BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

THE LABOR ASSOCIATION OF WISCONSIN, INC.

and

VILLAGE OF GREENDALE

Case 66
No. 57540
MA-10669

Appearances:

Mr. Patrick J. Coraggio, Labor Consultant, Labor Association of Wisconsin, Inc., appearing on behalf of the Association.

Mr. Roger E. Walsh, Attorney at Law, Davis & Kuelthau, S.C., appearing on behalf of the Village.

ARBITRATION AWARD

The Association and the Employer named above are parties to a 1996-1998 collective bargaining agreement that provides for final and binding arbitration of certain disputes. The parties jointly requested that the Wisconsin Employment Relations Commission appoint the undersigned as the arbitrator in a dispute regarding retirees' health insurance premiums. A hearing was held on August 12, 1999, in Greendale, Wisconsin, at which time the parties were given the opportunity to present their evidence and arguments. The parties completed filing briefs by November 4, 1999.

ISSUE

The parties ask:

> Is the Village's application and interpretation of Article XVII – Insurance, Section 17.02, as listed in Exhibit #6, consistent with the 1996-1998 collective bargaining agreement between the Village of Greendale and the Labor Association of Wisconsin, Inc.? If not, what is the appropriate application and remedy?

STIPULATIONS

Prior to the hearing, the parties entered into a number of stipulations and submitted them as Joint Exhibit #13. Those stipulations are:

1. The most recent collective bargaining agreement between the Village and the Association was the 1996-1998 Agreement, which expired on December 31, 1998. A copy of this Agreement was attached as Exhibit 1. The successor to the 1996-1998 Agreement is the subject of a pending interest arbitration proceeding.

2. On April 1, 1999, the Association, at the request of the Local Association, filed a grievance, #99-15, on behalf of Officer Bergeman, a retiree, and a former member of the Local Association. For this grievance only, the Village has agreed to waive its right to object to the arbitration of it on the basis that since December 31, 1998, there has been no collective bargaining agreement in effect between the parties. However, the parties agree that the terms of the 1996-1998 collective bargaining agreement will be used in the determination of this grievance. A copy of this grievance was attached as Exhibit 2.

3. The Firefighters of the Village of Greendale have a collective bargaining agreement covering 1999-2001, in full force and effect, the health insurance provisions of which were attached as Exhibit 3.

4. The Firefighters, in 1983, went to interest arbitration and received an award from Arbitrator Stanley Michelstetter, wherein they were given health insurance for retirees with 50% of the premium paid by the Employer. A copy of said decision was attached as Exhibit 4.

5. Subsequently, the Firefighters, in 1986, voluntarily entered into a collective bargaining agreement with the Village that increased the 50% payout for health insurance for retirees to 75%.

6. The Village and the Greendale Firefighters Association went to interest arbitration over the Firefighters 1988-89 collective bargaining agreement and one of the issues pertained to a change in the health insurance contributions made by the Village for retirees. The decision was rendered on October 24, 1988, by Arbitrator Neil M. Gundermann. A copy of the decision was attached as Exhibit 5.

7. Since 1983, the Village payments toward the health insurance premiums for retired firefighters have been a percentage of whatever premium was in effect, including any increases in premium subsequent to the date of retirement.

8. The Local Association had a collective bargaining agreement in full force and effect from 1990 through 1991 which provided in Section 17.02(A) that "the Village will pay 75% of the specific dollar premiums listed in Section 17.01."

9. The Village and the Local Association proceeded to grievance arbitration to have the above language in Section 17.02 interpreted by Arbitrator Amedeo Greco. A grievance arbitration award was issued by Arbitrator Amedeo Greco on the 9th day of April, 1992, and a copy of said decision was attached as part of Exhibit 2.

10. The language in Section 17.02(A) of the 1990-1991 collective bargaining agreement remained the same in the 1992-1993 and 1994-1995 agreements with the Local Association. Copies of the health insurance provisions in the 1992-1993 agreement and in the 1994-1995 agreement were attached as Exhibits 5A and 5B.

11. The provisions in Section 17.02(A) of the 1996-1998 collective bargaining agreement differ from the provisions contained in Section 17.02(A) of the 1994-1995 collective bargaining agreement. A copy of Section 17.02(A) of the 1996-1998 agreement was attached as part of Exhibit 1, page 19, lines 12 through 23 and page 20, lines 1 through 2.

12. The 1996-1998 collective bargaining agreement was the result of a voluntary agreement ratified by both parties.

13. On March 30, 1999, Village Manager, Joseph Murray, sent a letter to William Bergeman, retired police officer for the Village, indicating that the health insurance to be paid by the Village would be based on the health insurance premium in effect at the time of his retirement, and the Village payment would not fluctuate either up or down during his retirement. A copy of this letter was attached as Exhibit 6.

14. On April 2, 1999, Labor Consultant, Robert E. Blumenberg, sent a letter attaching grievance #99-15 to Chief David Leack contesting the letter sent to William Bergeman. A copy of this letter was attached as Exhibit 7.

15. On April 8, 1999, Chief of Police David Leack responded to grievance #99-15 in writing, denying the grievance. A copy of said response was attached as Exhibit 8.

16. On April 12, 1999, Consultant Blumenberg moved grievance #99-15 to Step 2 by letter to Joseph Murray, Village Administrator. A copy of this letter was attached as Exhibit 9.

17. On May 4, 1999, Village Manager Joseph Murray responded to grievance #99-15 denying said grievance. A copy of this letter was attached as Exhibit 10.

18. The Association and the Village, on May 14, 1999, requested that Arbitrator Karen Mawhinney be appointed to resolve the dispute. A copy of said letter was attached as Exhibit 11.

19. By written confirmation dated June 2, 1999, Arbitrator Karen Mawhinney established a hearing date of August 12, 1999, at 10:00 a.m. at the Police Department in Greendale, Wisconsin. A copy of said letter was attached as Exhibit 12.

