

**IN THE MATTER OF ARBITRATION BETWEEN**

<b>TEAMSTERS LOCAL UNION NO. 346</b>	)	<b>OPINION AND AWARD</b>
<b>CLERICAL/TECHNICAL UNIT</b>	)	
	)	
<b>AND</b>	)	<b>BMS NO. 15-PA-0799</b>
	)	<b>Grievance re:</b>
<b>THE COUNTY OF CARLTON</b>	)	<b>Medical Insurance for Part-Time Employees</b>

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ARBITRATOR: Charlotte Neigh

HEARING: July 9, 2015

POSTHEARING BRIEFS RECEIVED: August 5, 2015

AWARD: August 18, 2015

**REPRESENTATIVES**

For the Union:

Timothy W. Andrew, Esq.  
302 W. Superior St. - #300  
Duluth, Minnesota 55802

For the Employer:

Dennis Genereau, Coordinator & HR Director  
301 Walnut Avenue  
Carlton, Minnesota 55718

**JURISDICTION AND PROCEDURE**

Pursuant to the parties' Collective Bargaining Agreement and the procedures of the Minnesota Bureau of Mediation Services, Charlotte Neigh was appointed to arbitrate this matter. A hearing was held in Carlton at which time both parties had a full opportunity to offer evidence. Posthearing briefs were filed by the agreed deadline of August 5th, at which time the record was closed.

**ISSUE**

Whether part-time employees covered by the terms of the Collective Bargaining Agreement (CBA) are eligible for hospital-medical insurance pursuant to Article 16, Section 1.

## PERTINENT AUTHORITY

### LABOR AGREEMENT

#### ARTICLE 16. INSURANCE

Section 1. **Hospital/Medical Insurance.** The employer shall pay for health insurance for the employee and 80 percent of the cost of providing health insurance for the employee's dependents.

Section 2. **Retiree's Insurance.** Retirees with at least ten (10) years of service, defined as "uninterrupted employment with the Employer, whether part-time or full-time", are eligible beginning at age 55, or at age 50 with 30 years of service, for County contributions to their health insurance premiums according to the following schedule:  
*(percentage increasing from 50% to 100% for 10 to 30 years of service)*

Section 3. **Life Insurance.** The Employer will provide term life insurance coverage in the amount of \$40,000 on each full-time employee with the premium being paid by the Employer, effective January 1, 2013.

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### BACKGROUND AND UNDISPUTED FACTS

Carlton County has more than 300 full-time and approximately 40 part-time employees across fifteen departments. Seven bargaining units (BUs) represent all except about twenty-five employees, *e.g.*: elected officials, department heads, confidential staff, and supervisors in the sheriff office. The Teamsters BU is the second largest, having 62 members in clerical and technical positions in various departments; eleven of them are in part-time positions, regularly working at least 40% of the equivalency of full-time hours (FTE, *i.e.* 37.5 per week, 75 per pay period).

The Employer has historically offered medical insurance benefits to all full-time employees, paying the entire premium for single coverage and 80% of the premium for family coverage. In 2014, in an effort to assure compliance with the Affordable Care Act (ACA), the Employer negotiated provisions with the two LELS BUs that have part-timers: the Employer pays a percentage of the premium for single medical coverage that equals the position's FTE if it is regularly scheduled for at least 70% of full-time hours (.7 FTE); the Employer does not contribute to the premium for family coverage. These terms have been in the AFSCME contract since before 2011.

The 2014 negotiations for a new CBA with the two LELS BUs in the sheriff department occurred after contract negotiations with the Teamsters BU were finalized in 2013 for a CBA running through 2015, which includes the same language in Article 16 that has been unchanged for more years than the parties can remember. In November 2014 the Employer offered the Union an amendment to the CBA that would provide the same terms for medical insurance for part-timers as negotiated with the LELS BUs. The Union claims that this was its first notice that part-timers were not receiving medical insurance benefits and replied that its reading of Article 16, Section 1 meant that it applied to all employees, including part-timers. The Employer disagreed with this interpretation but offered to include positions at a minimum of .6 FTE. The Union rejected this offer and filed a grievance on 4/14/15 on behalf of part-time employees in its BU, seeking the same medical benefits as provided to full-time employees. The parties were unable to resolve this matter and it proceeded to arbitration.

