IN ARBITRATION BEFORE ARBITRATION BOARD
MICHAEL D. GORDON, NEUTRAL ARBITRATOR

LOCAL 1287, AMALGAMATED TRANSIT UNION

and 2005 Health Insurance Grievance

KANSAS CITY AREA TRANSPORTATION AUTHORITY

DECISION AND AWARD

This is an interest arbitration to determine the parties' 2005 health insurance program. It arises under Section 1.22(b) of the 2003-2005 collective bargaining contract ("Agreement") between Local 1287, Amalgamated Transit Union ("Union") and the Kansas City Area Transportation Authority ("Company"). The Arbitration Board ("Board") consists of Union appointed member Marvin Shackelford; Company appointed member Fern M. Kohler; and, Neutral member Michael D. Gordon.

A hearing was held on December 21, 2004, in Kansas City, Missouri. Scott A. Raisher appeared for the Union. The Company was represented by Jeffrey M. Place. At the hearing, the parties received full opportunity to examine and cross-examine witnesses, to introduce relevant exhibits and to argue. Briefs were received from the parties on or before December 28, 2004 The hearing was treated expeditiously. Thereafter, the parties continued negotiations until January 20, 2005, but did not reach resolution.

## ISSUE[1]

**Whether the Coventry health insurance "Renewal Plan" or "Alternative 2 Plan" should be selected for the plan year beginning January 2005.**

## RELEVANT PROVISIONS IN THE AGREEMENT

Section 1.22. Group Insurance Welfare.

. . .

(b) Basic Health Insurance - Active Employees.

The Authority shall provide one or more comprehensive hospital, medical and surgical health plan(s) with coordinated benefits to all employees upon hire, and their dependents after one (1) year of service. Effective January 1, 2001, the Authority shall provide one or more comprehensive hospital, medical and surgical health plan(s) with coordinated benefits and dependent coverage to all full-time employees upon completion of the probationary period.

The selection of the plan providers and the determination of the design of the plans offered shall be subject, each year, to mutual agreement between the parties. If the parties fail to reach agreement within forty-five (45) days of the plan's anniversary date, either party may demand expedited arbitration under Section 1.13(a) of this Agreement. Arbitration must be demanded at least thirty (30) days prior to the plan's anniversary date. The arbitrator may select plan or plans consistent with the requirements of this contract. Any plan proposed must offer different rates for each class of employees listed below.

. . .

## FACTS

The parties have a long relationship. For many years, their contracts included health insurance. The plans cover unit employees, non-unit employees and retirees less than 65 years old and, depending on individual choices, certain family/dependent members. Since 1992, contracts contained language like Agreement

---

[1] At the hearing, the Union suggested perhaps that employees have the option of selecting either plan. The Company opposed it primarily because frequent users would skew the economics by flocking to the lower co-pay plan (a so-called "death spiral"). The possibility was not advanced in the Union brief and apparently has been abandoned. In any event, for reasons mentioned below, only a single plan is appropriate.

§1.22(b). At least one interest arbitration decision issued under its terms. That was in 1994 with Sinclair Kossoff serving as neutral in a dispute about the 1995 plan year ("Kossoff Award").

The parties have negotiated in good faith for 2005 health insurance to replace their 2004 plan.. Among several possibilities initially available, and specifically considered, they narrowed the choices to two. Both satisfy other §1.22 criteria. Both are from Coventry Health Care of Kansas, the insurer since it replaced Aetna for 2002 coverage.[2] Neither reduces benefits, restricts access to specialists or raises deductibles.

The Company wants "Alternative 2" which will cost an estimated $2,987,517 or 6.5% more than the prior year.[3] The Union seeks a "Renewal Plan" that costs an estimated $3,201824 or about 14% greater than 2004. Alternative 2 premiums saves the Company some $214,250 and saves unit members about $27,595 in premiums; but, it increases co-pay for certain covered services.[4]

Under the rather complicated §1.22 formula, the premium cost is split at approximately 80% by the Company and 20% by the

---

[2] The 2002 change of carriers, and certain increases in co-pay amounts, resulted to avoid a 28% increase in Aetna premiums. Premiums increased 22% in 2003 and 13% in 2004 without co-pay adjustments.

[3] The Company has adopted Alternative 2 effective January 1, 2005, subject to this Board's decision.

