

FEB 17 2009

BEFORE THE ARBITRATOR

RELATIONSHIP
Weld

In the Matter of the Petition of

VILLAGE OF ELLSWORTH POLICE ASSOCIATION,
LOCAL 318 OF THE LABOR ASSOCIATION OF
WISCONSIN, INC.

To Initiate Arbitration Between
Said Petitioner and

VILLAGE OF ELLSWORTH (POLICE
DEPARTMENT)

Case 6
No. 66811 MIA-2780
Decision No. 32360-A

Appearances:

Mr. Thomas A. Bauer and Mr. Gary Krueger, Labor Consultants, Labor Association of Wisconsin, Inc., N116 W16033 Main Street, Germantown, Wisconsin 53922, on behalf of the Association.

Weld, Riley, Prens & Ricci, S.C., Attorneys at Law, by Ms. Andrea M. Voelker, 3624 Oakwood Hills Parkway, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, on behalf of the Employer.

ARBITRATION AWARD

Village of Ellsworth Police Association, Local 318 of the Labor Association of Wisconsin, Inc., hereinafter referred to as the Association, and Village of Ellsworth, hereinafter referred to as the Village of Employer, met on several occasions in collective bargaining in an effort to reach an accord on the terms of a new collective bargaining agreement to succeed an agreement, which by its terms was to expire on December 31, 2006. Said agreement covered all regular full-time police officers and regular part-time police officers with the power of arrest employed by the Village of Ellsworth, excluding supervisory, managerial and confidential employees. Failing to reach such an accord, the Association on May 5, 2007, filed a petition with the Wisconsin Employment Relations Commission (WERC) requesting the latter agency to initiate arbitration pursuant to Section 111.77(3) of the Municipal Employment Relations Act,

and following an investigation conducted in the matter, the WERC, after receiving the final offers from the parties on February 5, 2008, issued an Order dated on February 21, 2008, wherein it determined that the parties were at impasse in their bargaining, and wherein the WERC certified that the conditions for the initiation of arbitration had been met, and further, wherein the WERC ordered that the parties proceed to final and binding arbitration to resolve the impasse existing between them. In said regard the WERC submitted a panel of five arbitrators from which the parties were directed to select a single arbitrator. After being advised by the parties of their selection, the WERC, on May 1, 2008, issued an Order appointing the undersigned as the Arbitrator to resolve the impasse between the parties, and to issue a final and binding award, by selecting either of the total final offers proffered by the parties to the WERC during the course of its investigation.

Pursuant to arrangements previously agreed upon, the undersigned conducted a hearing in the matter on August 11, 2008, at Ellsworth, Wisconsin, during the course of which the parties were afforded the opportunity to present evidence and argument. The hearing was not transcribed. Initial briefs and reply briefs were filed and exchanged and the record was closed on November 11, 2008.

THE FINAL OFFERS AND STIPULATIONS OF THE PARTIES:

The Employer and Association final offers and their tentative agreements are attached and identified as attachment "A," "B" and "C," respectively.

BACKGROUND:

The instant law enforcement unit is comprised of five police officers. There is one other bargaining unit in the Village, the utilities and streets unit with four employees. Additionally, there are approximately four full-time non-represented employees.

POSITIONS OF THE PARTIES:

The following is a summary of the parties' extensive and well-argued positions as presented in their briefs and does not purport to be a complete statement of all arguments presented.

Union's Position

External Comparables

The Union agrees with all of the comparables set forth by the Employer except for the Village of Roberts, City of St. Croix Falls and Village of Somerset. Those should not be considered as comparable communities with the Village of Ellsworth because they are under 2,500 population and do not have the right to final and binding arbitration. The Union submits the following comparables: City of Amery, City of Hudson, Village of North Hudson, Village of Osceola, Village of Baldwin, City of River Falls, City of New Richmond, City of Prescott and the County of Pierce.

The Offers

There are two issues in dispute: health insurance and wages. Each must be considered on their own merits, however, since both are monetary issues and they also must be considered as a package.

The Union's primary argument and support for its position is that the Employer has not offered an adequate quid pro quo for changing the existing health insurance benefits.

