AMERICAN ARBITRATION ASSOCIATION

FRENCHTOWN CHARTER TOWNSHIP

-and-

Case No. 01-15-9993-1141
Grievance No. 15-001

LOCAL 3233, INTERNATIONAL
ASSOCIATION OF FIRE FIGHTERS

SUBJECT

Health insurance; change of insurance program for other full-time Township employees but not for bargaining unit employees.

ISSUE

Did the Township violate Article XXII of the parties' agreement by refusing to provide bargaining unit employees the same insurance program which it provided to other full-time Township employees on and after February 1, 2015?

CHRONOLOGY

Grievance submitted: January 31, 2015
Arbitration hearing: October 15, 2015
Briefs received: November 20, 2015
Award issued: December 23, 2015

APPEARANCES

For the Employer: Craig W. Lange, Attorney
For the Union: Alison L. Paton, Attorney

SUMMARY OF FINDINGS

The Township's decision not to provide bargaining unit employees the same insurance program which it provided to other full-time Township employees as of February 1, 2015 is subject to the grievance procedure, and the Union proved by clear and convincing evidence that leaving bargaining unit employees in a different program violated Article XXII, so the grievance must be sustained and the same program must be provided to bargaining unit employees, with appropriate remedies for the violation.

EVIDENCE AND ARGUMENT

On February 1, 2015, after about a month's advance notice, the Township changed the health insurance program provided to non-represented full-time employees, from the BCBS Community Blue PPO Plan identified in Article XXII of the parties' 2010-12 collective bargaining agreement (still in effect by extension while negotiations for a new one continue) to a Simply Blue PPO HSA plan. The new plan reduced the Township's premiums but added deductibles and increased co-payment responsibilities for employees. To offset added costs for employees, the Township funds Health Savings Accounts for them in the form of debit cards loaded with an amount equal to the difference between its actual premium costs for the new plan and the statutory "hard cap" on its payment for such costs under PA 152 (2011), MCL 15.563.

The Township decided not to make that change for bargaining unit employees, and left them in the Community Blue Plan with substantial exposure for increasing premium costs above the hard cap. The Union submitted a grievance on January 31 protesting that decision because their continuing insurance program "is neither equal to or better than what is provided, nor the same program provided to other employees," a claim based in Article XXII of the CBA, which as pertinent states that:

> Employees will be provided, during the term of this Agreement, the same insurance program which is provided to other full-time employees of the Township [including medical and dental insurance] . . . .
>
> Effective with the mutual ratification of this agreement on the 14th day of August, 2012, the health program shall be BCBS Community Blue PPO Plan 1 with $10 office co-pay [and a long list of other coverage details] . . . .
>
> The Township shall have the sole and exclusive discretion to amend or modify the Insurance Program at any time, for any reason. All decisions of the Township regarding the Insurance Program will not be subject to the grievance procedure so long as the Employees are covered under the same Insurance Program which is provided to other full-time employees of the Township and so long as the Insurance Program remains equal to or is better than what is currently provided.

The Township denied the grievance, asserting that it appropriately exercised its sole and exclusive discretion by deciding *not* to modify the Insurance Program for bargaining unit employees and did not violate the CBA because the new insurance program for other full-time employees was not equal to or better than their continuing program. The issue

presented in arbitration is whether the decision *not* to change the bargaining unit insurance program to keep it the same as the program provided to other full-time employees violated Article XXII. In deciding that issue the arbitrator must be mindful of the Article XXII requirement that "The party submitting the grievance to arbitration shall have the burden to prove by clear and convincing evidence that a violation of this Agreement has occurred" and that he has no power to add to, subtract from or modify CBA terms.

The Union argues the Township's violation of Article XXII is absolutely clear, since it is undisputed that bargaining unit employees no longer have "the same insurance program which is provided to other full-time employees of the Township," although it views the two programs as essentially equal, if measured by *the Township's* premium costs. It thus asks that the grievance be sustained and bargaining unit members be moved into the Simply Blue Plan with the same HSA funding provided for other full-time employees and reimbursed for their premium costs beyond the hard cap since February 2, 2015 under the Community Blue program, subject to offset for the costs of benefits they received in that program that they would have had to pay for in the Simply Blue Plan.

The Township argues the Union has not carried its burden to prove such violation by clear and convincing evidence, absent proof that non-represented employees are provided an equal or better insurance program than bargaining unit employees. It insists the other employees' program clearly is i*nferior* to the bargaining unit program in terms of benefit levels, co-payments and deductibles and argues costs of superior coverage to bargaining unit employees, statutorily imposed and thus extrinsic to the "insurance program," are irrelevant to determining equality, superiority or inferiority.

