STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In the Matter of the Interest
Arbitration Between

VILLAGE OF HARTLAND (POLICE DEPARTMENT) and THE LABOR ASSOCIATION OF WISCONSIN, INC. (HARTLAND PROFESSIONAL POLICE ASSOCIATION, LOCAL 301)	Case 16 No. 61916 MIA – 2501 Decision No. 30770-A

APPEARANCES:

Jon E. Anderson, Esq., LaFollete, Godfrey & Kahn, on behalf of Village of Hartland

Patrick J. Corragio, Labor Consultant, on behalf of The Labor Association of Wisconsin

INTRODUCTION

On December 18, 2002, the Village of Hartland (hereafter "the Village" or "Employer") filed a petition with the Wisconsin Employment Relations Commission (WERC) requesting the Commission to initiate final and binding arbitration pursuant to Sec. 111.77(3) of the Wisconsin Municipal Labor Association of Wisconsin, Inc. (hereafter "the Association") with respect to negotiations leading toward a new collective bargaining agreement beginning January 1, 2003 covering wages, hours and conditions of employment for law enforcement personnel (hereafter "the police unit", "officers" or "employees") employed by the Village.

On January 20, 2004, following investigation and report by a member of the WERC, the WERC found that an impasse existed within the meaning of Sec. 111.77(3) of the MERA and ordered that compulsory final and binding interest arbitration pursuant to that statute be initiated for the purpose of issuing a final and binding award to resolve the impasse. On February 11, 2004, after the parties advised the WERC that they had chosen the undersigned, Richard B. Bilder of Madison, Wisconsin, as the arbitrator, the WERC appointed the undersigned as impartial arbitrator to issue a final and binding award in the matter pursuant to Sec. 111.77(4)(b) of the MERA.

The undersigned met with the parties on May 27, 2004 at the Village of Hartland Village

Hall, to arbitrate the dispute. At the arbitration hearings, which were without transcript, the parties were given a full opportunity to present evidence and oral arguments. Post-hearing briefs and reply briefs were submitted by both parties, the last being received by the Arbitrator on July 17, 2004.

This arbitration award is based upon a review of the parties' evidence, exhibits and arguments, utilizing the statutory criteria set forth in Sec. 111.77 of the MERA.

FINAL OFFERS AND ISSUE

The parties have reached agreement on various matters. This includes their agreement that Article XXIX-TERM OF AGREEMENT of their contract should be modified to provide for a two (2) year agreement commencing January 1, 2003 and concluding on December 31, 2004 and that Section 5.01 of their contract should provide for a wage rate increase of 3.0% across the board effective January 1, 2003 and an increase of 3.25% across the board effective January 1, 2004. The single issue which has not been resolved voluntarily by the parties, and which has been placed before the Arbitrator, as reflected in the parties' final offers, concerns their differing proposals with respect to Article XI-HOSPITALIZATION, DENTAL & SURGICAL CARE INSURANCE (page 12, Section 11.01) of their contract.

The language of Article XI, Section 11.01 of the parties January 1, 2000-December 31, 2002 contract provides, in relevant part:

> "The Employer shall provide hospitalization and surgical care insurance through the State of Wisconsin Health Plan and pay one hundred five percent (105%) of the lowest cost qualified plan for this region offered for single and family. . . .
>
> + + + + +
>
> Effective April 1, 1994, the officer shall pay five percent (5%) of the cost of the lowest cost qualified plan in the service area plus the difference between the amount paid by the Employer and the full cost of the plan selected. . . ."

The Association proposes that lines 23-25 of Section 11.01 be modified to read as follows:

> "Effective January 1, 2003, the employees shall pay six percent (6%) of the cost of the lowest cost qualified plan in the service area plus the difference between the amount paid by the employer and the full cost of the plan selected. The employee contribution shall be paid by payroll deduction."

The Village proposes that Section 11.01 be modified, effective January 1, 2004, to read as follows (with strike-outs showing deleted language and underlines showing additional language):

> "The Employer shall provide hospitalization and surgical care insurance through the State of Wisconsin Health Plan. The Employer shall ~~and~~ pay ~~one hundred five percent (105%)~~

ninety-five percent (95%) of the cost of the plan selected by the officer, but not more than ninety-five percent of the cost of the lowest cost qualified plan for this region offered for single and family. The Village may from time to time, change the insurance carrier or self-fund health care benefits if it elects to do so provided the coverage afforded officers is equivalent or comparable. The Village shall notify the Association in writing at least thirty (30) days prior to any change in carrier. If the Village elects to change insurance carrier, the officer contribution for health insurance will be frozen at the amount the officer would have paid if the Village had remained in the State of Wisconsin Health Plan. Officer contributions will remain frozen for the remaining term of this Agreement.

The Village shall not be required to provide coverage for any officer during any waiting period for new officers which is imposed by the insurer.

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

STATUTORY CRITERIA

The criteria to be utilized by the Arbitrator in rendering the award are set forth in Section 111.77(6), Wis. Stats., as follows:

"(6) In reaching a decision the arbitrator shall give weight to the following factors:

(a) The lawful authority of the Employer.

(b) Stipulations of the parties.

(c) The interests and welfare of the public and the financial ability of the unit of government to meet these costs.

(d) Comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

1. In public employment in comparable communities.
2. In private employment in comparable communities.

(e) The average consumer prices for goods and services, commonly known as the cost of living.

(f) The overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and excused time, insurance

and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment."

DISCUSSION

The Village of Hartland is located in Waukesha County. Hartland's population is approximately 8,200. The Village employs a total of 44 full-time and 25 part-time employees. The police unit of the Association represents 11 of the Village's full-time employees. There are 14 full-time employees working for the Public Works Department (DPW) who are also represented by the Labor Association of Wisconsin (LAW). All remaining Village employees are non-unionized.

The most recent Police collective bargaining agreement between the Village of Hartland and LAW Local 301 expired on December 31, 2002 but will hereafter be referred to as "the current contract". The current contract between the Village and its DPW unit also expired on December 31, 2002.

