

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**VILLAGE OF HARTLAND**

and

**HARTLAND PROFESSIONAL POLICE ASSOCIATION,  
LOCAL 301,**

**LABOR ASSOCIATION OF WISCONSIN, INC.**

**AND**

**VILLAGE OF HARTLAND DEPARTMENT  
OF PUBLIC WORKS ASSOCIATION**

**LOCAL 707,**

**LABOR ASSOCIATION OF WISCONSIN, INC.**

Case #12

No. 57577

MA-10679

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Appearances:

Godfrey & Kahn, S.C. by **Mr. Jon E. Anderson**, 131 West Wilson Street, P.O. Box 1110, Madison, Wisconsin 53701-1110, appearing on behalf of the Employer.

**Mr. Patrick J. Corraggio**, Labor Consultant, The Labor Association of Wisconsin, Inc., 2825 Mayfair Road, Wauwatosa, Wisconsin 53222, appearing on behalf of the Unions.

**ARBITRATION AWARD**

The Village of Hartland, hereinafter referred to as the Employer, and Hartland Professional Police Association, Local 301, Labor Association of Wisconsin, Inc., and, the Village of Hartland Department of Public Works Association, Local 707, Labor Association of Wisconsin, Inc., hereinafter referred to as the Union, are parties to a collective bargaining agreement which provides for final and binding arbitration of grievances. Pursuant to a request for arbitration the Wisconsin Employment Relations Commission appointed Edmond J. Bielarczyk, Jr., to arbitrate a dispute over the employe contribution to health insurance. A

procedural question was raised by the Employer and the parties agreed to bifurcate the matter and have the procedural question resolved prior to hearing on the merits. The parties entered into a stipulation of fact received by the undersigned on September 7, 1999. Written arguments were received by the undersigned by September 16, 1999. Full consideration has been given to the evidence and arguments presented in rendering this Award.

### ISSUE

The parties have agreed to the following issue:

"Did the Union file grievance 99-17 and 99-19 in a timely fashion?"

### STIPULATION OF FACTS (ABSENT ATTACHMENTS)

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### **I - CONCERNED PARTIES**

- A. **The Hartland Professional Police Association, Local 301 of the Labor Association of Wisconsin, Inc.** which is represented by Mr. Patrick J. Coraggio. Mr. Coraggio's office is located at 2825 N. Mayfair Road, Wauwatosa, WI 53222, (414) 258-3300.
- B. **The Village of Hartland Department of Public Works Association, Local 707** which is represented by Mr. Patrick J. Coraggio of the Labor Association of Wisconsin, Inc.
- C. **The Village of Hartland** which is represented by Attorney Jon E. Anderson of Godfrey & Kahn. Mr. Anderson's office is located at 131 W. Wilson Street, P.O. Box 1110, Madison, WI 53701-1110, (608) 251-4670.

### **II - PROCEDURAL ISSUE**

Did the Association file Grievance 99-17 and 99-19 in a timely fashion?

### **III - FACTS**

- 1. That on September 4, 1985 the Wisconsin Employment Relations Commission (WERC) certified the Labor Association of Wisconsin, Inc. (LAW, Inc.) as the sole and exclusive bargaining agent for the Hartland Professional Police Association.

2. That the Village of Hartland and LAW, Inc., on behalf of the Hartland Professional Police Association, have a collective bargaining agreement which has been in force and effect at all times pertinent to the instant grievance. (Joint Exhibit 1)
3. That the 1997-1999 collective bargaining agreement between the Village of Hartland and LAW, Inc. (police) contains Article XXII Grievance Procedure which reads in pertinent part as follows:

