

Linda Willard

DEPARTMENT OF JUSTICE

STATE OF NEBRASKA
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#89002

NO.
STATE OF NEBRASKA
O F F I C I A L
JAN 13 1989
DEPT. OF JUSTICE

ROBERT M. SPIRE
Attorney General
A. EUGENE CRUMP
Deputy Attorney General

DATE: January 11, 1989

SUBJECT: Propriety of the Unique Group Life Insurance Program Offered Employees of the Nebraska Department of Labor

REQUESTED BY: Andrew W. Russell, Acting Director
Nebraska State Department of Personnel

WRITTEN BY: Robert M. Spire, Attorney General
Dale A. Comer, Assistant Attorney General

You have requested our opinion concerning a number of questions involving the unique group life insurance program established for the employees of a particular state agency. Specifically, you are concerned with the propriety of special group life insurance coverage offered employees of the Nebraska Department of Labor in light of the pertinent statutes regarding the Nebraska State Insurance Program, Neb.Rev.Stat. §44-1620 et seq. (Reissue 1988). Our conclusions concerning your various questions are set out, in detail, below.

Prior to 1973, no general program of health insurance or life insurance was made available uniformly to all permanent state employees. Rather, individual state agencies established various group insurance programs for their own employees. One such program was a group life insurance program provided for employees of the Nebraska Department of Labor.

In 1973, the Legislature established the Nebraska State Insurance Program which was designed to provide uniform group health insurance and life insurance to all permanent state employees. See, Neb.Rev.Stat. §44-1620 et seq. (Reissue 1988). In spite of this new general state program of group insurance, the Department of Labor continued to offer its employees group life insurance coverage separate and apart from that offered under the general state plan. This different form of group life insurance prompted your opinion request. Under Neb.Rev.Stat. §44-1621 (Reissue 1988), your agency is required to administer the Nebraska State Insurance Program.

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Andrew W. Russell
January 11, 1989
Page -2-

Your initial questions involve the basic issue of whether existing statutes allow the Department of Labor to continue to offer its unique life insurance coverage. As a part of that primary issue, you ask whether the monies used to pay for the unique insurance, which are entirely provided by the federal government, somehow become "state contributions" under §44-1620 when they are deposited with the state. You also request our analysis of the legislative intent underlying the Nebraska State Insurance Program. In response to these initial questions, we have concluded that the current statutes do prohibit the Department of Labor from offering its unique group life insurance to newly hired employees. This is true even though federal funds are used to provide the special group insurance.

Neb.Rev.Stat. §44-1620(1) (Reissue 1988) provides, in pertinent part,

There is hereby established a program of group life and health insurance for all permanent employees of this state who work one-half or more of the regularly scheduled hours during each pay period. . . . Such program shall be known as the Nebraska State Insurance Program and shall replace any current program of such insurance in effect in any agency and funded in whole or in part by state contributions.

(Emphasis added). It appears to us that the language of this statute clearly contemplates a uniform program of insurance for all state employees which would replace any previous forms of such insurance.

As noted above, the employer's portion of the insurance program offered by the Department of Labor is paid entirely with funds made available by the federal government. Consequently, the question has been raised as to whether the Labor Department insurance is even funded by "state contributions" so as to fall under the provisions of §44-1620(1). We do not necessarily believe that deposit of federal funds in the state treasury automatically makes those monies state funds. See, Opinion of the Attorney General, No. 87001, January 6, 1987. However, §44-1620(1) refers to "state contributions," and we believe that phrase could be read to include monies paid by the state regardless of their original source.

More importantly, we believe that the unique insurance at issue here is clearly prohibited under another Nebraska statute, Neb.Rev.Stat. §44-1628 (Reissue 1988). That statute provides, in pertinent part, "No agency shall provide for its employees any program of life or health insurance supplementary to that provided under sections 44-1620 to 44-1632. . . ." Section 44-

Andrew W. Russell
January 11, 1989
Page -3-

1628 thus specifically prohibits state agencies from offering different forms of insurance such as the life insurance coverage provided by the Department of Labor.