As indicated, the only issue here in dispute between the Village and Association concerning the terms of their new January 1, 2003-December 31, 2004 contract is in regard to the language of Article XI- HOSPITALIZATION, DENTAL & SURGICAL CARE INSURANCE (Section 11.01) of their prospective contract, and more specifically, as to the respective contributions of the Village and the Association members to the cost of the members health insurance. The parties have agreed on all other issues, including the two-year term of their prospective contract and the wage increase in each of the two years of that contract.

The Association proposes to retain the language of Section 11.01 of the current contract, under which the Village is obligated to pay 105% of the lowest cost qualified health insurance plan for Waukesha County offered for single and family, with the exception that, effective January 1, 2003, the officers in the police unit shall pay 6% of the cost of the lowest cost qualified plan in the service area, instead of the 5% of the cost the officers had agreed to pay under the current contract, plus the difference between the amount paid by the Village and the full cost of the plan the officer selects. That is, the only change the Association proposes to make in the current contract is to increase the officers' minimum contribution to the cost of their health insurance plans from 5% to 6%. This increased minimum contribution by the officers would apply retroactively to January 1, 2003, the beginning of the new contract.

The Village, on its part, proposes to modify the language of Section 11.01, effective January 1, 2004, to provide that the Village shall pay 95% of the cost of the plan selected by the officer, but not more than 95% of the cost of the lowest cost qualified plan for Waukesha County offered for single or family, rather than the 105% of the lowest cost qualified plan for the County as provided in the current contract. The Village also proposes that, in conjunction with the above change in the Village's obligation, effective January 1, 2004, the current language of Section 11.01 requiring that the officers shall pay 5% of the cost of the lowest cost qualified plan in Waukesha County be deleted and the officers henceforth be required to pay only the difference between the amount paid by the Village and the full cost of the plan selected. As indicated, the changes proposed by the Village would take effect only as of January 1, 2004, the second year of the proposed contract.

1. Some Relevant Background

Since the issue here relates solely to the Village's and Association members' respective contributions to costs of the members health insurance plans, some background concerning their previous contractual arrangements and experience regarding health insurance coverage for the officers in the police unit may be helpful.

The Village and Association have been parties to a series of collective bargaining agreements, which have in recent years covered, inter alia, health insurance benefits for officers in the police unit and DPW unit. In 1988 the parties agreed to participate in the Wisconsin Public Employers' Group Health Insurance Plan (hereafter "the State Health Plan") and the parties have agreed to remain in that plan since that time.

The State Health Plan, as usefully described in the Village's brief, is a health insurance program operated by the State of Wisconsin. The State Health Plan has existed for many years, offering attractively competitive premium alternatives for its public sector participants. The State Health Plan is structured on a countywide basis, aligning health care providers within each of the seventy-two (72) counties. All participating health insurance carriers are mandated to provide the State's uniform level of benefits. Participating employers are prohibited from making any benefit design changes — a trade-off for the competitive premium costs associated with the program. Participating employers are also restricted from paying less than 50% or any more than 105% of the monthly premium of the lowest cost qualified plan available to the parties within the employer's region.

The important component of the State Health Plan is the State's determination of "qualified plans" within the program. Each year, the State evaluates each of the plan providers within 72 service areas. Customer feedback and assessments of provider availability are evaluated to determine the continued viability of each of the participating providers. Each health plan is then identified as either a "qualified" or "non-qualified" plan within each service area. The qualified vs. non-qualified distinction is extremely important, as the State's assessment of maximum employer premium contributions (i.e., 105%) is based upon the premium costs

attributable to the lowest cost qualified plan.

A qualified plan is any plan within each county that guarantees the minimum provider levels required by the State. The minimum provider levels include assessments of primary care providers, hospitals, pharmacies, chiropractors and dentists. It is only the qualified plans that are considered in the final calculation of maximum employer cost limits.

A plan is earmarked as non-qualified if it does not provide those minimum levels of provider availability deemed necessary by the State of Wisconsin. While non-qualified plans are not included in the determination as to maximum employer cost exposure, employees are free to select health coverage through a non-qualified plan. A plan may be considered as qualified in one service area but non-qualified in another. This is due to the State's assessment of the plan's primary care providers within each service area.

Employees are free to enroll in any plan. Employees are not restricted solely to plans that are within the Employer's service area, regardless of where they live. The State Health Plan also offers a standard plan alternative to the traditional HMO arrangement.

The Village of Hartland's premium calculations under the State Health Plan are based upon the options available within Waukesha County. Thus, the 2004 HMO options for Waukesha County are CompcareBlue Southeast (CS), Dean Health Plan (D) and Humana-Eastern (HE). The Standard Plan is also available within Waukesha County. For the maximum 105% premium contribution calculations, the Village is restricted to analyzing CompcareBlue Southeast, Humana-Eastern and the Standard Plan as they are the only plans that are qualified for Waukesha County. Humana-Eastern is the LCQ plan in the County for 2004. Dean Health Plan is a non-qualified plan because of its limited provider availability within Waukesha County. However, Dean Health Plan is the lowest cost plan within Waukesha County. Employers are not only restricted in terms of benefit design, but the premium levels also place cost limitations on the employer. Specifically, as indicated, a participating employer is prohibited from paying more than 105% of the lowest cost qualified plan.

The contract entered into in 1988 between the parties, wherein they agreed to participate in the State Health Plan, provided that the Village would pay up to 105% of the lowest cost plan available to employees, and this language has remained essentially unchanged up through the current contract. During negotiations that led to 1992-1994 Department of Public Works agreement, the Village sought additional participation by employees both its DPW and Police Unit in the payment of health insurance premiums. At that time, the Village proposed language that the Employer would only contribute up to 90% of the lowest cost qualified plan available, rather than 105% of the lowest qualified plan. The Association rejected this proposal by the Village to reduce the Village's required maximum contribution. However, the Association did agree to increase the amount contributed to health insurance premiums by officers in the police unit to a minimum of 5% of the lowest cost qualified plan, effective January 1, 1994.

