

City of Willmar,

Petitioner,

vs.

ORDER

Law Enforcement Labor Services, Inc.,

Respondent.

The above-entitled matter came before the Court for a motion hearing on February 15, 2013, at the Kandiyohi County Courthouse, Willmar, Minnesota. Attorneys Susan Hansen and Frank Madden appeared on behalf of Petitioner. Attorney Isaac Kaufman appeared on behalf of Respondent.

Petitioner moves to vacate an amended arbitration award and seeks a rehearing before the arbitrator on the issue of employer health insurance contributions.

Based upon the files, records, and proceedings, the Court makes the following:

FINDINGS OF FACT

1. Petitioner City of Willmar ("Petitioner") is a municipality that employs Respondent's employee members.
2. Respondent Law Enforcement Labor Services, Inc. ("Respondent") is a collective bargaining group representing patrol officers and police sergeants employed by Petitioner.
3. The relationship between Petitioner and Respondent has been governed by a collective bargaining agreement ("CBA"). The CBA from 2004-2009 contained the following language providing for health insurance:

COURT ADMINISTRATOR

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The Employer agrees to provide, at the Employer's expense, for all employees under this Agreement, an insurance program for hospitalization and major medical coverage comparable with the plan under existence, with the option of dependent coverage. If the employee chooses dependent coverage, the Employer shall pay the cost of dependent coverage:

A. Effective January 1, 2004, the Employer will contribute up to ninety (90%) percent of the cost of the monthly premium for dependent coverage under the basic plan. Any additional costs shall be paid by the employee through payroll deduction.

Effective January 1, 2005, the Employer will contribute up to fifty (50%) percent of the increase in cost of the monthly premium for dependent coverage under the basic plan. Any additional cost shall be paid by the employee through payroll deduction.

4. The most recent CBA between the parties was executed on August 20, 2010. This CBA was effective from January 1, 2010 through December 31, 2010. The 2010 CBA has remained in effect pursuant to Minn. Stat. § 179A.20, subd. 6. The relevant portion of Article 18 of the 2010 CBA addresses health insurance as follows:

18.1 The Employer agrees to provide, at the Employer's expense, for all employees under this Agreement, an insurance program for hospitalization and major medical coverage comparable with the plan under existence, with the option of dependent coverage. If the employee chooses dependent coverage, the Employer shall pay the cost of dependent coverage:

A. The Employer will contribute up to ninety (90%) percent of the cost of the monthly premium for dependent coverage under the basic plan. Any additional costs shall be paid by the employee through payroll deduction.

The Employer will contribute up to fifty (50%) percent of the increase in cost of the monthly premium for dependent coverage under the basic plan. Any additional cost shall be paid by the employee through payroll deduction.

5. The parties reached an impasse in negotiating terms for a successor CBA.

6. On January 25, 2012, the Minnesota Bureau of Mediation Services (“BMS”) received a request from Respondent to submit contract negotiations to “interest arbitration” as provided in Minn. Stat. § 179A.16.
7. On March 13, 2012, BMS certified the following four issues for interest arbitration:
 1. Wages 2011 – Increase, If Any, For Patrol and Sergeant Rates – Art. 25.1.
 2. Wages 2012 – Increase, If Any, For Patrol and Sergeant Rates – Art. 25.1.
 3. Health Insurance 2012 – Employer Contribution Amount/Formula – Art. 18.1.
 4. Health Insurance 2012 – Amount of Employer Contribution New Hires – Art. 18.1.
8. The present dispute only involves the employer health insurance contribution and amount (“Issue Three”).
9. BMS required the parties to submit their “Final Positions” on the certified issues by March 28, 2012.
10. Petitioner’s Final Position on Issue Three sought a two-tiered contribution structure with the following language:

18.1 The Employer agrees to provide at the Employer’s expense for all regular full-time employees and probationary employees under this Agreement, an insurance program for hospitalization and major medical coverage comparable with the plan under existence with the option of dependent coverage. For employees hired in 2012 and thereafter, the Employee shall contribute up to \$549 per month toward the cost of single coverage and up to \$1,302 per month toward the cost of family coverage. Any additional costs shall be paid by the employee through payroll deduction. If the employee chooses ~~dependent~~ family coverage, the Employer shall pay the following toward the cost of ~~dependent~~ family coverage.

