARTICLE XIII

Insurance

(Bold type designates new contractual language in the 2010-2014 agreement.)

- 1. Employees hired prior to July 24, 2010 will have the following options;**
 - Belong to the Union insurance plan with the Employer paying \$700 per month towards the premium**

- **Opt out of Union insurance plan with employer paying \$300 per month to the employee**
- **Opt in to the non bargaining unit insurance plan with employer paying \$300 per month to the employee**
- **Proof of insurance must be provided before any payment is made by the employer**

Employees hired after to July 24, 2010 will have the following options;

- **Opt in to the non bargaining unit insurance plan with employer paying \$300 per month to the employee**
- **Opt out with employer paying \$300 per month to the employee**
- **Proof of insurance must be provided before any payment is made by the employer**

Any additional premium will be paid by the employee.

2. Sickness and Accident benefits shall be provided all Union employees of \$250 per week for a maximum of fifty-two (52) weeks, first day accident and hospitalization, eighth day sickness, as outlined in the Summary Plan Description attached hereto. Sickness and Accident benefits shall be provided for non-compensable sickness or accident only to all employees in the Bargaining Unit.
3.

BACKGROUND

The Usem Chevrolet, Oldsmobile and Cadillac Company, hereinafter referred to as the “EMPLOYER”, is engaged in the sales and service of automobiles in Austin, Minnesota. All employees of the dealership excepting shop foremen, supervisors, executives, office personnel, salesmen and the head partsman are represented, for purposes of collective bargaining, by the United Automobile, Aerospace ad Agricultural Implement Workers of America (UAW) and its Local 867, hereinafter referred to as the “UNION.”

The parties entered into a new collective bargaining agreement in July of 2010. Among the provisions adopted in the new agreement was a change to the first section of Article XIII (Insurance) noted above. This provision replaced language requiring the employer to pay a fixed maximum monthly amount toward employee hospital, surgical, major medical, dental, prescription drugs and weekly sickness and accident plan. Under the language of the 2006-2010 agreement (the previous agreement), the Employer's monthly maximum payment per employee increased in each year of the contract rising from \$668.07 per month in 2006 to \$694.02 beginning in July of 2009. No other change was made to Article XIII in 2010. Indeed, it is undisputed that the parties never discussed section #2 of Article XIII concerning Sickness and Accident Benefits, or Section #3 concerning dental insurance. It is likewise undisputed that, after first proposing language in section #1 of Article XIII calling for a \$700 monthly payment to each employee, the Union ultimately proposed the new language cited above in bold.

Following ratification of the contract on July 28, 2010, Union Committeeman Don Malm submitted Employee Grievance No. LP 071678 on November 4, 2010. This grievance asserts a violation of Article XIII of the parties' agreement because the "Owner (Tom Sherman) deducted the amount for dental, short term disability and life insurance from the opt out payment of \$300 per month." Grievant and several other employees had opted to take the \$300 monthly payment and leave the Union insurance plan. In remedy the grievance requests that Grievant and employees Maly, Shaw, Wollenbury, Bonnes, Stenzel and Duham be made whole for the alleged violation. The grievance form indicates that the grievance was presented in person on November 8, 2010 to Service Manager Mark Olson who refused to sign it. While there was no further documentation

of the processing of this grievance presented by either party, it is undisputed that the grievance was discussed by the parties and ultimately rejected by the Employer.

Accordingly, the parties stipulated that the grievance is properly before the Arbitrator for final and binding determination.

CONTENTIONS OF THE PARTIES

The Employer takes the position that the new language of Article XIII unambiguously favors the Employer's position since there is no articulation of specific coverage and the employee is clearly required to pay any additional premium. The Employer argues that it was uncontested at the hearing that the Employer fully articulated its desire to "get out of the insurance business." It maintains that the current agreement only applies to a capped monthly payment to the employee, nothing more. The Employer further takes the position that the contract clearly limits the Employer's contribution to all insurance to \$300/ month if the employee elects to opt out of the Union plan. In this connection the Employer argues that any ambiguity in the language must be construed against the Union since it was the Union that drafted the adopted language. Finally, the Employer contends that the collective agreement between Motor Inn Company and the UAW is irrelevant to the interpretation of the first provision of Article XIII.

The Union takes the position that the language of Article XIII is clear on its face and requires the Employer to pay each employee who opts out of the Union health insurance plan \$300 per month. It further takes the position that Sections 2 and 3 of Article XIII are unchanged from the prior agreement. These sections deal with Sickness and Accident Insurance and the dental plan. The Union therefore argues that the 2010-

2014 contract requires the Employer to continue to provide sickness, accident and dental insurance at no cost to the employee. The Union maintains that there was never any discussion during the negotiation of the new agreement about deducting the employer's cost of the sickness, accident and dental insurance (\$80.89/ month/ employee) from the \$300 payment for opting out of the health insurance plan. Finally, the Union contends that the current contract between the Motor Inn Company and the Union which was also negotiated in 2010 supports its position since that contract makes no reference to insurance deductions from the opt out payment.