[4] Alternative 2 has cheaper premiums for all employees. Alternate 2 also increases employee co-pay (primarily for physician office visits and specialist visits. See "2005 Benefit Comparison" chart below.) Thus, the amount individual employees save on premiums, if any, depends on how frequently higher co-pay services are used. However, Alternative 2's lower premiums obviously presume lower total insured payouts.

employee. In essence then, the parties disagree whether to raise total premiums by 6.5% or 14% or whether to increase certain co-pays that shift more service costs to employees.[5]

The difference in 2005 monthly/annual premiums between the Renewal and Alternate 2 are summarized as follows:

2005 MONTHLY/ANNUAL PREMIUM COMPARISONS

| | | 2005 RENEWAL | | | | ALTERNATE 2 | | | |
|---|---|---|---|---|---|---|---|---|---|
| | E # | KCATA | E | TOTAL | KCATA ANNUAL TOTAL | KCATA | E# | TOTAL | KCATA ANNUAL TOTAL |
| | FT | | | | | | | | |
| | PT | | | | | | | | |
| LOW HMO | | | | | | | | | |
| single | 67 7 | 298.82 | 28.66 | 327.48 | 240,251 | 278.37 | 2510 | 303.47 | 223,809 |
| employee +1 | 24 1 | 627.64 | 60.19 | 687.83 | 180,760 | 584.69 | 52.71 | 637.40 | 168,391 |
| emp+ Children | 31 2 | 567.94 | 54.47 | 622.41 | 211,274 | 529.07 | 47.71 | 576.78 | 196,814 |
| family | 43 - | 896.62 | 85.98 | 982.60 | 462,656 | 835.25 | 75,31 | 910.56 | 430,989 |
| HIGH HMO: | | | | | | | | | |
| single | 89 1 | 298.82 | 87.09 | 385.91 | 319,140 | 278.37 | 84.71 | 363.08 | 297,299 |
| employee +1 | 72 1 | 627.64 | 182.89 | 810.53 | 542,281 | 584.69 | 177.90 | 762.59 | 505,172 |
| emp+ children | 35 - | 567.94 | 165.51 | 733.45 | 238,535 | 529.07 | 161 .00 | 690.07 | 222,209 |
| family | 47 - | 896.62 | 261.27 | 1,157.89 | 505,694 | 835.25 | 254.15 | 1,089.40 | 471,081 |
| PPO PLAN: | | | | | | | | | |
| single | 3 - | 298.82 | 108.38 | 407.20 | 10,758 | 278.37 | 98.97 | 377.34 | 10,021 |
| employee +1 | 2 - | 627.64 | 227.65 | 855.29 | 15,063 | 584.69 | 207.89 | 792.58 | 14,033 |

[5] These dollar costs are based on JX 15 which assumes 525 employees (417 unit and 108 non-unit). JX 13 contains greater costs based on a 533 person work force (425 unit and 107 non-unit). The number of unit employees and the insured population fluctuates. At the time of arbitration, there were about 611 people covered by the existing insurance plan, including family members and retirees under age 65.

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| emp+ chilchildre n | 3 - | 567.94 | 205.99 | 773.93 | 20,446 | 529.07 | 188.11 | 717.18 | 19,047 |
| family | 1 417 12 | 896.62 | 325.20 | 1,221.82 | 10,759 | 835.25 | 296.98 | 1,132.23 | 10,023 |
| | | | | | 17,280 | | | | 17,280 |
| | | FT | PT | | | FT | PT | | |
| Person w/prool | 100 | 298.82 | | | 358,584 | 278.37 | | | 334,044 |
| Person w/olprool | 8 50 | 149.4 1 | 90.00 | | 68,343 | 139.19 | 90.00 | | 67,362 |
| TOTAL | 525 62 | | | | 3,201,824 | | | | 2,987,574 |

