

BEFORE THE ARBITRATOR

DEC 29 1995

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Petition of:

Case 77 No. 49889 MIA-1831
Decision No. 28409-A

GENERAL TEAMSTERS UNION,
LOCAL 662

For Final and Binding Arbitration
Involving Law Enforcement
Personnel in the Employ of

Heard: 9/19/95
Record Closed: 10/31/95
Award Issued: 12/28/95

CLARK COUNTY
(SHERIFF'S DEPARTMENT)

Sherwood Malamud
Arbitrator

Appearances:

Christel Jorgensen, Business Agent, P.O. Box 86, Eau Claire, WI
54702-0086, appearing on behalf of the Union.

Weld, Riley, Prenn & Ricci, S.C., Attorneys at Law, by Kathryn J.
Prenn, 4330 Golf Terrace, Suite 205, P. O. Box 1030, Eau Claire,
WI 54702-0130, appearing on behalf of the Employer.

ARBITRATION AWARD

Jurisdiction of Arbitrator

On June 27, 1995, the Wisconsin Employment Relations Commission appointed Sherwood Malamud to serve as the Arbitrator pursuant to Sec. 111.77(4)(b) of the Municipal Employment Relations Act to determine said dispute between General Teamsters Union Local 662, hereinafter the Union, and Clark County (Sheriff's Department), hereinafter the Employer or the County. Hearing in the matter was held on September 19, 1995, at the Clark County Courthouse in Neillsville, Wisconsin. Post-hearing briefs and reply briefs were received and exchanged by the Arbitrator by October 31, 1995, at which time the record in the matter was closed. This Award is issued pursuant to Sec. 111.77(4)(b) form 2 in that:

The Arbitrator shall select the final offer of one of the parties and shall issue an award incorporating that offer without modification.

BACKGROUND AND SUMMARY OF ISSUE IN DISPUTE

In August 1993, the parties commenced negotiations for an Agreement covering calendar years 1994 and 1995. This Award will complete the bargaining for the successor agreement for calendar years 1994 and 1995. The sole remaining issue that is the subject of this Award is the Union's proposal to switch from a self-insured indemnity health insurance plan administered by Blue Cross/Blue Shield to a managed care plan, the Greater Marshfield High Option Plan, for current employees and a separate plan administered by American Medical Security for retirees of the Clark County Sheriff's Department. To effectuate its proposal, the Union advances the following changes to Article 17 of the expired contract:

Change Section 1 to read

Effective January 1, 1995, or the first of the calendar month which falls not more than thirty (30) days following the date of the interest arbitration award so ordering, whichever is later, the County will participate in and provide Health and Welfare insurance coverage to Sheriff Department employees under the **General Teamsters Union Local 662 Health and Welfare Plan**. The County shall pay 85% of the monthly composite premium rate for family coverage and 100% of such rate for single coverage. For part time employees the County's contribution toward health insurance shall be prorated based on the County's contribution for full-time employees. Part-time employees must work an average of at least twenty (20) hours per week to be eligible for participation in the health insurance program. The prorating shall be based on the actual hours paid in the prior month.

Create a new Section 2 to read:

The plan renewal year shall be January 1 through December 31. The monthly composite premium rate for the initial calendar year period of participation (1995) shall be \$377.38. Rate increases of less than 25% shall be noticed, in writing, to the County not less than thirty (30) days prior to January 1, of each year. Rate increases of 25% or more shall be noticed, in writing, to the County not less than sixty (60) days prior to January of each year.

Should the monthly composite premium rate for the **General Teamsters Union Local 662 Health and Welfare Plan**, at any time,

exceed the family plan monthly premium amount for the County's Standard Health and Welfare Plan, based on the level of benefits and coverage existing on January 1, 1995, then the Sheriff Department employees will be required to convert back to the County's plan no later than thirty (30) days following the date of the County's written request for such change. The same provisions shall also apply in the event that the Sheriff's Department census (single v. family) changes so as to eliminate any cost savings to the County by continued participation in the **General Teamsters Union Local 662 Health and Welfare Plan.**

Renumber the current Section 2 to Section 3 without change.

