BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

LOCAL 1777 – INTERNATIONAL ASSOCIATION OF FIREFIGHTERS – GREENDALE PROFESSIONAL FIREFIGHTERS

and

THE VILLAGE OF GREENDALE

Case 86
No. 71499
MA-15144

[Retiree Health Insurance (Wood)]

Appearances:

John Kiel, Attorney at Law, P.O. Box 147, 3300 - 252nd Avenue, Salem, Wisconsin 53168-0147, for the labor organization.

Nancy Pirkey, Buelow Vetter Buikema Olson & Vliet, LLC, Attorneys at Law, 20855 Watertown Road, Suite 200, Waukesha, Wisconsin 53186, for the municipal employer.

ARBITRATION AWARD

Local 1777 – International Association of Firefighters – Greendale Professional Firefighters ("the Association," "the union," or "Local 1777,") and the Village of Greendale ("the Village," or "the employer") are parties to a collective bargaining agreement which provides for final and binding arbitration of disputes arising thereunder. On January 12, 2012, the union made a request, in which the Village concurred, for the Wisconsin Employment Relations Commission to provide a panel of five staff members from which the parties could select an arbitrator to hear and decide a grievance concerning the interpretation and application of the terms of the agreement relating to the administration of health insurance for retirees. The parties selected Stuart D. Levitan to serve as the impartial arbitrator. Hearing in the matter was held in Greendale, Wisconsin on April 2, 2012; a stenographic transcript was made available to the arbitrator and parties on April 16, 2012. The parties filed written arguments and replies, the last of which was received on June 29, 2012. The parties also conducted telephone conference calls with the arbitrator on October 19 and 22, 2012.

ISSUE

At hearing the Association initially stated the issue as:

Did the Village violate Article 17.02 of the collective bargaining agreement when it calculated its annual payment of Robert Wood's retirement health insurance at 75% of the premium up to a maximum of 75% of 93% of the lowest cost plan? If so, what is the appropriate remedy?

During the hearing, the Association modified its statement of the issue to be:

Does the Village violate Section 17.02 of the collective bargaining agreement when it calculates Robert Wood's 2012 annual retirement health insurance benefit at 75 percent of the premium up to a maximum of 75 of 100 percent of the lowest cost plan less $75? If so, what is the appropriate remedy?

The Village states the issue as:

Did the Village violate Section 17.02 and the established practice when it calculated the retiree health insurance benefits for the Grievant based on the premium contribution made by the Village for active employees in Section 17.01? If so, what is the appropriate remedy?

I state the issue as:

Did the Village violate Sec. 17.02 a) of the 2008-2010 collective bargaining agreement with IAFF Local 1777 when it required Firefighter Robert Wood to pay the Sec. 17.01 monthly employee contribution of $75.00 after he retired in 2011? If so, what is the appropriate remedy?

RELEVANT CONTRACTUAL LANGUAGE

2008-2010

ARTICLE XVII – HEALTH INSURANCE

17.01 Effective April 1, 1999, the Village shall provide hospitalization and surgical care insurance for employees covered by this Agreement under the Wisconsin Public Employers Group Health Insurance Plan (Wisconsin Group Plan), and thereafter coverage will remain as under the Wisconsin Group Plan, or under a substantially equivalent plan, and in the event of such change, the Village will pay the full cost of such coverage. Participating in the Wisconsin Group Plan, the Village will pay the premium cost of the health insurance plan selected by the employee, not to exceed 100% of the single or family premium

cost of the lowest cost eligible HMO (or the lowest cost qualified plan if no HMO's are available) offered in the service area covering the Village less a monthly employee contribution of twenty dollars ($20.00) for a single plan or sixty-five dollars ($65.00) for a family plan effective Janaury [sic] 1, 2008, thirty dollars ($30.00) for a single plan or seventy-five dollars ($75.00) for a family plan in 2009 and 2010. In addition, the employee shall play any premium costs in excess of 100% of the lowest cost qualified plan.

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 percent (75%) toward the cost of the premium.
b) The coverage will be for retired employees and "family". Family as defined in health plan in effect at the time of retirement.
c) Coverage would be in effect until retired employee and/or spouse qualify for Medicare.
d) Coverage would not include a retiree's spouse or family after the retiree's death.
f) Coverage would not include a retiree while the retiree is covered by another health plan of substantially equal benefit at no additional cost to the retiree.
g) The Village will issue a check to an insurance company of the retiree's choice if the Village has no policy or plan for which the retiree is eligible pursuant to Article 17.02 of such Contract. Said check is not to exceed the cost that the Village would incur for a retiree covered by a Village plan. The retiree shall pay the Village a $3.00 per month administration fee for this service.

BACKGROUND

Among its various governmental services, the Village of Greenfield operates a fire department, providing round-the-clock fire-fighting and emergency medical services. The International Association of Firefighters, Local 1777, represents the classifications of full-time firefighter, paramedic, and lieutenant. This grievance concerns the respective payments for health insurance the Village and members of the bargaining unit who retired under the 2008-10 collective bargaining agreement between the parties are responsible for.

The Wood Grievance

In late 2011, Firefighter Robert Wood asked the Village about his health insurance benefits if he retired at the end of that year. On November 30, 2011, Fire Chief Tim Saidler forwarded to Local 1777 President Jim Hintz the following statement, drafted by the Village's outside legal counsel:

> The Village cannot calculate the *exact* amount that Robert Wood will pay for health insurance benefits if he elects to retire. The employee does not pay a fixed dollar amount for health insurance after retirement. Section 17.02 currently states that the Village will pay 75% toward the cost of the premium and the retiree pays the balance. However, this 75% payment is calculated based on the payment made for active employees each year. Thus, the payment will depend upon what amount the parties negotiate as the Village and employee contributions to the health insurance plan. Since the current labor agreement is expired, we cannot realistically determine what the premium payments will be for active employees for 2011 or 2012; therefore, we cannot predict what Robert Wood will pay for health insurance should he decide to retire this year or next year. The Village can only confirm that it pays 75% of the cost of the premium payment made for active employees, with the retiree paying the balance which changes from year to year.

In that same email chain, Saidler also forwarded to Hintz the following e-mail to Village Manager Todd Michaels from Clerk-Treasurer Kathy Kasza, which Saidler had receive earlier that day:

> Attached is the updated version using the 2010 $75 premium co-pay and Nancy's language – if ok – forward to Tim [Saidler].

The exhibit offered into evidence at hearing did not include any attachment. That evening, Hintz emailed Saidler, in part as follows:

> Chief,
>
> The Union does know the cost of the premium in the year in which FF Wood will retire.
>
> FF Wood will retire in the year 2011, the premium cost per month is based on the lowest cost eligible HMO plan (or lowest cost plan if no HMO available) in the Wisconsin Employers Group Health Insurance Plan available in southeastern Wisconsin. The lowest cost eligible plan has been determined to be United Healthcare Southeast. The monthly premium cost for that plan in 2011 is $1896.90 (family plan). As Nancy [Pirkey, the Village's outside counsel] stated the Village must pay 75% of that cost per the 2008-2010 contract. There has

been no discussion during contract negotiations to change that language. So, it is the Union's stance that the Village must pay $1422.68/mo (75% of $1896.90) toward FF Wood's health insurance. Nowhere does it state the Village pays 75% toward the premium minus current employee contribution.

On December 2, 2011, Saidler emailed Hintz as follows:

Per my conversation with Manager Michaels, the initial estimate for retirement health insurance cost for FF Wood was made in error and should be disregarded, which was the cause of the grievance which was filed on November 22, 2011 @ 1645 hours. I have attached the most recent correct estimate, dated 11/30/2011. Please review and reply.

The attached estimate, which bore the same explanatory note as the estimate which Saidler forwarded on November 30, estimated the 2012 United Health Care SE premium at $1,752.60, with the Village contributing $1,258.20 and Wood responsible for $494.40. Although the document does not disclose how the premium was allocated between the Village and Wood, it was based on deducting the Sec. 17.01 monthly employee contribution from the premium for the lowest cost plan (LCP), then multiplying by .75 [($1,752.60 - $75.00) x (.75) = $1,258.20]. [1]

On December 6, Saidler forwarded an amended estimate, which again calculated Wood's share based on the Village paying 75% of 100% of the LCP minus the $75 supplemental monthly contribution provided for in Sec. 17.01 ($1,934.80-$75 x .75= $1,394.85; $1,934.80 - $1,394.85 = $539.95 as Wood's obligation.) The December 6 memo contained the same statement from Michaels as the December 2 memo, but again did not refer to a monthly contribution or explain why the Village's estimated payment was not 75% of the premium for the LCP, which would have been $1,47.55.

Also on December 6, 2011, Local 1777 President Hintz responded to Saidler's email as follows:

. . . This is to grieve the Village's interpretation of Section 17/02. With respect to retirement health insurance Section 16.02(a) specifically provides that:

The Village will pay seventy-five (75%) toward the cost of the premium.

Your contention that "However, this 75% is calculated based on the payment made for active employees each year" is inconsistent with the plain language set forth above and inconsistent with the intent of the parties. It is Local 1777's position that the Village is obligated to apply the plain language of the

[1] Based on a plan with deductibles, no longer applicable.

> agreement as written as opposed to "75% of the premium made for active employees."

Hintz appealed the grievance to Step 3, consideration by the Village Manager. On December 22, 2011, Michaels wrote Hintz as follows:

> This letter will serve as my decision at Step 3 of the grievance procedure. Your grievance alleges that the Village is required to apply your interpretation of the plain language of the agreement as written as opposed to "75% of the premium paid for active employees." The police union filed a grievance against the Village on this same issue in 2006. The Village went to arbitration on this grievance and the grievance was dismissed. The decision is Labor Association of Wisconsin, Inc. v. Village of Greendale, MA13472 (Arb. McLaughlin, 07/0507) and is available on the WERC website. Thus, the Village is properly interpreting the contract language by requiring a retiree to pay 75% of the contribution made for active employees.
>
> The union has also waived its right to file a grievance on the calculation of retiree health insurance benefits. The union filed a grievance on this same issue on August 23, 2005 and then withdrew that grievance on December 19, 2005. By withdrawing that grievance, the Union has accepted the Village's method of calculating the retiree health insurance benefit and waived its right to challenge this issue now.

On January 2, 2012, Hintz responded to Michaels' email of December 22 as follows:

> . . . This is to grieve the Village's interpretation of Section 17/02. With respect to retirement health insurance Section 16.02(a) specifically provides that:
>
> The Village will pay seventy-five (75%) toward the cost of the premium.
>
> Your contention that "However, this 75% is calculated based on the payment made for active employees each year" is inconsistent with the plain language set forth above and inconsistent with the intent of the parties. It is Local 1777's position that the Village is obligated to apply the plain language of the agreement as written as opposed to "75% of the premium made for active employees."

By this letter, Hintz also appealed the grievance to Step 4, consideration by the Village Board. On January 17, the Board denied the grievance.

In late March, 2012, the Village provided to Wood a revised projection based on his benefit being "calculated annually at 75% of the premium up to a maximum of 75% of 93% of the lowest cost plan," or ($1,934.80 x .93) x (.75). That resulted in the Village being

responsible for $1,349.52 and Wood being responsible for $585.28. At hearing, the Village stipulated the document had been provided to Wood, but stated it was based on an incorrect assumption (that the parties had already agreed to reduce the benefit level under Sec. 17.01 to 93% of the LCP) and that it no longer represented the Village's position.

Bargaining History

Local 1777 first obtained health insurance benefits for retirees through interest arbitration over the parties' 1983 collective bargaining agreement. The Village proposed a benefit tied to retirees' accumulated sick leave; the union proposed the following language, which arbitrator Stanley Michelstetter accepted and incorporated into the parties' agreement:

> The Village agrees that employees with 10 or more years of service, or employees who qualify for disability benefits under Chapter 41 or s40.65 Wisconsin Statutes, who retire 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 under the following conditions:
>
> a. The Village will pay 50% toward the cost of the premium.
> b. The coverage will be for retired employees and "family". Family as defined in health plan in effect at the time of retirement.
> c. Coverage would be in effect until retired employee and/or spouse qualify for Medicare.
> d. Coverage would not include a retirees' spouse or family after his death.
> e. Coverage would not include a retiree while the retiree is covered by another health plan of equal benefit at no additional cost to him. [2]

The voluntary settlement for the 1986-87 agreement increased the Village's payment to "75% toward the cost of the premium."

In the years since the 1986-87 settlement, the Village has made repeated efforts to reduce its contribution for both active and retiree health insurance benefits. As is discussed below, the parties have agreed to certain changes in Sec. 17.01, but the union has successfully resisted any modification to Sec. 17.02.

The parties again went to interest arbitration for their 1988-89 contract, over the Village's proposed caps on employee and retiree health insurance benefits, viz., proposing to replace the requirement in Sec. 17.01 that the Village will pay "the full cost" of HMO coverage with "the dollar amount of the highest 1988 HMO premiums with the provision that

[2] Village of Greendale (Fire Dept.), Case No. XXXIX, No. 30923, Dec. No. 20436-A (Michelstetter, 7/12/83)

if, during the contract term, the premium cost exceeds the stated dollar amount, the dollar amounts will be increased to the new level," and to amend Sec. 17.02 to read: "The Village will pay seventy-five percent (75%) of the specific dollar premium listed in Section 17.01 in effect on the date of retirement." The Village also offered to increase the uniform and longevity allowances, raise the limit for sick leave pay-out and extend it to retirees. The union's final offer was just wages, which were the same as offered by the employer.

