



SEBAC V is a twenty-year agreement. As negotiations for this agreement neared completion, all but two of approximately 200 issues were resolved. One was a Coalition proposal that the State extend health and pension benefits to the domestic partners of State employees and to their otherwise eligible children. The other was an early retirement issue.<sup>1</sup> The State opposed the inclusion of any domestic partner benefit in SEBAC V, but when it became apparent that the entire deal was in jeopardy over this issue, the State agreed to a reopener to occur in 1999 on domestic partners' benefits. The reopener provided:

The issue of whether and how domestic partners should be covered by pension and welfare benefits shall be the subject of contract reopener negotiations and arbitration to begin on or about January 1, 1999. SEBAC shall contact the State thirty (30) days prior to the date it wishes to begin such negotiations.

Accordingly, the parties met twice — once in January and once in February 1999 -- without resolving the issue, and agreed to proceed to arbitration. Hearings were conducted on October 28 and October 29, 1999. Thereafter, the parties exchanged Last Best Offers (November 19) followed by briefs (December 17) and replies (January 14).

### Statutory Framework

This interest arbitration arises under Connecticut General Statutes §5-276a (e)(5), which provides:

The factors to be considered by the arbitrator in arriving at a decision are: The history of negotiations between the parties including those leading to the instant proceeding; the existing conditions of employment of similar groups of employees; the wages, fringe benefits and working conditions prevailing in the labor market; the overall compensation paid to the employees involved in the arbitration proceedings, including direct wages compensation, overtime and premium pay, vacations, holidays and other leave, insurance, pensions, medical and hospitalization benefits, food and apparel furnished and all other

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<sup>1</sup> This issue was eventually resolved.

benefits received by such employees; the ability of the employer to pay; changes in the cost of living; and the interests and welfare of the employees.

The process requires the selection of one or the other Last Best Offer.

### The Issue

As set forth in SEBAC V, the issue is:

Whether and how domestic partners should be covered by pension and welfare benefits.

### The Last Best Offers

The State:

The State's last best offer is:

No such provision.

SEBAC:

The Coalition's last best offer is:

#### Domestic Partners

A. **Couples covered:** A couple shall be eligible for domestic partner status only if the couple is unable to marry in Connecticut because Connecticut's marriage provisions distinguish between same sex and opposite sex couples. Should eligibility to marry in Connecticut no longer be precluded on the basis of this distinction, the following provision shall cease to be effective on that date, except that coverage for couples having already achieved domestic partner status under the terms of this provision shall cease one year from that date.

B. The term "spouse" used anywhere in this Agreement shall be deemed to include a covered person's unmarried domestic partner who has executed an affidavit in accordance with this provision. An employee wishing to change his/her health or pension status based upon being in a domestic partnership must execute an affidavit with the employer, together

with appropriate evidence of joint residency and mutual dependence. The affidavit shall certify under the penalty of perjury that he or she:

1. Is in a relationship of mutual support, caring, and commitment, and intends to remain in such relationship for the indefinite future.
2. Is not married to anyone else.
3. Is her/his domestic partner's sole domestic partner, and visa versa.
4. Is not related by blood to the domestic partner closer than would bar marriage in the State of Connecticut.
5. Is at least 18 years of age and competent to contract.
6. Shares a legal residence with his/her domestic partner, and has shared a common legal residence for at least 12 months prior to the execution of the affidavit.
7. Is jointly responsible with his/her domestic partner for maintaining the common household.
8. Will inform the State promptly if there is any change in the status of the domestic partnership.

The evidence of mutual dependence shall be any two of the following:

- ownership of a joint bank account
- ownership of a joint credit card
- evidence of a joint obligation on a loan
- a joint mortgage or lease
- joint ownership of a residence
- evidence of a common household (household expenses, e.g. utility bills, telephone bills, joint public assistance budget, etc.)
- joint ownership of a motor vehicle
- execution of wills naming each other as executor and/or beneficiary
- granting each other durable power of attorney
- granting each other powers of attorney
- designation by one or the other as beneficiary under a retirement benefits account
- evidence of other joint responsibility.

