



**STATE OF NEW HAMPSHIRE**  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**STATE EMPLOYEES ASSOCIATION OF NH,  
SEIU LOCAL 1984**

v.

**CASE NO. S-0428-6  
DECISION NO. 2008-235**

**STATE OF NEW HAMPSHIRE**

**APPEARANCES**

Representing State Employees Association of New Hampshire, SEIU Local 1984:  
Glenn R. Milner, Esq., Molan, Milner & Krupski, PLLC, Concord, New Hampshire

Representing State of New Hampshire:  
Rosemary Wiant, Esq. Attorney General's Office, Concord, New Hampshire

**BACKGROUND**

The State Employees Association of New Hampshire, SEIU Local 1984 (the "SEA") filed an unfair labor practice complaint on June 30, 2008 alleging that the State of New Hampshire has breached the parties' 2007-2009 collective bargaining agreement ("CBA") and committed an unfair labor practice in violation of RSA 273-A:5, I (h) due to the State's administration of a health reimbursement arrangement ("HRA") under Article 19.8.1 (1)(d) of the CBA. The SEA complains that the State has improperly limited HRA fund reimbursements to co-payments, deductibles, and co-insurance. The SEA contends HRA funds should also be available to reimburse payments employees make for: 1) the \$25 per pay period that state

employees pay to subscribe to the health plan; 2) services or items that exceed the maximum benefit conferred by the health plan; and 3) and payments for services or products that are not covered by the health plans. The SEA also complains about the \$20 expense threshold required to receive reimbursement and the State's refusal to extend the Article 19.8.1 (1)(d) benefit to domestic partners. On August 25, 2008 the SEA withdrew the amendment to its complaint that by offering certain benefits, including the HRA, to non-bargaining unit employees the State is discouraging membership in the SEA and otherwise interfering with the administration of the SEA in violation of RSA 273-A:5, I (b), (c) and (e).

The SEA requests that the PELRB: 1) find that the State has committed an unfair labor practice as detailed above; 2) order the State to reimburse all adversely affected collective bargaining unit members; 3) order the State to refrain from committing these unfair labor practices as related to the HRA benefit in the future; and/or 4) issue such other orders as may be just.

On July 14, 2008 the State filed its answer denying the unfair labor practice charge. The State contends that it has properly administered the Article 19.8.1 (1)(d) benefit in terms of the specific employee expenses that are eligible for reimbursement and that the SEA is seeking payment for expenses that are not "out-of-pocket costs associated with health care services or products obtained under the health plan." The State contends that the \$20 threshold is required by the third party administrator of the plan, and that the State properly refuses to allow domestic partners to participate in the Article 19.8.1 (1)(d) benefit in order to avoid reporting the \$200 as employee income, regardless of whether the fund is expended.

The State requests that the PELRB: a) dismiss the complaint; and b) grant such other relief as justice may require.

The board held a hearing on September 18, 2008 at the PELRB offices in Concord. The parties had a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. Prior to hearing the SEA filed a Hearing Memorandum. Both sides argued their positions at the close of evidence and the record was closed. The parties' stipulated facts are set forth below as Findings of Fact 3-11.

#### FINDINGS OF FACT

1. The SEA is the board certified exclusive representative for certain state employees pursuant to RSA 273-A:1 et. seq.
2. The State of New Hampshire is a public employer within the meaning of RSA 273-A:1, X.
3. Pursuant to the Collective Bargaining Agreement ("CBA"), article 19.8.1(2)(d), the health reimbursement arrangement ("HRA") is for "out-of-pocket costs associated with health care services or products obtained under the health plan up to the amount of \$200."
4. According to the State, the amount of \$25 per pay period that state employees pay to subscribe to the health plan is not reimbursable under the HRA. According to the SEA, these payments are "associated with health care services or products obtained under the health plan."
5. According to the State, the HRA is not intended to expand the benefits provided by the state health plan. Rather, according to the State, the HRA is intended to reimburse the employee for the employee's portion of the cost for the services or products provided by the plan. According to the SEA, this question is controlled by the terms of the CBA.
6. Under the HRA, the State would reimburse an employee for the following types of expenses: co-payments, deductibles and coinsurance.

7. Under the HRA, the State would not reimburse an employee for the following types of expenses: payments for services or items that exceed the maximum benefit conferred by the health plan and payments for services or products that are not covered by the health plan.

8. The State does not set the minimum reimbursement threshold. The third party administrator imposed the requirement that reimbursement checks will only be written for amounts of \$20 or greater.

