

STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

IN THE MATTER OF
GRISWOLD BOARD OF EDUCATION

DECISION NO. 3786

-and-

AUGUST 24, 2000

GRISWOLD EDUCATION ASSOCIATION

Case No. TPP-19,547

A P P E A R A N C E S:

Attorney Peter Janus
Attorney Richard D. O'Connor
For the Board of Education

Attorney Ronald Cordilico
For the Griswold Education Association

DECISION AND DISMISSAL OF COMPLAINT

On November 13, 1997, the Griswold Education Association (the GEA or the Association), filed a complaint with the Connecticut State Board of Labor Relations (the Labor Board) alleging that the Griswold Board of Education (the Board of Education or the Board) had violated the Teacher Negotiation Act (the Act) by failing to implement a prescription drug rider as part of a new medical insurance plan.

After the requisite preliminary steps had been taken, the matter came before the Labor Board for a hearing on January 22, June 28, September 24 and December 8, 1999, at which both parties appeared, were represented by counsel and were given full opportunity to adduce evidence, to examine and cross-examine witnesses and to make argument. Both parties filed post-hearing briefs on March 20, 2000.

Based upon the entire record before us, we make the following findings of fact and conclusions of law, and we dismiss the complaint.

FINDINGS OF FACT

1. The Board of Education is an employer within the meaning of the Act.
2. The GEA is an employee organization within the meaning of the Act and at all times material was the exclusive collective bargaining representative of a unit composed of certified professional employees of the Board of Education other than temporary substitutes and those in an administrative or supervisory capacity.
3. The Board of Education and the GEA were parties to a collective bargaining agreement effective September 1, 1994 until August 31, 1997 (Ex. 2), which provided in Article XXII, Sec. d:

The Board may, in place of Blue Cross and Blue Shield of Connecticut, provide a different policy with identical coverage and equivalent administration. This requires prior notice to and approval (such approval not to be unreasonably withheld) from the Association.

The successor agreement (Ex. 24), in effect from September 1, 1997 to August 31, 2000, contains an identical provision in Article XXII, Sec. d.

4. The existing medical insurance plan for GEA members was of the indemnity type which was being phased out by Anthem Blue Cross and Blue Shield (BC-BS). In 1996, BC-BS was encouraging insureds to switch to a preferred provider organization type of plan entitled the Century Preferred Plan.
5. The existing medical insurance plan provided prescription drug coverage through the major medical plan insured by Phoenix Mutual. Under this plan, employees paid for prescriptions and then submitted receipts which would be paid at an 80% rate after satisfaction of a deductible amount, up to a maximum annual limit.
6. The BC-BS medical insurance plan covering the approximately 40 employees of the Town of Griswold had a prescription drug rider (PDR). Under this rider, Town employees made a \$2.00 co-pay for generic drugs, a \$7.00 co-pay for brand names and a \$0.00 co-pay for mail orders. The balance of the prescription cost was paid by BC-BS.
7. On several occasions, the GEA had attempted to obtain a PDR in collective bargaining negotiations, but had been unsuccessful in doing so.
8. In 1996, the Board of Education decided to consider exercising its right to change the medical insurance plan in order to reduce costs for both the Board and its employees who were paying 10% of the cost. (See Ex. 2, Art. XXII). The Superintendent of Schools, Dr. Edward Malvey (Malvey) formed a Task Force consisting of representatives from the five unions representing Board employees (teachers, administrators, custodians, secretaries and instructional

assistants). Representing management on the Task Force were Malvey, Cynthia Hebert (Hebert), the Board's Confidential Financial Assistant, and Richard Wilburn (Wilburn), the Board's insurance broker.

9. The first meeting of the Task Force was held on September 26, 1996. The major topic discussed was the \$200,000 fund balance existing in the BC-BS plan which would be forfeited if another insurance carrier were selected. No insurance proposals were presented at this meeting.

10. The second meeting of the Task Force was held on October 22, 1996. A representative of BC-BS, Chris Shortell (Shortell), presented documents describing the Century Preferred Plan. (Ex. 3). A comparison of the existing plan provisions and Century Preferred provisions regarding prescription drugs appears at page 3 of this document:

Traditional Plan	Century Preferred
Not covered	\$2.00 Generic/\$7.00 Brand \$0.00 Mail Order Co-pays \$800.00 unlimited maximum per calendar year additional coverage subject to deductible and coinsurance.

Prescription drugs were described as "not covered" under the present plan because they were not covered under the BC-BS plan, but rather were part of the Phoenix Mutual Major Medical supplement.

11. Oxford Health Plan made a presentation to the Task Force on January 14, 1997 and Physicians Health Services did the same on January 28, 1997. Both presentations contained prescription drug coverage options similar to the BC-BS PDR.

12. No additional meetings of the Task Force were held until May 6, 1997. At this meeting, the Task Force reached a consensus to go forward with the BC-BS Century Preferred Plan.

