

IN THE MATTER OF ARBITRATION BETWEEN

LAW ENFORCEMENT LABOR SERVICE)	OPINION AND AWARD
LOCAL 44)	
)	
AND)	BMS NO. 12-PA-1106
)	Grievance re:
CITY OF CRYSTAL)	Insurance Contribution

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ARBITRATOR: Charlotte Neigh

HEARING: October 3, 2012

POSTHEARING BRIEFS RECEIVED: October 31, 2012

AWARD: November 26, 2012

REPRESENTATIVES

For the Union:

Adam Burnside, Business Agent
327 York Avenue
St. Paul, Minnesota 55130

For the Employer:

Susan K. Hansen, Esq.
Madden Galanter Hansen
505 North Highway 169 - #295
Plymouth, Minnesota 55441

JURISDICTION AND PROCEDURE

Pursuant to the parties' Labor Agreement and the procedures of the Minnesota Bureau of Mediation Services, Charlotte Neigh was appointed to arbitrate this matter. A hearing was held in Crystal, Minnesota at which time both parties had a full opportunity to offer evidence. Posthearing briefs were e-mailed by the agreed deadline of October 31st, at which time the record was closed.

ISSUE

Whether the City violated Article 18.1 of the collective bargaining agreement (CBA), and if so, what is the appropriate remedy?

PERTINENT AUTHORITY

LABOR AGREEMENT

ARTICLE 18 - INSURANCE

18.1 Effective January 1, 2011, the Employer will contribute up to a maximum of \$1,217.62 per month for **family** (employee plus spouse and children) health insurance coverage.

Effective January 1, 2011, the Employer will contribute up to a maximum of \$990.74 per month for **employee plus spouse** health insurance coverage or **employee plus children** health insurance coverage.

Effective January 1, 2011, the EMPLOYER will contribute up to a maximum of \$684.10 per month for **single** health insurance coverage. For Employees choosing single health insurance coverage, the Employer will contribute an additional twenty-two dollars (\$22.00) per month toward the cost of dental insurance.

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ARTICLE 30 - DURATION

This Agreement shall be effective as of January 1, 2011, except as herein noted, and shall remain in full force and effect until the thirty-first (31st) day of December, 2011. . . .

BACKGROUND AND UNDISPUTED FACTS

Since 2008 the City has offered three medical-insurance plans: a High Option \$30 copay plan; a base plan; and a high-deductible plan with a health-savings account (HSA). Within each plan the employee can elect the level of coverage: self only; self plus spouse; self plus children; or family coverage including both spouse and children. Since 2008 the specified amount for the City's contribution has equalled 100% of the cost of the premium for single coverage under the base plan. To the extent that this premium cost exceeded the cost for single coverage under the high-deductible plan, the City deposited the difference into the employee's HSA.

In 2011 a solicitation for bids resulted in a 16% reduction in premiums for 2012 with caps on increases for the subsequent four years. When these significantly lower rates were announced late in 2011, the City was still negotiating new contract terms for 2012 with three bargaining units (BUs) but it needed to establish the amount of its contribution to prepare the 2012 payroll. The lower premiums created concerns for the City about IRS regulations prohibiting it from recouping any overpayment deposited in an employee's HSA: if the City contributed an amount greater than the amount ultimately included in the 2012 CBA, it couldn't recoup these public funds.

Background and Undisputed Facts (continued)

The parties tried to schedule contract negotiations in fall 2011 but didn't meet until December 5, 12, and 27, when they discussed the 2012 premiums and the City's contributions. On 12/14/11 the City proposed a memorandum of agreement (MOU) setting "a temporary 'stop gap' Employer health insurance contribution . . . (to be) in place until . . . a different . . . contribution is negotiated, if any, as part of the 2012 contract". The City was proposing a temporary contribution less than the maximum specified in the 2011 contract that kept the employee "whole", while protecting the City and the employee from needing to have money recouped after the final amounts were resolved. The proposal included \$180/month contribution to HSAs. The Union declined to accept the MOU.

The City informed the Union on 12/30/11: "Given the lack of settlements and in recognition of contract language, the following contribution amounts will be in effect until settlements are achieved". The City would continue on a temporary basis to contribute the same amount as in 2011 if it did not exceed the amount of the premium. An employee electing single coverage under the base plan or the High Option plan would have the full premium paid by the City. For employees under these two plans electing coverage for spouse and/or children, the City would contribute the same amount as in 2011. However, these employees might be required to reimburse the City when final amounts were set. For employees electing the high-deductible plan with HSA, the City would pay the full premium for all coverage options but temporarily discontinue contributing to HSAs.