20. Neither party has made any procedural objections in respect to grievance #99-15, except for the waiver of objection to arbitration referred to in Item 2 above.

ADDITIONAL BACKGROUND and TESTIMONY

The issue centers around a dispute of whether the Association and the Village agreed that the Village's contribution for health insurance premiums for retirees would escalate or float with the current rate, or whether the Village's level of contribution was fixed at the time of an employee's retirement. The contract language will be noted more fully in the Discussion section of this Award.

In 1992, the parties asked Arbitrator Amedeo Greco whether the Village should pay 75% of the premiums for retirees including any escalator costs, or whether there was a cap of 75% based on the premiums in effect at the time of one's retirement. Arbitrator Greco denied the grievance, finding that the contract language in effect at the time was unclear, that past practice favored the Village. Arbitrator Greco further noted that the firefighters' language differed from the police contract language by pegging the Village's contribution to a percentage which automatically rises rather than a fixed dollar amount referred to in the police contract.

The Firefighters and the Village went to interest arbitration in 1983 when the sole issue was the health insurance for retirees. Arbitrator Stanley Michelstetter found in favor of the Union (Jt. Ex. #4). The parties returned to interest arbitration in 1988 before Arbitrator Neil Gundermann. The Village attempted to insert the specific dollar amount to health insurance premiums for retirees in order to fix its cost at the time of their retirement. Arbitrator Gundermann rejected the Village's proposal on retirees' premiums and accepted the Union's final offer (Jt. Ex. #5).

The Association's contract for 1992-1993 (Jt. Ex. #5A) shows that the Village would pay 75% of the specific dollar premiums listed in Section 17.01 for retirees. The same language, although with different dollar amounts, appeared in the 1994-1995 labor contract (Jt. Ex. #5B).

Blumenberg's Testimony

Robert Blumenberg is a labor consultant with the Labor Association of Wisconsin, Inc., and was the chief negotiator for the Association at the bargaining table when the contract language in dispute was being negotiated. Detectives Lee Kelm and Robert Malasuk were on the bargaining committee. Malasuk was the president of the Association and Kelm was a Board member. The Village's negotiators were former Village Manager Frank Pascarella and former Chief of Police David Leack. Pascarella was the spokesman for the Village's bargaining team.

The Association proposed in bargaining for the 1996-1998 contract what the parties have referred to as the "escalator clause" – a proposal to eliminate the Village's fixed contribution at time of retirement and allow the contribution to escalate (or fluctuate up or down) with changes in the premium after retirement. The parties met five times, and Blumenberg testified that wages and health insurance for retirees were the two primary issues. Blumenberg said that the Association was trying to achieve parity with the firefighters' language and eliminate the language that referred to a fixed dollar amount.

The Village's priority in that round of negotiations was for co-pays on health insurance premiums. On August 30, 1995, the Village proposed that employees pay 20% of the premium, which it later dropped to 12.5% on October 4, 1995. Blumenberg prepared a document showing the status of negotiations as of October 4, 1995, which indicates that the Association dropped its proposal for an escalator clause.

Blumenberg testified that the Village initially balked at the proposal for the escalator clause. By November 1, 1995, when the parties had their third or fourth meeting, the Village proposed a retirement insurance contribution that gave officers a sliding percentage scale based on the number of years on the job. It started with a 50% level after 10 years, up to 75% after 25 years. Blumenberg's notes and recollection show that this was a proposal made by the Village. He recalled asking the Village's negotiators if the Association agreed with the proposal, would it take care of the escalator problem, and Pascarella said it would. The firefighters' contract had no such sliding scale, and all get the 75% contribution. Blumenberg stated that the trade-off for the escalator clause was to take the sliding scale. His notes do not show the word "escalator" in them. The Association counter-proposed an 80% and 100% payout with 28 and 30 years of service, respectively. During the November 1, 1995 bargaining session, the Village proposed a $25 co-pay on insurance premiums, and then moved to a co-pay only for new employees.

Blumenberg prepared a status report on November 3, 1995, and sent it to Pascarella. The open issues included the Village's demand for a co-pay of premiums for new employees, which the Association continued to reject, and the Village's proposal for a tier system for retirees' health insurance. Blumenberg testified that because the parties were agreeing to delete the language regarding the specific dollar amount listed in Section 17.01, it was understood that the premiums were no longer frozen or fixed at the time of retirement.

The parties reached a voluntary agreement with the sliding scale proposed by the Village, and all tentative agreements were concluded by December 12, 1995. Blumenberg was aware that the sliding scale on retirees' insurance could have an adverse effect on Officer Gerald Petushek, who could have retired with 75% of his insurance paid in the old language. Under the new language, Petushek would not have enough years of service to hit the 75% level and would only have reached the 60% level. Petushek was on the bargaining committee and supported the sliding scale because the Association believed the language included the escalator clause. The Association ratified the agreement near the end of December of 1995.

The parties signed the labor agreement on January 30, 1996. Village President Bernie Schroedel and Frank Pascarella signed for the Village, and Robert Malasuk, Lee Kelm, and Blumenberg signed for the Association.

Kelm testified that Blumenberg clearly told the Village that the language change proposed by the Association would involve an escalator clause and it was discussed back and forth several times. Kelm understood the Village's position to be that it was willing to go along with the escalator like the firefighters had in exchange for the sliding scale. Although the police officers did not achieve parity with the firefighters, Kelm said that they felt the only way to get the escalator clause was to meet the Village half way by agreeing to the sliding scale.

Pascarella's Testimony

As noted above, Pascarella was the Village Manager and chief spokesman in contract talks for the contract language at issue here. At the time of the instant arbitration hearing, he was the Polk County Administrator and Finance Director. He left the Village in October of 1996, without completing his own contract and was asked to resign from the position as Village Manager.