**Section 22.02 - Grievance Steps:**

- A. If a difference arises between the Village of Hartland and the Association as to the interpretation and application of this Agreement, during the term of this Agreement, such differences or disputes shall be settled in the following manner. **Step 1:** The grievant shall submit his/her grievance in writing to the Chief of Police not later than ten (10) working days from the date of incident or when the officer had knowledge of the grievance.
4. That on December 21, 1988, the WERC certified LAW, Inc. as the sole and exclusive bargaining agent for the Village of Hartland Department of Public Works Association.
5. That the Village of Hartland and LAW, Inc. have a collective bargaining agreement which has been in full force and effect at all times pertinent to the instant grievance. (Joint Exhibit 2)
6. That the 1997-1999 collective bargaining agreement between the Village of Hartland and LAW, Inc. (DPW) contains Article VII Grievance Procedure which reads in pertinent part as follows:

**Section 7.05 – Steps in Procedure:**

**Step 1:** If any employee has a grievance, he shall reduce his grievance to writing on a form supplied by the Village and present it to the DPW Director within ten (10) work days after he knew or should have known of the cause of the grievance. . .

7. That the Village of Hartland and LAW, Inc. negotiated an employee contribution into the collective bargaining agreement which went into effect January 1, 1994 for the members of the Hartland Department of Public Works Association.

8. That Article XIII – Hospitalization, Dental & Surgical Care Insurance of the collective bargaining agreement between the Village of Hartland and the Hartland Department of Public Works Association contains the following language regarding employee contributions:

Section 13.02 – Hospitalization, Dental & Surgical Care Insurance: The Employer agrees to pay a dollar amount up to 105% of the cost of the gross health insurance premium for the lowest cost qualified plan in the service area of the employer. Employees may select among other available qualified plans offered by the employer, however said employees shall pay the difference between the amount paid by the employer and the full premium cost of the plan selected. Effective January 1, 1994, the employee agrees to pay five percent (5%) of the health insurance plan selected by the employee for single or family coverage. The five percent contribution on the part of the employee shall be paid by payroll deduction. . .

9. That the Village of Hartland and LAW, Inc. negotiated an employee contribution into the collective bargaining agreement which went into effect April 1, 1994 for the members of the Hartland Professional Police Association.
10. That Article XI – Hospitalization, Dental & Surgical Care Insurance of the collective bargaining agreement between the Village of Hartland and the Hartland Professional Police Association contains the following language:

Section 11.01 – Hospitalization & Surgical Care Insurance: The Employer shall provide hospitalization and surgical care insurance through the State of Wisconsin Health Plan and pay one hundred five percent (105%) of the lowest cost qualified plan for this region offered for single and family. . .

Effective April 1, 1994, the officer shall pay five percent (5%) of the cost of the lowest cost qualified plan in the service area plus the difference between the amount paid by the Employer and the full cost of the plan selected. The officer contribution shall be paid by payroll deduction.

11. That effective April 1, 1994 the Village of Hartland has been calculating the Employer's contribution based on ninety-five percent (95%) of the lowest plan. The implementation of the employer contribution for health insurance has been consistently applied by the Village from April 1, 1994 to the present. This period of time has spanned two (2) labor contracts covering the 1994-1996 period and 1997-1999 period.

12. In October each year employees must choose the health plan that they will participate in for the following calendar year. The choice is from the offerings made available under the State Plan. The Village distributes to each employee a spreadsheet of cost information to assist employees in making an informed decision. The information details the cost of each plan as well as the employee cost per pay period depending on the plan selected. The following exhibits reflect information provided to employees by the Village. For 1999 (Exhibit "A"), 1998 ("Exhibit B"), 1997 ("Exhibit C"), 1996 (Exhibit "D"), 1995 (Exhibit "E")
13. That on or about March 17, 1999, Officer Jeffrey Noennig, who is the Association President for the Hartland Professional Police Association, became aware of the Village's method of calculating the employee's contribution and thereafter agreed that the Village was incorrectly interpreting the language found in Article XI - Hospitalization, Dental & Surgical Care Insurance.
14. That Officer Noennig notified Mr. Patrick J. Coraggio of this matter via a letter dated March 17, 1999. (Appendix "A")
15. That the Village's Administrator, Mr. Wallace C. Thiel, also received a copy of Officer Noennig's letter.
16. That after investigating Officer Noennig's complaint Mr. Coraggio concluded that he agreed with Officer Noennig and asked Mr. Thiel to respond via a letter dated March 25, 1999. (Appendix "B")
17. That on April 1, 1999, Attorney Jon E. Anderson responded on behalf of the Village stating that it was his opinion that the Village has implemented the employee contributions in a manner that is consistent with the intent of the parties. (Appendix "C")
18. That on April 22, 1999, Officer Noennig filed grievance 99-17 with the Chief of Police, Morton A. Hetznecker, on behalf of the Hartland Professional Police Association pursuant to step one of the grievance procedure. (Appendix "D")
19. That on April 27, 1999, Chief Hetznecker denied grievance 99-17. (Appendix "E")