Arbitrator Neil Gundermann noted the union's strong attitude toward preserving the retiree health benefits in explaining why he adopted its final offer:

> The employer is seeking a change in the area of insurance and has offered certain inducements to encourage the Union's acceptance of these changes. Some of the improvements in the area of fringe benefits contained in the Employer's final offer were responses to demands made by the Union during the early phases of bargaining. Based on the evidence, the granting of certain of the benefits would result in the Union reaching the average of the comparables. When given the choice of accepting improvements in other fringe benefits in return for a freezing of the insurance premium for retirees, the Union elected to maintain the status quo. *Apparently the Union gives high priority to the insurance premiums for retirees.* (*emphasis* added)
>
> Based on a review of the statutory criteria, it must be concluded that by maintaining the status quo the Employer maintains comparability with the comparables. This is particularly true of the comparables relied upon by the Union. Even if the comparables urged by the Employer were adopted, at least six other employers provide higher payment of retirees' insurance premiums than does the Employer. After giving due consideration to the statutory criteria, it is the opinion of the undersigned that the Employer has failed to meet its burden of justifying the need for a change from paying the full premium to a dollar premium or for changing from the 75% of the retirees' insurance premium to 75% of the premium in effect at the time of retirement. [3]

For five years before this Award, and eleven years after, the Village offered only one or two HMO insurance plans to its employees. Although the collective bargaining agreements from 1990-1998 required the Village to offer both an HMO and a non-HMO plan to employees (and, by extension, retirees), the parties entered into letters of agreement obviating that requirement.

In bargaining for the 1990-1991 agreement, the Village again sought to limit the health insurance benefits for both active and retired employees by inserting flat dollar caps for both

---

[3] Village of Greendale (Fire Department), Case 54, No. 39920, Dec. No. 25400-A, at 15-16 (Gundermann, 10.24.88).

groups. The union did not agree to either change, and neither was incorporated into the agreement.

In bargaining for the 1992-93 agreement, the Village proposed to reduce its contribution for employee insurance to "85% of the premium cost of the HMO plan selected by the employee," and to pay "the same dollar amount towards the non-HMO contract as it does toward the highest HMO plan it offers" for active employees who elected the Village's non-HMO coverage. The Village did not propose a like amendment regarding retirees, instead seeking to amend Sec. 17.02 as follows:

> The Village will pay a dollar amount toward the premium cost during the entire period the employee is eligible for this Village payment under this Section that is equal to seventy-five percent (75%) of the premium cost that is in effect at the date of retirement. The retiree must pay the balance of the full monthly premium to the Village Treasurer by the 15th of the month prior to the month the premium is due or the retiree may be dropped from the Village's insurance program.

The union did not agree to either change, and neither was incorporated into the agreement.

In bargaining for the 1994-95 agreement, the Village proposed to reduce its contribution for active employees to 80% "of the monthly health care premium," and to reduce its contribution for retirees to 50% "of the premium in effect at the time of retirement for all employees" who retired after December 31, 1995. The union did not agree to either change, and neither was incorporated into the agreement.

In bargaining for the 1996-98 agreement, the Village on September 11, 1995 again proposed reducing its contribution for active employees to 80% "of the cost of the employee's monthly health insurance premium." It also proposed to separate the retiree group from the active employee group and to "establish a separate health insurance premium for each group," and to revise Sec. 17.02 "to provide that the Village will pay 75% of the health insurance premium in effect at the time of retirement" for all employees who retired after December 31, 1995. The Village on October 26, 1995 amended its offer, calling for a 15% contribution from active employees. It also sought a sliding scale for retirees, tying its contribution to their length of service; payment of 100% of the premium for those who took single coverage, and an annual payment of $750 for those who took no coverage. The union did not agree to any of these changes, and neither was incorporated into the agreement.

In negotiations for the 1999-2001 agreement, the Village on October 10, 1998 proposed the same sliding scale tying its premium participation to the retiree's length of service as it had proposed in 1995, which the union again rejected. Again, the union did not agree to this proposal, and it was not incorporated into the agreement.

Also during negotiations for the 1999-2001 agreement, the Village proposed to its four collective bargaining units (IAFF Local 1777; The Greendale Professional Police Officers Association, LAW Local 309; the Greendale Professional Clerk-Dispatchers Association, LAW Local 505, and AFSCME Local 609) that the parties change health insurance carriers to the State Health Insurance Plan. On December 11, 1998, the then-Village Manager, Joseph M. Murray, wrote to all Village employees, in part as follows:

> …. the Village is in serious negotiations with all four (4) unions to change its health insurance program. The Village and unions are examining the possibility of the Village moving to the State health Insurance Program. Under the State Health Insurance Program, employees would be able to select from approximately a half-dozen health insurance providers, including Humana and Family Health, based on which health insurance provider and benefits best meet their personal needs. If the Village does move to the State Plan the move would not occur any earlier than April 1999 and is still only in negotiations. The final decision to move is pending the resolution of the union contracts and all employees and retirees will receive additional information if and/or when the move would occur. (emphasis in original).
>
> . . .
>
> On January 7, 1999, the Village proposed to revise Sec. 17.01 as follows:
>
> Coverage will remain as under the Village HMO and non-HMO contracts in effect on January 1, 1984, until coverage under the Wisconsin Public Employers Group Health Insurance Plan (Wisconsin Group Plan) becomes effective, and thereafter coverage will remain as under the Wisconsin Group Plan, or under a reasonably equivalent plan. Until the Wisconsin Group Plan becomes effective, the Village will pay the full cost of such HMO coverage, the difference in premium cost between the non-HMO coverage and the highest HMO cost will be deducted from the employee's paycheck. When the Wisconsin Group Plan becomes effective, the Employer will pay an amount toward the premium cost of up to 105% of the premium cost of the lowest cost plan. The employee shall pay the balance of the premium, if any, via payroll deduction.
>
> It also modified its proposal for retirees, as follows:
>
> Revise Section 17.02(a) to read:
>
> a) (i) For employees hired prior to January 1, 1999:
> The Village will pay seventy five percent (75%) toward the cost of the premium. When the Wisconsin Group Plan becomes effective, the Village will pay seventy five percent (75%) of an amount equal to 105% of the premium of the lowest cost plan (or an amount equal to the

premium cost of the lowest cost plan at the time of retirement if the employee was a participant of the lowest cost plan at retirement) toward the cost of the premium.

(ii) For employees hired on and after January 1, 1999:

The Village will pay the following percentage amounts of the premium in effect at the time of retirement toward the cost of the premium:

With ten (10) consecutive years of service:	50% payment
With fifteen (15) consecutive years of service:	60% payment
With twenty (20) consecutive years of service:	70% payment
With twenty-five (25) consecutive years of service:	75% payment.

On February 12, 1999, the Village proposed to amend Sec. 17.01 as follows:

17.01 Coverage will remain as under the Village's health care contracts in effect on December 31, 1998, and the Village will pay the full cost of such coverage. Effective April 1, 1999, or as soon as possible thereafter, the Village shall provide hospitalization and surgical care insurance for employees covered by this Agreement under the Wisconsin Public Employers Group Health Insurance Plan (Wisconsin Group Plan), and thereafter coverage will remain as under the Wisconsin Group Plan, or under a substantially equivalent plan, and in the event of such change, the Village will pay the full cost of such coverage.

In this second offer, the only amendment to Sec. 17.02 the Village proposed was to revise Sec. 17.02(e) to read:

e) Coverage will not include a retiree while he is covered by another health plan of substantially equal benefit at no additional cost to him.

On March 4, 1999, Village Manager Murray wrote to all Village employees, represented and unrepresented, other than the two LAW units, in part as follows:

Re: Change in Village Health Insurance to the State of Wisconsin Group Health Insurance

. . .

Village funding levels toward the State Plan insurance will be determined by calculating the average of the HMO's, dropping the highest premium and the lowest premium plans. In 1999, the calculation drops Compcare SE (highest premium) and Family Health (lowest premium) and is calculated as noted below. **In 1999 employees could select Family Health, Humana and Managed Care at**

no cost to the employee since their premiums are less than the average calculation. (emphasis in original)

FOR CURRENT PERSONNEL:

Utilizing this method, for current personnel the Village will pay up to $216.69 for Single Plan premiums and up to $547.16 for Family Plan premiums. Employees may then use this funding level to select any of the seven (7) health insurance plans available under the State Plan. If the selected health insurance plan's premium is less than the average cost to be paid by the Village, the cost of the health insurance is paid entirely by the Village at no cost to the employee. The employee, however, does not receive the difference. If the cost of the selected health insurance plan's premium is more than the average, the Village will pay up to the average and the employee will pay the difference in premium. As an example, if an employee were to select Compcare SE, family coverage, in 1999, the employee would pay the difference between Compcare SE's premium of $683.34 and the average of $547.16, equating to the employee paying $136.18 per month to the health insurance premiums.

FOR RETIREES:

Utilizing this method, for retirees the Village will pay the applicable percentage of the retiree's health insurance they are entitled to per their appropriate contract, years of service, retirement age, etc. but the Village's portion of the retiree's health insurance will not exceed the applicable percentage of the average premium cost as computed above. As an example, if a retiree participates in family coverage under Humana with a premium of $531.38, less than the average as calculated, above, the Village will pay 75% of the Humana premium or $398.54, with the retiree paying $132.84. If a retiree were to select a plan with a cost higher than the average, as an example, family coverage under Physicians Plus with a premium of $571.38 and the applicable percentage is 75%, the Village payment will be 75% of the $547.16 average or $410.37 with the retiree payment of $161.01.

. . .

The unions all agreed to switch to the Wisconsin Group Plan, and on April 16, 1999, Local 1777 and the Village executed a collective bargaining agreement covering the period 1999-2001, modifying Sec. 17.01 as follows:

17.01 Coverage will remain as under the Village's health care contracts in effect on December 31, 1998, and the Village will pay the full cost of such coverage. Effective April 1, 1999, or as soon as possible thereafter, the Village shall provide hospitalization and surgical care insurance for employees covered

by this Agreement under the Wisconsin Public Employers Group Health Insurance Plan (Wisconsin Group Plan), and thereafter coverage will remain as under the Wisconsin Group Plan, or under a substantially equivalent plan, and in the event of such change, the Village will pay the full cost of such coverage.

Rather than incorporate all the details of the new provisions into the collective bargaining agreement, the Village and IAFF Local 1777 also on April 16, 1999 entered into a side letter of agreement which provided as follows:

1. When the Wisconsin Group Plan becomes effective, the Village will pay the premium cost of the health insurance plan selected by the employee, but not to exceed an amount equal to the average of the single or family premium cost, whichever is applicable, of all the HMO plans offered in the service area covering the Village (excluding the highest and lowest cost HMO plans and the Standard Plan). (Note: In the event there are only 4 or less HMO plans offered in the service area covering the Village, then the highest and the lowest cost plans will be included in the computation of the average. In the event there are only 5 HMO plans offered in the service area covering the Village, then the average of the highest and the lowest cost plans will be added to the total of the remaining 3 HMO plans and that sum will be divided by 4 to obtain the above mentioned average.) For example, in 1999, the following is the average premium cost:

Plan	Single Plan Premium Cost	Family Plan Premium Cost
Humana	$210.38	$531.38
Managed Health	$210.38	$531.38
Network Health	$219.62	$554.48
Physicians Plus	$226.38	$571.38
AVERAGE	**$216.69**	**$547.16**

For purposes of determining the "cost of the premium" referred to in Section 17.02(a) and the payment to the insurance company referred to in Section 17.02(f), when the Wisconsin Group Plan is in effect, the Village will pay the applicable percentage of the actual premium cost for the plan the retiree participates in or the other insurance plan under Section 17.02(f), but such Village payment shall not exceed the applicable percentage of the average premium cost as computed above. For example, in 1999, if the retiree participates in family coverage under Physicians Plus and the applicable percentage is 75%, the Village payment will be 75% of $547.16, or $410.37; if the retiree is covered by a family plan in another state whose premium cost is $450.00 and the applicable percentage is 75%, the Village payment will be 75% of $450.00, or $337.50; if the retiree is covered by a family plan in

> another state whose premium cost is $650.00 and the applicable percentage is 75%, the Village payment will be 75% of $547.16, or $410.37. (In the event the Village changes to a health insurance plan other than the Wisconsin Group Plan pursuant to Section 17.01, the "cost of the premium" referred to in Section 17.02(a) and the payment to the insurance company referred to in Section 17.02(f) will be the payment made by the Village under the last sentence of Section 17.01.)
>
> In the event the above amount of the Village premium payment toward the Wisconsin Group Plan is determined to be improper and the Village payment is limited to 105% of the lowest cost premium of the plans in the service area covering the Village, the Village will contribute into the employee's IRS Section 125 – Plan account an amount equal to the difference between the above 105% amount and the amount of the premium cost for the plan the employee participates in, provided that such premium cost used to determine this difference shall not exceed the average premium as computed above. [Jt. Ex. 21]

In order to comply with state regulations, the parties in the 2002-2004 labor agreement negotiated a further change to the premium contributions the Village would make for active employees, capping the Village's contribution under Sec. 17.01 at 105% of the lowest cost plan. During bargaining for the 2002-04 agreement, the Village on September 19, 2001 also again proposed tying retiree insurance benefits to length of service, adding a *quid pro quo* of a one-time payment of $250. When the union rejected that offer, the Village on October 17, 2001 changed the pay-out offer to a grandfather clause, providing the full 75% for all employees hired before January 1, 2002, and the sliding scale for those hired thereafter. The union rejected that offer as well, and section 17.02 remained unchanged.

At the time the parties changed the Village's 17.01 contribution from 100% of the average to 105% of the LCP, there were two retired firefighters who were enrolled in the Village's health insurance plan, Russell Billmeyer and Robert Fridrick. On December 5, 2001, Murray wrote them each the following letter:

> *RE: Retiree Health Insurance Contribution Formula Agreement*
>
> As part of the Village's contract negotiations for 2002-2004, it has been tentatively agreed to that the Village will modify the formula for calculating it's (sic) maximum health insurance contribution. Since moving to the State of Wisconsin Group Health Insurance Plan ("State Plan") in 1999, the formula of calculating the Village's maximum health insurance contribution has been done by averaging the premiums of the HMO's offered in Milwaukee County. This method differs from the typical State Plan premium calculation formula of 105% of the lowest cost HMO available in Milwaukee County. From 1999 to 2001,

this averaging formula has been to the benefit of the employees – both current and retirees – providing a larger Village contribution.

