

AMERICAN ARBITRATION ASSOCIATION  
LABOR ARBITRATION TRIBUNAL

In the Matter of the Arbitration Between

VILLAGE OF SKANEATELES,

Employer,

and

CIVIL SERVICE EMPLOYEES ASSOCIATION,

Union,

Re: Health Insurance.

Before SHEILA S. COLE, Impartial Arbitrator

AAA Case No.  
15 390 00024 11

OPINION  
~~AND~~  
AWARD

Appearance:

D. JEFFREY GOSCH, ESQ.  
COLIN LEONARD, ESQ.

For the Union  
For the Employer

OPINION

On 2011, the parties submitted the following issue to arbitration by me:

Did the Employer violate the applicable provisions of the collective bargaining agreement when it changed health benefit plans on January 1, 2011?

If so, what shall the remedy be?

In accordance with my authority under the parties' collective bargaining agreement (Joint Exhibit 1), I conducted a hearing in this matter on August 10, 2011, in

Skaneateles, New York. Both parties appeared by attorney and were afforded full opportunity to adduce evidence, cross-examine witnesses, and make argument in support of their respective positions. The parties submitted post-hearing briefs, and neither party has raised objection to the fairness of these proceedings.

On the record so produced, I find the following relevant facts.

The Civil Service Employees Association, Inc., Local 1000 (CSEA or Union) and the Village of Skaneateles (Village or Employer) are parties to a collective bargaining agreement for the period June 1, 2007 through May 31, 2011. The parties have not adopted a successor agreement.

The Union alleges that the Employer unilaterally changed the health insurance plan it provides to unit members in violation of the parties' collective bargaining agreement. Article 13.1 of the Agreement, Health Insurance Coverage, provides in relevant part:

... the Employer shall provide the Excellus Blue EPO Option 11 health insurance plan. ....The summary plan features included in the Excellus Blue EPO Option 11 are subject to change, without notice, by Excellus and any such change shall be effective under this Agreement. The Employer reserves the right to change insurance carriers as it deems appropriate so long as the new coverage and benefits are substantially similar to the Excellus Blue EPO Option 11 health insurance plan.

[Joint Exhibit 1.]

In October 2010, Douglas Grucza, Regional Sales Manager of EBS RMSCO, a subsidiary of Blue Cross-Blue Shield, met with the Village's health insurance committee to provide information about health insurance plans that were being considered for 2011. Then-Mayor Robert Green, Village Clerk/Treasurer Patty Couch, CSEA President Dave Short, and Skaneateles Police Officers Union (Council 82) President David Wawro attended the meeting. Mr. Grucza provided information and answered questions concerning benefits and projected rates for Excellus Blue EPO Option 11 (EPO Balance 11), Healthy Blue HP-C-46E (Healthy Blue) and Simply Blue SB-C-11 (Simply Blue). Mayor Green asked the union presidents

whether they would object to a change in plans. Mr. Short stated that he did not object because it looked like a new plan would save the Village and employees money. Mr. Grucza informed the committee that, if the Village decided to switch to either Healthy Blue or Simply Blue, it must inform him by December 1, 2010

The Employer provided an opportunity for all Village employees to meet with Mr. Grucza on November 8, 2010, to learn about the Healthy Blue plan. At the meeting, Mr. Grucza handed out a comparison of benefits between the EPO Balance 11 and Healthy Blue plans. Employer Exhibit 4. The Union's Labor Relations Specialist, Terri Hoffman, attended the meeting and did not then express opposition to a change in health insurance plans.

A few days after the meeting, Mr. Short advised Mayor Green that the Union wanted to negotiate the terms of a new contract as a condition of agreeing to change to the Healthy Blue plan. Mayor Green told Mr. Short that he did not think it would be possible to complete contract negotiations by the date it needed to advise Mr. Grucza of a change. Council 82 agreed to the change in writing. CSEA did not.

On December 13, 2010, the Village approved Healthy Blue as the health insurance plan to be provided to Village employees for 2011. Changing health insurance plans was expected to save the Village more than \$64,000 in 2011. There record includes evidence concerning the Village's loss of sales tax revenues, increase in other revenues, and layoff of unit employees. The Union grieved this action on December 21, 2010.