Pascarella recalled that the Association wanted to change the language in Section 17.02 to get some type of equality with the firefighters for retirees' health insurance. The firefighters were paying 25% of the premium, and the escalator clause meant it could change every year. Pascarella testified that the Association considered parity with firefighters to be a high priority in negotiations. He agreed with Blumenberg that the Village initially objected to the proposal for an escalator clause, and he also agreed that he proposed the sliding scale on November 1, 1995.

Pascarella testified that the proposal with the sliding scale contained an escalator clause, and that after an officer retired, he or she would receive the same escalation in contributions as contained in the firefighters' contract. The fact that the Village's proposal contained an escalator clause was clearly communicated to the Association.

After the officers ratified the tentative agreements, Pascarella recommended that the Village Board pass it. In a closed session, Pascarella discussed with Board members the issues of wage rates, retirement issues and the inability of the Village to get cooperation from the Association regarding co-pay on premiums. Pascarella presumed he told Board members that they had reached a tentative agreement with sliding scale which included an escalator clause. He thought he told Board members in an executive session that the police officers would be consistent with the firefighters, but he may not have used the word "escalator" or "tiered." Pascarella testified that it was his intent that the language negotiated in the 1996-1998 contract with the Association contain an escalator clause.

David Leack retired as Chief of Police from the Village in 1999, having been Chief for 14 years and an employee of the Village for 35 years. He attended all of the negotiation sessions for the 1996-1998 contract. Leack analyzed the Association's proposals and recommended that the Village reject the Association's proposal for retirees' insurance. Leack noted in his written recommendations that the language had been upheld in an arbitration award (the Greco Award). Pascarella was aware that initially, the Village Board members were opposed to changing the basis that had been used for retirees' insurance contributions. There were lots of discussions about trade-offs with both parties wanting changes in insurance benefits. While the Village moved from a 20% co-pay to a 12.5% co-pay to a $25 co-pay and then for new employees only, the Association was adamant in refusing to accept any co-pay.

Leack did not recall Pascarella granting the escalator clause by using those words. He was aware of the sliding scale or tier system but did not understand it to be coupled with the escalator clause. He testified that Pascarella told him the tier system would save the Village some money for early retirees, but he was unclear at the hearing about how it would save money. Leack did not clearly remember whether it was discussed in negotiations that additional premiums would be picked up by the Village. Leack knew that Officer Petushek – who was on the bargaining committee – would have been entitled to 75% of a fixed dollar amount with ten years of service under the old contract. Under the proposal made by the Village, Petushek would have been entitled to 60% of his premium paid. Leack testified that he did not think Petushek would have agreed to a proposal that reduced his benefit by 15%, and that Petushek might have voiced that concern at the bargaining table. Leack did not recall whether Pascarella answered his concern by stating that if the Association took the sliding scale, it would get the escalator clause. He admitted it was possible that Pascarella said just that.

Pascarella stated that he had conversations with Attorney Walsh in preparation for this hearing, and during those conversations, he indicated to Walsh that the Village had not given up any type of an escalator clause. He also told Walsh that it would take him awhile to think

of what transpired four years ago. Three days before the hearing, Pascarella told Walsh that he did not believe the Village had given up an escalator clause. However, he explained that in the last 72 hours before the hearing, he thought about what transpired in the negotiations and reviewed documents sent by the parties in this dispute. He recalled that when it became apparent that the Village was not going to get any kind of co-pay on the premium, the Village negotiators reached a comfort level restructuring the retiree benefit package for employees. Pascarella did not recall whether he presented a written document to the Board during a closed executive session on January 2, 1996, when discussing the settlement.

Dianne Robertson was Clerk-Treasurer while Pascarella was the Village Manager, and she became the acting Village Manager from October of 1996 through May of 1998. She was the Village Administrator of Thiensville at the time of the hearing in this matter. She understood that the firefighters' contract always had a provision whereby the Village paid 75% of the premium currently charged to the Village, and this amount would escalate after one's retirement. Her understanding of the other Union contracts was that the Village paid 75% of the premium at the time of retirement, and this amount stayed the same until the retiree was eligible for Medicare.

During the first part of 1996, Robertson took copies of the health insurance portion of each contract with the various Unions and asked Pascarella how to implement them. She was specifically looking at a change in the calculation of retirement before 25 years of service in the AFSCME contract, and she asked Pascarella whether there were any other changes, and he told her there were not. Her testimony was that Pascarella told her there were no other changes for all of the contracts, including the police contract. She testified that she asked him whether any of the other unions got the same level of benefit that firefighters had, and he replied no, other than the sliding scale for years of service.

Pascarella recalled talking with Robertson about an employee who was working under the AFSCME contract and getting near retirement, and he told her there was no change in the AFSCME contract. He did not recall whether Robertson talked with him about the change in the police officers' contract, and he presumed that if he talked to her, he would have told her that there were changes in it.

The Trustees' Testimony

George Vranes has been a trustee of the Village for 16 years and is familiar with some of the history of this case, including the decision by Arbitrator Greco and the escalator clause that was in the firefighters' contract. Vranes testified that for the last ten years, the Board wanted to get a co-pay on premiums from current employees. The Board was against giving an escalator clause to retirees. Vranes attended one bargaining session but did not recall when it was and believed that the issue of retirees' insurance did not come up at that meeting.

Vranes had only a general recollection of the police contract settlement being discussed in an executive session in January of 1996. He recalled Pascarella mentioning the inability of the Village to get a co-pay in insurance premiums. He testified that Pascarella did not indicate that there was a change regarding retirees' insurance, but did not recall anything about the tier system. He was positive that Pascarella did not mention that the Village gave an escalator clause because he would have reacted strongly to it if it had been brought up. Vranes testified that he would not have approved the contract if the Village gave up an escalator clause. Pascarella did not give the trustees a written document with the proposed settlement. Vranes stated that whether the matter regarded contracts or other Village business, they received presentations on an oral basis rather than combined with written documents. Vranes did not ask Pascarella about why the term "specific dollar" was deleted from the contract, why the sliding scale was put into the contract or what impact the scale had on the Village.

