



BARGAINING BENEFITS

COLLECTIVE AGREEMENT LANGUAGE

There are two overriding objectives to keep in mind when negotiating benefits:

1. to ensure that the wording prevents the employer from reducing benefits (especially important in the present climate);
2. to make the employer, rather than the insurance company, responsible for the provision of benefits. In this way, the union can grieve through the grievance/ arbitration procedure of the collective agreement if benefits are changed during the term of the agreement, or if an employee is denied benefits. If their claims are denied, members do not have to “go it alone” against big insurance companies.

Both of these objectives can be achieved by either negotiating a clause that sets out the specific benefits that will be provided or by incorporating the Master Policy into the collective agreement.

Too many CUPE collective agreements only include language on the share of premium to be paid by the employer. Very few contain language addressing actual benefit coverage, which means that benefit coverage cannot be grieved and the employer can make changes without advising the union.

The following should be included in collective agreement language governing benefits:

- ◇ A clear definition of what “dependents” means.
- ◇ A clear definition of what bargaining unit members are covered by insurance plans.
- ◇ Clear language outlining the responsibility for paying premiums and amounts paid by each party (if not entirely employer-paid).
- ◇ Preferably the plan won’t contain deductibles, caps and shared premiums, but when it does, the specific terms and conditions of every good or service provided under every plan should be stated explicitly, so as to prevent further erosion in these areas.
- ◇ If the specific terms and conditions are found in an appendix, including a clause in the body of the agreement can indicate that the appendix content forms part of the collective agreement, which makes it grievable and not easily changed by the employer.

Other Clauses that can strengthen the Union's Position Include:**▪ Making the plan grievable**

Negotiating a clause making explicit the employer's responsibility (rather than the insurance company's responsibility) for the provision of benefits helps to ensure that the employer can't blame the insurance company for cuts or reduced services. Here are some examples:

"Subject only to Schedule "F" [dental plan and group life insurance], the Employer has the sole responsibility for all aspects of the administration of the health and welfare benefit plans."

[CUPE Local 1004 and City of Vancouver]

"The Employer is responsible for the administration and application of the plan referred to in Article X and any difference arising with respect thereto will be disposed of in accordance with the grievance and arbitration procedures of this agreement."

[BCGEU and Legal Services Society]

"The Employer and not the insurance Carrier, shall be responsible for all protections provided."

[SEIU and Brookhaven Nursing Home]

▪ Protecting against unilateral changes

Negotiating a clause that ensures that changes cannot be made to insurance plans without the consent of the union further ensures that the employer cannot take away members' benefits during the term of the collective agreement. Here are some examples:

"If the BRC [Benefits Review Committee] unanimously recommends changes to the Benefits Plan ... they will provide these recommendations to Local 4400, CUPE and the Board. Thereafter, Local 4400, CUPE and the Board may agree to amend the Collective Agreement ..."

[CUPE Local 4400 and Toronto School Board]

"It is agreed and understood by the parties signatory to this agreement that the Group Welfare Plans form part of the Collective Agreement, and may only be altered or amended by mutual agreement of both parties."

[C.E.P. and Nova Scotia Forest Products Industries]

Protecting cost saving measures

When negotiating cost saving proposals it is important to ensure that access is not undermined. Below is a clause that institutes a mail order pharmacy but still ensures employees access to a regular pharmacy for some situations.

“Effective September 1st, 1999, the Major Medical Insurance Plan will be amended to provide that employees are required to use Medi-Trust to supply the prescribed drugs covered under the drug plan. The drug plan will not cover drugs supplied by a pharmacist other than Medi-Trust except in the two (2) circumstances specified below:

a) In the event that a physician prescribes a drug which is covered under the drug plan of the Major Medical Insurance Plan and Medi-Trust cannot supply the prescribed drug or a generic substitute for the prescribed drug, the employee may have the prescription filled by an alternate pharmacist.

b) In the event of an emergency a physician prescribes in writing a drug which is covered under the drug plan of the Major Medical Insurance plan and prescribes, in writing, it is medically necessary that the prescription must be filled in a shorter time frame than the time frame in which it can be supplied by Medi-Trust, the employee may have the prescription filled by an alternate pharmacist. In such event, the employee must provide the Employer and the Carrier with a written certification by the physician that the prescription must be filled immediately and cannot medically wait the time required by Medi-Trust to supply the drug. In such case, the employee will pay the dispensing fee for the prescription and such dispensing fee will not be covered under the Plan.”

[CUPE Local 132-01 and the Sunnycrest Nursing Home Limited expiry March 31/ 2004]

▪ Substitute of Carrier

During the term of the collective agreement, the employer may wish to change insurance carriers. If the change results in a reduction in benefit costs the union may support such a change. However, careful wording helps protect members from cuts to coverage.