The Employer's final offer proposes to modify the current health insurance plan (Blue Access Option P8 and Rx Option S), effective January 1, 2009, to the Blue Access Health Savings Accounts Option HP3 with a \$2,000 single deductible and a \$4,000 family deductible.

The Village, effective January 1, 2009, as part of the insurance change over, will implement a Health Savings Account for each employee and the Village will fund the account in the amount of: \$1,750 for single plan participants; \$3,500 for family plan participants. This obligates the employee to pay an annual single plan deductible of \$250 and an annual family plan deductible of \$500. The employees, under the current plan, pay an annual deductible of: \$250 single plan deductible and \$750 family plan deductible.

The fact that the Employer funds an HSA account for its employees does not equate to an appropriate quid pro quo.

The Employer has offered the police unit less than what it settled with the Utilities and Street Department bargaining unit. The settlement with the Utility unit was a \$35 per hour increase plus 3% effective January 1, 2007, 3% effective January 1, 2008 and 3% effective January 1, 2009. Based on a \$20 per hour wage rate this totals 10.75% over the term of the agreement. When increased vacation and holiday benefits are included, the total package amounts to 13.15%. The Employer's final offer to the instant unit totals 8.5%.

The Employer has not offered a significant quid pro quo for the following major changes in health insurance:

- a. For 2007 the Village continued the 97%/3% premium contributions from 2006, and the Association's final offer has included the same cost sharing of the premium.
- b. For 2008 the Village proposes that the employees pay 4% of the premium for single and family premiums. An employee would be paying an additional \$22.97 per month (\$275.97 annually) under the family plan and \$10.72 per month (\$128.64 annually) under the single plan. The additional out-of-pocket premium cost impacts the family plan participants 13¢ per hour (.6% loss), and single plan participants 6¢ per hour (.3% loss).
- c. For 2009 the Village proposes to implement the Health Savings Account (HSA) and that the employees pay 5% of the premium for single and family premiums. The employee's premium costs would go down by changing over to the HSA; however, the employee would be assuming a 5% premium contribution thereafter.

The Village's final offer on wages amounts to an 8.5% increase in wages over the term of the contract. Calculating the additional out-of-pocket costs to the employees for increased premium contributions the wage increase is actually a 7.9% increase in wages over the term of the contract, of **5.25% less** than the Utilities and Street Department had received.

The Village will argue that the lower wage proposal offered to the law enforcement group was due to the unit rejecting the HSA plan and the cost of requiring the Village to go to arbitration. Officer Darren Foss, a 13-year employee of the Ellsworth Police Department and a member of the Association bargaining committee, testified at hearing that the Association rejected the Health Savings Account insurance plan because the Village never provided the Association with explanation of the plans (sic) impact upon employees retiring from Village employment, as well as how funds in the account would be dispersed upon the death of the employee. Foss testified that the Association was never opposed to the concept of the Health Savings Account insurance plan. In fact, Foss testified that he had researched the HSA's of other communities in 2006 and related the information to the Village Clerk. During bargaining the Village asked the Association to provide language on the HSA the Association provided the language currently in the Association's final offer.

The Association has proposed a 3% premium contribution by employees for 2007; and \$50.00 per month toward the family plan and \$20.00 per month toward the single plan for 2008 and 2009. The \$50 (F)/\$20 (S) employee contribution for 2008 equates to 3% contribution for a family plan participant, and 3% contribution for a single plan participant. The \$50 (F)/\$20 (S) employee contribution for 2009 equates to 4% contribution for a family plan participant, and 4% contribution for a single plan participant.

Finally, the Village proposes to fund the employee's HSA accounts effective January 1, 2009 at \$1,750 for single plan participants and \$3,500 for family plan participants. The Association's final offer proposes that the Village fund the employee's HSA accounts at 100%; \$2,000 for single plan participants and \$4,000 for family plan participants. The Association argues that the additional funding of \$250.00 (S) and \$500.00 (F) annually impacts the Village at **eight tenths of a percent (.8%)**.

As the proponent of this mammoth change, the Village bears the burden of proof that a change is needed, including an adequate quid pro quo. The Village has neither met their burden nor offered an adequate quid pro quo and the Association respectfully requests that the Arbitrator concur.