Our view that the unique insurance offered by the Department of Labor is prohibited by statute is supported by the legislative history of the original bill which established the Nebraska State Insurance Program. The introducer's statement of intent for LB 516 in 1973 includes this comment:

The intent of this bill is to adopt a uniform group life and health insurance program for all full-time state employees including those in the University of Nebraska, State Colleges and Technical Community Colleges. It will replace any current insurance program.

Introducer's Statement of Purpose, LB 516, 83rd Nebraska Legislature, First Session, 1973 (Emphasis added). In addition, the committee statement for the same bill includes the comment, "LB 516 could be a major step in improving fringe benefits for state employees and will bring greater consistency into the total compensation package." Committee Statement, LB 516, Retirement Systems Committee, 83rd Nebraska Legislature, First Session, 1973 (Emphasis added). These comments, together with other portions of the legislative history, indicate that the Nebraska State Insurance Program was intended to provide a uniform insurance program for all state employees which would replace the piecemeal, agency-by-agency programs then in place. Unique insurance programs obviously run contrary to that intent.

As a result, we believe that the unique group life insurance program offered to employees of the Department of Labor is contrary to statute. However, certain aspects of that group policy appear to give employees now covered under its provisions certain vested rights beyond the mere term insurance offered under the general state program. Those vested rights could create a constitutional problem with termination of the group policy for those employees currently covered within the Department of Labor.

The group life insurance policy offered to employees of the Department of Labor differs in several respects from the term coverage afforded other state employees. For example, employees currently covered by the policy can continue coverage in force at their own cost upon their retirement. If they are 65 when they retire, the amount of coverage is reduced 2 per cent per month from their birth date to a minimum of 25 per cent of the insurance in force prior to their retirement. Thus, current employees of the Department of Labor have the right to continue

Andrew W. Russell
January 11, 1989
Page -4-

some life insurance coverage permanently, and there are a number of retired employees who are continuing coverage at this time. In addition, the group coverage includes a disability waiver of premium. Therefore, the employees covered by the policy have acquired some rights which appear vested under the policy, and the insurance offered, unlike the standard state policy, is not simple term insurance where coverage ceases when the individual is no longer employed by the state.

Our Supreme Court has indicated that the state's modification of state employees' vested contract rights can constitute an unconstitutional impairment of contract rights under Article I, Section 10 of the United States Constitution. In Halpin v. Nebraska State Patrolmen's Retirement System, 211 Neb. 892, 320 N.W.2d 910 (1982), the court considered the propriety of a change in the way retirement annuities were calculated by the Public Employees Retirement Board. The Board had decided to change an existing administrative policy, and exclude final lump sum leave payments from amounts used to compute annuities for state patrolmen. The court held that the benefits in question were contractual rights, and that they were vested because of prior administrative practice. The state could not, therefore, change those benefits without impairing the established contract rights of the state patrolmen plaintiffs.

In a similar fashion, it seems to us that the Department of Labor employees who currently receive the Labor group life insurance coverage have some vested rights under that coverage which would be impaired if the state ceased to offer the program. For example, current employees would lose their right to maintain up to 25 per cent of their final coverage indefinitely upon retirement. Consequently, we believe that the state may not terminate the unique group life insurance offered by the Department of Labor for those employees who are already a part of the system. On the other hand, the unique policy is prohibited by statute, and should not be offered to new individuals as they are hired by the Department of Labor. Those individuals would have no vested rights to such insurance.

In addition to the questions discussed above, you have also posed a number of additional questions conditioned upon a determination by this office that the unique insurance coverage offered by the Department of Labor is, in some sense, appropriate. Since we have concluded that the Department of Labor must continue to offer the unique group life insurance coverage to current employees, we must necessarily respond to your additional questions.