A dependent child of the domestic partner (as defined above) shall be covered, provided that the child otherwise meets eligibility requirements.

The Healthcare Cost Containment Committee, working pursuant to C.G.S. §5-259, shall arrange to provide coverage to domestic partners in accordance with the definition awarded by the Arbitrator. During the period between the effective date of the award, and the expiration of any particular vendor contract with the State, if any particular vendor will not provide domestic partner's insurance using the definition awarded by the Arbitrator without increased *per capita* costs, the Healthcare Cost Containment Committee shall use a definition as close to the awarded definition as the Healthcare Cost Containment Committee, working pursuant to C.G.S. §5-259, can arrange. For all future contracts, the parties shall use the definition awarded by the Arbitrator, provided however that the Healthcare Cost Containment Committee may make such temporary modifications to the definitions as are necessary to prevent disqualifying an otherwise qualified vendor which uses a different definition of domestic partner and refuses to provide benefits based upon the definition awarded by the Arbitrator.

For purposes of the Pre-retirement Death Benefit, the "lawfully married for one year" requirement shall be deemed to be met if, and only if, the employee had filed the affidavit attesting to his/her domestic partner's status at least one year prior to his/her death.

### The Coalition's Arguments

The Coalition begins its arguments with some general observations. First, it notes that health coverage is terribly important for every family, and the State's current benefit for employees' spouses and children is an important part of the State's compensation system. The Coalition argues that denial of health benefits to partners and dependent children of same-sex couples results in distinctions based solely upon domestic partners' legal bar to marriage. The failure to provide equal health benefits condones and perpetuates social discrimination against and devaluation of gays and lesbians. The Coalition states, "There

can be no genuine disagreement that the facts show a real, live human problem, and no good reason not to fix it.”

The Coalition continues with an examination of its LBO in light of the relevant statutory factors. It maintains that in each category, its LBO emerges as the more reasonable. With respect to negotiations history, the Coalition tracks the issue’s journey through difficult negotiations to arrive at this forum. It stresses the unusual duration of the SEBAC V agreement — a matter of some consequence given the national trend towards recognizing the benefit.

As for the interests and welfare of the employees, the Coalition argues that its LBO unquestionably trumps the State’s in this category. The Coalition highlights the economic value of employee benefit-packages generally and offers a glimpse into the financial strain, personal hardship, and professional devaluation endured by the State’s gay and lesbian employees in domestic partnerships.

The Coalition addresses together the two factors of existing conditions of employment of similar groups of employees and wages, fringe benefits, and working conditions prevailing in the labor market. It describes the growth of the domestic partner health benefit among employers, public and private, in Connecticut and nationally.

Ability to pay, the Coalition continues, cannot be used as a shield by the State to avoid granting this benefit. This is a matter of “choosing” to pay, not “ability” to pay. The Coalition contends that the cost of providing this benefit is “tiny ” and the State is well-positioned to fund it.

The next factor, changes in the cost of living, is also advanced to support the Coalition's LBO. The medical cost of living is rising substantially faster than the overall cost of living. State employees in domestic partner relationships are increasingly unable to provide adequate insurance for their families.

Finally, the overall compensation of affected bargaining unit employees is currently far lower than that of heterosexual married members who enjoy expanded health care coverage for their spouses and children. In this factor, as in the others, the Coalition maintains that the evidence supports its LBO.

In all, the Coalition concludes, its LBO is far more reasonable than the State's "Just Say No" stance. From a cost/benefit analysis, the benefit to the Coalition far outweighs the minimal cost to the State. Status quo for the next two decades, which is no benefit at all, is unfair, unacceptable, and unnecessary. The Coalition has modified its original proposal to meet the weaknesses that the State identified in its testimony at hearing. Nonetheless, staunch opposition by the State employer to any form of domestic partner health benefit has not abated. The Coalition urges that its LBO be accepted.

#### The State's Arguments

The State opens its arguments with the observation that domestic partner benefits coverage is not a matter of statutory discrimination, and neither state law nor federal law requires domestic partnership coverage. The State's overarching contention, though, is that domestic partner benefits coverage is a public policy issue that is more appropriately decided by the legislature. Arbitrators should not decide issues of public policy.

