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STATE OF WISCONSIN
BEFORE THE ARBITRATOR

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

* * * * *

* In the Matter of the Petition of *

* GENERAL TEAMSTERS UNION *

* LOCAL 662 *

* for Final and Binding Arbitration *

* Involving Law Enforcement *

* Personnel in the Employ of *

* EAU CLAIRE COUNTY *

* SHERIFF'S DEPARTMENT *

* * * * *

Case CXXII
No. 32650
MIA-840
Decision No. 21647-A

I. APPEARANCES

On Behalf of the Union: Merle Baker - Business Representative, Local 662

On Behalf of the County: Keith R. Zehms - Eau Claire County Corporation Counsel

II. BACKGROUND

On December 20, 1983, the Union filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to initiate final and binding arbitration pursuant to Section 111.77(3) of the Municipal Employment Relations Act, with regard to an impasse existing between the Parties with respect to wages, hours and conditions of employment of law enforcement personnel for the years 1984 and 1985. An informal investigation was conducted on February 15, 16 and 17, 1984, by a member of the Commission's staff. The Investigator advised the Commission on April 25, 1984, that the Parties were at an impasse on the existing issues as outlined in their final offers. The Investigator closed the investigation on that basis.

The Commission then ordered the Parties to select an arbitrator. The undersigned was so selected. The Arbitrator was advised of his selection May 14, 1984. A hearing in the matter was conducted on August 27, 1984. The proceedings were transcribed. The Parties also reserved the right to file briefs and reply briefs. Both filed briefs and the County filed a reply brief which was received October 18, 1984. Based on the evidence, the arguments of the Parties and the criteria contained in the relevant statute, the Arbitrator renders the following award.

III. FINAL OFFERS AND ISSUES

Both Parties agreed to the duration of a successor contract. The new contract will cover the period of January 1, 1984, through December 31, 1985. There are two items at issue. They are wages and health insurance contribution.

A. Health Insurance Contribution

The Union proposes to maintain the status quo with respect to the Employer's health insurance contribution. The relevant portion of the predecessor contract (Article 15) reads as follows:

"15.01 The Employer shall contribute 100% of premium payments toward a group health insurance program as approved by the Eau Claire County Board of Supervisors."

It is relevant to note that the 1983 contribution by the Employer for the family premium was \$152.46 and the 1983 contribution by the Employer for the single premium was \$55.60.

The Employer's final offer on health insurance proposes essentially two changes: (1) that the amount to be contributed for 1984 by the Employer be expressed as a dollar amount, and (2) that 50% of any premium increase in 1985 will be assumed by the Employer. The remainder of the increase will be assumed by the employee. The Employer proposal for Article 15 reads as follows:

"The Employer shall provide a Standard Health Insurance Plan for eligible full-time employees and shall pay up to a monthly premium cost of \$152.46 for family coverage and \$55.60 for single coverage in 1984. The Employer will assume fifty percent (50%) of any premium increase in the Standard Plan in 1985."

B. Wages

The proposals on wages are identical the first year. In the second year, the Union's proposal on wages is less than the Employer's. The Union's proposal is as follows:

"Increase all steps and classifications, effective January 1, 1984, by thirty-eight (38¢) cents per hour.

"Increase all steps and classifications, effective January 1, 1985, by forty (40¢) cents per hour."

The Employer's offer on wages is as follows:

"Increase all steps and classifications, effective January 1, 1984, by thirty-eight (38¢) cents per hour.

"Increase all steps and classifications, effective January 1, 1985, by forty-three (43¢) cents per hour."

IV. ARGUMENTS OF THE PARTIES

A. The Union

The Union believes there is one basic issue and that is: "Should the County continue to pay 100% of any health insurance premium increases, as in the past, or should the employees now be required to pay a part of any increase?"

In support of their position, they note historically, the employees have always had the benefit of the County paying 100% of their health insurance premium. This was a benefit that was negotiated into the original Agreement and has remained constant throughout the years of collective bargaining with the County. The Union acknowledges that inflationary increases in health insurance are a factor in increasing costs to the Employer. However, they emphasize these inflationary costs are not extremely excessive when compared to the experience of other employers, particularly counties throughout the area. In this respect they reference one of the Employer's exhibits which compares employer health insurance contributions for comparable employers. Based on this, they suggest Eau Claire County has fared well compared to other employers when it comes to health insurance cost. For instance, they note the Employer experienced no premium increase in 1984.