You first ask whether the state is required to offer the general statutory life insurance coverage to employees of the

Andrew W. Russell
January 11, 1989
Page -5-

Department of Labor if those employees are currently receiving the unique coverage. In essence, you ask if those Labor employees must be offered two separate life insurance coverages.

As noted above, Neb.Rev.Stat. §44-1620(1) establishes a program of group life insurance and health insurance "for all permanent employees of this state." In addition, Neb.Rev.Stat. §44-1627 (Reissue 1988) provides that the state life insurance coverage "shall be afforded to each permanent state employee." In the absence of anything indicating the contrary, statutory language should be given its plain, ordinary meaning, and no interpretation of statutory language is necessary to ascertain meaning when the words of a statute are plain and unambiguous. Midwest Messenger Association v. Spire, 223 Neb. 748, 393 N.W.2d 438 (1986). It seems to us that the statutes cited above are plain and unambiguous. All state employees shall be offered the standard state life insurance, and there are no exceptions listed. Therefore, absent any legislative changes, we believe that those Department of Labor employees who currently receive the unique life insurance coverage through the Department must also be offered the standard, statutory policy offered to all state employees.

You next point out that many of the employees in the Department of Labor who receive the unique life insurance policy are covered by the 1988-89 labor agreement between the state and the Nebraska Association of Public Employees. Since that labor agreement does not provide for the unique insurance coverages, you are concerned a continuation of the special program could constitute an unfair labor practice. Neb.Rev.Stat. §81-1386 (Reissue 1987), which is part of the State Employees Collective Bargaining Act, sets out certain prohibited labor practices which generally track the unfair labor practices prohibited in the National Labor Relations Act, 29 U.S.C. §158. If, in fact, offering an insurance coverage not included in the labor contract is an unfair labor practice, it seems to us that it would be so only as a violation of §81-1386(e) which requires the state to bargain collectively with representatives of the exclusive bargaining agents for state employees. However, there are cases, in the context of 29 U.S.C. §158(a)(5), the federal statute analogous to §81-1386(e), which indicate that an employer may make unbargained changes in employee working conditions if the changes act to maintain a long-standing practice or constitute a continuation of the status quo. City Cab Company of Orlando, Inc. v. NLRB, 787 F.2d 1475 (11th Cir. 1986); NLRB v. Hendel Manufacturing Company, Inc., 523 F.2d 133 (2d Cir. 1975); NLRB v. Ralph Printing and Lithographing Company, 433 F.2d 1058 (8th Cir. 1970). In the present case, continuation of the unique Labor insurance coverage would constitute a continuation of the status quo, and we do not believe that offering the special coverage to

Andrew W. Russell
January 11, 1989
Page -6-

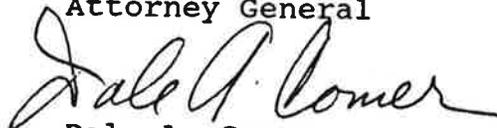
current Labor employees would involve an unfair labor practice. Nonetheless, it might be well to bring this to the attention of union representatives in future bargaining sessions.

Finally, you note that the unique Labor life insurance policy has been put up for bids only once, and you question whether that coverage should be generally open for competitive bidding on a yearly basis. We have conducted an extensive review of the pertinent Nebraska statutes, and we have been unable to find any statutory requirement that the insurance coverage in question be open for competitive bidding on an annual basis, or otherwise.

In summary, we do not believe that the unique life insurance coverage offered employees of the Department of Labor is permitted under our current statutes. In a similar fashion, we believe that no other state agency may offer insurance coverages at variance with the general policies made available to all state employees. Therefore, new employees of the Department of Labor should receive only the general state group life insurance coverage. On the other hand, current employees of the Department of Labor apparently have vested rights under the unique coverage previously available to them, and those employees should continue to receive that coverage in order to avoid an unconstitutional impairment of contract rights by the state.

Sincerely yours,

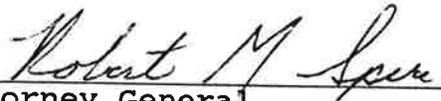
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