Moreover, current policy in Connecticut does not support the extension of domestic partner health insurance and pension benefits to domestic partners.

As for the statutory factors guiding this issue, it is the State's contention that they strongly support its LBO, not the Coalition's. Most significant are the factors related to conditions of employment of similar groups of employees and conditions prevailing in the labor market, the ability of the employer to pay, the interests and welfare of the State's employees, and the overall compensation paid to employees.

The State notes that very few public employers at the state and municipal levels provide health benefits to domestic partners. In the private sector, both locally and nationally, the extension of such benefits remains rare. The statistics favor the State's position that no benefits of this nature should be granted at this time.

As for the expenses associated with the benefit, the State argues that it will be required to incur significant costs if forced to offer domestic partner benefits. There are immediate costs to provide expanded coverage. And long-term, the State's rate schedule will be adversely affected by its additional claims experience. As the parties stipulated at the hearing, the increase in the State's health insurance cost is likely to fall between one half of one percent (0.5%) and two percent (2%) of the total health insurance budget for actives. The State argues that costs even at the middle of this stipulated range would pose a serious obstacle. In addition, the administration of the benefit would impose a considerable burden upon the State.

Consideration of the interests and welfare of employees within the bargaining unit also leads inexorably towards the State's "No such provision" LBO. In most situations, the

State argues, the lack of coverage of domestic partners reflects the individuals' personal choices for which the State is not accountable. In any event, the hardship cases are too few to justify an award of this magnitude.

The last factor -- the overall compensation paid to the employees -- also supports the State. Employees already receive a generous wage package coupled with "a long laundry list of other benefits including four types of paid leave, unemployment compensation benefits, workers' compensation benefits, pension benefits, life insurance, social security and an extremely rich health insurance benefit." In addition, employees can already elect their domestic partner as their beneficiary under the State's pension plan for purposes of the joint and survivorship benefit. Under the circumstances, there is no sound basis for enhancing the overall compensation package.

The State concludes by advancing its LBO as the more reasonable approach to this issue. It points out that granting this benefit to Coalition bargaining unit employees will create substantial disparities among other groups of State employees and within the State's benefit systems. It urges the selection of its "No such provision" LBO, and requests that this process leave the issue for the State legislature to consider at some time in the future.

### Discussion

Because of the emotional charge attached to gay/lesbian issues, it is critical at the outset to declare what this exercise is and what it is not. This is an interest arbitration over a benefit sought by the Coalition for a small, precisely defined group of bargaining unit members. Like every other interest arbitration over unresolved disputes, this labor is guided by the enumerated statutory factors. It is a balancing exercise -- relevant evidence evaluated and measured against relevant standards. It is conducted with detachment.

What this is not is a commentary about the members of the class. It is not a voice in the religious, moral or political debate surrounding same-sex relationships. It neither advocates for nor preaches against gay rights.

Difficult though it is to ignore the swirl of extra-contractual conflict, this analysis will be held within the confines of traditional collective bargaining discourse. It will steer clear of the rhetoric of the moment.

It also makes sense at the outset to address the roles, if any, that federal and state discrimination laws play in the selection of the more reasonable LBO. The short answer is that they play no appreciable role. This is not a grievance about unlawful discrimination. It is, rather, a negotiations conflict about what in most jurisdictions remains *lawful* discrimination, that is, legally sanctioned distinctions between married and unmarried couples. Not only have courts routinely held that an employer's failure to extend dependent benefits to domestic partners is not violative of federal or state discrimination law, but arbitrators (myself included) have denied such claims when they have arisen in the context of a rights (grievance) arbitration. Simply put, the issue now is not whether the denial of the benefit violates the law or the existing contract. The Coalition would have to concede that it doesn't. That is what the reopener is about. The issue now is whether the statutory factors favor adding the benefit to the SEBAC V agreement for the future.

