BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
GENERAL TEAMSTERS UNION, LOCAL 662	
and	Case 164 No. 42154 MA-5583
CHIPPEWA COUNTY	

Appearances:
Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, by Mr. William S. Kowalski, appearing on behalf of the Union.
Mr. Mel Bollom, Personnel Director, appearing on behalf of the County.

ARBITRATION AWARD

General Teamsters Union, Local 662, hereinafter referred to as the Union, and Chippewa County, hereinafter referred to as the County, are parties to a collective bargaining agreement which provides for the final and binding arbitration of disputes arising thereunder. The parties jointly requested that the Wisconsin Employment Relations Commission designate a member of its staff to act as an arbitrator to hear and decide a grievance involving the meaning and application of the terms of the agreement. The undersigned was so designated. A hearing was held in Chippewa Falls, Wisconsin on June 6, 1989. The hearing was not transcribed and the County filed a post-hearing brief on June 26, 1989. No brief was filed by the Union.

BACKGROUND

The grievant suffers from allergies and has received certain treatment for these since 1974. The treatment involves sublingual, intracutaneous and subcutaneous provocation neutralization testing, end point skin titration, IGG RAST and sublingual antigen treatments. The cost of these treatments was initially paid for by the County's insurer, Rural Security, and later by the County, after it became self-insured on October 1, 1983. By a letter dated January 20, 1989, the grievant was informed by the County's third party administrator for its health insurance that as of February 20, 1989 coverage for this type of treatment would no longer be available. The reason for this action was a position statement approved by the Executive Committee of the American Academy of Allergy and Immunology published in August, 1986, which concluded referring to the treatment in question that "an objective evaluation of the diagnostic and therapeutic principles used to support the concept of clinical ecology indicates that it is an unproven and experimental methodology". The County indicated that it would not pay any further amounts based on the Limitations and Exclusions clause in its insurance contract because these treatments were not medically necessary for diagnosis or treatment. The grievant filed a grievance which is the subject of the instant arbitration.

ISSUE

The parties stipulated to the following:

> Did the County violate the collective bargaining agreement by not continuing payment for the type of coverage in question?
>
> If so, what is the remedy?

PERTINENT CONTRACTUAL PROVISIONS

ARTICLE 25

INSURANCE

Section 1. Full time employees shall be offered the equivalent of existing group hospital/surgical/medical insurance in effect January 1, 1983 with pre-existing conditions for new employees remaining in effect. The County shall pay one hundred (100%) percent of the single premium and eighty-five (85%) percent (100% effective 7-1-86) of the family premium of those employees electing to take such coverage. A $50.00 per person or maximum $100.00 per family deductible provision to the basic health insurance program (not Major Medical) pre-existing conditions for new employees, reimbursement of medical bills for covered employees up to $50.00 per year (to be paid on one check in December), second opinion for non-emergency surgery and same-day surgery provisions shall be as per Health Insurance booklet.

Section 2. The employees and/or representatives may avail themselves of appropriate hearing procedures or legal proceedings separate from this Contract if denied health insurance.

COUNTY'S POSITION

The County contends that the instant case is parallel to blood-letting in the Medieval Days in Europe, a practice that was discontinued after the evidence became clear that this was not an acceptable means of treating patients. It argues that it has likewise become clear since 1986 that the treatment of the grievant's allergies is not an acceptable means of treatment. The County claims that the treatment is not generally accepted, proven or effective and is rejected by the American Medical Association, the American Academy of Allergy and Immunology, the United States Food and Drug Administration and the National Center for Health Services. The County asks that the Union's argument that because the County paid for this treatment in the past, it must continue to do so, be rejected because it was not until 1986 that this type of treatment was determined to be unacceptable and a temporary one person error for a few treatments does not establish a past practice. The County notes that it is required to continue the same coverage as the Rural Security Insurance provided in 1983 and points out that this insurance contained a provision which excluded coverage for "unnecessary medical care and treatment." It submits that the grievant's treatment would not be covered under the Rural Security policy because this treatment is not a "generally accepted, proven and established practice by most qualified practioners with similar experience and training." The County also maintains that its position is supported by the state office of the Commissioner of Insurance who indicated there was no violation of law disclosed by its review of the grievant's complaint. It asks that the grievance be denied.

DISCUSSION

Article 25, Section 1 of the parties' collective bargaining agreement provides that the County will offer employes the equivalent of the existing health insurance in effect on January 1, 1983. The insurance in effect on January 1, 1983 was Rural Security Insurance which contained an exclusion for charges for unnecessary care or treatment.1/ The County became self-insured on October 1, 1983 and it excludes payment for care and treatment that is not medically necessary. 2/ The evidence established that in August, 1986 in a position statement approved by the Executive Committee of the American Academy of Allergy and Immunology, the grievant's treatment was found to be unproven.3/ Evidence to the contrary did not refute this conclusion and the undersigned therefore finds that the grievant's treatment in this case is not medically necessary and would be excluded from coverage under both the Rural Security Insurance and the County's self-insurance. Even though the treatment was paid for in the past, insurance coverage would not continue once it was established that such treatment had no benefit. The record indicates that the grievant has appealed the County's decision not to provide the coverage for this treatment through the insurance's internal appeal procedure and to the Commissioner of Insurance with no change in the result. Given the evidence presented, the undersigned finds no violation of the collective bargaining agreement by the refusal of the County to continue to pay for the grievant's unproven treatment for her allergies.

Based on the above and foregoing, the record as a whole and the arguments of the parties, the undersigned issues the following

AWARD

The grievance is denied.

Dated at Madison, Wisconsin this 9th day of August, 1989.

By _____
Lionel L. Crowley, Arbitrator

1/ Ex. - 11.

2/ Ex. - 6.

3/ Id.