However, in 2002, the averaging formula provides less funding for the Village's health insurance contribution than the 105% formula. Calculating the averaging formula, the Village's 2002 monthly maximum health insurance contribution for retirees would be calculated at 75% of the average or equal $260.63-Single/$649.65-Family. Utilizing the 105% of the lowest cost HMO plan formula, the Village's maximum contribution for retirees increases to $271.14-Single/$675.83-Family. This provides a potential savings of $10.51/month/$126.12/year – Single and $26.18/month/$314.16/year – Family.

The revision to the 105% of the lowest cost HMO plan would provide you with an increased benefit. Below you will find how your 2002 health insurance premium would be revised if the 105% formula were utilized. Based on your selected 2002 insurance carrier and the Village's appropriate premium share for you as a retiree, in 2002 your new health insurance premium or co-pay utilizing the 105% formula would be calculated as noted below:

Health Insurance Plan Selected:	**Humana**
Health Insurance Coverage Code:	**Single**
Your 2002 Monthly Health Insurance Premium/Co-Pay:	**$79.56**

In that the new 105% formula will be utilized for current employees and new retirees, the Village is interested in trying to maintain health insurance calculations as uniform as possible. Therefore, the Village is offering you the opportunity to also utilize the 105% formula for calculating your retiree health insurance benefits beginning in 2002. Revising your health insurance contribution formula will require you to sign and return this letter. If you are agreeable to the change in formula, please sign and return this letter with your next monthly premium payment by December 15, 2001.

Should you not be interested in agreeing the formula revision, your monthly health insurance premium will be calculated as it has been in the past. This will have your 2002 monthly premium equal to the amount you have already been notified.

Please make payment of the monthly health insurance premium noted above by December 15th for January 1st coverage and by the 15th of each month preceding coverage.

Your VIPA Gold 70 Eye Glass Insurance will remain the same in 2001; with the entire cost of the eye glass insurance being paid by the Village.

If you changed your health insurance carrier during the State Plan's Open Enrollment period in October, the new carrier's coverage will become effective January 1st. For the remainder of this year, you are with your current carrier. If you changed your health insurance carrier during the Open Enrollment, you should be receiving any new insurance cards prior to the end of this year.

Please review the information above to confirm that Village records are correct. If incorrect or if you have questions, please contact the Clerk-Treasurer's Office as soon as possible. Thank you for your cooperation.

Let me also take this opportunity to wish you and your families a very happy holiday season and the best wishes for health and happiness during the coming year.

Billmeyer returned his form as follows:

I, Russell Billmyer, agree to allow the Village to revise the formula for calculating my maximum health insurance premium contribution to being 105% of the lowest cost HMO available in Milwaukee County.

Signed: Russell Billmyer /s/ Date: 12-11-01

Signed under protest

On December 14, 2001, Billmeyer and Fridrick wrote essentially identical letters to Murray, as follows:

Referencing your letter dated 12/5/01 concerning retiree health insurance premium contribution formulas, I disagree with these formulas being applied to health insurance costs for retiree's (sic). Specifically article XVII in the contract I retired under. In the contract that I retired under, (1996-1997-1998) (1994-1995), Under article XVII, 17.01 and 17.02 it states that the Village shall pay the full cost of any HMO coverage offered by the Village to the employee. Under article 17.02a, it states that the Village will pay 75% towards the cost of the premium for the retiree. Nowhere in these articles does it state that there is to be any payment based upon average costs, or 105% of the lowest cost HMO. Due to the short notice of this letter and the necessity for a quick decision because of the premium due date which is December 15, 2001, I will require time to research my rights. I do not want my health insurance coverage to lapse or be discontinued for any reason. I ask that you comply with the language and intent of the contract under which retired.

On December 21, 2001, Murray replied to Billmeyer and Frederick as follows:

Re: Village Firefighter Retiree Health Insurance Calculations

Dear Mr. Billmyer and Mr. Fridrick:

Thank you for your letters of December 14, 2001 (attached) regarding the Village's calculation methods for your health insurance as firefighter retirees. Having spoken to Mr. Billmyer briefly regarding this issue on Wednesday, December 12, 2001, I did not have ample time to investigate the matter sufficiently by December 14th. I have now had an opportunity to research this issue and to speak with the Village labor attorney on the legal issues you have raised.

As you note in your letters, the basic language in Section 17.01 and 17.02 of the 1994-95 and 1996-98 Firefighter contracts was to have the Village pay 75% of the retiree's health insurance premium based on the HMO's offered to those in the active bargaining unit. However, in 1999 the Village changed health insurance carriers to become a member of the State of Wisconsin Group Health Insurance Plan ("State Plan"). In 1999, the State Plan offered six (6) HMO's with an array of premiums which was an increase in carriers compared to the one (1) or two (2) that had been available at the time of your retirement.

To develop a consistent and equal means of calculating the Village's contribution toward both existing and retired employees, the Village created an averaging formula to determine the maximum Village contribution toward health insurance. This formula dropped the highest cost HMO premium and lowest cost HMO premium and averaged the remaining four (4) HMO premiums available in Milwaukee County. This average was the maximum Village contribution toward an active employee's health insurance. The formula for retirees was to take their applicable percentage, in both your cases 75%, times the calculated maximum to determine the maximum amount the Village would pay toward a retiree's health insurance. For retirees selecting an HMO below the premium the Village would pay up to 75% of the premium. For retirees selecting an HMO costing more than the maximum amount, the Village would contribute up to 75% of the calculated maximum with the retiree assuming the balance. In essence, if the HMO selected was below the maximum amount the retiree received a full 75% contribution from the Village. If the HMO selected was more expensive than the maximum amount the Village's contribution came in less than 75% of that premium, but not less than 75% of the maximum. In either event, the Village's contribution to your health insurance has been based on 75% of the calculated maximum (the average of the 4 HMO premiums) since May 1, 1999.

At the time of switching to the State Plan, the Village sent you both the attached letter dated March 4, 1999. This letter explained the change to the State Plan,

provided the enrollment forms, invited you to a registration meeting, etc. It also explained the averaging method of calculating the Village's contribution towards health insurance for both the current employees and retirees. Since 1999 and in subsequent years you did not object to the method the Village would determine its contribution toward your health insurance.

At the time of switching to the State Plan, several retired firefighters continued to enroll in the Village's health insurance. Two (2) firefighters, Richard Kittleson and Roger Kryscio enrolled in carriers having premiums in excess of the maximum average. Both retirees received a Village contribution of 75% of the maximum as calculated average and assumed the balance. Neither of these firefighter retirees objected in 1999 or in subsequent years to the average calculation method. Both of you also accepted the Village's method for calculating the employer contribution to your health insurance plan when the change was made in 1999. The difference between your situation and that of Mr. Kittleson and Mr. Kryscio is that you selected a lower cost HMO; thus, the calculation using 75% of the maximum average did not apply, the Village simply paid 75% of the cost of the HMO you selected.

In that neither you nor other retired firefighters objected to the average calculation method when it was first implemented in 1999, you have waived your right to challenge the methodology used by the Village to calculate retiree premium contributions. The Village has legally made a change in its health insurance plan and formula for calculating premium contributions for retirees and all retirees have voluntarily agreed to this change based on their acceptance of the Village's plan over the last 2-1/2 years.

At this time, the Village seeks to modify the method for calculating the maximum Village contribution from the averaging formula to 105% of the lowest cost HMO available in Milwaukee County. We have made this same proposal to all of our employee groups, including the firefighters union, but have not yet reached a contract settlement. Based on our current contract language, we expect that the same health insurance caps will be provided to active employees and to retirees. Thus, you have the option to switch now to the new formula for calculating premium contributions or to wait until the contract negotiations are completed with the firefighters union.

In 2002, the number of HMO's participating in the State Plan has dropped to two (2) – Aurora/Family and Humana Eastern. Utilizing the averaging method the maximum Village contribution for health insurance calculated to $347.50/Single & $866.20/Family. Utilizing the 75% factor for the Village's maximum contribution towards your retiree health insurance, the average method's retiree maximum Village contribution equals $260.63/Single & $649.65/Family.

Utilizing the 105% of the lowest cost HMO method, the 2002 maximum Village Contribution for health insurance calculates to $361.52/Single & $909.11/Family. Again utilizing the 75% factor for the Village's maximum contribution towards your retiree health insurance, the 105% method's retiree maximum Village contribution equals $271.14/Single & $675.83/Family. Under the 105% method, the maximum Village monthly contribution toward a retiree's health insurance increases by $10.51/Single/month or an additional $126.12/Single/year, and $26.18/Family/month or an additional $314.16/Family/Year. In that the 105% also provides a potential benefit to retirees as well as to active employees in 2002, many retirees are agreeable to the change.

In summation, despite the contract language in place at the time of retirement, by failing to object to the Village's method of determining the maximum contribution towards your health insurance in 1999 it is the Village's position that you have consented to the averaging method implemented in 1999 and the enrollment in the State Plan. It is your option at this time to accept or reject the proposal to implement the 105% method for your own contributions. Should you reject the 105% method you will continue on the averaging method as implemented in 1999.

If you have any further questions, please feel free to contact me at (redacted).

On February 5, 2002, Atty. John Kiel wrote Murray as follows:

Re: Village Firefighter Retiree Health Insurance Calculations

Dear Mr. Murray:

I represent retired Greendale fire fighters Russell A. Billmyer, John Doctor and Robert Fridrick in regard to the above matter. The collective bargaining agreement under which Mr. Billmyer, Mr. Doctor and Mr. Fridrick retired specified that they were entitled to continue as members in the Village's group health insurance plan after retirement with the Village paying 75% of the premium. In a letter dated December 21, 2001 you informed Mr. Billmyer, Mr. Doctor and Mr. Fridrick that you no longer paid 75% of their health insurance premium but, instead, had unilaterally adopted a change in benefit. The Village unilaterally began to pay 75% of the average of health insurance premiums rather than the 75% of the retiree's actual health insurance premium. Neither Mr. Billmyer, Mr. Doctor nor Mr. Fridrick executed any agreements authorizing the change. You unilaterally assert that Mr. Billmyer, Mr. Doctor and Mr. Fridrick waived their rights by failure to object to the Village's unilateral change. In essence you suggest that Mr. Billmyer, Mr. Doctor and Mr. Fridrick gave their implied consent to the change. The Village did not

solicit nor receive approval to change the insurance calculations from Mr. Billmyer, Mr. Doctor or Mr. Fridrick.

By way of this letter Mr. Billmyer, Mr. Doctor or Mr. Fridrick advise you that they do not give their consent to any unauthorized changes in their retirement health insurance benefit.

Please be advised that the retirement health insurance benefits of Mr. Billmyer, Mr. Doctor and Mr. Fridrick were vested upon their retirement. As such the Village had no authority to unilaterally change their retirement health insurance benefit. Moreover, the Village does not enjoy the right to make any future changes to the retirement health insurance benefit of my clients.

Please cease and desist from any effort to change the retirement health insurance benefit of Mr. Billmyer, Mr. Doctor and Mr. Fridrick. Please maintain the retirement health insurance benefits of Mr. Billmyer, Mr. Doctor and Mr. Fridrick at a level not less than that at which they retired. Specifically, please pay not less than 75% of the health insurance premium of Mr. Billmyer, Mr. Doctor and Mr. Fridrick.

Thank you in advance for your attention to this matter. Please contact me with any questions.

On February 6, 2002, Murray wrote Kiel as follows:

Re: Retiree Firefighter Health Insurance Calculations

Dear Mr. Kiel:

Please accept this in response to your letter of February 5th, attached. As one point of clarification, in my letter of December 21, 2001 and in previous considerations of the issue of the method the Village calculates its payment toward a retired firefighters health insurance my considerations have included Mr. Billmyer and Mr. Fridrick. Your letter is the first mention of Mr. Doctor.

In March, 1999, when the Village was switching to the Wisconsin Group Health Insurance Plan ("State Plan"), the Village notified your clients on the change to the State Plan and the new averaging method for calculation retiree health insurance contributions. Since 1999 and in subsequent years your clients did not object to the method the Village would determine its contribution toward their health insurance. Therefore, contrary to your letter, I continue to stand behind my letter of December 21st to hold that your clients' failure to object to the change in calculation over the past three years represents their acceptance of the averaging method.

I will take your letter to represent your clients' objection to the new calculation method being proposed by the Village to utilize 105% of the lowest cost State Plan HMO available in Milwaukee County. The Village will therefore continue to utilize the averaging method implemented in 1999 to determine your clients' health insurance contribution.

If you have any questions or would like additional information, please feel free to contact me at the address and telephone number above.

On March 13, 2002, Kiel wrote Murray as follows:

Re: Village Firefighter Retiree Health Insurance Calculations

Dear Mr. Murray:

I am in receipt of your February 6, 2002 letter and have discussed it with Mr. Doctor, Mr. Fridrick and Mr. Billmyer. Since then, Mr. Doctor has elected against further pursuit of his challenge to the Village's recalculation of his health insurance benefits. Mr. Fridrick and Mr. Billmyer have elected to assert their rights.

This is to once again insist that the Village calculate the retirement health insurance benefits of Mr. Fridrick and Mr. Billmyer according to the terms in effect at the time of their retirement. Contrary to your assertion, Mr. Fridrick and Mr. Billmyer did not agree to the 1999 calculation method unilaterally imposed on them by the Village. Mr. Fridrick and Mr. Billmyer were never fully informed of the 1999 calculation method change and never gave their express or affirmative consent to the change.