They also question if it is the County's intent to make issue of future insurance increases, and if so, then why has the County pursued a multi-year Agreement rather than a one-year Agreement when the issue could have been addressed for the year of 1985 in direct negotiation when everyone would be aware of the cost of the insurance.

The Union indicates that it is "not without understanding" with respect to health insurance costs. As evidence of this, they direct attention to the wage proposals. The Union recognizes the possibility of premium increases for insurance and has proposed a wage increase of \$.40 per hour versus \$.43 per hour for the Employer thus allowing \$.03 per hour as a buffer to cover any increased costs. The Union has allowed for a cost increase, even though no one knows if there will be an increase. They also noted that the Parties have agreed to the County's offer of including the Midelfort Clinic Plan and the CompCare program to the current Group Health Co-op of Eau Claire program as additional options for the employees. Even though an employee elects this coverage, the County is not liable for any additional payments in excess of the normal standard basic health plan, yet, if the premiums are less for these plans, as has been the case with the Group Health Co-op Plan at some times in the past, the County is the recipient of the savings.

They also believe they have given the Employer a cost break in terms of an agreed upon proposal to change the overtime provisions of the Agreement. They note that Article 8.02 stated:

"In the event it becomes necessary to schedule personnel for overtime work, (over 8 hours per day or 40 hours per week) to cover emergencies or absences of regular employees, such work will be offered first to seniority employees in order of their seniority in the division where need occurs. Such divisions are understood to be patrol, jail, process bailiff, detective, cooks and cook/matrons."

Thus, under 8.02, if a vacancy occurred in the jail, a patrolman could not fill that vacancy but the vacancy would be filled by a jailer at an overtime rate. The same would be true if there was a vacancy in any of the divisions. Someone from some other division could not fill that vacancy, but the employees in the division in which the vacancy occurred would have the opportunity to fill the vacancy at an overtime rate. In the context of 8.02, manpower shortages and the need to allow employees their regular days off created regular vacancies on the schedules which could only be filled on overtime.

The Union indicates that the County sought relief and that it was agreed, after much discussion, that two floating positions would be created within the jail, subject to bid, to fill vacancies in the jail division, as well as vacancies in the patrol division. This would allow better coverage on patrol as well as permit the County to fill mandatory vacant shifts in the jail at a regular straight time rate.

The Union also estimates that the cost savings to the County and loss of overtime to the Unit are significant. As a basis for this estimate, they note a review of the schedules from the jail for 1984 beginning January 1st through August shows the following: 159 eight (8) hours shifts vacant on the schedule to cover long weekends off and 157 eight (8) hour shifts open to cover vacation time off. They also note these shifts were covered at a time and one-half rate as well as other predictable vacancies, including 49 shifts for schooling and training. They did not include "unpredictable" sick leave vacancies in their estimates. The number of shifts that now can be covered without overtime is 365. When this is factored by eight (8) hours per shift multiplied by time and one-half pay, they estimate the loss per employee on an hourly rate

would reduce the \$.38 per hour that the County is offering the unit the first year of the Agreement to less than one-half that amount.

With respect to other internal bargaining units, the Union acknowledges that other bargaining units within the County have accepted the final offer regarding health insurance as the County has proposed. However, in their view, it should be noted that one of the bargaining units is a supervisory unit which fails to have the privilege of Municipal Interest Arbitration and the other bargaining unit covers four (4) employees. The practicality of arbitrating this issue for four (4) employees would not be sound financially. It should also be noted that the settlements these employees received for the year of 1984 and the year of 1985 are of a higher percentage settlement than the County has offered for this bargaining unit and certainly higher than the Union proposed. The settlements compared to the instant final offers on a percentage basis are as follows:

<u>Eau Claire County Sheriff's Department Supervisors</u>		
	<u>1984</u>	<u>1985</u>
	4.3%	4.8%
 <u>Airport Employees</u>		
	<u>1984</u>	<u>1985</u>
	4.79%	4.29%
 <u>Final Offers</u>		
	<u>1984</u>	<u>1985</u>
Employer	4.1%	4.5%
Union	4.1%	4.2%

