

---

In the Matter of the Arbitration

Between

SOUDERTON AREA EDUCATION  
ASSOCIATION

And

SOUDERTON AREA SCHOOL DISTRICT

---

:

:

:

:

:

Opinion and Award

Re: Susan Roncoroni/Denial  
Spousal Health Insurance

Before: Joan Parker  
Arbitrator

**Appearances:**

For the Association:

Charles L. Herring, Esq., Staff Attorney, PSEA

For the School District:

Fox Rothschild, LLP

By: Jeffrey T. Sultanik, Esq.

\* \* \* \*

Pursuant to the terms of the Collective Bargaining Agreement between the Souderton Area Education Association (“the Association”), and the Souderton Area School District (“the District”), the undersigned was selected to serve as Arbitrator in the instant matter. A hearing was held on June 8, 2016, at which time both parties were afforded full opportunity to present testimony, evidence, and argument in support of their respective positions. Post-hearing briefs were received by the Arbitrator on July 20, 2016, at which time the Record was deemed closed.

**The Issue**

The issue for determination, as stipulated by the parties, is as follows:

Whether the Grievant is entitled to add a spouse to her retiree medical benefits subsequent to her date of retirement in accordance with the Code and/or the Contract?

**Applicable Contract Language**

**ARTICLE VII – BENEFITS**

\* \* \* \*

**F. Retired Employees**

Retired Bargaining Unit Employees may elect to remain in the District Group Hospitalization Plan under conditions outlined in School District Policy.

**Applicable Statutory Provisions**

24 P.S. §5-513

§ 5-513. Group insurance contracts

\* \* \* \*

(b) The board of school directors is hereby authorized to deduct from the employe’s pay, salary, or compensation, such part of the premium as is payable by the employe and as may be so authorized by the employe in writing.

(b.1)(1) School districts, intermediate units and area vocational-technical schools shall give employes and their dependents, upon the employe’s retirement, the option of continuing in the group health plan to which they belonged as employes.

(2) Notwithstanding the provisions of Title XXII of the Public Health Service Act (58 Stat. 682, 42 U.S.C. Sec. 300bb-1 et seq.) and amendments thereto, annuitants of the Public School Employees’ Retirement System may continue to purchase that coverage after retirement, as defined in paragraph (4), until sixty-five years of age or until they are covered by another plan. An annuitant who is eligible to be covered as an employe or dependent by any other employer-provided health plan shall not be eligible for coverage in the school unit’s plan: Provided, however, That such annuitant shall be eligible for reinstatement in the school unit’s health plan whenever such alternative coverage ceases.

(3) Purchase of the coverage provided for in this subsection shall equal the cost of the program for active employes and dependents plus an additional two per centum.

(4) For purposes of this section, an annuitant shall mean a member of the Public School Employees’ Retirement System who has taken superannuation retirement, has retired with thirty (30) or more years of credited service or has taken disability retirement.

**Background**

The facts in this case are largely undisputed, and the parties, in fact, signed a Joint

Stipulation of Facts, which they entered into the Record at the outset of the hearing, along with ten additional exhibits. (Jt. Exhs. 1-11). The Joint Stipulation sets forth the background of this case and states as follows, in relevant part:

1. The Association and District were parties to a Collective Bargaining Agreement dated July 1, 2008 through June 30, 2012.
2. The Association and District are parties to a Collective Bargaining Agreement dated July 1, 2012 through June 30, 2017.
3. Susan Roncoroni, the Grievant, retired from the District on June 11, 2012.
4. Roncoroni retired with 30 years of service as professional employee in the District.
5. Roncoroni has a date of birth of 10/21/54 and was 57 years old when she retired.
6. Section 5-513 of the Public School code requires school entities to provide qualified retirees with the option to continue to purchase medical insurance after retirement until age 65 when the retiree meets the conditions set forth in Section 5-513.
7. Section 24 P.S. Sec. 5-513 (b.1) (1) of the Public School Code provides that “[s]chool districts, intermediate units and area vocational-technical schools shall give employees and their dependents, upon the employee’s retirement, the option of continuing coverage in the group health plan to which they belonged as employees.”
8. Section 5-513(b.1) (2) further provides, in pertinent part, that “annuitants of the Public School Employees’ Retirement System may continue to purchase that coverage after retirement, as defined in paragraph (4), until sixty-five years of age or until they are covered by another plan. An annuitant who is eligible to be covered as an employee or dependent by any other employer-provided health plan shall not be eligible for coverage in the school unit’s health plan: Provided, however, That such annuitant shall be eligible for reinstatement in the school unit’s health plan whenever such alternate coverage ceases.”
9. Roncoroni is a qualified annuitant for purposes of Section 5-513.
10. District Policy No. 813 outlines the requirements for retired employees to remain on the District’s Group Health Plan.
11. When Roncoroni retired, she opted to remain on the District’s Group Health Plan and continued her single-only coverage. Roncoroni has been paying the full premium for such single-only coverage since her retirement.
12. Same-sex marriage has been legally recognized in Pennsylvania since May 20, 2014.

