BEFORE THE ARBITRATOR

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

Appearances:

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

Mr. Patrick J. Corraggio, Labor Consultant, The Labor Association of Wisconsin, Inc., 2825 Mayfair Road, Wauwatosa, WI 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 employee 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, and an Award on the procedural issue was rendered on December 16, 1999, wherein the undersigned found the matter timely. Hearing on the merits of the matter was held in Hartland, Wisconsin, on

July 11, 2000. Post hearing arguments and reply briefs were received by the undersigned by October 4, 2000. Full consideration has been given to the evidence, testimony and arguments presented in rendering this Award.

ISSUE

The parties have agreed to the following issue:

Is the Village of Hartland deducting the correct amount of insurance premiums from the members of the Police Department and the members of the Department of Public Works?

If not, what is the appropriate remedy?

PERTINENT CONTRACTUAL PROVISIONS

. . .

Article XI – Hospitalization, Dental & Surgical Care Insurance

Section 11.01 – Hospitalization, Dental & 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.

. . .

B. 1998-2000 DPW AGREEMENT

Article XIII – Insurance

. . .

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.

. . .

BACKGROUND

The Employer and the Union have been parties to a series of collective bargaining agreements. In 1988 the parties agreed to participate in the Wisconsin Public Employers' Group Health Insurance Plan, hereinafter referred to as the State Plan. Under the State Plan, the Employer is required to pay between fifty percent (50%) and one hundred and five percent (105%) of the lowest cost plan available to the parties. The agreement entered into between the Employer and the Union in 1988 was that the Employer would pay up to one hundred and five percent (105%) of the lowest cost plan available to the employees. During the negotiations that led to the 1992-1994 Department of Public Works (DPW) agreement, the Employer sought additional participation by employees in the payment of health insurance premiums. The Employer proposed language that the Employer would only contribute up to ninety percent (90%) of the lowest cost plan available. The Union rejected this. However, the Union did agree to increase the amounts paid by employees for health insurance premiums. The Employer also sought a change in the agreement with Police Department employees. Here again the Union agreed to increase the amounts paid by employees for health insurance premiums. The date of the effective increase is identified in the collective bargaining agreements as January 1, 1994. Beginning in 1995 the Employer also commenced the change with its non-union employees and changed its employee handbook to read as follows:

. . .

Medical Insurance – State of Wisconsin Employee Health Insurance Plan (#690-6-228). This Plan allows the employee to choose between a variety of health insurance plans through a contract between the Village and the State of Wisconsin. The insurance plans offer a variety of different services and the employee can chose the insurance plan which best services his/her and his/her dependents needs. The Village agrees to pay a dollar amount up to 100% of the cost of the gross health insurance premium for the lowest cost qualified plan in the service area for employee and dependent coverage. After January 1, 1995

employees choosing the lowest cost plan will pay 5% of the lowest cost plan. Employees choosing a more expensive plan will pay 5% of the lowest cost plan plus the additional premium. (Jt. Ex. 15)

. . .

The record demonstrates that in October of each year, the Employer distributes printed material from the State of Wisconsin that identifies the insurance choices available and the cost thereof. Included by the Employer is a worksheet that shows the amount to be paid by the Employer and the amount to be paid by the employee per pay period. The Employer did this in 1995, 1996, 1997, 1998 and 1999. In early 1999, an employee became aware that the Employer based the pay period contributions based upon ninety-five percent (95%) of the lowest cost plan available. Both the Police and DPW Unions filed grievances concerning the method the Employer was using to calculate the employees' contribution for health insurance. The Union contended the employee contribution for employees that had selected the lowest cost plan was correct, however, that the agreement between the Union and the Employer for employees who selected other plans was that commencing with the change in 1995, the employee would pay the difference between one hundred and five percent (105%) of the lowest price plan and the cost of the plan selected by the employee plus five percent (5%) of the cost of the lowest cost plan. The grievances were consolidated by the parties and processed to arbitration.