Scott Leonard has been on the Village Board for nine years and currently serves as its president. His testimony was similar to that of Vranes, recalling the Greco arbitration decision, agreeing that the Board wanted a co-pay for insurance. Leonard's recollection of the January 1996 executive session is that Pascarella told the trustees that he was disappointed that they could not get a co-pay. Pascarella listed the different things he tried to do but that the police would not even pay $5 a month. Leonard testified that they agreed to go with the three-year contract with a slight escalator in wages for the second year to get some parity with other communities in the ranking, but there was no discussion of any other concessions or tier increases on health. He testified that Pascarella did not tell them that there was a change in the retiree's insurance or that there was an escalator clause. Leonard said he would not have voted for the contract if he had been told that. Pascarella told them about the cost of arbitration versus the cost of increased wages for the contract, and they decided it would not be worth the cost of arbitration. Leonard did not review the contract before it was signed. He did not ask Pascarella why the term "specific dollar amount" was deleted from the contract or why the sliding scale was included. He was not aware that a sliding scale was put into the contract. He had never read the complete contract and did not sit in on any of the negotiations that produced it. Leonard testified that he was not aware of any specific changes with the police contract.

Bernie Schroedel was the Village Board President for 14 years, ending his term in 1998, and a trustee between 1980 and 1984 before that. He signed the 1996-1998 contract between the Association and the Village, along with Pascarella, although he did not remember specifically signing the contract. Schroedel was aware that the firefighters had an escalator clause for retirees' insurance and that the Village tried to eliminate it but was unsuccessful. He was aware that the police were unsuccessful in getting the escalator clause in grievance arbitration. The Board was adamant about not giving away an escalator clause for retirees' insurance.

Schroedel did not attend any negotiations with the police. He had a general recollection of the January 1996 executive session in which Pascarella stated that he was not going to be able to get a co-pay on insurance premiums. Schroedel testified that Pascarella did not talk

about insurance at all, at least about putting an escalator clause in, or he would have voted against the contract. He did not recall any mention about the sliding scale and was not aware of it. He did not read the contract before he signed it.

The trustees all agreed that Pascarella had the authority of the Village Board to enter into negotiations with the Police Association for a collective bargaining agreement, and that he was the chief spokesperson on behalf of the Village. He had the authority to enter into a tentative agreement subject to the Board's approval. The trustees speculated that if they had obtained a co-pay from employees for the insurance premiums, they might have been receptive to an escalator clause for retirees.

When the 1996-1998 contract was about to expire, the Wisconsin Professional Police Association (WPPA) sought to represent the officers in the Village. On October 28, 1998, the WERC conducted an election in which the vote was split and neither Union received a majority of the ballots cast. The parties delayed their negotiations until the election was held. Negotiations for the successor agreement started in November of 1998. The Association team consisted of Blumenberg, Kelm and Pat O'Neill. Attorney Roger Walsh represented the Village, and the current Village Manager Joseph Murray was also present at the negotiation sessions. The Village proposed to change Section 17.02(A) to fix the Village's contribution for retirees' health insurance premiums at the specific dollar premium in effect at the time of retirement. Walsh told the Association that the Village did not agree that the language in place included an escalator and it just wanted to firm that up. The Association rejected the Village's language, stating that it had just achieved the escalator language and did not want to go backwards. The parties had not resolved the contract dispute by the time of the hearing in the instant case, and final offers had been certified for interest arbitration. The Village did not put its proposal on retirees' insurance in its final offer for interest arbitration.

On May 13, 1999, Murray sent Blumenberg a letter stating that the Village's withdrawal of its proposal on Section 17.02 was not to be construed as an unsuccessful attempt to get the language, and that the proposal was to clarify an ambiguity. Murray noted that the Village consistently interpreted the contract language to fix the contribution at the time of retirement. The grievance in the instant case had been filed on April 1, 1999.

THE PARTIES' POSITIONS

The Association

The Association argues that the Village is asking the Arbitrator to render a decision based on outdated language found in the expired labor contracts while ignoring the recent bargaining history which led to the clear and unambiguous language in the 1996-1998 collective bargaining agreement. The Village is asking the Arbitrator to excuse it from honoring the terms and conditions on the contract simply because the trustees were ignorant of

the fact that their designated representative, Frank Pascarella, negotiated an escalator clause into the agreement in return for the sliding percentage scale. The Association's position is supported not only by its chief negotiator, Robert Blumenberg, but also by Pascarella.

There can be no doubt that Pascarella was the Village's proxy for negotiating with the Association over the 1996-1998 collective bargaining agreement. The Association asserts that the parol evidence rule dictates that the testimony offered by the trustees should be given little, if any, consideration. While the three trustees testified they were unaware of the fact that the parties incorporated an escalator clause into the contract, that testimony is irrelevant. The Arbitrator is being asked whether or not the Village is abiding by the terms of the collective bargaining agreement, according to the issue. The Arbitrator is precluded from re-writing mutually agreed upon contractual language simply because a party to the agreement failed to read and understand the contents of it before signing it. The Association finds it hard to believe that the three elected officials with a combined 39 years of Board experience would take their fiduciary duties so lightly as to sign a collective bargaining agreement without reading and understanding it. The fact that the Village does not like the outcome is irrelevant to the case at hand.

The Association negotiated in good faith with the Village Board's representative. The testimony of the trustees would indicate that the Village wants the Arbitrator to believe that the Association gained the escalator clause through chicanery and the Arbitrator should wipe it out as if it were merely a typographical error. Nothing could be further from the truth. The Association presented its proposals in writing to the Village through its designated chief spokesperson, Pascarella. Blumenberg and Kelm gave unrefuted testimony that the escalator clause was discussed in depth from the very beginning of the negotiation process. The Association should not be forced to endure any negative consequences due to the Village's inability to effectively communicate with its spokesperson.

