AMERICAN ARBITRATION ASSOCIATION
----------X
In the Matter of Arbitration

OPINION and AWARD

-between-

TBTA SOBA
(Union)

-and-

TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY
(Employer)

AAA Case No.: 01-16-0003-4354
Grievance: 14-04 (9-14-18) Improper Reduction of Health Insurance Coverage
----------X

Before: Deborah M. Gaines, Esq.
Arbitrator

APEARANCES:

For the Union

Davis & Ferber, LLP
By: Christopher S. Rothemich, Esq.

For the Employer

Alexandria Jean-Pierre, Esq.
Labor Counsel

The undersigned was appointed to hear and decide the grievance described below under the rules of the American Arbitration Association. A hearing was held on November 17, 2017 at the offices of AAA, 120 Broadway, New York, NY.

The parties were accorded a full and fair hearing including the opportunity to present documentary evidence, examine and cross-examine witnesses, and make arguments in support of their respective positions. The hearing was transcribed. The parties submitted post-hearing briefs, at which time the record was declared closed. Neither party has raised any objection to the fairness of this proceeding.

Issues:

The parties were unable to agree upon a stipulated issue, as a result, the undersigned has framed the issues for arbitral determination to be:

1. Does the Union have standing to bring the grievance ?
2. If so, did the TBTA violate Article XIX of the parties' collective bargaining agreement and/or paragraph 3 of the parties' Memorandum of Agreement dated January 5, 2009 when it notified SOBA members they were no longer permitted to have two-family coverage under the negotiated health plan? If so, what shall the remedy be?

Relevant Language

Collective Bargaining Agreement

Article XIX
Other Conditions

Sec. 1. Any conditions of employment not set forth in this agreement specifically or by referral, which now prevail, shall continue to prevail until modified. Any modification shall become part of this agreement.
Sec. 2. There shall be no unilateral changes in working conditions and existing working conditions shall continue.

The Employer, however, shall have the right to change job specifications during the life of the contract, but will notify the Association beforehand.

January 5, 2009 Memorandum of Agreement

3. Medical: The parties agree there will be no employee contribution to the premium, and no diminution in the medical plan currently provided.

Discussion and Findings

The essential facts in this case are not in dispute. The parties are signatories to a collective bargaining agreement. Article XIX of the Agreement prohibits the Employer from unilaterally changing working conditions.

On September 9, 2000, the parties entered into a Memorandum of Agreement (MOA), which read in pertinent part:

> 7. The parties agree that the current employer provided health benefits, including major medical, hospitalization benefits, prescription benefits and managed physical care, will be replaced with the Participating Employer New York State Government Employees Health Insurance Program, "The Empire Plan," including prescription drug coverage. Such coverage will be subject to all subsequent revisions and amendments made to the Empire Plan by the State of New York, and shall become effective as soon as the Authority can implement the new plan. Employees will not be obligated to make premium payments if they choose to participate in the base Empire Plan option or HIP/HMO. Employees choosing to participate in another offered HMP option will be responsible to pay any additional premium above the premium applicable to the base Empire Plan option.

On January 5, 2009, the parties executed a subsequent MOA, which provided there would be no employee contributions to the premium and "no diminution in the medical plan." [Joint Exhibit 1]

It is undisputed that, until 2014, SOBA members were permitted to enroll in two family coverage under the health plan. In fact, the General Information Book describing elements of the plan provides:

> Coverage: Individual or Family
>
> . . .
>
> Family coverage
>
> . . .
>
> - two family coverages, if both of your employers permit two Family coverages (NOTE: NEW YORK STATE does not permit two Family coverages. If one spouse is enrolled as an employee of New York State, only one spouse may elect Family coverage. The other spouse may only elect Individual coverage).