POSITIONS OF THE PARTIES

The Union

The Union contends the language is not clear and unambiguous as asserted by the Employer. The Union points out the Finance Director/Treasurer, Joycelyn Schwager, acknowledged she was unaware of the language in the contract, and, after reading the language acknowledged she could understand how the Union's interpretation could be right. The Union also points out the Village President, David Lamerand, who participated in the bargain in 1995, acknowledged he did not understand the meaning of the language in question and that he relied on the previous Village Administrator Mark Fitzgerald for contract interpretation. The Union also points out that Fitzgerald did not testify on behalf of the Employer. The Union further points out that even though there is no reference to a ninety-five percent (95%) cap anywhere in the agreement, the Employer asserts that is the maximum of its financial obligation.

The Union asserts the language is ambiguous and is not being applied in a manner consistent with the intent of the parties. To support its position, the Union relies on the testimony of DPW Union President Michael Laguna, Police Union President Jeffrey Noennig and Labor Consultant Patrick Coraggio. The Union asserts Laguna's testimony demonstrates the Employer would continue to contribute one hundred and five percent (105%) of the lowest cost plan in situations where the employee selected a plan whose premiums were over the five percent (5%) contribution rate. The Union points out Laguna's testimony was unrefuted. The Union also points out that Laguna also testified the Employer never offered an explanation as to how the

figures for employee contributions were arrived at. The Union asserts that Noennig's testimony demonstrates that the Employer would continue the one hundred and five (105%) contribution. The Union points out his testimony was unrefuted. The Union asserts Coraggio's testimony demonstrates that while the Employer has sought a contribution from all of the employees, it never discussed a ninety-five percent (95%) cap nor did it ask to delete the language concerning the Employer contribution of one hundred and five (105%) of the lowest cost plan. The Union

points out Coraggio's testimony was unrefuted. The Union concludes that while the language itself is not clear, the testimony of the witnesses demonstrates the intent and purpose is clear.

The Union acknowledges that when language is clear and unambiguous, arbitrators are required to give effect to the plain meaning of the language. However, if the language is ambiguous, the drafters of the language are responsible and if the Employer truly desired to cap the Employer's contribution at ninety-five percent (95%) of the lowest plan it could have been clearly written. The Union argues that the intent of the parties was to insure that employes would contribute at least five percent (5%) premium contribution even if the employee selected the lowest cost plan. The Union also asserts there is no past practice binding between the parties.

The Union would have the undersigned sustain the grievances.

The Employer

The Employer contends the language of the police department collective bargaining agreement is clear and unambiguous. If an employee selects the lowest cost plan, the employee pays five percent (5%) of the plan. If an employee selects a plan that costs more than the lowest cost plan, the employee must pay the five percent (5%) of the lowest cost plan plus the difference between the amount paid by the Employer and the full cost of the plan selected by the employee. The Employer argues this result's in the Employer paying ninety-five percent (95%) of the lowest cost plan.

The Employer also contends the language of the DPW collective bargaining agreement is clear and unambiguous. The Employer acknowledges that while the language is not as clear as the Police Union contract, interpreting this language in light of the law, which limits the Employer contribution to one hundred and five percent (105%) of the lowest cost plan, the employee pays five percent (5%) of the lowest costs plan and the difference between the amount paid by the Employer which is ninety-five percent (95%) of the lowest costs plan.

The Employer asserts that because the language of the agreements is clear and unambiguous there is no need to review bargaining history and practice. However, the Employer asserts that if the undersigned finds the language ambiguous, the Employer practice concerning the respective contributions is compelling and provides clear evidence that mandates denial of the grievance. The Employer points out it believes that its obligation is to pay ninety-five percent (95%) of the cost of the lowest cost plan irregardless of which plan the employee selects. The Employer further points out it has computed its contribution and the employees' contribution on

this basis since the effective date of the change in 1995. The Employer asserts it sought this change at the bargaining table with a vengeance seeking to have all employees pay a portion of health insurance costs.

The Employer points out it had provided spreadsheets to employees each October to help employees select their provider. The Employer asserts the Union's claim that it did not understand the calculations is balderdash. The Employer points out the employees who testified

clearly understood who was paying what and when based upon the plan the employee selected. The Employer also asserts employees received higher wage increases as a "***quid pro quo***" for the change in employee contribution for health insurance. The Employer asserts the minimum charge was five percent (5%) of the lowest plan selected. If an employee selected a higher cost plan, the employee was to pay the difference.

