

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
)	DOCKET NO. 97-36
VERMONT STATE COLLEGES)	
FACULTY FEDERATION)	

MEMORANDUM AND ORDER

At issue is whether to grant motions filed by the Vermont State Colleges Faculty Federation ("Federation") to compel discovery and to conduct a separate hearing on the issue of damages in this matter. In this grievance, the Federation contends that the Vermont State Colleges ("Colleges") made a change in health insurance coverage for the period July 1995 to July 1997, when health insurance plan administration changed from CIGNA to Blue Cross/Blue Shield, in violation of the collective bargaining agreement provision that the "current indemnity insurance plan coverage that was implemented on September 1, 1984, shall be available to bargaining unit members".

In the motion to compel discovery, the Federation contends that the Colleges should be required through the discovery process to provide certain financial information on CIGNA and Blue Cross coverage to the Federation. In the motion to conduct a separate hearing on the issue of damages, the Federation contends that the Board should bifurcate the issue of damages from the issue of liability. Each of these motions will be discussed in turn.

Motion to Compel Discovery

In ruling on a motion to compel discovery, the Board applies Rule 26(b)(1) of the Vermont Rules of Civil Procedure, which provides that "parties may obtain

discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action". The information sought is discoverable "if it appears reasonably calculated to lead to the discovery of admissible evidence".

The Federation seeks the following specific financial information in discovery: 1) internal accounting spreadsheets reflecting administrative costs from 1988 to 1995, 2) annual medical management reports from CIGNA from 1988 to 1995 *summarizing medical expenses*, 3) CIGNA *policy year final accounting* for 1993, 4) CIGNA renewal rate cost projection for fiscal year 1994, 5) Blue Cross cost projection for fiscal year 1995, and 6) miscellaneous accounts payable invoices.

The Federation contends that this financial information detailing the costs to the Colleges of health insurance coverage from CIGNA and Blue Cross is relevant to the issue of liability; that such information would refute the claims of the Colleges that the Blue Cross had a *de minimis* impact because evaluating cost differences to the Colleges under CIGNA and Blue Cross may lend insight into just how substantial was the change in coverage to the employees. In addition, the Federation contends that the financial information detailing the costs of health insurance coverage to the Colleges from CIGNA and Blue Cross is discoverable for two reasons related to damages: 1) to support the Federation's position that damages may be measured by the difference between the value of the potential claims under CIGNA compared to the value of the potential claims under Blue Cross; and 2) to establish that the Colleges were unjustly enriched when they changed the coverage.

The Federation's contention that the requested information is relevant to liability needs to be examined in reference to what the Federation has to establish in this grievance. Under the Board decision in Grievance of Majors, 19 VLRB 375 (1996), grievants seeking to prevail on a claimed violation of the Colleges' contractual obligation to maintain insurance plan provisions must demonstrate that there has been a change to the basic provisions of the health insurance plan; as set forth in the plan booklet prepared by the plan administrator; concerning benefits, eligibility, exclusions and levels of coverage. *Id.* at 382. In order for the Board to conclude that the requested information is relevant to liability, the Board would have to determine that a comparison of the respective costs to the Colleges under CIGNA versus Blue Cross coverage makes it more probable there has been a change to the basic provisions of the health plan.

We conclude that the requested information does not lead down the path of furthering the inquiry as to whether there has been a change to the basic provisions of the health plan. Such inquiry is furthered through examination of the plan documents themselves and presenting evidence on any changes realized by employees concerning benefits, eligibility, exclusions and levels of coverage. The Federation must demonstrate that specific material changes in the plans adversely affect employees. Examining the respective costs to the Colleges of maintaining insurance coverage under the two carriers provides no assistance in this regard.

Additionally, the Federation's contentions regarding the relevance of the requested information to damages go beyond what actually was requested as a remedy in the grievance filed with the Board, and beyond the standard remedy in

grievance cases. The remedy requested was that “all plan participants be reimbursed with interest for out-of-pocket expenses resulting from the unilateral changes to the indemnity health insurance plan coverage”, and that “all plan participants be made whole for any and all damages”. This requested remedy in the grievance is consistent with the standard remedy in grievance cases that aggrieved employees be made whole by being placed in the position they would have been in if the contract had not been violated. Grievance of Lowell, 15 VLRB 291, 339-340 (1992).

The Federation’s theory that damages should be measured by the difference between the “the value of the potential claims” under CIGNA and Blue Cross goes beyond a make whole remedy granting employees the amount of money they actually lost because of any decrease in coverage under Blue Cross. The value of potential claims simply is too elusive and theoretical to constitute a valid theory of damages. Similarly, the Federation’s “unjust enrichment” argument also goes beyond a make whole remedy. Remedies in grievance cases are designed to redress adverse effects on employees, not to address how employers may have improperly benefitted through contract violations.

Motion For Separate Hearing on the Issue of Damages

The Federation contends that the Board should bifurcate the issue of liability from the issue of damages, holding a separate hearing for each, because the issues are substantially separate and distinct and involve minimal overlap, and substantial savings of time and expense may occur. The Colleges oppose this motion on the grounds that the question of damages is inextricably linked to the question of liability.

We conclude that the questions of liability and damages are too intertwined to grant the Federation's motion to bifurcate. Evidence concerning any changes realized by employees concerning benefits, eligibility, exclusions and levels of coverage may be applicable to both liability and damages. Given this significant overlap in evidence, we are not persuaded that a savings in time and expense would occur by conducting separate hearings on the questions of liability and damages.

NOW THEREFORE, based on the foregoing reasons, it is hereby ORDERED that the Motion To Compel Discovery and the Motion For Separate Hearing on the Issue of Damages filed by the Vermont State Colleges Faculty Federation are DENIED.

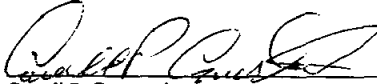
Dated this 29th day of January, 1999, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Catherine L. Frank, Chairperson

/s/ Leslie G. Seaver

Leslie G. Seaver


Carroll P. Comstock


Richard W. Park