BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
WISCONSIN PROFESSIONAL POLICE ASSOCIATION/LEER DIVISION	Case 44 No. 50222 MA-8186
and	
CITY OF SPARTA (POLICE DEPARTMENT)	

Appearances:

Mr. Richard J. Heitman, City Attorney, City of Sparta, appearing on behalf of the City.

Cullen, Weston, Pines & Bach, Attorneys at Law, by Mr. Gordon E. McQuillen, appearing on behalf of the Union.

ARBITRATION AWARD

The City of Sparta and Wisconsin Professional Police Association/LEER Division are parties to a collective bargaining agreement which was in effect at all times relevant to this proceeding and which provides for the final and binding arbitration of certain disputes. The Union requested, and the City agreed, that the Wisconsin Employment Relations Commission appoint an arbitrator from its staff to resolve the grievance filed by the Union contesting the City's decision to change health insurance carriers. The Commission appointed Thomas L. Yaeger, a member of its staff. Hearing on the matter was held on February 16, 1994, in Sparta, Wisconsin. The hearing was not transcribed and the parties filed briefs, the last of which was received on July 11, 1994.

ISSUE:

> Did the City violate Article XI, Health and Welfare, of the parties' 1992-1994 collective bargaining agreement when it changed health insurance carriers from Wisconsin Physicians Service Insurance Corporation (WPS) to Employers Health Insurance effective December 1, 1993?
>
> Did the City violate Article XI, Health and Welfare, of the parties' 1992-1994 collective bargaining agreement by not providing the Union with a copy of the "group health insurance plan selected by the City . . . for examination prior to its effective date"?
>
> If so, what is the appropriate remedy?

PERTINENT CONTRACT LANGUAGE:

ARTICLE XI
HEALTH AND WELFARE

11.01 Employer shall contribute 90% toward the cost of purchasing group health insurane (sic) benefits under the city group insurance plan for single individuals, and shall contribute 90% toward the cost of purchasing such group health insurance benefits for the individual and his dependents, the contribution to be made directly to the insurance carrier by the employer. The City reserves the right to name the health insurance carrier, provided that substantially the same level of benefits presently existing in the city's group health plan is maintained. Any group health insurance plan selected by the City pursuant to this provision shall be submitted to the union for examination prior to its effective date. The City is permitted to select a plan with a $500 per patient deductible and the employees shall pay the first $100 per patient deductible under such plan. Payment of the City's "self-insured" portion of the deductible shall be made to the health care provider upon presentation of the group carrier's explanation of benefits to the City Clerk, showing that charges or portions thereof payable under the terms of the group policy are subject to the deductible provided by the plan.

Pursuant to the provisions of Section 40.70 Wis. Stats., employer has determined to be included under the Basic Group Life Insurance Programs provided by Section 40.70 Wis. Stats., for its eligible personnel and the employer shall make payment for the basic plan. Further, employer agrees to provide life insurance for the spouse and dependants (sic) of eligible employees under the Wisconsin group Life Insurance Program pursuant to the provisions of Chapter ETF 60 for its eligible employees and the Employers shall make payment for the same. Further, pursuant to the provisions of Section 40.03(6)(b) Wis. Stats., Employer determines to be included under the Additional Group Life Insurance Plan provided by Section 40.03(6)(b) Wis. Stats. for its eligible employees.

FACTS:

In early November, 1993, the City of Sparta police officers became aware that the City was considering changing health insurance carriers from the then current carrier WPS. On November 9, there was a meeting of the City's Finance Committee discussing a proposed change in carriers. In attendance at the meeting were committee members, health insurance sales representatives and some employes. At this meeting there was a six page handout given to those in attendance. The handout was prepared by Kurt Krueger and James Needham from the Insurance Center of Onalaska, Wisconsin. The first page was a summary of costs under the then-current WPS plan; the second page was a similar costing sheet for Employers Health Insurance plan; the third page was a letter to the City from the Insurance Center providing the group policy number and the premium rates; the fourth and fifth pages were a group health insurance

comparison of PPO's provided by Wausau Insurance and Employers Health Insurance; and page six was a listing of LaCrosse area participating providers under the Employers Insurance PPO plan. At that meeting employes were told that the Employers Health Insurance plan was better than the then-current WPS plan because it provided for lower premiums. There was considerable discussion between employes and the Employers Insurance agents dealing with the differences in plans. At the conclusion of that meeting, the City's Finance Committee voted to recommend to the City Council that it adopt the Employers Insurance plan in place of the WPS plan.