Finally, the State's public policy argument does not dispose of this case. For one thing, there is no persuasive evidence that an award granting the benefit in this matter would contravene public policy. The State extrapolates from tangential issues a view that

domestic partner benefits would run counter to public policy, but that view is far from proof of an explicit, well-defined expression contained in State law or legal precedent. At best, the public policy of the State of Connecticut on this issue remains unsettled. Further, there can be no dispute that the matter of health and pension benefits for State employees is a mandatory subject of collective bargaining. Whether to extend health benefits to a particular group of employees is something the parties can and did bargain about, reach impasse about, and eventually agree to send to binding interest arbitration.

The latter point is perhaps the most important -- that is, the State voluntarily (if reluctantly) entered into an agreement with the Coalition to place the question of domestic partner health benefits before a neutral arbitrator for a decision on the merits.<sup>2</sup> In so doing, the State, acting in its role as employer, and the Coalition as labor representative of thousands of employees, presented a basic employment question regarding the benefits it will provide to its employees. This interest arbitration responds to a negotiations impasse. It neither alters Connecticut's public policy nor forges it.

### The Statutory Factors

#### *History of Negotiations*

There are two relevant features of the parties' negotiations history. One has already been discussed, that is, the mutual agreement of the parties to place the issue of domestic partner health/pension benefits to a neutral third party for resolution. While the State attempts to distinguish its willingness to participate in arbitration from its willingness to have an arbitrator consider the substantive merits of the issue, the fact is that in agreeing

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<sup>2</sup> The State argued in its brief, "The power to frame or recast public policy does not, and cannot, reside in the hands of an arbitrator who is not chosen by or responsible to the citizens of Connecticut and who in this case is not even a resident of this State." The parties jointly selected the neutral in this case, fully aware that she does not reside in Connecticut.

to let an arbitrator rule, the parties submitted the question of domestic partner health benefits to a legally appropriate mechanism for dispute resolution. This element of the parties' negotiations history bears upon the reasonableness of the State's LBO to the extent that the State's "No such provision" doctrine stems from a "wrong forum" view of this proceeding. It is not reasonable for the State to propose "No such provision" on the strength of the argument that an arbitrator ought not make this important decision. That is precisely the purpose for which this proceeding was convened.

The other relevant feature of the negotiations history pertains to the agreed-upon duration of the SEBAC V agreement. Unlike most every collective bargaining agreement in this country, the SEBAC V contract is a twenty-year settlement. Effective July 1, 1997, SEBAC V does not expire until June 30, 2017. Thus, factored into the assessment of the parties' respective LBO's must be the reality that the resolution of this issue carries for seventeen more years. The issue is not simply which LBO is more reasonable in the year 2000 but which LBO is more likely to endure as the more reasonable until the year 2017.

From that standpoint, the Coalition's LBO -- with *some* benefit, as opposed to the State's LBO with *no* benefit -- is more reasonable. The evidence points to an increase in the availability of domestic partner health benefits among employers. It appears more likely than not that these benefits will be widespread well before the end of the SEBAC V agreement.

*Existing Conditions of Employment of Similar Groups of Employees;  
Wages, Fringe Benefits and Working Conditions Prevailing in the Labor Market*

These factors invite a number of statistical constructs: numbers of public sector employers that provide the benefit; private sector employers; employers with more than

200 employees, municipalities, academic institutions, etc. They also invite discussion of what constitutes a "similar group" of employees -- external comparisons and/or internal. There is no question that domestic partner health benefits are not commonplace today. Among Connecticut's largest private sector employers (in assets), five out of nineteen provide the coverage. Four states provide it. Ten percent of employers with more than 200 employees provide it. Twenty-three per cent of employers with 5,000 or more employees provide it. Seventy of the country's Fortune 500 companies offer it. Eighty-six municipalities are known to provide it. From these numbers one could not characterize the benefit as a working condition "prevailing" in the labor market or anything close to prevailing.

On the other hand, there is also no question that as a benefit for employees, domestic partner health and pension coverage is appearing with increased frequency, particularly among larger employers. Union witness Lee Badgett, Ph.D., economics professor at University of Massachusetts, testified that she has read reports, conducted analyses of industries, interviewed employers, read extensively from secondary sources, and has herself written a book on the economic lives of lesbians and gay men. Badgett testified that her impression, "based on all of these different sources, is that there had been a trend of acceleration, not just an increase, but in increase in the rate of growth of the number of employers that offer these benefits." Even the State's expert, Corporate Benefits Management Consultant Robert Lindberg, Executive Vice President of Lindberg & Ripple, agreed that the number of employers offering domestic partner benefits is increasing, though he quarreled with Badgett's description of a "trend." He did agree that the larger the employer, the more likely it is that it will provide domestic partner benefits.