Following those negotiations, the Village changed its employees' handbook to read, as

regards the respective Village and employee contributions to health insurance premiums, as follows:

> "Medical Insurance State of Wisconsin Employee Health Insurance Plan (#690-6-228). This Plan allows the employee to choose between a variety of health insurance plans through a contract between the Village and the State of Wisconsin. The insurance plans offer a variety of different services and the employee can choose the insurance plan which best services his/her and his/her dependents needs. The Village agrees to pay a dollar amount up to 100% of the cost of the gross health insurance premium for the lowest cost qualified plan in the service area for employee and dependent coverage. After January 1, 1995 employees choosing the lowest cost plan will pay 5% of the lowest cost plan. Employees choosing a more expensive plan will pay 5% of the lowest cost plan plus the additional premium."

In effect, the Village's position, as indicated in the handbook, was that, as it interpreted the language of the health insurance provisions in the contract, after January 1, 1995 the Village's required contribution to Association's members' health insurance premiums was capped at 95% of the lowest cost qualified plan available to the members, without regard to the plan selected.

Beginning in 1995, and continuing through 1995, 1996, 1997, 1998 and 1999, the Village distributed printed material identifying insurance choices available and the cost thereof and a worksheet that showed the amount to be paid by the Employer and the amount to be paid by the employee per pay period. However, in early 1999, an employee became aware that the Village calculated its pay period contributions based upon 95% of the lowest cost plan available rather than 105%. Both the Police and DPW units filed grievances disputing the Village's interpretation of the contract and concerning the methods the Village was using to calculate the employees' contribution for health insurance. The Association contended that, while the Village's calculation of the employee contribution for employees that had selected the lowest cost plan was correct, the agreement between the Association and the Village as regards employees who selected other than the lowest cost plan was that, commencing with the change in 1995, the employee would pay the difference between 105% of the LCQ plan and the cost of the plan selected by the employee plus 5% of the cost of the LCQ plan, rather than the difference between 95% of the LCQ plan and the cost of the plan selected by the employee plus 5% of the cost of the LCQ plan as interpreted by the Village. These consolidated grievances proceeded to grievance arbitration before Arbitrator Edmond J. Bielarczyk.

In a decision rendered under WERC auspices on December 28, 2000 (*Village of Hartland and Hartland Professional Police Assoc.*, Local 301, etc., Case 12, No. 57577, MA 10679), Arbitrator Bielarczyk held that the 105% language of the collective bargaining agreement was clear and unambiguous and that the Village violated the agreement when it established rates based upon a minimum Employer payment of only 95% of the lowest cost qualified health plan rather than the 105% of the LCQ plan required by the contract. As a remedy, Arbitrator Bielarczyk directed the Village to make the employees whole for lost monies commencing with the month following the filing of the grievances.

The evidence indicates that during the four years since Arbitrator Bielarczyk's decision, the Village has calculated the Village and Association members' contributions in accordance with that decision, using the 105% figure as a cap on the Village's required contribution.

2. Contentions of the Parties

Each of the parties contends that, under the statutory criteria set forth in Sec. 111.77(6) of the MERA, the Arbitrator should find in favor of its proposal, as the more reasonable. As set forth in their respective briefs and at hearing, their principal arguments are the following.

The Association maintains that:

- The Village has the financial ability to meet the costs of the Association's offer without negatively impacting the interests and welfare of the public and the Village has not raised this issue. Indeed, the Village will save some $2,711 if the Association's final offer is selected. The Association points out that its members were willing to pay more for health insurance to help alleviate the increase cost of insurance to the Village and to maintain the status quo language in the current agreement; that that gesture on the part of the Association members is a "quid pro quo" for maintaining the existing health insurance language in the contract; and that the current language was voluntarily negotiated by the parties and should be changed only through collective bargaining rather than the arbitration process.

- The final offer of both parties regarding wages are identical and provide no quid pro quo for a language change. The Association emphasizes that the wage offer it proposes is notably below the average of its primary comparables and that it has offered to accept a below average wage increase in order to show the importance it attaches to maintaining the status quo in health insurance language. In contrast the Village has offered no quid pro quo or increased level of benefits in exchange for its proposed change in the language in Article XI, Sec. 11.01 and major change in health insurance.

- The Village, as proponent of a change in a major benefit in the contract, bears the burden of proof that such a change should be made through arbitration rather than the collective bargaining process. In this case, the Village failed to seriously negotiate this issue, failed to provide a substantial reason why a change is needed in the language, and has failed to offer a quid pro quo for any change of this magnitude. In fact the Village is here proposing to change Section 11.01 to conform with the Village's previous erroneous interpretation and application of that section as requiring only a minimum Employer payment of 95% of the lowest cost health plan, an interpretation which was expressly rejected by Arbitrator Bielarczyk in his December 28, 2000 grievance arbitration decision, and to in effect reverse that decision. Since this decision, both sides have a clear

understanding of the provision's meaning and intent, the Village had administered it for four years since then without error, and there is no need to change the provision, particularly by arbitral decision.

- The Association's members have not only been making employee contributions longer than any of the primary comparables but are paying one of the highest premiums of all 37 municipalities in southeastern Wisconsin. Moreover, as indicated, they have offered to increase their employees' contribution from 5% of the premium to 6% to help defray the Village's increased health insurance costs and provide a quid pro quo for maintaining the existing health insurance language. Finally, none of the comparable or other surrounding communities have contract language such as the Village proposes and, as to most of these, the Association members will, under its proposal, be contributing considerably more than officers in those other communities.

- The other benefits afforded the members of the Association are about average as compared with other comparable communities.

The Village contends that:

- There is a need for the Village's final offer, since the future cost exposure of the Village's health insurance program requires attention in view of mushrooming health insurance costs and the fact that the current health insurance calculation formulas are confusing and often lead to misunderstanding. Indeed, the Association's own exhibits call into question the level of understanding as to how the formulas are to be calculated. The Village's final offer reasonably addresses the problem, simplifies the calculation process by removing the 105% and 5% calculation thresholds and requiring only a single assessment of the lowest cost qualified plan, and guarantees future understanding of the formula.

- The Village's final offer guarantees employee analysis of premium costs and absorption of health plans that are more expensive. In contrast, maintenance of the 105% maximum employer cost exposure would provide a continued cost buffer for employees who opt into higher cost plans. The Village's final offer is the more appropriate because it is easier, encourages wiser health plan selection, discourages the use of higher cost plans, and provides a reasonable platform for future health cost containment.