The Union also reviews external employers with respect to the health insurance contribution issue. They review counties with populations between 60,000 and 100,000. Eau Claire's 1982 population was estimated at 81,987. Their review indicates that allowing Eau Claire County to impose employee participation in paying for part of their insurance premiums would go against the trend from the year 1980 to 1983 and further, would put this County in with the minority group. In 1980, of the ten counties, Dodge, Eau Claire, Fond du Lac, Jefferson, LaCrosse, Manitowoc, Ozaukee, Walworth, Washington and Wood, only two of the counties required single employees to participate in payment of premium and four of the counties required family plan participants to participate in premium payments. For the year of 1983, of these same counties, two still required single plan employees to participate in premium payments but only three of the counties required family plan participants to participate in payments.

B. The Employer

The Employer, like the Union, focuses on the health insurance issue. To summarize the first portion of the Employer's extensive argument, they submit their offer is most reasonable because (1) it is consistent with voluntary agreements with two other internal units, (2) six of seven contiguous counties require contributions from their employees, (3) all three of what they term as "labor market" counties require an employee contribution, (4) four of five public sector employers in the area require an employee contribution, and (5) two hospitals in the City do not pay 100% of the health insurance cost.

With respect to contiguous counties, they are the counties of Buffalo, Chippewa, Trempealeau, Dunn, Pepin, Jackson, and Clark. As noted, they indicated six of seven contiguous counties' employees contributed to the cost of the health care premium for the year 1984. Only Jackson County, with a population of 16,831, pays 100% of the Standard Health Insurance Plan. On the average, the comparable counties paid percentage of total premium is 85.1% for 1984. This is compared to Eau Claire County which pays 100% of the premium cost for the Standard Health Insurance Plan. They submit it is patently obvious that Eau Claire County is unique as compared to contiguous counties in not requiring employees to share the cost of monthly premiums. In short, they contend, the contiguous county comparables support the Employer's position.

The County also believes their offer is most consistent with the "labor market" counties which are identified as LaCrosse, Wood and Portage County. They submit that none of the three labor market counties pay 100% of the Standard Health Insurance Plan premium. Moreover, they draw attention to the fact that the average employer cost for the labor market counties is less than the premium cost paid by Eau Claire County. The County paid percentage of premium in the labor market counties is 90.3% versus 100% in Eau Claire County.

The Employer submits evidence and argument with respect to other public sector employers as well. This pool consists of the Eau Claire Board of Education, the City of Eau Claire broken down into labor and clerical employees, District I Technical Institute and the University of Wisconsin-Eau Claire. Besides Eau Claire County, these are the four largest public employers located within Eau Claire County and, in fact, within the City of Eau Claire. In four out of five of the public employer comparables, employees contributed to the cost of health care premiums in 1983. There is no evidence to indicate that employer contribution will change in 1984. The employer premium cost in dollars for the public employer comparables was less than for Eau Claire County. The employer paid percentage of total premium for the public employers in 1983 was 79.3% and with the data available for 1984, is 76.9% versus the 100% paid by Eau Claire County. Employees in this comparison group make a significant contribution to the premium cost of their Standard Health Insurance Plans which is in stark contrast to Eau Claire County.

In terms of external comparables, they next draw attention to Luther and Sacred Heart Hospitals. These are the only two hospitals located in the City of Eau Claire. They are also major employers in Eau Claire County. Neither Luther Hospital nor Sacred Heart Hospital pays 100% of the premium of their Standard Health Insurance Plans. In fact, the hospitals in 1984 paid only 39.9% of the health insurance premium versus 100% for Eau Claire County.

In addition to its argument on health insurance, the Employer offers argument on wages broken down along the same comparable groups. Regarding contiguous counties, they draw attention to the fact that a comparison of salaries for the non-supervisory Sheriff's Department employees reveals that the Employer pays more at the minimum and maximum rates as compared to the average of contiguous counties for all classifications except for the cook and cook/matron classification which accounts for only six of the thirty-six bargaining unit employees. In fact, in the Deputy Sheriff/Patrol classification as well as the Deputy Sheriff/Jailer classification, Eau Claire County's maximum hourly rate is higher than all of the contiguous counties. In the Deputy Sheriff/Process/Bailiff classification, only Dunn County pays more at the maximum rate than does Eau Claire County. In short, it is clear in the Employer's opinion that the Employer is the wage leader as compared to contiguous counties.