Moreover, I am not persuaded by your claim that Mr. Fridrick and Mr. Billmyer gave their implied consent to the change by failing to raise a specific objection in 1999. It is well established that implied consent does not support a employer's effort to change the health insurance benefits of retirees. (See Roth v. City of Glendale, 2000 WI 100, rejecting reliance on implied consent as the basis for changing the level of retiree health insurance benefits). Mr. Fridrick and Mr. Billmyer did not voluntarily and intentionally waive their retirement health insurance rights and continue to enjoy the right to the benefit level in effect at the time of their retirement.

If you have any documents to show that Mr. Fridrick and Mr. Billmyer voluntarily and intentionally agreed to waive their rights regarding the calculation of their retirement health insurance benefits in 1999, please forward copies of such agreements to me so that I may review them with my clients. If

not, please immediately restore the benefits to which Mr. Fridrick and Mr. Billmyer are entitled.

The Village continued Billmeyer and Fridrick at 75% of the "averaged" annual premiums, and they did not file any legal challenges.

2005-07 Bargaining and Grievance.

The employer resumed its efforts to reduce health insurance benefits for both active employees and retirees during bargaining for the 2005-2007 agreement. On November 1, 2004, it proposed reducing its premium participation to 90% of the LCP, and revived its proposal for a sliding scale tying retiree premium participation to the former employee's length of service, offset by a one-time payment of $250. The union rejected both proposals, and on November 18, 2004, the employer proposed instead setting its 17.01 contribution at 95% of LCP in 2005, 92.5% in 2006 and 90% in 2007, and a new *quid pro quo* for the Sec. 17.02 sliding scale, "a one-time payment … in the amount of 0.5%." [4]

Again, the union opposed this proposal. On December 2, 2004, the Village renewed its November 18 offer regarding retiree insurance, and amended its offer for active employees as follows:

17.01 – Revise last sentence to read:

Participating in the Wisconsin Group Plan, the Village will pay the premium cost of the health insurance plan selected by the employee, not to exceed ~~100%~~ ~~90% 95% in 2005, 92.5% in 2006 and 90% in 2007~~ 100% of the single or family premium cost of the lower cost eligible HMO (or the lowest cost plan if no HMO's are available) offered in the service area covering the Village. In addition, the employee shall pay the following monthly co-pays to the Village for health insurance premiums:

Year as of January 1	Single	Family
2005	$30.00	$60.00
2006	$36.00	$72.00
2007	43.00	$86.00

[4] Although the full import of this final offer is unclear (the proposal does not make clear whether the 0.5% is of the full premium, the employer's share or the employee's share, or of something else), it presumably would have been worth more than the flat $250.

On January 14, 2005, the Village presented what it termed "a comprehensive package for a voluntary settlement" which renewed its December 2 offer regarding active employees, but dropped all proposals concerning retiree benefits.

By the late Spring, the parties had tentatively agreed to a phased-in reduction of the employer's contribution toward the premium for active employees, from 105% of LCP to 100% of LCP over the three years of the successor labor agreement. On June 8, 2005, the Village proposed the following:

> 3. Section 17.01 Health Insurance:
> ....
> Participating in the Wisconsin Group Plan, the Village will pay the premium cost of the health insurance plan selected by the employee, not to exceed 105% in 2005, 102.5% in 2006 and 100% in 2007 of the single or family premium cost of the lowest cost eligible HMO (or the lowest cost plan if no HMO's are available) offered in the service area covering the Village.
>
> 4. Section 17.02(a) Calculation of Retiree Health Insurance (Housekeeping to comply with #2 above and practice):
>
> a) The Village will pay seventy-five (75%) toward the cost of the premium **applicable to all members of the bargaining unit (105% of the lowest cost eligible HMO in 2005, 102.5% in 2006 and 100% in 2007).** (**Emphasis** in original)

Local 1777 President Jim Hintz informed Murray by email dated June 29, 2005, that "there is no agreement on paragraph #4," and asked that it be removed from the tentative agreement. On June 30, 2005, Murray wrote Hintz as follows:

> Jim:
>
> The Village's #4 relating to the Retiree Health Insurance language is purely a codification of past and current Village practice/policy. The Village calculates the retiree's 75% based on the amount that it annually pays the current employees. As an example an employee (and this applies to ALL employees) that would retire this year (2005) would have the maximum Village retiree benefit of 75% x 105% of the Lowest Cost Plan (LCP) since the Village's health insurance payment for current employees is the 105% of the LCP. In 2006 the retiree benefit will be 75% x 102.5% LCP, in 2007 it'd be 75% x 100% LCP (as proposed in the contract).
>
> The Village is fully aware that this change in percentage would not apply to existing retirees who have retired under prior contracts. Prior retirees will continue to receive the appropriate benefit as provided in the existing contract at

the time of their retirement, unless they would voluntarily agree to any subsequent changes.

If placing the language is a concern for the membership the Village will drop #4, however it will NOT revise the Village's interpretation or practice of annually calculating the retiree health insurance benefit based on the applicable LCP percentage as noted above.

If the membership and/or your attorney is unfamiliar with the Village's practice and you would like to discuss this further I would suggest we schedule a face-to-face meeting with all the appropriate parties, including your attorney, so we can bring this matter to an end.

Thanks.

Joe

On July 5, 2005, Hintz emailed Murray as follows:

I am in receipt of your June 29, 2005 email concerning the Village's view of the retiree provision in the collective bargaining agreement. The 2002-2004 collective bargaining agreement contains the following provision for active employees:

> (T)he Village will pay the premium cost of the health insurance plan selected by the employee, not to exceed 105% of the single or family premium cost of the lowest cost eligible HMO (or the lowest cost plan if no HMOs are available) offered in the service area covering the Village.

Retirees are covered by separate provision that includes retirees in the "group health insurance plan applicable to the collective bargaining unit" members (e.g., the "Wisconsin Public Employers Group Health Insurance Plan" also referred to as the "Wisconsin Group Plan") under different conditions. Unlike active employees, retirees are not limited to a benefit equal to 75% of the lowest cost plan. The benefit payable to retirees is set forth under Section 17.02, which provides:

a) The Village will pay seventy-five percent (75%) toward the cost of the premium.

The Union is not aware of any practice that contradicts the obligation set forth under the plain language of Section 17.02(a) of the collective bargaining agreement. Accordingly, when Section 17.02(a) is applied, the Union will insist

that the Village pay seventy-five percent (75%) of (sic) towards the cost of whatever the retiree's premium might be.

In close, the language with which the Village proposes to modify Section 17.02(a) of the collective bargaining agreement does pose a concern for the membership and the Union will not agree to any contract that includes that unilateral change. To the extent the Village wishes to modify the retiree health insurance provisions of Section 17.02(a) that change should be accomplished through collective bargaining as opposed to unilateral action.

Please contact me with any questions.

Murray replied fourteen minutes later, as follows:

As I stated in my last message (June 30, 2005), I've dropped the proposed language change for retiree health insurance since it causes you concern, but dropping it doesn't change the Village's past practice nor interpretation. The 75% is calculated against the premium amount the Village pays towards the LCP. That's the maximum amount the Village will pay towards the retirees health insurance.

Dropping the final item, as you've noted, the Firefighters Union has no further objection to the TA and you have assured me of a majority vote to ratify the TA. When will the vote occur? I expect that you will be able to confirm ratification quickly.

Thank you.

On July 11, 2005, Murray emailed Hintz, in part as follows:

I've cleaned up the Village's final offer (attached) so we're all certain of what is being discussed/voted on. I've revised the Comp Time language to reflect your language. I've also removed the revision language for retiree health insurance calculations. It doesn't change the interpretation of how the 75% retiree health insurance benefit is calculated, but we can drop it since the new language causes more concerns/conflicts than it was intended. I believe this should make the offers complete and ready for the Firefighters to act on the TA.

On August 11, 2005, Hintz wrote then-Fire Chief Gary Fedder as follows:

This is to grieve the Village's violation of Article 17.02 a) of the collective bargaining agreement between the Village of Greendale and Local 1777. Article 17.02 entitles retired and disabled bargaining unit members to the following retirement health insurance benefit:

a) The Village will pay seventy-five percent (75%) toward the cost of the premium.

In bargaining over a successor to the 2002-2004 collective bargaining agreement, the Village proposed the following language:

a) The Village will pay seventy-five percent (75%) toward the cost of the premium applicable to the members of the bargaining unit (105% of the lowest cost eligible HMO in 2005, 102.5% in 2006 and 100% in 2007).

Local 1777 objected to the modification proposed by the Village because changing retiree language had never been discussed at any negotiating meeting leading up to the proposed change, after which the Village withdrew its proposal to change Article 17.02 a).

This is to inform the Village that, unless otherwise agreed to, Local 1777 objects to the effort to reduce retiree health insurance benefits below 75% toward the cost of the premium an individual employee retires under.

Fedder denied the grievance on August 17, 2005, writing Hintz in part as follows:

The language suggested for the contract was to clarify the formula that has been used by the Village toward the cost of a retirees' (sic) health insurance and was not to change or reduce benefits

On August 23, 2005, Hintz submitted the grievance to Murray. On September 22, 2005, Murray emailed Hintz as follows:

Jim

As I'm sure you fully expected, I'm denying your Step 3 Grievance on Retiree Health Insurance. Attached you'll find my reply. Darlene will be making hard copies with the attachments tomorrow morning and it'll be in the Fire Dept. mailbox.

As we discussed during negotiations, the Village has always calculated the Retiree Premium at 75% of the premium paid to/for the current employees. I don't understand the reasoning behind this grievance and I hope we can put it behind us.

The attached reply read as follows:

Re: Step 3 Grievance – Section 17.02(a) – Retiree Health Insurance

Dear President Hintz:

Please accept this letter in reply to the Step 3 Grievance filed about Section 17.02(a) of the Village – Firefighters Union Contract – Retiree Health Insurance (letter dated August 23, 2005, attached). Section 17.02(a) of both the 2002-04 and the new 2005-07 Union Contract that's been approved (though waiting final signature) reads:

17.02(a) The Village will pay seventy-five percent (75%) toward the cost of the premium.

At issue is how the Village calculates or determines the 75%. As I understand the grievance, it is the Union's interpretation that the 75% would be 75% of whatever premium a retiree selects. This is contrary to the Village's past, present and future interpretations. Therefore based on the information I must DENY this grievance for the reasons detailed below.

1) Past Practice

It has been the Village's interpretation of Section 17.02(a) that the Village would calculate its maximum contribution toward a retiree's health insurance based on the premiums and benefit levels applicable to the active employees. The calculation became a bit more complex when the Village changed health insurance carriers and joined the State of Wisconsin Group Health Plan (State Plan) in 1999, however, it has remained consistent in calculating the retiree health insurance benefit based on the premium amount/benefit provided to the active employees.

When the Village joined the State Plan in 1999 to 2001, the Village calculated the maximum health insurance premium for active employees as the Village calculating the average premium of the HMO's available in Milwaukee County. Once the Village maximum premium for active employees (Employee Premium) was determined the Village multiplied this by 75% to determine the maximum premium for retirees (Retiree Premium).

In 2002 the Village was required by the State Plan to modify its calculation method for the Employee Premium from an averaging method to its more standard 105% of the lowest cost plan (LCP) available in Milwaukee County. Rather than averaging, the Village determined the LCP premium and multiplied that by 105% to calculate the Employee Premium. From the Employee Premium the Village multiplied that by 75% to determine the Retiree Premium. In 2002 the calculation change from the averaging to the 105% LCP

method actually resulted in the maximum Village contribution for health insurance benefits increasing to the benefit for both the Employee Premium and Retiree Premium.

The Village's calculation of the Employee Premium and the Retiree Premium has utilized the 105% of the LCP methodology since 2002 through the present. Therefore, based on this consistency the Village's interpretation of the Retiree Premium would constitute a past practice and thus justify denial of this grievance.

2) Union Interpretation Would Violate State Plan

As I noted earlier, participating in the State Plan the Village's maximum contribution toward health insurance is capped by the State Plan at 105% of the LCP. In 2005, the LCP for Milwaukee County is Compcareblue/Aurora/Family having premiums of $479.60/Single and $1,180.60/Family. Multiplying the LCP by 105% the maximum Village contribution toward health insurance for both Employee Premiums and Retiree Premiums would be $503.58/Single and $1,239.63/Family.

Utilizing the Union's proposed Retiree Premium as being equal to 75% of the health insurance premium the retiree was enrolled in would violate the State Plan's 105% LCP limitation if the retiree were enrolled in the Standard Plan – Milwaukee. As expected, the Standard Plan is the highest price plan available in Milwaukee County with premiums typically twice those of the HMO's. In 2005 the Standard Plan's premiums are $1,060.70/Single and $2,596.10/Family. If the Union's 75% Retiree Premium interpretation were utilized, the Retiree Premium for any retiree in the Standard Plan would be $759.53/Single and $1,947.08/Family. The Union's 75% interpretation would result in the Village's Retiree Premium being equal to roughly 166% of the LCP.

2005 State Plan Premiums in Milwaukee County

			Union's Interpretation of 75% For Retiree Premium	
Plan	Single Premium	Family Premium	Single Premium	Family Premium
Compcare Blue Aurora/Family	$479.60	$1,180.60	$359.70	$885.45
Humana-Eastern	$534.00	$1,316.60	$400.50	$987.45
Standard Plan – Milwaukee	$1,060.70	$2,596.10	$795.53	$1,947.08

105% LCP – Max. Village Contribution	$503.58	$1,239.63

Union 75% Interpretation if Standard Plan is Selected Exceeds 105% Maximum by:	$291.95	$707.45
Union's 75% Interpretation of Standard Plan Equals Percentage of LCP	166%	165%

Therefore, if the Union's 75% Retiree Premium interpretation were correct the Village would be in violation of the State Plan's 105% LCP premium. Since the Union's interpretation could not be correct and would justify denial of this grievance.