On January 19, 2012 the Union grieved this action on behalf of Local 44 and Local 56, which represents police supervisors. Local 44 appealed the City's denial of the grievance to mediation and arbitration but Local 56 did not. The parties also participated in contract mediation but a tentative agreement, which included amounts for the City's insurance contribution, was not ratified by the BU's 22 patrol officers. The BMS certified issues for interest arbitration, with the Union taking the same position as in this grievance - a continuation of the 2011 contribution amounts. The interest arbitration hearing by another arbitrator was scheduled for October 10, 2012, with a decision expected by the end of November.

SUMMARY OF THE PARTIES' ARGUMENTS

THE UNION ARGUES THAT:

- The City violated the CBA by not continuing to follow it until a successor contract was agreed upon. Even though there were issues regarding possible repayment of excess contributions to the insurance premium, the amount of the contribution was a negotiable issue and the City cannot unilaterally change the terms and conditions of the CBA. The Union declined to agree to the 12/14/11 MOU proposed by the City, choosing to keep the 2011 amounts in place until successful negotiation of a new CBA.
- The contribution amounts imposed by the City's 12/30/11 notice resulted in lesser contributions for employees with single coverage in the \$30/Copay plan and for all employees in the high-deductible plan, for which the City also refused to provide any monthly HSA contribution.

Union Arguments (continued)

- Minnesota Statute 179A.20, Subd. 6 states:

During the period after the contract expiration and prior to the date when the right to strike matures, and for additional time if the parties agree, the terms of an existing contract shall continue in effect and shall be enforceable upon both parties.

The City errs in arguing that Subdivision 6 does not apply to essential employees, misstating the opinion of the Minnesota Supreme Court in *Law Enforcement Labor Services, Inc. v. County of Mower* 483 N.W.2d 696 (Minn. 1993). The court's statements regarding this section of the law are to be taken together with the 1988 amendments to PELRA regarding retiree health insurance. The decision does not directly address the individual merit of this section on essential employees.

- Courts have consistently determined that employers cannot unilaterally change the terms and conditions of an agreement without negotiating such changes and in one case the appellate court found a violation of this section of PELRA when a school district unilaterally froze step increases with the expiration of the contract.
- Although the CBA states that the employer's contribution is "up to a maximum of . . .", this does not allow it to pay any amount less than the stated number. The understanding of the Union members and the City's 12/30/11 letter show that the intent and understanding of the language was to provide the stated amount.
- Given that the City has always provided the amount stated in the CBA, the Union members believed that would be the amount received each year. The BU members unanimously rejected the City's request to temporarily modify this amount under the belief that the 2011 contribution rates would remain in effect until a successor agreement was negotiated.
- Although the City argues that it could not pay employees cash in excess of the premium amount, it did not offer any state or federal law regarding the need for a cafeteria plan for this purpose. Nor is there any City policy on this point.
- The City also decided unilaterally to suspend contributions to the HSAs, arguing that it couldn't recover dollars in excess of IRS limits. The IRS bulletin offered in support of this argument discusses excess contributions done in error, not ones done deliberately, and does not support the City's argument. Another IRS document explains that excess contributions are to be considered as taxable income, indicating that they do not violate IRS policy.
- The City also raised concerns regarding its ability to claw back excess contributions to HSAs after a 2012 CBA was finalized. The Union offered to negotiate how to handle this but the City unilaterally decided not to provide any contribution to HSAs, creating hardship for some members who had to pay medical expenses out of pocket.
- The City's contribution to health insurance in 2011 should be continued into 2012 and all HSAs should be made whole, using the excess premium dollars left over after paying the 2012 premiums. The City should also be prevented from attempting to claw back any excess dollars paid to Employees from 1/1/12 to the date of the arbitration award.

THE CITY ARGUES THAT:

