
IN THE MATTER OF ARBITRATION CONCERNING
INSURANCE COSTS (CLASS ACTION)
BETWEEN
WALT DISNEY WORLD COMPANY
LAKE BUENA VISTA, FLORIDA
AND
CRAFT MAINTENANCE COUNCIL BUILDING AND
CONSTRUCTION TRADES DEPARTMENT AFL – CIO

ARBITRATOR: Donald P. Crane RE: GR 0023485 - 002

HEARING: April 30, 2009, Continued July 1, 2009
Sun Trust Bank Building
Lake Buena Vista, Florida

Grievance filed: October 27, 2008

Post hearing briefs received by Arbitrator:
on or before November 25, 2009

APPEARANCES:

FOR THE UNION

Richard Siwica, Atty.
David Futrelle, Paralegal
Debra Greco, Bus. Agt., IUPAT
Richard, Sikorski, Bus. Agt., IBEW Local 606
Wes Davis, Bus. Agt., SELDC/Laborers
Larry Jordan, Bus. Agt., IUOE Local 673
John "Spike" Coskey, Bus. Agt., Teamsters
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Keith Brault, B.A.O. Local 1, FL
Roy Poteet, IBEW, Local 606
Harry Brown, IBEW, Local 606
Brad Grabill, UA, Local 803
Scott From, UA, Local 803
Laurel Crom, B.C.T.D.
George Cressman, B.C.T.D.
Joe Mills, Dir., B.C.T.D.

FOR THE COMPANY

Tom Garwood, Atty.
Heather Hassell, Paralegal
Stephen Eisenhardt, V. P., L. R. Immig.
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Bill Pace, L. R. Mgr.
Christie Sutherland, L. R. Mgr.
Phil Bernard, V. P., L. R.
Hank Holden, L. R. Mgr.
J. C. Goldman, Benefits Anal.
Robin King, L. R. Mgr.
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BACKGROUND.

The Craft Maintenance Council represents eight crafts with 4,000 employees that maintain the Company's parks and hotels. The parties have had a bargaining relationship since 1971. Negotiations for the current agreement commenced on September 8, 2008. The Union presented its proposals including a change to Article 30, Section 2: "Maintain existing co-pays and lock in existing plan coverage". On September 22, 2008, there was a preliminary discussion of Union economic proposals including Article 30, Section 2 (b). The Company responded with the following language:

Notwithstanding (a) above, the following employee contribution rates shall be maintained for the duration of this agreement... Effective January 1, 2009, annual employee contribution rates for the HMO shall not be increased in weekly dollar amounts greater than the following: ...

After further sessions on September 24, the Company made a counter proposal for Article 30 which was accepted by the Union.

Union members ratified the new Agreement on October 3, 2008. It became effective September 28, 2008 for a period of four years.

Shortly after ratification, the Company announced increased employee weekly contribution rates depending on the type of coverage (employee only, employee and family, etc.).

The Union felt there should be no increases in employee contribution rate, so it filed a class action grievance on October 27, 2008. It was appealed to arbitration from Step Two of the Grievance Procedure. A hearing was held at the Sun Trust Bank Building, Lake Buena Vista, Florida on April 30, 2009 and continued on July 1, 2009.

Both parties had full and equal opportunity to examine sworn witnesses and present written evidence. They submitted timely post hearing briefs which were received by the Arbitrator on or before November 25, 2009.

The parties submitted the following statements of the issue:

Union: Whether the Employer violated (and violates) the collective bargaining agreement by implementing increases in weekly group insurance employees contribution rates? If so, what shall the remedy be?

Company: Whether the Company violated Article 30 of the C B A by implementing increases in weekly group insurance employee contribution rates to eligible employees pursuant to Article 30, Section 2 (a), where the increase does not exceed the limits set forth in Article 30, Section 2 (b)?

Applicable language from the Current Agreement is excerpted below.

