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Collective Bargaining Bulletin

A REVIEW OF CONTRACT NEGOTIATION AND ADMINISTRATION

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Highlights

In the Manual

Unemployment Data
August unemployment data are added at 18:8201. The government report is available at http://www.bls.gov/news.release/empsit.toc.htm

Contract Settlements
Terms of settlements reported Aug. 31-Sept. 13 and weighted average, average, and median wage increases are in *Table of Contract Settlements* at 19:4161.

Continental, Pilots Union Enter Partnership On Approach to Labor-Management Relations

Continental Airlines and the Air Line Pilots Association Sept. 1 signed a partnership accord aimed at ushering in a new approach to labor-management relations.

Airline and union officials said the partnership was developed to provide each side with "accurate, factual information and will take into consideration each other's input in operational and other issues." The "old way of confrontational labor relations" is detrimental to both sides' interests, they added.

Representatives of the company and ALPA, which is the bargaining agent for Continental's 4,000 pilots, said the partnership also assures that each party will receive "a fair share of the financial and economic rewards."

The agreement "further reflects Continental's policy of open, honest, and direct communications with all employees," said Gordon Bethune, the airline's chairman and chief executive officer. The situation in the industry is "dire," he said, and there are two ways to handle relations: acrimoniously as opponents or together as friends and teammates.

"We are showing a new way and it is a credit to ALPA that they are willing to step up and talk to us openly and honestly as we have agreed to do with them about the situation in our company and how best to help each other get through these turbulent times," Bethune said.

The partnership is the culmination of more than a year's work, and will allow both sides to sit down together to discuss serious issues "before they grow a life of their own," Jay Panarello, chairman of the Continental ALPA Master Executive Council, told BNA. Both sides "will never agree on everything, but as long as you keep talking and come to an ultimate resolution it will be a good thing for everybody."

Issues the partnership will address include scheduling, vacation, contractual issues, and changes in certain practices such as jump seat privileges for pilots, Panarello said. The arrangement already has facilitated an agreement to expedite the recall of 310 furloughed Continental pilots without imposing burdensome costs on the carrier.

Panarello said ALPA has been working diligently to secure the futures of pilots and the airline, and called the new agreement a "process" as well as a "philosophy that is not strictly driven by contract negotiations."

The parties continue negotiations on a contract to replace one that became amendable Oct. 1, 2002. Negotiators have agreed on 10 sections of a new contract, some of which have been implemented by the airline, Panarello said.

Cintas, UNITE HERE Contracts Boost Pay, Provide Protections for Immigrant Workers

Members of UNITE HERE employed at two Cintas Corp. facilities have ratified three-year contracts that raise pay for piecework and hourly employees, call for a two-tier health care plan, and provide new protections for immigrant workers, the union announced Aug. 27.

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The agreements, reached after seven months of negotiations and a threat by U.S. Postal Service employees to boycott products made by Cintas, the nation's largest uniform company, cover 23 warehouse distribution workers in Kansas City, Mo., and 65 uniform sewing workers in Fort Smith, Ark.

The Fort Smith uniform sewing employees work on a piecework system, and earned on average $10.54 per hour under the prior agreement. The new contract changes the calculation of the piece rate and makes small increases to the base rate that will bring average wages to more than $11 per hour by end of term, the union told BNA. Distribution center employees in Kansas City, who earned an average $9.50 per hour, receive wage increases of 30 cents per hour each year.

Negotiators for both contracts bargained jointly for health care benefits, reaching a two-tier arrangement for premium payments. Employees opting for individual coverage continue to receive benefits without paying a premium contribution in the first two years of the contract, but will be required to contribute $2 per week in the third year. Effective immediately, employees pay $5 per week toward the premium for dependent coverage. New hires will pay $5 per week for individual coverage and $10 per week for family coverage.

Employer health care contributions will increase from $210 per month per employee to $360 by end of term, the union said. In the third year, Cintas expects to have excess health care funds that could allow for increased coverage at that time.