Insurance Agent Needham testified that the premium rates quoted by him for the Employers Insurance plan were based on the age of the current City employes and the number of family and single plans, but that he was unaware of the ages of dependents or the number of dependents of City employes. Furthermore, he testified that the premium was not based upon the carriers knowledge of the prior claims experience of any of the City's employes. At hearing, Needham also denied that he ever said at the November 9 meeting that the Employer's plan was substantially the same as the WPS plan then in effect.

Subsequent to the November 9 meeting, the City Council met on November 16 and accepted the Finance Committee's recommendation to purchase the Employers Health Insurance plan for the subsequent year instead of continuing with the WPS plan. The parties stipulated that pursuant to this decision the WPS group medical insurance policy was terminated effective November 30, 1993, at midnight and the new Employers Health Insurance plan took effect at 12:01 a.m. on December 1, 1993.

On November 16, 1993, the Union filed the grievance which is the subject of this arbitration proceeding.

POSITIONS OF THE PARTIES:

The Union contends that the City violated Article XI of the parties' collective bargaining agreement when it entered into a different insurance plan with a new carrier for bargaining unit employes. The Union believes that the City did not meet its obligation under Article XI to provide it with a copy of the new insurance plan prior to its effective date, and also breached Article XI by switching to a new health plan that did not provide employes with "substantially the same level of benefits" that were previously provided under the WPS Health Insurance plan.

The Union believes that the dispute centers on the meaning of the phrase "substantially the same." It does not believe that the meaning of that phrase is open to serious challenge. Had the parties, for example, meant the City to provide identical benefits to those provided by WPS, they would have used the word "identical" or the phrase "the same." They did not do that and the Union believes that this was in recognition that "some slippage" was appropriate so that the City could shop around for a better deal without adversely impacting the interests of bargaining unit employes. The Union notes that ordinarily the naming of an insurance carrier is a mandatory subject for collective bargaining; however, in this case the bargaining unit waived its right to bargain over such a change when it entered into the language appearing at Article XI, thus granting the City the right to select a carrier. The Union asserts that by agreeing to such a provision the City was in effect "agreeing to take on the fiduciary duty of safeguarding the level of benefits for bargaining unit employes," and the City thereby assumed any risks accompanying its now unilateral ability to designate a carrier.

The Union believes that the inclusion of the word "substantially" in

Article XI, when given its plain meaning, requires "more than the ephemeral approximation of equality argued for by the City." The Union believes that "substantially the same" must be construed to mean as nearly equivalent to the original as possible. This is contrary to the presumed Employer's argument that even though there may have been a diminution of benefits in one area under the new plan there was an improvement of a benefit in another area, and therefore on balance the two plans are "substantially equivalent." That would be a lesser standard than required by Article XI and thus should not be applied to this case.

Furthermore, the improvements noted by the City are mainly available only at the upper limit of the policy. For example, the City's newly adopted plan provides for a $2 million lifetime major medical benefit coverage whereas the previous WPS plan provided a million dollar lifetime benefit. Second, the out-of-pocket costs to employes will be incurred on a much more frequent basis and by nearly every member. For example, all prescriptions must, under the new plan, be ordered by mail with a greater per out-of-pocket cost, whereas previously they could be ordered locally. In addition, the supply of drugs available per order is less under the new plan, thereby causing employes to incur the increased costs more frequently. The Union believes the most significant difference in the two plans is the handling of a disputed charge where a health care provider charges more for a delivered service than has been authorized under the carrier's usual, customary and reasonable standards. There is a specific provision in the WPS policy for resolving such disputes wherein WPS "will assume any liability a court determines was due from the participant to the physician solely because of the charges," whereas, the Union asserts that the new plan offered by the Employers Health Insurance does not contain such a benefit. The agent for Employers Health Insurance testified that the Company would attempt to negotiate with the health care provider to reduce the amount owed, but if the Company were unsuccessful, the disputed charges would be the obligation of the employe/patient. Also, the testimony of the Employer's insurance agent, argues the Union, underscored the fact that neither the City nor the agent knew the details of or understood the WPS plan; thus, the City cannot persuasively argue that it sought out a substantially equivalent policy.