3) Grievance Untimely

Also as I noted earlier, the Village's interpretation of calculating the Retiree Premium as being 75% of the Employee Premium has been consistent. In particular the Village's Retiree Premium calculation as being 75% of 105% of the LCP (the Employee Premium) has been in place since 2002. The Union has not filed a grievance regarding this interpretation until this time.

Section 13 of the Union Contract provides for Grievance procedure, in particular Section 13.02 reads (in both the 2002-04 and the 2005-07 Contract):

> ***13.02*** *Grievances shall be processed in the following manner:*
>
> > *Step 1. The employee and/or Union representative shall take the grievance up orally with the employee's immediate supervisor within five (5) days of their knowledge of the occurrence of the event causing the grievance, which shall not be more than thirty (30) days after the event. The immediate supervisor shall attempt to make a mutually satisfactory adjustment, and in any event, shall be required to give an answer within five (5) days.*

Under this the Union would have had to file the grievance within five (5) days of their knowledge, and not more than thirty (30) days after the event. There have not been any Firefighter retirements in several years. The most recent Firefighter to leave the Department was Jerome Suderland in April 2005 due to a duty disability. Therefore any basis for this grievance from prior retirees or Mr. Suderland clearly exceeds the timeliness standards and justifies denial of this grievance.

In a related note to the prior retirees, as retirees they are no longer active, participating members of the Fire Department and the Union and therefore are not subject to the grievance procedure.

The timeliness of this grievance would also be past even if this grievance

were being filed without the Union's possible prior Village interpretation of the Retiree Premium benefit for prior retirees. As part of the 2005-07 Contract negotiations the Union agreed to modify Section 17.01 of the Contract relevant

to Employee Premiums to progressively lower the premium calculation method from 105% of the LCP in 2005, to 102.5% in 2006 and down to 100% LCP in 2007. Once it became clear during the negotiation process that the revisions to Section 17.01 for the calculation method was tentatively agreed to by both the Village and the Union the Village did note a language revision for Section 17.02 and the Retiree Premium calculation. The language I provided to you on or about June 8, 2005 as part of our Tentative Agreement process was to revise as follows:

> *Section 17.02 (a) Calculation of Retiree Health Insurance (Housekeeping to comply with change in employee health insurance Section 17.01 and practice):*
>
> *a) The Village will pay seventy-five percent (75%) toward the cost of the premium* ***applicable to the members of the bargaining unit (105% of the lowest cost eligible HMO in 2005, 102.5% in 2006 and 100% in 2007).***

As noted, the Village provided this language simply as a housekeeping item. The Union, however, did not view this as a housekeeping item as noted in your e-mail reply on June 29th (attached). In an effort to reach a final agreement rather than being bogged down over language changes I replied in an e-mail on June 30th (attached) reiterating the Village's intent in the language change as being "purely a codification of past and current Village practice/policy" and that the "Village calculates the retiree's 75% based on the amount that it annually pays the current employees." I further noted in the e-mail: "If placing the language is a concern for the membership the Village would drop {the revisions to Section 17.02(a) Retiree Health Insurance}, however, it will NOT revise the Village's interpretation or practice of annually calculating the retiree health insurance benefit. . ." As such I notified you, the Union President, directly of the Village's interpretation of the 75% Retiree Premium on June 30th.

Village records indicate that the Union did not file the grievance until it spoke with Captain Weiler on August 7th, some thirty-eight (38) days later. Therefore since as the Union President you were aware of the Village's interpretation on June 30th this grievance was not filed in a timely basis in accordance with Section 13.02, Step 1 and justifies denial.

Therefore, based on: 1) the Village's established past practice and interpretation of Section 17.02(a), 2) the Union's interpretation could/would be in violation of the State Plan; and 3) the grievance was not filed in a timely basis

for in regard to a) past retirees (no retirees for several years and/or Firefighter Suderland's Duty Disability Retirement occurring in April 2005) and b) your

knowledge of the Village's interpretation of Section 17.02 during negotiations, I hereby DENY this grievance.

If the Union elects to pursue this to a Step 4 Grievance, please submit the Step 4 request in writing to me by **the opening of business on Friday, October 7th**. (**emphasis** in original)

On September 23, Hintz replied to Murray's email and attachment as follows:

Thank you for your reply. The Greendale Professional Firefighters Local 1777 baord members have to disagree with you though. We never discussed retiree health insurance benefits during negotiations. We have not discussed retiree health insurance benefits since the Village took on the state insurance. If you feel it was discussed, please present to Local 1777 the date and a copy of meeting notes showing the discussion. Thank you.

On September 30, 2005, the parties signed their collective bargaining agreement covering 2005-2008. The agreement included the phased-in reduction of active employee benefits in Sec. 17.01, with no corresponding amendment to Sec. 17.02.

On October 6, 2005, Hintz appealed the grievance to Step 4, the Village Board of Trustees. On November 1, 2005, Murray wrote the Village Board of Trustees as follows:

TO: Board of Trustees

FROM: Joseph M. Murray, Village Manager

RE: ***Firefighter Step 4 Grievance – Retiree Health Insurance Calculation***

In a conversation with Firefighter Union President Jim Hintz this evening, I have a new/better understanding of our different interpretation of the Village's contract related to how the Village calculates retiree health insurance. We both agree that the Village will pay the retiree 75% of the "premium" – at issue is how "premium" is defined.

The Village defines the "premium" as the amount paid to the current employees in effect the year the Firefighter retires. So, in 2005, the "premium" amount for current employee health insurance is based on 105% of the Lowest Cost Plan (LCP). A Firefighter who retires in 2005 would receive 75% x 105% of the LCP. This formula would remain the same throughout their retirement –

staying at 75% x 105% LCP. In 2006, the current employee premium amount decreases to 102.5% LCP. A firefighter retiring in 2006 would have their retiree health insurance formula equal 75% x 102.5% LCP and that would be

"locked in" throughout their retirement. Firefighters retiring in 2005, however would remain at 75% x 105% LCP.

As I now further understand the Firefighters' interpretation they contend that the Village would have had to negotiate a change in the calculation method for retirees separate from any agreements for current employees. We both agree that the current employee health insurance benefit will decrease from 105% LCP in 2005, to 102.5% LCP in 2006 and 100% LCP in 2007. But since there was never any meaningful negotiation to change how "premiums" were defined for retirees it doesn't change. But Firefighters interpret the lack of any revision to Section 17.02 to mean that the "premium" calculation for retirees would remain at 105% LCP as it were in the 2001-04 contract. This would mean any Firefighter retiring between 2005-07 would have their retiree health insurance premium equate to 75% x 105% LCP even if the current employees received less than 105% LCP.

This table attempts to summarize the difference in the Village and Firefighters' interpretation of Section 17.02.

Section 17.02 Interpretation Difference Summary

If a Firefighter:	Retires in 2005	Retires in 2006	Retires in 2007
Village Interpretation	75% x 105% LCP *Prior retirees at 75% x 105% LCP or at 75% x Average Premium as defined in 1999-2001 Contract	75% x 102.5% LCP *2005 & Prior Retirees Remain at 75% x 105% LCP or 75% x Average Premium from 1999-2001 Contract	75% x 100% LCP *2006 Retirees Remain at 102.5%, 2005 & Prior Retirees Remain at 75% x 105% LCP or 75% x Average Premium from 1999-2001 Contract
Union Interpretation	75% x 105% LCP	75% x 105% LCP	75% x 105% LCP
Difference	SAME	Retires in 2006 Would "lose"	Retires in 2007 Would lose 5% LCP (from 105% to

		2.5% LCP (from 105% to 102.5%)	100%)

I continue to disagree with this interpretation in that the Village has clearly established a past practice of calculating the retiree health insurance premium based on the benefit provided to the current employees in the year that they retire. However, based on my conversation with President Hintz I have a new/different understanding of their interpretation and their basis for the grievance. I hope that this provides some further clarification for the Board's consideration.

On November 17, 2005, then-Village President Scott Leonard wrote Hintz as follows:

> **Re: Village Board Decision**
> **Grievance on Retiree Health Insurance**
>
> Dear Mr. Hintz:
>
> This letter will serve as confirmation of the Village Board's decision to deny the grievance that the Association filed over the calculation of retiree health insurance benefits. The Board held a hearing on November 1st in which both the Association and the Village Manager presented their facts and arguments concerning this grievance. At the end of the hearing, the Board deliberated and then announced their decision to deny this grievance.
>
> The reasons for the Board's denial of the grievance were explained at the Village Board meeting and can be summarized as follows:
>
> - The grievance is untimely. The Association was notified in an e-mail dated June 30, 2005 from the Village Manager to you, as the Union President how the Village has been interpreting the language on retiree health insurance. The grievance procedure allows the Association five (5) days to file a grievance from the date of their knowledge of events giving rise to the grievance, or no more than thirty days after the event occurs. The grievance was not filed until August 23, 2005, more than 30 days after the Association received the e-mail from the Village Manager.
>
> - Section 17.02 states that "the Village will pay seventy-five percent (75%) toward the cost of the premium." The Village has an established past practice of calculating the payment for retirees based on 75% of the amount paid for active employees, not 75% of the premium in which the employee is enrolled at the time of retirement. The Association could not name one retiree who has been offered, or is receiving, a payment of

75% of the premium in which the retiree is enrolled (unless that plan is the lowest cost plan).

- The contract language must be read as a whole. The language which states that retirees will be "members of the group health insurance plan applicable to the collective bargaining unit" means that retirees are subject to the same contributions on health insurance as active employees must pay. Thus, the 75% calculation is tied to the contribution the Village makes for active employees and must be adjusted each year if the contribution changes for active employees.

- The language states that the Village will pay 75% **toward** the cost of the premium; it does not say the Village will pay 75% **of** the premium in which the employee is enrolled.

- The Association's interpretation requiring payment of 75% of the premium for the plan selected by the retiree could result in the Village paying more than the State Health Plan's limit of 105% of the lowest cost qualified plan. The Village did not negotiate language, nor will it interpret contract language, in a manner that violates the State's regulations.

- The Association's interpretation requiring payment of 75% of the premium for the plan selected by the retiree could result in the Village paying more than 105% of the lowest cost qualified plan. This would mean that the Village would be paying more for health insurance for retirees than it pays for active employees. That is not the intent of the contract language nor consistent with the bargaining history on this language.

Should you disagree with this decision, the grievance procedure provides you with 20 days in which to file for arbitration of this grievance.

On December 12, 2005, Murray wrote the following memo to all Village retirees receiving health insurance benefits:

Re: 2006 Retiree Health Insurance Premium Calculations

Dear Retirees:

In calculating the retiree health insurance premiums for next year (2006), the Village has received more calls and questions than normal. Perhaps it's due to the addition of new health insurance providers in the State of Wisconsin Group Health Insurance Plan ("State Plan") (new in 2006 – United/Health Care SE,

WPS Choice 1 and WPS Choice 2). Or perhaps it's because Compcare Blue Aurora/Family is no longer the lowest cost plan (LCP). Whatever the cause for question, I would like to try and clarify the Village's calculations.

Each contract and retiree has slightly different language, but in essence all the retirees have a health insurance benefit of 75%. The 75% of "what", however varies.

Currently, the Village has three (3) primary calculations for retiree health insurance benefits depending on the retiree's retirement year and union contract or non-represented employee benefit language. These different "statuses" result in different benefit calculations to determine the amount the Village pays towards their health insurance as follows:

Status 1 – "Capped" – Some retirees have their ***retiree health insurance benefit "capped" at the time of retirement***. For these retirees the Village utilized the premium in effect the year they retired, multiplied that times 75% and established the health insurance benefit the Village will pay each year towards their retiree health insurance. The Village's payment – the health insurance benefit amount – remains constant and does not increase each year even though the health insurance premium amount does increase. This primarily applies to older non-represented employee retirees.

Most of the retirees now have benefit language that provides the "escalator clause" so that the Village must calculate their retiree health insurance benefit each year with the new premiums. In general, the Village must calculate the retiree health insurance each year so that it increases or "escalates" each year as the health insurance premiums also increase. Retirees in Status 1 above do not have the escalator clause and that is why they are "capped". The escalator clause benefit relates to Status 2 and Status 3 retirees below.

Status 2 – "Averaging" – When the Village joined the State Plan in 1999, the health insurance benefit for current employees and retirees was calculated utilizing an average of the HMO health insurance premiums each year. In essence, the Village calculated the average cost of qualified HMO health insurance premiums in Milwaukee County and then multiplied that by 75% to determine the MAXIMUM Village retiree health insurance benefit. Non-HMO (such as the Standard Plan) and non-qualifying plans are not included in the calculation. For some retirees their ***retiree health insurance benefit is 75% of the premium UP TO 75% times the average – whichever is less***. The retiree is required to pay at least 25% of the premium.

An example of the Averaging calculations would be as follows:

AVERAGING CALCULATIONS

	Premiums	If Retiree Enrolls In:	Village Share	Retiree Share
HMO 1	$1,000.00	HMO 1	$750.00	$250.00
HMO 2	$1,055.00	HMO 2	$791.25	$263.75
HMO 3	$1,125.00	HMO 3	$795.00	$330.00
AVERAGE	$1,060.00			

MAXIMUM VILLAGE PAYMENT = 75% X AVERAGE ***$795.00***

From the example above, since the premium prices for HMOs 1 & 2 are below the average ($1,060), the Village would pay 75% of the premium and the retiree would pay the difference. The premium price for HMO 3, however, exceeds the average. For the retiree health insurance benefit for retirees in HMO 3 the Village would pay UP TO 75% times the average ($795.00) and again the retiree would pay the difference.

The Village does NOT pay the 75% x the Average amount ($795.00) toward all the retirees' premiums. Each retiree's premium is calculated based on the health insurance plan they enroll in.

The calculations are computed each year based on the actual premiums so that the average "escalates", but the definition of the retiree health insurance benefit provided by the Village would remain the same – 75% of the premium UP TO 75% of the average – whichever is less.

