BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

TEAMSTERS LOCAL NO. 662

and

WISCONSIN TRUSS, INC.

Case 6
No. 53312
A-5421

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by Ms. Naomi E. Soldon, on behalf of the Union.

Brigden & Petajan, S.C., by Mr. Albert H. Petajan, on behalf of the Company.

ARBITRATION AWARD

The above-entitled parties, herein "Union" and "Company", are privy to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in Cornell, Wisconsin, on February 28, 1996. The hearing was not transcribed and the parties thereafter filed briefs which were received by May 13, 1996. Based upon the entire record and the arguments of the parties, I issue the following Award.

ISSUE:

The parties have agreed to the following issue:

> *Did the Company violate the contract by deducting $20.00 per month for insurance premiums from the paychecks of those employees who are covered by the Company's health insurance plan?*

BACKGROUND

The Company manufactures trusses used in building construction at its Cornell, Wisconsin, facility.

Following a strike, the parties herein reached agreement on an initial collective bargaining agreement in August, 1993, which provided in Article X, entitled "Health and Welfare":

. . .

Section 2

. . .

d. "After 10,000 hours of service, the Employer will pay up to the full cost of the premiums that is in effect on August 1, 1993, (which is $332.92 per month). Any further increase in premiums are to be split 50-50."

e. If the Employer switches to a Union sponsored plan or other less expensive plan, the requirement that employees pay 50% of the increase in premium will not become operative until the premium is greater than $332.92 per employee. In such event (premium over $332.92), the computation of amounts employees pay (including those co-sponsoring the plan with lesser amounts of service) will be adjusted accordingly.

. . .

Employes at that time were covered by a health insurance plan administered by Wisconsin Physicians Service ("WPS"), which enabled them to go to the doctor of their own choosing. The monthly WPS premiums at that time were higher than the monthly premiums of a health insurance plan sponsored by the Union.

The parties in 1993 agreed to switch over to the Union's plan and employes were covered under that plan for about a month. The premiums for that plan went up substantially, thereby resulting in the Company proposing that employes be covered under a self-funded plan. The Union proposed that employes should be covered under a different plan administered by the Marshfield Clinic.

By letter dated September 20, 1993, Union President Michael R. Thoms voiced his concerns over the Company's proposal to Company President Dan Schulner by stating, inter alia:

3.) That in no event will the employee's obligation toward co-payment of the premium, as spelled out in the contract, be greater than it would have been had you stayed in our group. (For example: If your premium, or estimated premium under your partially self-funded program rises to $400.00 per month, while the premiums for our plan stay

> below the $332.00 cap that exists in the contract, then you will pay the difference between the cap and the $400.00 per month, or $68.00 per month, per employee.

Thoms, who formerly worked as an insurance agent, testified here that he made that proposal because he was concerned that the monthly rates would go up under such a small plan.

By letter dated September 22, 1993, Company Attorney Raymond L. Hoel informed Thoms:

> "I have only one problem with your reasoning. You indicate on the second page that your employees should be removed from all risk if the premiums gets over $332.92 per month. Under the present contract, page 12, the employer can choose the health and welfare program; 'The Employer will sponsor a health and welfare program of its choosing.' On page 13, paragraphs d and e provide that if the premium is in excess of $332.92 per month that further increases in the premium are to be split 50-50.
>
> . . .
>
> Thank you for your letter of September 20, 1993. I have passed the same on to Dan Schulner, Wisconsin Truss.
>
> I have only one problem with your reasoning. You indicate on the second page that your employees should be removed from all risk if the premium gets over $332.92 per month. Under the present contract, page 12, the employer can choose the health and welfare program; "The Employer will sponsor a health and welfare program of its choosing." On page 13, paragraphs d and e provide that if the premium is in excess of $332.92 per month that further increases in the premium are to be split 50-50.
>
> Your interpretation would effectively remove the bargained requirement that your employees share 50% in the cost of any increases. This may or may not get to be a problem in the next 18 months. I do want to point out that our interpretation of this clause is different from your interpretation.
>
> . . .

The parties met and discussed this issue at a September 29, 1993, meeting in Attorney Hoel's office. By letter dated September 30, 1993, Thoms informed Schulner:

. . .

> Dan, this will confirm the agreement that was reached on September 29, 1993 in our meeting at Ray Hoel's office regarding changing the health insurance to the plan you proposed through **Benefit Plan Administrators.**
>
> Given the fact that you have agreed to the terms outlined in my letter of September 20, 1993, I will agree to the change of carrier that you have proposed.
>
> Thank you for your cooperation in this matter.

. . .

