COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS
EXPEDITED ARBITRATION AWARD

In the Matter of Arbitration between	*	Case No:
BOARD OF HIGHER EDUCATION	*	ARB-19-7653
and	*	
AFSCME, COUNCIL 93	*	Date Issued:
		July 31, 2020

Issue: Did the employer violate the October 2, 2019 Memorandum of Agreement when it denied Kevin Hanley participation in the October 4, 2019 Early Retirement Incentive Program and when it failed to reimburse him for two months of COBRA Health Insurance payments? If so, what shall be the remedy?

Background: The grievant Kevin Hanley (Hanley) worked at Bunker Hill Community College from November 1979 until his termination on July 12, 2019. The Union filed for Arbitration and filed an unfair labor practice charge against the Employer disputing the termination. The parties engaged in mediation at the Department of Labor Relations and came to an agreement that was memorialized and signed on October 2, 2019. In exchange for resolution to all pending litigation, Hanley was reinstated effective July 15, 2019 and immediately placed on paid sick leave until November 30, 2019, the effective date of his retirement. Hanley was paid a lump sum payment of $47,500. Additionally, the parties agreed to language which stated that "the parties understand and acknowledge that any cost savings options that may be forthcoming shall not be available to Mr. Hanley or grounds to modify this agreement."

On October 4, 2019, the Employer offered an Early Retirement Incentive Program (ERIP) for certain employees as a cost savings measure. Otherwise eligible employees who were eligible for retirement and who retired between October 4, 2019 and January 31, 2020 were paid $20,000. Hanley applied for the ERIP stating that he was eligible and was retiring on November 30, 2019. The Employer denied his application citing the above referenced language of the MOA.

During the time of his separation from the college, prior to his reinstatement, Hanley's health insurance terminated. Upon his reinstatement, Hanley was placed back on his health insurance on November 1, 2019 the earliest possible effective date under the GIC regulations. Due to this separation, Hanley was required to pay two months of COBRA payments to retain his family health insurance.

Analysis:

The Union is arguing that Hanley is eligible for the ERIP because the Employer had notified the Union of its intent to offer an ERIP, as a cost savings measure, prior to the date of execution of the MOA. The Union was notified by letter on August 24, 2019 of the general parameters of the intended offering and was invited to "meet and discuss the details of this ERIP." The Union subsequently declined the offer to meet and discuss the program by email in September and the Employer offered the ERIP to its employees by letter on October 4, 2019.

The Union argues that the cited language of the MOA restricts Hanley from participating in only a forthcoming cost savings program. The Union had knowledge of and approved of the ERIP prior to October 2, 2019, the execution date of the MOA. As

such, the October 4, 2019 ERIP was not a forthcoming cost savings program, but a prior program that Hanley was eligible to participate in. In addition, the Union is disputing the requirement that Hanley had to repay two months COBRA health insurance payments because his health insurance restart date was not until November 1, 2019 under GIC regulations, even though he was reinstated as an employee back to July 15, 2019. The Union believes that these payments are the responsibility of the Employer.

The Employer argues that Hanley already received the value of the cost savings plan as part of his lump sum payment and in any event, the ERIP was offered on October 4, 2019, two days after execution of the MOA making it a "forthcoming cost savings program" for which Hanley was ineligible. Regarding the COBRA health insurance payments, the employer states that additional money was added to the final lump sum payment to cover all potential health insurance costs including any potential COBRA payments. As such, it does not believe it owes any further payments to Hanley.

While I agree that the Union was aware of the Employer's intent to offer an ERIP, and had approved of its anticipated terms by declining to meet to bargain over the intended offer, the ERIP program did not become official until it was ultimately offered by the Employer on October 4, 2019, two days after the Hanley MOA was finalized. The Employer was not bound to offer this ERIP simply because it had notified the Union of its intention to potentially offer the program in the future. In fact, the ERIP announced on October 4, 2019 was different than the one outlined in August, as the effective dates in the final offer differ from the dates outlined in the Employer's offer to bargain. The October 4, 2019, ERIP was the exact "cost savings options that may be forthcoming" that the parties agreed Hanley would be ineligible to participate in. As such, the Employer's denial of Hanley's application was not a violation of the MOA.

Regarding the COBRA health insurance payments, the parties disagree over whether the lump sum payment included money to cover these payments. The Employer argues that it increased its lump sum payment offers in mediation in response to the Union raising concerns over potential health costs associated with Hanley's separation from employment. The Union countered that the COBRA payments were not included in the lump sum discussions but failed to provide any further evidence to support its position. As the moving party, the burden of proof lies with the Union to show that the COBRA payments were not part of the lump sum payment and should be the responsibility of the Employer. I find that the Union has failed to satisfy its burden with this argument, as such, I find the Employer's failure to reimburse Hanley for the COBRA health insurance payments is not a violation of the MOA.

Timothy Hatfield, Arbitrator