## SUMMARY OF THE PARTIES' ARGUMENTS

### THE UNION ARGUES THAT:

- This BU historically never had very many regularly scheduled part-time employees. In the last few years the Employer has increased its use of part-time employees in this BU without offering paid medical insurance; this practice was not known to the Union until Fall 2014.
- The part-timers in this BU are eligible for medical insurance pursuant to the plain language in Article 16, Section 1 that uses the term “employee”, which includes both full-time and part-time employees. The CBAs for the other BUs and the County’s personnel policy for non-union employees have explicit provisions prorating single coverage for part-time employees and providing no payment for dependent coverage.
- Article 16, Section 2 expressly provides coverage to retirees “whether part-time or full-time” and it would be an absurd result to find that the parties had negotiated coverage for retirees but not for active employees.
- Under every other provision in the CBA the parties interpret “employee” to mean both part-time and full-time and Article 16, Section 1 should be interpreted consistently.
- Numerous provisions in the CBA demonstrate that the parties know how to distinguish between part-time and full-time employees to limit eligibility for specific benefits, but they did not choose to do this for medical insurance:
  - Article 5, Section 2, regarding floating holidays, provides prorated holidays for “regular part-time employees working an established schedule of at least 14 hours per week”;
  - Article 6, Section 1, regarding sick leave accrual, provides different formulas for calculating earned sick leave for “permanent full-time employees” and for “permanent part-time employees working more than 14 hours per week”;
  - Article 9, Section 2, regarding accumulation of vacation leave, provides a specified maximum number of days for “full-time employees” and “a prorated maximum accumulation for part-time employees”;
  - Article 9, Section 3, regarding accrual of vacation leave, specifies a formula for “permanent part-time employees”.
  - Article 14, Section 4 explicitly limits seniority rights of “part-time”, “temporary” and “seasonal” employees in relation to “a regular employee who fills a full-time position”;
  - Article 14, Section 5 distinguishes between recall rights for “part-time employee” and “regular full-time employees”;
  - Article 16, Section 3, “effective January 1, 2013”, which is also in the insurance article, explicitly limits the paid life insurance premium benefit to “each full-time employee”.
- By its plain meaning the language of Article 16, Section 1 applies to all employees and it would violate the CBA for the Arbitrator to add the term “full-time employee” so as to exclude part-time employees.

## Union Arguments (continued)

- The fact that the Employer has successfully negotiated lesser benefits with its other unions through explicit limiting language only reinforces that it has not done so for the Teamsters CBA, where the language is significantly different.
- The well-established majority view in arbitration is that whether an ambiguity exists must be determined by the “four corners of the instrument” without resort to extrinsic evidence; the plain meaning of Article 16, Section 1 can be derived from the language with no need for interpretation.
- In the event interpretation is applied, in the context of the CBA the word “employee” consistently includes part-time as well as full-time unless some limitation is expressed. An example of where the parties agreed to this arose recently when it was discovered by the Union Steward that the bylaws for the sick leave bank erroneously limited participation to full-time employees, contrary to Article 6, Section 8 which provides that it is “available for all regular employees”; the bylaws were formally amended to provide a prorated schedule for part-time employees; this was done with the concurrence of the Employer.
- In many situations the County has interpreted “employee” to include part-time employees:
  - Article 8, Section 6.1, which provides that an “employee” taking parenting leave may retain up to 37.5 hours of previously earned paid leave for use upon return to work; when this question was raised by a part-timer in the BU in early 2015, the County agreed that this provision applied to her;
  - Article 10, Section 1, which provides for funeral leave benefits for the death of an “employee’s” family member, was applied to another member of this BU who is not regularly scheduled for full-time hours;
  - Article 14, Section 11, which provides that “all newly hired employees” shall serve a six-month probationary period used to be interpreted as requiring a part-time employee to work the equivalent of 50% of full-time hours before completing probation and being eligible for the designated wage increase. When the question was raised by a part-time employee, the HR Director determined that a six-month calendar period should apply to all employees, both part- and full-time.
- The County’s ill-conceived theory of the case would defeat collective bargaining by considering what the County meant to or intends to negotiate with the Teamsters, but not what was actually negotiated. The County seems to confuse this grievance arbitration with interest arbitration, where internal comparables regarding medical insurance would be relevant. In this case the comparables show only that the Teamster language is different from other BUs and mandates a different result.
- The County’s past practice argument should be rejected because: it is not appropriate where the language is clear, even if the Union has not previously challenged the failure to provide the benefit in the past; and it has not met its burden of proof regarding mutuality - the Union never knew about or accepted the County’s failure to provide the benefit.

Union Arguments (continued)

- Although the County has acknowledged in other situations that its past practice of not giving contractually specified “employee” benefits to part-time employees was erroneous, it resists doing so regarding medical insurance benefits because this is more expensive than advancing the time for paying a wage increase. However, the County must live with the contract it made and the cost is not a reason to deny enforcement of the CBA.
- The evidence is clear that the County has interpreted “employee” to include part-timers in every provision of the CBA with the exception of Article 16, Section 1; this provision should be read consistent with the rest of the CBA.
- The remedy should be an order for the County to provide part-time employees in the BU with health insurance to the same extent as full-time employees, effective on the first day of the month after the date of the award.