9. The HRA provides up to \$200 per subscriber. It does not provide an additional \$200 for the subscriber's spouse or partner.

10. The State is subject to income reporting requirements imposed by the Internal Revenue Service ("IRS").

11. The IRS requires that benefits provided to the same-sex partner of an employee be imputed to the employee's income.

12. Article 19.8.11 of the parties July 1, 2007 to June 30, 2009 Collective Bargaining Agreement (the "2007-09 CBA") provides:

**Health Insurance:**

**19.8.1.** The Employer shall make available to employees and their dependents a Network health benefit plan (i.e. HMO) and a Point-of-Service (POS) health benefit plan. An employee's eligibility and opportunity to elect available health care options shall be in accordance with the "Benefits Highlights" set forth in Appendix F and G and the enrollment conditions of the respective plans.

The Association acknowledges that the Network plan and POS plan provider(s) shall be chosen by the Employer, and that the election by any employee(s) to participate in either plan shall not entitle said employee(s) to any further benefits not expressly provided for by this Agreement.

The level of benefits, cost-sharing, dependent coverage and Employer premium contributions of the Network and POS health plans offered under this provision shall be in accordance with the following provisions and with the specifications for a competitive bid.

- a. Except as provided in subparagraphs (1) and (2) of this section, the Employer shall pay the full premium or premium equivalent cost for employee only, two person and family coverage.
  1. Effective with the pay period beginning July 6, 2007, all employees who subscribe in either the Network or the POS plan shall pay \$25.00 per pay period.
  2. Effective with the pay period beginning January 2, 2009, all employees who subscribe in either the Network or the POS plan shall pay \$30.00 per pay period.
- b. The Network plan design shall be as described in Appendix F. Additional benefits, terms of coverage, exclusions and limitations not described in and not inconsistent with Appendix F shall be comparable to those set out in the Benefits Booklet for active state employees in effect on the day preceding the effective date of this agreement. The office visit co-payments for the Network Plan shall increase to \$10.00 per visit for Primary Care Physicians and \$20.00 per visit for Specialists effective January 1, 2009.
- c. The POS plan design shall be as described in Appendix G. Additional benefits, terms of coverage, exclusions and limitations not described in and not inconsistent with Appendix G shall be comparable to those set out in the Benefits Booklet for active state employees in effect on the day preceding the effective date of this agreement. The office visit co-payments for the POS Plan shall increase to \$10.00 per visit for Primary Care Physicians and \$20.00 per visit for Specialists effective January 1, 2009.
- d. Effective January 1, 2008, subscribers in either the Network or POS plans shall be eligible to participate annually in a health reimbursement arrangement established by the Employer, upon annual completion and proper submission of the health risk appraisal provided for under the respective plans. The arrangement shall provide funds for the payment of any out-of-pocket costs associated with health care services and products obtained under the health plan up to the amount of \$200\*.
- e. Domestic partners of employees who are the same sex as the employee shall be eligible for coverage under the Employer's available health benefit plans as though they were married spouses. Dependents of such domestic partners shall be eligible for coverage under the health plans as if they were dependents of the employee. Requirements for domestic partner benefit eligibility shall be in accordance with Appendix E. Employees meeting such requirements shall then be authorized by the Employer to enroll their domestic partners and dependents.
- f. The Employer shall provide coverage under the health plans consistent with Chapter 321 of the Laws of 2006, and known as Michelle's Law and codified in RSA 415.

\*This section shall only be enforced if the information obtained from the Health Risk Appraisal is privileged and protected from discovery.

13. Employees who participate in the Health Reimbursement Arrangement benefit ("HRA benefit") are issued a debit card. In the absence of the debit card, employee's may

request reimbursement. However, the third party administrator will only issue checks for reimbursement requests in an amount less than \$20 at year end.

14. Currently the State informs employees with same sex partners that under federal tax laws, as set forth in State Exhibit E, that:

“health coverage provided to your same sex domestic partner (and to your domestic partner’s dependents) will typically result in wage income being imputed to you. The amount of income imputed to you will be calculated based on the fair market value of the coverage being provided. This income, like other wage income, is subject to income tax withholding and to payroll taxes (Social Security, Medicare, and FUTA).”