They next highlight a comparison of Eau Claire County wages and those in the "labor market" counties. This comparison shows

that Eau Claire County pays more than the average of labor market counties at the maximum rate in every job classification at issue in the Sheriff's Department. The wage leadership of Eau Claire County is uncontested and strikingly clear. In fact, in every class for each position listed, considering the maximum rate, Eau Claire County pays more in every single instance except in relation to Deputy Sheriff/Jailer pay in Wood County. In their opinion, labor market counties as comparables unequivocally support the Employer's position. They also note that Eau Claire is a wage leader in the combined sample of the contiguous and labor market counties.

The second major point made by the Employer is that phenomenal increases in health insurance costs mandate acceptance of the Employer's request that employees share the cost of health insurance premiums. They believe that arbitrators have historically recognized the importance of employee contribution to health insurance premiums as a method of cost containment. Against this assertion, they submit that the Employer's health insurance cost has increased 102.9% since 1980 and that the cost of health insurance to the Employer in 1984 is \$.88 per hour. They mention that their proposal was negotiated in an attempt to sensitize employees to the costs of health insurance coverage and to help contain health insurance increases. They cite several cases where arbitrators have held as such, specifically LaCrosse County, Decision No. 13408 (5/75) and Wilmot Union High School District, Decision No. 16398-A. They also draw attention to media coverage regarding the problem of health care cost containment.

Next they mention that the vast majority of comparable employers receive health insurance premium contributions from their employees and that the number has been increasing. In 1980, of the total sample of comparables, six (6) of the comparables paid 100% of the family plan premium cost. In 1983, only four (4) of the comparables' employers paid 100% of the family plan premium cost and with the data available for 1984, only two (2) of the total sample of comparable employers pay 100% of the family plan health insurance premiums. This information contained in Employer Exhibits No. 8-8D supports the state-wide and national trend discussed above for employee contribution for health insurance. Arbitrators have recognized the validity of requiring employee contributions towards health insurance premium costs when a majority of comparable employers have similar requirements. They cite Green County Pleasant View Nursing Home, Decision No. 17775-A (9/80), and School District of Turtle Lake, Decision No. 16536-A (4/79), where Arbitrators Petrie and Kerkman spoke of the weight given to comparables regarding this issue.

Moreover, cost sharing is not new to Eau Claire County employees, since 50% of the bargaining unit employees subject to this arbitration participate in paying part of their health insurance premium cost by participating in plans other than the basic plan. Included in these other options are HMO's which, as the Employer points out, many of the comparables do not even offer.

Also on the wage issue, the Employer asserts that the Employer's status as wage leader for all of the employees in the bargaining unit will be maintained through inclusion of the Employer's final offer in the arbitration award. They support this by first noting that the Employer has offered \$.03 more per hour than the Union. They do a comparison to externals assuming a 5% wage increase in external counties and no insurance increase and assuming a 20% increase in health insurance premiums. This comparison reveals that not only would Union employees contribute significantly less on a cents per hour basis for health insurance but that the Employer would maintain its wage leadership position to the tune of \$.49 per hour or 5.24% as against the total sample average. In 1985, Eau Claire County would be paying more than the contiguous and labor market counties for the positions as shown on the following page.

<u>Position</u>	<u>Amount/Hour</u>	<u>Percentage</u>
Deputy/Patrol	\$.53	5.39%
Jailer	\$.94	9.98%
Deputy/Process/Bailiff	\$.43	4.37%
Cook/Matron	\$.27	3.95%
Cook	\$.15	2.06%

The Employer next argues that an analysis of the health insurance issue on its own merits or in conjunction with the wage issue supports the Employer's final offer. They submit that the overwhelming majority of comparable employers historically and currently have employee premium contributions. Assuming a 20% increase in insurance premium for the Employer in 1985, bargaining unit employees would be required to pay only 5.55% of the total premium. This is in stark contrast to the employees' share of total premium in contiguous counties amounting to 14.9% and in labor market counties amounting to 9.7%. They also compare this against the total sample average of 22.1% for the year 1984. Standing alone, and not considering the fact that the Employer's wage offer is \$.03 per hour more than the Union's wage offer, the analysis of the health insurance issue fully supports the Employer's position as evidenced in its final offer.