13. On July 18, 2015, Roncoroni married Judith M. Mantle.
14. On September 22, 2015, Roncoroni contacted the District to request that her spouse be added to her health plan starting January 1, 2016.
15. Roncoroni made the request to add her spouse to her health plan by attaching a post-it note to paperwork remitted to the District with her monthly insurance payment.
16. This request was prospective seeking to add Ms. Mantle to the plan starting January 1, 2016.
17. The Group Health Plan includes a special enrollment period of 31 days from the date of a marriage to enroll a new spouse for coverage.
18. Roncoroni's request to add her spouse was made outside of the 31-day special enrollment period provided for in the Group Health Plan.
19. The District's open enrollment period for the Group Health Plan occurs every August.
20. Roncoroni's request to add her spouse was made outside of the District's open enrollment period for 2015-2016.
21. On October 1, 2015, Deirdre Flenders, Benefits Coordinator for the District, spoke with Roncoroni and advised her that she could not add her spouse under the District's retiree healthcare policy because Roncoroni had single coverage when she retired and could not add a new spouse after retirement. Ms. Flenders also explained that Roncoroni could not add her spouse because it was more than 31 days after her marriage or that it was not open enrollment.
22. On October 7, 2015, Dr. Christopher Hey, Assistant Superintendent for the District, advised Roncoroni that she would not be able to add her spouse to her health plan because District Policy does not include a provision for adding a spouse after retirement.
23. It is the District's position in interpreting Policy No. 813 that a retiree is entitled to continue coverage in place at the time of retirement and that no changes to the coverage can be made, including adding a new spouse and/or dependents to the policy post-retirement.
24. In administering Policy No. 813, it is the District's position that it has received requests from retirees to add an existing spouse and/or dependents to the Group Health Plan post-retirement and has denied all such requests because a retiree is entitled to continue the coverage in place when he/she retired and that no changes to the coverage can be made after retirement.

25. On July 18, 2015, Ms. Mantle was retired and was purchasing her own health insurance coverage.

26. The relief sought in the October 19, 2015 grievance was as follows:

*“The District shall immediately add Susan Roncoroni’s spouse to the District insurance plan.”*

27. The District Administration denied the grievance by way of a transmittal dated November 30, 2015.

28. On December 4, 2015, the Association’s PSEA UniServ Representative submitted a Request for Grievance Arbitration to the Bureau of Mediation, Department of Labor and Industry.

29. The relief sought by the Association in this hearing is to add Roncoroni’s spouse to the District’s insurance plan during the August 2016 open enrollment period.

Additional facts were developed at the hearing which further explain the basis for the instant grievance. Ms. Roncoroni taught French in the District for a significant number of years, which made her eligible to purchase post-retirement medical coverage through the District’s group insurance program, pursuant to 24 P.S. § 5-513 of the Public School Code. When she retired in 2012, she had a same sex partner, Judith Mantle. Grievant and Ms. Mantle have been in a monogamous relationship for over twenty years, and in 1993, they participated in a symbolic marriage ceremony in which they exchanged wedding rings and vows. At that time, the Commonwealth of Pennsylvania did not recognize same sex marriage and, therefore, it was not possible for Grievant to claim Ms. Mantle as a dependent. However, Roncoroni and Mantle held themselves out as a married couple and co-mingled assets, jointly purchased property, bought insurance, shared pets, etc.

After the Commonwealth of Pennsylvania recognized as lawful same sex marriage, Grievant and Ms. Mantle married in July 2015. At the time that they married, Ms. Mantle was employed at Richman Chemical and was provided with employee-only medical insurance. Ms. Mantle

retired from Richman Chemical on May 27, 2015 and had limited COBRA coverage because of the size of the company. Her COBRA coverage ran from May 27, 2016 to February 28, 2016. Because the medical coverage the Ms. Mantle had through COBRA was ending, and given that she and Roncoroni were legally married by that time, Roncoroni asked the District to add Ms. Mantle as a dependent to her coverage. The District denied the request based upon its practice of allowing retirees to continue the coverage that they had at the time of retirement but not permitting them to add family members to their health plan after retirement. The District's denial was also based on its interpretation of § 5-513 of the School Code, the Public Health Service Act, and District Policy No. 813.