13. The Association held a general membership meeting on May 23, 1997 at which Union President Philip Miner (Miner) told the members that having the PDR would be a "definite plus".

14. At Miner's request, informational meetings for employees were scheduled for May 26 and June 10, 1997 to report the Task Force's activities to them. Malvey's notice of these meetings (Ex. 6) stated, "The consensus of this group is that a new plan (Blue Cross/ Shield Century Preferred) may be a viable option for us to convert to if such a change is imminent."

15. The first informational meeting was held on May 26, 1997, and was attended by 30 or 40 employees out of a total group of about 300. A package describing the BC-BS Century Preferred Plan (Ex. 22) was distributed at this meeting. This was the same package that had been given to the Task Force at the October 22, 1996 meeting except for the relabelling of some of the sheets.

Included in this package was a detailed description of the PDR and a cursory description of the present drug benefit. (See Exs. 7, 8, 9, 10 and 11). A number of questions were raised about the PDR. Malvey and Wilburn stated at this meeting that the PDR would not be provided. However, the GEA members present at this meeting who testified at the hearing came away from this meeting thinking that the PDR would be provided. A large number of questions about the PDR were raised by a teacher, Jeanette Kildea (Kildea), in an angry, confrontational manner.

16. The second informational meeting was held on June 10, 1997, and this was even more poorly attended than the first meeting. Elizabeth Tobin (Tobin) substituted for Shortell as the BC-BS representative at the meeting. Kildea asked Tobin several questions about the PDR in such a confrontational manner that Wilburn had to intervene. He and Kildea had a heated argument about the PDR.

17. A meeting of the Task Force was held on June 11, 1997 at which it was agreed to select the BC-BS Century Preferred Plan. Miner informed Malvey that he would have to submit this to the membership of the GEA for a vote. None of the four other bargaining unit representatives submitted the decision to their memberships for ratification.

18. The GEA held a vote on the change in insurance plans on June 16, 1997, and the change was approved. All of the GEA witnesses who testified at the hearing thought that the plan they voted for included the PDR.

19. After having been informed that the GEA membership had approved the change, Malvey submitted the change to the Board of Education which approved it.

20. Changing to the Century Preferred Plan resulted in an annual cost savings of approximately \$400,000 shared by the Board of Education and the employees on a 90% - 10% basis. The additional annual premium cost at the time for the PDR would have been approximately \$250,000.

21. In August 1997, several GEA employees, thinking that they had the PDR, tried to process prescriptions under it. When the claims were denied, several employees contacted Hebert, who told them that the PDR was not part of the plan.

22. A staff meeting was held at the beginning of the school year on August 25, 1997. Several teachers asked Malvey about the PDR. He became angry and said that he had stated during the informational meetings that the PDR would not be provided. Malvey informed the employees by memorandum dated August 25, 1997 (Ex. 13) that a BC-BS representative would be available on August 26 to answer questions about the Century Preferred Plan. At the meeting on August 26, information was distributed explaining the plan provisions, including those regarding prescription drug coverage. (See Ex. 14).

23. On August 25, 1997, Miner sent a memorandum (Ex. 12) to GEA members stating that the informational materials distributed by the Board of Education clearly indicated that the PDR would be provided and that the vote to change plans had been made in reliance upon the PDR being part of the plan.

24. On October 3, 1997, Miner wrote to the Board of Education to set forth the GEA's position that its members had voted in favor of the change to the Century Preferred Plan in the belief that the PDR was included. (See Ex. 15).

25. The GEA filed the instant complaint on November 13, 1997.

26. No other union representing Board of Education employees filed a prohibited practice complaint alleging that the PDR was not provided as promised.

CONCLUSIONS OF LAW

1. A refusal to incorporate into a written agreement a provision that has not been agreed upon does not violate the Act.

2. Since there was no agreement on the PDR, there was no violation of the Act.

DISCUSSION

The complaint alleges, in essence, that the Board of Education violated its obligation to bargain in good faith by offering the PDR as part of the Century Preferred Plan and then refusing to implement the PDR after the employees and their collective bargaining representative had approved the change to the Century Preferred Plan in reliance on the fact that the PDR was part of the plan. The GEA argues that the totality of the circumstances supports its claim of bad faith bargaining. The Board of Education, on the other hand, views the issue more narrowly as being a claim of violation of § 10-153e(d) of the Act by a refusal to incorporate an agreed term into a written agreement upon request. It argues that since there was no agreement on the PDR, there was no violation of § 10-153e(d).

The problem here arose from a failure of the Task Force members to make clear what was being included in the Century Preferred Plan. It was entirely reasonable for the BC-BS representative to present documents to the Task Force at the October 22, 1996 meeting showing the full range of benefits that it could provide. However, by the time of the informational meetings in May and June of 1997, it was not reasonable to put before the employees virtually identical documents (Exs. 7-11) extensively describing the PDR. On the basis of the documents presented at the informational meetings, the employees reasonably, if erroneously, could have concluded that the Century Preferred Plan would include the PDR. (The documents do describe the type of prescription drug plan in effect at the time and in effect now, but a very careful reading of the document is required to find this description.)

