

IN THE MATTER OF THE ARBITRATION BETWEEN

Education Minnesota, Wrenshall

-and-

BMS Case No. 08-PN-0752

ISD 100
Wrenshall, Minnesota

ARBITRATOR:	Christine D. Ver Ploeg
DATE & PLACE OF HEARING:	May 7, 2014 ISD 100 Wrenshall, Minnesota
RECEIPT OF POST-HEARING BRIEFS:	June 13, 2014
DATE OF AWARD:	June 27, 2014

ADVOCATES:**For the Union**

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For the Employer

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Susan Frank, GRIEVANT

ISSUE

Did the District violate Article IX, Section 1, Subd. 2 of the parties' Agreement with respect to the Grievant's Family Health and Hospitalization Insurance contribution? If so, what shall be the remedy?

BACKGROUND

This case has been brought by Education Minnesota – Wrenshall (hereinafter “Union”) on behalf of the Grievant who is a teacher employed by ISD 100, Wrenshall, Minnesota (hereinafter “District”). The Union is her exclusive representative.

This arbitration stems from the Union’s challenge to the District’s refusal to provide the Grievant an additional financial contribution to her family’s group health insurance policy. The Union submits that this refusal violates Article IX, (Group Insurance), Section 1 (Health and Hospitalization Insurance), Subd. 2 (Family Coverage) of the parties’ Agreement. The District denies that it has violated the Agreement.

The facts that underlie this arbitration are not in dispute. Prior to June 2013 the Grievant was the District’s kindergarten through 12th grade principal for nine years. When the District discontinued that position the Grievant exercised her right pursuant to Minnesota law to bump into the teacher bargaining unit as a sixth grade teacher.

As a principal the Grievant had an individual contract with the District by which she obtained family medical insurance coverage through the District at no cost to herself. When she became a member of the teachers’ bargaining unit, effective July 1, 2013, she lost her coverage as a principal and came under the terms of the teachers’ collective-bargaining agreement, including its provisions regarding group health and hospitalization insurance.

Initially the business manager and the Grievant erroneously understood that the Grievant would not be eligible for the group insurance benefit in her own right until she began teaching that fall semester. Thus, there would be no coverage between July 1 and the time she started teaching. Although this did not prove to be true, the business manager advised the Grievant that to maintain family medical coverage when the current policy lapsed, the Grievant’s husband – a Special Ed teacher in the District – should complete the necessary paperwork to do so per the teachers’ contract, Article IX, Section 1, Subd. 2¹. That provision provides:

The School District shall contribute \$1105.00 per month for 2011-2012 and \$1130.00 per month for 2012-2013 toward the premium for family coverage for all full-time teachers employed by the School District who

¹ Note: this language and these amounts remain the same in the current Agreement.

qualify for and are enrolled in the School District group health and hospitalization plan and who qualify for family coverage. Any additional cost of the premium shall be borne by the employee and paid by payroll deduction.

Subsequently the District began to contribute \$1130 per month toward the Grievant's family coverage premium, with the Grievant and her husband – both now District teachers covered by this same Agreement – paying the additional balance of \$331 per month. This is the same amount paid by all District teachers who have elected Family Coverage. However, it is also true that the Grievant and her husband are the only two persons in the District both covered under this same contract.

On September 12, 2013, the Grievant raised the issue of health insurance with the District's business manager via the following email exchange:

Grievant: "Are you in tomorrow[?]"

Business Manager: "Is it something that can wait a week? The auditors will be here next Thursday, and I have barely begun the financial clean up that needs to be done."

Grievant: "I want a single health insurance policy."

Business Manager: "I do not believe you can be covered twice under the same employer. If you want I will check into it after the auditors are here next week."

Grievant: I want me off the family and on an individual please.

Business Manager: "I can't do that without forms from both you and Doug, and unless there is a 'qualifying event' it may have to wait until next fall."

Grievant: "If Doug's mom comes to live with us and becomes a dependent (she can't live alone), can she be covered if need be?"

Business Manager: "I'm pretty sure not; I'd be happy to check after the audit is over."

There was no further discussion of this matter until the Grievant approached her Union on October 24, 2013 to complain that the District had denied her health insurance coverage. The next day, on October 25, 2013 the Union filed this grievance which states that:

(The Grievant) was denied Group Insurance benefits when her employment assignment changed for the 2013-14 school year. As a full-time teacher employed by the School District, she meets the requirement to receive this benefit.