With respect to the other statutory criteria, the Association argues that the Employer has the lawful authority to meet the terms and conditions set forth in the Association's final offer (Section 111.77(6)(a)); that the stipulation of the parties imposes no significant monetary burden upon the Employer (Section 111.77(6)(b)); and that the Employer has not proven it cannot afford the Association's final offer or that the interest and welfare of the public will be adversely affected (Section 11.77(6)(c)). Regarding the latter, the public interest is well served if the citizens and taxpayers of the Employer are provided with public sergeants who are well paid and of high spirits and morale.

Section 11.77(6)(d) requires that the Arbitrator compare the final offers to wages, hours and conditions of employment received by police officers in comparable communities. There is no statutory criterion, unlike Wis. Stats. 111.70(4)(cm)7.e. covering non-protective employees, to make comparisons to employees in the same communities.

The difference in the statutes clearly indicates that the drafters of Section 111.77(6) recognize the need to distinguish the special characteristics and needs of law enforcement employees when compared to employees holding other positions within the same community. This difference has been recognized and given effect by arbitrators.¹

Throughout the negotiations that took place over wages pursuant to the agreement, the Association has consistently argued that its final offer was supported by settlements received by other law enforcement within the comparable communities.²

Lastly, the Association's final offer is consistent with the Consumer Price Index (CPI). When final offers were certified, the CPI was 4%. The Village's offer is well below the CPI.

Based on all of the above, the Association requests the Arbitrator to accept its final offer as the most reasonable.

Employer's Position

External Comparables

In addition to the comparables the Association accepts, the Employer proposes the Village of Roberts, City of St. Croix Falls and the Village of Somerset.

The Employer's comparable pool is inclusive and unbiased. It includes all unionized law enforcement units within Ellsworth's general geographic area. When measured against the commonly-accepted indicia (geographic proximity, similarity in size, and similarity in character), Ellsworth is clearly more similar to the Employer's proposed municipalities as a whole than the Union's.

¹ Portage County, Case 16, No. 51947, INT/ARB-7488 (Fleischli).

² See Association's Tab 7.

High Deductible Health Care Plans and Health Savings
Accounts Promote a Partnership Between Employer and Employee
in Managing health Care Costs and Benefits.
Under the Union's Final Offer, Full Responsibility for Funding
Health Insurance Deductibles Reverts to the Employer in 2009.

The Union's final offer runs counter to the underlying principle of shared responsibility in managing health care costs. Although the Union agrees to implement a HDHP/HSA in 2009, the Union's offer requires that the Village fund each employee's Health Savings Account at the plan's full deductible amounts of \$2,000/\$4,000. The Village's offer, on the other hand, provides for annual Village HSA contributions of \$1,750/\$3,500. Because the Union's proposal requires the Village to contribute the full deductible amounts each year, the employee has absolutely no out-of-pocket exposure under the Union's offer. As the Village will show, the Union's offer for 2009 runs counter to Village practice and internal settlements, and also runs counter to established trends throughout comparable municipalities.

In terms of Village history, police employees have been paying deductibles of \$00/\$300 and drug card co-pays of \$10/\$20/\$30 for years. They are also subject to 80/20 co-insurance after the deductibles have been met. Under the existing contract, an employee's maximum out-of-pocket exposure is \$620 single and \$920 family. These out-of-pocket maximums will continue for 2007 and 2008 under both parties' final offers.

When the high deductible health plan is adopted in 2009, co-insurance and drug co-pays necessarily disappear pursuant to IRE regulations, making the employee's only out-of-pocket exposure the deductible amounts of \$2,000/\$4,000. Under the Village offer, the Village funds the HSA at \$1,750/\$3,500, thereby reducing the employee's maximum out-of-pocket exposure

from the current \$620/\$920 to \$250/\$500. The Village's offer also removes the contractual out-of-pocket caps since they are necessarily obsolete upon the implementation of the HDHP.

Under the Union's final offer, not only are the contractual out-of-pocket caps retained (which conflicts with the implementation of the HDHP), but the Village is also required to fund the HSA at the full deductible amount of \$2,000/\$4,000, thereby reducing the employee's out-of-pocket exposure to zero. Under the Union's offer, therefore, employees enter a zone of zero risk when it comes to out-of-pocket health insurance expenses.

