

STATE OF CONNECTICUT
DEPARTMENT OF LABOR
STATE BOARD OF MEDIATION AND ARBITRATION

IN THE MATTER OF	:	
CSEA SEIU Local 2002	:	
and	:	Case 2023-A-0078
ELLINGTON BOARD OF EDUCATION	:	

Hearing Date(s): May 3, 2023 and June 6, 2023
Hearing Location: Zoom videoconference
Date of Award: August 1, 2023

APPEARANCES:

Diana Busch
Staff Representative
CSEA/SEIU Local 2001
760 Capitol Avenue
Hartford, CT 06106-1206
For Union

Attorney Frederick L. Dorsey
Kainen, Escalera & McHale
21 Oak Street
Hartford, CT 06106
For Management

ARBITRATION AWARD

This arbitration arises from a dispute between CSEA SEIU Local 2001 (“Union”) and Ellington Board of Education (“Employer”) regarding employee benefits. Hearings were held on May 3, and June 6, 2023¹ via Zoom videoconference.²

On behalf of the Union, Staff Representative Busch offered fifteen exhibits (Exh. U-1 through U-12 were admitted absent objection; U-13 and U-15 were marked for identification subject to an offer of proof; U-14 was admitted after Employer’s objection was overruled), made an opening statement, and presented one witness who was questioned and cross-examined under oath: Diane Frasca (“Union President”).

After the Union rested their case, the Employer moved to dismiss the grievance for failure to state a claim. Employer argues that the parties never bargained about the issue and that the Union did not identify a specific contract provision that was violated and therefore has no case. The motion to dismiss was denied.

On behalf of the Employer, Attorney Dorsey made an opening statement, offered fifteen exhibits (Exh. B-3 was admitted absent objection; the remaining exhibits were duplicative of those already marked as Union exhibits), and presented one witness who was questioned and cross-examined under oath: Brian Greenleaf, Employer’s Director of Finance & Operations, (“Director”).

¹ All dates are 2022 unless otherwise indicated.

² Arbitrators Jerman (neutral), Culhane (management), and Kuehnel (labor) presided at the May 3 hearing which was limited to rescheduling. Arbitrators Jerman (neutral), Baldyga (management), and Kuehnel (labor) presided at the June 6 hearing at which time the case was heard on the merits.

The parties waived oral closing arguments in favor of written briefs which were submitted simultaneously on July 10, 2023.

ISSUES

The parties did not agree on a statement of the issues. The Union proposed: “Did the Ellington Board of Education violate Article XIX of the Collective Bargaining Agreement by failing to provide an HSA vehicle at Employer’s cost? If so, what shall be the remedy?”

Employer objected to the proposed issue, arguing that the requested remedy is not part of the grievance process and that the Arbitration Panel has no authority to hear the matter because no grievance was filed under Article 5 of the Collective Bargaining Agreement. Employer asked the Arbitration Panel to first determine whether it had jurisdiction to hear and decide the matter. The Union argued that they filed a grievance which was heard, escalated, and denied through Steps 1, 2, and 3 of the grievance process. Employer did not claim arbitrability when the matter was filed with State Board of Mediation and Arbitration (“SBMA”).

After fully considering the parties’ positions, the following Issues were identified for hearing:

Did the Ellington Board of Education violate Article XIX of the Collective Bargaining Agreement by failing to provide an HSA vehicle at Employer’s cost?

If so, what shall be the remedy?

RELEVANT FACTS

1. The Employer and Union entered into a Collective Bargaining Agreement (“CBA”) for the period July 1, 2017 to June 30, 2022. (Exh. U-1)
2. Pursuant to the CBA, Employer provides eligible employees with a High Deductible Health Plan (“HDHP”). Prior to 2022, participants in the Connecticut HDHP had access to a fee-free Health Savings Account (“HSA”) through Health Equity. Employer switched from Connecticut to Anthem for HDHP coverage. Effective July 1, 2022, the Health Equity HSA was no longer offered fee-free. (Exh. U-1; Testimony of Director, Union President)
3. On May 6, Employer’s Insurance Specialist notified all Union members via email that Employer was transitioning “from our current Health Savings Account (HSA) provider **Health Equity to Liberty Bank**” and that “employees currently enrolled with our Medical insurance can open a new HSA account at Liberty Bank with ZERO fees.” The email informed employees that they will be charged \$3.95 per month if they retain their HSA at Health Equity and will be charged a one time fee of \$25 to transfer their balance from Health Equity to Liberty Bank. (Exh. U-2; Testimony of Union President) [emphasis in original]
4. Union President met with Director to discuss the HSA bank account change and the Union members’ disappointment that they had to pay fees that they never had to pay for previously. Director said that he would ask Insurance Specialist to send a clarifying email and that he would respond with a potential resolution of the issue. (Exh. U-3, B-3; Testimony of Union President)
5. On May 20, Insurance Specialist sent an email to all staff with clarifying information about the change in HSA. The clarification email states that HSAs are personally owned bank accounts; the Health Equity fees were previously covered by Connecticut; Anthem

agreed to cover the fees for the first year and not thereafter; Employer searched for an alternative bank to provide an HSA with no fee; Liberty Bank does not charge a fee; employees choose what bank they want to use for their account. (Exh. U-4; Testimony of Director)