A. (Delete first two sentences) For 2012, the Employer will contribute up to \$1,302 toward the cost of family coverage. Any additional costs shall be paid by the employee through payroll deduction. For 2013 and annually thereafter for employees hired prior to 2012, The Employer will contribute up to fifty (50%) percent of the increase in the cost of the monthly premium for family ~~dependent~~ coverage under the basic plan. Any additional cost shall be paid by the employee through payroll deduction.

11. Respondent's Final Position on Issue Three sought the following relevant language:

The Employer will contribute up to ~~ninety (90%) percent~~ *eighty-five (85%)* percent of the cost of the monthly premium for dependent coverage under the basic plan. Any additional costs shall be paid by the employee through payroll deduction.

The Employer will contribute ~~up to fifty (50%)~~ *eighty-five (85%)* percent of the increase in cost of the monthly premium for dependent coverage under the basic plan. Any additional cost shall be paid by employee through payroll deduction.

The Employers [sic] agrees to provide, at the Employer's expense, for all employees under this Agreement, an insurance program for hospitalization and major medical coverage comparable with the plan under existence, with the option of dependent coverage. If the employee chooses dependent coverage, the Employer shall pay the cost of the dependent coverage:

A. The Employer will contribute eighty-five (85%) percent of the cost of the monthly premium for dependent coverage under the basic plan. Any additional costs shall be paid by the employee through payroll deduction.

The employer will contribute up to (85%) percent of the increase in cost of the monthly premium for dependent coverage under the basic plan. Any additional costs shall be paid by the employee through payroll deduction.

12. On June 28, 2012, the parties participated in interest arbitration before Arbitrator George Latimer ("Latimer") in *Law Enforcement Labor Services, Inc. and City of Willmar*, BMS Case No. 12-PN-0441.

13. On August 12, 2012, Latimer issued a written decision and award ("Original Award") on the four certified issues. The Original Award characterized, in part, Respondent's argument on Issue Three as follows:

The Union's proposal maintains the current structure of the health insurance language. It reduces the City's contribution for *single* coverage from 90% to 85%. It also increases its contribution to any annual increases in dependent coverage to 85%, from the current 50%.

14. The Original Award contains Latimer reasoning on Issue Three. Latimer indicated that he was declining to award Petitioner's proposed language on Issue Three. He then stated:

For its part, the Union has proposed increasing the Employer share of the cost increases for family coverage from 50% to 85%. The Union has argued that a burden on employees has resulted in cost increases in family coverage over the years. This is an unfortunate fact of life, one which has affected the Employer as well. Again, to award a significant change as proposed here should require a compelling reason. The Arbitrator does not find the Union's arguments in favor of the change to be compelling, and so declines to award the change.

15. The Original Award contains Latimer's award on Issue Three as follows: "Reduction from 90% to 85% for Employer contribution to single health coverage, effective January 1, 2012."

16. Respondent subsequently sought a clarification of the award. Petitioner declined to join a joint request for clarification.

17. On August 31, 2012, Respondent made a written request to Latimer for a clarification of the Original Award pertaining to Issue Three. Respondent's request stated that Latimer had misstated LELS' position, noting that Petitioner had always paid 100% of *single* coverage and that the contested issue related to *dependent* coverage. Respondent also asserted that the award appeared to be inconsistent with Latimer's explanations from other parts of the Original Award. Respondent requested that Latimer "[p]lease clarify if your award pertains to dependent or single health care coverage and what effect, if any, this has on employees electing to carry single health care coverage."