The agreements contain new provisions intended to protect immigrant rights, a feature UNITE HERE has begun to negotiate in many of its contracts, the union said. Provisions call for written health and safety materials to be translated for non-English speaking workers, and for Cintas to provide a translator for workers when they have questions on such issues as health and safety, work assignments, or potential grievances.

The translation provision formalizes a long-term policy at Cintas, the company said, adding that it translates its human resources materials into 27 different languages.

Additionally, immigrants will be allowed to take a leave of absence of up to six months to secure their immigrant status. Immigrant workers can change their Social Security numbers or their name on company records without prejudice, such as loss of seniority, if they provide appropriate documentation.

Bonus, Health Care Options Included in Cessna Contract

A $2,500 signing bonus and wage increases totaling 10 percent are called for in a three-year contract between Cessna Aircraft Co. and the International Association of Machinists that was ratified Sept. 11 and covers about 4,300 employees.

Cessna, a Wichita, Kan.-based aircraft manufacturer that is a subsidiary of Textron Inc., said the agreement provides "very competitive wages and benefits" and "supports our relationship with the IAM, [which] is dedicated to improving quality, productivity, and developing an environment of participation."

Employees receive a 4 percent wage increase initially and 3 percent wage hikes in the second and third years. In addition, pension benefits for future retirees increase from $41 to $48 per month per year of service.

A key issue for workers was health care, the union said. Most Textron employees are enrolled in a high-deductible, consumer-based health care plan run by Definity Health, and Cessna wanted to move bargaining unit employees into that plan. "Our members were very much against it," IAM said.

Under the new contract, employees have the option of participating in Definity without having to contribute toward the premium, or enrolling in one of two more traditional network-based health plans. Employee premiums for those plans are $25 per month for individual coverage and $75 per month for family coverage during the first year, rising to $75 per month and $150 per month, respectively, by the third year.

There are some work rule changes the union reluctantly accepted, IAM told BNA. For example, Cessna gained the ability to put most covered employees on "irregular workweeks," such as four 10-hour days and workweeks that start on days other than a Monday. However, the union secured a 90-day limit for moving certain employees between shifts.

Swedish Medical Center RNs Agree to New Acuity System

About 2,000 registered nurses at Swedish Medical Center in Seattle are working under a new four-year contract that provides pay increases, wage and benefit reopeners, and a new acuity system.

Ratified by members of the Service Employees International Union in voting Aug. 17-19, the contract calls for a 4 percent pay increase retroactive to Aug. 1, raising start pay to $21.89 per hour and top pay to $37.69 per hour. Pay increases 3 percent

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July 1, 2005, and 1 percent Jan. 1, 2006, and a new 26th step will be added to the top of the pay scale Jan. 1, 2005. The contract will reopen in 2007 and 2008 for negotiations on wages and benefits.

Standby pay—for employees available to be called in to work—increases from an hourly premium of $3.50 under the old contract to $3.75 initially and to $4 in May 2005. Beginning Jan. 1, 2005, a nurse will receive an additional 50 cents per hour after 50 hours of standby.

The contract also provides for implementation of a joint project on a new acuity system. Acuity is ''how you rate a patient's illness'' and how much care that person needs as conditions change, the hospital said. The new system will ensure patient care while providing for determination of staffing needs, within the context of a shortage of registered nurses.

Nurses in the bargaining unit work at three Swedish locations in the greater Seattle area and for the organization's home care service.

Employer-Paid Health Care Maintained in BCTGM Accord

Members of the Bakery, Confectionery, Tobacco Workers and Grain Millers Sept. 2 ratified a seven-year contract with American Crystal Sugar Co. that raises wages and pensions while making no change in employees' health care costs for the term of the contract.

Covering about 950 full-time employees and 400 seasonal workers, the contract increases an average hourly wage rate of $17.89 for full-time workers 2 percent each year. Pension benefits under a defined benefit plan will increase $8 per month per year of service over term.