This "Averaging" status applies to some of the retirees who retired between 1999-2001.

Status 3 – "105% LCP"- In 2002, the Village revised the health insurance benefit calculation method from "Averaging" to having it based on the Lowest Cost Plan ("LCP"). Annually, the State Plan identifies the LCP qualified plan available in Milwaukee County and the Village multiplies that by 105% to determine the MAXIMUM health insurance premium that it pays for current employees. Non-HMO (such as the Standard Plan) and non-qualifying plans are not included in the calculation. The amount paid to the current employees (105% LCP) is then multiplied by 75% to determine the MAXIMUM Village retiree health insurance benefit. For some retirees their ***retiree health insurance benefit is 75% of the premium UP TO 75% times 105% LCP – whichever is less***. The retiree is still required to pay at least 25% of the premium.

An example of the 105% LCP calculations would be as follows:

105% LCP CALCULATIONS

	Premiums	If Retiree Enrolls In:	Village Share	Retiree Share
HMO 1	$1,000.00	HMO 1	$750.00	$250.00
HMO 2	$1,055.00	HMO 2	$787.50	$267.50
HMO 3	$1,125.00	HMO 3	$787.50	$337.50
LCP	$1,000.00			
105% LCP	$1,050.00			

MAXIMUM VILLAGE PAYMENT = 75% X 105% LCP ***$787.50***

From the example above, since the premium price of HMO I is below the 105% LCP amount ($1,050.00) the Village would pay 75% of the premium and the retiree would pay the difference. The premium price for HMOs 2 & 3, however, exceeds the 105% LCP amount. For the retiree health insurance benefit for retirees in HMOs 2 & 3 the Village would pay UP TO 75% times the 105% LCP amount ($787.50) and again the retiree would pay the difference.

The Village does NOT pay the 75% x the 105% amount ($787.50) toward all the retirees' premiums. Each retiree's premium amount is calculated based on the health insurance plan they enroll in.

The calculations are computed each year based on the actual premiums so that the 75% x 105% LCP amount "escalates", but the definition of the retiree health insurance benefit provided by the Village would remain the same – 75% of the premium UP TO 75% x 105% LCP – whichever is less.

The 105% LCP status applies to most Village retirees.

I should also note that yet another status – Status 4 – "102.5% LCP" will be added for those that retire in 2006. Changes in the retiree health benefits for those that retire in 2006 will have the same calculation methods as Status 3 above, however the calculation method will utilize 102.5% of the LCP instead of 105% LCP.

The 102.5% calculation will apply ONLY to those employees that retire in 2006. Those that retired prior to 2006 will continue to have their retiree health insurance calculation remain as noted above and as contained in the union contract or non-represented employee benefit resolution the year they retired.

I'd also like to clearly state that this letter is NOT a revision to the retiree health

insurance benefits or a change in Village interpretation in union contract language or benefits. The Village interpretation described above remains the

same. This letter is intended to provide an explanation of the calculation methods ONLY.

The information above utilizes generic examples to demonstrate the calculation methods. Attached you will find a spreadsheet showing the actual 2006 retiree health insurance calculations. Status 2 – Averaging can be found on spreadsheet page 2 and Status 3 – 105% LCP is on page 3. These are the premium calculations for the health insurance plans available in Milwaukee County. Retirees in Status 1 – Capped will have different payment amounts based on their "capped" benefit. Retirees enrolled in health insurance plans outside of Milwaukee County will also have different payment amounts, however, the calculation methods will be consistent with Status 2 & 3 calculation methods described above.

Enclosed you will find your individual retiree health insurance premium utilizing the calculation methods described above. If you have any questions regarding your specific premium amount, please contact the Clerk-Treasurer, Mr. Todd Michaels in Village Hall, (414) 423-2100.

The calculation of retiree health insurance can be a bit confusing, based on individual circumstances (status) and calculation methods described above, but I hope that you find my explanation helpful.

Attachment – 2006 Retiree Health Calculation Spreadsheets (RETIREHC – 2006 Calcs)

Enclosure – Individual 2006 Retiree Health Insurance Premium

On December 19, 2005, Hintz wrote Murray as follows:

Dear Manager Murray,

This is to inform you that the Greendale Professional Firefighters Local 1777 is withdrawing the Retiree Insurance grievance, which concerns a change in future retiree health insurance from 75% of 105% of the LCP in 2005 to 75% of 102.5% in 2006 and finally 75% of 100% in 2007. Local 1777's withdrawal is without prejudice. Local 1777 reserves the right to grieve future unilateral changes to retiree health insurance benefits spelled out in 17.02(a). It has been and remains Local 1777's position that the retiree health benefits established under section 17.02(a) do not follow the active member benefits established under section 17.01. Rather than continue in pursuit of the grievance,

Local 1777 has elected to agree to the change in retiree health insurance.

> Furthermore, in reference to the timeliness of the grievance, according to Local 1777's contract, weekends and holidays are not to be included in the time lines given. It is Local 1777's position that the grievance was timely filed there under.
>
> Should you have any questions regarding the above, please contact me.

Hintz testified that the import of the letter was that the union agreed with the phased-in reduction of the employer's premium participation, but that anything less than 100% of the LCP would have to be negotiated.

During negotiations for the 2008-10 agreement, the Village on November 5, 2007 proposed to revise the last sentence of Sec. 17.01 to reas as follows:

> Participating in the Wisconsin Group Plan, the Village will pay the premium cost of the health insurance plan selected by the employee, not to exceed 95% ~~105% in 2005, 102.5% in 2006 and 100% in 2007~~ of the single or family premium cost of the lowest cost eligible HMO (or the lowest cost plan if no HMO's are available) offered in the service area covering the Village. (Jt. Ex. 15-q].

On December 3, 2007, the Village amended its offer as follows:

> Participating in the Wisconsin Group Plan, the Village will pay the premium cost of the health insurance plan selected by the employee, not to exceed 100% ~~105% in 2005, 102.5% in 2006 and 100% in 2007~~ of the single or family premium cost of the lowest cost eligible HMO (or the lowest cost plan if no HMO's are available) offered in the service area covering the Village less a monthly employee contribution of thirty dollars ($30.00) for a single plan or seventy five dollars (75%0 for a family plan. In addition, the employee shall pay any premium costs in excess of 100% of the lowest cost qualified plan. (Jt. Ex. 15-r].

When the Village proposed amending Sec. 17.01, it did not propose any changes to Sec. 17.02. The parties ultimately agreed to amend Sec. 17.01 as follows:

> . . . Participating in the Wisconsin Group Plan, the Village will pay the premium cost of the health insurance plan selected by the employee, not to exceed 100% of the single or family premium cost of the lowest cost eligible HMO (or the lowest cost plan if no HMO's are available) offered in the service area covering the Village less a monthly contribution of

> twenty dollars ($20.00) for a single plan or sixty-five dollars ($65.00) for a family plan effective January 1 2008, thirty dollars ($30.00) for a single plan or seventy-five dollars ($75.00) for a family plan in 2009 and

> 2010. In addition, the employee shall pay any premium costs in excess of 100% of the lowest cost qualified plan. (Jt. Ex. 1).

When the parties agreed to amend Sec. 17.01, they did not discuss or implement any changes to Sec. 17.02.

Other than Wood, four former firefighters have retired since 1995 and received benefits under Sec. 17.02, calculated as follows:

Russell Billmeyer, retired February 1995, benefit calculated at 75% of the premium to a maximum of 75% of the average of the premiums for all plans; Robert Fridrick and John Docter, date of retirement unknown, benefit calculated as per the Billmeyer example; Jerome Suderland, retired April 2005, benefit calculated at 75% of the premium to a maximum of 105% of the lowest cost plan, the % of LCP contained in Sec. 17.01 of the 2002-04 labor agreement, the agreement in place when Suderland retired.

At the time of hearing, there were 30 retired former Village employees receiving insurance benefits. Three of them paid their entire premium. The others all had their benefit calculated as 70% or 75% of a percentage of the averaged annual premium or of the premium of the lowest cost plan. Eight made the Sec. 17.01 monthly employee contribution, in addition to their premium participation. Other than the entries for Billmeyer, Suderland and Wood, the list of retirees does not reveal their former departments, leaving the record silent about any contractual provisions regarding the calculation of benefits for non-IAFF retirees.

Following the conclusion of the briefing schedule, I conducted a brief telephone conference with the parties, at which time they informed me that they are in interest arbitration for a successor agreement, and that both offers reduce employer support for active employees' 17.01 health insurance to 88% of LCP without a corresponding reduction or any other amendment in section 17.02.

The Police Contract and Grievances

The Village also employs police officers, represented for collective bargaining by the Labor Association of Wisconsin (LAW.) The Village and LAW have gone to grievance arbitration three times in the last 20 years over retiree health insurance benefits.

In 1992, LAW grieved over whether the Village's contribution for retiree health insurance rose each year with the new premiums. The relevant contract language provided:

> The Village agrees that employees with ten or more years of service who retire under the Wisconsin Retirement System at age 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 percent (75%) of the specific dollar premiums listed in Section 17.01.[5]

Reviewing the parties' past practice, Arbitrator Amedeo Greco denied the grievance:

> . . . it is undisputed that the Village ever since 1985 has not picked up the proportional increase in a retiree's health insurance premiums. The fact that it has followed this practice since 1985 without any prior grievance from the Association strongly indicates that the Association at that time agreed with the Village's interpretation. Village of Greendale (Police),No. 46127 (Greco, 4/92, p. 4) (Emphasis in original).

LAW also argued at that time that its members should receive the same benefit as the firefighters, who did have an escalator clause in their agreement. Noting that "there is a significant difference between the language found in the Police and Fire Department contracts and the Village's different responsibilities thereunder," Greco rejected this argument.

The police association grieved again in 1999 over whether the contract language contained an escalator clause, based on contract language which provided that, "[t]he amount of payment made by the Village will be based on the number of years of creditable service with the Village using" the same formula the employer had unsuccessfully sought to include in the Association agreement. Noting the similarities in the retiree health insurance language in the police and fire contracts, Arbitrator Karen Mawhinney granted the grievance:

> 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 time 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. 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 premiums is to be used. In the firefighters' contract,

[5] Although the full text of sec. 17.01 is not in the Award, an excerpt indicates it provided that the Village would pay "up to" $308.63 per month toward the cost of the family premium and "up to" $120.89 per month toward the cost of the single premium.

> 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 of whatever the premium is, not the premium in effect at the time of retirement. (Village of Greendale (Police), No. 57540, Dec. 6009 (Mawhinney, 1/00, pps. 18-19)

In a third related grievance, the police association argued in 2007 that the Village should be paying 75% of the retirees' full premium, and not 75% of the payment made for active employees, under contract language which provided:

> ARTICLE XVII – INSURANCE
>
> SECTION 17.01 – HEALTH INSURANCE: The Employer shall provide hospitalization and surgical care insurance for employees covered by this Agreement under the Wisconsin Public Employers Group Health Insurance Plan (Wisconsin Group Plan), and thereafter coverage will remain as under the Wisconsin Group Plan, or under a substantially equivalent plan, and in the event of such change, the Employer will pay the full cost as previously provided. The Employer shall pay one hundred and five percent (105%) of the lowest cost qualified plan (meaning the lowest cost HMO or the lowest cost qualified plan if no HMOs are available) offered in the service area covering the Village as determined by the Wisconsin Group Plan and the employee shall pay the difference, if any, between the Employer contribution and the plan selected by the employee. Effective January 1, 2006, the Employer shall pay one hundred and two and one-half percent (102.5%) of the lowest cost qualified plan offered in the service area covering the Village and the employee shall pay the difference, if any, between the Employer contribution and the plan selected by the employee. Effective January 1, 2007, the Employer shall pay one hundred percent (100%) of the lowest cost qualified plan offered in the service area covering the Village and the employee shall pay the difference, if any, between the Employer contribution and the plan selected by the employee. A retired employee may continue to participate in the Employer'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 Employer 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 Employer will be based on the number of years creditable service with the Employer 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 retire under a disability Retirement under Chapter 40 of the Wisconsin State Statutes:	75% payment

. . .

F. The Employer will issue a check to an insurance company of the retiree's choice if the Employer has no policy or plan for which the retiree is eligible. . .

Concluding that the Village's payment was linked to the payment made for health insurance for active employees, Arbitrator Richard McLaughlin denied the grievance. In so doing, he noted the negotiations over the decision to change carriers to the State Health Insurance Plan:

> The evidence does not afford persuasive support for the Association's view that Section 17.02, Subsection A demands Village percentage payment toward any plan selected by a retiree. As the Village points out, there is no basis to conclude the parties directly bargained this result. More significantly, the evidence favors the view that the parties did not anticipate this result.
>
> The parties initial understanding of the implementation of the State Plan was specific. They agreed on an averaging formula, stating it in considerable detail. Significantly, their agreement excluded the Standard Plan from the averaging formula by which premium payment under Section 17.01 was set. The Interim Agreement supplied to the Association, including then-incumbent President O'Neill, included a cover letter from Murray dated March 18, 1999, which noted Board "appreciation to the Police Officers for taking this step to help address a large fiscal issue which impacts both the Village and all of the

employees." This is the background to the Village's administration of the benefit, which has consistently set premium payment under the averaging formula or under any permutation of the "% LCP method" without including

the Standard Plan. This administration does not constitute a binding practice, but does set the context for bargaining history.

Arbitrator McLaughlin issued the following Award:

The Village's application and interpretation of Article XVII- Insurance, Section 17.02(A), is consistent with the 2005-07 collective bargaining agreement between the Village of Greendale and the Labor Association of Wisconsin, Inc. to the extent the Village applies the sliding percentage scale of Section 17.02, Subsection A against the number yielded by application of the "% LCP method" set in Section 17.01 for active employees. The Village violates Section 17.02, Subsection A, by using the sliding percentage scale against any premium for a specific plan selected by an individual retiree. Village payment toward retiree health insurance premium costs is established by multiplying the dollar figure generated by the governing "% LCP method" in Section 17.01 for an active employee by the applicable percentage set by Section 17.02, Subsection A for a retiree. Village of Greendale, No. 66254, Dec.7158 (McLaughlin, 7/07).