20. That on May 3, 1999, Mr. Kevin Naylor, a Labor Consultant with LAW, Inc. notified the Village's Administrator, Mr. Wallace Thiel, that the Association wished to move 99-17 to step two of the grievance procedure. (Appendix "F")
21. That on May 5, 1999, Mr. Naylor and Mr. Thiel discussed pursuing an identical grievance on behalf of the DPW. During this conversation both Mr. Naylor and Mr. Thiel agreed that the DPW should file a grievance and that the two grievances should be handled in conjunction with one another.
22. That on May 6, 1999, Mr. Thiel denied grievance 99-17 at step two. (Appendix "G")
23. That on May 7, 1999, Mr. Naylor confirmed that the parties have agreed to have Edmond J. Bielarczyk, Jr. from the Wisconsin Employment Relations Commission act as the Arbitrator. (Appendix "H")
24. That on May 12, 1999, Michael Laguna filed grievance 99-19 on behalf of the Hartland Department of Public Works Association. (Appendix "I")
25. That on May 24, 1999, Mr. Thiel denied grievance 99-19 under both step one and two. (Appendix "J")
26. That the Village is not contesting the manner in which grievance 99-17 and 99-19 moved through the grievance procedure after their initial filing date(s).
27. That on June 17, 1999, Mr. Anderson confirmed in a letter to Mr. Naylor that the Village was willing to bifurcate the hearing to address the "procedural" issues prior to proceeding to a hearing on the substantive issues. (Appendix "K")

### **EMPLOYER'S POSITION**

The Employer acknowledges it has agreed to provide health insurance benefits to bargaining unit members with coverage through the State of Wisconsin Health Insurance Group Health Plan (State Plan). The Employer points out that each year in October it provides each employe with a spreadsheet of requisite cost information. The information details the cost of each program as well as the employe cost per pay period. Negotiations, which culminated in the 1994 collective bargaining agreement, specified employes were to pay at least five percent (5%)

of the plan selected. The Employer calculated this intent and implemented it on April 1, 1994. The Employer points out the method of calculation was not challenged until March 17, 1999 when the Police Association president, Jeffrey Noenning, challenged the Employer premium contribution alleging the Employer had incorrectly interpreted the premium contribution language. The Police unit's grievance was subsequently joined by another grievance from the Department of Public Works bargaining unit. Since the initiation of the grievances the Employer has consistently held that both grievances are time barred and that the Employer has correctly applied the appropriate contract language.

The Employer points out that the collective bargaining agreements are clear in establishing time limitations and procedures which apply to the filing of grievances. The Employer argues an employee must file a grievance no later than ten (10) working days from the date of the incident or when the employee had knowledge of the grievance. The Employer concludes the Union has failed to follow the prescribed procedure in filing of the instant grievances given that the Employer has used the same method of calculation since 1994 and that it has notified each employee as to its method of calculation throughout this period.

The Employer argues that when an agreement contains clear timelines for the filing and processing of grievances failure to observe the timelines will result in dismissal if the failure is protested. The Employer stresses that arbitrators must construe technical requirements strictly to ensure that the intention of the parties regarding speedy resolution of disputes is preserved. The Employer argues that given the contractual commitment of the parties the undersigned should enforce the time limits and procedures.