Many CUPE collective agreements contain only very general language stating that new plans must be at least equal to existing ones. “Equal” may be interpreted as the overall dollar value of the new plans, which allows employers to change the actual benefits provided.

Contract language such as the examples above should prevent plan changes unless there is mutual agreement. Another option is a clause, similar to the following, in which the union has to approve new insurance plans resulting from a change of carriers:

“No carrier will be changed without prior approval of the Local Union on any plans.”
[CUPE Local 4435 and The Corporation of the County of Haliburton]

- **Employer Savings from Insurance Plans**

Employers sometimes receive monies from insurance carriers for premium deductions or rebates, money that could be used to reduce costs or enhance benefits.

Unfortunately, some employers hide these surpluses. One way to stop such abuses is to negotiate protections in the collective agreement such as:

“If the Employer underwrites the above group insurance programs with a carrier, he shall give the Union notice of any dividend, premium reduction, experience rebate or other savings from the plans paid by the Underwriter to the Employer. The Employer shall use these dividends, [premium reductions, experience rebates and other savings] to improve benefits in a manner mutually agreeable to the parties. If there is no agreement between the parties, the matter shall be submitted to arbitration in accordance with this agreement.”
[CUPE Local 4204 and Chimo Youth and Family Services]

- **Access to Information**

In order to make use of benefits when they are needed, employees must have access to current information regarding insurance plans. The easiest way for employees to understand their benefits protection is to include it in clear language in the collective agreement.

Regardless, employees should receive a brochure from the employer, outlining their coverage.

The union should always have a current copy of the Master Policy in order to ensure that it is being implemented correctly and to reference in the event of a grievance:

“Employee benefits brochures shall be provided by the Employer to all Employees who are eligible for benefits, at time of hire or upon request.”
[CUPE Local 4400 and Toronto School Board (Office Staff)]

“Upon request, the Union shall be provided with current copies of the Master Policies of all insured benefits.”
[CUPE Local 1321 and Renfrew County DSB Office]

“A copy of the master contracts with the carriers for the extended health care, dental and group life plans shall be sent to the President of the Union.”
[BCGEU and Government of B.C. (Retail/Warehouse)]

- **Disclosure of information**

In order to challenge the employer's cost estimates, bargaining committees need access to plan information such as number of employees covered, how many full time/part time, costs to date etc. A clause in the collective agreement can force the employer to reveal plan statistics and how cost calculations are made.

"The Employer shall provide the Union with a copy of all employee benefit and health and welfare master plan texts and amendments. In addition, the Employer shall, every two (2) years provide the Union with a copy of the financial/actuarial valuation for the pension plan including a list of all pension fund investments and holdings, rate of return, and all actuarial assumptions used."

[CUPE Local 1063 Manitoba Workers Compensation Board, expiry March 10, 2006]

- **Benefits for Same Sex Partnerships**

In the definition of "dependents" many locals have had success negotiating coverage for same sex spouses and their families. Here are two examples:

"Qualification for and entitlement to benefits shall be governed by plan texts, however, for the purposes of this Collective Agreement, "common-law spouse" shall include same gender partners. All references to, and provision of benefits (except the Workers Compensation Board of Manitoba Retirement Plan, as limited by statute) for, spouses and family members under the Collective Agreement shall include same gender partners and their families."

[CUPE Local 1063 Manitoba Workers' Compensation Board, exp March 10, 2006]

Same Sex Relationships

"An employee who co-habits with a person of the same sex, and who promotes such person as a "spouse" (partner), and who has done so for a period of not less than two (2) years, will be eligible to have that person covered as a spouse for purposes of Medical Services, Extended Health and Dental benefits and leaves related to family matters. This coverage includes dependents of the employee's same sex spouse."

[Local 388 and City of Victoria, expiry December 31, 2004]

Joint Insurance Benefits Review Committee

A joint employer-union benefits review committee can help to ensure transparency and accountability in the way benefits are procured and administered. The following are some of the elements of Terms of Reference for such a committee:

- Committee Composition – the Committee should be co-chaired by an employer and employee representative, and should have an equal number of representatives from each party:

“The committee shall be composed of an equal number of representatives from the Employer and from the Union....At meetings of the committee, each party may be accompanied by a representative to provide technical advice and counsel.”
[CUPE Local 1750 and The Workplace Safety and Insurance Board]