18. On September 7, 2012, Petitioner filed a written objection with Latimer in response to Respondent's request for clarification. Petitioner objected to Latimer amending the award, arguing that he had not been obligated to adopt either party's position; that the award was consistent with Latimer's analysis and reasoning; that amending the award to

reference dependent coverage would directly contradict Latimer's reasoning; that Respondent's employees would receive an unfairly large dependent contribution compared to employees in other bargaining groups; and that Respondent had not met its burden of proof required for a clarification. Petitioner also asserted that the 90% dependent contribution provision was ineffective because 2011-2013 AFSCME contracts contained a two-tiered contribution structure. Petitioner further asserted that in practice it had computed rates based on a formula separate from CBA language.

19. On September 11, 2012, Latimer emailed the parties a Clarification Letter and an Amended Award.
20. The Clarification Letter acknowledges that Latimer had misstated Respondent's Final Position on Issue Three. His purported intent on Issue Three is stated as follows:

There was no intention on the Arbitrator's part to change the Employer contribution from full to 85% of single health coverage. The intent was to decrease the Employer contribution from 90% to 85% of the dependent health coverage, and to leave the existing benefits structure in place for this bargaining unit, for both current and new employees.

21. The Clarification letter provides for the following amended award on Issue Three:
"Reduction from 90% to 85% for Employer contribution to dependent health coverage, effective January 1, 2010."
22. Latimer's name is typed at the bottom of the Clarification Letter. Latimer noted in the letter that the complete Amended Award was attached. Latimer's signature is not contained at the end of the Amended Award.
23. Latimer's Amended Award was also attached to the email. In the discussion of Respondent's arguments for Issue Three on page 10, Latimer corrected his reference to *single* coverage and instead inserted *dependent* coverage in the following passage:

The Union's proposal maintains the current structure of the health insurance language. It reduces the City's contribution for *dependent* coverage from 90% to 85%. It also increases its contribution to any annual increases in dependent coverage to 85%, from the current 50%.

24. Except as provided above, the Amended Award is the same as the Original Award, even though the Clarification Letter provided for a change to the award on Issue Three.
25. Both parties view the amended award contemplated by the Clarification Letter as the controlling amended award on Issue Three rather than the award provided in the Amended Award.
26. In October 2012, the parties entered into a stipulation regarding Petitioner's motion to the Court to vacate or modify the Amended Award. Essentially, the parties stipulated that Petitioner's motion would be limited to Issue Three; that Respondent would not raise any procedural objections to Petitioner seeking to vacate only one provision of the award; and that Petitioner would comply with and implement awards on other issues.
27. The arbitrator's intentions regarding the award on Issue Three are unclear, as are his intentions for modifying the Original Award. The Court does not have a full record or evidence from the arbitration proceedings.

CONCLUSIONS OF LAW

1. The record does not show that the arbitrator validly modified the Original Award pursuant to Minn. Stat. § 572B.20(a).
2. The effective date of health insurance contribution was not a certified issue for the arbitrator and was a determination by him that was beyond his jurisdiction. Minn. Stat. § 179A.16, subd. 5.

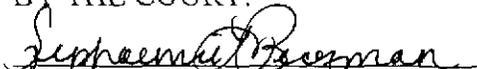
3. The arbitrator exceeded his powers in modifying the Original Award. Vacation of the Amended Award on Issue Three, as set forth in the Clarification Letter, is warranted under Minn. Stat. § 572B.23(a)(4).
4. A rehearing before the same arbitrator is appropriate because the arbitrator exceeded his powers. Minn. Stat. § 572B.23(c).
5. Because the Court is vacating the Amended Award on other grounds, Petitioner's argument seeking to void the Amended Award for lack of authentication is moot.

ORDER

1. Petitioner's motion to vacate the arbitrator's September 11, 2013, Amended Award on the issue of health insurance contributions, as set forth in the Clarification Letter, is GRANTED.
2. Petitioner's request for a rehearing on the issue of health insurance contributions is GRANTED.
3. The parties shall promptly schedule a rehearing with Arbitrator George Latimer on the certified issue of health insurance contributions and the rehearing shall be limited to addressing any modification or clarification of the Original Award. The arbitrator shall clearly explain and set forth his basis for making any modification to the Original Award.
4. Pursuant to the parties' Stipulation, the parties shall implement all other awards contained in the August 12, 2012, Original Award.
5. The attached Memorandum of the Court is incorporated by reference.