## The differences in employee co-pay are:

| | 2005 Benefit Comparison Renewal Co-pay | Alternate 2 Co-pay | Alt 2 Change from Renewal |
|---|---|---|---|
| PCP Office Visits<br>Low HMO<br>High HMO<br>PPO | <br>$20<br>$15<br>$15 | <br>$25<br>$20<br>$20 | <br>$5<br>$5<br>$5 |
| Specialist Office Visits<br>Low HMO<br>High HMO<br>PPO | <br>$20<br>$25<br>$15 | <br>$35<br>$35<br>$20 | <br>$15<br>$10<br>$5 |
| In Patient Hospital/admit<br>Low HMO<br>High HMO<br>PPO | <br>$250 + 10% coins<br>$100/day ($300 max)<br>$50/day ($150 max) | <br>$250 + 20% coins<br>$200/day ($600 max)<br>$100/day ($500 max) | <br>10% coins<br>$100/day ($300 max)<br>$50/day ($350 max) |
| Out Patient Surgery<br>Low HMO<br>High HMO<br>PPO | <br>$250 + 10% coins<br>$100<br>$50 | <br>$250 + 20% coins<br>$100<br>$75 | <br>*10%* coins<br>$0<br>$25 |
| Emergency Room<br>Low HMO<br>High HMO<br>PPO | <br>$75<br>$75<br>$75 | <br>$75<br>$100<br>$100 | <br>$0<br>$25<br>$25 |
| Prescriptions (30 day)<br>Prescriptions - (90 day mail order) | $10/20/50<br>$20/40 | $10/20/50<br>$20/40 | $0<br>$0 |
| Urgent Care<br>Low HMO<br>High HMO<br>PPO | <br>$20<br>$15<br>$15 | <br>$25<br>$35<br>$20 | <br>$5<br>$20<br>$5 |
| Allergy Testing<br>Low HMO<br>High HMO<br>PPO | <br>50% coinsurance<br>50% coinsurance<br>50% coinsurance | <br>50% coinsurance<br>20% coinsurance<br>10% | <br>0%<br>-30% coins<br>-40% coins |
| Out-of-pocket Maximum<br>Low HMO<br>High HMO<br>PPO In-Network<br>PPO Out-of-Network | <br>$2,500/5,000<br>$2,000/4,000<br>$2,000/4,000<br>$2,000/4,000 | <br>$2,500/5,000<br>$2,000/4,000<br>$3,000/6,000<br>$3,000/6~000 | <br>$0<br>$0<br>$1,000/2,000<br>$1,000/2,000 |
| PPO Out-of-Network | same under both plans except for out-of-pocket maximums noted above | | |

At the hearing, the professional insurance broker since 2001, Jeffery McDaniel testified (1) newspapers report premiums for health insurance nationally are increasing 14% overall and for comparable groups (200+ employees), about 13%; and (2) he is unaware of any employer renewing a 2004 plan that did not implement some form of cost control.[6] Deputy Director Fern Kohler discussed the St. Louis ATA/ATU contract that increased wages slightly above 2% but is scheduled to increase employee contributions for co-pay and other items on December 1, 2005.

## UNION POSITION

The Union prefers the Renewal Plan because it says: (1) Alternate 2's higher co-pay unreasonably and unjustifiably puts the entire burden of Company cost savings on employees; (2) Company cost savings alone are not determinative; (3) high percentage increases in urgent care defeat its purpose; (4) few, if any, employees are likely to reach maximum hospital benefits; (5) a 14% premium increase is within the range of comparable national increases; (6) higher co-pay discourages use of medical resources; (7) increased premiums are not linked factually to increased employee usage; (8) St. Louis ATA and Jackson County are not

---

[6] McDaniel spoke authoritatively about Jackson County, Missouri (higher co-pay for prescription drugs to cut premium increase by 2%), but the record does not disclose how much direct knowledge he has about other employers, their locations and/or whether they participate in mature collective bargaining relationships with mid-term health plan re-openers.

comparable because both have unknown and/or distinguishable factors; (9) nothing shows the Renewal Plan contravenes public interest; (10) whatever the "prevailing practice" about co-pay increases, the Company now can maintain benefits without financial or operational difficulty; and (11) the *Kossoff Award* and decisions in other industries support the Union.

## COMPANY POSITION

The Company supports Alternative 2, contending it: (1) satisfies §1.22's mandate for a reasonable annual selection to control long term, rapidly increasing costs; (2) meets prevailing practice for public and private employers, including Jackson County and the St. Louis ATA; (3) is consistent with the parties' past approach; (4) does not shift costs, but maintains a reasonable, real-world relationship between premiums and co-pay amounts; (5) benefits all employees by reducing medical costs created by some employees who overuse specialists, emergency rooms and other health care services; (6) does not involve cost increases so great it will discourage use of medical services; (7) means that some employees will save money based on lower total plan premiums; and, unchanged out-of-pocket maximums and prescription drug co-pay insures employees against unbearable 2005 health costs; and, (8) serves the public interest because it costs the Company $314,886 less.

## DECISION

As the parties recognize, §1.22(b)'s interest arbitration procedure is legislative, not judicial. It establishes new contract terms rather than give meaning to existing ones. Generally, standards vary in application and weight. Arbitrators enjoy a wide range of reasonable discretion. Ultimately, after due consideration of potentially relevant factors, each decision is specific to its time, place and particular circumstances.[7]

Here, three preliminary points are noteworthy at the threshold. First, by working earnestly, if unsuccessfully, to find common ground, the parties have (1) eliminated all options but two and (2) avoided material disputes about estimated costs of their respective options. Consequently, while the Board has authority to compromise or otherwise modify the parties' positions, on this record, it is best to select one proposed plan and reject the other. The evidence did not produce facts illuminating a third way. Moreover, the all-or-none posture discourages future negotiators from the intoxicating option of shifting difficult, but achievable, decisions to the Board. Interest arbitration is

---

[7] Generally, see Elkouri and Elkouri, *How Arbitration Works*, Ruben, Editor, 6th Ed., BNA, 2003, Chapter 22, especially, 1402-1443. Also, Anderson, *et al*, "Public Sector Interest Arbitration and Fact Finding: Standards and Procedures," Bornstein, Gosline, Greenbaum, *Labor and Employment Arbitration*, 2nd Ed., Matthew Bender, 2004, Chapter 48, especially, §48.05.

valuable but is less desirable than voluntary resolutions. It should be used rarely and only as a last resort.