ARTICLE 30 – RETIREMENT AND WELFARE

SECTION 2. HEALTH AND WELFARE

- (a) During the term of this Agreement, the Company will provide Group Insurance coverage and Signature Plan coverage to all eligible employees, on the same basis as provided to non-bargaining unit employees (including salaried employees) at the Company. It is understood that all employees in this unit who participate in any Company sponsored plan(s) do so on the same basis as non-bargaining unit employees (including salaried employees) generally and that, therefore, future changes in such plans which are applicable to non-bargaining unit employees (including salaried employees) generally shall apply equally and automatically to employees covered under this Agreement. By way of example, but not limitation, changes to such plan(s) may include termination in accordance with

the plan terms, substitution of, or merger with, another plan or part thereof, improvements and modifications in the plan(s), creation of new plan(s), adjustment in contributions, etc. ...; all subject to the condition that where the changes apply equally to non-bargaining unit employees (including salaried employees) generally, the Company will not be obligated to bargain with the Union. Enticement to pension and group insurance benefits shall be determined exclusively by the plan terms and laws governing those benefits and not by arbitration under this Agreement.

- (b) Notwithstanding (a) above, the following employee contribution rates shall be maintained for the duration of this agreement:

Effective January 1, 2009 annual employee contribution rates for the HMO shall not be increased in weekly dollar amounts greater than the following:

<u>Employee Only</u>	<u>Employee + Spouse</u>	<u>Employee + Children</u>	<u>Employee + Family</u>
\$3.00 per week	\$12.00 per week	\$5.00 per week	\$10.00 per week

...

ARTICLE 35-DURATION OF THE AGREEMENT

...

SECTION 2. The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining and that the understandings and agreements arrived at by the parties, after the exercise of that right and opportunity, are set forth in this Agreement. Therefore, the Company and the Union, for the life of this Agreement, each voluntarily and unqualifiedly waives the right and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter referred to or covered in this Agreement, or with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subjects or matters may not have been within the knowledge of

contemplation of either or both of the parties at the time that they negotiated or signed this Agreement.

POSITION OF THE UNION.

Union Counsel insisted that the Company in negotiations promised that there would be no increase of employee contributions for health insurance. The fact that the Company implemented increases shortly after ratification of the current Agreement was clearly a violation of the promise and the Contract, he asserted. Counsel elaborated that traditionally the parties have used the terms “co-pay”, “premiums” and “employee contributions” interchangeably. According to Counsel, the Company promised not to make any “changes to existing plans”, which by the negotiated contract language included any “adjustment in contributions”. In fact, he stated, the Company failed to prove that the increases were “generally applied” which was a threshold prerequisite to any increases in employee contributions. Counsel cited language in the Recap Sheets which stated: “No increase in co-pays in ‘09” and “No changes in existing plans” as proof that the parties had agreed there would be no increases in employee contributions. He concluded that the Recap Sheet was the basis for the Contract’s ratification and employees were led to believe there would be no increases. Furthermore, Counsel referred to the 1993 arbitration in which the Company used the Recap Sheet to prove what was agreed in collective bargaining (FMCS Case No. 92 - 00710). Because the language of Article 30, Section 2 (b) was ambiguous, the language contained in the Recap Sheet, i.e., “no changes in plan” made the parties’ intent clear, that there would be no adjustment in contributions, Counsel claimed. He emphasized that the agreement to make “no changes to existing plans” meant there would be no increases in employee contributions. In addition, Counsel maintained that, at worst, Article 30, Section 2 (b) permitted only increases in rates for the HMO plan. He argued that the Agreement specifically recognized the Company’s obligation to bargain with the Union any changes to employee health

insurance contributions. He urged the Arbitrator to grant the grievance, make the affected employees whole, with interest and direct the Company to cease and desist from further violations.

POSITION OF THE COMPANY.