6. Employer agreed to extend the timeline for the Union to file a grievance while they discussed a resolution to the issue. Employer and Union were not able to come to a mutually agreeable resolution. (Exh. U-6; Testimony of Union President)
7. On June 30, the Union filed a grievance alleging violation of Article XIX and "all other related articles" and that Employer "failed to negotiate the change to the health insurance benefits." Director denied the grievance on July 8. (Exh. U-7, U-8; Testimony of Union President)
8. The Union filed the grievance at Step 2 with Employer's Superintendent on July 20. Superintendent denied the grievance on August 15 (Exh. U-9, U-10; Testimony of Union President)
9. The Union filed the grievance at Step 3 with Employer's Board on September 7, modifying the grievance to add: "The [Employer] modified insurance benefits. Material change to health insurance benefits in violation of CBA. Specifically the [Employer] announced that there will be a cost to the HSA." The Board denied the grievance on October 5. (Exh. U-11, U-12; Testimony of Union President)
10. On October 31, the Union filed a request for grievance arbitration with SBMA. (Exh. U-14)

RELEVANT CONTRACT LANGUAGE (Exh. U-1)

GLOSSARY

Grievance: A claim alleging a violation, misapplication, or misinterpretation of a specific provision(s) of this Agreement or a condition which affects the health and safety of support staff personnel arising from the specific language of this Agreement.

SECTION 5.1

If the Employee or the Union (collectively referred to herein as the "Grievant") believes there has been a violation of a specific term of this Agreement, the Grievant will first discuss this matter with his/her immediate supervisor. If the matter is not resolved through informal discussion within three (3) days, the Grievant may file a formal grievance through the procedures established in Section 5.2.

ARTICLE XIX

INSURANCE BENEFITS

19.1 HEALTH INSURANCE

B. High Deductible Health Plan ("HDHP/H.S.A.") Effective July 1, 2018 for all eligible employees.

1. A HDHP/H.S.A. plan for eligible Employees with the following elements:

In Network:

Deductible: 2,250/\$4,500 (shared with out-of-network)

Member's out of pocket max: \$3,250/\$6,500 (After satisfying deductible, prescription co-pays are the only services that accrue toward out-of-pocket maximum. All other covered services are covered at 100%.)

Preventative care covered 100% (deductible waived)

Out of Network:

Deductible: \$2,250/\$4,500 (shared with in-network)

Member's out of pocket max: \$5,000/\$10,000 (All covered services are covered at 80%, with member paying the remaining 20%, after deductible.)

Lifetime in network: unlimited

Lifetime out of network: \$1,000,000

The Board will fund zero percent (0.0%) of the deductible. Eligible Employees who are not eligible for an H.S.A. plan can participate in a Health Reimbursement Arrangement/Account (HRA).

2. Rider Prescription drugs (managed three-tier formulary) (after deductible is met) – [includes oral contraceptives]

Co-pays:

- \$5 generic
- \$25 brand name
- \$40 non-formulary brand name
- 2.0 co-pay mail order for up to 90-day supply
- In-network caps of \$1,000 for single and \$2,000 dependent

C. Flex Dental Plan

- \$1,500 calendar year maximum
- Orthodontics payable at 50%, \$2,000 lifetime maximum (children only to age 19)

Premium Cost Share percentages for Employees participating in the above drug and dental insurance plans will be the same as for the health care plan option in which they participate.

D. Premium Cost Share:

Participating eligible Employees shall pay the following percentages of the premiums for the benefits described for the HDHP/H.S.A. above.

Year	
2018-19	3%
2019-20	4%
2020-21	5%
2021-22	6%

Should policy costs exceed \$10,200 (single) or \$27,500 (family) the parties agree to commence mid-term negotiations, in accordance with the provisions Connecticut General Statutes Section 10-153f(e), limited only to only discussion and good faith negotiations with respect to Article XXV, Section A of this Agreement, on or about July 1, 2018, July 1, 2019, July 1, 2020, and July 1, 2021.

UNION POSITION

The Union argues that Employer is contractually obligated to provide members with an HSA vehicle at no cost; CBA outlines specific amounts to be borne by each party and does not mention that members will be charged for participating in an HSA; Employer has provided an HSA vehicle at no cost to members since an HDHP was introduced; and past practice supports the Union's position.

EMPLOYER POSITION

The Employer argues that the Union did not mention a single contractual provision citing an HSA; the Union has failed to specify what was violated; HSAs are private bank accounts owned by individual members; Employer has no control over these personal accounts; and HSA is an IRS provision, not a health insurance provision.

DISCUSSION

The Union's initial grievance alleged violation of CBA Article XIX (Insurance) and that Employer "failed to negotiate the change to the health insurance benefits." Claims of failure to bargain are outside the jurisdiction of this panel.

The Union amended the grievance at Step 3 to claim that the Employer made a material change to the insurance benefits by announcing that there will be a cost to the HSA in violation of the CBA.

An HSA is a personally owned bank account governed by IRS regulations. Employees are free to select any bank they want for their HSA. An HSA is not a health insurance benefit. The CBA identifies the elements to be included in the HDHP, including the premium cost share. The CBA does not indicate that the Employer is responsible for selecting a bank for participants or for paying any costs associated with an employee's personal account. Consistent with that, Union President testified that an HSA was not discussed during contract negotiations and that they CBA does not indicate any HSA elements that are to be provided to members.

CBA Article XIX does not include a provision that Employer must provide a free HSA vehicle for Union members. There is no evidence that the Employer made any change to the insurance benefits.

AWARD

The Ellington Board of Education did not violate Article XIX of the Collective Bargaining Agreement by failing to provide an HSA vehicle at Employer's cost.

/s/ Janis C Jerman

Janis C. Jerman, Chair and Neutral

/s/ Ken Baldyga

Ken Baldyga, Management Member

/s/ Betty Kuehnel

Betty Kuehnel, Labor Member