- The CBA language does not require payment of the 2011 contribution amounts beyond 12/31/11, as the duration article clearly limits the contract to a one-year term.
- The CBA was no longer in effect and it was not extended by Minn. Stat. 179A.20, subd 6. It does not apply to essential employees, by its plain language and a Minnesota Supreme Court decision that held: “Nothing in section 179A.20, subd. 6, addresses contracts between a public employer and essential employees.” Thus the Union has no basis to claim that members were entitled to 2011 amounts after the expiration of the 2011 contract.
- Other court decisions regarding this section do not support the Union’s position. No appellate court decision defines the meaning of this phrase; any district court decision requires a careful reading of the duration article.
- The City’s temporary 2012 contributions complied with the CBA language. The language provides that it “will contribute up to a maximum of (X amount) per month”, followed by specified amounts for various types of coverage. There is no language requiring a contribution to an HSA. Arbitrators apply the plain and ordinary meaning of clear and unambiguous contract language and the CBA does not require the City to contribute an amount greater than the premium.
- A change in the underlying circumstances negates any claim of a binding past practice, and there has never been a situation similar to this significant reduction in premiums, creating the risk that the City’s contribution to the HSAs might exceed the amount ultimately determined. Thus the City was not obliged to continue contributing the amounts stated in the contract or to provide HSA contributions.
- Other arbitration decisions cited by the Union do not involve similar facts or essential employees; they related to specific contract language granting step increases in school districts. The appellate court decision also involved a school district that failed to respond to a request to bargain, and did not address the issue of the expiration date of the contract.
- The Union is seeking in this grievance arbitration the same remedy that it is seeking in interest arbitration, which was heard on 10/10/12 with a decision expected by 11/26/12. That decision will establish contract terms, including health insurance contributions retroactive to 1/1/12.
- Employees have not been harmed: the City’s temporary contributions maintained the status quo and kept employees whole; in most cases the payroll deductions for employees was less in 2012 than in 2011, so that they came out ahead. The grievance should be denied.

ANALYSIS AND DISCUSSION

The City had to reconcile two obligations in addressing this unusual situation: prudent management of public funds by not paying excess amounts into HSAs; and good-faith bargaining with its employees. Given the timing of the decreased premium in relation to three CBAs expiring without having new ones in place, the City offered a temporary solution that was reasonably designed to protect the status quo until final terms and conditions could be negotiated.

The City's proposed 12/14/11 MOU either did not change or reduced the amount of the employee's contribution and also provided \$180/month into HSAs for employees choosing the high-deductible plan. The BU rejected the proposal, based on its belief that the terms and conditions of the 2011 CBA would continue in effect until a new contract was in place. The BU's decision also was influenced, according to the testimony of the Union Steward, by the fear that agreeing to this "take away" would be giving up a bargaining chip that could be valuable during negotiations for a new CBA. The lack of an MOU forced the City to act unilaterally to responsibly meet its obligations.

The parties disagree about the applicability of the Minnesota Supreme Court's decision in the Mower County case. The City correctly quotes the decision as stating that "Nothing in section 179A.20, subd. 6, addresses contracts between a public employer and essential employees." However, the court was focused on a different issue and also stated: "Whether the contract in question expired according to its terms on December 31, 1989, was extended 45 days to the date on which the right of nonessential public employees to strike would have matured; or was extended for some undetermined reasonable period of time we need not decide here" Although the court offered no guidance regarding how that decision would be made, it did undermine the sole basis relied on by the Union in this case for extending the CBA beyond the expiration date stated in the duration clause.

Because the City has offered an alternative argument in defense of its unilateral action, it is not necessary to decide whether the CBA expired on 12/31/11. The City argues that it continued to conform to the CBA's terms. This argument is supported by the clear and unambiguous language of the contract: ". . . the Employer will contribute up to a maximum of (\$X) per month". The fact that since 2008 the specified maximum contribution has corresponded to the actual amount of the contribution was a function of steadily increasing costs for insurance premiums. Although the Union argues that its members believed the intent was to state a guaranteed amount, it can more logically be reasoned that the intent was to protect the City in the situation that has arisen. This language effectively anticipated the unlikely occurrence of a decrease in medical insurance premiums. In any event, the language is clear and it is not necessary to determine intent. The language does not guarantee that the specified amount will be paid if it exceeds the cost of the premium.

Analysis and Discussion (continued)

The City reasonably relied on expert advice regarding the IRS position on HSAs and the limitations on its ability to recoup excess amounts paid into employee accounts. The Union has not provided any authority to contradict this interpretation. Although the Union claims that it was willing to negotiate a method for the City to recoup any excess payments, the Union Steward conceded on cross-examination that one method he proposed wasn't feasible and he was unable to offer any particular alternative.

Furthermore, the CBA is silent regarding HSAs and the City's contribution to them. Thus the temporary suspension of contributions to the HSAs of employees opting for the high-deductible plan does not violate the CBA. Whether it violates some other legal entitlement is not an issue for this arbitration. In any event, the City has convincingly explained the reasons why it had to take this action and the Union has not shown any serious detriment to any particular employee due to this temporary delay in contributions to HSAs. The City always intended to make the HSAs whole retroactively when the amount is determined, and the employees can reimburse themselves for any out-of-pocket expenditures. Meanwhile, employees are able to fund their HSAs with their own pre-tax dollars.

IT IS CONCLUDED THAT the City did not violate Article 18.1 of the collective bargaining agreement.

AWARD

The grievance is denied.

November 26, 2012

Charlotte Neigh, Arbitrator