Renumber the current Section 3 to Section 4 without change, but add the following:

Employees taking an approved leave of absence may continue their protection by paying the monthly premiums to the County Clerk. Retired employees may continue their protection by paying the required monthly premiums directly to the insurance.

Renumber current Section 4 to Section 5 and delete the word "County's" in the first line.

Renumber the current Section 5 to Section 6 to Section 6 and Section 7, respectively.

The Employer proposes to maintain the *status quo*. The County argues that the language of Article 17 of the expired Agreement which reads as follows should remain unchanged:

Section 1. The benefits of the Standard Health and Welfare Insurance Program shall be as currently provided under the Group Health Care Protection Program for employees of Clark County. The Employer shall pay 85% of the total cost for the family plan or 100% of the cost for the single plan. Any employee desiring the CompCare Program shall be allowed credit for the Standard Health and Welfare Insurance Program, but will be required to pay any additional amounts due under the CompCare Program. The Employer may from time to time change the insurance carrier and/or self fund its health care program if it elects to do so, provided the level of benefits is equivalent or superior to the current level of coverage. For part-time employees, the County's contribution toward health insurance shall be prorated based on the County's contribution

for full-time employees. Part-time employees must work an average of at least twenty (20) hours per week to be eligible for participation in the health insurance program. The prorating shall be based on the actual hours paid in the prior month.

Section 2. Worker's Compensation. All employees shall be insured under the Wisconsin Retirement Fund, Federal Old Age Survivor's Insurance, and Worker's Compensation Insurance.

Section 3. Insurance. Employees on approved sick leave will remain insured for a period of time covered by their accumulated sick leave and the balance of the month in which their accumulated sick leave ends. After this time, they may continue to receive coverage for the duration of their approved sick leave by paying monthly premiums to the County Clerk if agreeable with insurer. The Union shall be notified as to any and all changes on insurance policy. Employees laid off will have their protection continued for the balance of the month in which the termination or the layoff occurs and may continue protection up to eighteen (18) months therefrom, upon payment of monthly premiums to the County Clerk if approved by the insurer.

Discharged employees may continue protection for up to eighteen (18) months from the date of discharge upon payment of monthly premiums to the County Clerk if approved by the insurer.

Retired employees or those taking an approved leave of absence may continue their protection by paying the monthly premiums to the County Clerk.

The employees and the Union shall be advised in advance of any proposed changes in regard to selection of insurance companies or insurance coverage.

The Employer agrees to provide and pay for false arrest insurance for all employees. The amount of coverage is to be agreed upon by Clark County Law Enforcement Committee and Insurance Committee and the Union is to be notified as to the amount and any changes made therein.

Section 4. All departing employees may remain in the County's Health Insurance group for a period of eighteen (18) months, provided they make payment pursuant to the procedure established by the County.

Section 5. The Employer retains the right, with reasonable cause, to require any employee to submit to a physical and/or psychological examination at the Employer's expense by a doctor of the Employer's choosing. The employee shall have the right to a second opinion, at the employee's expense, by a practitioner of his/her choice. The employee may submit his/her claim for examination to the health insurance provider.

The Employer has self insured its health insurance program for its employees since 1986. The Employer establishes the premium for an upcoming year based on expenses as measured by claims paid, the cost of an administrator for the program, the cost of stop/loss coverage; and the addition of a factor for inflation of medical costs. Currently, there is a reserve of \$999,000 for claims. The reserve falls within the range recommended to the county; funds sufficient to meet three to six months of claims. In the five-year period of 1990 through 1994 premiums collected exceeded expenses in calendar years 1990, 1993 and 1994. Expenses exceeded premium by \$6,000 in 1991 and by \$15,000 in 1992; premiums exceeded expenses by \$550,000 in 1994. As a result, the Employer did not increase the health insurance premiums for 1995.