The Association points out that the Village demanded – and got – a quid pro quo for the escalator clause. The Association accepted the sliding scale as proposed by the Village in return for the escalator clause now found in Section 17.02 of the agreement. Officer Petushek, a member of the bargaining team, agreed to the sliding scale, despite a reduction in the percentage of premium paid. The only logical reason the Association accepted the sliding scale would be to obtain the escalator clause now codified in Section 17.02.

The Association asserts that the language in question is clear and unequivocal. In order to make the language even more unequivocal, the parties agreed to eliminate the following phrase previously found in Section 17.02 of the 1994-1995 bargaining agreement: "The Village will pay seventy-five percent (75%) of the specific dollar premiums listed in Section 17.01." That phrase was voluntarily eliminated from the 1996-1998 contract, supporting the Association's contention that an escalator clause was contemplated by the parties who negotiated the contract. Murray, who was not present for those negotiations, has an untenable interpretation of Section 17.02. The language in the firefighters' agreement

contains an escalator, and it is the same language now found in Section 17.02 of the police agreement. If the Village is unhappy with the current language, it should seek a modification at the bargaining table and not through a grievance arbitration award.

The Village

The Village asserts that the Association did not obtain the identical language to that contained in the firefighter agreement. The firefighters' agreement states: "The Village will pay seventy-five percent (75%) toward the cost of the premium." The police agreement for 1996-1998 merely refers to the "amount of payment" and "50% payment," etc., but there is no specific language that indicates what the word "payment" refers to. There is no specific language which states that the Village's payment is based on whatever the health insurance premium happened to be. The revised Section 17.02(A) is ambiguous as to what the payment is.

The Village argues that the bargaining history shows that the Association withdrew its proposal to obtain the escalator provision. Blumenberg's status report on October 4, 1995, shows that the Association dropped its proposal relating to retirees' insurance. While Blumenberg claims that the Village nevertheless offered the escalator clause at the November 1, 1995 meeting, his notes are devoid of any mention of an escalator provision being offered by the Village. One would think that such an important proposal would have been noted. The Village argues that the sliding scale or tiered proposal was an attempt to get some relief in the area of health insurance, since its priority issue of co-pays was being rejected totally by the Association. There was no connection between its proposal for a tiered system and an escalator provision.

The Village states there is no merit in the Association's claim that the tier system was a quid pro quo for an escalator clause. While the Association claims that the tier system amounts to a reduced benefit to some retirees, a 50% payment on an escalator basis will amount to a larger benefit than a 75% payment frozen at time of retirement, computing premiums under the State Health Plan and using an 8% increase in premium for each year. The Village views the 8% increase as a conservative estimate, given current trends. Using an 11 year period (until an employee is eligible for Medicare), the Village calculates that under the Humana HMO, the retiree frozen at 75% on a family plan receives $52,607, while the retiree with a 50% escalator receives $53,071. Under the Family Health HMO, the retiree with 75% frozen receives $47,983 and the retiree with a 50% escalator receives $48,407. The Village notes that the Humana HMO plan actually increased 20-21% for the year 2000, and the Family Health HMO increased between 11.9-13.8%, depending on single or family premiums.

The Village further calculated that Petushek – if he retired on March 4, 2000, at age 57 – would be eligible for eight years of coverage with a 60% payment of the Family Health HMO. He would get $42,060 under a 60% escalator provision, using an 8% increase per year, while getting $39,542 under the 75% frozen system. Thus, he and every other employee

would gain under an escalator clause, even those who were employed by the Village for only ten years. It was a win/win arrangement for the Association and a lose/lose arrangement for the Village. Therefore, the Association made no concession by agreeing to a tier system and gave no quid pro quo. The Village believes that the tier system was what the Association was willing to make to get the Village to drop its co-pay proposal.

The Village further contends that Pascarella is a totally incredible witness. His testimony was contradicted by Board members, the former Clerk-Treasurer, the former Police Chief, and the Village's Labor Attorney. Chief Leack testified that Pascarella never made any proposal that contained an escalator clause. Robertson testified that she asked Pascarella about the police contract and he said there was no change in the premium although there was a sliding scale. Village Board members Vranes, Leonard and Schroedel all testified that Pascarella never told the Board that the settlement agreement included granting an escalator clause. On two occasions before the hearing while the Village's Labor Attorney Walsh was investigating the grievance, Pascarella told Walsh that he had not proposed to give an escalator clause to the Association during negotiations for the 1996-1998 bargaining agreement. The Village concludes that Pascarella lacks credibility and his testimony must be dismissed.

Further, the Village asserts, even if Pascarella proposed an escalator clause, there was no meeting of the minds on this issue between the parties to the agreement – the Association and the Village Board. The contract is between those two parties. The Village Board is the body that approves contracts on behalf of the Village and must consider the final ratification or approval of the collective bargaining agreement at a meeting open to the public, pursuant to State law. Pascarella had no authority on his own to bind the Village. It appears that he attempted to hide the escalator provision from the Village officials. Vranes said he was "positive" that he was not told that there was an escalator clause included in the agreement. Leonard and Schroedel testified similarly.

One of Pascarella's job duties as Village Manager was to prepare agenda for Village Board meetings. Village records indicate that there was no open meeting in December of 1995, or in January or February of 1996, at which the Board took a vote to approve the 1996-1998 police contract. There was no vote in open session to approve it. If Pascarella made an offer of an escalator clause, he had no authority to make it and he failed to convey that offer to the Village Board as well as to other Village officials.

The Village says – something is wrong with this picture. Whatever Pascarella did or did not do cannot be binding on the Village. There was no meeting of the minds between the Association and the Village that the 1996-1998 police contract contained an escalator provision for determining the amount of the Village payment toward retirees' health insurance premiums. The Village Board did not ratify such an agreement, and the escalator provisions cannot be imposed upon the Village, it asserts.