POSITIONS OF THE PARTIES

In support of its position that the grievance should be sustained, the Association asserts and avers as follows:

Grievance arbitrators have long held that clear and unambiguous contract language should be applied as written without resort to other evidence of intent, and the plain language of the agreement supports the union's interpretation. Just because the parties disagree over the meaning doesn't mean the language is ambiguous.

Further, the village seeks by this arbitration a concession it could not get at the bargaining table, despite persistent effort. The Village has tried to obtain a change in its obligations for retiree health insurance in bargaining; not getting its way there, it now asks for its wish to be granted as a matter of contract interpretation. The agreement should not be construed to give the Village a concession it could not obtain in bargaining.

Parties generally do not bother to seek what they already have. The Village's repeated, and repeatedly unsuccessful, efforts at reducing its obligations to its retires to pay less than 75% of their premium should be rejected here, just as it was in bargaining.

The association waived no rights when it withdrew its 2005 grievance. By that action, the association agreed that the Village's obligations to retirees would be 75% of 100% of premium; it did not agree that the Village could pay less than

100% of the lowest cost plan. The association did not agree that the Village could first deduct the insurance co-payment made by active employees before calculating its premium payment for retirees. Also, the withdrawal was without prejudice, leaving the Association the right to grieve future unilateral changes. The Village cannot argue the 2005 agreement on the Village paying 100% of the LCP means it agreed to link sections 17.01 and 17.02 such that the Village may first reduce its premium obligation by subtracting the active employees' co-pays. There is no past practice to support the Village. If the Village's interpretation were supported by past practice, why did it try again and again to persuade Local 1777 to agree to bargaining proposals that linked the employer's premium obligations under 17.02 to benefit levels for active employees under 17.01? As the 1999 Letter of Agreement makes clear, the parties did not intend for benefits under 17.02 to be reduced by premium co-pays made under 17.01. And since there have been no retirements since the co-pays were introduced under 17.01, there is no past practice evidence at all.

The Village's reliance on the arbitration involving its police officers is also misplaced. That case before Arbitrator McLaughlin involved different parties, different contract language and an issue different than the one in the present grievance.

In support of it position that the grievance should be denied, the Village asserts and avers as follows:

The McLaughlin decision, involving the same issue for the police officers, must be applied to the facts here and result in the dismissal of the grievance. The respective contract language is only slightly different, and represents a distinction without a difference because the grievances both involved determining what the 75% was of. As Arbitrator McLaughlin recognized, sections 17.01 and 17.02 are inextricably tied together, and the payment for retirees under 17.02 was based on the premium contribution under 17.01. Two other grievance arbitrations also linked interpretation of 17.02 in the firefighters contract with 17.01 in the police contract; that same inextricable link applies here and decides this dispute. Since arbitrators found that the police bargained for parity with the firefighters on retiree health insurance benefits, then the two most recent awards involving police retiree benefits are relevant and determinative of the instant grievance. Since the police officers bargained for parity, and the Village is providing the same contract interpretation to both units, this grievance must be dismissed.

The Village has a consistent past practice in interpreting section 17.02, which the union knows about, has accepted and failed to repudiate in any round of contract negotiations. The union errs in arguing that the language at issue is clear and unambiguous; there would not now be two grievances over the matter

(along with three arbitrations, over basically the same language, for the police union).

The language is ambiguous because of the reference to "the premium," which could either mean the premium of whatever plan the retiree enrolls in, or, as the Village contends, the payment made for active employees in Sec. 17.01. There is no other inference to be drawn from the language of Sec. 17.02. Specifically, it cannot mean what the union alleges it means, namely that the village pay 75% of 100% of the LCP, an interpretation not written anywhere and directly contrary to the village's clear statements in 2005.

The Village's past practice has been to determine the payment made for retirees based on the premium contributions it makes for active employees. It does not have to bargain over applying the minimum employee contributions.

The past practice is unequivocal. Since 1999, when the parties agreed to change carriers to the State Health Insurance Plan, the Village has unequivocally linked the payment for retiree insurance to the contributions made for active employees. If the parties had a duty to bargain a change in retiree health insurance to link the 75% payment to what active employees were paying, why did the union not grieve when Jerome Suderland began receiving retiree benefits in 2005, if not because that calculation was consistent with the Village's established past practice. That past practice was clearly enunciated and acted upon, as shown by the series of emails from the Village Manager in 2005.

The past practice is readily ascertainable over a reasonable period of time as a fixed and established practice by the parties. Informed by the employer of its interpretation and application of Sec. 17.02, the Union failed to arbitrate its grievance in 2005; took no steps during negotiations for the 2005-2007 agreement to terminate or repudiate the practice; and never notified the employer it was terminating the practice.

When the Village calculated the 75% payment for retiree insurance based on the contribution made for active employees, it was acting in accordance with established past practice which is binding because it is unequivocal, clearly enunciated and acted upon, and readily ascertainable over a reasonable period of time. The union's withdrawal of the 2005 grievance did not change the meaning of the past practice.

Accordingly, the Village has properly interpreted and applied the language of

Sec. 17.02 in making payments for retiree health insurance benefits based on the payments for active employees in Sec. 17.01.

In response, the Association posits further as follows:

None of the Village's arguments support abandoning the plain language defining the premium as 100% of the LCP and requiring the Village to pay 75% towards its cost.

The arbitration award involving the Village's police union did not involve the same issue, facts, or contract language, and thus offers no support for the Village. And since the Village has previously argued that the police grievance should be denied because that contract was different than the firefighters, the employer cannot now argue that the language is so alike that the two units should be treated the same.

The Village contends that Sec. 17.01 must be considered to determine "75% of what?" As Sec. 17.01 provides, "premium cost" refers to "100% of the single or family premium cost of the lowest cost eligible HMO (or the lowest cost plan if no HMO's are available) offered in the service area covering the Village." But the additional "monthly employee contribution" which active employees pay is not included in the definition of premium, and thus does not apply to the retirees.

There is no past practice that allows the Village to subtract an employee contribution before or after it calculates its premium obligation. The Village has not, and cannot, show any occasion where it paid less than 75% toward the cost of the premium.

Although the Village has made multiple attempts to get the Union to drop the reference to "premium" in Sec. 17.02 in place of a reference to "payment," the union has not agreed. There is no past practice that defeats the plan language as supported by the bargaining history. The Village's effort to obtain here what it could not obtain in bargaining should be rejected.

Nothing in the 1999 side letter states that the cost of the premium for retirees under Sec. 17.02 would be reduced by monthly contributions made by active employees under Sec. 17.01

When the union agreed in 2007 that the Village's obligation would be capped at 100% of the LCP, it did not agree that the payment for retire insurance would be linked to the contribution made for active employees. Nor did it agree that retirees would be subject to something more than a 25% contribution to the premium.

The employer errs when it contends the union accepted its interpretation and withdrew the grievance in 2005; as the union made very clear, its withdrawal was conditional. The union clearly stated it believed retiree benefits under Sec. 17.02 did not follow active member benefits under Sec. 17.01, and reserved its

right to file future grievances to protect those rights. It is important to note the Village did not object to the union's reservation of rights or contest the union's position. Moreover, the letter from the then-Village manager spoke only to the premiums, and nowhere suggested retirees are entitled to something less than 75% of the premium. That letter did not suggest that the Village may subtract the monthly contributions active employees make in calculating the Village's obligation to pay 75% of the retirees' health insurance premium.

The Village's claim that it was unaware of the Union's claim until hearing is also unpersuasive. The Union did not change its position; the Village simply did not understand it. The Union objects to the Village's attempt to deduct $75.00 from its obligation either before or after it calculates its 75% of the premium.

The Village should not be allowed to use grievance arbitration instead of bargaining to reduce its cost for retiree health insurance. The grievance should be sustained and the Village directed to pay 75% toward the cost of the premium for the grievant and make him whole for any losses suffered.

In its response, the Village posits further as follows:

The Union has offered extensive arguments on bargaining history, but misstates the relevance of the Village's proposals on retiree health insurance. The Union misinterprets the intent of the Village's proposals, which was to remove the escalator clause and cap the Village's contribution at the dollar amount in effect at the time of retirement, not to clarify how to calculate the 75% payment the Village will make for future retirees. This exposes the flaw in the Union's argument that a party does not need to propose in bargaining something it already has; the Village was proposing something much more serious than linking the Sec. 17.02 payments to Sec. 17.01; it was seeking to cap the 75% payment at the time of retirement, and avoid having to make increased payments over time.

The Union fails to address in its brief the 1999 letter of agreement, which in two places links the 75% payment for future retirees to the contribution made for active employees. It provides that the maximum payment the Village is required to make for retiree health insurance is the "average premium as computed above," which references the average premium cost used to set the Village's contribution for active employees.

The Union's claim that the language of Sec. 17.02 is plain and unambiguous is

not supported by the evidence. The text states the Village's obligation to pay "75% toward the cost of the premium." But the issue in this case is "75% of what premium?" The state plan offers six individual plans; under the Union's plain reading of the text, the Village would calculate the premium based on

whatever the premium was for the plan in which the retiree enrolled. This was how the Village understood the Union's position, until the Union stated otherwise at hearing.

The Union now argues the Village payment is based on 75% of 100% of the LCP; Yet the labor agreement makes no reference to 100% of the LCP, except in Sec. 17.01. That is, the payment under Sec. 17.02 is not linked to Sec. 17.01, except that the payment under Sec. 17.02 is linked to Sec. 17.01. The Union's argument makes no sense; Sec. 17.02 cannot be interpreted and applied without reference to some extrinsic evidence.

Arbitrator McLaughlin explained the link between sections 17.02 and 17.01 in the 2007 police grievance, properly determining that the calculation of the 75% payment in Sec. 17.02 can only be understood in reference to Sec. 17.01. That same analysis applies here; section 17.02 is not plain and unambiguous, but needs a reference point. By bargaining history, past practice and the entire text, that reference point is 17.01. Thus, the 75% payment is determined by whatever contribution is made for active employees at the time of retirement.

The Union's withdrawal of its 2005 grievance does not create a bilateral, binding interpretation of Sec. 17.02. The Union agreed to accept the sliding scale as stated by the Village, but never placed a statement in a settlement agreement or incorporated the language into the labor agreement. The Union's dropping of its grievance does not extinguish the Village's interpretation of the language and the established past practice.

The Village has properly interpreted and applied section 17.02 in making payments for retiree health insurance based on payments for active employees under section 17.01. Accordingly, the grievance should be dismissed in its entirety, with prejudice.

DISCUSSION

Both parties agree this grievance concerns the Village of Greendale's contribution toward the health insurance premiums for former firefighters who retired under its 2008-10 collective bargaining agreement with IAFF Local 1777. Other than that, a certain degree of confusion has beset this case from the outset.

Throughout the grievance process, and at hearing, the Village believed the Union claimed the contract required it to pay 75% of the premium of whatever plan a retiree selected,

regardless of whether that exceeded the premium of the lowest cost plan. While the union had previously asserted that position, it has not done so in this proceeding, and agrees that the relevant premium was that for the lowest cost plan. Hintz' email of November 30, 2011 explicitly states that "the premium cost per month is based on the lowest cost eligible" plan.

Throughout the grievance process, and at hearing, the union believed that, in addition to imposing the same $75 contribution made by active employees, the Village was also calculating Wood's benefit based on a reduction in the employer's share of the premium in Sec. 17.01 to 93%. The union had good reason for that belief, as the Village had provided Wood with just such a calculation, which it did not formally disavow and withdraw until several hours into the hearing.

Given this background, it is not surprising the parties disagree over the extent of the issue before me. At hearing, the union initially challenged the Village's calculation of Wood's retirement benefit as 75% of 93% of the LCP, until Village Manager Michaels testified that that calculation had erroneously assumed a reduction in the benefit under Sec. 17.01, and was withdrawn in favor of one which set Wood's benefit at 75% of 100% of the LCP minus seventy-five dollars. The union thereupon amended its statement of the issue to address that monthly employee contribution. The employer agrees the monthly contribution is an issue, and also wants me to answer whether sections 17.01 and 17.02 are so linked that retirees are subject to whatever terms apply to active employees, including the percentage of the premium that the employer covers, a monthly employee contribution, or any other expression of economic value.

I agree with the Village that the parties must come to a shared understanding of that relationship, especially since the successor agreement will reduce the employer's obligation for active employees to 88% of the lowest cost plan, without any corresponding amendment to Sec. 17.02.

But grievance arbitrations generally consider what has been done, not what might happen; arbitrators do not normally provide advisory opinions on whether some future action would or would not violate the labor agreement. *How Arbitration Works*, 6th ed., Ruben, ed. (BNA Books, Washington D.C., 2003, p. 322).

The only action the employer took regarding Wood which the union now challenges is its imposition of the monthly employee contribution. Also, although the union did begin the hearing prepared to litigate whether "the cost of the premium" could be set at something less than 75% of 100% of the LCP, the only issue which it ultimately argued was the monthly contribution. I have therefore stated the issue as above, and will limit the formal operation of this award accordingly.

Noting that arbitrators should apply the plain meaning of clear and unambiguous terms without resort to external evidence, the association asserts the phrase, "75% towards the cost of the premium" clearly and unambiguously means the Village must pay 75% of 100% of the lowest cost plan. For Wood this would mean ($1,934.80) x (.75) = a Village contribution of

$1,451.10, with Wood responsible for $483.70. Anything less than that, it argues, would effectively reduce the Village's contribution to below the mandated seventy-five percent.

When contract language is clear and unambiguous, does not reflect mutual mistake nor lead to absurd results, arbitrators should indeed shun external evidence. A contract is not inherently ambiguous simply because the parties claim differing interpretations.