As early as 1982, Local 662 developed a health insurance pool for employers and bargaining units of 250 or fewer employees. During the period pertinent to this dispute, Local 662 engaged K & K Insurance Services to identify managed care providers for the pool. Since calendar year 1993 through 1995 and projecting into 1996, health insurance coverage under the Union's pool has been provided by the Greater Marshfield Plan. For retirees, it is provided by American Medical Security, Inc. (AMS).

Generally, so long as employees obtain their medical care through the network of providers identified under the Greater Marshfield managed care plan, benefits are greater than those afforded to employees under the County's indemnity plan. Furthermore, there are no deductible or co-pay "features" when medical care is provided by network providers.

Under the Union's proposal, retirees, not yet on Medicare, are covered by a different plan than current employees. The Local 662 pool provides health insurance coverage for retirees under an AMS plan that includes up to three \$50 deductibles and 80/20 co-insurance after the

deductibles have been met. Under both the Employer and Union plans for retirees, they are permitted to participate in the plans in effect at the premium set for current employees, but at their own expense.

Through its final offer the Union attempts to maximize the monies spent on health insurance. Since the underlying collective bargaining agreement will expire within days of the issuance of this Award, the parties presented evidence comparing premium levels for calendar years 1995 and 1996. The insurance plan adopted in this proceeding will be in effect during the hiatus while the parties engage in bargaining over the successor to the 1994- 1995 agreement.

The total premium cost for family coverage for 1995 is \$585.08 of which the Employer pays 85% of the premium and bargaining unit employees who receive this benefit pay 15%. Under the composite premium framework in the Local 662 pool, the premium cost for either single or family coverage is \$377.38 for 1995.

The premium cost for single coverage under the County's indemnity plan for 1995 is \$222.63 per month; under the Local 662 composite premium framework it is \$377.38. The Employer proposes to maintain the *status quo* and pay 100% of the premium for single coverage. The Union proposes that the Employer continue to pay 100% of the premium for single coverage. Under the Union proposal, the 14 employees of the twenty-nine employees who participate in the Employer's health insurance program and who obtain single coverage would have their entire premium of \$377.38 paid by the Employer. The 15 employees who obtain family coverage would pay 15% of the \$377.38 premium under the composite rate framework proposed by the Union.

The Union notes that the 15 employees who receive family coverage would each contribute \$1,053.14 towards the cost of that premium in calendar year 1995 (\$87.76/month x 12 months). Under the Union's proposal employees receiving family coverage would contribute \$679.28 towards the cost of the family premium for 1995 (\$56.61/month x 12 month). The Union calculates the difference in premium contribution by each employee taking family coverage amounts to \$377.86 for the entire year, an amount equal to 18¢ per hour. Under the composite rate and the

Union's proposal that the Employer pay 100% of the premium for single coverage, the Employer expenditure for premiums in 1995 would be \$5,780 less than its expenditures for the indemnity plan.

The County projects a 5% increase in premium for both single and family coverage for 1996. This projection is firm. The total premium amounts to \$614.33 for family coverage and \$233.76 for single coverage. Under the Union's proposal, the composite premium for both family and single coverage would increase by 10% to \$414.98.

Under the Union's final offer, in 1995 the savings in the amount expended for health insurance premiums totals \$11,388. The savings in premium dollar expended in 1996 under the Union's plan amounts to \$5,438. However, the Employer's portion of that savings amounts to \$55.95.

DISCUSSION

Introduction

The arguments of the parties are incorporated in the analysis that follows. The parties focus their arguments on the following statutory factors:

...

(d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

1. In public employment in comparable communities.

...

(e) The average consumer prices for goods and services, commonly known as the cost of living.

(f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the

continuity and stability of employment, and all other benefits received.

...

(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

Status of the Record

The parties reached tentative agreement on all outstanding issues other than health insurance. At the hearing, they identified and agreed to the group of other county Law Enforcement units comparable to the Clark County Sheriff's Department, as follows: Jackson, Lincoln, Monroe, Pierce, Polk and Taylor Counties. At the arbitration hearing, the parties were able to stipulate to the exhibits central to the presentations of both the Union and the County.