Counsel for the Company argued that the Union failed to present any evidence to satisfy its burden demonstrating that the increase in contribution rates from 2008 to 2009 violated the Agreement. In fact, he emphasized, the plain language of Article 30 (Retirement and Welfare) was clear and permitted the Company to increase 2009 contribution rates. Counsel pointed out that neither the parol evidence rule nor the mutual mistake doctrine was applicable to this case. He explained that in the 2004 negotiations and the 2008 negotiations, the Company's stated goal was to equalize health insurance contribution rates for bargaining unit employees and non-bargaining unit employees (both referred to as "Cast Members"). Counsel emphatically stated that "copays" and "contributions rates" are two distinct concepts and these phrases are never used interchangeably when discussing benefits with employees. Furthermore, he stated, the Company spokesperson in negotiations informed the Union that "copays" would not increase in 2009 and contribution rate increases was not mentioned. Consequently, Counsel concluded, the Union failed to present any competent, material or credible evidence to support its grievance. Specifically, he insisted, there was no evidence that the contract language in Article 30, Section 2 (a) and 2 (b) was unclear or ambiguous. Counsel asserted that the Union's argument that the Company's comment during bargaining (September 22, 2008) that there would be no changes to "plan design" and no increase in "copays" affirmed that there would be no increase in "contribution rates" was absurd. He indicated that these terms had been used at least since 2004 and the Union had never indicated that there was any confusion until this arbitration. Counsel denied that the Main Table Recap Sheet was evidence of any misunderstandings during negotiations.

ARBITRATOR'S OPINION.

The governing language for this grievance is contained in Article 30, Section 2 (Health and Welfare). The wording of Section 2 (a) is clear and explicit that bargaining unit employees who participate in Company sponsored plans (Medical) do so on the same basis as non-bargaining unit employees. This includes changes in the plans and "adjustment in contributions" is specifically mentioned. The "adjustments" are not only the same as for non-bargaining employees (including salaried) employees, but they are automatic and the Company "will not be obligated to bargain with the Union" on this matter. The very clear intent of the parties is that the Company is authorized to increase employee contribution rates as it did in this case.

The only exception is the HMO. In Section 2 (b) the parties delineated limits or caps to the employee contribution rates depending on coverage (employee only, employee and spouse, employee and children, or employee and family). The other plans' employee contribution rates were tied to the rates of non-unit employees in accordance with the provisions of Section 2 (a).

It is the parties' role to fashion contract language. When the language is clear and unambiguous as it is here, I, as arbitrator am not authorized to alter or modify what the parties obviously intended.

The 2004 Agreement which is part of the record of this arbitration clearly demonstrates the parties' desire to equalize contribution rates between bargaining unit and non-bargaining unit employees. Article 30, Section 2 of the 2004 Agreement, established rates starting in 2006 based on salaried contribution rates (2006 – not to exceed 90%, 2007 – not to exceed 95%, and 2008 – not to exceed 100% = parity). Thus, it is apparent that the parties were seeking parity with salaried employees with this provision. They achieved this equalization for all plans except HMO.

The Union would have me conclude that the Section (b) language means that HMO contribution rates only would be increased (in 2009). But this is not what Section 2 (a) provides. The Contract language is unequivocal that the Company may change these rates along with the change for salaried and other non-bargaining unit employees automatically. My reading of Section 2 (b) clearly indicates that caps were placed on the employee contribution rates (depending on coverage) and nothing more. In my view, it does not preclude the raising of rates on the other plans.

I acknowledge George Cressman's testimony and I have no reason to question its veracity. He was the Union's Assistant Director during (and before) the 2008 negotiations. He felt that Company Spokesperson Steve Eisenhardt had promised there would be no changes in the plans and no increase in premiums. He attested that 20 – 30 members had asked him about increases in premiums and he told them there would not be any increase. Mr. Eisenhardt in his testimony denied that he promised that there would be no increase in contribution rates. He did explain that there would be no changes to "plan design" and no increases in "copays". Furthermore, he stated that the Union had not proposed the maintaining of contribution rates at their existing levels.