Second is the matter of burden of proof. Interest arbitrators frequently use that judicial concept. In fact, the *Kossoff Award* said the Company successfully met its burden as the party seeking change in the *status quo*. Still, because of cascading pressures from a flawed national health system, neither party defends the status quo. Neither is responsible for the current distasteful situation or has power to avoid it. Both share the common goal of a good plan. The problem is money.[8] At a minimum, premium costs will increase under either option for the Company and its employees. The question is how those additional costs will be defined and apportioned. Thus, "burden of proof" is more a metaphor for determining the stronger equities where both sides advance attractive positions.

Finally, §1.22 contemplates annual health insurance decisions during a multi-year agreement covering other economic and non-economic matters. This reflects a mutual desire for frequent fine tuning and fairly short term adjustments to unexpected, extant circumstances. It also suggests that factors potentially impacting

---

[8] Absent evidence of intentional abuse, the notion that employees overuse emergency medical services is more a predicate for cost shifting than a description of inappropriate behavior. This record provides no basis for assuming employees visit emergency rooms or specialists capriciously or the proposed higher co-pay will reduce the behavior.

health insurance decisions during negotiations for the whole contract may play a different role during the Agreement's mid-term. At the same time, §1.22 directs the Board "to select a plan or plans consistent with the requirements of this contract," but is silent about criteria when multiple options meet §1.22's rather mechanical standards.

Because the current equities are so close, the Board selects the Renewal Plan. Slightly different future circumstances might produce a contrary result.

Without question, the Company can not shoulder double digit premium increases indefinitely. If current escalations continue (and every indication is they will), accommodations must be made in medical benefits/apportionment and/or other aspects of the Agreement's total economic package. Still, while at least one co-pay changed under the prior contract, no modifications resulted in the first two years of the current three year Agreement despite percentage premium increases approximately as high or substantially higher than those proposed for 2005. The 2005 proposed increases are typical of current national averages which have climbed at similar rates for many years.

The number of projected employees and the Company's recent history of over-budgeting medical insurance suggests that total actual medical insurance costs may be somewhat inflated. This is

not a criticism of prudent business judgements but recognition that ultimate 2005 costs may be less than anticipated.

Public interest is significant when linked to favorable or unfavorable consequences of a potential outcome. For example, the *Kossoff Award* adopted {but modified} the Company's proposal because the Union alternative's extra $200,000 cost would require strong countermeasures (possibly involving service cuts or increased fares) based on a projected 1995 deficit between 1 and 1.4 million dollars. In this dispute, no deficit or inability to pay has been mentioned by the Company. The Union projects $21 million annually from new tax revenues for the next five years.

The two examples offered by the Company as comparables are a bit sparse to establish a regional or industry pattern. Significantly, St. Louis ATA, presumably very comparable because of its industry, size and proximity, does not change its premium relationships until November 2005. It seems questionable to rely on November 2005 St. Louis rates as a basis for this January 2005 Kansas City plan, especially when bargaining for a successor contract will begin sometime before January 2006.

In fact, in the present context, the determinative factor is the absence of immediate urgency for changing co-pay relationships and the Agreement's relatively short life before it totally reopens. Soon, a broad range of now unavailable options opens, if

either party wishes to pursue them. If they ultimately decide to retain the current mechanisms, fine. Arbitration then remains available. For now, the balance between immediate change in health insurance cost relationships and the mutual potential of reassessing the total economic package to accommodate the parties respective needs militates in favor of the Renewal Plan for 2005.

## AWARD

1. The Coventry Health insurance Renewal Plan should be selected for the plan year beginning January 2005.

2. This Board shall retain jurisdiction for sixty days from the date of this Decision and Award, or for such longer time mutually agreeable to the parties, for the sole and exclusive purpose of resolving questions, if any, about remedy. Jurisdiction shall continue until the remedial question is resolved if either party invokes this Board's retained jurisdiction during such sixty day or extended period.

Michael D. Gordon, Neutral Arbitrator Date

Marvin Shackleford, Union Member Date
(concur/dissent)

Fern M. Kohler, Company Member Date
(concur/dissent)