The critical issue is what was said about the PDR at the informational meetings. We must keep in mind that the goal of the Task Force was to implement Sec.d of Art. XXII of the labor contract (Ex. 2) by selecting "a different policy with identical coverage and equivalent administration". The intent was not to increase or to decrease existing benefits.

Since the PDR was so prominently described in the distributed material, the GEA asserts that it was incumbent upon the Board of Education to state clearly that the PDR was not being offered. Although none of the GEA's witness other than Kildea said that any of the presenters at these meetings said that the PDR was being offered, these witness all said that they were not told that it was not being offered. The witnesses for the Board of Education testified that it was made clear at the informational meetings that the PDR was not being offered.

One method of resolving credibility disputes is to examine the self interest of the witnesses. It was obviously in the interest of the GEA witnesses to convince us that the Board of Education did offer the PDR or, at the least, did not effectively communicate at the informational meetings that the PDR was not part of the Century Preferred Plan. In light of the description of the PDR that was put before them in the written materials, we do not doubt that they thought they would be receiving the PDR if they voted in favor of the change to the Century Preferred Plan. From the standpoint of the Board of Education witnesses (Malvey and Hebert), it was obviously in their interest to establish that they did not inadvertently offer an expensive (\$250,000 per year) benefit. Although it would have been in Wilburn's financial interest to have the PDR in place since it would have generated a commission of about \$8000 per year, it was clearly not in his interest to support the offering of a benefit which his client had not authorized.

We give substantial weight to the testimony of the witnesses who acted contrary to their self interest. Linda Merchant, a member of the Instructional Assistant bargaining unit and a member of the Task Force, testified that both Malvey and Wilburn made clear at the May 27 meeting that the PDR was not being offered. William Watson, a member of the custodian bargaining unit and a member of the Task Force, testified that it was made clear at the informational meeting he attended that the PDR "was not for us". It was not in the self interest of either of these employees to testify in this manner since they too would have been covered by the PDR had it been offered.

Kildea's conduct at both informational meetings further persuades us that it was made clear that the PDR was not being offered. At the first meeting she asked a number of questions about the PDR. The presenters' responses caused her to become angry and confrontational. The same thing occurred at the June 10 meeting although she was cut off sooner by the presenters because the subject had been covered with her at the first meeting. Kildea's reaction leads us to conclude that the presenters' responses to Kildea's questions about the PDR indicated that it was not being offered as part of the Century Preferred Plan.

We conclude, after weighing the testimony of all witnesses, that it was made clear by the Board of Education's presenters at both informational meetings that the PDR was not part of the package. It is true that only a small number of employees attended the informational meetings. Presumably not many of those who did not attend either meeting picked up the package describing the Century Preferred Plan. The source of information for these employees was the GEA and their peers. Because of our finding that it was stated at the two informational meetings that the PDR was not being offered, we cannot blame the Board of Education for a lack of

knowledge of what was being offered among those employees who did not attend the informational meetings.¹

This dispute was caused in large part by the Board of Education's failure to document a significant financial matter it was negotiating with the unions representing its employees. The BC-BS materials present and describe a panoply of options. However, there is nothing in writing showing which options were selected and when they were selected. Failure to document the transaction put the Board of Education at great risk of having inadvertently incurred a major financial obligation.

In conclusion, we believe that the Board of Education made it adequately clear at the informational meetings that the PDR was not part of the Century Preferred Plan being offered. The Board of Education did not in bad faith offer a benefit in negotiations in an effort to induce the Union's approval of the new insurance plan and then refuse to incorporate it into the collective bargaining agreement. See *City of Norwalk*, Decision No. 1683 (1978). Since there was no agreement on the PDR, the Board of Education's refusal to incorporate it in a written agreement did not violate the Act. We will therefore dismiss the complaint.

ORDER

By virtue of and pursuant to the power vested in the Connecticut State Board of Labor Relations by the Teacher Negotiation Act, it is hereby,

ORDERED, that the complaint filed herein be, and the same hereby is, **DISMISSED**.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

Wendella A. Battey
Wendella A. Battey
Chairman

David C. Anderson
David C. Anderson
Alternate Board Member

Thomas C. Watson
Thomas C. Watson
Alternate Board Member

¹ We make a final comment on the Board of Education's criticism of Miner's decision to submit the change in insurance plan to his members for ratification. Unless otherwise agreed, we see the question of ratification as something to be governed by a union's constitution and bylaws. Rarely is this subject a proper concern of management. Malvey submitted the change in insurance plan to the Board of Education for its approval. We see no difference in Miner's submission of the plan to his membership for its approval.

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed postage prepaid this 24th day of August, 2000 to the following:

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