On November 17, 2014, SOBA member Nina Comacho received a letter from the MTA Business Service Center, which read in pertinent part:

> An audit of our record indicates both you and your spouse are currently employed at MTA/NYC Transit and are included on each other's health benefits. MTA/NYC Transit does not allow dual coverage for employees or retirees.
>
> Therefore, please complete a 2015 Open Enrollment form indicating who will be the primary policyholder. Your

> or spouse had the option to Opt Out of your Medical benefits.
> . . . [Joint Exhibit 3]

According to Sharon Gallo-Kotcher, TBTA Vice President of Labor Relations, Administration, and Employee Development, these letters were issued in accordance with a policy adopted by the MTA sometime around 2014 which specifically prohibited two-family coverage. She noted the rationale behind the change resulted from the knowledge the state had done the same and it was deemed wasteful and at odds with the MTA's duty to eliminate wasteful spending. She testified that there are three other bargaining units within the TBTA none of the other units has any pending litigation on this issue.

Gallo-Kotcher testified the elimination of two family coverage did not impact the benefit levels enjoyed by SOBA employees under the healthplan. She further testified that the change did not diminish coverage, because employees are entitled to enroll under one spouse's plan as a family member or as an individual. Therefore, no dependents are left out of coverage. Moreover, she testified employees are eligible for a negotiated "opt-out payment".

Positions of the Parties:

The Union maintains the TBTA violated the parties' Agreement by unilaterally eliminating two family coverage

under the health plan for MTA employees. It argues paragraph 3 of the parties' January 5, 2009 MOA clearly provides there can be no diminution of the current health plan. It maintains two family coverage provides value to its members in the form of additional coverage and other intangible benefits such as the potential for broader choice of healthcare providers. It asserts the elimination of such coverage is a diminution of the medical plan and, also a unilateral change of a working condition in violation Article XIX of the parties' collective bargaining agreement.

The Union contends the TBTA's reliance on policy memo #133 [TBTA Exhibit 2] is misplaced. It argues this policy applies only to state employees and, it is clear, under the civil service law, MTA employees are not state employees.

Nor, the Union argues, can the TBTA rely upon a policy to curtail waste in spending to subvert a term of the parties' negotiated agreement. Such a reading, it maintains is not reasonable.

As a remedy, the Union seeks an order for the TBTA to cease and desist from eliminating the right to dual family coverage and to reimburse all affected members for any out of pocket expenses for the denial of two family coverage.

The TBTA, on the other hand, asserts the Union lacks standing to bring this grievance. It maintains the Union has failed to state any injury. It argues the only evidence submitted by the Union demonstrates a change in the level of benefits member's husband, who is a member of a different bargaining unit, received. It maintains Nina Comacho, the SOBA member, continued to enjoy the same coverage she always had under the plan. Moreover, it asserts the under-signed lacks jurisdiction to grant SOBA the relief it is seeking, as the contract prohibits the arbitrator from adding to, subtracting, modifying or amending any provisions.

If the undersigned finds the Grievant has standing to bring the grievance, the TBTA contends the Union has failed to establish a contract violation. It argues the Union's members enjoy all the same aspects of their plan that had been the subject of negotiation and the change in coverage is not a change in the level of benefits.

Moreover, it contends the September 9, 2000 MOA under which the current plan was adopted provided the plan would be subject to all subsequent revisions of the Empire Plan. It contends the evidence establishes the state of New York and determined it would not permit dual family coverage.

Thus, it argues this change by the state was applicable to the MTA.

The TBTA maintains the Union has not sustained any harm from the policy change, as it does not leave any SOBA member without coverage. It further notes members are provided an opt-out incentive payment. This payment was established in the April 7, 1999 MOA. It avers this payment applies if a spouse is an MTA member, and thus, the TBTA contends SOBA members are granted a direct cash benefit if one spouse opts out.

Finally, the TBTA argues the MTA's policy to eliminate two family coverage must be given deference as a reasonable rule enacted in further of the Public Authority Law 127-g, which requires the TBTA, as an Authority, to "minimize unwarranted expenses and protect against abuses." [TBTA Exhibit 6] It cites a Second Circuit decision to assert that "substantial deference to the pertinent agency's interpretation of the statute is warranted so long as its interpretation is based on a permissible construction of the statute." TBTA brief at 13.