Comparability

The average premium for family coverage among the six comparables in 1995 is \$493.¹ In 1995, the average premium for single coverage among the comparables is \$211. Again, the cost of family premium in Clark County for 1995 is \$585 and \$222.63 for single coverage. Clark County has the highest rates among the comparables for an indemnity plan that includes deductibles. The premium for family coverage in Clark County exceeds the comparable county with the next most expensive family coverage premium, Taylor County, by \$5/month and Polk County, by \$19/month. This comparability data supports the Union's efforts to reduce the total expenditure for health insurance premiums in Clark County.

Only two of the comparables settled for 1996. Accordingly, the

¹The Arbitrator used the premium under the standard plan in Polk County and the deductible plan in Taylor County in arriving at the average.

Arbitrator does not apply this criterion to the year 1996, the year in which this plan would be in effect during the hiatus period when the parties bargain a successor agreement.

On the other hand, the comparability data demonstrates that five of the six comparable employers self-fund health insurance. None of the comparables participate in an insurance pool or plan that has a composite rate that is the same dollar amount for either family or single coverage.

The comparability data supports the Employer's argument that the Union's proposal represents a radical departure from the standard framework for health insurance plans. The use of a composite rate is unique. Clark County apportions the largest amount for health insurance premiums for single and family coverage as contrasted to the amount allocated by the self-funded plans of five of the six comparables and the one comparable that does not self-fund health insurance. The Employer's proposal is preferred, nonetheless, because of the unique nature of the Union's proposal to change to a plan with a composite rate.

Overall Compensation and Cost-of-Living

The Union argues that the Overall Compensation criterion supports its proposal. On the basis of the record evidence, the Arbitrator finds that neither the Overall Compensation nor the Cost-of-Living criteria serve to distinguish between the final offers of these parties.

Such Other Factors

The Employer identifies what it considers to be many flaws in the Union's proposal. Foremost among its objections is the Union's failure to extend its proposal to the other unit of employees represented by Local 662, the Health Care Center employees. The Employer introduced data that demonstrated that health insurance usage measured by the dollar cost of claims was greater in the Health Care Center unit than in the law enforcement unit. The Employer argues that the Union attempts to remove the "healthiest" employees from coverage under the indemnity plan and leave the Employer's indemnity plan with those employees with the largest number of claims.

The Union argues that the Health Care Center unit does not conform to the criteria established for the Local 662 pool. The Union's insurance consultant Kamal Shah of K & K Insurance Services established that removal of 7% of the employees in the County plan would not adversely affect the rating of the County's indemnity plan.

The Arbitrator provides no weight to this Employer argument. The law enforcement unit is separate from the Health Care Center unit. The Employer attempts to constrict the Union's bargaining options. It attempts to force the Union to propose a benefit for one unit, if and only if, it proposes the same benefit for all the units represented by that Union. The bargaining demands and needs of the two units, one of law enforcement personnel, the other in the County's health care center, may well diverge. The Arbitrator is unaware of any statutory criterion that would constrain the Union to propose changes in benefits only if it is prepared to make such proposals for all the units it represents of a particular Employer.

The Arbitrator is mindful that the Employer may well be concerned with the fragmentation of the health insurance benefit. Under the Such Other Factors-Internal Comparability, the Arbitrator evaluates the Union's proposal to break away from the internal pattern on health insurance. That is the appropriate context in which to evaluate the Union's proposal.

Status Quo - Internal Comparability

This Arbitrator addresses the issue of internal comparability under the Such Other Factors criterion. The Union proposes to change the insurance plan, coverage and administration for this one unit of law enforcement personnel that comprises approximately 7% of the participants in the County's health insurance program. Establishing a separate carrier, benefit levels and plan administrator will create an administrative problem for the Employer for the period that two plans are in effect.

The Union attempts to break the internal pattern for health insurance in Clark County. Arbitrators provide substantial weight to internal patterns of settlement particularly in the area of fringe benefits. The party proposing a change to the internal pattern of benefits must present a compelling case for the change. This Arbitrator evaluates a proposal for change under the

Such Other Factor-Status Quo criterion.

