American Arbitration Association

In the Matter of the Arbitration Between:

SPRINGFIELD BOARD OF EDUCATION

-and-

Case No. AAA-01-18-0002-5640
(Waiver Payments)

SPRINGFIELD TOWNSHIP EDUCATION ASSOCIATION (STEA)

Before: Susan Wood Osborn, Arbitrator

Appearances:

For the Employer:
Craig Vaughn, Superintendent

For the Union:
NJEA UniServ Office # 5
By Hrair Zakarian, Representative

Witnesses:

Sandi Secouler, STEA President
Denise Buffa, STEA Vice-President

Also Present at the Hearing:

Kristen Lippincott, Board President
Andrew Eaton, Board Vice-President
Ashley Traino, STEA Grievance Chair

OPINION AND AWARD

In accordance with the parties' grievance procedure, I was designated by the American Arbitration Association on July 16, 2018 to hear and decide this matter. The parties' collective agreement provides that the arbitration in this matter shall be final and binding. An arbitration hearing was held on February 11, 2019 at the Board of Education's Administrative Offices. The parties submitted documentary evidence and testimony in support of their respective positions. The parties filed post-hearing briefs by March 4, 2019 and the record closed on that date.

ISSUE

The parties stipulated that the issue in this matter can be framed as follows:

> Should the waiver payments be based upon the PPO 15 premiums or the premiums of the plan the employee selects?

RELEVANT CONTRACT LANGUAGE

The most recent agreement between the Springfield Township Board of Education and the Education Association covered the period July 1, 2014 through June 30, 2017. The parties negotiated Article VII, D and E of the contract which provides as follows: (J-1)

> D. The parties agree to switch over to School Employee Health Benefit Plan (SEHBP) including the stand alone prescription plan, as soon as possible after ratification and Board approval. Employees shall be permitted to select any plan offered by SEHBP, including the base plan of DIRECT 10.

E. **Medical Coverage Waiver**[1]
Any employee may elect to accept a payment equal to 35% of the PPO premium for which they are eligible in lieu of medical coverage and/or a payment of 35% of the premium for which they are eligible in lieu of prescription coverage. The member must have alternate coverage.

POSITIONS OF THE PARTIES

The Association states that the Board unilaterally decided, without negotiations, to base the calculation of waiver payments using the Aetna PPO 15 plan rates rather than the PPO 10 rates, thereby decreasing the amount of the waiver payment, since the cost of the PPO 15 plan is less than the cost of the PPO 10 plan. The Association argues that the provisions of Article VII, Sections D and E must be read together and in context, and that when so read, the language supports the determination that the waiver amount must be calculated using the cost of the plan coverage selected by the employee prior to an election to waive coverage. The Association urges that Article VII, Section D provides employees with the right to select any plan offered, and that the selection of the plan determines the premium rate for purposes of calculating the waiver amount. The contract language in Article VII, Sections D and E is clear and unambiguous, and should be applied by the arbitrator, and the grievance granted. The remedy sought is the rescission of the Board's unilateral decision to base the amount of the waiver payments on the PPO 15 plan, and an award to make the affected employees

[1] Article VII, Section E has been part of the 2007-2011, 2011-2014, and 2014-2017 collective bargaining agreements.

whole by paying them the difference the premiums based upon the PPO 10 plan and the premiums based upon the PPO 15 plan.

The Board disputes the Association's reading of Article VII, contending that an employee either opts to be covered by one of the plans offered, and then either selects a plan or elects to waive insurance coverage. The Board urges that it is illogical to construe the relevant contractual language as supportive of the Union's position that an employee would first select a plan and then elect to waive coverage. The Board argues that the selection to which Article VII, Section D refers is the selection of the health insurance plan by which the employee will be covered, while the term "eligible" refers to the categories of coverage (e.g. single, parent/child, couple and family). The reference in Article VII, Section D to plans "offered by the SEHBP" is outdated, since the Board moved to the SHIF as of January 1, 2018; the language remains because the parties are in negotiations for a successor contract[2]. The Board maintains that the Association has misrepresented the plans which are offered by labeling them all as PPOs in order to advance their proposed reading of the relevant portions of the CNA. Additionally, the Board argues in its brief that Exhibit U-4, in evidence, has been altered and is different from the original which is on file in the Administration's Business Office. The Board maintains that since the CNA is silent concerning how the waiver is to be

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[2] The Board cited information in its post-hearing brief concerning negotiations history, however there was no documentary evidence or testimony offered into the record concerning negotiation history, including whether there was a demand to negotiate over the waiver issue.

calculated, the Board had the right to determine how to calculate the amount of the waiver.