The Union also notes that had the City adhered to the express contractual proviso that it share a proposed change in plans with the Union before implementation, the Union certainly would have been in a position to make appropriate inquiries about obvious changes in coverage before they were implemented. Had this been done, it would have permitted the City to escape liability for changes by raising and resolving the obvious differences before hand, whereas now it is the City who bears the responsibility for paying the results of the increase risks which logically and obviously followed from the change in plan.

In conclusion, the Union contends that while the collective bargaining agreement allows the City to change the insurance carrier unilaterally, it does not allow the City to change the plan, at all. In this case the City obviously violated the agreement because it changed the level of benefits as well as failed to notify the Union of the proposed changes prior to their implementation. Thus, that leaves only the question of remedy for resolution. Of the three principles involved in this case, the insurance carrier, the Union and the City, it is obvious to the Union that the carrier did nothing wrong. It made a proposal to the City which the City accepted, and the carrier was not bound by the provisions of the collective bargaining agreement because it was not a party to it. Furthermore, the Union did nothing wrong because once it found out that the City was contemplating a change in carrier, the Union asked for copies of the new plan, but were rebuffed. Thus, it was the City who sought and approved a change in carrier, and it was the City who knew that the Union had asked for a copy of the new plan for comparison purposes, and it was the City who finally acknowledged that it had not received a copy of the new carrier's plan so as to allow comparison. Obviously, if the City did not have a copy of the plan, it could not have made sure that the level of benefits had not changed and obviously did not tell the new carrier that benefit levels had to remain substantially the same. The Union argues that arbitral authority is clear in this regard that the Employer, because of its contractual obligations, bears the liability for any losses incurred by employes on account of its failure to maintain the contracted-for level of benefits. Consequently, the arbitrator should order that any and all affected bargaining unit employes be made whole for any losses which they have suffered or for any losses which they may suffer because of a change in insurance carrier. The Union states that the City may elect to self-fund those amounts or may choose to seek additional insurance coverage for those risks, but in the latter event, the Union's position would again be that the City must share such new insurance with the Union before implementation.

Contrary to the Union's assertions, the City does not believe that it violated the collective bargaining agreement by changing health insurance carriers. Like the Union, it looks to the dictionary definition of "substantial" and concludes that the health insurance plan as a whole must be compared as opposed to the selective variances which, when viewed in the context of the entire plan, are inconsequential. While one employe may be able to find the odd expense which is no longer covered or is not covered as completely, another employe will certainly find complete coverage at a drastically reduced cost to himself. "In the end, the essential elements--the substance of the health insurance benefits--are at least the same."

The City believes that the most useful comparison to make is that of the respective out-of-pocket limits for the old WPS policy and the new Employers Health policy. The City believes what is required is that the new policy be comparable in its essential elements and that it have basically like-kind coverages. The schedule of benefits discloses that the two policies are essentially the same--$100 deductibles for up to three family members; 80 percent co-insurance percentage for non-preferred providers; and 100 percent coverage without co-pay for preferred providers since the City offered to pay

the 10 percent co-pay required under the Employers Health plan. The City argues that the differences in the plans, such as prescription drug coverage, are minimal at worst and frequently difficult to compute with certainty.

The City acknowledges that there may be several instances where WPS covers an expense to a greater extent than Employers Health, but there is no question that this is a two-way street. For example, both policies cover cosmetic surgery for congenital disease or anomaly for covered dependent children which results in a functional defect. However, the WPS plan limits the benefit to children under the age of 16; the Employers Health plan has no such limitation on age. There is a $300 maximum benefit for ambulance services under the WPS plan, whereas Employers Health has no maximum for ambulance service. The City argues that the Union minimizes the importance of the increase in maximum benefit from $1 million to $2 million.

The City does not believe that the issue is whether these policies are exactly the same. It acknowledges they are not. However, when viewed as a whole, the level of benefits is at least substantially equal. When factoring in reduced costs to the employe, the new plan is better.