The fact is that when prevailing working conditions are viewed through the narrow lens of "today," it is undeniable that the list of those who do provide domestic partner benefits is dwarfed by the list of those who do not -- in every category. However, when the lens is opened to permit a glimpse backward at the rate of growth and projection forward to the seventeen years remaining in the SEBAC V term, the figures suggest a course toward inclusion rather than exclusion of this benefit in employment benefit packages.

In the current labor market, moreover, the State of Connecticut must remain competitive to continue to attract a highly qualified and diverse workforce. Though the State argues that it does not wish to be a "leader" in this particular area, leadership is not measured in narrow increments. The State is a leader. In sheer size it presents a dominant force in Connecticut. Its compensation and benefit levels already serve as a beacon for recruitment and retention of talent. Its long-standing commitment to fairness and equity transcends this issue. Were it to provide domestic partner benefits, the State would not become a leader; it would merely ensure that its status as one is not jeopardized.

As for employee-group comparisons, the statute does not define nor limit the scope of the phrase "similar groups of employees." Ordinarily, the "similarities" proffered in an interest arbitration tend toward job function (e.g. police officers as compared to other police officers) or some other readily apparent common denominator (other bargaining units of the same employer; State employees generally, etc.). In this matter, the Coalition advances an argument tailored to the underlying philosophical debate: Are employees in domestic partnerships any different from legally married couples?

It is neither necessary nor wise to attempt to answer that question with any more profound analysis than would attach to any other labor issue. To the extent one considers

similar groups of employees working within the same bargaining unit as a legitimate vehicle for comparison (and there is no manifest reason not to), and to the extent one notes that benefits have long been available for spouses of State employees, the chief basis for differentiating between spouses and domestic partners for purposes of providing health benefits is the legal status of the relationship. And while there may be several reasons why the State as employer is wary of expanding coverage to domestic partners of its employees, the legal status of an otherwise formal "spousal" relationship has no bearing upon an employee's role in the workplace.

From a labor employment perspective, there is no basis to justify the inequity between employees with spouses and those with spouse equivalents. The Coalition's LBO contains sufficient restrictions to warrant that participation in the benefit would be limited to just those unit members who, but for statutory constraints, *would* marry. Indeed, recognizing that not every couple who can marry does marry, the Coalition's LBO provides that should Connecticut's laws change to permit marriage between same sex individuals, the domestic partnership provision of SEBAC V would cease to be effective.

#### *Overall Compensation Paid to Employees Involved*

This factor has no independent relevance apart from the discussion of differentiation between comparable groups of employees within the unit. The record indicates that fringe benefits comprise roughly 50% of an employee's total compensation. For married employees and their children, subsidized health insurance coverage is easily the most important fringe benefit. Thus, the overall compensation paid to employees in domestic partnerships is unequal to that paid to seemingly similarly situated employees.

### *Ability of the Employer to Pay*

Prior to the submission of LBO's, the Coalition sought domestic partner benefits for both same sex and opposite sex couples. There is no dispute that when opposite sex couples are excluded, both the anticipated increase in health benefit enrollment and the overall cost to the employer drop dramatically.

At the hearings, the parties stated:

**State:** The State has agreed to an assumption, for lack of a better term, that almost regardless of what definition is used for the term "domestic partner," and regardless of whether it is limited to same sex or opposite sex, it is equally unlikely that the total cost will exceed 2 percent of the total health insurance cost.

**Coalition:** I indicated in an off-the-record discussion with counsel that SEBAC was prepared to agree that whatever the definition ultimately selected here, it is unlikely that the benefit will cost less than half a percent of the health care - of the State's overall health care budget for actives who are always covered now, and then gradually that would increase to no less than half a percent of the overall cost for new retirees.