Dated: April __, 2013

BY THE COURT:


Stephanie L. Beckman
Judge of District Court

Memorandum of the Court

Petitioner moves the Court to vacate a portion of the arbitrator's Amended Award from September 11, 2012, related to health insurance contributions and seeks a rehearing before the arbitrator on the issue. Specifically, Petitioner argues that the arbitrator exceeded his authority by making substantive changes to the Original Award. Respondent argues that vacation of the Amended Award is unwarranted because it only contains a clerical error, which the Court should correct.

On June 28, 2012, the parties participated in interest arbitration under the Minnesota Public Employment Labor Relations Act. *See* Minn. Stat. §179A.16, subd. 2. The arbitrator issued his Original Award on August 12, 2012 addressing the four certified issues. His award on Issue Three was for a “[r]eduction from 90% to 85% for Employer contribution to *single* health coverage, effective January 1, 2012.” Respondent believed that the reference to *single* coverage, rather than *dependent* coverage was a mistake and requested clarification from the arbitrator. Respondent also asserted that the arbitrator had misstated its position on the issue. Petitioner objected to the clarification and a change to the award.

On September 11, 2012, the arbitrator issued a Clarification Letter and an Amended Award. The arbitrator acknowledged that he had misstated Respondent's position on Issue Three and corrected it in the Amended Award. The arbitrator indicated in the Clarification Letter that his intent was to change the contribution for *dependent* coverage rather than *single* coverage. The Clarification Letter indicated that the Amended Award on Issue Three would provide: “Reduction from 90% to 85% for Employer contribution to *dependent* health coverage, effective January 1, 2010.” However, this language was not used in the Amended Award, which contains the exact award language as the Original Award. The parties treat the Clarification Letter's

contemplated award on Issue Three as the controlling amended award. For purposes of Petitioner's motion, the Court will also treat this as the controlling amended award.

The primary question is whether the Amended Award was a valid modification of the Original Award. Pursuant to Minn. Stat. § 572B.20(a), a party may move an arbitrator to modify or correct an award:

- (1) upon the grounds stated in section 572B.24, subsection (a)(1) or (3);
- (2) because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or
- (3) to clarify the award.

The grounds stated in Minn. Stat. § 572B.24(a) are applicable if “(1) there was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award; . . . [or] (3) the award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.”

For purposes of a court's modification or correction of an arbitration award, an “evident miscalculation” or an “evident mistake” has been held to be limited on its face to technical errors and irregularities not affecting the merits. *Int'l Union of Elec. & Mach. Workers v. Portec, Inc.*, 228 N.W.2d 239, 241, 243 (Minn. 1975). The court of appeals later expanded on this interpretation as follows:

We observe that “evident” means “[e]asily seen or understood; obvious.” *The American Heritage Dictionary* 617 (4th ed.2000). Thus, we conclude that an evident miscalculation is an error that is obvious on the face of the award, and the correction of which does not require the court to go outside of the four corners of the award. For example, an evident miscalculation could involve an obvious mathematical error in adding a column of numbers. Similarly, an evident mistake in the description of any person, thing or property could involve a mistake in identifying the wrong year or serial number of a vehicle that is the subject of an award.

All Metro Supply, Inc. v. Warner, 707 N.W.2d 1, 6 (Minn. Ct. App. 2005).

In the present case, the arbitrator modified the Original Award to reflect an award to *dependent* coverage rather than *single* coverage, and by changing the effective date from 2012 to 2010. These changes substantially change the parties' obligations. The changes could therefore not be considered imperfections in a matter of form or mere clarifications.