In terms of internal settlements, the Utilities and Street Department (the only other organized unit the Village) adopted the Anthem HP3 high deductible/HSA plan in 2007 with employees' out-of-pocket exposure steadily increasing. Under the Utilities and Streets agreement (also adopted for non-union employees in 2007), the Village funded the HSA at the full \$2,000/\$4,000 deductible amounts in 2007, at \$1,750/\$3,500 in 2008 and at \$1,500/\$3,300 in 2009. Thus, employee out-of-pocket maximums increased from \$0 in 2007 to \$250/\$500 in 2008 and to \$500/\$700 in 2009. Under the Union's final offer, police employees would be the only Village employees with zero out-of-pocket exposure.

Also, if an employee does not incur medical expenses up to the full deductible amount in any given year, the unused HSA funds carry over from year to year with no maximum cap, thereby providing employees with a virtual "windfall" of HSA funds to use – tax free – for future medical expenses.

A review of external comparables reveals that employee out-of-pocket expenses for deductibles and co-pays is the norm. In 2008, only Baldwin and Hudson are the only two comparables without in-network or out-of-network deductibles. The vast majority of

comparables have drug co-pays and additional co-pays for office visits and emergency room usage.

Two external comparables, New Richmond and River Falls, have HRA's, but neither funds the HRA's at the full deductible amount. The same is true with the three comparables, Osceola, Prescott and Somerset, with the HSA plans. The Village's final offer provides a lower employee out-of-pocket maximum (\$250/\$500) than all but one of the five.

Internally, for both the Utilities unit and the non-represented there was a progression from zero employee out-of-pocket to increasing out-of-pocket levels across contract years. The Union's final offer contains no exception to the zero out-of-pocket expense. There is no cost sharing.

The Union may argue that its final offer is preferable because it calls for the same Village HSA funding that the Village provided in the first year of HSA implementation for the other two employee groups. However, the Village reached voluntary agreement with the Utility unit in 2006, the same agreement the instant Police unit could have had. However, the Police refused implementation of the HDHP/HSA plan in either 2007 or 2008.

The delay in implementation resulted in significant additional premium cost to the Village: \$33,000 for 2007 and 2008. The employees as a group would have realized premium savings of over \$1,700 during the same period of time. The Village's offer for 2009 places Police employees at the 2008 funding level that was received by the Utility and Streets and non-represented employees, which is still more generous than those two employee groups will receive in 2009.

The Union's delay should not be rewarded by the arbitration. Arbitrators have so held.³

³ City of Beaver Dam (Law Enforcement), Decision No. 31704-A (7/07, McAlpin).

By Imposing a Fixed Dollar Amount for Employee Health
Insurance Premium Contributions Beginning in 2008,
The Union's Final Offer Abandons the Principle of
Shared Risk and Responsibility in Managing
Premium Increases.

The parties actually have a formula for determining premium contributions but it can generally be described as 97% paid by the Village and 3% paid by the employees.

Both parties propose continuing of 97% Village contribution in 2007. For 2008, the Village offer decreases its share to 96% while the Union proposes to change the employees' premium contribution to fixed dollar amounts of \$20 per month for single and \$50 per month for family. For 2009, the Village offer decreases its share to 95% while the Union proposes the same \$20/\$50 dollar amounts for employee contributions. The Union's offer proposes a significant change in the status quo in that it changes employee contributions from a percentage to fixed dollar amount and departs from the pattern that exists among internal and external comparables.

The Utility/Streets employees and non-represented employees pay the same increasing percentage of health insurance premiums as proposed by the Employer. Since 2004, all Village employees have paid a percent contribution for insurance premiums. The Employer's offer continues to base premium contributions on percentages, while the Union's offer does not. The Union bucks the uniformity of the internal trend of percent-based calculations.

The premium contribution pattern among the external comparables is very clear; they are percent-based. One pays employees a \$600 per month cash contribution in lieu of insurance. Of the remaining 11 comparables, only one, as of this date, is on a dollar amount employee

contribution. In addition, in 7 of the 11 comparables, employees pay the same or higher percent contributions than will be required of the police employees under the Village's offer.