Mr. Eisenhardt's testimony is corroborated by documentary evidence in the record. The exhibit that included the Company's proposal on Article 30 shows all references to employee contribution rates (except for HMO) deleted. The reason for these deletions, Mr. Eisenhardt explained, was that contribution rates had been "equalized" (except HMO). The Benefits Summary Chart for the various medical plans adds further credence to Mr. Eisenhardt's testimony. The dollar amounts of the copays in the 2009 plans are exactly the same as they were in the 2008 plans. This corroborates Mr. Eisenhardt's testimony that he agreed to "no increase in copays".

The Union also argued that "copay" and "employee contributions" are terms that traditionally have been used interchangeably. Hence, when Mr. Eisenhardt promised

no increase in copay it really meant no employee contribution increase. The evidence simply does not support this argument.

Benefits Analyst J. C. Goldman testified credibly that “copays” and “contribution rates” are distinct concepts and are never used interchangeably. He defined copay as any payment made by the insured at the point of service, whereas contribution rates are the premiums that are deducted from an employee’s paycheck. Mr. Eisenhardt also stated that the terms are not used interchangeably and that contribution rates were not discussed in the 2008 negotiations. Obviously, they were discussed in 2004 bargaining as evidenced by the inclusion of the term in several places of Article 30 of the 2004 Agreement. Consequently, I cannot conclude that “copay” means the same as “employee contribution rate”.

Union Counsel also asserts that increases were not shown to have been applied equally to bargaining unit and salaried employees. He claimed that the Company failed to prove that changes (contribution rate increases) were “generally” applied. I can find no evidence, testimonial or documentary, that supports this contention. Since the burden of proof is shouldered by the Union in this case, I am unable to conclude that there is a contract violation on this aspect of the issue.

The Union also claims that the Main Table Recap Sheet (dated September 27, 2008) demonstrates the Company’s violation because it states: “no increase to co-pays in ‘09”. It supports this contention by referring the Don B. Hays arbitration award in a case involving the same parties as in the instant case (FMCS Case No. 92 – 00710). Arbitrator Hays concluded that the Recap Sheet represented the “agreement” between the parties. But Arbitrator Hays noted in his award: “It is undisputed (emphasis added) that the only document which reflects the parties’ oral agreement ... is represented by the jointly drafted “Ratification Summary Sheet”.... That case is significantly different from this one. First, the 2008 Recap Sheet mentions “co-pays”, but not “contribution rates”. I have already discussed this aspect of the case, so I shall

not repeat my reasoning here. Then at the bottom of the Recap Sheet is the following disclaimer:

The above is a summary of some of the items agreed to during the 2008 Craft Maintenance Council negotiations. It is not intended to be all encompassing nor does it reflect all of the detail around each agreement. The Company and the Union have agreed that in the event of a dispute, the actual agreement itself will control.

Since there is disagreement regarding the terms “copays” and “contribution rates” regarding interchangeability, the actual agreement (according to the statement above) controls. As I stated earlier, the language in the Agreement is clear and unambiguous.

Finally, the Union asserts that the Company is obliged by the Recognition Clause to bargain over the increases in employee contribution rates. However, Article 30 Section 2 (a) explicitly states that the “Company will not be obliged to bargain with the Union” over “adjustment in contributions” (as long as changes apply equally to non-bargaining unit employees generally) among other items delineated in this section. Clearly and explicitly the Company is exempt from having to bargain over increases in contribution rates for health (medical) plans.

AWARD.

The Company did not violate the collective bargaining agreement by implementing increase in weekly group insurance contribution rates. The grievance is denied.

A handwritten signature in cursive script that reads "Donald P. Crane". The signature is written in black ink and is positioned above a solid horizontal line.

Donald P. Crane
December 7, 2009