In March 2008, the Village unsuccessfully attempted to negotiate a change in the applicable contract provision to allow a change in "plans" as well as "carriers."

Mr. Grucza testified that no benefit available under EPO Balance 11 is unavailable under Healthy Blue. The costs of some benefits have increased under Healthy Blue. Healthy Blue offers some benefits not available under the old plan. For example, under Healthy Blue, the co-pay for an office visit to a primary care physician (for some patients), obstetrician/gynecologist, or chiropractor is increased by \$5. The co-pay to see a specialist is \$10 more per visit under

Healthy Blue. There is a \$150 co-pay for each hospital (excluding maternity and newborn nursery), skilled nursing home or in-patient physical therapy admission, where there were none under the old plan. The co-pay for emergency room visits, emergency ambulance service, and outpatient surgery is \$25 more under Healthy Blue. Under Healthy Blue, the maximum number of days in a skilled nursing facility is decreased and a limit is imposed on the number of days home health care is covered. On the other hand, in contrast to EPO Balance 11, there is no co-pay under Healthy Blue for primary care physician visits for dependents up to age 19. Annual physicals exams are fully covered for all beneficiaries. There is no co-pay for prenatal and postnatal care. Although the eye exam co-pay is \$10 more, an eye exam is covered annually instead of bi-annually and an eyewear allowance is available annually instead of bi-annually. Healthy Blue includes an out-of-network benefit. EPO Balance 11 does not. The Healthy Blue monthly premium for an individual employee is \$81.85 less than it would have been under the EPO Balance 11 plan. An employee with family coverage saves \$203.07 each month under the new plan. Employer Exhibit 1. In addition, under Healthy Blue, an employee can earn up to \$1,000 per year in healthy lifestyle incentives.

On these facts, the Union argues that the Employer violated the parties' collective bargaining agreement when it unilaterally changed health insurance plans.

The Union avers that the applicable contract language is clear and unambiguous that the Village may change carriers, not plans, and then only if the new health benefits and coverage are substantially similar to those replaced. CSEA charges that the Village may not unilaterally change plans, as it did here, even if the new plan is substantially similar to the one it replaced.

The Union maintains that, even if the health insurance industry has changed in the twenty years prior to 2010, so that there are now more plans and fewer carriers, the parties did not modify their contract language to reflect this change. There is no evidence in the record to the effect that changes in the health insurance industry changed the meaning of the words "carriers" and "plans." The Village's own witness, Douglas Grucza, testified that EPO Balance 11 and Healthy Blue are "plans," not "carriers."

The Union asserts that the Employer failed to deal with it fairly and in good faith. The Village failed to obtain written or oral agreement to implement the change from CSEA, as it did from Council 82.

The Union maintains that the Employer's excuses for its conduct lack merit.

CSEA insists that did not waive its right to grieve the change in health insurance plans. Participation in informational meetings does not indicate acquiescence in the change. Although the Union had no duty to speak, as it had a binding Agreement concerning the health insurance benefit, it did speak by proposing to enter into collective negotiations concerning a proposed change in plans. No such collective negotiations occurred.

The Union submits that the new plan is not substantially similar to EPO Balance 11. The Union maintains that the increased co-pays far outweigh the few instances in which co-pays were decreased or eliminated. Moreover, the savings realized by the Employer demonstrates the reduction in benefits provided to unit members.

The Union asserts that the Village's action was not necessitated by exigent financial circumstances. The sales tax revenues it lost were more than made up by infrastructure improvement grants and reduction in the number of bargaining unit members employed by the Village.

The Union seeks immediate reinstatement of the EPO Balance 11 health insurance plan. It asks that savings realized by the Village, with interest, be returned to CSEA employees on a pro-rata basis. In addition, the Union requests that individual bargaining unit members be reimbursed for any additional health care costs they incurred as result of the change in plans.