## DECISION AND ORDER

### DECISION SUMMARY

The \$200 reimbursement arrangement cannot be applied to employee premium contributions, services or items that exceed the maximum benefit conferred by the health plan and payments for services or products that are not covered by the health plans. The \$20 threshold for check reimbursements is proper, since most employees receive reimbursements via debit cards, and employees who accumulate expenses of less than \$20 and who are unable to use a debit card to obtain reimbursement of such expenses will still be reimbursed at least on an annual basis. However, the State has improperly denied same sex domestic partners the use of the HRA benefit, and this benefit should be offered to them on the same basis as other health plan benefits.

### JURISDICTION

The PELRB has primary jurisdiction of all violations of RSA 273-A:5. *See* RSA 273-A:6, I. PELRB jurisdiction is proper in this case as the SEA has alleged violations of RSA 273-A:5 I (h)(to breach a collective bargaining agreement).

## DISCUSSION

Expenses eligible for reimbursement are limited to those “associated with health care services and products *obtained under the health plan.*” (emphasis added). The \$25 per pay period payroll deduction is an expense associated with the cost of the underlying insurance, and represents an employee’s premium contribution. The most reasonable interpretation of the disputed contract language requires a more direct association between the putative reimbursable expense and benefits obtained under the plan than is true with respect to the \$25 per pay period payroll deduction. This is because this \$25 payroll deduction helps pay the cost of the health insurance plan, and the health insurance plan is not a health care service or product “obtained under the plan.”

The SEA also claims that the HRA benefit should be available to meet, at least in part, expenses that exceed the maximum plan benefit or which represent uncovered costs. However, by definition these types of expenses are excluded from plan coverage, so they cannot reasonably be characterized as expenses associated with health care services and products obtained under the plan.

With respect to the SEA’s complaints about the \$20 threshold for reimbursement checks, the contract states that “subscribers in either the Network or POS plans shall be eligible to participate in a health reimbursement arrangement *established by the Employer.*” (emphasis added) . This language indicates that the State retains some level of control over the implementation and administration of the program, including how the reimbursement process is administered. The State has implemented an effective system for reimbursement by issuing debit cards. This allows employees to utilize the HRA benefit at the same time the

underlying expense is incurred. However, there are instances where the debit cards cannot be processed, necessitating the filing of reimbursement requests and the issuance of reimbursement checks. In such cases, the third party administrator will only process reimbursement requests in an amount that is less than \$20 once annually. The parties' collective bargaining agreement does not specify a time within which the State must perform its obligations to provide reimbursement to employees. The board believes that the current reimbursement arrangements are consistent with the State's general obligations and duties under Article 19.8.1 (d) and the SEA's complaint on this point is without merit.

The remaining issue is the State's refusal to extend the HRA benefit to same sex domestic partners and dependents. There is no dispute that an employee's married spouse and dependents are eligible to share the HRA benefit. Article 19.8.1 (e) specifically provides that "[d]omestic partners of employees who are the same sex as the employee shall be eligible for coverage under the Employer's available health benefit plans as though they were married spouses." This contract provision goes on to provide that employees who meet certain specified requirements are authorized to enroll their domestic partners and dependents. The purpose of Article 19.8.1 (e) is to allow same sex domestic partners and dependents to participate in the health benefit plan described in Article 19.8.1 in the same manner as an employee's married spouse, even though benefits provided to the same-sex partner of an employee may be imputed to the employee's income under federal tax law. There is nothing in the parties' contract which provides that the HRA benefit, which is a component of the health benefit plan described in Article 19.8.1, should be excepted from this arrangement. Accordingly, the HRA benefit should be extended to same sex domestic partners and dependents on the same basis as other the other health benefits described in Article 19.8.1. It

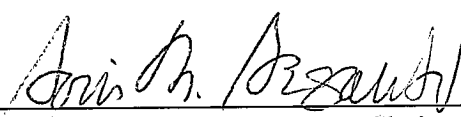


is up to the individual employee to decide whether to have the same sex domestic partner and dependent participate in the benefit even though the entire benefit may be reported as additional income to the employee.

In accordance with the foregoing, the State committed an unfair labor practice in violation of RSA 273-A:5, I (h)(to breach a collective bargaining agreement) on account of its determination that domestic partners of employees who are the same sex as the employee are not eligible to participate in the HRA benefit under Article 19.8.1 (d). The State shall implement procedures to make the HRA benefit available to such individuals for appropriate expenses incurred on or after June 30, 2008, the date this complaint was filed. The SEA's remaining claims are denied.

It is so ordered.

Signed this 19<sup>th</sup> day of November 2008.

  
Doris M. Desautel, Alternate Chair

By unanimous vote. Alternate Chair Doris M. Desautel presiding with Board Members Carol M. Granfield and E. Vincent Hall also voting.

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