The grievance further states:

Relief sought: Immediate access and enrollment in the coverage plan of grievant's choice according to Article IX, Section 1, Subd. 2.

It is now undisputed that the District never "denied" the Grievant group insurance benefits. She and her family became covered on July 1, 2013, upon moving from the position of principal to that of teacher and coming under the terms of the teachers' collective-bargaining agreement.

In addition, the Grievant has now dropped her initial stated demand of "I want a single health insurance policy" (Email exchange of September 12, 2013) and the related demand set forth in the October 25, 2013 grievance: "Relief sought: Immediate access and enrollment in the coverage plan of grievant's choice..." She now seeks a remedy whereby:

1. The District will continue to contribute \$1130 per month toward her family's Family Coverage on behalf of her husband, who initially obtained that policy, and
2. In addition must make a second contribution toward that policy on her behalf, to cover the remaining balance up to \$1130 per month. (Currently \$331 per month).

The Union submits that because the Grievant and her husband are both teachers covered by Article IX, Section 1, Subd. 2 each is eligible in his/her own right for the contractually mandated District contribution. The Union submits that the Grievant meets all of the conditions set forth in Article IX, Section 1, Subd. 2 and as such is entitled to this benefit. However, the Union understands that it is reasonable to limit that second contribution to the actual balance that the Grievant and her husband are currently paying (\$331 per month) rather than accord them a financial windfall by granting them the entire contract amount of \$1130.

The District rejects the Grievant's position, which it submits has "been a moving target." With respect to the Grievant's current claim that it should contribute the balance owed on the family coverage policy, the District argues that the Grievant is seeking a benefit that no other

District teacher enjoys: family health insurance coverage without paying any share of the applicable premium.

The parties were unable to resolve their differences concerning this matter in earlier steps of the grievance process and have agreed that this dispute is now properly before this arbitrator for resolution. However, the parties have not been able to agree on the statement of the issue. A hearing was held on this matter on May 7, 2014, and the parties submitted post-hearing briefs which this arbitrator received on June 13, 2014.

RELEVANT CONTRACT LANGUAGE

The Parties' current Collective Bargaining Agreement provides in relevant part:

ARTICLE III—DEFINITIONS

Section 2. Teachers: The term “teacher,” shall mean all persons in the appropriate unit employed by the school District in a position for which the person must be licensed by the State of Minnesota; but shall not include superintendent, assistant superintendent, principals and assistant principals who devote more than 50% of their time to administrative or supervisory duties, confidential employees, supervisory employees, essential employees, and such other employees excluded by law.

ARTICLE IX—GROUP INSURANCE

Section 1. Health and Hospitalization Insurance:

Subd. 1. Single Coverage: The School District shall contribute \$553.60 per month for 2011-2012 and \$568.60 per month for 2012-2013 toward the premium for individual coverage for all full-time teachers employed by the School District who qualify for and are enrolled in the School District group health and hospitalization plan. Any additional cost of the premium shall be borne by the employee and paid by payroll deduction.

Subd. 2. Family Coverage: The School District shall contribute \$1105.00 per month for 2011-2012 and \$1130.00 per month for 2012-2013 toward the premium for family coverage for all full-time teachers employed by the School District who qualify for and are enrolled in the School District group health and hospitalization plan and who qualify for family coverage.

Any additional cost of the premium shall be borne by the employee and paid by payroll deduction.

DISCUSSION AND DECISION

This case has raised two questions: (1) what is the issue to be addressed, and (2) within the parameters of that stated issue has the District violated Article IX, Section 1, Subd. 2 with respect to the District's contribution to the Grievant's family group health insurance coverage?

1. What is the issue to be addressed?

The parties disagree on issue to be decided in this case.

The Union submits that the issue is:

Did the District violate Article 9, Section 1, subdivision 2 of the Collective Bargaining Agreement when it refused to grant (the Grievant) a contribution toward family insurance coverage? If so, what is the appropriate remedy?

By contrast, the District submits that the issue is:

Did the District violate the 2011-2013 Teacher Master Agreement by not providing (the Grievant) with a single coverage premium contribution while she was receiving health insurance pursuant to her husband's family coverage through the District's group health plan?

