

BEFORE THE ARBITRATOR

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 In the Matter of the Arbitration :  
 of a Dispute Between :  
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 MARINETTE COUNTY PINE VIEW HEALTH CARE :  
 CENTER EMPLOYEES UNION LOCAL 3739, :  
 AFSCME, AFL-CIO : Case 122  
 : No. 47065  
 and : MA-7161  
 :  
 MARINETTE COUNTY :  
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Appearances:

Mr. James E. Murphy, Corporation Counsel, Marinette County, appearing on behalf of the County.  
Mr. Steve Hartmann, Staff Representative, Wisconsin Council 40, AFSCME, ALF-CIO, appearing on behalf of the Union.

ARBITRATION AWARD

On February 24, 1992, Marinette County Pine View Health Care Center Employees Union Local 3739, AFSCME, AFL-CIO, hereinafter the Union, with the concurrence of Marinette County, hereinafter the County or Employer, requested the Wisconsin Employment Relations Commission to appoint a member of its staff to act as the impartial arbitrator in a dispute involving the denial of medical insurance coverage to a Pine View Health Care Center employe. A hearing in the matter was held on May 7, 1992, at which time the parties were afforded the opportunity to adduce testimony and introduce documentary evidence. A stenographic transcript of the hearing was not taken and the parties concluded filing posthearing briefs and reply briefs with the undersigned by August 4, 1992.

ISSUE:

1. Was Jean Strauss' grievance, alleging the County wrongfully denied her health insurance, timely filed on January 10, 1992 and therefore, arbitrable?
2. Did the County violate the parties' collective bargaining agreement when it concurred with Claims Management Services' decision to deny medical insurance coverage to the grievant, Jean Strauss? If so, what is the appropriate remedy?

PERTINENT CONTRACT LANGUAGE

1991-92 PINE VIEW HEALTH CARE CENTER AGREEMENT

ARTICLE 6

GRIEVANCE PROCEDURE

6.01 Grievance Procedure. Should differences arise between the Employer and Employees or the Union, this procedure shall be followed:

Step 1: Any Employee covered by this Agreement who has a grievance shall report h/er grievance to the steward or other representative of the Union within ten (10) working days, who shall investigate the grievance thoroughly, and if the Union feels the grievance is warranted, the Union shall request a meeting with the Department Head within seven (7) days and such meeting shall be held within ten (10) working days. The Department Head shall give h/er answer to the Union in writing within seven (7) work days of this meeting.

Step 2: In the event the grievance cannot be satisfactorily adjusted by the Department Head, the grievance will be submitted in writing to the Administrator of Pine View who will hold a meeting within ten (10) work days. Following the meeting, the Administrator shall give h/er answer in writing to the Union within ten (10) days of this meeting.

Step 3. In the event the grievance cannot be satisfactorily adjusted by the Administrator, the grievance will be submitted in writing to the Board of Trustees of Pine View, which will meet with the Union at a mutually agreeable time within thirty (30) days. Following the meeting, the committee shall give its answer in writing to the Union within ten (10) work days of this meeting.

Step 4. If the matter still remains unsettled, then it should be submitted in writing to the arbitration. (sic) The arbitrator shall be selected by the Wisconsin Employment Relations Commission. The decision of the arbitrator shall be submitted to both parties hereto in writing and shall be final and binding upon both parties.

The Union shall have the right to have present the aggrieved Employee or Employees and any other Union representatives at all meetings for the purpose of resolving said grievance. Grievances shall be presented for adjustment without fear of penalty to the Employee aggrieved. No Employee shall be caused to suffer loss in pay on account of carrying out the provisions of this grievance procedure.

ARTICLE 18

INSURANCE AND HOSPITALIZATION-DENTAL

**18.01 Hospitalization Insurance.** The County shall pay the entire cost of hospitalization insurance including the family plan, if the Employee so selects. In addition, the County shall pay the entire cost of Employee's hospitalization while on paid sick leave, including the month paid sick leave expires.

**18.02** Employees on an authorized leave of absence, in excess of thirty (30) days, shall remain under the group insurance plan, but the Employee shall pay the full premium.

**18.03 Dental Insurance.** The County shall pay the full cost of a mutually agreeable dental insurance program.

ARTICLE 29

DURATION

**29.01 Duration.** This agreement shall be effective January 1, 1991 through December 31, 1992 and shall continue in full force and effect from year to year unless either party gives written notice to the other requesting changes prior to November 1, 1992.

