OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer **orginal draft**
ROD Case No: 02-012

Trustees: A. Frank Dunham, Michael H. Holland, Marty D. Hudson and Elliot A. Segal.

The Trustees have reviewed the facts and circumstances of this dispute concerning the provision of benefits under the terms of the Employer Benefit Plan.

Background Facts

The Complainant is employed by the Respondent and is a UMWA representative on the Respondent's Health Care Council on Cost Containment. The Respondent notified the Council by memorandum dated April 15, 2003, that it had selected a new medical network to replace its current network, which would provide significant savings and expand the selection of network hospitals.

The Council met in May, August, and September 2003 to discuss the new network.
The Respondent states that at the September meeting, the Council was advised that if a treating physician was not in the new network, patients would have to change or incur out-of-network benefits. It was also suggested that any provider not in the network could contact the new network to determine if space was available.

By letter dated October 2, 2003, the Respondent notified employees and retirees under its Employer Benefit Plan that effective January 1, 2004, it would change from a physician network called Select Value Care (which the Respondent had developed and operated) to VIVA Health Network, which is part of the University of Alabama at Birmingham Health system. The letter informed beneficiaries that "benefits will not change-all copays and deductibles will remain the

same." It further noted that "The VIVA Health network may be slightly different from Select Value Care, so if your physician is not in the VIVA Health Network, you will need to find another physician and have your records transferred."

The Respondent states that in December the Council requested additional primary care physicians and some specialists be added to the network to serve rural areas. According to the Respondent, the network "was able to accommodate these requests but stuck to the principle that there were sufficient primary care physicians in some areas and additional PCP's [primary care physicians] were not needed."

The Complainant claims that the Respondent is "acting unilaterally contracting out and creating new networks that adversely affect both active and retired beneficiaries." In particular, the Complainant states the beneficiaries are penalized because the network does not include many of the primary care physicians, including the Complainant's primary physician, that were in the old network and who have served the UMWA community for many years.

The Respondent is a member of the Independent Bituminous Coal Bargaining Alliance (IBCBA) which negotiates separately from the Bituminous Coal Operators Association.

Dispute

Is the Respondent's medical provider network which was implemented effective January 1, 2004, consistent with the provisions of the Respondent's Wage Agreement?

Positions of the Parties

Position of the Complainant: The Respondent's medical provider network is not consistent with

the Respondent's Wage Agreement because the network was not mutually agreed upon by all committee members and does not include some primary care physicians who have served the UMWA community for many years.

Position of the Respondent: The Respondent's medical provider network is consistent with its Wage Agreement because based on its ongoing collaboration with the Council, the Respondent met both the letter and spirit of the contract and benefit plan.

Pertinent Provisions

Article XX (10) HEALTH CARE: "Medical Benefit Cost Containment Program" of the Respondent's 2002 Wage Agreement provides in pertinent part the following:

> The parties agree to jointly and collaboratively install the following strategies to reduce health care costs for employees and retirees of the Employer.
>
> a. The specific objective of the parties is to provide high quality health care to employees and dependents through plan designs that protect them from catastrophic medical events and financial hardship, but are cost effective in reducing over-utilization.
> b. Effective immediately, the parties will collaboratively construct, install or join appropriate directed care network(s). This effort will also include to the fullest extent practical, information sharing, close collaboration and joint action with the Trustees of the UMWA Benefit Plan and Trusts, other employer and unions similarly confronted with rapidly escalation health care costs, and selected state and region-wide coalitions currently being implemented across the USA.

c. Effective immediately, the parties agree to install the following medical plan managed care provisions:

1. Gatekeeper and network concepts-- On a continuing basis, the Parties will jointly select a group of physicians, pharmacies and or clinics who provide cost effective, high quality primary care and continued management to insure appropriate referrals for additional necessary treatment.

* * *

d. The parties agree to establish joint Health Care Cost Containment, Wellness and Quality Outcomes working committees at the company and mine levels totally dedicated to (A) reducing costs by a targeted percentage during the term of this Interim Agreement and (B) continuously improving quality outcomes and end results of health care delivered to covered employees, retirees, and beneficiaries.

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Discussion

Article XX (10) of the Respondent's Wage Agreement under Medical Benefit Cost Containment Program provides that "The parties agree to jointly and collaboratively install the following strategies to reduce health care costs for employees and retirees of the Employer."
The strategies included the following: 1) "will collaboratively construct, install or join appropriate directed care network(s)"; and 2) "On a continuing basis, the Parties will jointly select a group of physicians, pharmacies and/or clinics who provide cost effective, high-quality

primary care and continued management to insure appropriate referrals for additional necessary treatment."

The Complainant argues that the new network was not mutually agreed upon by all Council members. The Complainant's claim, therefore, is that both the Respondent and the Council must agree to the selection of the new network. Article XX (10) of the Respondent's Wage Agreement provides that the parties "collaboratively. . . join appropriate directed care network(s)." According to Webster's dictionary, collaborate means "to work together." Thus, the Complainant's argument that both sides must agree to the selection of the network is not supported by the Article XX (10) of the Respondent's Wage Agreement. Therefore, the question here is whether the parties collaboratively joined an appropriate directed care network, or in other words, worked together to become a member of the new network.

A memorandum dated April 15, 2003, from the Respondent to the Health Care Council on Cost Containment announced the selection of the new network. Subsequently, the council meet on May 1, 2003, and August 21, 2003. At the May meeting a Council member questioned whether the Respondent could change networks "mid –UMWA Contract." The Respondent replied that the contact only says that the Respondent has to provide a network. At the August meeting, questions about the pharmacy network were addressed.

At a meeting on September 16, 2003, concerns were raised about the change of participating pharmacies in the Respondent's network and that the Respondent should have consulted the Council prior to signing the network agreement. Concerns were also expressed about participants having to change physicians if the existing physician was not in the new network. According to the Respondent, however, council members at the meeting did not request a list of physicians participating in the network .

On October 2, 2003, the Respondent notified all participants of the change to the new network.

According to the Respondent, in December, after the Council members received a list of the network providers, the Council members requested that additional primary care physicians as well as some specialists be added to the network. The Respondent indicated that some physicians were added in areas that were under served by the network but for those areas that had sufficient coverage, new physicians were not added.

Based on the review of the information provided from the meetings held concerning the change from one network to another, the Trustees find that the parties worked together to become a member of the new network.

The other issue raised by the Complainant was that the network did not include all the physicians that the council requested. Article XX (10) of the Respondent's Wage Agreement states that "On a continuing basis, the Parties will jointly select a group of physicians, pharmacies and/or clinics who provide cost effective, high-quality primary care and continued management to insure appropriate referrals for additional necessary treatment." The Respondent joined a network administered by a third party, which had in place a selection of network physicians who had signed a contract with the network's administrator to provide services to its participating members. Therefore, the opportunity to add new physicians to the network is determined by the third party administrator. When the Respondent became a member of the network, the official capacity to select all the physician for the network becomes the responsibility of the network administrator. The network in this case, identified areas that were underserved by the Respondent's community and contracted with physicians to service those areas.

Opinion of the Trustees

The Respondent's PPL is consistent with Article XX (10) of the Respondent's Wage Agreement.