Status Quo

Before turning to apply a *status quo* analysis to the Union's proposal, it is important to note the extent and scope of the changes proposed by the Union. The most significant change proposed by the Union is the abandonment of an indemnity plan and the freedom of choice it provides in favor of a managed care program with a composite rate premium structure.

Under the expired agreement:

The Employer may from time to time change the insurance carrier and/or self-fund its health care program if it elects to do so, provided the level of benefits is equivalent or superior to the current level of coverage.

The Union proposes to name the carrier as the General Teamsters Union Local 662 Health And Welfare plan. Through the identification of a pool plan in which the Union, unilaterally, selects the insurance carrier and plan administrator, the Employer loses the ability to change carriers during the term of the Agreement.

The Employer correctly notes that the Union's proposal impacts retirees and current employees differently. Current employees would be covered under the Greater Marshfield High Option plan which has no deductibles or co-pay provisions. Retirees would be covered under a plan administered by AMS. They would pay up to three deductibles and they would be subject to an 80/20% co-payment obligation. The Union notes that under the County's indemnity plan the inclusion of deductibles and an 80/20% co-pay feature not only applies to retirees but to current employees, as well.

The Employer notes that the Union's proposed escape clause requires employees to convert back to the County's plan should the composite premium exceed the premium for family coverage or should the census of single versus family coverage eliminate the cost savings for the Employer. The Employer notes that the cost savings for the Employer is all but

obliterated in 1996. The Union proposal is moot.

The Employer raises several technical arguments against the Union's proposal. Should the Union's offer be selected by the Arbitrator, the Employer would be saddled with dual liability for one's month administrative costs to its current plan administrator while it instituting the Union's plan. Under the language of the Union's final offer, the Local 662 plan would go into effect within 30 days of the issuance of the Award. Under the plan documents of the Blue Cross/Blue Shield administrator, 60 days' notice is necessary to terminate its contract.

In addition, the Employer notes that the Union proposal fixes a renewal period of January through December when the renewal dates of most plans is October through September. However, the current renewal period in Clark County is January through December.

With an eye to the scope of change proposed by the Union, the Arbitrator turns to apply this statutory criterion to the Union's health insurance proposal. This Arbitrator applies a three-prong test to the analysis of a proposal to change the *status quo*. To prevail, the party proposing change must establish the need for the change. Secondly, the party proposing change must provide a *quid pro quo* for the change. The party proposing the change must meet the first two tests by clear and convincing evidence.

The arbitral inquiry begins with the question whether there is a need for change. The monthly premium for family coverage in Clark County in calendar year 1995 exceeds the average of the comparables by approximately \$92/month².

The Union proposal not only eliminates deductibles, but eliminates co-payments. Clark, as well as two of the comparables, Jackson and Pierce Counties, have uncapped co-payment provisions in their insurance plans. Lincoln has a \$2,000 co-pay cap; Monroe a \$4,000 cap for family coverage; and Taylor a \$2,000 cap. In the event of a catastrophic illness, an uncapped co-payment liability undermines the very purpose of major medical

²Source: Joint Exhibit 15.

insurance, or for that matter, the very reason for any insurance. If any employee encounters a hundred thousand dollar medical bill, the co-pay liability that is uncapped may amount to \$20,000. The Arbitrator concludes that the higher than average total dollar expenditure for health insurance premiums, particularly for family coverage, and the uncapped dimension to the health insurance plan establish the need for change.

Has the Union proposed a *quid pro quo* for the change? The wage settlement agreed to by the Employer and Union is consistent with the settlements of the comparables for 1994 and 1995. It is also consistent with the internal pattern of settlement in Clark County. Joint Exhibits 5 and 6 clearly establish this point. The parties stipulation on wages does not provide the *quid pro quo* for the Union's proposal for change.