Signed this 12th day of November, 1991.

MARINETTE COUNTY AND  
PINE VIEW HEALTH CARE CENTER

PINE VIEW HEALTH CARE  
CENTER EMPLOYEES, LOCAL 3739  
AFSCME, AFL-CIO

\_\_\_\_\_  
Don Phillips  
County Clerk

\_\_\_\_\_  
Union Representative

\_\_\_\_\_  
Stephen M. Fredricks  
County Administrator

\_\_\_\_\_  
Union President

\_\_\_\_\_  
Karla Brabender  
Administrator, PVHCC

\_\_\_\_\_  
Union Secretary

\_\_\_\_\_  
Henry Lauerman, Chairman  
Pine View Board of Trustees

\_\_\_\_\_  
Union Steward

1991-92 COURTHOUSE AGREEMENT

MEMORANDUM OF UNDERSTANDING

1. The parties agreed that the signed copies of the 1991-92 Courthouse Agreement are in error in that the

following language should be included in Article 17 Sec. 17.01(E):

Employees covered either by health or dental coverage may elect to change (either increase or decrease) coverage from no coverage to single or family coverage under the following conditions: a) change in employment of spouse who provided coverage and evidence of insurability; b) change in marital status; c) during an annual period of open enrollment; d) or upon approval of the Personnel and Insurance Committees of the County Board.

2. The parties agreed that the signed copies of the 1991-92 Courthouse Agreement are in error in that item 1 of the Memorandum of Understanding on page 36 of the agreement should read as follows:

Article 17 Sec 17.01(E) notwithstanding the parties agree that there shall be no open enrollment for health or dental insurance in the year 1991.

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FOR MARINETTE COUNTY  
STEPHEN FREDERICKS  
COUNTY ADMINISTRATOR

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FOR AFSCME LOCAL 1752  
STEVE HARTMANN  
STAFF REPRESENTATIVE

## ARTICLE 17

### INSURANCE AND HOSPITALIZATION - DENTAL

**17.01 Hospitalization Insurance.** The County shall pay the entire cost of hospitalization insurance, including the family plan, if the Employee so selects. In addition, the County shall pay the entire cost of Employee's hospitalization while on paid sick leave, including both the month paid sick leave expires and the following month.

A) Upon retirement, resignation or dismissal, the Employer shall pay the insurance premium for the month in which the retirement occurs and the month following.

B) Seasonal Employees shall have their hospital insurance premiums paid by the county during the season in which they work. In the off season, the Employees shall remain under the group insurance plan, but Employee shall pay the full premium.

C) Regular part-time Employees shall receive health and dental benefits based on the percentage of full-time equivalency authorized for the part-time position. Those regular part-time Employees already receiving full pay insurance as of January 1, 1989 shall continue to receive this benefit in their current part-time positions.

D) Employees on an authorized leave of absence shall remain under the group insurance plan, but the employee shall pay the full premium.

**17.02 Dental Insurance.** The County shall pay the full cost of a mutually agreeable dental insurance program.

**17.03 Retiree Health Insurance.** Employees who retire between the age of fifty-five (55) and sixty-two (62) and have twenty (20) years of service shall have their medical insurance monthly premium paid in full by the Employer for the Employee and the Employee's spouse until the Employee has reached eight (8) years of retirement or age seventy (70), whichever occurs first. Employees who retire after sixty-two (62) with fifteen (15) years of service shall have their insurance and their spouse's insurance paid for by the County until the Employee reaches the age of seventy (70).

#### BACKGROUND

The grievant in this case, Jean Strauss, is employed by the County at its Pine View Health Care Center. Strauss was originally hired by the County as a relief employe in June of 1988. In January, 1989, she was elevated to a half-time position. On January 18, 1989, Strauss voluntarily chose not to apply for medical insurance. 1/ On February 3, 1989, she resigned her employment with the County, however, she was rehired in June of 1989. Again, in June of 1989, she elected not to take health insurance. In the spring of 1991, her hours of employment with the County were increased such that she was a 60% employe in April of 1991. In May of 1991, Strauss did apply for employe medical insurance, however, she did not receive coverage. On September 9, 1991, the North American Life and Casualty Company wrote to her about her application for insurance indicating "additional information is needed to process your application." Then, on September 30, 1991, Strauss received a letter from Claims Management Services (CMS) acknowledging receipt of her application for single medical and dental coverage and advising her that her application for single dental coverage had been approved, but that her application for single medical coverage had been denied. On October 3, Strauss wrote to CMS asking for more information as to why her application for medical coverage had been denied. On October 25, 1991, Strauss received a letter from the North American Life and Casualty Company underwriting department. The letter explained that, based upon correspondence they had requested and received from one of her physicians and a clinic, pre-existing conditions were established and "on this coverage we do not have the option of excluding conditions and covering everything else; this coverage is underwritten on accept/reject basis only." Thus, they rejected her application of medical insurance.