The escalator provision did not make economic sense to the Village, because an employee with 25 years of service would get about 58% more under the escalator clause than under a 75% frozen provision. Over 11 years and under the Humana HMO Plan, the dollar

amount is $26,999 more for a family plan, and $24,727 under the Family Health HMO Plan. One of the main objects of the Village was to get some type of co-pay on premiums. There is no reason for the Village to have agreed to an escalator clause for retirees, especially since the Association had already dropped its request for that benefit at the October 3, 1995 meeting.

Finally, the Village submits that the contract provision at issue does not specifically state that there is an escalator in the premium to be used to determine the amount of the Village's payment toward a retirees' premium. The new language merely uses the word "payment" and does not specify what that payment is. It is ambiguous and unclear. It is inconceivable that the trustees would have been able to realize that an escalator clause was contained in the new contract language unless Pascarella had specifically informed them of that escalator clause. This he did not do.

In Reply

The Association

The Association points out that the proper issue was stipulated prior to the hearing, and a substantial portion of the Village's brief addresses concerns which are irrelevant to the instant case and were not put forth during the hearing. For instance, the Village, on page 11 of its brief, made an expense argument and then devoted an entire section in its brief bemoaning the fact that the escalator provision did not make economic sense. The Arbitrator is to interpret and apply the language found in Section 17.02, and arguments regarding increases in premiums as well as the economic sense of the agreement are inappropriate and should not be considered. Case law has addressed the issue, the Association notes, and an arbitrator is not empowered to relieve a party of a bad bargain or to improve an existing contract. The grievance procedure precludes the Arbitrator from considering extraneous factors, such as the cost of the escalator in Section 17.02, when rendering a decision. The arguments regarding cost and economic sense are proper in an interest arbitration forum.

The Association also takes issue with the Village's argument that the language is ambiguous on page seven of its brief. The former Chief of Police, in direct testimony, understood that the Association was looking for an escalator clause. The deletion of the phrase "listed in Section 17.01" from the 1996-1998 agreement, coupled with Leack's testimony, renders the Village's ambiguity argument null and void. The Village then provided a fatal blow to this argument wherein it clarified the intent of proposal Number 10 and notes that the effect of the proposed change would have been to have Section 17.02(A) read: "The Village will pay seventy-five percent (75%) of the specific premiums." Clearly, this was the Association's attempt to get identical language to the firefighters' contract, as suggested by Arbitrator Greco in his award.

The Association notes that the Village spent an inordinate amount of time trying to impeach the testimony of Pascarella – nearly 50% of its brief lambasted Pascarella. When all

is said and done, the fact remains that the issue before the Arbitrator is not whether Pascarella and the Village communicated effectively with each other. The issue is whether or not the language found in Section 17.02 includes an escalator clause.

Further, Pascarella's testimony is consistent with Blumenberg's and Kelm's testimony that an escalator clause was put into effect when the parties agreed to eliminate the phrase "listed in Section 17.01" from Section 17.02 in return for the sliding scale. The Village ratified and signed the 1996-1998 collective bargaining agreement and must now abide by the terms and conditions found therein. The Village stipulated that it ratified the agreement in the Statement of Fact offered as Exhibit #13. The Association has no moral or legal obligation to see that the Village conducts its business in a fashion consistent with the open meeting laws of the State. The Association fulfilled its duty to bargain in good faith with the Village's designated spokesperson in order to obtain the escalator clause. The Village's current dissatisfaction should not result in the Association being penalized through the loss of its escalator clause.

The Association also takes issue with the cases cited by the Village to support its claim that there was no meeting of the minds between the parties to this agreement and thus no escalator clause. The *Kimberly* case states that ". . . such an agreement would not be an enforceable collective bargaining agreement until it has been ratified by all parties to the agreement." The difference is that in this case, the Village and the Association ratified and signed the 1996-1998 collective bargaining agreement. Village Board President Schroedel legally bound the Village to the terms and conditions found in the 1996-1998 agreement when he signed the agreement. The Board cannot be excused from the terms because they failed to read and understand the contents of the document before signing it. An Arbitrator may not excuse the Board from honoring the terms and conditions because the Board members have made an unfounded allegation that they were bamboozled by their own chief spokesperson.

The Association acknowledges that it withdrew proposal Number 10 in October of 1995 regarding retirees' health insurance. Nothing precludes either side from adding to, deleting from or modifying their proposals. This includes re-introducing proposals which have been withdrawn earlier.

The Village

The Village states that the Association makes two erroneous assumptions in its initial brief. First is that the language at issue is clear and unambiguous. The second erroneous assumption is that Pascarella can bind the Village without the formal approval of the Board. The Village has discussed the issue of ambiguity previously but some repetition is needed, it feels. Under the old contract, the language stated: "The Village will pay seventy-five percent (75%) of the specific dollar premiums listed in Section 17.01." The firefighters' contract said: "The Village will pay seventy-five percent (75%) towards the cost of the premium." Arbitrator Greco previously held that the Association failed to get identical language to the firefighters.

The Association's initial proposal would have read: "The Village will pay seventy-five percent (75%) of the specific dollar premiums." Although that language would not be identical to the firefighters' contract, the Association negotiators told the Village that the proposal would create an escalator provision. All of the testimony cited by the Association to support its position that the Association was seeking an escalator provision referred only to the Association's initial proposal Number 10. However, the Association dropped proposal Number 10 at the October 3, 1995 meeting. Thus, the proposal to revise Section 17.02 to include an escalator was no longer on the table.

The resulting provision does not specifically make any reference as to what the payment is, the Village reiterates. The firefighters' contract provides that the payment will be 75% towards the cost of the premium. There is no reference to the cost of the premium in the police contract. The payment referred to could just as easily be the payment that the Village made in the past, a payment based on the premium in effect at the time of retirement. Therefore, the new provisions are totally unclear and ambiguous.

Contrary to the Association's allegations that the trustees' testimony is irrelevant, the Village argues that it is very relevant and critical to the issue of whether the Village Board approved an escalator provision. Under Wisconsin Statutes, it is the Village Board in which shall be vested all the powers of the Village. The Board, not Pascarella, can bind the Village. Pascarella never gave an escalator clause to the Association in negotiations, and his testimony that he did should be rejected because of lack of credibility. Even if he had included an escalator clause, he had no authority to make that proposal and he never disclosed it to the Board. It is not binding on the Board because the Board did not approve it. There was no meeting of the minds for an inclusion of an escalator clause.