In referring to one of the Union's principal complaints regarding the protection against charges in excess of "usual, customary and reasonable," the City concludes that the plain reading of the WPS policy demonstrates that it is not true as the Union argues. It points to the last sentence of the clause referred to by the Union which states "any liability we assume in this way will be limited to the reasonable value of services performed as determined by us." Thus, WPS has reserved to itself the right to determine what is a reasonable charge. Also, the Employers Health plan similarly limits the benefits they will pay which they describe as a "maximum allowable fee." The principal difference between the Employers Health plan and the WPS plan concerning this issue is that the Employers Health goes to greater length to explain the factors taken into account to determine the amount they will pay for a particular service. The City concludes that a comparison of the plans as they treat charges over the "usual, customary and reasonable" show that both plans reserve the right to deny benefits upon their calculation of what is reasonable for this service in this same general area and under similar or comparable circumstances.

In response to evidence concerning medical and hospital services provided to bargaining unit employes which show various deductibles and co-insurance provisions being invoked by Employers Health Insurance to reduce the amount of benefits paid, it notes that WPS also had deductible and co-insurance provisions. The most significant difference is that WPS had no co-insurance for preferred providers, while Employers Health has a 10 percent co-insurance requirement for preferred providers. However, the City offered to assume that 10 percent co-insurance responsibility for preferred providers. With respect to the other co-insurance for non-preferred providers, both plans had an 80/20 co-insurance provision. With regard to other examples put into evidence by the Union of charges that were not covered under the new Employers Health plan, the City contends that none of this information had been given to Employers Health or the City prior to the hearing for possible adjustment or assistance.

Regarding the issue of the City's alleged failure to provide a copy of the new policy to the Union prior to its effective date, the City argues that meetings with City employes were held to explain the terms and conditions of the new plan. At these meetings, handouts were distributed to show the schedule of benefits. It is difficult to accept the proposition made by the Union that the employes were not informed as to the terms and conditions of the new plan prior to its effective date, yet they were able to file this grievance a full two weeks before said effective date. Also, the City notes that the

collective bargaining agreement does not require submitting a "policy" to the Union, but rather the "insurance plan" is what must be supplied. If actually submitting a policy to the Union before its implementation was significant, it certainly did not raise the issue the prior year when the policy effective February 1, 1992, was not actually executed by Wisconsin Physicians Service Insurance Corporation until August 24, 1993.

The City also rejects the Union's arguments that it had not bothered to compare the level of benefits between these two plans. The City argues there was testimony which clearly established that the City examined and analyzed the level of benefits offered by the WPS plan, the Employers Health plan and a third plan offered by Wausau Insurance before they decided to accept the Employers Health plan. Obviously, it was the opinion of City officials that the new plan did, in fact, provide substantially the same level of benefits when viewed as a whole. That the Union happens to disagree does not mean that the City did not discharge its responsibility to meet the requirements of the collective bargaining agreement.

In conclusion, the City argues that it did not violate the collective bargaining agreement by changing health insurance carriers since the level of benefits is substantially the same under the new carrier when one considers that the City has offered to assume responsibility for the 10 percent co-insurance to preferred providers. The co-insurance to preferred providers is the only material difference between the plans and an award specifying that the City pay those costs would leave the Union with the same coverage as provided by WPS.

Last, the City concludes that it did not violate the contract by failing to provide the new policy to the Union prior to its effective date because the contract by its express terms did not require that the policy be submitted to the Union. The plan, with all of its benefits and conditions for coverage, was provided to the Union well in advance of the effective date.

DISCUSSION:

The resolution of this dispute turns on the meaning of the phrase ". . . provided that substantially the same level of benefits presently existing in the city's group health plan is maintained" contained in Article XI of the parties' collective bargaining agreement. No evidence of bargaining history leading to the inclusion of that language in the parties' collective bargaining agreement was adduced. Thus, absent a showing that some special meaning should attach to the words contained in that phrase, the plain meaning of the terms must be applied. Both parties have cited to the undersigned the dictionary definition of the word "substantial." Webster's New World Dictionary, The Third College Edition, 1988, defines "substantial" as "1. of or having substance . . . 7. with regard to essential elements; in substance . . ." "Substance" is then defined as "1. the real or essential part or element of anything; essence, reality, or basic matter . . . 4. the real content, meaning, or gist of something said or written . . ."

"Substantially" as it is used in Article XI modifies "same level of benefits"; in other words, in substance the same level of benefits.