Subsequent to receipt of the aforesaid letter, Strauss talked to Local Union representatives who advised her to wait until December or January of

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1/ There was very little information provided with respect to the County's medical insurance plan or administration, however, from the briefs I was able to discern that the County self funds medical insurance coverage up to the first \$125,000 per person and reinsures the additional risk. Claims Management Services administers the medical coverage policy including issues of insurability.

1992, for an open enrollment period and not to file a grievance. She was also told to talk with Lisa Young, the Business Office Manager at Pine View, about when the next open enrollment period would occur so that she could be covered under the insurance plan without regard to pre-existing conditions. Strauss testified that Lisa Young advised her that the next open enrollment period would be in December of 1991 or January of 1992, and that was confirmed by a local union Vice President. Lisa Young denies that she ever told Strauss that there would be an open enrollment period, and indicated that if she had ever said anything about an open enrollment period, it would have been that "if there was going to be one it would be posted." Young did testify that prior to and including 1990, there always had been an open enrollment period in January when employees who had not taken insurance during their first 30 days of employment could sign-up and receive coverage without regard to insurability. She further testified, however, that in 1991 and 1992 there had not been an open enrollment period and she was unaware as to the reasons why. Mullins, Pine View Personnel Manager, confirmed there had usually been an open enrollment period in January each year, and many times it occurred after there had been a change in carrier. She also confirmed that employees were notified of these open enrollment periods by a posting. Young also testified that while an employee can inquire as to the reasons why they were denied coverage, there is no appeal process available to employees to contest the carrier's denial.

The language of the medical insurance plan document 2/ relative to enrollment for single or family coverage provides:

Your coverage is effective on the first of the month following satisfaction of the eligibility period, if your completed enrollment card is received by FFEIC before the end of your eligibility period. If your card is received by FFEIC within 31 days after you are eligible, your coverage is effective on the date the card is received by FFEIC.

If you do not enroll within those 31 days, you are considered a late enrollee. You must then provide evidence of insurability to FFEIC. Your coverage is effective on the date FFEIC gives it approval of your evidence.

When an open enrollment period did not occur in December of 1991, and no posting appeared advising of an open enrollment period occurring in January of 1992, the grievant on January 10, 1992, filed a grievance contending the County had denied her medical insurance to which she was entitled under the collective bargaining agreement.

In its brief, the Union argues that the County has chosen to ignore the clear and unambiguous language of the collective bargaining agreement appearing at Article 18, by allowing the carrier to refuse medical insurance coverage to the grievant, Jean Strauss. The Union believes that because the County is self insured that the County itself is the insurer of the employees and it merely hires CMS to administer the insurance offered by the County. Thus, the Union concludes that it is the County that controls who is in or out of the insurance, not CMS or the reinsurance company who has agreed to insure the County's risk that exceeds \$125,000 per employee. The Union believes that this conclusion is further buttressed by the language of the various other collective bargaining agreements it has with the County and the County's

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2/ Only excerpts of the plan document were introduced into evidence.

stipulation at hearing that it was the intent of the parties in negotiating the Pine View Health Care Center contract that the County would provide the same insurance coverage to Pine View employees as it had agreed to provide Courthouse bargaining unit employees.

The Union's analysis of the bargaining history for the 1991-92 collective bargaining agreement at Pine View was that the County proposed the language which appears in the 1991-92 Courthouse contract Memorandum of Understanding,

Employees covered by either health or dental coverage may elect to change (either increase or decrease) coverage from no coverage to single or family coverage under the following conditions: a) change in employment of spouse who provided coverage and evidence of insurability; b) change in marital status; c) during an annual period of open enrollment; d) or upon approval of the Personnel and Insurance Committees of the County Board.

as a representation of the status quo and not any change in existing practice or policy. The Union acknowledges rejecting the inclusion of this language in the Pine View collective bargaining agreement because in its view, even though it was not a change in the status quo, the language was "too narrow." Consequently, that language, although appearing in the other County collective bargaining agreements, did not appear in the Pine View current 1991-92 collective bargaining agreement. The Union believes that notwithstanding its rejection of this language, the absence of the language is insignificant inasmuch as the County had agreed in bargaining to continue the Courthouse status quo, which that language represented, under the Pine View contract.

