

308

ARB 4/2/85

STATE OF MICHIGAN
- and -
CITY OF GROSSE POINTE PARK AND
GROSSE POINTE PARK FIREFIGHTERS
LOCAL 533 I.A.F.F. AFL-CIO

MTRC # D83D-1374
ARBITRATION UNDER PUBLIC ACT 312
PUBLIC ACTS OF 1969

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An Arbitration Award, pursuant to the provisions of Public Act #312, was issued on the matters in dispute between the above named parties November 8, 1984. Since the issuance of the Arbitration Award, a dispute has arisen between the parties relative to the specific award pertaining to a prescription drug rider provisions.

The parties to the dispute have stipulated (by letter dated March 12, 1985, signed by Mr. Ronald R. Helveston, Counsel for the above named Union) that the issue in dispute be submitted to the undersigned for resolution.

The Award in question read as follows:

"VII PRESCRIPTION DRUG COVERAGE

The City's last best offer and the Union's last best offer on this issue for the contractually (sic) year of 1983-84 were the same and so will be granted.

The Union's last best offer that prescription drug coverage be added to the present health medical and surgical coverage effective July 1, 1984, is granted." (Arbitration Award and Order, p. 32.)

The Union's last best offer on the issue of prescription drug coverage shown on pages 17 and 18 of the 1983-1985 Union's Last Offers of Settlement of Economic and Non-Economic Issues read as follows:

"XIII. Prescription Drug Coverage - 1983-84

Pursuant to Section 8 of Act 312, as amended, the Union submits its last offer of settlement on the economic issue of Prescription Drug Coverage for 1983-84. The Union's last offer is to maintain the current insurance coverages listed in Article 3, Sections (a) through (e) of the current collective bargaining agreement (i.e., no addition of a prescription drug program in 1983-84).

XIV. Prescription Drug Coverage - 1984-85

Pursuant to Section of Act 312, as amended, the Union submits its last offer of settlement on the economic issue of Prescription Drug Coverage for 1984-85. The Union's last offer is to modify Article 3 of the collective bargaining agreement by adding the following paragraph (f):

3. Insurance

(f) Effective July 1, 1984, the City shall provide, and pay all premiums for, a prescription

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drug rider, \$2.00 co-pay, in addition to the existing hospital, medical and surgical coverage referred to in the foregoing paragraph (a).

The issue now before me is:

"Does the prescription drug coverage cited above apply only to active employees or to such employees and pre-65 retirees?"

The Union's position is that the prescription riders was intended to apply to pre-65 retirees and active employees. In Mr. Helveston's letter of March 12th, the Union's arguments are stated as:

"To briefly recap the arguments set forth in our January 28 letter, the Union contends that the prescription rider was intended to apply to pre-65 retirees as evidenced by the following:

- 1) Since the Union's Last Best Offer was that the prescription rider be in addition to existing coverage, and since that existing coverage applies to pre-65 retirees, the prescription rider likewise was intended to be co-extensive with the existing coverage and hence applicable to pre-65 retirees.
- 2) The U. Ex. 35-36, submitted on the related Union proposal of supplemental coverage for post-65 retirees, it was indicated that a majority of the comparables provided supplemental coverage with a prescription rider for their retirees. Hence, the record is not devoid of any mention of prescription riders for retirees.
- 3) Unlike the optical and dental coverage provisions which undisputedly do not apply to pre-65 retirees, the Union's Last Best Offer for the prescription rider did not use the term "employees" or "employee".

Finally, it should be noted that even under the health insurance plan in effect under the prior contract, pre-65 retirees, like employees, were entitled to 80/20 coverage for prescriptions. This circumstance further shows that the Union's proposal to add the prescription drug rider to existing coverage was meant to apply to employees and pre-65 retirees. In addition, even if the prescription drug rider were not applied to pre-65 retirees, those retirees would still be entitled to such 80/20 coverage for prescriptions as part of the existing health insurance coverage."

The City's argument is that the prescription drug coverage added by the Act 312

Award applies only to active employees (firefighters) and not to retired employees.

In the letter written by Mr. R. Craig Hupp, dated February 5, 1985, in response to a letter dated January 28, 1985, from Mr. Helveston to Mr. John R. Crawford, City Manager, in which the Union's position on the matter in dispute was outlined, Mr. Hupp stated in part:

"The City never perceived the Union's position on prescription insurance during arbitration to include coverage for any retirees. The City understood the Union demand on prescription insurance to be the same as its demand on optical insurance, i.e., employees were to be covered, retirees were not."