This matter is confusing in that neither of these stated issues is consistent with either the Grievant's stated request when she raised this subject prior to filing a grievance ("I want a single health insurance policy" and "I want me off the family and on an individual please") and the relief which the written grievance states that it seeks ("Immediate access and enrollment in the coverage plan of grievant's choice according to Article IX, Section 1, Subd. 2.").

Further evidence of this confusion is found in the District's specific questioning of the Grievant at this hearing regarding what exactly she was seeking, and her unequivocal assertion that she had dropped her claim for single insurance coverage and was now seeking a second District contribution toward the family insurance coverage already in place.

Although the Union asserts that any confusion is attributable to the business manager's failing to get back to the Grievant in the fall of 2013, the evidence suggests that the business manager's deferral of discussion of that matter was reasonable given that the impending audit was a reasonable top priority, the Grievant and her family already had family medical insurance coverage and hence there was no urgency to safeguard the family and for the Grievant to have received separate individual coverage while her family retained the family coverage would be financially disadvantageous for both parties and would make no sense.

Second, the Union submits that notwithstanding its apparent change regarding the statement of the issue and the relief sought, this arbitrator has the authority to decide the issue as a question of a second contribution given that: (1) this question is an integral part of the entire health insurance coverage question that the Grievant initially raised and which was articulated in the grievance, (2) the District has always understood that the Grievant's concern has been to obtain a District financial contribution for her in her own right, in addition to that already being provided to her husband in his individual capacity, and (3) pursuant to the relatively new Uniform Arbitration Act, awarding the relief the Union now requests is "fair and just" and thus well within this arbitrator's discretion.

I have considered these arguments and am concerned that the case the Union presented at this hearing departs from the questions initially raised by the Grievant and reflected in the written grievance. Moreover, the District has indicated that the first time it was aware that the Union had narrowed the issue to that of a second financial contribution was at this hearing. That assertion is affirmed by its very specific questioning of the Grievant and other Union witnesses regarding this matter.

This apparent belated change in the Union's position is cause for concern. It is possible that the District initially denied this grievance on the grounds that the articulated relief sought – "Immediate access and enrollment in the coverage plan of grievant's choice" – had already been provided. Nevertheless, it is also true that questions of the District's financial contribution toward the Grievant's insurance coverage – regardless whether that coverage was individual or family – have been intertwined throughout the course of this dispute. Moreover, the District has taken the opportunity both at this hearing and in its post-hearing brief to directly and comprehensively

address the question of the Grievant's entitlement to a second District contribution toward her family's policy. Thus, it is difficult to find prejudice in this matter.

Balancing these considerations, I find that the issue in this case does extend to include the Grievant's entitlement to a second insurance contribution in her own right. However, this award shall be prospective only. The District's additional contribution to the Grievant's family coverage, awarded for reasons which are discussed below, shall commence with the beginning of the new fiscal year: July 1, 2014.

2. *Is the Grievant entitled to an additional District contribution toward her family's insurance premium?*

Both the Grievant and her husband are District teachers and both fall under the terms of Article IX, Section 1, Subd. 2. That provision states:

The School District shall contribute \$1105.00 per month for 2011-2012 and \$1130.00 per month for 2012-2013 toward the premium for family coverage for all full-time teachers employed by the School District who qualify for and are enrolled in the School District group health and hospitalization plan and who qualify for family coverage. Any additional cost of the premium shall be borne by the employee and paid by payroll deduction.

The District currently contributes \$1130 per month toward the family policy that the Grievant's husband obtained beginning July 1, 2013. Since that time the Grievant and her husband have been paying the "additional cost of the premium" of \$331 per month. That is the same amount being paid by other District teachers who have elected family coverage. The District submits that this is appropriate.

However, the Union argues that the Grievant and her husband – as the only married teachers in the District – are each entitled to a separate District contribution toward their family policy, up to the actual additional cost of the premium. In their case, as the current additional premium cost (\$331) is less than the negotiated District contribution amount (\$1130), the Union submits that the Grievant and her husband should not at this time have to cover any premium costs. Presumably they would be responsible only if the "additional cost of the premium" ever exceeds \$2260 (the \$1130 contribution for the husband combined with the \$1130 contribution for the Grievant).

The District rejects the Union's position on the grounds that (1) the Grievant is seeking to avoid a financial responsibility imposed on all other District teachers, i.e., responsibility for paying any "additional cost of the premium" and (2) contrary to the Union's assertion, the Grievant does not meet requirements set forth in Article IX, Section 1, Subd. 2.