The Coalition's brief points to developments at and after the hearings that it argues warrant a reduction in the range to below 0.5%. It points out that its adoption of the durational residency and mutual dependence requirements into its last best offer brings the costs to the lower or middle end of the scale. It argues for a further 10% reduction in the scale in light of the parties' later-in-the-hearing joint admonition that "the arbitrator should not assume that any benefits provided to SEBAC-represented employees would be extended to non-SEBAC represented employees." And it argues that the entire range should be modified to reflect the estimated reduction attributable to the Coalition's same-sex limitation in its LBO.

The State contends that the Coalition's latest estimate of cost as "less than 0.18% of the entire health care appropriation flies in the face of the parties' stipulation, and therefore must be disregarded." The stipulation is not open for revision after the fact, it contends. Moreover, the parties anticipated that the definition of domestic partner might change in the course of the hearing, and accommodated that possibility in their original stipulation.

It is not necessary to parse the nuances of the parties' record stipulation to determine if there is room for SEBAC's post-hearing contention. The fact is, even holding to the original stipulated range, the developments cited by the Coalition drive the anticipated costs down to the lowest part of the range. For purposes of this arbitration, then, the LBO's will be evaluated *as though* the increase to the State to provide the benefit would be in the neighborhood of 0.5% of the State's overall health care budget for actives, or somewhere between \$1.3 to \$1.5 million.<sup>3</sup>

There is no persuasive evidence that the State would be unable to pay for domestic partner health/pension benefits, nor that providing the benefits would pose a hardship. Arguments about ability to pay naturally centered upon costs in the context of the State's immediate financial condition. While even those arguments don't support a finding that the State cannot afford to provide the benefit today, it is notable that there is no evidence that the State would be unable to fund the benefit over the next 17 years.

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<sup>3</sup> These figures represent .5% of roughly 267 to 292 million -- the closest approximations to the overall health budget. The Coalition argues that even the estimate of \$267 million overestimates the cost to the State by as much as \$67 million.

As for the current fiscal year and the next, the record fails to demonstrate inability to pay, or ability to pay only at great sacrifice. The State does advance the spending cap -- estimated expenditures cannot be greater than estimated revenues; the General Assembly will not adopt a budget greater than the growth in personal income or the growth in the CPI absent a 3/5 vote of both houses -- in support of its claim that a costly benefit is unlikely to be welcomed by the legislature. But, as the Coalition argues, the existence of the spending cap in and of itself does not mean that the State would have to exceed the cap to fund the benefit.

The State is correct when it points out, "The fact that any public employer has the power to raise taxes on its residents does not justify an endless stream of benefits for those who are compensated with tax dollars." For that reason, ability to pay as a factor in an interest arbitration is not assessed in a vacuum. It is, rather, considered along a spectrum of reasonableness. Within that framework, the evidence here favors the Coalition in that the record discloses no tangible economic obstacle at present or reason to suspect the emergence of one as the term of the agreement progresses.

#### *Changes in the Cost of Living*

Limiting this factor to changes in the medical cost of living, there is no dispute that these costs continue to rise at a rapid pace. This reality cuts in two directions: On the one hand, State employees denied domestic partner benefits confront daunting expenses and wrenching choices as costs to provide health care for their partners escalate. On the other hand, as costs increase, so too, do the costs to the State to provide the benefit.

The Coalition produced a stream of witnesses who told their personal stories of need. Several were without resources to provide insurance for their partners, and as a consequence, endured financial hardship as well as scant medical care. That costs are going up will dig deeper and deeper into employees' income just to maintain status quo. In the long run, an employee whose partner lacks adequate medical care becomes an employee who is more likely to be absent and more likely to be distracted when present. Valuable employees may, in fact, become former employees. These circumstances produce costs to the State as well. Where the State is not ill-positioned to pay for domestic partner benefits, this factor, on balance, favors the Coalition's LBO.

#### *Interests and Welfare of the Employees*

It goes without saying that it serves the interests and welfare of affected employees to be eligible for domestic partner health/pension benefits. One needn't look far for evidence of financial strain, personal hardship, and negative repercussions in the employment relationship. Impacted employees see themselves as second-class citizens in the workplace. They sense arbitrary distinctions being drawn between them and their married counterparts, for their partnerships are no less permanent, stable and committed than those of their married peers.