- A quid pro quo is not necessary in this case as both parties have proposed changes to current health insurance language or status quo. Moreover, in cases involving the mutual problem of health insurance coverage, many Wisconsin arbitrators have held that a quid pro quo is not a necessary component of the traditional status quo analysis.

- The Village's health insurance final offer seeks internal consistency. Since 1995, the Village's non-represented employees choosing the lowest cost plan have paid 5% of that plan and employees choosing a more expensive plan have paid 5% of the lowest cost plan plus the additional premium. The DPW unit has agreed to accept whatever final offer is selected in this proceeding. Thus, the Association's proposal requiring that the formula retain the 105% employer contribution would maintain an unfair level of inequality within the Village and maintain a benefit that the non-represented employees do not enjoy.

- The Village's external comparable pool is more appropriate because it incorporates the complete grouping contemplated by a previous interest arbitration in 1987.

- The external comparisons demand acceptance of the Village's final offer. In particular, the external comparable pool supports continued employee premium contributions in the Village at the 5% level, rather than the 6% level proposed by the Association. Moreover, the Association's comparable health insurance documentation does not support maintenance of the 105% maximum language.

- The Village's final offer will continue to provide a salary schedule that is competitive for these bargaining unit members. Its final wage offer maintains the superior wage structure that the Association's members have enjoyed and its combined wage and health insurance offer continues to outstrip the levels of salaries and health insurance that is paid by surrounding communities.

- The Association's final offer seeks to maintain the 105% threshold that is patently unfair to the Village as it continues to provide an inequitable advantage for those seeking higher cost coverage.

3. Analysis of the Parties' Proposals and Arguments Under the Statutory Criteria

Section 111.77(6) of the MERA requires the Arbitrator to consider various listed factors in deciding which of the parties' Final Offers is most reasonable. In this case, the parties have principally invoked only several of these factors in support of their proposals — notably, Sec. 111.77(6)(d) concerning "comparability" of the parties' respective offers regarding health insurance to those of employees performing similar services in public employment within the Village and in comparable communities, and, most importantly, some broader considerations perhaps best characterized as encompassed by Sec. 111.77(6)(c) ("The interests and welfare of the public and the financial ability of the unit of government to meet these costs") and Sec. 111.77(6)(h) ("Such other factors . . . which are normally or traditionally taken into consideration . . . in the determination of . . . conditions of employment . . . through voluntary collective bargaining . . . arbitration or otherwise between the parties, in the public service. . . ."). Neither party has invoked, to any significant extent, other statutory criteria, such as Sec. 111.77(6)(a) ("the lawful authority of the Employer") or Sec. 111.77(6)(e) ("cost of living"), as relevant to this

arbitration. As regards Sec. 111.77(6)(f) concerning the overall compensation presently received by the employees, there appears to be no issue between the parties that, while the agreed wage settlements in both Final Offers are slightly below the average of settlements in comparable communities, the officers in the police unit continue to be overall in an above-average position in this respect and that either offer will continue to provide a competitive environment for the Association's members. Consequently, the Arbitrator will discuss only the two sets of factors to which the parties have addressed their principal arguments, beginning with the set of broader considerations most emphasized by the parties, and which the Arbitrator believes deserve the most weight in his decision regarding this matter.

a. Has the Village demonstrated a need to change the language of Section 11.01, must it offer a *quid pro quo* for such a change, and has it done so?

As the Association points out, interest arbitrators have generally held that the proponent of a substantial change in the existing contract ordinarily bears the burden of proof both that such a change is reasonable and needed and that the proponent of change has offered a sufficient *quid pro quo* for such a change — at least, absent proof of circumstances establishing a significant and unanticipated necessity for the change.

The authorities the Association cites for these principles are persuasive. Thus, Arbitrator Petrie, in *United Professionals for Quality Health Care*, Dec. No. 28272-A (Petrie, 1/96), stated:

> "The Nature of the Wisconsin Interest Arbitration Process
> *As the undersigned has indicated in various prior decisions and awards, including the following, a Wisconsin interest arbitrator operates as an extension of the parties' collective negotiations process, his or her normal role is to attempt to put the parties into the same position they would have occupied but for their inability to reach full agreement at the bargaining table, and certain special considerations normally apply to proposed changes in the status quo ante:*
>
> + + + + +
>
> *"The proponent of change(s) in the status quo ante is asking an arbitrator to reach a decision that is inconsistent with the parties' bargaining history, and it generally must establish a very persuasive case in support of such a proposal. In accordance with Section 111.70(4)(cm)(7)(j) of the statutes, Wisconsin public sector interest arbitrators have recognized the need for innovation or change where the proponent has demonstrated that a legitimate problem exists which requires attention, when the proposal reasonably addresses the problem, and where an appropriate quid pro quo is provided in connection with the change. The rationale for the latter requirement is that neither party should achieve the elimination of or a substantial change in a previously negotiated policy or benefit, without having advanced something equivalent to what would have been required at the bargaining table."*

Again, Arbitrator Herman Torosian, in *Washington County DSS*, Dec. No. 2936-A (Torosian 12/98) stated:

> *"The Arbitrator in the instant case, like so many before him, is firmly convinced that in cases where one party is seeking to make significant changes in existing language or benefits (status quo), the interests of the parties and the public is best served by imposing on the moving party the burden of establishing (1) a compelling need for the change, (2) that its proposal reasonably addresses the need for the change, and (3) that a sufficient quid pro quo has been offered. In each case, the sufficiency and weight to be given to each element must be balanced.*
>
> *The rationale for tests and criteria, as set forth above, is simple. Stability in labor relations is essential for a good working relationship between the parties. The Municipal Employment Relations Act seeks to promote stability as a matter of good public policy by promoting collective bargaining and peaceful resolution of impasses through interest arbitration. Therefore, any major changes proposed in existing language negotiated by the parties must be for compelling or demonstrated need or else left for voluntary negotiations by the parties and not imposed by an arbitrator."*