After careful and exhaustive review of all the documentation relative to this matter, i.e., the transcript; the agreement; the Union's last offers of settlement dated August 10, 1984; the post-hearing briefs and the arbitration award and orders, I agree with the City's position on this matter. I reach that conclusion on the basis that:

- A. The Union's last best offer for the contracted year 1984-1985 was to modify Article 3 of the collective bargaining agreement by adding a paragraph (f) to the article which would read: "(f) Effective July 1, 1984, the City shall provide, and pay all premiums for, a prescription drug rider, \$2.00 co-pay, in addition to the existing hospital, medical and surgical coverage referred to in the foregoing paragraph (a)."
- B. Paragraph (a) read: "The City will maintain the existing hospital medical and surgical coverage for all employees and pay the entire premium along with any rate increase for such coverage." (Emphasis added)

The only conclusion one can reach is that the Union proposal for a prescription drug rider was applicable only to "employees", or in effect "active firefighters".

Retirees are not "employees" in accordance with the provisions of the recognition clause and retirees are not covered by the provisions of the collective bargaining agreement except where specifically so designated, i.e., retirees are not entitled to benefits provided for "employees" such as holidays, vacations, etc.

Retirees are entitled to those specific benefits designated for them such as is the case in Section 3 (d) which specifically provides for certain insurance coverage for retirees and that provision is separate and apart from the insurance coverage provided for "employees" in paragraph (a).

No where in the Union's last best offer relative to the prescription drug rider did the Union specifically request such coverage for retirees, nor in the post-

hearing brief, submitted in support of the last best offer, did the Union specifically request such coverage for retirees. Throughout the section in the post-hearing brief in which the Union's arguments for the prescription drug rider were outlined (pp. 39, 40 and 41) the references are to "employees" and "firefighters". In citing the comparisons with other cities, the reference was to "firefighters". There is nothing in this section to indicate the Union intended that pre-65 retirees were to be given the prescription drug rider in addition to the insurance coverage spelled out in Article 3(d) of the Agreement as was done in the last best offer relating to Blue Cross Blue Shield Medicare Supplement (commonly known as M-65). Here the Union specifically requested such coverage for retirees.

It should also be noted that the Union agrees dental insurance specified in Article 3(e) is applicable only to "employees", and not to "retirees" which clearly indicates the parties recognize "employees" and "retirees" as separate and distinct entities.

If the Arbitrator were to change the last best offer of either party on any issue presented to him to reflect what he believed the intent of a party to be, he would be exceeding the authority granted him under the Act which states in Section 8: "As to each economic issue the Arbitration Panel shall adopt the last offer of settlement which in the opinion of the Arbitration Panel more nearly complies with the applicable factors prescribed in Section 9."

In the case of the issue of the prescription drug rider, this is what the Arbitration Panel did: considered each last best offer on each of the issues as it was presented to them. It should be noted that the Panel met in executive session before the final opinion and award was issued and there was no claim made by the Union delegate that the prescription drug rider was to be added to existing insurance coverage for retirees as well as for "employees".

Throughout the proceedings, it was the opinion of the Chairman of the Arbitration Panel, and I believe that of the other two panel members, that the request for the prescription drug rider was that this benefit would be granted "employees" which are in this case active firefighters and there was no indication in the record that the Union intended the coverage be granted to retirees.

Under the circumstances, the answer to the issue presented to me is that: The prescription drug rider last best offer made by the Union, which was accepted by the Arbitration Panel, was applicable to "employees" (active firefighters) and not to retirees. The Union's claim in Section 3 of the letter dated March 12, 1985, signed by Mr. Helveston, that "the Union's Last Best Offer for the prescription rider did not use the term "employees" or "employee" fails when the wording of the Last Best Offer on this issue is read. The offer was: That the prescription drug rider be in addition "to the existing hospital, medical and surgical coverage referred to in the foregoing paragraph (a)." 3(a) states, "The City will maintain the existing hospital, medical and surgical coverage for all employees ..."

As was stated in Mr. Hupp's letter of February 5, 1985:

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"The arbitration award is limited in coverage to those issues specifically put into arbitration by the Union and the City. An arbitration award cannot grant a benefit that is not in issue before the arbitration panel. There is no evidence in the hearing record, in the Union's offer or in the arbitration award that prescription coverage for retirees to age 65 was proposed as a new benefit to be included in the contract."



Dawson J. Lewis, Chairman
Arbitration Panel

DATE: April 2, 1985