FINDINGS OF FACT

The language in Article VII, Section D appeared for the first time in the 2014-2017 CNA. I infer that prior to this contract, the Springfield District employees were covered by health insurance from a private carrier. Pursuant to the 2014-2017 contract, District employees were covered by the New Jersey School Employee Health Benefit Plan (SEHBP"). Upon the expiration of the 2014-2017 contract, the Board continued to insure employees under the SEHBP. Those employees declining coverage were provided waiver payments; however, the SEHBP limited the dollar value of the waiver payment to 25% of the premium savings or a maximum of $5,000, whichever is less. Because 25% of the actual premium savings always exceeded this waiver cap, there was no problem with regard to calculating the amount of waiver payments for which employees were eligible under Article VII, Section E.

In negotiations for a successor agreement to the 2014-2017 contract, the Board proposed to switch health benefit insurance carriers to the School Health Insurance Fund ("SHIF"), asserting that the premiums under that plan were less expensive. Under the SHIF plans, employees could choose between two Direct 10 PPOs, two Direct 15 PPOs or an HMO. The plans were structured similar to the SEHBP's plans.

The parties agreed to change carriers to the SHIF and that change was implemented effective January 1, 2018. A comparison of the 2017 SEHBP premium costs by category (i.e. single, parent/child, couple, and family) versus the SHIF's premium coverage for 32 of the Township's employees was presented at hearing. The 2017 SHIF premium coverage was $54,137 or 10.36% less overall, than the SEHBP premium costs. (J-6)

Effective January 1, 2018, the District's employees could choose from SHIF's PPO plans - - Direct 10 and Direct 15 -- and an HMO plan. The rates for both PPO 10 plans are the same and the rates for the two PPO 15 plans are the same; the PPO 15 carries a lower premium and was used by the Board to calculate the amount of the waiver payments. The SHIF monthly premium rates for 2018 were as follows: (U-3)

HEALTH SHIF (1/1/18-12/31/18)		**PRESCRIPTION RX Alliance (1/1/18-12/31/18)**	
PPO (NJ Direct & Aetna Freedom 10 Match)			
Single	783.00	Single	212.40
Parent/ch(n)	1,456.00	Parent/ch(n)	395.07
Couple	1,565.00	Couple	424.79
Family	2,239.00	Family	607.47
PPO (NJ Direct & Aetna Freedom 15 Match)			
Single	745.00		
Parent/ch(n)	1,386.00		
Couple	1,490.00		
Family	2,131.00		
HMO (Aetna HMO Match)			

Single	718.00
Parent/ch(n)	1,335.00
Couple	1,435.00
Family	2,053.00

Board Resolution - Medical Waivers

Sometime in the Spring in 2018, a resolution was passed approving the payment of medical coverage waivers for the 2017-18 school year and pursuant to Article VII, Section E of the agreement. The resolution, in part, reads as follows: (J-4)

> WHEREAS the State of New Jersey, Department of Treasury, Division of Pensions and Benefits, Form HA-0109-0510p provides that employees in the School Employees State Health Benefits Program may elect to waive medical and prescription benefits under the provisions that the "payment may not be more than 25% of the amount saved by the employer because of the waiver or $5,000, whichever is less"; . . .
>
> WHEREAS the employees of the Springfield Township Board of Education were enrolled for six months under the State Health Benefits Program and six months under the School's Health Insurance Fund program; . . .