Health insurance was the main issue in negotiations, the union said, and members Aug. 5 rejected a company proposal that would have increased health care deductibles. In talks that resumed with the assistance of a Federal Mediation and Conciliation Service representative, the parties reached the new agreement that continues health care coverage for the next seven years at no additional cost to employees. Workers make no contributions to health care premiums for the plan, which covers 80 percent of costs, but pay the uncovered 20 percent and deductibles of $150 for individual coverage and $450 for family coverage up to an out-of-pocket maximum of $1,950 per year. Employees also pay an $8 copayment for prescription drugs.

American Crystal Sugar, with headquarters in Moorhead, Minn., is an agricultural cooperative owned by approximately 3,000 members. The new contract covers distribution operations in Mason City, Iowa; Chaska, Minn.; and Drayton, N.D.; and sugar plants in Hillsboro, N.D.; East Grand Forks, Minn.; Crookston, Minn.; and Moorhead.

Actors' Contract Features Agreement on Touring Shows

Actors' Equity Association members Aug. 31 ratified a four-year contract with the League of American Theatres and Producers that will increase minimum salaries 11 percent over term and institute an experimental touring program to increase the number of touring productions.

The contract, which covers about 1,200 actors and stage managers who work on Broadway in New York and in national touring shows, provides wage increases of 2 percent in the first year, retroactive to June 28, and 3 percent in each year thereafter. Minimum weekly pay for actors rises to $1,381 initially and to $1,509 in the final year, while the minimum for stage managers rises to $2,270 for musicals and $1,951 for dramatic productions in the first year and to $2,480 for musicals and $2,132 for dramatic plays in the last year.

At issue going into negotiations were the health insurance package and the proliferation of non-Equity touring companies, the union said. Equity actors work half the number of weeks they worked five years ago, resulting in lower health plan contributions and cuts to health care.

The experimental touring program sets up a sliding salary scale for touring musical productions with at least 40 people in the company based on the size of the touring company and other variables. The program also provides for profit-sharing by actors and increased salaries after a production recoups its initial investment. The union will monitor the tiered system for three years, and can cancel the agreement after that.

Producers will make significantly higher contributions to the health fund, and actors who are injured on the job will receive ''meaningful'' financial support from the supplemental workers' compensation fund.

News in Brief

Health Care Issues Training Begins

To help federal mediators better assist labor and management representatives during collective bargaining negotiations involving health care, the Federal Mediation and Conciliation Service has begun providing mediators with a two-day training program, the agency announced Aug. 24. The training will examine best practices and issues involved in health insurance, coverage, care, and costs. Health care is the ''most vexatious'' issue at the bargaining table, and was identified as a key problem in 46 percent of the more than 6,000 collective bargaining or grievance mediations FMCS was involved in for fiscal year 2003, the agency said.

Health Costs Up Fourth Year in Row

Job-based health insurance premiums increased 11.2 percent in 2004, a smaller hike than the 13.9 percent increase of 2003, but 2004 still marked the fourth consecutive year of double-digit premium hikes, a study released Sept. 9 by Kaiser Family Foundation and the Health Research and Educational Trust showed. The report said 61 percent of all workers receive health coverage from their employer, about the same as in 2003 (62 percent), but down from the 65 percent figure for 2001. The average annual family premium for coverage through a preferred provider organization reached $10,217 in 2004, while the average annual family premium for coverage through a health maintenance organization reached $9,504. The report, *The 2004 Annual Employer Health Benefits Survey*, is available at http://www.kff.org/insurance/7148/index.cfm.

BNA Releases 2004 Labor Directory

The newly released 2004 edition of the *Directory of U.S. Labor Organizations* provides key information on 129 national and international unions; 1,511 elected union officers and key staff by office and department; and almost 30,000 active local labor organizations by state, city, and local union number. The directory also indexes entries by name, abbreviation/acronym, officers and staff, and Web site. The 2004 edition is available for $115 from BNA Books. To order, call 800-960-1220 or visit http://www.bnabooks.com.