And, Arbitrator Krinsky, in *Salem Joint School District No. 7*, Dec. No. 27479-A (Krinsky, 5/93) commented:

> *"As a general rule the arbitrator believes that a party which offers to make a substantial change in benefits, or in contract language, must offer a quid pro quo. Without the presence of a meaningful quid pro quo, it is the arbitrator's view that the change should not be made through arbitration, but rather should be the result of bargaining between the parties."*

The Village argues that these principles are not applicable to this case since both parties have proposed changes to the current health insurance language or status quo. However, the Arbitrator believes it evident that only the Village's proposed change — particularly, the reduction of its obligatory share of the cost of health insurance benefits from 105% to 95% of the cost of the LCQ plan — would significantly affect the balance and health insurance benefits provided by the contract. In contrast, the Association's proposal to simply increase its minimum contribution from the present 5% to 6% of the LCQ plan makes no significant change in the language of the contract, is intended to and would in fact benefit rather than adversely affect the Village's interests, and, in the Arbitrator's opinion, cannot reasonably be regarded as falling within the rationale for the above principles. Consequently, the Arbitrator agrees with the Association that the Village should be regarded as here the proponent of change in the existing contract and, on this basis at least, bears the burden of proof to establish both the need and its provision of an adequate *quid pro quo* for the change it proposes. (A further argument of the Village that the *quid pro quo* principle should not apply in this case is discussed below.)

The Village contends that there is a need for the proposed reduction of its contractually required contribution from 105% to 95% in view both of mushrooming health insurance costs

and the fact that the current health insurance calculation formulas are confusing and often lead to misunderstanding. However, in the Arbitrator's opinion, its evidence does not meet its burden of persuasion on either of these points.

As regards the Village's claim that there is a need for a change in the language of Sec. 11.01 concerning its percentage health insurance contribution, the Village points out that since the end of 1999, it has experienced as 215% increase in the family plan premiums attributable to the LCQ plan. It explains that, while its proposed change in the percentage formula reducing its required maximum contribution from 105% of the LCQ plan to 95%, beginning only in 2004, will have little effect during the term of this contract, its proposed change in the contract's contribution formula is especially directed at meeting the Village's future cost exposure for health insurance, particularly if more of the officers should in the future decide to enroll in higher priced health insurance plans rather than the LCQ plan. As noted, in the Village's brief, the Village's president confirmed at hearing that "it costs the Village more when an employee buys up for higher priced insurance" and the Village's goal is to get employees to enroll in the lowest cost qualified plan. The Village president stated that it needs to be "crystal clear that if an employee wants to buy up for insurance, they must absorb that extra cost." In the Village's view, the maintenance of the current 105% commitment of the Village to the payment of the LCQ plan premium in the current contract would provide a continued cost buffer and thus encouragement for employees to opt into higher costs plans, whereas the Village's proposal to reduce this figure to 95% will discourage selection of such higher cost plans, or at least ensure that the Village will not have to be responsible for absorbing the additional cost of such higher cost plans if they are selected in the future.

The Association, on its part, points out that the provision for a maximum employer health insurance contribution of 105% has been part of the parties' contracts since 1988, some eighteen years; that the Village will actually save money over the term of this contract if the Association's Final Offer is adopted; and that the Village has not claimed that it is financially unable to meet its health insurance costs, or shown any other special need for such a significant change in the contract that warrants recognition by an interest arbitrator rather than, as ordinarily the case, only through the parties' own negotiations and bargaining.

It is well-recognized, of course, that rapidly growing health insurance costs pose difficult challenges for all employers and employees, and that accommodations will be required on the part of all parties in order to meet them. But the Arbitrator sees nothing in the evidence suggesting that the Village is at this time and with respect to the contract here in issue financially unable to meet such increased health insurance costs or that it currently faces an exceptional or unanticipated burden or financial emergency in this respect, distinct from that generally faced by comparable communities. On the contrary, as the Association points out, if the Association's Final Offer proposing an increase in the officers share of premium costs from 5% to the cost of the LCQ plan to 6% is accepted, the Village should save some $2700 over the term of the new contract. Indeed, the evidence indicates that currently all but one of the officers in the unit have in fact selected the LCQ plan rather than a more costly alternative plan. Consequently, it is not apparent that the Village is likely, because of officers' selection of higher cost plans, in the

immediate future often to be called upon to meet its contractual obligation to pay as much as 105% of the LCQ plan premiums. Should such a situation in fact occur in the future and result in financial stress for the Village, it can of course at that time be addressed by the parties through their subsequent negotiations. In short, the Arbitrator believes that the Village has not in this case shown any significant or unique financial or other need or problem regarding the formula for its sharing of health insurance costs which would appear to justify this Arbitrator imposing on the Association through an interest arbitration decision a readjustment of the Village's long-time contractually agreed share of health insurance costs. As have the other arbitrators previously cited, this arbitrator believes it preferable and more appropriate to leave the question of the parties' respective contributions to health insurance costs to the parties themselves through their collective bargaining process.

The Village also argues at length that the current calculation formula based on 105% is confusing and difficult to administer, and that its 95% alternative proposal would greatly simplify calculation of the Village's and employees respective health insurance contributions. The Association challenges this contention, pointing out that the 2000 grievance arbitration decision has made it clear what the language of Sec. 11.01 means, that the Association now understands this meaning, and that the Village has administered this language and the calculation since that decision without any problem. Indeed, the Association says that it is willing to increase its members contributions from 5% to 6%, and to accept a less than average wage increase, in order to retain this language which it now understands.

The Arbitrator again finds the Village's arguments evidence in this regard unpersuasive. As did Arbitrator Bielarczyk in his December, 2000 grievance arbitration decision, this Arbitrator considers the language of Article XI, Section 11.01 clear and unambiguous. Moreover, as the Association points out, Arbitrator Bielarczyk's decision has in any event resolved any doubt as to the meaning, intent and application of that language and the Village has administered it in the four years since that decision without error. The Arbitrator can see no reason why the Village should not be able in the future to continue to do so.