In terms of rebuttal, the County contends the Union has not allowed for an increase in insurance, while the Employer has proposed a trade-off by offering \$.03 per hour more than the Union's final offer. There is no evidence in the record to indicate that the floating deputy agreement was contingent upon the Employer paying 100% of health insurance premiums, because it simply is not true. Further, since the floating deputy positions have not been established and filled, any reduction in overtime paid is pure conjecture on the part of the Union. Moreover, they do not believe it is a proper subject for consideration because it has already been agreed to by the parties.

V. DISCUSSION AND FINDINGS

The first, ancillary issue to be discussed is that of comparable employers. The Parties are in sharp disagreement over which counties should be used as comparables. The Arbitrator finds that the primary comparable group should be the contiguous counties. The Union's proposed group of comparables is much too broad. Moreover, they have not sufficiently established, based on traditionally used factors of comparability, the similarity between Eau Claire County and all those counties utilized in their comparable group. On the other hand, a comparable group made up of the contiguous counties provides a group of employers which are comparable based on geography, economic base, and shared labor and product markets. With respect to the Employer's second group of comparables, that being the "labor market" counties, the Arbitrator does not find it necessary to utilize these counties as it is his belief that the contiguous counties provides a sufficient basis for comparability.

It is clear that the primary issue in this case is the health insurance issue. The wage offer is relevant only to the extent that it may influence the reasonableness of the respective health insurance offers. For instance, the Employer claims their health insurance offer is justified because they are offering \$.03 per hour more than the Union. On the other hand, the Union argues that their offer is more reasonable because they are willing to accept \$.03 per hour less than the Employer is offering.

It should first be noted that the burden is on the Employer to justify their health insurance proposal. This is because it represents a change from the Parties' voluntary agreement over several years to have the Employer pay 100% of the cost of health

insurance. Their proposal in reality seeks to change the status quo in two respects. First, they seek to convert the 100% contribution in the first year to a dollar amount (although equivalent to 100%) and second, they seek to have the employees contribute toward health insurance by having them absorb 50% of the health insurance premium increase in the second year of the Contract. It is also noteworthy that the Employer's offer does not indicate that its offer to absorb only 50% of the premium increase is limited only to 1985. Thus, the Arbitrator must presume that if the Employer's offer were adopted, the premium increase sharing provision would then become the status quo. Moreover, in line with arbitral thought, the burden would thus shift to the Union to change the Contract language as it relates to health insurance contributions.

The Arbitrator has given consideration to the Employer's arguments and evidence and cannot conclude that they have justified their proposal to alter the health insurance contribution language.

It certainly weighs in the Employer's favor that employees in six of the seven contiguous counties contribute toward the cost of their health insurance. It also weighs in their favor that the average employer contribution is approximately 85%. Additionally, it weighs in the Employer's favor that as a general matter, health insurance costs are rapidly increasing and that employees elsewhere have often agreed to share the cost. Certainly employees cannot be blind to these realities.

However, these considerations are outweighed by two factors: (1) the Employer, relative to other comparable employer contributions, has not demonstrated a compelling need for a change based on cost; and (2) the Employer proposes an unusual method of employee contribution which is inconsistent with the method of contribution in the comparable employers.

In terms of a realistic need to reduce the cost of the Employer's contribution, it is noted that the Employer's actual cost--even though expressed as 100%--is still lower in 1984 than the other employers on the average. In fact, Eau Claire County pays the least of any employer for family premiums in 1984. For instance, the average premium in the contiguous counties for a family was \$189.66 and the average employer contribution in the contiguous counties was \$161.41 or \$.94 per hour. This compares to the family premium in Eau Claire County of \$152.46 fully paid by the Employer or \$.8796 per hour. It is clearly evident while Eau Claire County pays 100% of health insurance premiums, their cost is still appreciably lower than that experienced by other counties. This is a critical factor in the Arbitrator's conclusion that the Employer has not demonstrated the need for a change in health insurance language.