THE COUNTY ARGUES THAT:

- The County raised the issue to create fairness for all employees, which has been an ongoing effort over the last four years since the arrival of the new HR Director. Recent lengthy negotiations have been directed at creating parity among all employees.
- The CBA is not clear in its reference to what constitutes a full-time employee, nor is it consistent in how it refers to employees generally, using the terms “employee”, “regular employee”, “full-time employee”, “regular full-time employee”, and “permanent full-time employee” interchangeably and without definition, as well as “part-time employee”, “temporary employee”, “seasonal employee”, and “new employee”; the only one of these terms defined in the contract is “new employee”; the contract is not clear and unequivocal as to what the term “employee” is defining as used in Article 16, Section 1.
- The use of “part-time” in Article 16, Section 2 does not convey health insurance benefits on part-time staff but rather allows credit for part-time years of service that have been coupled with full-time employment when determining eligibility for the benefit; no employee who has retired as a part-time employee has received County contributions toward medical insurance premiums.
- An issue regarding wage progression for part-time employees resulted in a memorandum of understanding (MOU) designed to create parity for all staff; the language was unclear in its application to part-time employees and the practice of requiring them to work more calendar time than full-time employees before the probationary period ended and a wage increase was granted was not fair; it was resolved in favor of the part-time employees out of a concern for morale and balance.

County Arguments (continued)

- The issue of medical insurance for part-time employees should be settled on terms consistent with the other Unions: two BUs don't have any part-time employees and their CBAs expressly limit medical coverage to full-time employees; prior to the last negotiations with LELS, whose contracts contained the same language as in Article 16, those two BUs had no medical insurance benefit for part-time employees. This was changed to be consistent with the pre-existing AFSCME provision for prorated single coverage for employees working at least a .7 FTE. None of the CBAs provide family coverage for part-time employees unless the employee pays the premium, which is \$1300/month more than single coverage.
- The Teamsters contract is the oldest in the County, dating back to 1978; the language of Article 16 has been unchanged for many years. The most recent CBA had already been finalized before the LELS negotiations and so the County offered the same benefit as an MOU to the CBA. When the Union disagreed with the offer, the County offered to extend the benefit to .6 FTE employees, which would probably precipitate a similar claim by the other Unions. Below the level of .6 FTE, medical insurance that conforms to the Affordable Care Act (ACA) is unaffordable. The .6 FTE level would be subject to approval by Blue Cross/Blue Shield, the insurance carrier for the County.
- The language in Article 16 of the Teamsters CBA has been the same during at least four rounds of negotiations and probably many before that; the Union never raised the issue of medical insurance for part-time employees, although it has challenged other benefits for part-time employees.
- The absence of medical insurance for part-time employees is a longstanding and accepted past practice that the Union has never requested to change and therefore it is binding; the fact that the Union President was unaware that this benefit was not being granted doesn't change the fact that the Union membership was aware.
- The Union's position is not valid given the parties' past practice and the County's offer would treat all part-time employees consistently.

## **ANALYSIS AND DISCUSSION**

Although, as the County points out, various terms are used throughout the CBA for referring to employees, no ambiguity has been shown that would reasonably support differing interpretations of the meaning in any particular context. The CBA language clearly distinguishes between full-time and part-time employees in sections where it is relevant, particularly regarding benefits provided by the County. The Union persuasively argues that the parties have proven themselves capable of expressing such distinctions when they have agreed to treat part-time employees differently than full-time employees. Moreover, the County has recently agreed with the Union's position that part-timers should be covered by provisions relating to "employees" in two situations where the practice had been to treat them differently: timing for successful completion of the probationary period and its concomitant wage increase; and participation in the sick-leave bank. It is concluded that the plain meaning of "employee" in Article 16, Section 1, includes both full-time and part-time employees.

It is a rare situation where it can be legitimately found that a unilateral practice negates the plain meaning of the words in the CBA. The fact that the County has been failing to offer medical insurance to newly hired part-time employees without objection by the Union is apparently attributable to: the increase in part-time positions in this BU being relatively recent; the failure of the County to carefully consider how various contractual provisions would apply to part-time employees; the unwarranted assumption by some unidentified person on behalf of the County that medical insurance benefits should not be offered to part-time employees; and the part-time employees' acceptance of the terms offered by the County without bringing this issue to the attention of the Union. There has been no showing that Union officials had knowledge of this practice prior to November 2014 when the HR Director offered to change it. Thus it has not been mutually accepted so as to constitute a past practice that prevails over the contractual provision.

The County's reluctance to extend the same medical insurance benefits to part-time employees as to full-time employees is understandable: it is a significant expenditure that has not been included in the budget, and that substantially increases the cost of part-time positions. The County has asserted that providing this benefit is unaffordable, which may be the case. However, this is not an interest arbitration where the Employer's ability to pay can be considered. In this grievance arbitration the issue is the meaning and application of the contract as it is written, without regard to terms negotiated with other unions for other BUs. The record does not reveal whether the parties have contemplated what actions may be taken if the Union's position prevails in this arbitration but it would not be surprising if it gives rise to more difficulties.

It is concluded that under Article 16, Section 1 of the CBA, the County is required to pay for health insurance for part-time employees and 80 percent of the cost of providing health insurance for the part-time employee's dependents. The Union's requested remedy is for such coverage to begin on the first of the month following the issuance of this award, and the County has not proposed any different remedy.

**AWARD**

1.    The grievance is sustained. Part-time employees covered by the terms of the Collective Bargaining Agreement are eligible for hospital-medical insurance pursuant to Article 16, Section 1.
  
2.    This coverage shall commence on September 1, 2015.

August 18, 2015

Charlotte Neigh, Arbitrator