DISCUSSION, OPINION AND AWARD

This dispute clearly arises from the failure of the parties to fully reach a common understanding of the revisions which they made to Article XIII. Owner Thomas Sherman credibly testified that it was his intent to remove the Employer, to the extent possible, from the business of providing health insurance through the collective bargaining agreement. The language of Article XIII, Section 1 reflects the Employer's success in both eliminating the cost sharing arrangement for health insurance contained in the 2006-2010 agreement and in providing an incentive for employees to opt out of health insurance coverage under either the Union or non-union plans. The result was a significant cost saving for the Employer and a substantial payment to the employee that can only be considered to be a wage increase (assuming that the employee could document other health care coverage.) While the Arbitrator is persuaded that Sherman believed the \$300 per month payment to be a maximum payment for all insurance coverage, such an interpretation is not supported by the language of Article XIII, Section

1. Rather, it is readily apparent that this monthly payment is to apply only to health insurance. Section 1 provides for a \$300 per month payment to employees who opted out of the union insurance plan, and it is evident that the “union” plan covered only health care. In this connection it is significant that sickness, accident and dental insurance are provided by separate provisions in Sections 2 and 3 of Article XIII. There can therefore be little doubt that the \$300 payment applies only to health insurance. Further, there is nothing within Section 1 that provides for a limitation to, or deduction from the \$300 monthly payment.

As counsel for the Employer noted in his closing argument, unless there is an ambiguity in the contractual language, the Arbitrator should not resort to the rules of interpretation. Neither is the intent of the parties as evidenced by bargaining notes or parole evidence relevant when the intent of the parties can be clearly determined by the language of the contract itself. When the language of the contract is clear and unambiguous as it is here, the Arbitrator must follow the terms of the agreement. Under Article XIII, employees hired prior to July 24, 2010 have three options: 1) they can continue in the Union provided health insurance plan with the Employer paying \$700/month toward the premium and the employee paying the remaining premium; 2) they can opt out of the Union insurance plan and receive a \$300 per month payment from the Employer provided that they can demonstrate proof of other health insurance; or 3) they can opt in to the non-bargaining unit plan and receive the same \$300 per month payment. There is no stated limitation on this \$300 whether the employee opts out or opts in to the non-bargaining unit plan. Indeed, unlike the prior agreement, the matter of sickness and health benefits and dental insurance are not even mentioned in Section 1. Rather, these

other insurance benefits are covered in Sections 2 and 3 respectively. Moreover, Sections 2 and 3 are unchanged from the prior agreement. Accordingly, the benefits provided in these sections continue irrespective of the option that the employee selects under Section 1. It is therefore abundantly clear that Article XIII has seven (7) sections or separate provisions. The first of these applies to health insurance, the second applies to sickness and accident benefits, the third applies to dental insurance, the fourth to disabled employees, and so forth.

Based on the foregoing discussion it is readily apparent that Section 1 of Article XIII applies solely to health insurance, hospital, surgical and major medical benefits and that the \$300 monthly payment to those who opt out and the \$700 monthly payment to those who continue in the Union plan are wholly unrelated to, and separate from, the cost of sickness, accident and dental insurance. The latter are separate benefits which the parties clearly intended to continue. It follows that the Employer violated the collective agreement when it deducted \$80.89 per month from the \$300 monthly payment to those employees who opted out of the Union plan and obtained coverage elsewhere. The Arbitrator therefore finds that the clear language of Article XIII favors the interpretation advanced by the Union and that the grievance must be sustained.

Brief comment is warranted with regard to the Union contention that the UAW/Motor Inn contract is instructive in the interpretation of the instant dispute. The Arbitrator is not persuaded that this contract is at all relevant to the interpretation of the contract between Usem and the UAW and is compelled to reject this contention. Whether or not opt out language exists in other contracts negotiated by the Union has little, if any, bearing on the interpretation in dispute here.

The Arbitrator has made a detailed review and analysis of the entire record in this matter and he has given full consideration to the arguments advanced by the parties in their written, post hearing submissions. He is satisfied that the crucial issue that arose in this matter has been fully addressed above, and that certain other matters that were entered into the proceedings must be deemed immaterial, irrelevant or side issues at the very most, and therefore has not afforded them any significant treatment, if at all, for example: whether or not the summary plan descriptions referenced in Article XIII currently exist or have ever existed; whether or not specific coverages are provided for in the agreement; the contention that the language of Article XIII, Section 1 should be construed against the Union; and so forth.

Having considered the above review and analysis together with the findings and observations hereinabove made, the Arbitrator has determined, and so he finds and concludes, that with the specific facts of the subject grievance and within the meaning of the parties' collective bargaining agreement, the evidence is more than sufficient to support a finding that the Employer violated the parties' agreement when it withheld \$80.89 from the \$300 payment to Grievant Don Malm and others who opted out of Union insurance plan coverage. The grievance must be, and is hereby, sustained. Accordingly, award will issue, as follows:

AWARD

THE EMPLOYER VIOLATED ARTICLE XIII OF THE PARTIES' COLLECTIVE BARGAINING AGREEMENT WHEN IT DEDUCTED \$80.89/ MONTH FROM THE \$300 MONTHLY PAYMENT TO EMPLOYEES WHO OPTED OUT OF THE UNION INSURANCE PLAN.

REMEDY

THE EMPLOYER SHALL CEASE MAKING DEDUCTIONS FROM THE \$300 MONTHLY PAYMENT TO EMPLOYEES WHO OPTED OUT OF THE UNION INSURANCE PLAN AND REIMBURSE THESE EMPLOYEES FOR ALL SUCH DEDUCTIONS MADE SINCE THE RATIFICATION OF THE CURRENT COLLECTIVE AGREEMENT.

John Remington, Arbitrator

July 20, 2011

St. Paul, MN