The Employer points out that neither grievance was filed in a timely manner. The Employer contends the Union knew or should of known of the Employer's method of calculation long before the filing date of the grievances. The Employer points out that employee cost information for calendar year 1995, 1996, 1997, 1998 and 1999 was provided reflecting not only the lowest cost plan but also a calculation based upon the five per cent (5%) of that lowest cost plan. The Employer asserts the method of calculation is easily gleaned from this documentation. The Employer argues any questions regarding the calculations should have arisen in 1995, not six (6) calendar years later. The Employer also points out ten (10) days from the initial action would have occurred in 1994.

The Employer also argues that grievances which are not filed on a timely basis are barred. The Employer stresses the undersigned cannot ignore the clear mandate of the parties that grievances are to be filed within a certain timeframe. The Employer argues the undersigned should not set aside the parties time limitations.

The Employer also argues the grievances cannot be processed under the continuing violation exception. The Employer contends there are three conditions that must be met to be considered as a continuing violation: 1, the timeframe is not unreasonably protracted; 2, the grievant offers a good and sufficient reason for the late filing; 3, the late filing poses no undue burden to the employer. The Employer argues there has been an unreasonably protracted time period and thus the Union has acquiesced to the Employer's method of calculation, there has been no offer of a good and sufficient reason for the late filing, and that the late filing places an undue burden on the Employer.

The Employer would have the undersigned deny the grievance.

### **UNION'S POSITION**

The Union contends that a grievance can be raised when the employe had knowledge of the grievance and argues the Employer's denial of the grievance as being untimely fails to acknowledge this provision. The Union argues that Association President Jeffrey Noening did not become aware of the Employer's method of calculating the employe's health insurance contribution until March 17, 1999, and, thereafter Noening took action to grieve the matter. The Union also contends the instant matter is an on-going or continuous in nature grievance rather than one connected with a single event such as in a disciplinary matter and thus may be challenged upon each occurrence regardless of when they first arose and the time restrictions found in the agreement. The Union concludes the on-going nature of the grievance coupled with the language of Article 5.07 of the agreement clearly and unequivocally supports the Union's request that the merits of the matter be heard.

### **DISCUSSION**

There is no dispute that the Employer provided all employes with a State Plan offering sheet in October of each year since the parties selected this form of insurance in 1994. This sheet includes the cost of each available health insurance program and employe pay period costs. The costing sheets do not contain the calculations of how the Employer arrived at the sums but merely the sums the Employer arrived at. While the Employer claims these calculations can be easily deduced, the Employer unilaterally made these calculations and has never shared the method of calculations with the Union or any of the employes, only the sums it arrived at. Had the Employer provided the calculations demonstrating how it arrived at the sums the undersigned would agree with the Employer assertion that the Union has waived the ability to grieve the matter. However, no such calculations were distributed. Thus, until someone attempted to calculate how the Employer arrived at the sums there was no knowledge the Employer might be violating the terms of the agreement. Even if the undersigned may agree with the Employer that this is an easy calculation to make, there is nothing in the agreement that would mandate the employes or the Union had a burden to make the calculations. Thus the undersigned concludes



that until the calculations were made there was no knowledge of a grievable matter. When the Union made the calculations it then grieved the matter. The undersigned concludes the matter is therefore timely and properly before the arbitrator.

The undersigned does note the Employer's concern of the undue burden placed upon it by such a late filing. However, Arbitrators tend to limit a remedy in such matters as in the instant one to the date of filing the grievance, particularly in view of an arbitrator's reluctance to go beyond the four corners of the current collective bargaining agreement. Such an argument is more suited for questions concerning remedy if the Employer is found to have violated the intent of the parties.

Based upon the above and foregoing and the stipulation and arguments presented by the parties the undersigned concludes the grievances were filed in a timely manner.

### AWARD

The Union filed grievance 99-17 and 99-19 in a timely fashion.

Dated at Madison, Wisconsin this 16th day of December, 1999.

Edmond J. Bielarczyk, Jr. /s/

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Edmond J. Bielarczyk, Jr., Arbitrator