Here, the Union's proposing a change but has not met the criteria of establishing a need, or a reasonable response to the alleged need, or the offer of a quid pro quo.

The Employer cites a number of arbitration awards in which arbitrators have been reluctant to uphold a change for percent-based to flat dollar amount employee premium contributions. Some have held that such a change should not be awarded through arbitration.

The Union's Proposed HSA Language is Inconsistent with Applicable
IRS Rules and Regulations and Jeopardizes the Employee's
Eligibility to Participate in the HSA.

The Employer deliberately chose not to speak to the IRS, attempt to interpret the Internal Revenue Code in the collective bargaining agreement or unnecessarily restrict an employee's rights to the HSA if the IRS changes the regulations in the future. Instead, the Village's proposed HSA language is restricted to the one and only aspect of an HSA which is within the Village's control, the specific amounts the Village will deposit.

In contrast the Union's final offer contains 10 paragraphs of language addressing HSA, but HSA is governed by the HSA and, as such, are subject to future alterations in IRS and regulations. Therefore, the proposed language does not belong in the collective bargaining agreement.

Also, the language appears to be based upon regulations applying to HRA's not HSA's. The two are different and not interchangeable. The Union's proposal is deficient in this regard and should be rejected.

Further, the Union's proposal is at odds with HSA IRS regulations because it maintains existing contractual out-of-pocket caps. Under the Union's final offer, the Village would be

reimbursing “all or part of the employee’s medical expenses below the minimum HDHP deductible “which, in turn, render the employees ineligible to participate in an HSA.” If the Village does so, it could be supplying “additional coverage to a HDHP/HSA” which clearly is not allowed under a valid HSA. This would subject employees to tax liability.

The Employer’s Wage Offer is in Line With the Pattern of
Internal Settlements and is Reasonable in Comparison to
External Settlements. In Terms of Total Compensation,
Employees Maintain Top-Reporting Longevity, Vacation,
Sick Leave, Holiday and Other Insurance Benefits.

When measured against the external comparables, the Village’s wage offer emerges as reasonable.

In any given year, some settlements are lower than the Village’s offer and some are higher, but among those that are higher, several obtained significant changes to health insurance at the time of the higher increase, including implementation of HRA’s and HSA’s.

Seven out of twelve comparables made insurance changes during 2007-2009. Ellsworth’s police employees are not along on being asked to make insurance changes, and they are not being asked to sacrifice reasonable wage increases in exchange for same.

Also, the existing wage rates are the result of years of voluntary bargaining. Therefore, any argument that Ellsworth’s wage rates are low in comparison to external comparables must fail. The existing rates were voluntarily bargained.

With respect to comparison of overall compensation, the Village submits that its wage offer, when considered in conjunction with the many other benefits enjoyed by the police employees, results in the continuation of a top-ranking total compensation package. Under the Village offer, police officers will continue to receive above-average benefits in the following

areas: longevity, vacation, sick leave, accumulation and payment, holidays, and other insurance (dental and life).

Even more important, however, are internal comparables. There has been absolute consistency with respect to health insurance and near absolute consistency with respect to wage increases. However, because the Union has delayed adoption of the HSA until 2009, the internal consistency on insurance is broken. The Union's offer to convert employee contributions to a flat dollar amount breaks the internal pattern. However, as to HSA, finding the Employer's offer differs in 2009 in that it provides this unit a higher amount (\$1,750/\$3,500) in recognition of the fact that this will be the first year of HSA implementation.

The Village offered more of a wage increase in 2007 and 2008 (3%, 3%). However, the Utility/Streets employees voluntarily agreed to make the insurance change in exchange for the wage increases. The Village should not be required to reward the police employees for holding out. The lower wage increase offered to this unit recognizes the increased health insurance costs incurred by the Employer.

Here, the internal settlement represents the best indicator of the agreement the parties should have reached if voluntary negotiations had been successful.

Arbitrators have recognized the important of treating all employee groups consistently when it comes to health insurance, especially where a change in such benefits is at issue. The Arbitrator in this case should do the same.