DISCUSSION AND FINDINGS

The one clear, certain requirement of Article XXII, specified in its first sentence, is that bargaining unit employees "will be provided . . . the same insurance program which is provided to other full-time employees of the Township." It is equally clear, certain and undisputed that since January 31 bargaining unit employees have not been provided the same coverage as non-represented full time employees. No further convincing is needed

on that point, so the Union has carried its burden of proof in that regard. Whether this self-evident insurance program discrepancy violates Article XXII perhaps is perhaps not quite as clear and certain, due to rather muddy and convoluted language in its third paragraph, but careful analysis leads to the conclusion that it does.

As stated in the first sentence of that paragraph, the Township has "sole and exclusive discretion to amend or modify the Insurance Program at any time, for any reason." Such discretion is sole and exclusive in that the Township is not obligated to negotiate program amendments or modifications with the Union, but it is not absolute. The second sentence of that paragraph, a grammarian's nightmare, says "all decisions of the Township regarding the Insurance program will not be subject to the grievance procedure" if two conditions exist: bargaining unit employees "are covered under the same Insurance Program" as other full-time Township employees, *and* their program "remains equal to or is better than what is currently provided."

The second condition might be said to exist in this case insofar as the bargaining unit employees' *insurance program benefits* have not changed, and the Township is correct that the new requirement for employees to pay premiums above the statutory "hard cap" is extrinsic to that program in the sense that is a creature of statute, not Blue Cross policy language. But that is an unduly technical distinction, because employees' costs are part of their insurance program with regard to other kinds of expenses (e.g., co-pays) and it is illogical to exclude increased premium costs, even if statutorily imposed, from a comprehensive comparison of the bargaining unit insurance program as it now exists with what was "currently provided" when the parties ratified the CBA in August 2012.

Thus the more logical conclusion is that the second condition does not exist in this case, and it is undisputed that the first one does not, because bargaining unit employees have not been provided the same health insurance program as other full-time employees since January 31. Even if the first one did, the decision not to keep insurance programs for bargaining unit and other full-time employees the same after January 31 still would be subject to challenge by grievance, because *both conditions* must exist for such decisions

to "not be subject to the grievance procedure." The Township seems to have tacitly conceded this point, given that is did not claim the grievance is not arbitrable.

It must be observed, also, that being equal to or better than an existing program is not stated in Article XXII as a condition that any change to the bargaining unit insurance program must satisfy, but only as one of two conditions that together bar access to the grievance procedure. No other provision in the agreement excludes changes that might make the insurance program less than equal to what it was in August 2012 from the Township's discretion to amend or modify it, either. As to the first condition, however, the contractual situation is fundamentally different in that it relates to both grievability and a substantive contractual guarantee: the mandate in the first sentence of Article XXII that bargaining unit employees "*will be provided* . . . the same insurance program" as other full-time employees, which the third paragraph of Article XXII does not nullify or diminish but essentially reinforces.

The Township attempts to avoid that mandate by noting that when it proposed to change the bargaining unit insurance program in 2007 to match a less generous program then being instituted for non-represented employees, the Union protested. In contractual terms, however, the gist of that protest was that the revised program would not "remain equal" to what was then currently provided, so it also had more to do with Union access to the grievance procedure to contest the proposed change than the merits of a challenge. The Township then may have considered it to have other contractual significance, but that is irrelevant to the interpretation of Article XXII in the current situation.

Be that as it may, the meaning of Article XXII's first sentence could not be clearer. Read in context with the third paragraph, as it must be, its mandate is not nullified by the Township's right to change the insurance program; rather, it constrains exercise of that right to the extent that any such change must result in a program the same as provided for other full-time employees. To interpret Article XXII otherwise would be an abuse of the arbitrator's contractual authority, because I have "no power to add to, subtract from, or otherwise modify any of the explicit terms and conditions of this agreement."

For these reasons, it must be concluded that the Township violated Article XXII by not keeping bargaining unit employees' insurance program the same as that provided for other full-time Township employees, and the grievance must be sustained, with remedies appropriately requested by the Union.

AWARD

Grievance No. 15-001 is sustained. As soon as practicable, the Township shall provide the same BCBS Simply Blue PPO HSA health insurance program to bargaining unit employees as has been provided to other full-time Township employees since January 31, 2015 and reimburse them for premium costs they paid for the Community Blue PPO Plan during that period, minus amounts they would have had to pay under the Simply Blue Plan for benefits received without such costs in the Community Blue Plan. The arbitrator retains jurisdiction until March 30, 2016 for the limited purpose of resolving disputes between the parties about calculation of reimbursements and offsets ordered herein.

Paul E. Glendon, Arbitrator
December 23, 2015