Nor, as the Association stresses, has the Village in this case offered any meaningful *quid pro quo* in terms of a significantly larger wage increase or enhanced other benefits for the substantial change in the contract language and benefits it proposes. On the contrary, as the Association points out, it is rather the Association which has proffered a significant *quid pro quo,* in terms of its offer to voluntarily increase its minimum contribution from 5% to 6% and to accept a wage increase which it contends is less than the average received by officers in comparable communities, in order to retain the current language of Section 11.01.

Arbitration cases cited by the Association in support of its position in this respect analogous to the situation here in question and are again persuasive. The Association points out, for example, that this issue was addressed by arbitrator Christopher Honeyman in his decision in *City of Tomahawk,* Dec. No. 61000, MIA-2456 (Honeyman, 8/03), where the Association was willing to take an average raise of 3% in 2002 and 2003 leaving the health insurance status quo. The City of Tomahawk also participates in the State health plan as does the Village of Hartland.

In the Tomahawk case, the City wanted to change the Employer's contribution from 105% to 95% in 2002 and then go from 95% to 92.5% in 2003. This case, like Hartland, had the wage offers identical by both the Association and the Employer in each year. The arbitrator, ruling in favor of the Association, noted that there was an insufficient quid pro quo for such a major change in the health insurance language. Arbitrator Honeyman stated in pertinent part as follows:

> *"The latter two examples demonstrate a principle widely accepted in cases of this type: in a nutshell, that a major change in a fringe benefit sought unilaterally by a party must be justified by a quid pro quo, unless there is some kind of extraordinary circumstance that amounts to necessity — while necessity is argued much more often than it is proven. It is conspicuous that Rhinelander has provided a very substantial additional wage increase, amounting to an additional lift of 5.5 percent in wages over two years beyond the three percent per year 'going rate', at the same time as it has introduced a very substantial employee contribution toward the health insurance premium.*
>
> *"The City is thus subject to the typical calculation of what is being done by comparable Employers. And the evidence is that two Employers among the three comparables which have changed health insurance in the applicable period have provided a proportionate quid pro quo, while the third obtained a much smaller employee contribution than the City seeks here, and with its employees remaining the highest paid among the comparables by a significant margin. In Lincoln County, what appear to have been relatively modest changes (the co-pays and deductibles are sizeable, but presumably not paid by every family every year) resulted in a relatively modest quid pro quo. In Rhinelander, both sides of the equation are more dramatic. But here, the City has proposed a substantial change over two years in a major fringe benefit, while offering no quid pro quo at all. This lacks support among the external comparables. . . . The City has thus failed to demonstrate a uniqueness of circumstance that would place it outside the customary expectation of a quid pro quo when a party seeks a major change in a fringe benefit in arbitration."*

The Association also points to Arbitrator Stephen A. Bard's decision in *North Shore Fire Department*, Dec. No. 60874 MIA-2450 (Bard 7/03), which also addressed the issue of a sufficient quid pro quo and also involved the Wisconsin State Health Insurance Plan. In that case, the Association and the Employer offered the same on wages in 2002 of 3% and in 2003, the Association offered a 3% raise and the Employer offered a 3.5% raise. The Employer argued that the one-half percent additional pay in 2003 was for an increase in employee contributions to the health insurance. The Association's final offer was to have the employees pay a minimum of ten dollars per month for single or family in 2002 and twenty dollars for single or family in 2003. The Employer proposed the minimum payment of twenty dollars per month for single or family in 2002 and twenty dollars for single or family in 2003 plus one-half the difference in the increase of insurance to a maximum of seventy-five dollars per month. In making his ruling in this case, the arbitrator stated that the additional one-half percent offered by the Employer in the second year of the agreement was not a sufficient quid pro quo for the major changes in the

health insurance benefit that they were seeking. Accordingly, the Association's final offer was determined to be more reasonable. The arbitrator, in rendering his decision, stated in pertinent part as follows:

> *"Finally, the Employer offer fails to provide a satisfactory quid pro quo. Not only is the additional half percent wages in 2003 taxable to the employees, as opposed to the health insurance benefit, but it does not even raise the total package of benefits to the mean paid by the other communities, nor begin to offset for the minimal health insurance benefits currently being paid."*

The Village, on its part, argues that, in cases dealing with the mutual problem of health insurance coverage, many Wisconsin arbitrators have held that a *quid pro quo* is not a necessary component of the traditional *status quo* analysis. It notes, for example, that in *Unified Community Services of Grant and Iowa Counties* (Dec. No. 30621-A; 4/04), Arbitrator William Petrie, in reviewing the *status quo* and *quid pro quo* factors in assessing the Employer's desire to secure a 5% employee premium contribution, commented:

> Wisconsin interest arbitrators generally recognize that the proponent of change in the negotiated status quo ante is normally required to establish three determinative prerequisites: first, that a significant and unanticipated problem exists; second, that the proposed change reasonably addresses the problem; and, third, that the proposed change is accompanied by an appropriate quid pro quo.
>
> > (i) The dramatic and ongoing escalation in the cost of health care represents a significant and continuing mutual problem, and it clearly meets the first of the referenced status quo prerequisites.
> >
> > (ii) The Employer proposed expanded application of a 5% employee contribution toward health insurance premiums reasonably addresses the underlying problem, and it thus meets the second of the referenced status quo prerequisites.
> >
> > (iii) In connection with the quid pro quo requirement, it is noted that various Wisconsin interest arbitrators have recognized escalating health insurance costs as an ongoing, continuing and mutual problem, have distinguished some proposed changes in this area from other types of proposed changes, and have required relatively little, if any, quid pro quos in support of reasonable proposed changes to control such costs.
> >
> > (iv) If the insurance premium payment dispute had been the only impasse item before the undersigned in these proceedings, a persuasive argument could perhaps have been made that little or no quid pro quo was required to justify selection of the Employer's final offer.

However, it would appear that, in the above cited case, the employees were not making any

significant contribution to the employers increasing health insurance. In contrast, in this case the officers have not only long voluntarily agreed to share this burden — indeed, since 1994, well before employees in most other comparable communities did so — but are in fact here proposing to increase their contributory share.