By letter dated October 1, 1993, Attorney Hoel informed Thoms:

> "This letter will document the agreement with regard to the health insurance coverage for Wisconsin Truss, Inc. Copy of our previous correspondence is attached.
>
> It was the Union's position that if Wisconsin Truss went to the "partially. . .self-insured program" that the employee should not have to pay the 50% of excess of over $332.92 as required by Paragraph 10, Section 2d. It was the Company's position that the language in Paragraph 10, Section 2e and Section 3 only pertains if the Company switches coverage from the plan in effect at the time of the contract, and further that there is no change because the Company is duplicating the prior plan exactly. Therefore the Company felt that the requirement that the employees contribute over $332.92 would still be on a 50/50 basis.
>
> Subsequent to the contract, the Company switched to the Union sponsored plan. That plan became more expensive. The Union negotiated a plan with a new carrier which restricts providers but which arguably provides the same or greater benefits. The Union maintains that that plan should be maintained inasmuch as it avoids any possible excess premium over $332.92 for the coming year. There is no guarantee that the Union sponsored plan through

Marshfield will not exceed $332.92 for the second year of coverage.

The Company maintains that the partially self-insured plan will not create a premium in excess of $332.92 for the initial year end. Also, the Company has no guarantee that the premium won't increase over $332.92 for the second year of coverage.

. . .

To resolve the matter, we have agreed that if the Company plan results in a premium greater than $332.92, that the employees will only have to pay that portion of the increase they would have had to pay if the Company would have switched to the new Union plan through Greater Marshfield. Thus, if the health insurance increases to an amount such that an employee contribution is required, we will contact you, and you will advise us of the rate in effect for that period under the Teamsters sponsored plan and will compute the amount the employees have to pay as if the Teamsters sponsored plan was in effect still using the 50/50 formula.

Thank you for initialing the enclosed copy of this letter and returning it to our office.

. . .

That understanding did not have a termination date.

Bargaining unit employes thereafter did not pay any health insurance premiums for the remainder of the 1993-1995 contract when they were covered under the Company's self-funded plan.

The parties in 1995 entered into negotiations for a successor contract. The Union in February, 1995, submitted a "Union Initial Proposal" which stated at the outset:

. . .

"All Articles and Sections of the current collective bargaining agreement, including related addendums and Letters of Understandings, to remain in full force and effect."

. . .

The Union at that time also proposed the following changes dealing with health insurance:

"23.- **Page 12, ARTICLE 10, HEALTH AND WELFARE**

Section 1. Modify to provide for a health insurance plan that has an annual deductible of $100.00 per person with a maximum of two (2) deductibles per family. 80/20 coinsurance. Next $2,000.00 per individual with an aggregate $5,000.00 per family per year.

24.- **Page 12 and 13, ARTICLE 10, HEALTH AND WELFARE**

Section 2. Modify to provide for 100% Employer paid health insurance for all employees who have completed their probationary period.

25.- **Page 13, ARTICLE 10, HEALTH AND WELFARE**

Section 5. Increase the current $150.00 per week Sickness and Accident benefit to **$200.00 per week.**

26.- **Pages 12 and 13, ARTICLE 10, HEALTH AND WELFARE**

Add new language to provide for a Basic **Dental Plan** with 100% of the monthly premium paid by the Employer. Currently the Union has a plan available at a cost of $25.45 per month per employee (single or family).

27.- **Pages 12 and 13, ARTICLE 10, HEALTH AND WELFARE**

Add new language to provide for a Basic **Vision Plan** with 100% of the monthly premium paid by the Employer. The Union has a Vision plan available at a cost of $7.98 per month per employee (single or family)."

The parties in negotiations subsequently never discussed Attorney Hoel's October 1, 1993, letter, supra., which stipulated that employe contributions toward the monthly health insurance premiums would be tied to the cost of the Union's plan and that subject was never addressed by either party in negotiations.

The finalized 1995-1997 agreement provides in Article X, entitled "Health and Welfare":

. . .

Section 2.

e. If the Employer switches to a Union sponsored plan or other less expensive plan, the requirement that Employees pay 50% of the increase in premium will not become operative until the premium is greater than $**367.21** per Employee. In such event (premium over $**367.21**), the computation of amounts Employees pay (including those co-sponsoring the plan with lesser amounts of service) will be adjusted accordingly.

. . .

That contract at Article XVII (sic), entitled "Entire Memorandum of Agreement", stated:

ARTICLE XVII (sic)
ENTIRE MEMORANDUM OF AGREEMENT

The parties acknowledge that during the negotiations which resulted in this Agreement each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. This Agreement constitutes the entire Agreement between the parties and supersedes all previous communications, representatives or agreements either verbal or written between the parties. Therefore, the Company and the Union, for the life of this Agreement, each waives the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter referred to or covered by this Agreement. If a law is changed that makes a change in this contract necessary, the parties will negotiate with respect to such change. [Boldface in original]

Before reaching that agreement, Attorney Hoel by letter dated February 2, 1995, detailed to Thoms "the changes that we made in the current Agreement." That letter did not refer to

Attorney Hoel's earlier October 1, 1993, side letter, supra., and that side letter was not included with the February 2, 1995, letter sent by Attorney Hoel to Thoms. It did, however, refer to a separate side letter involving supervisor Tim Jenneman and that side letter was included with the February 2, 1995 letter. That was the only side letter reached at that time.