The Voluntary Settlement of Collective Bargaining
Agreements is Provided Under the Village Final Offer.

It would appear the Union's alleged "lack of details" about the Village's insurance proposal was the main impediment to settlement. Yet at the hearing, Union witness Officer

Darren Foss acknowledged that he and Union representatives did receive documents describing the new health plan from the Village's insurance carrier. They also attended several meetings with Village representatives when it became known that the current health plan would be changing. The Village remains in the dark about what specific insurance questions remain unanswered, as alleged, from the Union's perspective.

At the hearing, insurance, not wages, was identified by the Union as the key obstacle to settlement. However, both are linked. Linking wage increases and benefit changes provides "give and take" and the early and voluntary settlement of bargaining agreements. The Employer's linking of the two should be upheld.

The Employer in its reply brief argues that the Union attempts to alter its final offer by presenting an edited version in its brief. The Union replaces all of the HRA references to HSA. The Arbitrator must evaluate the parties' final offers based upon its express language, not on what they may have intended the language to mean.

The Union's control theme is that the Employer has not offered an adequate quid pro quo for significant modifications the Employer is seeking in health insurance. The fact is both parties' final offer implement the agreed-upon high deductible/HSA plan effective January 1, 2009. The only issue is the amount the Village will contribute to the HSA.

In fact, the Union should be offering a quid pro quo because it is proposing a far greater change, i.e., because it proposes to change the structure of converting from a percent contribution to a flat dollar amount. This is much more significant than simple adjustments to percentage contribution amounts.

The Union compares its settlement cost to that of the Utility/Streets settlement. It attributes costs to vacations and holidays, but there is no evidence on the record to support the

figures used. The Union does not include the HSA contributions in its costing. Under the Union's final offer, the police will receive a total of \$3,100 more in the HSA funding levels than will be in place for other Village employees in 2009.

The Union argues that external wage settlements support its position. But as discussed earlier, many of these settlements incorporated changes to health insurance. With regard to three of the comparables (St. Croix Falls, Roberts and Somerset) the Union wishes to exclude, the Employer argues for their inclusion because even though they cannot go to arbitration, they are unionized and collectively bargain their wages, hours and conditions of employment.

Lastly, the Union argues that the Village's lower wage offer will jeopardize the spirits and morale of the police officers. But, there is no evidence that police officers are leaving for higher wages elsewhere. The officers have been with the Village for at least 6 years and up to 13 years. The evidence shows that Ellsworth's police officers enjoy a highly competitive compensation package.

Based on all of the above, the Employer requests that its offer be selected by the Arbitrator.

DISCUSSION:

External Comparables

The parties disagree over the inclusion of three external comparables: Village of Roberts, City of St. Croix Falls and Village of Somerset. They agree on: City of Amery, Village of Baldwin, City of Hudson, City of New Richmond, Village of North Hudson, Village of Osceola, City of Prescott, City of River Falls and Pierce County.

The City argues for the addition of the three disputed comparables. According to the City they meet the geographic proximity, similarity in size and similarity in character criteria used to

determine appropriate comparables. The Union argues that the three comparables should not be considered because all are under the population of 2,500 and, as such, their law enforcement units of employees do not have access to final and binding interest arbitration.

Both parties make good arguments. The three are in the same labor market as Ellsworth and therefore compete for jobs. On the other hand, employees of the three small communities do not have the leverage that interest arbitration provides in negotiating their wages, hours and conditions of employment.

Based on the above, the Arbitrator will include Roberts, St. Croix Falls and Somerset in the external comparables, but will not give them as much weight as the other external comparables.

Health Insurance and Wages

The Employer in its brief accurately sets forth the parties' present health plan and the parties proposed health plan in 2009.⁴

The current health plan covering Police employees is a fairly traditional plan with \$100/\$300 deductibles, 80/20 co-insurance after deductibles are met, and a 3-tier drug card – all of which employees must pay out-of-pocket up to certain contractual caps (Er. Ex. 6, 9). Currently, the Village pays 97% of the premiums and employees contribute 3% of the premium cost.