The Employer asserts that the Employer interpretation of the health insurance contributions constitutes a binding past practice that the Union can change only in collective bargaining. The Employer asserts the practice is clear, has a long-standing duration, is consistent, repetitive and has mutuality and acceptability. The Employer also asserts that one party can not unilaterally change a past practice.

The Employer also asserts bargaining history supports the Employer's interpretation of the health insurance language. In support of its position, the Employer points to Village President David Lamerand's testimony that a mandated employee contribution was a major priority of the Employer at the bargaining table. The Employer also asserts that the only reason the parties continued the one hundred and five percent (105%) language was because the change was made in mid contract.

The Employer also asserts the Union theory would result in five percent (5%) being paid by only those employees that selected the lowest cost plan.

The Employer would have the undersigned deny the grievance. If the undersigned does not deny the grievance, the Employer would have the undersigned limit any remedy to the date the grievances where filed.

Reply Briefs

The Union

The Union argues that if the language were as clear and unambiguous as the Employer asserts, the Employer witnesses would have been able to explain its meaning at the hearing. The Union also points out that although throughout its brief the Employer makes reference to a ninety-five percent (95%) contribution, no such phraseology is in the collective bargaining agreements. The Union also reasserts that it was unrefuted that the Employer never declared during negotiations that it was their intent to cap the Employer's contribution at ninety-five percent

(95%), and did not dispute Noening's testimony the Employer would continue the one hundred and five percent (105%) contribution. The Union also asserts there is no binding past practice because there was no mutuality. The Union also argues that the Employer contention of a "***quid pro quo***" should be afforded no weight as the Arbitrator has not been asked as to whether the Employer made a good deal, but what did the parties intend.

The Union also argues that had the Employer's insurance data indicated the rates were based upon ninety-five percent (95%) of the lowest cost plan this matter would have been raised

in 1994 or 1995. The Union points out this vital information was not included with the employee handouts. Once the Union became aware of this, it took the instant action. The Union would have the undersigned make employees whole back to the date of the first occurrence.

The Employer

The Employer contends the Union argument the contract language is clear and unambiguous is vulnerable. The Employer asserts it is nonsense that because both Schwager and Lamerand acknowledged to understanding the Union's interpretation that the language is ambiguous. The Employer again argues that if an employee selects a higher cost plan the employer is to pay the difference between what the Employer pays and the full costs of the plan selected. The Employer asserts that it is logical that the Employer's contribution remains at ninety-five percent (95%) of the lowest cost plan.

The Employer also asserts that Schwager was directed by the Village Administrator to do the ninety-five percent (95%) and five percent (5%) formula and this was reflective of the agreement reached during the contract negotiations. The Employer also points out that although the Union attempted to discredit Lamerand's testimony, the Union did not discount the fact that the Employer wanted to secure a five percent (5%) contribution during that round of bargaining.

The Employer also asserts that the fact the parties did not eliminate the one hundred and five percent (105%) language in subsequent contracts has no substantive bearing on the instant matter. The Employer also asserts that the Union is crying wolf because the Employer never demonstrated how the figures arrived at in the employee handouts were arrived at. The Employer argues that for the Union to now argue that employees were never offered the opportunity to investigate these figures or that employees were kept in the dark is ridiculous. The Employer concludes that when employees made their choices, they knew or should have known what their financial liability would be.

DISCUSSION

A careful review of the Police and DPW contracts demonstrates that the Employer's contention that it need only pay up to ninety-five percent (95%) of the lowest cost plan available to employees under the State Plan would render meaningless the provisions of the

agreement that mandate the Employer pay up to one hundred and five percent (105%) of the lowest cost plan. The one hundred and five percent (105%) language is clear and unambiguous. If an employee selects the lowest cost plan they would pay no premium. If the employee selected a plan that costs less then one hundred and five percent (105%) of the lowest cost plan they would pay no premium. If the employee selected a plan which costs more than one hundred and five percent (105%) of the lowest cost plan the employee would pay the costs of the difference between the costs of the plan and one hundred and five percent (105%) of the lowest cost plan. The amount paid by the Employer would be one hundred and five percent (105%) of the lowest cost plan.