- Mandate/Duties of the Committee - the greater the committee involvement in the determination of the carrier, plan administration and the monitoring of the cost-effectiveness of plans, the better.
 - The joint committee could also pursue the possibility of joining with other employers or bargaining units to set up a multi-employer benefits plan. Remember that bigger is cheaper because the costs and risks are shared by a larger number of people.
 - The committee should also re-evaluate the present carriers and the costs and services that are entailed with providing the benefits. Perhaps the benefits plan can be tendered to see if other carriers can provide better service or do so more cheaply.
 - In particular, a non-profit carrier such as Blue Cross or Green Shield should be considered. Remember, however, that lower cost should not necessarily be traded for an erosion of benefits or service in processing benefit claims.
 - The illnesses and injuries of employees who are on short-term or long-term disability could sometimes more appropriately be drawing Workers Compensation benefits, thus taking pressure off the benefits plan.
 - The committee could also look at the workplace and see if changes can be made that will reduce worker stress and fatigue and thereby reduce the demand on the benefit plan.

*“Duties of the Committee:**The duties of the committee shall consist of the following:*

1. *Development of the specifications for the public tendering of any negotiated benefits which may be included in the Employee Benefit Plan;*
2. *Determination of the manner in which the specifications will be made available for public tendering;*
3. *Consideration and examination of all tenders submitted in response to the specifications for tender and preparation of a report thereon;*
4. *Recommendation to the Employer on the selection of the insurance carrier or carriers to underwrite the Employee Benefit Plans;*
5. *Review of the semi-annual financial reports on the Employee Benefit Plans; and*
6. *Review of contentious claims and recommendations thereon when such claim problems have not been resolved through the existing administrative procedures.*

The specifications for tender will describe the benefits to be provided, the cost-sharing arrangement between the employer and its employees in the Bargaining Unit, the past financial history of the benefit plans subsequent to the establishment of this committee, the employee data, the format of the retention illustration for each coverage and the financial reporting requirements. Tenders shall be entertained by the Committee for any individual insurance carrier acting solely on its own behalf. This shall not preclude such carrier from arranging reinsurance as may be necessary.

The basis for recommendation of an insurance carrier(s) will include the ability of the carrier(s) to underwrite the plan, compliance of the carrier's quotation with the specifications for tender, the carrier's service capabilities and the expected long term net cost of the benefits to be provided.”

[CUPE Local 1750 and The Workplace Safety and Insurance Board expired March 31, 2005]

- Meetings – language should clearly state the frequency of meetings, when they occur and the assurance of paid time off for union member to attend meetings to ensure the committee has the opportunity to get its work done.

“Time at meetings is considered work time.”

[CUPE Local 1750 and The Workplace Safety and Insurance Board]

- Access to Required Documentation – without the critical information the committee will not be able to do its job. They need access to the documentation (especially the Master Policies).

Joint Employee Benefit Plan Committee

“All employee benefit plans shall be fully negotiable. Accordingly, a joint committee on employee benefit plans and a joint advisory committee for pensions shall be established to study and review all employee benefit and health and welfare plans and to make recommendations as to improvements as are mutually agreeable. The committees shall have equal representation from the Union and the Employer. Either party may make use of technical advisors, as required. The Committee shall have full access to all pertinent information concerning the benefit plans.”

[CUPE Local 1063 Manitoba Workers Compensation Board expiry March 10, 2006]

Benefit costs are rising. But don't assume rising costs are due to increased use by employees. In reality, costs are rising because of four major factors:

1. Provincial governments are constantly “de-listing” services from provincial plans. This “de-listing” of medical services means that citizens without insurance plans have to pay out of their pockets, and those with private benefits plans see the costs of their plans increase.
2. The federal government recently passed legislation that protects drug companies from competition for 20 years. That means drug companies have a 20-year monopoly on whatever drugs they produce, and can set prices without competition.
3. Insurance companies profits are part of the premium cost. And in recent years insurance companies profits have risen steadily. According to the March 2004 issue of H.R. Outlook (a newsletter produced by Mellon), Great-West Life reported a 28% increase in profit last year; Industrial Alliance finished 2003 with a record net income up 39% over 2002. Manulife has ten years of record profits reporting a 12% increase for 2003 over 2002. While Sun Life reported a 31% increase in net income for 2003 over 2002.
4. Insurance companies are consolidating. There are now only a handful of insurance companies, compared to more than 100 only two decades ago. This consolidation concentrates the suppliers of insurance to only a few, and reduces competition.

These cost shifting initiatives have meant that our workplace group insurance plans pick up much of these costs. For more information on benefit costs, see the “Overview” of this series.

CUPE's bargaining Benefits series also includes:

- An Overview of the Issues
- Checklist for Benefit Plans
- Drugs! Can we negotiate cost savings?
- Flexible Benefits
- Health Spending Accounts (HSAs)
- What to Watch For
- Why are Drug Costs Escalating?