The Union goes on to say that the proposed language which was rejected also establishes the Union's point that the County is the insurer and not a third party because the language states that an employee may receive insurance "...d); . . . upon approval of the Personnel and Insurance committees of the County Board." Thus, it concludes that the County's argument that the employee must be approved by the reinsurer is simply false and that it is clear that the County is the insurer and has control of these matters. The Union concludes further that the language wherein it states "...employees covered by health or dental may elect to change (increase or decrease) from no coverage to single..." makes it clear that all employees are "covered" by health and dental and the only question is when can they change their status, not whether they may receive the benefit. Finally, the Union argues that the language provides four different occurrences with respect to changes in status and only "...change of employment of spouse who provided coverage..." contemplates proof of insurability. Because it is a well established contract interpretation principle that to express one thing is to exclude others, this language establishes that the County has agreed that the only time evidence of insurability is required is when there is a change of employment of a spouse who previously provided coverage.

The Union also argues that if the arbitrator were to conclude that proof of insurability were required in the instant case, the Pine View Personnel Director and Bookkeeper's testimony establishes that only pre-existing conditions would be excluded and that the employee would be included under the coverage in all other respects.

Lastly, the Union argues that there should have been an open enrollment period at Pine View in 1991 for employees like the grievant. The evidence established that the County had offered open enrollment periods at least up through 1990, and in 1991 when an open enrollment period was not offered, the Union filed a grievance which was settled on a non-precedential basis wherein

the employees who were involved in the grievance received insurance coverage. The Union also cites the contract language contained in the Courthouse and Human Services Professional contracts providing "notwithstanding, the parties agree that there shall be no open enrollment for health or dental insurance in 1991" as evidence of the County's obligation to provide an annual open enrollment period for Pine View Health Care Center employees. However, the language of the Pine View contract does not except the open enrollment period for 1991 or 1992, and consequently, the County was obligated to provide an annual open enrollment period both in 1991 and 1992, at Pine View.

The County argues, in the first instance, that the grievance is untimely and should not be considered by the arbitrator. The County points to the fact that the grievant was notified on September 30, 1991, that her application for medical insurance had been denied, but she failed to file a grievance until January 10, 1992, several months later, and well beyond the time permitted under the contract for filing grievances. The grievant acknowledges that she talked to the Union about filing a grievance and was told that she could either grieve or wait for an open enrollment period, and she chose the latter, thereby waiving her right to file a grievance. Thus, to now permit the grievant to proceed would be to ignore the clear language of the collective bargaining agreement with respect to the time limits for filing grievances.

On the merits, the County believes that there is no substantial factual dispute and that the dispute rests upon the Union's claim that the County was obliged to provide an open enrollment period for Pine View employees. The County notes however, that the record is "barren" of any evidence of open enrollment for any County employee other than at a time when a new insurance carrier was taking over the health insurance. The County points to the testimony of Courthouse Union President, Fritz, that it was her understanding that the insurance contract was a part of the collective bargaining agreement. The County also believes that the testimony clearly established that the bargaining that took place between the union representing Pine View employees and the County resulted in an understanding that the insurance coverages to be provided Pine View employees were the same as those in existence for Courthouse employees. The insurance pamphlet which was introduced into evidence, outlining the eligibility requirements, clearly establishes the procedures governing determinations of eligibility for insurance. In the grievant's case, medical underwriting was required, and the underwriters determined that the grievant was not insurable. The County concludes that had it waived that underwriting finding it would be without coverage from the insurance carrier, and thus expose itself to "additional medical liability." Also, the County notes that it is not self insured, but rather self funded and even though it can waive any and all restrictions, it must be willing and able to pay in the case of a catastrophic loss and not be protected against under the reinsurance agreement.