The resolution authorized the issuance of $52,545.96 in waiver payments to ten employees - - some of whom were enrolled in the SEHBP for six months and enrolled in the SHIF plan for six months. Payments were to be made in the May 30, 2018 pay period. (J-4)[3] Union President Sandy Seculor stated that all of the waiver payments were determined by calculating 35% of the Direct 15 coverage. The Association calculated the difference between the amount of waiver payments actually paid to unit

[3] The SHIF 2018 premium rates applied towards waiver payments beginning January 1, 2018.

employees under the Direct 15 plan and 35% of the Direct 10 plan premiums to which the Association claims it is entitled. The Association prepared the following chart showing the comparison for the six-month period commencing January 1, 2018 to June 30, 2018: (U-3)

PPO (NJ Direct or AETNA (10)					PPO (NJ Direct or AETNA PPO 10			
Coverage	Monthly Rate	# Months	Total Cost		Coverage	Monthly Rate	# Months	Total Cost
Family	2,239.00	6	13,434.00		Couple	1,565.00	6	9,390.00
RX	607.47	6	3,644.82		RX	424.79	6	2,548.74
			17,078.82					**11,938.74**
		%					**%**	
		Premium	0.35				**Premium**	**0.35**
		Waiver	**5,977.59**				**Waiver**	**4,178.56**
PPO (NJ Direct or AETNA (15)					**PPO (NJ Direct or AETNA (15)**			
Coverage	Monthly Rate	# Months	Total Cost		Coverage	Monthly Rate	# Months	Total Cost
Family	2,131.00	6	12,786.00		Couple	1,490.00	6	8,940.00
RX	607.47	6	3,644.82		RX	424.79	6	2,548.74
			16,430.82					**11,488.74**
		%					**%**	
		Premium	0.35				**Premium**	0.35
		Waiver	**5,750.79**				**Waiver**	**4,021.06**
		PPO 10	**5,977.59**				**PPO 10**	**4,178.56**
		PPO 15	**5,750.79**				**PPO 15**	**4,021.06**
		Difference	**226.80**				**Difference**	**157.50**

In the chart above, PPO 15 plan premiums are marginally less than the PPO 10 premiums. RX coverage is offered as a stand-alone plan for the Board's employees.

Grievance

STEA Grievance Chair Ashley Traino and Co-Chair Andrea Batchler outlined the STEA's grievance 2017-18 1 regarding insurance waiver, level 2 by letter to School Superintendent Craig Vaughn on May 16, 2018 (J-2). The Association asserts that it should have been contractually entitled to select the coverage upon which the waiver payment would be based. The Employer responds that the contractual language regarding waiver payments is *silent* in regard to the employee's right to choose a plan for the purpose of calculating the in-lieu payment. By letter of May 17, 2018 (J-2), Superintendent Vaughn replied to the Association's grievance in part, as follows:

> I am in receipt of the referenced grievance submitted to my attention via hard copy letter dated May 16, 2018.
>
> The basis for this grievance focused on the in lieu payment for employees waiving their eligibility to receive medical coverage in Article VII, Section E of the current collective bargaining agreement. The grievance specifically posits that the "waiver should be calculated according to whichever plan they [STEA membership] choose" and further states that STEA members should have the opportunity to "choose a plan and then calculate the waiver amount accordingly. " . . . I would draw your attention to [Article VII, Section E] the contractual language referenced above which is clearly silent in regards to an employee's right to choose a plan for the purpose of calculating the in lieu payment. As such, in lieu payments are based on plan eligibility, not choice. The Board of Education's decision to approve in lieu payments as calculated according to Aetna ACPOS/AHA PPO ($15) is permissible within the agreed upon contractual language. Therefore, please be advised that this grievance is denied.