Both parties propose maintaining the existing plan for 2007 and 2008. For 2009, both parties propose the implementation of a high deductible health plan (HDHP) known as the Anthem HP3 plan, as well as a health savings account (HSA). In order to have a valid HSA, employees must be covered by a qualified HDHP. In order to have a qualified HDHP, deductibles must meet certain minimums established by the Internal Revenue Service (IRS). Currently those minimums are \$1,100 single, \$2,200 family (see Er. Ex. 19).

⁴ Employer's brief, pp. 11 and 12.

The Anthem HP3 plan agreed upon by the parties has deductibles of \$2,000 single and \$4,000 family, with no employee co-insurance or co-pay requirements and no prescription drug co-pays. Instead, all medical expenses apply directly toward the deductible. Once the deductible is met, the plan pays 100% of all medical expenses. Employees are responsible to pay the deductibles, but can use funds from their HSA to do so. When employers contribute to HSA's, as both parties proposed here, employees' out-of-pocket expenses are reduced or eliminated.

Under an HSA, each employee sets up an account at a qualified financial institution. Both the employer and the employee may make annual contributions into the account up to IRS-established maximums (currently \$2,850 single, \$5,650 family) (Er. Ex. 16). The account, and the funds deposited into it, are completely owned by the employee and may be used to pay for qualified medical expenses for the employee and his/her dependents. All HSA funds contributed by the employer are fully vested by the employee upon deposit. Also, any unused HSA funds carry (sic) over from year to year, earn interest tax-free, and are portable (Er. Ex. 19). Pursuant to IRS regulations, HSA funds may be used to pay for eligible medical expenses both during employment and/or after an employee quits or retires (Er. Ex. 18).

Both parties agree to implement the same HDHP/HSA effective January 1, 2009. The only disagreement is over the Village's contribution to the HSA.

The Association's offer calls for the Employer to fund each employee's HSA at the plan's full deductible amounts of \$2,000/\$4,000. The Employer's offer requires the Employer to contribute \$1,750/\$3,500 towards the same maximum amounts.

The only other issue in dispute is wages. Because the two are monetary issues, the Arbitrator cannot ignore that they are closely related and one impacts the other. The Employer offers increases of 2.75%, 2.75% and 3% for the years 2007, 2008 and 2009, respectively. The Association, for the same years, proposes a 3% increase each year.

In comparison with the only other represented Village unit of employees, Utility and Streets,⁵ the Association's offer is more consistent than the Employer's. Utility/Streets settled for a 35¢ per hour increase plus a 3% increase in 2007, 3% in 2008 and 3% in 2009.

The Employer argues that the instant unit should not be rewarded for not settling and accepting the same health insurance plan change in 2007 as accepted by Utilities/Streets, by awarding them the same wage increase as Utility/Streets. The Arbitrator agrees, but neither should this unit be punished for exercising their statutory right to interest arbitration. Thus, the Arbitrator will decide the issue on the relative merits of the two offers.

As stated above, a strict comparison of the wage increases of the two units favors the Association's offer. However, as argued by the Employer, the Utility/Streets unit voluntarily accepted the same change in health plan, as now agreed to by this unit, effective 2007 – not 2009 - in exchange for a higher wage increase. Some of the savings realized by the Employer from the insurance change was used for the wage increases. The anticipated \$33,300 in savings in an early implementation of the health plan was not realized and available to pay the instant unit the same increases received by the Utility/Streets employees.

With respect to a comparison of wage increases with external comparables, the Association's offer is more in line with the comparables than the Employer's. In 2007, all but two comparables, Hudson and Osceola, settled for 3% or more (either up front or split increases). For 2008, the same (3% or more) is true for all of the externals that have settled except for Hudson and St. Croix Falls. The Employer points out that some of those settlements included insurance changes, but that is also true under both offers in this case. It is quite clear that solely

⁵ The non-represented employees agreed to the same package as the Utility/Streets, except their wage increase in 2009 has not been determined.

on a wage increase comparison with the externals, the Association's offer is more reasonable than the Employer's.

However, as state earlier, wages is only one of two monetary items in dispute. The other, health insurance, is equally as important.