#### DISCUSSION

The threshold issue to be resolved is the County's claim that the subject grievance was not timely filed thereby barring a review of the merits of the grievance by the undersigned. The County believes that the time limits established in the grievance procedure for filing a grievance began to run when Strauss was notified by the insurance company that she was being denied medical coverage. That occurred on September 30, 1991, when CMS notified her that her application for dental coverage had been approved, but that her medical coverage application had been denied. However, it was not until January 10, 1992, long after the contractual grievance procedure time limits for filing a grievance had expired, that Strauss filed the subject grievance.

The grievance states:

. . . employe Jean Strauss was denied health insurance. Article 5, Section 5.03 states a part time-employe is eligible for all benefits on a prorated basis. Article 1, Section 1.03 Equal Opportunity is a form of discrimination. Management has denied Jean Strauss insurance and is entitled to insurance as stated in Article 5, Section 5.03 of the union contract.

The Union insists that this is a continuing grievance inasmuch as the grievant is entitled to insurance, and every month that goes by wherein she is not provided with medical insurance coverage another grievance occurs. Therefore, the Union believes that the grievance was timely filed and can be considered by the undersigned.

In the undersigned's opinion, if the essence of the grievance is that CMS erroneously determined that grievant Strauss was uninsurable because of pre-existing medical problems, then the County's contention that the grievance filed on January 10 was untimely is correct. Clearly, as of September 30, 1991, the grievant knew that CMS had determined her to be uninsurable, and at that point, she was aggrieved with respect to that determination. However, the undersigned is not persuaded that that is the essence of her grievance, rather, her grievance is that she is entitled to be enrolled in the medical insurance program during an open enrollment period when employes are allowed to sign up for health insurance without regard to insurability and that the County by not providing for such an open enrollment period in 1991 and again in 1992, was in violation of the parties' collective bargaining agreement. That being so, the

question for determination regarding the timeliness of the grievance turns on when the employe became aggrieved with respect to the Employer not scheduling an open enrollment period.

The grievant acknowledges that when she went to the Union, after receiving CMS's explanation on October 25, 1991, as to why they determined her to be uninsurable, she was told to wait for the open enrollment period and apply for insurance at that time when there would be no issue regarding her insurability and she would receive coverage. The grievant testified that she contacted the Business Manager at Pine View and was advised that an open enrollment would be scheduled in either December of 1991 or January of 1992. If you credit the Office Manager's testimony that she never advised the grievant that there would be an open enrollment period, but rather that if there were such an open enrollment period it generally occurred at the beginning of the year, then the grievant's filing of the grievance on January 10th would clearly place it within the time limits of the contract. There was no testimony or other documentary evidence to establish that the grievant was ever advised by County representatives that there would not be an open enrollment period in January of 1992. Therefore, when the grievant did not see a posting in late 1991, or the first week of 1992, she could reasonably assume from the Business Manager's version of their conversations that because a notice of an open enrollment had not been posted there was not going to be one.

Thus, it would make sense why she filed a grievance on January 10th. In view of the foregoing, the undersigned believes that it is reasonable to conclude that the grievance filed by Jean Strauss on January 10, 1992, challenging the County's failure to provide for an open enrollment period within which she could enroll in the health insurance program without regard to insurability and thereby denying her insurance coverage, was timely filed.

The Union insists that it is the County that determines who receives medical insurance coverage under the collective bargaining agreement. Both the Pine View Contract, which the Union believes the parties agreed would mirror the Courthouse agreement, contain the same language in Article 18.01 and 17.01 respectively. That language provides, "The County shall pay the entire cost of hospitalization insurance including the family plan, if the employe so selects." This language, however, does not speak to the issue of insurability but only speaks to the question of who is responsible for the cost of the hospitalization insurance. Furthermore, there was no evidence of bargaining history to support the interpretation that the Union places on that language, i.e. that all Pine View Health Care Center employes who request health insurance coverage are entitled to receive it without regard to insurability. Furthermore, the language does not speak to the issue of plan design, benefit levels, etc. Even the language of the Memorandum of Understanding appearing in the Courthouse collective bargaining agreement relating to changes in coverage under certain circumstances, does not speak to the issue of mandatory coverage.

Rather, it provides that employes "covered," under specified circumstances may change coverage.

Both parties agree that during negotiations for the first collective bargaining agreement covering Pine View Health Care Center employes for 1989 and 1990 calendar years, it was understood that the County would provide the same insurance coverages then in affect in the Courthouse bargaining unit. However, again, there is nothing in that agreement relative to the issue of who receives coverage and who does not. Rather, that agreement was that the coverage afforded to Courthouse employes would also be provided to Pine View Health Care Center employes during the 1989-90 collective bargaining agreement.