DISCUSSION

The contract language at issue in this dispute is the following language from the 1996-1998 collective bargaining agreement:

> **ARTICLE XVII – INSURANCE**
>
> **SECTION 17.01 – HEALTH INSURANCE:** Employees shall be provided with medical and hospitalization insurance provided by the Employer for full-time employees. Health insurance coverage will remain as under the Village HMO and non-HMO contracts in effect on January 1, 1998, or their equivalent. The Employer shall pay up to Five hundred fourteen dollars and fifteen cents ($514.15) per month toward the cost of the family premium and up to One hundred ninety dollars and seventy-five cents ($190.75) per month toward the cost of the single premium. If an employee elects to be covered under the Village's non-HMO coverage, the difference in premium cost between the non-HMO coverage and the above premium amounts, if any, will be deducted from the employee's paycheck. In the event during the contract term

the premium cost for any of the Village's HMO contracts exceeds the premium listed above, the Village will pay the increased cost and the above dollar amounts will be automatically increased to reflect the new amounts. The Village will send written notification to the Association of such new amounts when they become available. A retired employee may continue to participate in the Village's group health insurance program for active employees until the retired employee becomes eligible for Medicare, provided the insurance carrier agrees to permit the retired employee to continue in such group program and provided that the retired employee pays the full premium for such insurance, unless Section 17.02 applies. Such payment is to be made monthly on or before the 15th of each month. If applicable, this payment can be made from an employee's health insurance premium account pursuant to Section 10.07.

SECTION 17.02: The Village agrees that employees who retire under the Wisconsin Retirement System as per guidelines set by the Wisconsin Retirement System, or older, during the life of this contract shall be continued for the balance of their lives as members of the group health insurance plan applicable to the collective bargaining unit under the following conditions:

A. The amount of payment made by the Village will be based on the number of years creditable service with the Village using the following formula:

With ten (10) years of service:	50% payment
With fifteen (15) years of service:	60% payment
With twenty (20) years of service:	70% payment
With twenty-five (25) years of service:	75% payment
Employees who retired under a disability retirement under Chapter 40 of the Wisconsin State Statutes:	75% payment

B. The coverage will be for retired employees and family. Family is defined in health plan in effect at time of retirement.

C. Coverage would be in effect until retired employee qualifies for Medicare.

D. Coverage would not include a retiree's spouse or family after his death.

E. Coverage would not include a retiree while he is covered by another health plan of equal or better benefit at no additional cost to him.

F. The Employee will issue a check to an insurance company of the retiree's choice if the employer has no policy or plan for which retiree is eligible. The retiree shall pay the Village a three dollar ($3.00) per month administrative fee for this service.

The above language replaced some of the language in the 1992-1993 and 1994-1995 labor contracts. The most relevant portion of the prior contracts was Section 17.02, which stated:

> The Village agrees that employees with ten or more years of service who retire under the Wisconsin Retirement System at age 53 (with twenty-five (25) years of creditable service) or older during the life of this contract and employees who retire during the life of this contract, under a disability

> retirement under Chapter 40, Wisconsin Statutes, shall be continued for the balance of their lives as members of the group health insurance plan applicable to the collective bargaining unit under the following conditions;
>
> A. The Village will pay seventy-five percent (75%) of the specific dollar premiums listed in Section 17.01.

The specific dollar premiums referred to in Section 17.02 of the 1992-1993 agreement were $396.60 for the monthly family premium and $149.40 for the monthly single premium. The specific dollar premiums in the 1994-1995 agreement were $464.35 for the family premium and $172.25 for the single premium.

While the Village argued that the Firefighters' labor contracts were not relevant, the history – particularly the interest arbitration in 1988 (Jt. Ex. #5) – shows that the Village knew it had to obtain certain language to fix its contribution at the time of retirement. It knew that it had not previously done so with the Firefighters' Association and it attempted to do so in the 1988-1989 labor contract but failed in interest arbitration. Joint Exhibit #3, the 1999-2001 agreement between the Village and the Firefighters, has the following language regarding retirees' insurance:

> **17.02** The Village agrees that employees with ten (10) or more years of service who retire under the Wisconsin Retirement System at age fifty-three (53) with twenty-five (25) years of creditable service (as provided by Chapter 40, Wisconsin Statutes), or at age fifty-four (54), or older during the life of this Contract, and employees who retire during the life of this Contract under a disability retirement under Chapter 40, Wisconsin Statutes, shall be continued for the balance of their lives as members of the group health insurance plan applicable to the collective bargaining unit under the following conditions:
>
> a) The Village will pay seventy-five (75%) toward the cost of the premium.
>
> . . .

The language in the Association's contract for 1996-1998 is nearly the same as in the firefighters' contract. The parties deleted the phrase in the old contract in Section 17.02(A) that stated: "The Village will pay seventy-five percent (75%) of the specific dollar premiums listed in Section 17.01." The language in the 1996-1998 contract has only the percentages listed, just as the firefighters' contract lists a percentage.

Although the language in dispute does not say that the Village's contribution levels include any increases after the date of retirement, the parties deleted the language that froze the Village's contribution at the date of retirement. The parties deleted the phrase "of the specific dollar premiums listed in Section 17.01," and in doing so, they knew that the Village's contributions would float or escalate with the premium in effect, not at the time of retirement, but at the time of the payment of the premium. Moreover, the parties agreed to a percentage, and the firefighters have a percentage. While the Village argued that the police contract does

not state what the word "payment" refers to, the firefighters' contract likewise does not state what premium is to be used. In the firefighters' contract, the percentage of 75% means that the Village pays 75% of the premium, period, not just 75% of the premium in effect at the time of an employee's retirement. The same is now true in the Association's contract – the Village must pay from 50% to 75% of the premium, with the only difference being the years of service of employees. It must pay the percentage on whatever the premium is, not the premium in effect at the time of retirement.