Facts & Figures

Productivity Revised Downward in Data for Second Quarter

Labor productivity among nonfarm businesses grew more slowly in the second quarter than initially reported, reaching its lowest level since late 2002, according to figures released Sept. 2 by the Bureau of Labor Statistics.

Productivity, or output per hour, increased at a seasonally adjusted annual rate of 2.5 percent at nonfarm businesses in the second quarter, less than the 2.9 percent reported by BLS in August. The revised productivity figure was the smallest quarter-over-quarter gain since the fourth quarter of 2002, when it rose 1.6 percent.

The change resulted from a downward revision in output and an upward revision in hours worked.

Revised data also show that unit labor costs—a closely watched indicator of wage pressure that measures the amount of labor compensation to produce one unit of output—rose 1.8 percent in the second quarter, compared with the preliminary figure of 1.9 percent.

Revised figures for the first quarter show that unit labor costs dropped 1.6 percent, instead of increasing 0.3 percent as BLS originally estimated. The change was due to smaller growth in hourly compensation costs than initially reported—2 percent instead of 4 percent—as productivity was unchanged at 3.7 percent.

BLS said unit labor costs fell 0.4 percent in 2003 and 1.1 percent in 2002, a trend that analysts attribute to a generally weak labor market. Even with gains in the fourth quarter of 2003 and the second quarter of 2004, unit labor costs still are 0.3 percent below the level of the second quarter a year ago.

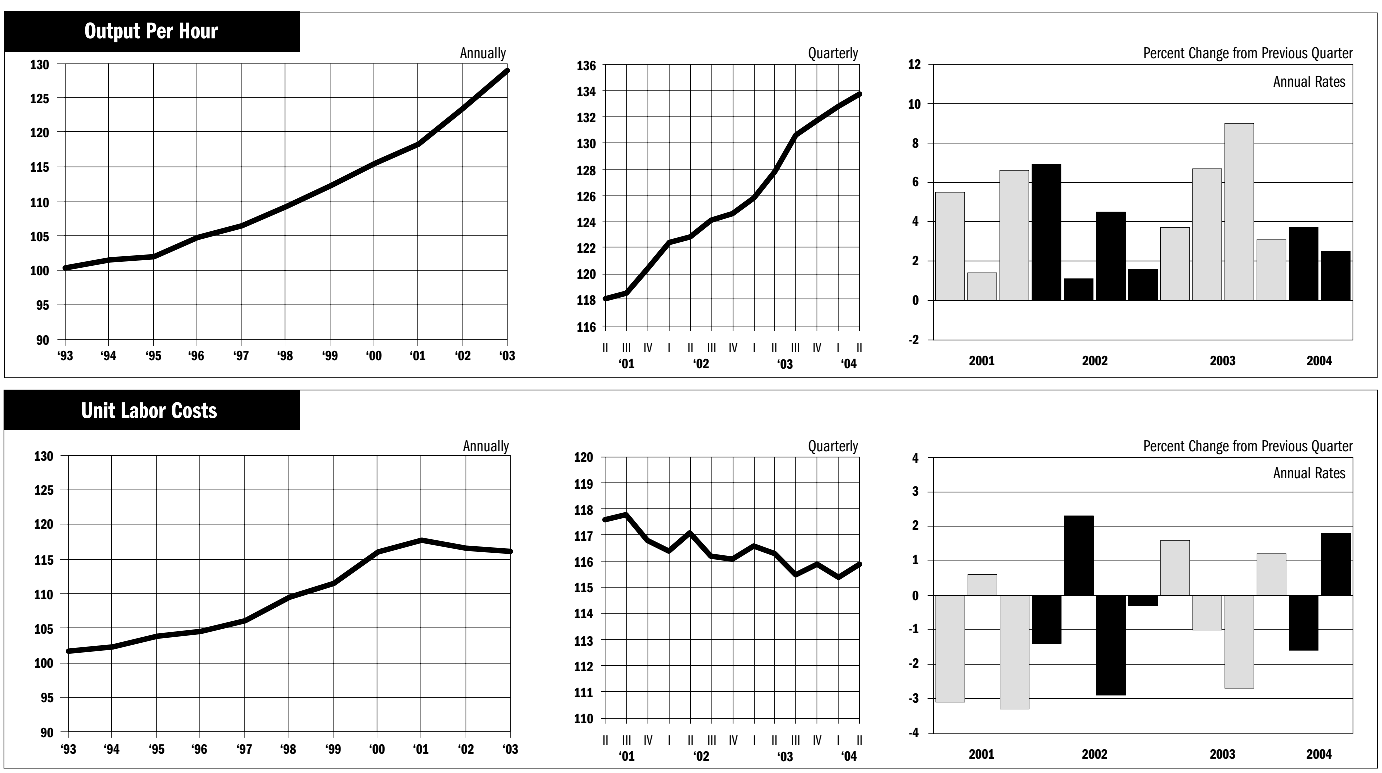
In the manufacturing sector, productivity growth for the second quarter also was revised downward, from 7.5 percent to 6.9 percent, as hours fell 0.6 percent, instead of the initially reported 0.9 percent, and output growth was revised lower to 6.2 percent from 6.6 percent. Unit labor costs declined more than initially reported, falling 3.5 percent instead of 2.2 percent, mainly because of a downward revision in hourly compensation growth, from 5.2 percent to 3.2 percent.