On May 25, 2018, Traino and Batchler informed Vaughn that the Association was appealing the Board's decision at level 2 and moving the grievance to level 3 (J-5). On

June 22, 2018, Traino notified the Board that since they had not heard back from the Board, and pursuant to Article XIII 5.b, the Association was submitting the matter to arbitration. (J-3)

ANALYSIS

This grievance arose from a dispute between the parties about how the waive payments were calculated. The CNA itself is silent with regard to the basis to be used to calculate the payment. Although the parties' negotiations for a successor agreement are continuing, the parties did agree that effective January 1, 2018, the School Health Insurance Fund ("SHIF") would replace the New Jersey School Employee Health Benefit Plan ("SEHBP") as the insurance provider. Despite the change in carriers, the CNA contains references to the SEHBP in Article VII, Sections D and E, which pertain to employee selection of plans, and medical coverage waivers. These outdated references are evidently the result of the parties' failure to conclude negotiations.

The Association maintains that the clear language of Article VII, Sections D and E, when read together, allow an employee to select a plan for which they are eligible, then execute a waiver and have the waiver payment calculation based on the cost of the premium of the plan which was selected, then waived. The Association further argues that the Board's unilateral decision to base the amount of the waiver payment on the cost of the PPO 15 premium rate, which is lower than the PPO 10 rate, disturbed the status quo and diminished the rights of the membership during negotiations.

The Board urges that the clear language of Article VII, Sections D and E, does not support a reading which would allow an employee to select a plan, and then elect to waive coverage. It points to the language in Section D which pertains to selection of a plan, as opposed to the term "eligible" in Section E; the latter term, the Board argues, read in context, refers to the level of coverage for which the member is eligible -- in other words, single, parent/ch(n), couple or family. The Board also maintains that in the absence of contractual language which mandates how the waiver calculation is to be performed, it could unilaterally determine how to make the calculation.

The goal of contract interpretation is to effectuate the intent of the parties when they bargained and reduced the terms of their agreement to writing. If an agreement between the parties is unambiguous, an arbitrator is limited to the four corners of the agreement. See Elkouri & Elkouri, How Arbitration Works, at 434 (6th ed.). In a grievance arbitration which arises from a dispute about contract interpretation, the grievant bears the burden of demonstrating, by a preponderance of the evidence, that its interpretation of the contractual language is more consistent with the parties' intent than the interpretation advanced by the employer. The issue as framed is really in two parts: (1) should the waiver payments be based upon the PPO 15 premium or (2) the premium of the plan the employee selects and then waives.

The parties disagree about the meaning of the language in Article VII, Sections D and E. There is no negotiations history in the record before me, nor is there any

evidence in the record of a past practice as to how the waiver payments had been calculated in previous years prior to coverage by the SEHBP. In ascertaining the meaning of what the parties intended, the plain language of the relevant sections of the CNA, read as a whole, is the best indicator of intent.

Article VII, Sections D and E refer to two separate but related functions; the selection of a health insurance plan by a employee, and the ability of an employee who elects to waive coverage for a payment in lieu of coverage as a result of that election. The pertinent language of Section D provides that "[e]mployees shall be permitted to select any plan offered by SEHBP, including the base plan of Direct 10". As previously noted, the reference in the CNA to the SEHBP as the carrier, as well as the reference to Direct 10 as the base plan, is the result of the parties still ongoing negotiations for a successor agreement which will presumably correct the cited language. Regardless of the outdated language, the clear import of Section D is the memorialization of the right of members to select any of the plans offered by the carrier, as opposed to having a plan imposed upon them by the Board. There is nothing in record before me which indicates that the Association has objected to the number of available plans offered by the SHIF from which their members may select coverage.

Section E defines the parameters of waiver reimbursement for employees who do not elect to obtain insurance coverage from the Board. The relevant language provides that employees who waive coverage "[may] elect to accept a payment equal to

35% of the PPO premium for which they are eligible in lieu of medical coverage...". The same percentage applies to the payment for waiver of prescription coverage, which is a separate element of the Board's medical insurance coverage. Additionally, the final sentence of Section E mandates that an employee who waives the Board's insurance "[must] have alternate coverage". This language states that no employee can be without alternate insurance coverage and receive a waiver payment.