The American Heritage Dictionary, Second College Edition, 1985, provides the following definition for the word "same":

> 1. Being the very one; identical. 2. Similar in kind, quality, quantity, or degree. 3. Conforming in every detail; according to the same rules as before.

> 4. Being the one previously mentioned or indicated; aforesaid.--adv. In the same way.--pron. 1. Someone or something identical with another. 2. Someone or something previously mentioned or described. . . .
>
> **Synonyms**: same, selfsame, identical, equal, equivalent. These adjectives refer to the absence of difference or disparity. Same, selfsame, and identical are all applicable, when only one object is under consideration, in the sense of one and the same: the same (or selfsame or identical) man I saw this morning. Same and identical are also used when two or more objects are considered. In this sense same implies absence of difference with respect to kind, quality, quantity, or the like; identical specifies strict agreement in every respect and detail. Equal refers more generally to absence of difference between two or more with respect to extent, amount, value, force, or the like. Equivalent, referring to two or more means not identical but having the same worth, effect, force, or meaning. . . .

In this case, the word "same" is used to describe the level of benefits presently existing in the City's group health plan. The health plan necessarily being referenced by the subject collective bargaining agreement was the WPS plan which the City replaced with the Employers Health Insurance plan.

The Union in its brief acknowledged that by choosing the words "substantially the same" as opposed to "identical" or "the same" that the parties intended to provide the Employer with the opportunity to shop around for a better deal with regard to health insurance. However, it went on to state its belief that "substantially the same" must be construed to mean as nearly equivalent to the original as possible. The Employer, on the other hand, argues that this language requires that the new health insurance plan "as a whole" must be compared with the old plan, as opposed to looking at selective variances which, when viewed in the context of the entire plan, are inconsequential.

The undersigned believes that the plain meaning of the language "substantially the same," and referring to level of health insurance benefits, requires that if a change is to be made in the carrier that the new carrier's plan must provide nearly the same or identical level of benefits provided under the previous plan. Applying that standard in comparing the new Employers Health Insurance plan with the old WPS insurance plan leads the undersigned to the inescapable conclusion that the new plan does not provide "substantially the same level of benefits" as was provided under the WPS plan. The undersigned is not surprised by that result in light of the substantially lower premiums for the new Employers Health Insurance plan. It would have been more surprising to find that the new carrier was providing substantially the same level of benefits while collecting a premium for family coverage that was 43 percent less than the premium for family coverage under the WPS plan and a premium which was 39 percent less for the single plan.

As is the case with all health insurance plans the undersigned has examined, the plans here are complex documents. However, in this case, there are four essential elements of the new Employers Health Insurance plan where the level of benefits is substantially different from those of the old WPS plan. First, both plans offer different coverages depending on whether the subscriber uses PPO or non-PPO providers. However, the Employers Health Insurance plan contains a $500 penalty to the subscriber which is not applied

to the deductible or out-of-pocket limits if the subscriber does not notify the carrier prior to an inpatient confinement or non-emergency outpatient surgery. I cannot find anywhere in the WPS plan any penalty such as this for failure to notify under the circumstances set forth above. It seems clear to the undersigned that a reasonable person would conclude that this is a substantial difference between the two plans.

Another essential element of the plans where there is a substantial difference in level of benefits is in the area of mental health covered services. Both plans provide for a $7,000 calendar year maximum benefit for inpatient care, a $2,000 calendar year benefit for outpatient services, and a $3,000 calendar year benefit for transitional treatment. However, the two plans with regard to mental health covered services do differ substantially in one area, the annual maximum benefit per participant per policy year. Under the new Employers Health Insurance plan, the "combined calendar year maximum benefit is $7,000," whereas the WPS plan provides for "the annual maximum amount of $8,000 per participant per policy year." Again, the undersigned believes that a reasonable person would conclude that this is a substantial difference in level of benefits provided under each plan.