The union rightly asserts that the language of Sec. 17.02 is indeed plain, consisting as it does of only 13 words. But not every simple declarative sentence has a clear meaning.

Section 17.02 requires the employer to "pay seventy-five percent (75%) toward the cost of the premium." Since "the cost of the premium" is, in common parlance, the amount of money an insurance company charges for coverage, this could require the employer to pay 75% of the premium for whatever plan a retiree was enrolled in. Indeed, the union previously asserted that *was* the proper interpretation of this phrase. In his letter of July 5, 2005, union president Hintz wrote to then-Village Manager Murray that "the Union will insist that the Village pay seventy-five percent (75%) of (sic) towards the cost of whatever the retiree's premium might be." [6] As noted, the union no longer makes that claim, now stating instead that "the premium is defined as 100% of the lowest cost plan in Milwaukee County."

When a party advances conflicting interpretations of the same text, it cannot then assert the text is clear and unambiguous.

The terms of Sec. 17.02 thus being legitimately subject to more than one reasonable interpretation, I turn to external evidence. [7] Since contract interpretation requires understanding the intent and prior actions of the parties, bargaining history and past practice are particularly persuasive guides to solving textual ambiguity.

As the lengthy background section above indicates, the record before me includes an exhaustive amount of bargaining history. Whether there is also any past practice is in dispute.

The Village contends that its past practice linking the Sec. 17.02 contribution to its Sec. 17.01 payment was clearly enunciated and acted upon, and readily ascertainable over a reasonable period of time as the fixed and established practice of the parties. There is certainly evidence supporting that contention as regards the percentage of the *premium* in Sec. 17.01.

---

[6] The Village thus had good cause for its (mis)understanding of the union's position, which had been the union's position in 2005.

[7] Moreover, sec. 17.02 a) is not the only sentence or phrase at issue. Two other terms, both from sec. 17.01, also require interpretation and application – "the premium cost of the health insurance plan selected by the employee, not to exceed 100% of the (applicable) premium cost of the lowest cost eligible" plan, and "less a monthly employee contribution." The first phrase is straight and simple and needs no further exegesis. The reference to "monthly employee contribution" is equally clear and direct, and will be discussed below.

But as is discussed below, the monthly employee contribution is a fundamentally different economic element, and was only added in 2008. Wood is the first firefighter to retire under its terms. When something is happening for the first time, no party can claim past practice.

The Village acknowledges it had been "attempting to significantly reduce the benefit level" for retirees consistently for over twenty years. There is nothing nefarious about this; collective bargaining presumes that both parties will seek economic and operational improvements from their respective perspective.

But each and every time the Village tried to reduce retiree health insurance benefits, Local 1777 objected, and on every occasion but one, the employer dropped its proposal. [8] This is powerful evidence of the parties' shared intent against amending Sec. 17.02.

The only time the employer did not yield to the union's objection was in 1989, when the parties went to interest arbitration over the employer's demand to reduce insurance benefits for both active employees and future retirees. The Gundermann Award thus shows the bargaining unit willing to sacrifice the economic interests of active employees to those of retirees. It would be entirely consistent with the unit's practice for it to agree to a monthly contribution limited to active employees; it would be entirely inconsistent with that practice for it to readily agree to a monthly contribution for retirees.

The employer is correct that nothing in the 1999 side letter explicitly forbids it from charging retirees the same monthly contribution as active employees. But certainly nothing in the letter authorizes it to do so. Given the clear bargaining history of the union protecting retiree insurance benefits, the lack of a prohibition in that letter cannot be held as authorization.

The more recent bargaining which produced the employee contribution now under review also does not support the employer, in part because of its own actions.

The Village first proposed the monthly employee contribution on December 2, 2004, after the union rejected its demand to reduce its premium contribution for active employees to 90% of LCP. The union also rejected setting the Village's contribution at 95%, and a phased three-year reduction from 95% to 90%. Only when all three attempts to change the Village's premium participation to something less than 105% failed did the employer propose paying 100% of the LCP; "In addition, the employee shall pay the following monthly co-pays to the Village for health insurance premiums." The union rejected that as well, before agreeing to the phased reduction from 105% in 2005 to 100% in 2007. Thus, in its initial iteration, the

[8] In the 1990-91 agreement, the Village sought specific dollar caps on its contribution; in 1992-93, it proposed to limit its obligation to a dollar amount equal to 75% of the premium in effect on the date of retirement; in 1994-95, it sought to reduce its contribution to 50% of the premium in effect on the date of retirement; for the 1996-98, 1999-2001, 2002-04 and 2005-07 agreements, it proposed the sliding scale tying its contribution to the retiree's length of active duty service.

contribution was explicitly assessed against "the employee," and was designated a monthly co-pay distinct from the premium.

Correspondence from the then-Village Manager during the negotiations in 2005 further reinforces the distinction. As Murray informed Union President Hintz on June 30, 2005, it was

"the Village's interpretation or practice of annually calculating the retiree health insurance benefit based on the applicable LCP percentage…."

In 2005, after the Union agreed to the phased-in reduction of the Village's obligation to active employees, the Village presented what it termed "a housekeeping proposal" to incorporate the same changes into Sec. 17.02. When the union objected, the village withdrew the proposal regarding retirees, but asserted clearly and unambiguously (three times, in fact) that it would administer the benefits as though the proposal had been adopted. As no firefighter retired under these terms, the provision was never administered.

But in 2007, when the Village proposed changing the percentage of LCP it paid for active employees to 95%, it neither made a corresponding proposal to amend Sec. 17.02 nor did it re-assert that it would calculate retiree benefits based on the new percentage in Sec. 17.01.

The Village was certainly within its rights to believe that the union's withdrawal of its 2005 grievance established that the union accepted the Village's interpretation, thus relieving it of any further need to declare that relationship in subsequent negotiations.

But a month later, the Village dropped the proposal to reduce the percentage of LCP and demanded instead the monthly employee contribution, and again neither made an offer nor gave an explanation linking retiree contributions to those of active employees.

But a monthly employee contribution is so fundamentally different from a premium allocation that the Village could not reasonably assume the union would know that the new charge – by its explicit terms, applicable only to employees – also applied to retirees.

The parties followed a similar pattern in negotiating the 2008-10 agreement, albeit with a different outcome. The Village first proposed amending Sec. 17.01 by reducing the % of LCP to 95%, which the union rejected. A month later, the employer proposed maintaining the 100% of LCP standard and providing for an alternative revenue source, the monthly employee contribution, which the union accepted. The fact that the union would agree to a reduction in benefits expressed as a monthly contribution but not as reduced premium coverage establishes that it treated the two economic aspects as separate and distinct.

The bargaining history thus reinforces that "the monthly employee contribution" is a fundamentally different economic element than is the premium.

The union had no reason at all to know the Village intended to apply the new Sec. 17.01 monthly employee contribution to retirees, whereas the Village – based on the union's resolute opposition to any diminution in retirement insurance benefits – had every reason to know the union's interpretation was that the new contribution did not apply to retirees.

As it has been said:

> Where the parties have attached different meanings to an agreement or a term thereof, it is interpreted in accordance with the meaning attached by one of them if at the time the agreement was made that party did not know, or had no reason to know, of any different meaning attached by the other, and the other knew, or had reason to know the meaning attached by the first party. *Restatement (Second) of Contracts, sec. 201(2).*

That is, "a party that makes a contract knowing of a misunderstanding is sufficiently at fault to justify that party's being subjected to the other party's understanding." Farnsworth, Contracts, sec. 7.9, at 462.

"If there is no indication that one party's intended application of contractual language was shared by, or even revealed to, the other party, it cannot be said that the party's unilateral interpretation reflects the mutual assent of both parties." CVS, 120 LA 1292, 1299 (Franckiewicz, 2005).

By failing to alert the union that the new monthly employee contribution also applied to retirees, the employer prevented a meeting of the minds on that matter.

Had the village informed the union the new monthly employee contribution would also apply to future retirees, the union would have objected. Given the union's steadfast opposition to reducing retiree insurance benefits, I do not see the union accepting such a monthly contribution on retirees at all, let alone without discussion and without substantial improvement elsewhere in their benefits. Yet since there is no bargaining history attesting to such discussion and improvement, that is essentially what the Village is contending – that after more than twenty years of opposing all reductions in retiree benefits, after going to interest arbitration rather than accept other improvements at the expense of retiree benefits, the union agreed to a monthly contribution by retirees without any discussion or benefit elsewhere in the agreement. The bargaining history simply does not support such a conclusion. Instead, the steady bargaining history indicates the employer would have yielded, and been satisfied with its new cost-shifting to active employees.

Finally, the term "monthly employee contribution" is also clear and unambiguous – it is a contribution which employees make each month. In daily discourse as well as in labor relations, these terms are easily and universally understood.

An "employee" is one employed by an employer; pursuant to Article II of the collective bargaining agreement, the universe of employees consists of "all regular full-time salaried firefighters employed by the Village of Greendale, excluding the Fire Chief and Captains…." Only one employed in such capacity is an "employee" under this agreement, and only an employee can make a monthly employee contribution.

Robert Wood is no longer an employee of the Village, and cannot be treated as though he still were.

Whether or not the Village is correct about the historic relationship between Sections 17.01 and 17.02 in defining and allocating the premium, a monthly employee contribution is materially different from a premium, and is limited to employees. Article 17 does not authorize the employer to assess the monthly employee contribution against retirees.

That conclusion resolves this grievance. But it does not fully resolve the parties' underlying dispute over how to define retiree health insurance benefits. Because the 2011-12 labor agreement will reduce the Sec. 17.01 contribution to 88% of the LCP, the parties need to know the correct definition of "the cost of the premium" in Sec. 17.02.

The Union has declared throughout this proceeding that the 2008-10 agreement sets the employer's Sec. 17.02 premium contribution at 75% of 100% of the LCP. The employer agrees.

But the union has not fully revealed the basis for that formula. As the employer correctly notes, the only reference to "100% of the LCP" in the labor agreement is that defining the benefit level for active employees. By claiming that as the basis for calculating retiree benefits, the employer suggests, the Union has implicitly acknowledged the link between sections 17.01 and 17.02.

Basing the value of the retiree benefit on that of the active employees is consistent with the most recent grievance arbitration interpreting the Village's insurance obligations, the so-called McLaughlin Award interpreting the police contract. Calculating the retiree benefit under the 2008-10 contract at 75% of 100% of the LCP, as Local 1777 has done, conforms to the formula my former colleague established:

> Village payment toward retiree health insurance premium costs is established by multiplying the dollar figure generated by the governing "% LCP method" in Section 17.01 for an active employee by the applicable percentage set by Section 17.02, Subsection A for a retiree. [9]

[9] Dec. 7158 at 26.

If the McLaughlin Award is applicable to Local 1777, changing the percentage of the LCP for which the employer is responsible would have a corresponding effect on the employer's economic obligation for retirees.

There are good reasons not to apply that award to this case, starting with the respective terms and conditions. The union rightly notes precedent presumes that the contract language be identical, and "the cost of the premium," (the text of the firefighter agreement) is different from "the amount of payment," (that in the police agreement.) A case could be made that "the

cost of the premium" explicitly limits its range to that insurance industry term of art, while "the amount of payment" is broader and includes such elements as a monthly employee contribution.

The respective agreements are also substantially different on a material point – the tenure-based sliding scale for calculating retiree benefits, which the Village had tried in vain for many years to obtain from the firefighters, but did get from the police. The fact that the police contract is weaker on retiree benefits, specifically on terms the firefighters had rejected, argues strongly against applying the LAW terms to IAFF.

Because of their respective bargaining histories and textual deviations, an arbitration involving the LAW agreement cannot be binding precedent on the IAFF. But the McLaughlin Award is still persuasive, primarily because it makes sense.

Mandating the employer to pay 75% "toward the cost of the premium" for retirees requires a definition of "the premium." Since the primary purpose of Article 17 is the health insurance benefits for active employees, the section applicable to them has primacy.

One obvious way for the employee and the Village to learn their respective post-retirement financial obligations is to monetize the value of the active employees' benefits (by multiplying the premium of the lowest cost plan by the negotiated percentage), and then applying the negotiated percentage of Sec. 17.02. That is how the Village calculated the benefit for Suderland, the only firefighter prior to Wood to retiree since the parties entered the State Group Health Plan in 1999.

Whether or not there are other ways to define "the premium" in Sec. 17.02 may become relevant as the labor agreement continues to evolve. It is not necessary I formally resolve that question in this award.

I disagree with the employer, however, that the McLaughlin award compels dismissal of this grievance; quite to the contrary, the McLaughlin award compels that this grievance be sustained.

As noted above, Arbitrator McLaughlin clearly stated the Village payment toward retiree health insurance was established "by multiplying the dollar figure generated by the governing '% of LCP method' in Section 17.01 for an active employee by the applicable

percentage set" in Sec. 17.02 for a retiree.

There are only two fiscal elements in that formula – the value of the Sec. 17.01 benefit and the percentage set in Sec. 17.02; nothing in the McLaughlin Award authorizes the monthly employee contribution which the Village now seeks to extend to retirees. The Village is thus violating the award it cites as the primary precedent. Even though the McLaughlin Award does not have that status, this conflict does provide further justification for sustaining the grievance.

Accordingly, on the basis of the collective bargaining agreement, the record evidence and the arguments of the parties it is my

AWARD

That the Village violated Sec. 17.02 a) of the 2008-2010 collective bargaining agreement with IAFF Local 1777 when it required Firefighter Robert Wood to pay the Sec. 17.01 monthly employee contribution of $75.00 after he retired in 2011.

As remedy, the Village shall reimburse Wood for all such contributions he has made since his retirement.

Dated at Madison, Wisconsin, this 1st day of November, 2012.

Stuart D. Levitan /s/

Stuart D. Levitan, Arbitrator

SDL/gjc
7835