District Policy No. 813 is silent on the specific issue in dispute, but it does state as follows, in relevant part:

Conditions for Retired Professional and Classified Personnel to Remain  
On Group Hospitalization Plan

Retired personnel may elect to remain on the district's Group Hospitalization Plan Under the following conditions:

1. S/He must be at least fifty (50) years of age, with employment in the Souderton Area School District for at least ten (10) years immediately prior to retirement.
2. S/He must be actively on the plan at the time of retirement.
3. S/He must be drawing an annuity from PSERS or vesting rights with the PSERS upon leaving district.
4. Both the retired employee and spouse may remain on the plan until they reach sixty five (65) years of age. An annuitant who is eligible to be covered as an employee or dependent by any other employer-provided plan shall not be eligible for coverage in the school unit's health plan. Should such alternate coverage cease, such annuitant shall be eligible for reinstatement in the school unit's health plan.
5. Eligible dependent children may remain on the plan as long as the parent is enrolled.

6. If the retired employee dies before the spouse reaches sixty five (65) years of age, the spouse and dependent children can continue for a grace period of two (2) years before converting to an individual plan.
7. All retirees, regardless of classification, will carry the same benefit coverages. Those coverages will be that in effect for the active staff, but not to include dental or vision. Life insurance will be limited to \$5,000.
8. The premium must be paid entirely by the insured, quarterly and in advance. There will be no Board contribution. Premiums are due March 15, June 15, September 15, and December 15.

\* \* \* \*

### **Contentions of the Association**

The Association contends that the District erred in denying Grievant the right to add her spouse to her medical coverage after she retired. According to the Association, the District is correct only in regard to its contention that, assuming *arguendo* that the grievance has merit, the time when Grievant can begin to add Ms. Mantle as a dependent would be in the open enrollment period during August 2016.

The Association argues that there is no practice which precludes the District from allowing Grievant to add her spouse as a dependent during her post-retirement period. The Association acknowledges that in 2008, a case arose involving an employee who retired and then divorced his spouse, remarried, and in 2011 sought to add his second spouse to his medical coverage. The District denied that request, and the employee did not grieve. The Association submits that it was unaware of that matter, and the fact that it did not challenge the District's action cannot be used by the District to support its contention as to a binding practice of disallowing retired employees to add dependents to medical coverage following their retirement.

The Association further submits that District Policy No. 813 does not address the issue of an employee's right to add a dependent to medical coverage subsequent to retirement. Therefore,

the District cannot find support for its argument about practice by citing Policy 813.

With respect to the Public School Code, the Association argues that § 5-513 likewise is silent as to whether a retiree may add a dependent after retirement. The relevant language in § 5-513 (2) states that annuitants of the Public School Employees' Retirement System "may continue to purchase that coverage after retirement, as defined in paragraph (4)..." There is no restrictive language prohibiting the addition of dependents. The Association asserts that the intent of § 5-513 mandates that dependents of a retiring employee be eligible for coverage. Undisputedly, at the time of retirement, an employee with sufficient years of service is permitted to purchase continued coverage for himself and his dependents. In the Association's view, employees who previously did not have the legal right to marry a same sex partner, should not be prohibited from adding a dependent now that the law has changed to legalize such marriages.

The Association likens the District's position to characterizing retirement as a snapshot. However, retirement is not necessarily static and should be likened to a "movie." In this regard, the Association introduced two arbitration awards which did not interpret § 5-513, but did address a change of dependents in post-retirement under the language of collective bargaining agreements. In both cases, the arbitrators held that medical benefits are "not a snapshot but in fact a dynamic movie...." (Assn. Brief, at 3) The arbitrators found that the grievants were entitled to add their spouses to their medical coverage subsequent to retirement. *Conneaut School District and Conneaut Education Assn.*, (Elliott Newman, April 21, 2005) and *Western Wayne School District and Western Wayne Education Association*, (Diana S. Mulligan, May 18, 2009).