Also, the Memorandum of Understanding which was proposed by the County for the 1991-92 Pine View collective bargaining agreement, and rejected by the Union, did not speak to the issue of mandatory coverage without regard to insurability. The County's proposed language was identical to the aforementioned language contained in the Memorandum of Understanding in the Courthouse collective bargaining agreement and dealt only with when an employe could elect to go from not insured to insured or change from single coverage to family coverage. It did not state that any time an employe wished to become insured he/she need only express that wish to the County, and they would be covered irrespective of considerations of insurability.

Consequently, the undersigned is not persuaded that the language of the 1991-92 Pine View contract or the bargaining history relative to either the 1989-90 or 1991-92 Pine View collective bargaining agreements support the Union's conclusion that the County determines who receives coverage and who does not and/or that the collective bargaining agreement itself mandates that any employe who meets the minimum hours of work eligibility requirements be covered under the County's health insurance plan irrespective of any consideration of insurability.

The Union also argues that the 1991-92 Courthouse collective bargaining agreement Memorandum of Understanding, setting forth the circumstances under which an employe can go from no coverage to coverage either during an open enrollment period or upon approval of the County Board personnel and insurance committees, reflects the status quo in the Courthouse collective bargaining unit which the County agreed in negotiations to maintain with the County Pine View Health Care Center employes. However, the facts in this case are that the negotiations which transpired between the Union and the County for the first Pine View Health Care Center agreement were for the 1989-90 collective bargaining agreement. The Memorandum of Understanding referenced in the Union's argument first appeared in the in the 1991-92 Courthouse collective bargaining agreement. Whereas, the bargaining history establishes that the agreement between the County and the Union to provide Pine View Health Care Center employes with the same coverages as those offered in the Courthouse bargaining unit occurred in negotiations for the 1989-90 collective bargaining agreement. There is no evidence that the County made similar representations in bargaining the 1991-92 collective bargaining agreement for Pine View Health Care Center employes. In fact, the evidence establishes that the County proposed the same Memorandum of Agreement which now appears in the 1991-92 Courthouse collective bargaining agreement, but the Union rejected inclusion of that memorandum in the Pine View contract. It argues it rejected the language because it believed it was nothing more than the then existing status quo. However, this Memorandum of Understanding does not pertain to covered services and level of benefits, but rather talks about circumstances under which an employe may change from single to family or from not being covered under the County plan to being covered. Consequently, for these reasons the undersigned does not concur in the Union's conclusions that the Memorandum of Understanding which appears in the 1991-92 Courthouse collective bargaining agreement is binding upon the County for employes at the Pine View Health Care Center. Thus, because that Memorandum of Understanding was not made a part of the Pine View contract, Pine View employes cannot insist upon its benefits in light of the bargaining history at Pine View.

The Union also believes that the Memorandum of Understanding appearing in the Courthouse collective bargaining agreement establishes that proof of insurability is only required in one circumstance, because it is only mentioned in the Memorandum once; and therefore, to mention it in one instance and not in others is to exclude it from being a consideration in any other circumstance other than that where it is mentioned. First, all witnesses also testified about prior open enrollment periods offered by the County defined "open enrollment" as meaning a time when an employe could indicate their desire to be included within the County's health insurance program and no issues of insurability would be taken into consideration in determining whether they would receive coverage. Consequently, in the instance of open enrollment, there is not need to talk about the issue of insurability because by definition insurability is not a consideration during an open enrollment period. Second, the language of the Courthouse contract Memorandum of Agreement provides that County committees can agree to assume responsibility for coverage of employes irrespective of the issue of insurability. This means they can direct the insurer to pay claims without proof of insurability because the County assumes the financial responsibility for individual claims up to \$125,000; and, were it to direct the carrier to pay claims for a particular employe without regard to insurability, it would necessarily be agreeing to underwrite costs in excess of \$125,000 were they not able to reinsure the risk because of their waiver of proof of insurability. Finally, and most importantly, the language being relied on by the Union to support its conclusion, that proof of insurability can only be required when there is a change in the employment of the spouse who provided coverage, is the Memorandum of Understanding contained in the Courthouse collective bargaining agreement and not the instant contract for Pine View Health Care Center employes. However, any reliance upon that language is misplaced because it is not a part of the 1991-92 Pine View contract nor was it a part of the 1989-90 Courthouse agreement; and even if it were, the bargaining history does not establish that the understanding between the parties respecting health insurance coverage for Pine View employes in the initial contract was anything other than an agreement by the County to provide them with the same coverage afforded employes in the Courthouse bargaining unit.