The Employer, on the other hand, argues that it did not violate Section 13.1 of the Agreement because the Village has the right to provide different insurance coverage so long as the benefits and coverage are not diminished. Arbitrators have found that, unless restricted by express contract language, an employer is free to select the plan administrator or insurance

carrier of its choice. Here, the Agreement does not limit the Village's right to change the insurance program – whether the change is to the “plan” offered, the “carrier” selected, or some other aspect relating to insurance – so long as the benefits and coverage levels are not diminished. The Employer posits that the bargain struck at the table between union and employer is not for the name the insurance company uses in marketing its product, but for a certain level of benefits.

The reservation of rights language in Section 13.1 permits the Village to change “carriers.” Nothing prohibits the Village from changing “plans.” To prevail, the Union must convince the arbitrator to add language to the Agreement. In the Employer's view, the Union seeks to use the reservation of rights language as a sword against the Village by interpreting it to prohibit a change in “plans.”

Logic requires a conclusion that the Village acted appropriately. The sentence immediately preceding the reservation of rights language indicates that Excellus may, without notice, change the summary plan features of Blue EPO 11. If Excellus were to revise Blue EPO 11 and raise the doctor's office visit co-pay, for example, a grievance challenging that change would fail.

The Employer asserts that it would be error to place too much emphasis on a distinction between the word “carrier” and “plan.” When the language in question was adopted, over twenty years ago, each carrier offered one indemnity product. The Employer suggests that the word “carrier” was used because there were no such things as other “plans” as exist today. The reservation of rights language was intended to enable the Village to make changes in health insurance provided to employees, so long as what the employees received was substantially similar to the prior offering.

The Union bears the burden of proving that the two programs are not substantially similar. The two experts, Douglas Grucza and Margaret Gannon, did not conclude that any substantial diminishment had occurred by the change to Healthy Blue. The Village acknowledges that some costs are higher under the new plan. It contends that those increased

costs are more than offset by enhanced benefits for the types of services adults and families regularly use, and addition of the incredibly valuable out-of-network benefit.

Even assuming the Village did not have the right to make the change to Healthy Blue, the Employer contends that the Union's failure to object to the change until after it was made constitutes a waiver. The Union's request to bargain does not alter the fact that, having been advised of the proposed change, the Union did not notify the Village that it considered such a change to constitute a breach of contract.

The Employer urges that, should a contract violation be found, the remedy should be limited to reinstatement of the EPO Balance 11 program and appropriate offsets to the Village and employees. Any make-whole remedy would have to account not only for increased co-pays but also for savings employees realized in their premiums as a result of the Village's election to change from Blue EPO Option 11 to Healthy Blue.

On the entire record before me, the grievance is denied.

It is the arbitrator's job to give effect to the parties' intended meaning of contract language. When that language is clear and unambiguous, an arbitrator need not look beyond it to ascertain the parties' intent because it is manifest in the words themselves. The Union argues that, because a health insurance **carrier** is not a health insurance **plan**, the clear and unambiguous language of the contract permits the Village, in certain circumstances, to change the health insurance carrier, but not the health insurance plan it offers to unit members. The contract language in issue appears clear and unambiguous on its face. But sometimes, as here, seemingly clear language is not so clear as it appears.

The Union is correct that a "carrier" is not a "plan." To end the inquiry with that observation, however, would ignore the parties' expressed intent. Understanding the structure of the health care industry over time gives context to the environment in which

the language was negotiated more than twenty years ago and to the environment in which it is to be implemented today.

The parties expressed their intent to allow flexibility to the Village in selecting a health insurance program offered to employees, provided that the level of the benefit remained substantially similar. At a time when it was typical for a health insurance carrier to offer only one product, it made sense to say that the Village could change insurance "carriers." It would have made no sense then, when carriers did not offer a choice of plans, to say that the Village could change insurance "plans." The Union would have this decision rest on one word that no longer accurately reflects the state of the health insurance industry, in the face of language that expresses the parties' intent to permit a change in health insurance product so long as the benefit provided to employees remains substantially similar. I find that the contract permits the Village to change the health insurance product it offers to employees, whether it entails a change in carrier or plan, provided that the level of the benefit remains substantially similar.