The productivity report for the second quarter of 2004 is available at http://www.bls.gov/news.release/pdf/prod2.pdf.

Productivity and Costs, Second Quarter 2004

Seasonally Adjusted, 1992 = 100

Nonfarm Business Sector



Source: Bureau of Labor Statistics

A BNA Graphic/cbn419g1

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Arbitrating the Contract

Just-Cause Standard Applies To Zero-Tolerance Drug Policy

An employee of a newspaper distribution service tested positive for a pain medication. He told the testing lab he had taken the drug prescribed for his wife the night before the test for pain in his leg. After receiving notice that the worker tested positive and did not have a prescription for the drug, the employer fired the worker pursuant to its zero-tolerance substance abuse policy.

Under a contract covering the employee, management retained the right to make and enforce "reasonable policies (e.g., substance abuse.)" The agreement also provided that the company could suspend or terminate employees for "just cause."

The union contended that it opposed the unilaterally implemented policy, particularly the "one strike and you're out" provision, because it did not take into consideration just cause as required by the contract.

The employer said it satisfied just-cause due process in terminating the employee: the employee had notice of the policy, the policy was reasonably related to safety, a proper investigation was made, evidence was substantial, the policy was applied even-handedly, and the seriousness of the offense merited discharge.

Award: An arbitrator sustained the grievance and ordered reinstatement with three weeks' suspension (*Newspaper Agency Corp.*, 119 LA 926 (McCurdy, 2004)).

Discussion: The arbitrator determined that the zero-tolerance drug policy did not supersede the employee's right to due process under the contract's just-cause requirement.

The policy was "not in a position equal to that of the just-cause requirement written into the agreement" because it was unilaterally adopted, and the majority view of arbitrators is that due process is an integral part of "just cause," the arbitrator said.

In addition, the arbitrator found the policy subject to just-cause due process because there "is no *bona fide* bargained-for right to adopt a zero-tolerance policy that is not subject to the due process requirements of the just cause clause," the workplace was not unusually dangerous, and the employee did not commonly operate dangerous machinery.

Turning to the elements of due process, the arbitrator found that the employer violated the grievant's rights by failing to conduct a fair investigation—since it only determined what happened, not why—and by failing to provide the employee an opportunity to explain his action before being terminated.