The Union also believes that if the undersigned concludes the County can inquire as to pre-existing conditions with respect to the issue of insurability, even where pre-existing conditions do exist the County can only deny medical coverage with respect to those conditions, and cannot use the pre-existing condition to reject coverage in its entirety. The Union states it reaches this conclusion from the testimony of the Pine View Business Manager. The undersigned does not concur in the Union's assessment that the Business Manager testified that pre-existing conditions only mean that the employe would not receive medical coverage for those conditions, but would receive medical coverage in every other respect. The testimony of the Pine View Business Manager was almost exclusively related to the issue of open enrollment periods and when they had previously occurred, under what circumstances, etc. Furthermore, there was no qualification of the Business Manager as an expert witness in this case or that she had any special knowledge in the area of pre-existing conditions and their impact upon the issue of insurability under the County health insurance program. Thus, her assumptions, presumptions, etc., even if they did speak to that issue, could not bind the County to such a result in and of themselves.

Last, the Union insists that the County was obligated to provide for an open enrollment period in 1991 and 1992 as a part of the agreement reached in the first negotiations for a Pine View Health Care Center collective bargaining agreement. It also believes that the fact that it did not agree to the Memorandum of Understanding proposed by the County which was included in the

1991-92 Courthouse collective bargaining agreement supports that conclusion. The Union argues in this instance that the absence of the language contained in that Memorandum of Understanding which provides that there will not be any open enrollment period in the Courthouse bargaining unit in 1991 and 1992, is significant with respect to the agreement between the County and the Pine View Health Care Center bargaining unit. The record evidence did establish that there have been open enrollment periods annually in the past through 1990. The testimony of County witnesses was that these open enrollment periods usually occurred at a time when there had been a change in plan administrators. Also, that is what occurred prior to the last open enrollment period for Pine View employees in 1990. The Union claims there has been an open enrollment period every year but testimony of Union witnesses did not establish the reason why an open enrollment period occurred. Thus, the record is sufficiently inconclusive on the circumstances surrounding prior open enrollment periods such that the undersigned cannot conclude that a binding practice has developed requiring the County to continue the practice in 1991 and 92 at Pine View. Further, the bargaining history evidence establishes that the agreement between the County and the Union relative to providing Pine View Health Care Center employees with the benefits then received by the Courthouse employees was an agreement to provide the same health insurance coverage. Again, as with other arguments raised by the Union in this case, there is no record evidence to establish that open enrollment periods were a part of the benefit package that the County agreed to provide Pine View Health Care Center employees. Thus, there is no basis upon which to require the Employer to offer open enrollment for Pine View Health Care Center employees in 1991 or 1992. Even the language of the Courthouse agreement does not specify that there will be open enrollment periods annually. Rather, the only reference to when open enrollment periods will be held, if at all, is contained in the Memorandum of Understanding appended to the 1991-92 Courthouse agreement which states that "...notwithstanding the parties agree that there shall be no open enrollment for health or dental insurance in the year 1991." That is a reference to paragraph c. of paragraph 1. of the same Memorandum of Understanding which talks about when an employe can elect to change coverages and state "during an annual period of open enrollment." But, irrespective of all of this, the Memorandum of Understanding being relied upon by the Union is not binding upon the County as noted above, with respect to the Pine View Health Care Center employees' bargaining unit. Consequently, the County was not obligated to schedule an open enrollment period in either 1991 or 1992, for Pine View employees.

Based upon the foregoing and the record as a whole the undersigned enters the following

AWARD

1. The instant grievance filed by Jean Strauss on January 10, 1992, was timely, and therefore, arbitrable.

2. The County did not violate the parties' Pine View Health Care Center collective bargaining agreement when it concurred with Claims Management Services' decision to deny medical insurance coverage to the grievant Jean Strauss. Therefore, the grievance is denied.

Dated at Madison, Wisconsin this 13th day of November, 1992.

By \_\_\_\_\_  
Thomas L. Yaeger, Arbitrator