Decision

After carefully reviewing the entire record before me, as well as evaluating witness credibility and the probative

value of evidence, I find the Employer violated the parties' Agreement when it eliminated two family coverage of a TBTA or MTA spouse. My reasons follow.

As a threshold matter, I find the Union has standing to bring the grievance. Contrary to the TBTA's assertion, the Union has demonstrated its members are significantly connected to and impacted by the action challenged. The record evidence demonstrates SOBA member Nina Comacho had been eligible for two family coverage until she received notification from the MTA that she and her spouse were not able to each be enrolled for family coverage. The Employer directed her to complete an open enrollment form specifying whether she or her husband's insurance would be primary. This changed the amount of coverage her family received under the plan and, thus, she was specifically impacted by the change.

Whether the undersigned has authority to order the specific remedy requested by the Union does not impact the arbitrability of the grievance in this case. In determining whether the TBTA violated the parties' Agreement, the undersigned is empowered to determine the appropriate remedy, subject to the authority granted under the parties' Agreement. Therefore, even if the undersigned is precluded from granting a specific remedy requested by the Union, it

does not follow that there is no remedial action that can be fashioned.

As to the merits, I find the elimination of two-family coverage constitutes a "diminution of the medical plan" as described in paragraph 3 of the January 5, 2009 MOA. Paragraph 3 speaks to the whole medical plan, and not just the benefit levels of the plan as argued by TBTA. Coverage under the medical plan is an important element of the plan and, therefore, elimination of a certain class of coverage would constitutes a diminution.

In fact, the stated reason for the change in policy is that it is a means of reigning in expenditures. Thus, clearly the additional coverage has an economic value. Taking away that compensation is a reduction or diminution of the plan.

TBTA's argument that the State's limitation of two family coverage applies to TBTA employees because the parties' collective bargaining agreement provided health coverage was subject to subsequent revisions and amendments to the Empire Plan by the State of New York is unpersuasive. There is no evidence in the record as to when the state made the revision to the plan for state employees. However, the record evidence establishes the Empire plan continues to permit two-family coverage for

non-state employees. Further, it is uncontroverted that when the parties negotiated paragraph 3, the TBTA permitted such coverage for its employees.

While the parties have a negotiated opt-out payment, it is clear this payment was not negotiated in relationship to a reduction in coverage. According to the TBTA, opt-out payments were negotiated in 1999, well before the elimination of two family coverage.

Finally, the TBTA's argument that the grievance must be dismissed because its policy of eliminating dual coverage is part of its compliance with Section 1270-g of the Public Authorities Law is not supported by the record evidence. While deference must be given to the TBTA's interpretation of the statute, it is not a reasonable interpretation of the law that it enables the TBTA to implement a policy in contravention of an express term of a negotiated collective bargaining agreement. The law seeks to minimize "unwarranted" expenses. Here, there is a specific reason for such costs – it is part of a negotiated collective bargaining agreement. Of course, collective bargaining is also governed by statute.

Turning to the issue of remedy, I note my authority is limited to members of the bargaining unit. To the extent the MTA's discontinuation of two-family coverage impacts

other units, I am without authority to rule upon its ability to enact such changes. However, the TBTA may not eliminate two family coverage for SOBA members.

As there is no evidence of any specific financial harm to Nina Comacho or any other unit members, I find no monetary remedy available.

Based upon the above, I render the following,

AWARD:

1. The Union has standing to bring the grievance.
2. The TBTA violated paragraph 3 of the parties' January 5, 2009 Memorandum of Agreement by eliminating two family coverage under its medical plan.
3. The TBTA shall cease and desist from elimination of such coverage.
4. The undersigned shall retain jurisdiction for the purposes of implementation of the remedy as stated in paragraph 3 of this Award.

Dated: March 8, 2018

Deborah M. Gaines

Affirmation
State of New York }
County of New York } ss:

I, DEBORAH GAINES, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my award.

(Signature)