Further, the penalty of summary discharge was not reasonably related to the offense or the grievant's work history, the arbitrator concluded.

Pointers: An arbitrator upheld the mandatory discharge of an employee who tested positive for marijuana, finding that the zero-tolerance rule was related to the safe and efficient operation of an electric power cooperative (*Cajun Elec. Power Coop.*, 111 LA 769 (O'Grady, 1998)).

The discharge of a gaming boat maintenance employee who failed a random drug test, where the company's past practice was to discharge all employees who tested positive for drugs, and failure to administer the zero-tolerance policy might violate Coast Guard regulations, was upheld by an arbitrator (*Argosy Gaming Co.*, 110 LA 540 (Fowler, 1998)).

In another case, an arbitrator overturned the discharge of an employee who brought marijuana into the plant, even though the contract called for discharge for bringing liquor, illegal drugs, or firearms on plant premises. The arbitrator found that employees who brought alcohol or firearms to work were not disciplined; the company's written policy statement on substance abuse provided that "[v]iolation of this policy . . . will result in appropriate disciplinary action, which may include termination;" and the grievant had been a model employee for 26 years (*Kimberly-Clark Corp.*, 107 LA 554 (Byars, 1996)).

The case discussion above is designed to illustrate how arbitrators resolve disputes. "LA" references are to BNA's weekly Labor Arbitration Reports. *For a discussion of discharge for drug use, see* Discipline and Discharge *at 9:501, and for sample language, see* Reason for Discharge or Other Discipline *at 200:2601.*

Conferences

Airline and Railroad Labor and Employment Law: A Comprehensive Analysis, Oct. 21-23, Washington, D.C.; price: $995. Presented by the American Law Institute-American Bar Association, 800-253-6397.

Labor-Management Strategies for Organizational Change, Oct. 26, Buffalo, N.Y.; price: $595. Presented by Cornell University School of Industrial and Labor Relations, (716) 852-4191.

Interest-Based Bargaining, Oct. 27-28, Buffalo, N.Y.; price: $995. Presented by Cornell University School of Industrial and Labor Relations, (716) 852-4191.

Contract Language: Working Within It, Making It Work for You, Nov. 1, New York, N.Y.; price: $595. Presented by Cornell University School of Industrial and Labor Relations, (212) 340-2802.

The Dynamics of Labor Negotiations, Nov. 1, Buffalo, N.Y.; price: $595. Presented by Cornell University School of Industrial and Labor Relations, (716) 852-4191.

Collective Bargaining: Tactics, Techniques and Table Manners, Nov. 1-3, Milwaukee, Wis.; price: $1,165. Presented by University of Wisconsin-Milwaukee, (414) 227-3200.

Preparation for Collective Bargaining, Nov. 2-3, Buffalo, N.Y.; price: $1,195. Presented by Cornell University School of Industrial and Labor Relations, (716) 852-4191.

Contract Negotiations, Nov. 6 and 13, Minneapolis, Minn.; price: $100. Presented by University of Minnesota Labor Education Service, (612) 624-5020.

Effective Collective Bargaining Skills and Strategies, Nov. 10-11, Buffalo, N.Y.; price: $1,295. Presented by Cornell University School of Industrial and Labor Relations, (716) 852-4191.

Employment Law Conference, Nov. 11-12, Chicago; Nov. 18, San Francisco; Dec. 2-3, New Orleans; Dec. 9-10, Washington, D.C.; price: $800. Presented by National Employment Law Institute, (303) 861-5600.

Conference Report

Consumers Urged to Take Greater Role in Health Care Choices

A panel of four Minnesota health benefit experts Sept. 10 called on consumers to take a greater role in the purchasing of health care as a means of holding down costs.

Addressing the Minnesota State Bar Association's Continuing Legal Education seminar on public sector labor and employment law held in Minneapolis, the panelists said consumers must become more engaged in the purchase of health care, especially as they increasingly are being asked to pay a greater share of costs.