Commencing in 1994 for the Police contract, the parties added a provision that mandates that an employee pay five percent (5%) of the lowest cost plan plus the difference between the amount paid by the Employer and the full cost of the plan selected. This provision is also clear and unambiguous. If an employee selected the lowest cost plan they would pay at least five percent (5%) of the lowest cost plan. Because the parties did not eliminate the provision requiring the Employer to pay up to one hundred and five percent (105%) of the lowest cost plan the maximum the Employer must pay is one hundred and five percent (105%) of the lowest cost plan. If an employee selected a plan that costs less than one hundred and five percent (105%) of the lowest cost plan, the employee would pay at least five percent (5%) of the lowest costs plan. If the employee selected a plan which costs more than one hundred and five percent (105%) of the lowest cost plan, the employee would pay at a minimum five percent (5%) of the lowest cost plan plus any additional costs above one hundred and five percent (105%) of the lowest cost plan. The maximum the Employer pays is one hundred and five percent (105%) of the lowest cost plan. The minimum the employee pays is five percent (5%) of the lowest cost plan.

Thus, if the lowest cost plan costs $484.68, the employe would pay would pay $24.23 (or 26 payroll periods of $11.18). One hundred and five percent (105%) of the lowest cost plan is $508.91 and an employee would pay $24.23 (or 26 payroll periods of $11.18). If an employee selected a plan that costs $531.38, the Employer would pay one hundred and five percent (105%) of the lowest cost plan ($508.91) towards this plan. However, $531.38 less $508.91 is only $22.47. The employee would still pay $24.23 (or 26 payroll periods of $11.18).

If an employee selected a plan that costs greater than one hundred and five percent (105%) of the lowest cost plan and five percent (5%) of the lowest cost plan, the employee would pay the amount over $508.91.

$554.48 less $508.91 is $45.57 (or 26 payroll periods of $21.03).
$571.38 less $508.91 is $62.47 (or 26 payroll periods of $28.83).
$683.34 less $508.91 is $174.43 (or 26 payroll periods of $80.51).
$763.38 less $508.91 is $254.47 (or 26 payroll periods of $117.45).

The Undersigned notes here that the DPW language must be construed in the same manner as the Police contract. The maximum the Employer may pay towards the premium of

a plan is one hundred and five percent (105%) of the lowest cost plan. However, the employee must pay at least five percent (5%) of the plan selected. This language is also clear and unambiguous. Thus, the following rates:

$484.68. 5% is $24.23 (or 26 payroll periods of $11.18).
$531.38. 5% is $26.57 (or 26 payroll periods of $12.26).
$554.48. 5% is $27.73. However, the Employer only pays up to one hundred and five percent (105%) of the lowest cost plan. The employee, therefore, pays $62.47 (or 26 payroll periods of $28.83).
Payments for $683.34 and $763.38 would be the same as the Police contract.

The undersigned would note here that the above is consistent with both parties contention that where the Employer to pay more than one hundred and five percent (105%) of the lowest cost plan it would find itself in violation of State of Wisconsin statutes concerning the State Plan.

Having found the language of the collective bargaining agreement to be clear and unambiguous, the undersigned finds the Employer violated the collective bargaining agreements when it established rates based upon a minimum Employer payment of ninety-five percent (95%) of the lowest costs health plan. The undersigned does find that while the Union relied upon the Employer's calculations, the Union also has a burden to police the contract. Therefore, the undersigned directs the Employer to make employees whole commencing with the month following the filing of the grievances. It was at this time that the Employer became aware of the Union's concerns on the calculations of premium sharing.

Based upon the above and foregoing and the testimony, evidence and arguments presented, the undersigned concludes the Village of Hartland is not deducting the correct amount of insurance premiums from the members of the Police Department and the members of the Department of Public Works. The undersigned will retain jurisdiction for ninety (90) days pending implementation of the directed remedy.

AWARD

The Village of Hartland is not deducting the correct amount of insurance premiums from the members of the Police Department and the members of the Department of Public Works.

The Village of Hartland is directed to make the employees whole for all lost monies commencing with the month following the filing of the grievances.

Dated at Madison, Wisconsin, this 28th day of December, 2000.

Edmond J. Bielarczyk /s/

Edmond J. Bielarczyk, Jr., Arbitrator

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