For the following reasons I find that the evidence does not support the District's position.

First, the District submits that the "plain language of Article IX, Section 1, Subd. 2 demonstrates that every District teacher is responsible for paying a portion of his/her insurance costs. The District supports its argument by pointing to the paraprofessionals' contract, which provides

If an employee, within this bargaining unit, is covered under a spouse's family health insurance plan authorized by the District, the District will contribute up to \$175.00 per month toward the family monthly premium in lieu of a single coverage, not to exceed the total cost of the premium.

The District submits that by this language a paraprofessional in the Grievant's position – i.e., married to another District paraprofessional – is also required to contribute toward his/her family health insurance. However, the paraprofessionals have negotiated an additional District contribution to help them do that, a benefit not found in the teachers' contract. The District submits that the absence of such language in the teachers' Agreement demonstrates an intent for *all* teachers to contribute to their premium costs.

I have considered this argument but find that the paraprofessionals' language can also be read support the Union's position. That is, the paraprofessional contract's specific reference to spouses who fall under its terms provides a striking contrast to Article IX, Section 1, Subd. 2's silence regarding the subject. The Union has reasonably argued that the \$175 referenced in the paraprofessional contract is a *limit* on the amount of the second contribution for which the District would otherwise be responsible. The monetary amount does not add value, it caps the amount the paraprofessional would otherwise receive.

Having considered both sides of this argument I find that the paraprofessional contract does not provide helpful guidance on this matter.

Considering only the teachers' contract, it is noteworthy that adopting the District's interpretation of Article IX, Section 1, Subd. 2 would be to accept that the parties shared a clear intent to mandate that a teacher must *always* pay something toward a health insurance policy.

However, there has been no evidence to support that proposition. While some employers in other cases have offered evidence and vigorously argued that policy holders who financially contribute to their healthcare are more judicious in using it, that argument does not been advanced in this case.

In short, Article IX, Section 1, Subd. 2 requires only that a teacher pay any “additional cost” that remains following the District’s contribution. It does not mandate that a teacher always pay something toward a premium, only that a teacher must cover the balance between the District’s contribution and the amount owed. Thus, the question remains: what is the District’s contribution to the Grievant’s family policy?

The District argues that the Grievant’s family gets only one contribution. However, nothing in the parties’ Agreement specifically supports the conclusion that when two full-time teachers are employed by the District they are limited to one District contribution toward their family insurance policy. On the contrary, it is more reasonable to conclude that the Grievant is entitled to a District contribution in her own right. The Grievant’s services for the District and its students are separate from those provided by her husband. There is no basis for treating the Grievant and her spouse as a single entity for purposes of receiving a contract benefit.

The District’s financial contribution toward insurance coverage is a negotiated benefit. It is self-evident that those who negotiate a collective-bargaining agreement, especially in the public sector, understand that financial resources are limited and trade-offs must be made. The two most financially expensive benefits in many collective-bargaining agreements are wages and health insurance. It is well understood that enhancement of one will often be accompanied by diminution, or at least stagnation, of the other. In this case, the Union made trade-offs and negotiated benefits to which all of its members are entitled, including health insurance coverage for qualifying members coupled with the District’s financial support up to a negotiated amount.

In this case the Grievant meets the stated qualifications of Article IX, Section 1, Subd. 2. She is a full-time teacher who qualifies for family coverage. Moreover, despite the District’s attempt to limit the definition of “enrolled” to only the person who actually filled out the paperwork (in this case the Grievant’s husband), it is more reasonable to adopt the insurance industry’s standard terminology by which any person covered under a policy is characterized as “enrolled.”

Finally, the District has argued that limiting a married couple to one contribution is supported by past practice. I have considered this evidence but find that testimony regarding records that indicate one married couple many years before may have received only one contribution does not rise to the level of the binding past practice. No one had first-hand knowledge of that single contribution payment and there is no indication that the Union was aware of the situation.

AWARD

For the above reasons this grievance is granted. However, this award shall be prospective. The District's additional contribution to the Grievant's family coverage shall commence with the beginning of the new fiscal year: July 1, 2014.

June 27, 2014

A handwritten signature in black ink, reading "Christine Ver Ploeg". The signature is written in a cursive, flowing style.

Christine D. Ver Ploeg