The changes also cannot be considered corrections to an "evident mistake." While the Clarification Letter contains some explanation for the change from *single* coverage to *dependent* coverage, it is not clear whether the arbitrator was making a simple clerical substitution in words or whether he intended a substantive change from the Original Award. Only the arbitrator knows his specific intention. Similarly, the arbitrator's basis for changing the effective date from 2012 to 2010 is unclear. While this change could be seen as a clerical error, the arbitrator could have intended a further adjustment to the award given the change from *single* coverage to *dependent* coverage. The record does not show that the arbitrator made these changes to correct "evident mistakes." Also, the effective date to the health insurance contribution issue was not a certified issue for the arbitrator and addressing it was beyond his jurisdiction. *See* Minn. Stat. § 179A.16, subd. 5 ("The arbitrator or panel selected by the parties has jurisdiction over the items of dispute certified to and submitted by the commissioner.").

To support their positions on Petitioner's motion, the parties point to various portions of the arbitrator's analysis as evidence of his intent. However, the Court does not view these portions as dispositive of the arbitrator's intent and of the present issue. The record does not contain other evidence of the arbitrator's intent sufficient to show that the modifications were valid. For the reasons stated, the arbitrator's modification of the Original Award was not valid.

Pursuant to Minn. Stat. § 572B.23(a)(1)-(6), a court may vacate an arbitration award if:

(1) the award was procured by corruption, fraud, or other undue means;

- (2) there was: (A) evident partiality by an arbitrator appointed as a neutral; (B) corruption by an arbitrator; or (C) misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;
- (3) an arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to section 572B.15, so as to prejudice substantially the rights of a party to the arbitration proceeding;
- (4) an arbitrator exceeded the arbitrator's powers;
- (5) there was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection under section 572B.15, subsection (c), not later than the commencement of the arbitration hearing; or
- (6) the arbitration was conducted without proper notice of the initiation of an arbitration as required in section 572B.09 so as to prejudice substantially the rights of a party to the arbitration proceeding.

A party seeking to vacate an arbitration award has the burden of proving its invalidity. *Nat'l Indem. Co. v. Farm Bureau Mut. Ins. Co.*, 348 N.W.2d 748, 750 (Minn. 1984). “Absent a clear showing that the arbitrators were unfaithful to their obligations, the courts assume that the arbitrators did not exceed their authority.” *Garlyn v. Auto-Owners Ins. Co.*, 814 N.W.2d 709, 712-13 (Minn. Ct. App. 2012) (citing *QBE Ins. Corp. v. Twin Homes of French Ridge Homeowners Ass'n*, 778 N.W.2d 393, 398 (Minn. Ct. App. 2010)).

In the present case, the only potential ground for vacating the Amended Award is if the arbitrator exceeded his powers. As discussed above, the record does not show that the arbitrator validly modified the Original Award. Also, the arbitrator’s change to the effective date of the award was beyond his jurisdiction. Accordingly, the arbitrator exceeded his powers in amending the Original Award. The Amended Award pertaining to Issue Three, as set forth in the Clarification Letter, shall be vacated.

Petitioner also seeks a rehearing before the arbitrator. Where a court vacates an arbitration award on grounds that the arbitrator exceeded his powers, as here, the Court is authorized to order a rehearing before the same arbitrator. Minn. Stat. § 572B.23(c). A rehearing before arbitrator George Latimer in the present case is appropriate. The rehearing shall

be limited to Issue Three. Additionally, neither party has sought to vacate any part of the Original Award. The rehearing shall therefore be limited to addressing any clarification or amendment to the Original Award that the arbitrator is authorized to make under statute.¹

Petitioner also advances an argument that the Amended Award is void for lack of an authenticating signature pursuant to Minn. Stat. § 572B.19(a). However, the Court has vacated the Amended Award for the reasons stated above and Petitioner's authentication argument is moot.

SLB

¹ The Court has not found a valid ground for upholding the arbitrator's modification of the Original Award under the present record. However, the arbitrator is not precluded from modifying the Original Award following rehearing. The arbitrator simply must provide a sufficient record to justify his modifications and to satisfy statutory requirements.