### **Contentions of the District**

The District contends that the Association, as the complaining party in this case, has the burden of proof. However, it has failed to establish that the District has violated any provision of

the Collective Bargaining Agreement because there is no contract language requiring the District to permit a retiree to add a spouse to the District's group health plan post-retirement. Similarly, there is no language in § 5-513 of the School Code or District Policy No. 813 requiring the District to allow a retiree to add a spouse to the group health plan post-retirement. In the District's view, if the Association wishes to expand the right of retirees to add dependent coverage post-retirement, it should pursue that goal in collective negotiations, rather than arbitration.

The District emphasizes that § 5-513 of the School Code gives a qualified retiree the option to continue on the District's health plan at the employee's expense. Policy No. 813 implements the District's retiree healthcare program. It does not contain language supporting the Association's position. In fact, to the contrary, the policy contains several references to a retiree's right to "remain" on the District's group health plan, which is consistent with the obligations imposed under § 5-513. The District asserts that it has always interpreted Policy No. 813 to permit retirees to continue only the coverage they had in place at the time of retirement. In fact, the one time that a retiree sought to add a new spouse to his coverage following his retirement, the District denied his request, and the matter was not grieved.

It is the District's additional position that the two arbitration decisions cited by the Association – *Conneaut School District* and *Western Wayne School District* – do not lend persuasive value to this case. The two awards involved disputes about contract interpretation and were decided based on contract language in the respective collective bargaining agreements that governed retiree healthcare. The cited cases are distinguishable from the instant case, which involves a collective bargaining agreement that is silent on retiree healthcare except to state that the subject is controlled by District Policy No. 813. The District further notes that neither

arbitration award cited by the Association discussed § 5-513 of the School Code, because the grievances in those cases did not challenge the school districts' obligations under the law.

As to the Association's emphasis on the legal status of Grievant's same sex relationship with her partner at the time of her retirement, the District submits that its actions were in no way influenced by the fact that Grievant was part of a same sex couple. In this regard, the District notes that when Grievant retired in 2012, she did not seek to add Ms. Mantle to her coverage, and, in fact, did not make this request until September 2015. The District first learned that Grievant and Ms. Mantle are a same sex couple after this grievance was filed.

The District asserts that it self-insures its group health plan, and the instant grievance could have a significant financial impact on the District. Because the District is self-insured, every additional life substantially affects the District's financial risk. The decision to deny Grievant's request to add Ms. Mantle to her health coverage had little to do with their personal relationship and everything to do with the economics of the request, as well as the District's legal obligations under the School Code.

The District further contends that the relief sought by the Association exceeds the authority of the Arbitrator, who has no power to add to, subtract from or modify the contract provisions which the parties negotiated and included in their collective bargaining agreement. Here, the Association is asking the Arbitrator to expand the statutory right afforded to retirees to continue to purchase healthcare coverage through the District's group health plan. There is no language in the parties' Agreement supporting the instant grievance, and therefore, the Arbitrator has no valid basis on which to award in the Association's favor.

## Opinion

It is undisputed that the parties' Collective Bargaining Agreement does not contain specific language regarding the addition of dependents to a retiree's health care coverage post-retirement. Article VII, Section F merely states that retired bargaining unit members may elect to remain in the District's Group Hospitalization Plan pursuant to the conditions outlined in School Policy. Similarly, School Policy No. 813 does not specifically address the issue of whether a retiree may add a dependent subsequent to retirement. It sets forth certain conditions pursuant to which a retiring bargaining unit employee may elect to continue his/her participation in the District's group health care plan, but is silent on the specific question of adding dependents following retirement.

Clearly, the District's Policy is intended to be consistent with the requirements of the Public School Code, § 5-513, which requires school districts to give employees and their dependents, "upon the employee's retirement, the option of continuing coverage in the group health plan to which they belonged as employees." Interestingly, the statutory language speaks in terms of continuing coverage in the *plan*, but does not state that the level of coverage must remain as it was on the date the employee retired.

Section 5-513(b.1) (2) further provides that annuitants of the Public School Employees' Retirement System may continue to purchase "that coverage after retirement...." Again, the wording is ambiguous, and not clear as to whether "that coverage" pertains broadly to coverage (i.e., participation) under school district's group insurance plan, or whether the reference is to the specific *level* of coverage, i.e., single or dependent, which is in place on the date the employee retires.

The parties agree that Grievant, at the time of her retirement, was eligible to purchase the

coverage that she had with the District prior to her retirement. Moreover, had she wanted to add dependents at that time, prior to the actual date of retirement, she could have done so. She did not because she had no legal dependents in 2012. Hence, she purchased single coverage for herself.