I reach this conclusion even though the Village attempted, without success, to add the word "plan" to the contract during negotiations in 2008. Usually, a party cannot obtain in arbitration what it was unable to achieve at the bargaining table. In this case, however, the change the Village sought would have done nothing to alter the parties' expressed intent. The Union offered no evidence to demonstrate that the proposed addition would have done anything but make the contract language accurately reflect the current state of the health insurance industry.

Having determined that the Employer has the right to change insurance plans, it remains to determine whether Healthy Blue is "substantially similar" to the Blue EPO Option 11 plan it replaced. The new plan is less generous with respect to some benefits and more generous with respect to others. An individual employee, depending upon his unique medical and family circumstances, might fare better under one plan than the other. For example, an employee who is admitted to a hospital as an in-patient would incur a \$150 co-pay under the new plan, where he would pay nothing under the old plan. On the

other hand, an employee whose family's medical needs are more ordinary might find the new plan advantageous. The out-of-network benefit has enormous value, but only to those employees who might avail themselves of it. All employees realize a reduction in the cost of premiums under the new plan. The plans are not equal but that is not what the contract requires. It requires substantial similarity. The Union's expert witness, Margaret Gannon, testified that certain things in the new plan are better but certain out-of-pocket expenses are greater. She stated that she thought the new plan was a "bit of a diminishment." That conclusion did not take into account the savings employees would enjoy under the new plan due to the lower premium. Ms. Gannon conceded that her analysis was not complete. She stated that, taking premium cost into consideration, "there is not a clear answer," and it would depend on each individual's experience.

Based on a comparison of the benefits and costs of the old and new plans, including cost of premiums, and taking into consideration the testimony of the Union's witness, Ms. Gannon, and the Employer's witness, Mr. Gruzca, I find that the Union did not meet its burden of proving that the two plans are not substantially similar.

By reason of the foregoing, I issue the following

#### AWARD

The Employer did not violate the applicable provisions of the collective bargaining agreement when it changed health benefit plans on January 1, 2011.

Dated: October 28, 2011  
Delmar, New York

  
SHEILA S. COLE, Impartial Arbitrator



Draft Statement for Village Board Meeting

On the agenda is the item listing discussion of the arbitration decision involving the Village's health insurance change in January 2011.

By way of background, the Village changed health insurance plans in January 2011 from an Excellus EPO plan to another Excellus plan called Healthy Blue. All employees at the Village with health insurance were transitioned to Healthy Blue. The two unions that represent certain Village employees – Council 82 for the police and CSEA for the street and water – were advised in late 2010 of the change. Council 82 expressed no objection to making the change.

CSEA, however, objected to the change as one the Village was not authorized to make unilaterally under the collective bargaining agreement. Specifically, the Union maintained that the Village could change an insurance *carrier* but not the insurance *plan*, and because we were staying with an Excellus product, we were not able to make the change without the Union's approval.

The Union filed a grievance and demanded arbitration of the matter before an impartial arbitrator. A hearing was held in August. The Village and CSEA submitted briefs to the arbitrator, who then issued an Opinion and Award.

In her decision, the arbitrator concluded that the Village did not violate the collective bargaining agreement when it changed to the Healthy Blue insurance program for all employees, including CSEA employees. Specifically, the arbitrator concluded "that the contract permits the Village to change the health insurance product it offers to [CSEA] employees, whether it entails a change in carrier or plan, provided that the level of the benefit remains substantially similar." Because the Healthy Blue

plan was found to be "substantially similar" to the previous product, the Village was authorized to make the change without obtaining the Union's consent.

From my perspective, I am very pleased with the result in this case. All along, our intention has been to provide our Village employees with fair wages and benefits and follow our contractual commitments. Of course, we also have a responsibility to the Village residents, whose taxes pay these wages and benefits.

We will continue to work with the union's bargaining representatives in negotiations for a new collective bargaining agreement, as the current one expired in May of this year. Over the course of the spring and summer, we had several meetings with the Union but have not been able to reach an agreement on a new contract. We will continue to meet and bargain with the union in good faith and, hopefully, will reach an agreement in the near future.