It is also critical to note that the Employer has asked its employees to make their contribution in somewhat of an unusual way. While it is not unusual for employees to share in the cost of health insurance, and it is not unusual for the employer to only contribute a portion of the health insurance premium, there is no evidence in the record that employees in comparable counties are subject to contribution language similar to that proposed by the Employer. The Employer's language in essence, over time, places no limit on the proportion of contribution relative to that of the Employers by the employees. For instance, Union exhibits show that the Employer contribution in contiguous counties is expressed as a percent, i.e. 85%, 90%, etc. The Arbitrator also takes notice of the fact that employer/employee contributions are generally expressed as a percentage. Thus, employees in the contiguous counties have a relative percentage limit on their contribution versus that of the employer. However, under this Employer's language, unless changed in future negotiations the employee could, over time, end up contributing more than employees in comparable counties. This is because the Employer is asking the employee for an open-ended contribution. The Employer might counter that the

present language is open-ended and that if, due to their language, the employee contribution gets out of line, the Union would be free to make new proposals. However, this shifting of the burden to the Union is not justified in this record. As noted, the Employer cost under the present language is not out of line.

These two factors compel the adoption of the Union offer. It is one thing to have health insurance costs out of line with comparable employers and ask employees to make a similar contribution in a similar way to employees in comparable counties. However, it is quite another thing to ask employees to contribute toward health insurance premiums when there is no evidence that the employer's costs are greater than other employers and at the same time, ask them to contribute in a different way than other employees contribute. In fact, the Employer is asking the employees to contribute in a way which has the potential for relatively greater contributions than other employees make in the contiguous counties. Their language also has potential for shifting the burden of overcoming the status quo to the Union when no need to do so has been established by the Employer.

The Employer did argue that their offer of \$.03 per hour more than offered by the Union was a quid pro quo or buyout which added extra justification to their offer. However, even assuming this was more than received by other employees, a \$.03 per hour one-time increase is an insufficient buyout for permanent language which could result in relatively greater health insurance contributions by employees. The inadequacy of the \$.03 per hour buyout is also seen when the potential for health insurance premium increases in 1985 is considered. The Employer suggests a 20% increase in 1985 is reasonable to project because this is equivalent to the average annual premium increase since 1980. A 20% increase would result in a \$30.69 increase to be shared equally by the Employer and employees. The employee's share would be \$15.35 per month or about \$.09 per hour. Thus, the weight to be given to the \$.03 per hour or \$5.19 per month "extra" increase as a buyout is greatly diminished when compared to the cost impact of the Employer's proposal on the employee.

The Employer also made reference to the fact that two other units had accepted their health insurance proposal. However, in the Arbitrator's opinion, this does not deserve as much weight as the factors enumerated above. This is so for several reasons. First, little weight can be given to the supervisory unit because they have no access to the arbitration process. Thus, they are in a significantly weakened bargaining position. With respect to the airport employees, they are indeed a very small unit. Other arbitrators have been reluctant to give controlling weight to one or two internal settlements where they have occurred with small and less powerful bargaining units. For instance, see Arbitrator Rice's decision in City of Milwaukee vs International Brotherhood of Electricians, Local 494, Decision I7143-A.

In summary, the Employer's offer is considered less reasonable because there is no need based on actual cost of health insurance premiums at the present time to justify a change in health insurance contributions and secondly, the Employer is asking the employees to make a contribution in a manner which is not supported by the comparables. If the Employer could show their contribution in terms of actual dollars was out of line with comparable employees and that the method of contribution proposed by them would be consistent with that method found in the contracts of comparable employers, their case would be significantly strengthened. However, they have not presented sufficient evidence along these lines.

VI. AWARD

The 1984-85 Collective Bargaining Agreement between General

Teamsters Union, Local 662 and Eau Claire County Sheriff's Department shall include the final offer of the General Teamsters Union, Local 662 and the stipulations of agreement as submitted to the Wisconsin Employment Relations Commission.

Dated this 13th day of December, 1984, at Eau Claire, Wisconsin.



Gil Vernon, Mediator/Arbitrator