It is undisputed, however, that in 2012 when Grievant retired, she was in a committed relationship with her partner, Ms. Mantle, and openly lived as a married couple with her. They had participated in a marriage ceremony in 1993 and lived together, sharing a home, investments, and other assets. But when Grievant retired, same sex marriage was not recognized by the Commonwealth of Pennsylvania and, consequently, Grievant could not have included Ms. Mantle as a dependent at that time.

Both parties have cited the Public School Code in support of their respective positions. However, the fact is that, in all likelihood, when § 5-513 was written, the Legislature was not contemplating same sex marriage and did not write the language expressly anticipating what would, or should, occur in a situation where a bargaining unit employee marries after retirement and for the first time is legally permitted to declare his/her spouse as a dependent.

What is clear, however, is that § 5-513 was intended to require school districts to allow retirees and their dependents to be eligible for coverage in the group health plan in effect at the time of retirement. If an employee meets the conditions set forth in the statute, he/she may cover all dependents that they have when they retire. It makes sense, therefore, that if a retiree was legally ineligible to bring a spouse under coverage when she retired, but the law then changed to make that coverage legal, the employee should be permitted to expand her insurance coverage.

The District argues that the arbitration cases cited by the Association are distinguishable because the Public School Code was not at issue in those matters, and the arbitrators' decisions

rested solely on their interpretations of the applicable collective bargaining agreements. However, the reasoning of the arbitrators in *Conneaut School District* and *Western Wayne School District* is instructive. While Arbitrators Newman and Mulligan were tasked with interpreting contractual language, the agreements they examined, similar to the Souderton Agreement and § 5-513, were silent about the addition of a dependent spouse to health care coverage post-retirement. Nevertheless, they found that silence did not prohibit the addition of a dependent spouse. Their reasoning was that where a school district commits to continue an employee's health care coverage after retirement, and also allows the employee to cover dependents at retirement, there is no valid basis for precluding the employee from modifying that coverage due to changed circumstances during retirement.

As Arbitrator Newman stated: "Health insurance coverage is not static, and invariably changes as dependent children become adults or marry, or as children are born or are adopted, or as spouses die, or if there is a divorce." In his opinion, he also emphasized that if the grievant and her husband had married before her retirement,

. . . there would be no question that she would have been entitled to husband and wife coverage upon her retirement in June, 2002. If (regrettably) Mr. and Mrs. LaBarbera then divorced after her retirement, or if he passed away, it is reasonable to find that the District would expect her to change her coverage from husband and wife coverage to single coverage. Referencing the District's argument, deleting a retiree's spouse from its group health insurance coverage would beneficially impact its exposure to claims, and thus lower its annual contribution....

*Conneaut School District*, p. 10.)

Arbitrator Mulligan, also responding to the school district's arguments regarding the potential financial impact of adding older dependents to the risk pool, noted that retirees' lives are not static. Spouses die, and children grow up, and dependents are just as likely to be removed from coverage as they are to be added to coverage, even in retirement. She stated:

If a dependent can be removed from retiree coverage, whether by a natural occurrence (death or the attainment of non-insurable age) or by a deliberate action (divorce), then one can also be added, unless there is a specific provision in the CBA which bars this action. There is no such provision in the instant Agreement.

*Western Wayne School District*, p. 10) (emphasis added.)

There is no language in the instant Agreement that expressly prohibits a retiree from adding a dependent to his/her health insurance coverage post-retirement. Nor does the Record contain any actuarial evidence purporting to show that the instant grievance, if sustained, will significantly affect the District's financial exposure and risk.

But, perhaps most important in this case, there is no doubt that when Grievant retired, she could not have legally elected to bring a same sex spouse onto her health insurance plan. While she and Ms. Mantle participated in a wedding ceremony in 1993, their marriage was symbolic only. She was not legally permitted to marry her partner until the law was changed in 2014 to recognize same sex marriage. Following this change in the law, she did marry Ms. Mantle in 2015 and thereafter made a request to add her dependent spouse to her insurance coverage.

Given the facts in this case, and recognizing the equities, as well as the requirements of both the Collective Bargaining Agreement and the Public School Code, there is no valid basis on which to deny the grievance.

For all of the foregoing reasons, the grievance is sustained, and Grievant shall be permitted to add her spouse to her health insurance coverage under the District's group insurance plan.

**Award**

The Grievant is entitled to add her spouse to her retiree medical benefits subsequent to her retirement. Such coverage may be added during the District's open enrollment period in August, 2016.

August 7, 2016

*Joan Parker*  
Joan Parker

Arbitrator