Third, the plans differ significantly in the area of prescription drug coverages. Under the new Employers Health plan there is a $7.00 prescription drug co-pay and a provision that generic substitute drugs will be supplied unless the physician has prohibited the use of generic substitutes. Also, the new plan requires subscribers to use a mail order pharmacy except that the employe can utilize a local pharmacy where medication is needed immediately, and the employe obtains two prescriptions from his physician, one for a 14 day supply to be filled at the local pharmacy and a second for a 60 day supply to be sent to the mail order pharmacy. If the employe uses the local pharmacy, he must pay for the drugs and submit a receipt to the carrier for reimbursement. This plan differs significantly from the old WPS plan in that employes were not required to utilize a mail order pharmacy, and additionally, it was not necessary to obtain two prescriptions, one to cover the first 14 days of treatment following a visit to a physician and a second for the 60 day supply with the employe paying the entire cost of the prescription and subsequently seeking reimbursement from the carrier. Also, there was a $5 co-pay under the WPS plan and I could find nothing in examining the plan which stated that the pharmacist must use generic equivalent drugs unless the physician had prohibited such a substitution. I believe that a reasonable person would also conclude that these represent substantial differences in level of benefits under the two plans.

Finally, the two plans differ significantly with respect to their co-insurance provisions. The old WPS plan provided for 100 percent payment of covered services from a preferred provider, except in the area of mental health covered services, after the deductible had been met. This contrasts with the new Employers Health Insurance plan where the carrier pays only 90 percent of the charges for covered services, except in the case of mental health covered services, after the deductible has been met. Both plans provide for payment of 80 percent of the charges for covered services provided by a non-preferred provider. Obviously, the differences in co-insurance benefits between the two plans is substantial, and the new Employers Health Insurance plan does not provide substantially the same level of benefits in this regard as provided under the old WPS plan. The Employer discounts this difference by arguing that it has offered to pick up the 10 percent difference which otherwise would be assumed by the employes. While clearly this evidences an intent on the Employer's part to attempt to comply with the requirements of the collective bargaining agreement, this voluntary assumption of co-pay liability cannot be equated with the plan providing that level of benefit. Clearly, the plan does not provide for reimbursement of 100 percent of the charges for covered

services provided by a preferred provider. Furthermore, while the Employer may currently be willing to assume this responsibility, it is not contractually obligated to do so as it has contractually obligated itself to do with regard to assuming $400 of the $500 deductible.

> 11.01 . . . The City is permitted to select a plan with a $500 per patient deductible and the employees shall pay the first $100 per patient deductible under such plan. . . .

Were the City to have included such language in its collective bargaining agreement with regard to the co-insurance provision, the undersigned might have taken a different view of this aspect of the plans. However, it has not contractually obligated itself to assume the 10 percent that the new Employers Health Insurance plan does not pay. Consequently, comparing plan to plan, the inescapable conclusion is that only 90 percent of the charges for covered services provided by a preferred provider will be paid for under the new Employers Health Insurance plan, whereas 100 percent of those charges would have been paid for under the old WPS plan.

In conclusion, the undersigned is satisfied that the Employer did violate the parties' collective bargaining agreement when it switched carriers from WPS to Employers Health Insurance because the Employers Health Insurance plan did not provide "substantially the same level of benefits" as was provided under the prior WPS health insurance plan.

The other issue presented by this grievance is whether the City violated the parties' collective bargaining agreement by not providing the Union with a copy of the "group health insurance plan selected by the City . . . to the Union for examination prior to its effective date." The City insists that it complied with this provision of the collective bargaining agreement because it held meetings with employes and representatives of the Employers Health Insurance Company at which time employes were afforded the opportunity to ask questions and be advised as to the level of benefits provided by the Employers Health Insurance plan, and employes were also provided with a comparison of the essential benefits provided under the Employers Health program and WPS programs. To the contrary, the Union insists that what the City did do did not meet the requirement of providing the Union with a copy of the health insurance plan.

The undersigned's analysis of the evidence and argument leads me to conclude that the Employer did not comply with its obligations under Article XI to supply the Union with a copy of the health insurance plan prior to its effective date. The effective date for the Employers Health Insurance plan was December 1, 1993. The meeting at which employes were provided an opportunity to question the Employers Health Insurance agent and at which time they were provided a comparison of benefits and given other information occurred on November 9. The Employers Health Insurance plan, which was Union Exhibit 1, was not provided to the Union, as testified to by Officer Kuderer, until some time in December, 1993. I have been afforded the opportunity to examine both the WPS and the Employers Health Insurance plans because both are in evidence in this proceeding. Given the opportunity to examine the two plans, which are complex and lengthy documents, a reasonable person would conclude that the information available therein is significantly more than what was provided in the documentation given to employes who attended the November 9 meeting. Furthermore, as the Union argues, without having an opportunity to see the language of the plans, it is impossible to determine whether they provide "substantially the same level of benefits." Obviously the contractual