Even if one considers the interests and welfare of all bargaining unit employees, a benefit for one small group does not detract at all from the interests and welfare of the majority. The benefit creates compensation equity for similarly situated employees, which, if anything, serves the interests of the entire unit.

*Miscellaneous*

Interwoven within the State's arguments to support its LBO are observations that do not directly apply to a given statutory factor, but could, if necessary, be tucked into discussion of one or another of them. Rather than search for a reasonably related category, I will briefly address them.

The State posits the following:

- There are significant administrative difficulties associated with the extension of benefits coverage to domestic partners of state employees.
- An award of domestic partner benefits would create disparities among state employees and within their benefit package.
- There is no generally accepted definition of domestic partner status, and all definitions, including the Coalition's definition, present problems.
- Should the arbitrator award domestic partner benefits to same sex, but not opposite sex domestic partners, there is no assurance that such award will stand unchallenged.
- The duration of the award is a false issue.

The anticipated administrative difficulties are greatly eased by the Coalition's modification of its LBO. The registration requirements inserted in its LBO remove the vagaries of the Coalition's earlier proposals. All employee benefits require administration and any employee benefit is susceptible to attempted abuse. There is no demonstrable evidence, beyond the assertion, that administering this benefit will pose unmanageable administrative concerns.

As for the threatened disparities in benefits among different groups of State employees as a result of granting the Coalition's LBO, that is not a justification for awarding "no such provision." Whether the State would ultimately choose to extend the benefit to employees not represented by SEBAC is a matter that the parties agreed is beyond the

purview of this arbitration. Even the fact that bargaining unit employees whose pensions come through the Teachers' Retirement System (as opposed to the State Employees Retirement System) would be disadvantaged does not warrant denying the benefit to the group as a whole. Health/pension benefits for domestic partners, all will agree, is not an overnight revolution. It is, rather, a gradual evolution. That the grant of the benefit leaves unchanged *other* relevant sources of benefits is inevitable, and does not militate against appropriate change.

The lack of a universal definition of domestic partner does not meaningfully hamper implementation of this benefit. Again, the Coalition's LBO anticipates this problem and provides a solution: "If any particular vendor will not provide domestic partner's insurance using the definition awarded by the Arbitrator without increased *per capita* costs, the Healthcare Cost Containment Committee shall use a definition as close to the awarded definition as the Healthcare Cost Containment Committee, working pursuant to C.G.S. §5-259, can arrange."

The State is right that there is no guarantee an arbitrator's award will go unchallenged by an employee who is ineligible for health coverage for his/her opposite sex domestic partner. The State did make the following representation at the arbitration hearing, though:

If the arbitrator were to rule that on a last best offer or offers which resulted in a domestic partner benefit being available to same sex but not opposite sex couples, the state will not take the position that that distinction constitutes an illegal discrimination under either state or federal law.

Really, the Coalition and the State are united in this dilemma. It is not a reason to deny the benefit.

Finally, the argument that the duration of the SEBAC V agreement is a false issue is somewhat paradoxical. The State contends that despite the negotiated duration of the agreement, the parties will probably seek to revise the insurance provisions of SEBAC V more than once during the remaining 17 years. "Nothing prevents the Union from demanding benefits for domestic partners as a condition of any such renegotiated agreement," it writes. This argument has it backwards, however. The duration is the duration. There is no other opportunity set forth in the agreement for a reopener, renegotiation or reconsideration of already settled matters. This arbitration must be decided in light of SEBAC V as it currently exists -- not as the parties may mutually agree to modify it somewhere down the road.

On balance, then, the weight of the evidence supports an award that grants the benefit rather than an award that denies it. The Coalition in its LBO responded to the criticisms leveled at its earlier positions. It inserted "teeth" into the eligibility criteria and dramatically reduced the scope of eligible beneficiaries. After careful consideration of the record and arguments, I am persuaded that the Coalition's LBO is the more reasonable of the two.

Award

I hereby award the Last Best Offer of the Coalition.

  
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Roberta Golick, Esq.  
Arbitrator

Date: January 31, 2000