Director of Human Resources Barry Bohman testified that the Company agreed to the $367.21 new monthly insurance rate because he assumed at the time that that was the cost of the Union's sponsored plan and that he did not know that the rate for the Union's sponsored plan was $330 per month. Company President Daniel Schulner testified that he signed the contract because he assumed under the "Entire Agreement Clause", ante, that there were no other side letters or any other understandings which were not covered in the contract. He admitted on cross-examination, however, that he never asked Attorney Hoel whether there were any such side letters.

Thoms by letter dated March 30, 1995, informed General Manager James Ver Hulst about several contractual issues and he there asked whether employe contributions for health insurance premiums had increased.

By letter dated April 3, Bohman replied:

> "The third issue is the increase of health insurance premiums. The health insurance premium was increased in accordance with the increase you proposed in the contract. Under Article X, Health and Welfare, Section 2(d), the rate that was agreed to is $367.21. The co-sponsor rate is computed by taking ($367.21 x 12 months/52 weeks) x the co-sponsor %."

Shortly thereafter, Thoms informed Bohman that he disagreed with the Company's interpretation of this proviso and he enclosed a grievance to that effect. That grievance was not pursued.

Thereafter, the Company in October, 1995, began deducting $20 a month from those employes with health coverage after it learned from its benefits plan administrator that premiums had to be increased because of adverse experience in the last benefit year. The Union's-sponsored Marshfield Plan at that time provided for a $348.72 monthly premium.

Attorney Hoel testified here that the Marshfield Plan is not as good as the Company's plan because chiropractors are not covered under the plan and because employes had to stay within the plan's provider network which, as shown by Company Exhibit No. 2, does not extend to the Cornell area. He also claimed that his October 1, 1993, letter, supra., represented a "snap-shot in time" which was never intended to extend past the termination date of the 1993-1995 contract.

The Union filed the instant grievance on October 9, 1995, wherein it charged that the

Company had violated Article 10 by increasing the "employee contribution for health insurance coverage by $20 per month per participating employee."

DISCUSSION

The essence of this dispute turns on whether Attorney Hoel's October 1, 1993, side letter became part of the current 1995-1997 contract. Since the Union never specifically referred to that side letter in negotiations leading up to the current contract, and since it was not included with Attorney Hoel's February 2, 1995, letter to Thoms, it is understandable why the Company asserts that it never agreed to carry over the October 1, 1993, side letter and make it part of the 1995-1997 contract.

This argument would carry the day except for one thing: the "Union's Initial Proposal" put the Company on notice in February, 1995, that the side letter would carry over to the new contract because it stated:

> All Articles and Sections of the current collective bargaining agreement, including related addendums and Letters of Understandings, to remain in full force and effect."

By virtue of that statement, it was incumbent upon the Company to expressly reject any such addendums and letters of understanding in the subsequent negotiations, which is something it did not do. As a result, the Company tacitly agreed to keep the October 1, 1993, letter of understanding in effect through its conduct even though it never specifically stated that it was doing so.

To be sure, Company President Schulner claimed that he did not mean to grant that benefit and that he relied on the contract's "Entire Agreement" clause before he signed it. His subjective belief, however, cannot supersede the plain language of the October 1, 1993, letter which has no termination date and the Company's failure to challenge the Union's Initial Proposal which stated that the side letter carried over to the new contract. In other words, what is important here is the objective language of the October 1, 1995, letter and the Company's bargaining failure to counter the Union's Initial Proposal when it had the opportunity to do so and when it was required to do so.

The Company nevertheless claims, "the new entire agreement clause cancelled all prior letters of understanding" and it cites arbitral authority in support of its claim that such clear and unambiguous language must be given its plain meaning. As stated above, this clause states: "This Agreement constitutes the entire Agreement between the parties and supersedes all previous communications, representations, or agreements either verbal or written between the parties."

This language certainly is sweeping in scope. However, the Company itself has tacitly

acknowledged that it does not cover letters of understandings reached between the parties because it reached such a letter with the Union involving Supervisor Jenneman when it agreed to the present contract. By doing so, the Company therefore has made it clear that side letters are to be honored even though the contract does not refer to them. The same is true for Attorney Hoel's October 1, 1993, letter, which also superceded the contract.

The Company also argues that the Union in negotiations only proposed that "the Company pay 100% of the premium - not that the cost-sharing side agreement be continued" and that such a proposal "is inconsistent with a position that the letter of understanding concerning shared costs be continued."