The Association, both at hearing and in brief, argues that the Village is here attempting to gain, through this interest arbitration process, its erroneous "95%/5%" interpretation of Section 11.01 that was specifically rejected in Arbitrator Bielarczyk's 2000 grievance arbitration decision and that it could not attain through the collective bargaining process. The Association also alleges that the Village was consequently reluctant to engage in serious negotiation in this respect and agreed to only a few meetings before resorting to this interest arbitration. This view finds some support in the Village's testimony at hearing and brief. Thus, the Village in its brief notes that:

> "Village President Lamerand's testimony confirmed that the Village had sought a 5%/95% split with its employee groups when the health language was changed back in 1994. In fact, the Village had assumed that the new language bargained in 1994 reflected a 5%/95% split and had calculated the premium contribution levels as such. That was the scope of grievance arbitration before Arbitrator Bielarczyk. Unfortunately, his decision gave economic benefit to any person who wanted to buy up to a higher cost plan. The Village desires to regain that original 5%/95% split that it thought it had obtained back in 1994. This is comparable to what the non-represented employees must pay. Continuity and consistency must prevail."

The Association persuasively suggests that the interest arbitration process is not an appropriate venue for seeking to reverse a grievance arbitration decision.

After considering the evidence and arguments of the parties in this respect, the Arbitrator is, on balance, of the opinion that the Village has failed to demonstrate a significant need to change the language of Section 11.01 in order to limit its obligation regarding the payment of its share of the cost of Association members' health insurance to 95% rather than 105% of the LCQ plan, and, moreover, has failed to offer a *quid pro quo* adequate to compensate Association members for such a substantial change in the existing contract language and the officer's health insurance benefits. As indicated, the Arbitrator agrees with the opinion of the various arbitrators previously quoted that, absent compelling reasons or unique circumstances, significant changes in major benefits of a collective bargaining agreement should ordinarily best come through the collective bargaining process rather than by the decision of an interest arbitrator.

Consequently, with respect to these above-addressed particular factors and contentions of the parties, the Arbitrator believes that the evidence more strongly supports acceptance of the Association's Final Offer than that of the Village.

b. <u>The Factor of Comparability.</u>

Each of the parties argues that the health insurance arrangements in comparable other communities ("external comparables") favor its Final Offer. The Village argues, additionally, that its proposal is also supported by a comparison with the Village's unrepresented employees ("internal comparables"). While, as indicated, the parties have devoted their arguments primarily to the questions of the need and *quid pro quo* for a change in the employer's health contribution formula, and the Arbitrator considers those issues most significant, the issue of comparability requires discussion.

As is frequently the case, the parties differ as to the appropriate group of external comparable communities. The evidence indicates that the Village and Association were parties to a prior interest arbitration in 1987 before Arbitrator Christenson. In that case, as in this, while both parties agreed that Chenaqua, Delafield, Menomonee Falls, Oconomowoc, Pewaukee and Waukesha County should be used as comparables, both the Village and Association believed that other externals should be added to the pool, but differed as to which ones should be added. At that time the Village proposed to add Germantown, Muskego and the City of Waukesha, while the Association proposed to add Brookfield, Elm Grove, Butler and the Town of Oconomowoc. Arbitrator Christenson did not endorse either pool but noted that the dispute was "much ado about nothing" since, he believed that, whichever combination of these communities, or even all of them, was used as comparable, the same conclusion would follow.

In this proceeding, the Village proposes that the entire cluster of these communities should be utilized, since Arbitrator Christenson was prepared to use them all, and as providing a broader scope of external comparables. Thus, it would include in the pool of comparables Brookfield, Butler, Chenaqua, Delafield, Elm Grove, Germantown, Menomonee Falls, Muskego, City of Oconomowoc, Village of Oconomowoc, Pewaukee, City of Waukesha and Waukesha County. The Village argues that, since Arbitrator Christenson did not reject this broader group, they are historically established and should not be varied without good reason. The Association, however, would use only the comparables that were commonly agreed to in the 1987 dispute, but would add the City of Pewaukee as a new comparable. Thus, the Association's proposed comparables would include Chenaqua, Delafield, Menomonee Falls, Oconomowoc, Village of Pewaukee, City of Pewaukee and Waukesha County. The Association believes its grouping is the only ones clearly historically "established" and that they are in the most relevant respect the communities most clearly comparable to the Village.

As the Arbitrator reads Arbitrator Christenson's 1987 decision, he did not actually endorse either of the parties proposed set of comparables as the most appropriate set, but simply bypassed this issue as not determinative under the facts of that arbitration. Consequently, the most that can be said — as the Association maintains — is that those communities commonly accepted by the parties as comparable at that time have some historical weight — although, the considerable time elapsing since that 1987 decision has arguably diminished that relevance. While, on balance, the Arbitrator regards the Association's choice of historically commonly-agreed comparables as somewhat preferable, he believes, as did Arbitrator Christenson, that a choice of comparables is not crucial to a decision in this matter, since either or both sets can provide some guidance.

The Association's major contentions in this respect are that the officers have contributed to the Village's health insurance costs longer and in a greater amount than officers in almost any other comparable community in Southeastern Wisconsin and that the language the Village seeks in this arbitration, limiting its contribution to a maximum of 95% of the LCQ plan, is nowhere to be found in similar comparable collective bargaining agreements in Southeastern Wisconsin.

The Association stresses that its members have voluntarily offered and agreed to pay 5% of the LCQ plan since 1994, much earlier than employees in any other primary comparable community. From 1994 to 1998, no other of the Association's proposed comparable communities required employee contributions to employers health insurance costs. In 1998, the Village of Pewaukee employees started making a contribution, followed by Chenaqua in 1999, Menomonee Falls in 2001, Delafield in 2003, and the City of Pewaukee in 2004. The City of Oconomowoc, which also participates in the State plan, has the employer paying 105% of the LCQ plan, which means that any employee taking the LCQ plan or any other plan offered by the state that has a cost lower than 105% of the LCQ plan pays nothing for insurance.