requirement that the City provide the Union a copy of the plan prior to the effective date of any new plan was intended to allow the Union to assure itself that the new plan would provide substantially the same level of benefits. If after the Union examines the plan, it concludes that the new plan will not provide substantially the same level of benefits, it can so advise the City and alert it to its concerns, and thus provide the City with an opportunity to

correct any deficiencies and avoid the problems and litigation as occurred in this case. As is evidenced by the City's assertions that it will assume the 10 percent of charges for covered expenses not picked up by Employers Health Insurance pursuant to the co-insurance provision of the plan, had that difference been noted prior to the change, either the plan could have been amended or the Employer could have proposed amending the contract to provide that it would be contractually obligated to assume those charges. However, in this case, obviously, neither occurred.

Everyone knows that health insurance is becoming increasingly expensive and represents an increasingly larger proportion of employes' total compensation, whether the employes are paying a portion of the premiums or otherwise sharing in the costs. It has also become common that where there are substantial increases in those health insurance costs the money available for salary increases is diminished. Thus, it is both in the employes' and employer's interest to work cooperatively in dealing with this fact of life. This case is an example of where that cooperation was missing.

All that remains is to discuss what remedial action is required to rectify the breaches. In this case, as is true in most all grievance arbitrations, the remedy is to make whole and not impose punitive sanctions on the employer. In this case the undersigned is persuaded that the City must reimburse employes for financial losses they incurred as a consequence of the City's contract violations. However, the violation also resulted in savings to employes in the form of reduced monthly employe contribution toward premiums. These savings resulted in part at least because they had substantially lower benefits than before, but now, because the City is being ordered to reimburse them for the losses resulting from the lower benefits, employes must give back those savings in the form of an offset. Therefore, the City can offset its liability to any employe who incurred a financial loss by the amount of premium contribution savings enjoyed by that employe. Otherwise, the employe would reap a windfall. However, if there are employes who did not incur any financial loss, the City may not recoup any monthly premium contribution savings those employes received because those savings resulted from them being provided with substantially lower benefit levels than those which they were previously paying for.

Also, the City must rectify its contract violations by immediately commencing to take the necessary steps to replace the Employers Health Insurance plan or have the carrier modify the plan so that whatever carrier is selected the plan will provide employes with "substantially the same level of benefits," as those terms have been interpreted in this decision, as existed under the WPS plan in effect immediately preceding the City's change in carriers to Employers Health Insurance. Also, prior to the effective date of any change in carrier or modification of the existing Employers Health Insurance plan, the City shall provide the Union with a copy of any new or modified plan.

Based on the testimony, exhibits and arguments of the parties, the undersigned enters the following

AWARD

That the City did violate the collective bargaining agreement by changing health insurance carriers from Wisconsin Physicians Service Insurance Corporation (WPS) to Employers Health Insurance effective December 1, 1993. Also, the City violated Article XI by not providing the Union with a copy of the "group health insurance plan selected by the City . . . for examination prior to its effective date."

To remedy these violations the City must immediately make all bargaining unit employes whole for any financial losses they incurred, since December 1, 1993, up until the violation has been rectified as ordered below, as a consequence of receiving less benefits than they would have been entitled to under the WPS plan had the City not changed carriers to Employers Health Insurance. The City can, upon being presented by employes with substantiation of loss, offset against those losses any premium savings enjoyed by the employe (reductions in the employe's share of the premium only). Also, the City shall immediately commence action to replace the Employers Health Insurance plan or have the carrier modify the plan so that whatever carrier is selected the plan will provide employes with "substantially the same level of benefits," as those terms have been interpreted in this decision, as existed under the WPS plan in effect immediately preceding the City's change in carrier to Employers Health Insurance. Also, prior to the effective date of any change in carrier or modification of the existing Employers Health Insurance Plan, the City shall provide the Union with a copy of any new or modified plan.

Dated at Madison, Wisconsin, this 13th day of October, 1994.

By Thomas L. Yaeger /s/
Thomas L. Yaeger, Arbitrator

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