The Village does not explain why the parties deleted the phrase "of the specific dollar premiums listed in Section 17.01," a phrase that clearly differed from the firefighters' contract. The language is clear and unambiguous, particularly to these parties, who have argued over this issue through grievance arbitration, as well as the Village having gone to interest arbitration twice with the firefighters. The Village knew how to get the contribution frozen at the time of retirement. It deleted the language regarding a specific dollar amount, and left a percentage in the contract, which the Village knew would allow the contribution to escalate or float up or down with the premium in effect – not at the time of retirement, but at the time the Village is paying for it. It agreed to a percentage figure without further limiting the percentage figure to anything.

If there were any doubt in this case, all the negotiators confirm that they meant the contract to include the escalator clause.

Therefore, even if the language were ambiguous (which it is not in this case), the bargaining history would clearly render a decision in favor of the Association. While the Village has strongly objected to the testimony of its own former spokesman, Frank Pascarella, his testimony is well corroborated by that of Blumenberg and Kelm, and to some extent, Leack. Leack's testimony tends to support both sides to this dispute – he admits that it's possible that Pascarella told the Association that it would have the escalator if it took the sliding scale, while he denies ever hearing Pascarella say directly that the escalator was being granted. At any rate, the negotiators all knew that the escalator was going into the contract by the deletion of the limiting language in Section 17.02, and the Village's spokesman admitted that it was the intent of the parties to put the escalator clause into the contract.

The Village also claimed that the trustees would not have been able to realize that an escalator clause was contained in the new contract language unless Pascarella had specifically informed them of that escalator clause. The testimony from the trustees shows that they were all well aware of the prior interest arbitration awards involving the firefighters and the grievance arbitration award involving the police officers. Pascarella told them that the police contract would be consistent with the firefighters' contract. The Association made no secret of the fact that it obtained an escalator clause and went to a ratification vote on it. Even if the trustees were not aware of the changes in insurance language, what of it? Parties are held to the contracts that they sign. Otherwise, a party could always claim that he or she had not read the contract and should not have to abide by it. Arbitrators will not reform a contract without a showing that there has been a mutual mistake, not just a unilateral mistake. As stated in

Elkouri & Elkouri, How Arbitration Works (5th Edition), "An arbitrator will not set aside the terms of an agreement simply because, at the time of the signing of the agreement, one of the parties failed to realize the full ramifications of the provision signed."

The same argument holds true for the "meeting of the minds" – parties in arbitration are held to the language in a written collective bargaining agreement. If they do not agree on the meaning of language, they obviously do not have a full meeting of the minds. If the parties always had a real meeting of the minds in a contract, they would never be in grievance arbitration. However, in this case, there was a meeting of the minds – the negotiators at the table agreed on an escalator clause in conjunction with a sliding scale for years of service. The contract deleted language that limited the Village's contribution at the date of retirement and left percentages in the contract. The new contract language was agreed upon, ratified and the 1996-1998 collective bargaining agreement was signed by both sides authorized to sign contracts. The lack of a meeting of the minds occurred internally, apparently, between the trustees and their own manager. Pascarella told the trustees that the police contract would be consistent with the firefighters' contract, and if the trustees did not realize the ramifications of that statement, the Association should not be denied the benefit of the bargain and the benefit of the contract language.

The Association is correct that arguments regarding cost or economic sense or quid pro quos are all fodder for interest arbitration settings but have no relevance in this grievance arbitration. It makes for interesting reading but is ultimately rejected. The parties will be held to the bargain they struck, not the bargain they should have or could have struck.

The fact that the Association dropped its proposal on retirees' insurance once during the bargaining process has no effect in this case. The parties had no tentative agreement on October 3, 1995, and the Village proposed the sliding scale in November of 1995. It was at the November bargaining session that the escalator clause was put back in play. This is confirmed by all the negotiators at the table, including the Village's negotiators (albeit somewhat reluctantly by Leack on cross-examination).

Also, the Arbitrator takes no notice of the Village's proposal for the successor collective bargaining agreement. Whether or not the Village believed it needed a change or a clarification has no impact in this decision. The decision in this matter rests on the language of Article XVII, the importance of the change in the language, the deletion of language that limited the Village's contributions on retirees' premiums, the percentages without limitation similar to the firefighters' contract, as well as the fact that negotiators agreed on their intentions to include the escalator clause. The fact that the language is not identical to the firefighters only favors the Village – the police did not get full parity by getting the 75% for all retirees, but got the sliding scale based on service.

Finally, the Arbitrator has nothing to say regarding open meetings laws. The contract was signed, a Village Board President signed it, he had the authority to bind the Board to the contract, and the Arbitrator is limited to interpreting a section under that contract. The parties have asked:

Is the Village's application and interpretation of Article XVII – Insurance, Section 17.02, as listed in Exhibit #6, consistent with the 1996-1998 collective bargaining agreement between the Village of Greendale and the Labor Association of Wisconsin, Inc.?

I find it is not. The Village has incorrectly relied on the old language and not taken into account the fact that the new language allows the insurance contribution for retirees to fluctuate or float up and down. It is no longer frozen at the time of retirement. That is what the change in the language means, that is what the parties agreed to in negotiations and that is how the parties are to interpret it.

AWARD

The grievance is granted.

The Village is ordered to make whole retirees who were affected by the Village's incorrect interpretation of the 1996-1998 collective bargaining agreement's provision for the Village's contribution to health insurance for such retirees.

The Arbitrator will retain jurisdiction until March 31, 2000, for the sole purpose of resolving any disputes over the scope and the application of the remedy ordered.

Dated at Elkhorn, Wisconsin, this 26th day of January, 2000.

Karen J. Mawhinney /s/
Karen J. Mawhinney, Arbitrator

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