The speakers also called for more sharing of health care information regarding both cost and quality.

Steven C. Clausen of Deloitte & Touche in Minneapolis said the rising cost of health care, which continues to average between 10 percent and 15 percent per year, is on everyone's mind as they negotiate benefits for employees and retirees. While trends indicate that the percentage of increase in premiums may be dipping, health care remains the number one issue facing employers today, he said.

Rising health care costs also has become a priority for workers, and in instances where public employees must share the costs of health insurance, it has become the most important issue, Clausen said. The issue was important enough to Twin Cities' transit workers that it was one of the main reasons they went on strike earlier this year, he added.

Lack of Savings Incentives Cited

A significant problem with health care costs is that there are no incentives in place to reduce rising premium rates, Clausen said. Employers finance most of the costs of health care, and at the same time, providers are not accountable for the delivery of care, its quality, or its efficiency.

As an example, he cited the care his son received for a broken arm. After the arm had been x-rayed, the attending doctor left for the day. Despite the fact that the physician had gone and had not treated the broken arm, Clausen said he paid the doctor the required copayment and his insurer reimbursed the physician for the billed charges.

Actions taken over the past few years to address rising health care costs have not been successful, Clausen said. Employers and employees have accepted gradual changes in benefits, with an emphasis on greater employee contributions, but still health care costs continue to increase, Clausen said.

In addition to paying more for health care, employees often have accepted reduced or no salary increases and/or reduction in the size of the workforce, Clausen said. Employers are facing budget constraints, and say they have little or no money left for wage increases once health care has been negotiated.

Increased consumerism could hold the key to reducing health care costs, Clausen said. However, for employees to take a more active role in their health care, it is important that the care system become transparent. In other words, he said, workers must have information on the true cost of their medical care, as well as information on the quality of the facilities they use. Provided the information, employees can become more responsible for medical purchase decisions, he said.

Help in Decisionmaking Needed

David K. Haugen of the Minnesota Department of Employee Relations, which oversees 48,000 state employees covered by the State Employee Group Insurance Program, agreed there is a lack of health care information among employees, so there is little to guide their decisionmaking.

Haugen suggested the use of health savings accounts as a possible remedy. If workers had more of a stake in their health care costs, perhaps they would be more judicious in their care choices and their spending, he said. Other options to help control health care costs include penalties for unhealthy behaviors or rewards for embracing better lifestyles.

Peter J. Benner, director of Council 6 of the American Federation of State, County and Municipal Employees, said he has heard the argument that employees need to be more engaged in the health care process. However, that is just one view of how to deal with the costs of health care, he said. A major issue that must be addressed is quality of care. Insurers currently are paying for both efficient and inefficient care, Benner said, adding that anywhere from 10 percent to 20 percent of health care costs is due to costs not associated with actual care.

Increased consumerism by employees does not take into consideration rising pharmaceutical prices, Benner said. As more people take prescription drugs, prices have continued to climb. The pharmaceutical industry is a rarity in that the more drugs manufactured, the more they cost, he added.

Wise Use of Resources Urged

Mary K. Brainerd, chief executive officer for HealthPartners, a Minnesota health care organization with 630,000 members, said the clearest opportunity for health care cost savings is addressing the overuse, under use, and misuse of resources, which accounts for 20 percent to 30 percent of health care costs.

An example is government payment policies for Medicare, Brainerd said. Medicare payment increases do not cover the cost of care, and Medicare payments reward the volume of care, rather than the results or quality of care given. The end result is abbreviated doctor visits as doctors are forced to see a heavier volume of patients to get more Medicare dollars.

Open access to care information would help reduce costs, Brainerd said. Another promising step is the expanded use of electronic medical records, which should reduce costs as specialists use tests ordered by primary physicians rather than ordering new ones. Use of electronic records could save HealthPartners about $3 million in paperwork, she said.

New approaches to chronic illness care and more efficient administrative procedures also should help lower health care costs, she said.

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