Reading Sections D and E together, and relying on the common meaning of words, I am unpersuaded by the Association's argument that an employee should first select a plan, and then waive it, with the waiver calculation based on the cost of the plan selected. Employees first make a binary choice -- that they need insurance, or they do not. I infer that those employees who elect to waive coverage do so because they meet the requirement of having alternate coverage. Employees who elect coverage then select a plan and decide the appropriate level of coverage for which they are eligible. Read in context, the term "eligible" means a level of coverage which accurately relates to their personal situation. For example, an employee who elects parent/child coverage may need to provide whatever documentation was necessary to establish that familial relationship meets the legal definition of that status. The Association's proposed interpretation of Sections D and E would lead to the illogical result that employees could pick the most expensive plan premium available, then waive coverage, and be reimbursed at the highest rate possible for coverage that they did not need. The

Association has not met its burden of demonstrating that its interpretation of Article VII, Sections D and E is consistent with the intent of the parties. The portion of the grievance which advances the position that waiver payments should be based upon the premium of a plan selected by the employee prior to waiver of coverage is denied.

The second question raised by the grievance, whether the waiver payments should be based upon the PPO 15 premiums, raises the issue of whether the Board was justified in unilaterally deciding how to calculate waiver payments in the absence of contract language which describes the manner in which the calculations are to be made, and while the parties are in negotiations for a successor agreement. Although the Board urges that it had the right to make a unilateral decision about how to calculate the waiver payment, I am unpersuaded that this is the case. The waiver provision of the contract is an economic term of the CNA, which provides an employee who elects not to purchase health insurance from the employer with a payment in lieu of medical or prescription drug coverage. Compensation is a term and condition of employment which the parties are required to negotiate. Unilateral action is the antithesis of collective negotiations. Despite the absence of any language in the CNA which defines how the waiver payment is to be calculated, the Board's unilateral action in selecting the PPO 15 premium as the basis for calculating the amount of the waiver payment was inappropriate. The Board cannot simply decide to base waiver payments on the less expensive PPO 15 premiums without negotiating with the Association. It should be

noted that when the Board participated in the SEHBP, State law allowed boards to unilaterally offer employees the lesser of 25% of the amount saved by the employer or $5,000 as a result of the employee's waiver of insurance coverage. However, the Board's determination to switch carriers to the SHIF eliminated that statutory provision, making incentives for non-enrollment a negotiable issue. See City of Orange Township, P.E.R.C. 2019-37.

The Union has met its burden of proof that the Board's unilateral selection of PPO 15 premiums as the basis upon which to calculate waiver payments violates its obligation to negotiate terms and conditions of employment with the Association. However, I cannot add to the provisions of the CNA, which is silent as to how the waiver payments are to be calculated. The parties will have to continue their negotiations to resolve the issue.

I have not discussed the issues raised by the parties with respect to the waiver form itself (Exhibit U-4) because I have given it no weight in reaching the conclusions articulated above.

CONCLUSION

I conclude that the Association members are not contractually entitled to select their plan on which the waiver payment would be based and conversely, the Board is not entitled to unilaterally select the plan for which the waiver payments would be

based. The grievance is denied in part and sustained in part. Therefore, the grievance is denied to the extent that it maintains that the waiver payments should be calculated on the basis of a plan selected by an employee who then waives coverage and sustained with respect to the Board's unilateral action in basing the calculation of waiver payment amounts on the PPO 15 premiums.

AWARD

The Board and the Association are directed to negotiate concerning the appropriate method to calculate the amount of the waiver payment authorized by the present Article VII, Section E. That portion of the Association's grievance which asserts that the waiver payment should be calculated based upon a member's selection of a plan prior to waiving coverage is dismissed. I retain jurisdiction.

Susan W Osborn

Susan W. Osborn
Arbitrator

Dated: April 3, 2019
Trenton, New Jersey

State of New Jersey)
County of Mercer)

On this 3rd day of April, 2019, before me personally appeared Susan Wood Osborn known to me to be the individual who executed the foregoing instrument and she acknowledged to me that she executed same.

Pamela J. Sutton Browning

PAMELA J SUTTON-BROWNING
Commission # 50074695
Notary Public, State of New Jersey
My Commission Expires
January 11, 2023