I disagree. The Union's initial proposal went to the question of how much premium - if any - employes should pay towards their health insurance. When that proposal was rejected, the Union subsequently proposed that employes not make any contributions until the monthly premium was raised to $367.21, which the Company accepted. The raising of the base insurance premium from $332.92 in the prior contract to $367.21 in the current contract therefore raised the threshold limit used to determine whether the Union's original health insurance plan was cheaper than the Company's. As a result, while employes under the 1993-1995 contract were not required to pay any monthly premiums if the Union's monthly premiums stayed under $332.21, they now are not required to pay any monthly premiums if the Union's monthly premium stays under $348.77. There is nothing at all "inconsistent" about such a result or bargaining strategy.

The Company similarly argues that the present contract language is contrary to the premium cost sharing provisions of Article X of the contract. But, letters of understandings by their very nature regularly do that. Indeed, Attorney Hoel's October 1, 1993, letter of understanding, ante, did just that by pegging any possible employe contribution to the cost of the Union's plan, rather than to the cost of the Company's plan as provided for in Article X, Section 2(e), of the prior 1993-1995 contract.

Also without merit is the Company's claim that the October 1, 1993, letter was only intended to apply to that initial contract. For if that were the case, the parties surely would have provided a termination date in the letter. By failing to do so, it must be assumed that it continues until it is bargained away - which has not happened. Moreover, if the Company wanted it to terminate with the prior contract, it could have told Thoms at the outset of the 1995 contract negotiations that it had expired. By failing to do so, it indicated that it was agreeing to its continuation for the duration of the successor contract.

The Company also asserts that changes in the new health insurance article have "outdated the October 1, 1993 letter" and that the parties were required to revise the letter because it now is not clear what Union plan is equivalent to the Greater Marshfield Plan referred to in the letter. The record, however, fails to bear this out since Thoms testified about a plan that was similar to the one offered by the Company and since there are only small deviations from the Union's plan

versus the Company's plan.

The Company further claims that the Jenneman letter of understanding was the only one considered in the negotiations for the 1995-1997 contract and that Attorney Hoel's February 2, 1995, letter to Thoms proves that point because it did not refer to Attorney Hoel's earlier October 1, 1993, letter of understanding. The problem with this claim is that Attorney Hoel's 1995 letter lists "the changes that we made in the current agreement." Said letter therefore did not refer to the October 1, 1993, letter because the Union's initial proposal only listed the changes it wanted to make -- changes which did not cover the October 1, 1993 letter. That is why Attorney Hoel's 1995 letter did not have to refer to it -- just as it did not have to refer to any of the other uncontested contract provisions such as plant safety, holidays, leaves of absence, etc., carried over from the initial 1993 contract to its successor.

Lastly, the Company argues that the "monthly premium rate for any equivalent Greater Marshfield Plan is irrelevant" because the Union's $348.72 figure was an "afterthought"; because the Union has failed to explain where the $376.21 figure came from; and because the Union never mentioned the $348.72 figure in negotiations; and because the Union did not pursue its original April, 1995 grievance.

The record, indeed, does not establish why the Union's initial grievance was dropped. Its reason for doing so, however, is immaterial because the Company did not begin deducting the $20 monthly contribution until October, 1995. As a result, the Union was not required to file a grievance until after the deductions began - which is exactly what it did on October 9, 1995.

The record similarly does not establish why the Union failed to mention the $348.72 figure in negotiations. But, that also is immaterial because the Company itself failed to raise the issue or to ask about the cost of the Union's sponsored plan in these negotiations.

Having failed to do so, then, there is no merit to the Company's claim here that the Union has failed to offer sufficient justification for that figure. That is the figure testified to by Thoms and -- absent clear evidence which is not present here -- that is the figure which must be accepted for the purposes of the October 1, 1993, letter of understanding.

The $376.21 figure offered by the Union also remains a mystery. But, if the Company wanted to find out why the Union selected that figure, it need only have asked that question in negotiations before agreeing to it. Having failed to do so then, it cannot now seek to overturn that agreement here.

As a remedy, the Company is required to make whole its employes by reimbursing them for the $20 per month premium contribution they have made from October 1, 1995, to the present, and it henceforth will not impose any premium contribution unless it is in accord with the terms of the October 1, 1993, letter of understanding.

In light of the above, it is my

AWARD

1. That the Company violated the contract by imposing a monthly $20 health insurance premium contribution on October 1, 1995.

2. That to rectify that violation, the Company shall take the remedial action stated above and it shall not for the duration of the current contract increase employe contributions unless health insurance premiums exceed the cost of the Union's sponsored plan.

3. That to resolve any disputes which may arise over application of this Award, I shall retain my jurisdiction for at least sixty (60) days.

Dated at Madison, Wisconsin, this 24th day of May, 1996.

By Amedeo Greco /s/
Amedeo Greco, Arbitrator