While the Association does not claim these as primary comparables, it also presents data on some 15 police departments in municipalities participating in the State Health Plan in a more expanded area relatively close to Hartland in Southeastern Wisconsin (including Chenaqua, Cudahy, Delafield, Fort Atkinson, Fox Point, Glendale, Grafton, Jackson, Mequon, Oconomowoc, South Milwaukee, Whitefish Bay, and Whitewater). The Association's exhibits indicate that eleven of these municipalities set the employer's maximum contribution at 105% of the LCQ plan, as in the current contract here in issue; two set the maximum at 100%; one set the maximum at 99%; and only one municipality, Chenaqua, which is too small to qualify for interest arbitration, set the maximum at 94% of the LCQ plan.

The Association stresses that of the fifteen municipalities participating in the State plan in Southeastern Wisconsin, including the Milwaukee Metropolitan area and suburbs, none of them have the 95% cap to the Employer's contribution the Village proposes. It notes that in seven of these fifteen communities, the Employer picks up 105% of the LCQ plan, with no required mandatory employee contribution. In seven of eight other of these communities, the Association members will, under the Association's proposal, make a greater contribution to the family plan health insurance than comparable employees in those other communities.

Finally, the Association contends that its Final Offer produces one of the highest paid employee contributions in all of Southeastern Wisconsin. It presents evidence indicating that, of some thirty-seven police departments in the general Hartland region of Southeastern Wisconsin, shown in its exhibits, in only four of these departments do officers pay more in employee contributions to health insurance than do members of the Association.

The Village, on its part, argues that its Final Offer is most consistent both with its proposed pool of external comparable communities and, as a matter of internal consistency, with the Village's own employees.

As regards external comparisons, the Village notes that of the thirteen public sector employers within the Village's proposed external comparable pool, only three participate in the State Health Plan while the remaining ten are either self-funded or offer health coverage through an area HMO. The Village points out that, only one of these three health plan participants — the City of Oconomowoc — limits the employer premium contribution at the 105% calculation threshold; the Village of Chenaqua and City of Delafield establish a predefined employee contribution based upon either a flat dollar or percentage contribution. Moreover, there is an overwhelming prevalence of employee contributions throughout the entire comparable pool — in fact, all but the City of Waukesha have some level of employee contribution by their police units. The Village emphasizes that while these employee contributions range from a zero contribution in the City of Waukesha to 10% in Waukesha County, for those officers who continue to elect coverage through the LCQ provider in the County, Humana-Eastern (which is all but one individual in the police unit), maintaining the 5% employee contribution, as the Village proposes, more closely aligns with the external comparables than moving to a 6% employee contribution, as the Association proposes.

The Village also challenges the relevance of the Association's argument based on its evidence and exhibits showing that many area communities who participate in the State Health Plan continue to operate with some reference to maximum employer contribution based on 105% of the LCQ plan in its area. The Village presents data which it believes indicates that the fact that the 105% language is still prevalent elsewhere doesn't matter because historical pricing within those counties continues to generate the lowest cost plan as the lowest cost qualified plan. It argues that, in contrast, there is a uniqueness that exists within Waukesha County's State Health Plan pricing structure that is advantageous to participating employees and here requires elimination of the 105% threshold.

As regards internal comparisons, the Village emphasizes that its non-represented employees are required to pay for a portion of the health insurance plans an amount equivalent to that sought in the Village's Final Offer, and that the 105% benefit of the Association members under the current language of the contract, as interpreted by Arbitrator Bielarczyk in his 2000 grievance arbitration decision, has provided the Association's members a benefit superior to that of the Village's non-represented employees. It points out that its Final Offer will remove this inequity and establish consistency in this respect within the Village's work force.

Comparisons in cases such as this are notoriously difficult, since both different communities police departments and their separate health insurance plans each have their distinct characteristics and it is not easy to say which are really "comparable". However, the Arbitrator believes that, by and large, on balance, the Association's proposal is closer to the norm of police departments in generally comparable communities participating in the State Health Plan than is that of the Village. As the Arbitrator reads the evidence, few other comparable communities in Southeastern Wisconsin — in particular, those utilizing the State Health Plan — have contractual language such as the Village proposes, capping the employers contribution at 95%. In contrast, a number of communities have contracts mirroring the 105% cap the Association would retain.

Moreover, the evidence does indicate that Association members have long made and will make an at least equal if not greater contribution to the employer's health insurance costs than those of most other comparable communities — particularly if its proposed offer to increase this contribution from 5% to 6% is accepted. Indeed, the Village suggests that its Final Offer is more comparable to those of similar communities because it would retain the employees' share at only 5% rather than 6% — a proffer by the Association which the Arbitrator believes should not, however, be held or work against the Association.

As regards the issue of internal consistency, the Arbitrator notes that the parties have agreed to apply the outcome of this arbitration to the Department of Public Works employees as well as the police unit, who together constitute the only organized employees in the Village and are in fact the majority of the Village's full-time employees. Thus, there should be no inconsistency as regards health insurance benefits as among its represented employees who constitute most of its employees. Any remaining inconsistency or inequity regarding health insurance coverage or between these represented employees and the Village's non-represented employees would seem within the Village's discretionary authority to remedy.

Consequently, with respect to the factor of comparability, the Arbitrator believes that the evidence on balance also more strongly supports acceptance of the Association's Final Offer than it does that of the Village.

4. Conclusion

As indicated in the above analysis of the parties' proposals in relation to the relevant statutory criteria, and in his overall assessment of this matter, the Arbitrator is of the opinion that the statutory factors preponderantly favor selection of the Final Offer of the Association rather than of the Village. Consequently, the Arbitrator concludes that, for the above reasons, the Association's Final Offer is the more reasonable and should be selected.

AWARD

Based upon the statutory criteria contained in Section 111.77(6), the evidence and arguments of the parties, and for the reasons discussed above, the Arbitrator determines that the Final Offer of the Hartland Professional Police Association, Local 301 of the Labor Association of Wisconsin, Inc., is the more reasonable, and directs that it, along with already agreed upon items, and those terms of the predecessor Collective Bargaining Agreement which remain unchanged, be incorporated into the parties January 1, 2003 to December 31, 2004 Collective Bargaining Agreement.

September 3, 2004

Richard B. Bilder
Foley & Lardner Emeritus Professor of Law
Arbitrator