The Union maintains that the *quid pro quo* for its final offer is generated by the savings that will result from the implementation of its proposal. In 1995, the only year of the successor agreement in which the Union's proposal could possibly have been in effect during the term of this two-year agreement, the savings in total expenditure for premium in 1995 under the Union plan would have been \$11,388 or 8% of the total expenditure for premiums in the base year, 1994.³ Under the Union plan, in calendar year 1995 the Employer would save \$5,780 or 4 1/2% of the total premium dollars expended by the Employer for premium on behalf of bargaining unit employees of this law enforcement unit. If savings of this magnitude were projected into the following year, the Union would have established the *quid pro quo* necessary for the adoption of its proposal.

At this point, it is important to note that the Employer demands to retain the *status quo*. The *status quo* generates total expenditures for health insurance premiums that are significantly higher than the average premium levels of the comparables. It is easy to understand the Employer's opposition to the Union proposal that reverses the Employer's decision to self-insure and removes the Employer's involvement in the selection of the carrier, despite its contribution of 100% of the premium for 14 of the 29

³There was no increase in premium in 1995. As noted in Union Exhibit No. 1, the total expenditure for premiums in 1994 is the same as the expenditure for premiums in 1995.

employees who take single coverage and its 85% contribution toward family coverage for 15 of the 29 employees who take advantage of the health insurance benefit. In a sense, the arbitration proceeding through the *status quo* analytical framework subjects the Employer's rate setting decision to measurement by market forces.

In 1996, the Union plan guarantees a 10% increase in premium; under the County's plan premiums will increase by 5%. Despite the higher percentage rate increase under the Union's plan, it nonetheless generates a savings in total premium dollars expended in 1996 that totals \$5,438 or approximately 3.6% of the total premium expenditure in 1995. The Union proposes that the Employer continue to pay 100% of the premium for single coverage. This proposal equalizes the rate charged for single and family coverages in a composite rate. The net result of the Union's proposal is the following. Of the \$5,438.04 in premium saved in 1996, employees get \$5,382.09 of the savings and the Employer realizes a savings in premium in 1996 that totals \$55.95. The inequality in the distribution of premium savings under the Union's final offer undermines its ability to establish a *quid pro quo* for its proposal.

The Arbitrator recognizes that the *status quo* analytical framework he employs has the potential for the implementation of substantial change through the arbitration process. If the party proposing change is able to establish by clear and convincing evidence the need for the change and it offers a *quid pro quo* for that change, the party opposing the proposal for change has a choice. It may refuse to recognize the need for the change, but it must be able to establish that position. If it relies on the Arbitrator to identify how much is enough, that is the most difficult task for an arbitrator to determine. In the alternative, the party opposing the specific proposal proffered for change, may itself make a proposal for change that meets the problem identified. Where both parties make proposals for change, then this Arbitrator addresses the issue of which proposal is better suited to resolve the problem identified, established and recognized by the parties.

Based on the above discussion, the Arbitrator concludes that the Union established the need for change. It has failed to provide a *quid pro quo* for the changes it proposes. Accordingly, the Arbitrator concludes that this criterion supports the Employer's proposal to maintain the *status quo*.

SELECTION OF THE FINAL OFFER

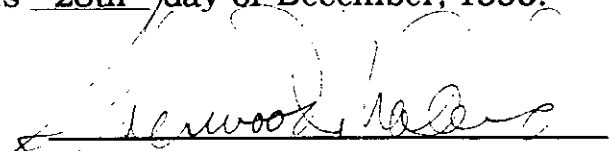
In the above discussion, the Arbitrator finds that the comparability, Such Other Factors-status quo and Such Other Factors-internal comparability criteria support the adoption of the Employer's final offer to maintain the *status quo* with regard to the health insurance plan in place in Clark County.

Based on the above discussion, the Arbitrator issues the following:

AWARD

Under the statutory criteria found at Sec. 111.77(4)(b), Wis. Stats. and for the reasons discussed above, the Arbitrator selects the final offer of Clark County, which together with the stipulations of the parties, are to be included in the Collective Bargaining Agreement between Clark County (Sheriff's Department) and General Teamsters Union Local 662 effective January 1, 1994 through December 31, 1995.

Dated at Madison, Wisconsin, this 28th day of December, 1995.



Sherwood Malamud
Arbitrator