There are two aspects of the agreed-upon HDHP/HSA in issue; the amount of the Employer's contribution to the HSA and the level of premium contributions by the Employer and employees.⁶

With respect to the former, the Association proposes that the Employer pick up the entire \$2,000/\$4,000 deductible amount. The Association in support of its position argues that the Employer contributed the entire deductible amount for the Utility/Streets unit to initiate the change in insurance plans. That is true, but the Utility/Streets agreed to the change in the first year of the contract (2007) unlike here. In the second and third years (2008 and 2009), the Employer's contribution dropped to \$1,750/\$3,000 and \$1,500/\$3,300, respectively. In 2009, the Employer's offer to the Association is to contribute \$1,750/\$3,500; \$250/\$200 more than contributed to Utility/Streets employees. Also, notably, it is less than this unit's current maximum exposure of \$620/\$920.

With respect to premium contributions, both parties are proposing a change. The Employer's offer calls for a 1% increase in employee contribution in 2008 and another 1% increase in 2009. The Association, like the Employer, proposes the status quo in 2007 (97%

⁶ The Employer also raises issues with the Association's contractual language accompanying its HSA proposal. The Arbitrator notes, as argued by the Employer, that there is some confusion created by reference to HRA accounts. The language in part is not non-applicable and confusing, but not material enough for the Arbitrator to not select the Association's offer if found to be more reasonable than the Employer's. Therefore, the Arbitrator will base his discussion on the merits of the two offers.

contribution by the Employer) and a fixed dollar amount of \$20 single and \$50 family contribution by employees in 2008 and 2009. This equals a 3% and 4% contribution by employees in 2008 and 2009, respectively.

The problem with the Association's offer is not so much the difference in cost between the offers, as it is with the philosophical difference. The Association does not want to share the cost of the deductible amounts and wants to cap its exposure to premium increases. This, especially the latter, is clearly counter to the trend in the state and nationally. For instance, there is only one external comparable that has an employee flat amount contribution; all the rest are on percentage-based contributions with seven of the eleven paying the same or a higher percent contribution than required by the Employer's offer. At a time when insurance premium costs far exceed the rate of inflation and in many cases is spiraling, the Association is seeking a structural change from percentage to a fixed dollar amount contribution by employees. It seeks to change the financial relationship between the parties from the present where employees and the Employer share premium increases based on their percentage contribution to where the employer will pick up all future premium increases.

The Employer will be required to continue to do so until it can negotiate a change in the arrangement in a successor agreement.

Summary and Conclusions

There are two underlying principles involved in this case. The Union argues that it is entitled to a quid pro quo for agreeing to a significant change in health insurance plans while the Employer's primary theme is that the Union fails to accept the well-accepted concept that the parties have a shared responsibility when it comes to health insurance costs.

The Union's wage proposal, considered alone, is more reasonable because it is more in line with internal and external comparables. In this regard, comparison with external comparables is appropriate and given considerable weight because it is a comparison with other law enforcement units as opposed to the one internal comparable consisting of non-law enforcement personnel.

However, the parties' final offers must be considered as a whole, a total package.

The Arbitrator finds the Employer's offer in the only other issue, health insurance, to be more favorable and when the two issues are considered together as a package, the Arbitrator finds the Employer's final offer the more reasonable of the two.

This is so because the lower wage increases in 2007 and 2008 are offset by the delay in the implementation of the agreed-upon new health insurance plan until 2009. More importantly, however, the Union seeks a change in the present shared responsibility arrangement in insurance costs.

Currently, employees are required to contribute to the deductible amount of coverage up to a maximum of \$620 single and \$920 family. The Union proposes that the Employer, under the new plan, pick up the entire amount of the \$2,000/\$4,000 deductible. But more significant is the Union's proposal to change the financial relationship between the parties regarding insurance premiums. The Union agrees to the equivalent decrease in Employer contribution from the current 97% to 96% in 2008 but stated in a dollar amount. The Union proposes a flat dollar contribution by employees of \$20/\$50 which equates to a 4% pick-up of premiums in 2008 and 2009. The Union caps the employee's contributions at the \$20/\$50 level.

The Employer offers to pick up \$1,750/\$3,500 of the deductibles. The employees' exposure is \$250/\$500. The Employer raises the employees' premium contributions from 3% in

2007 to 4% in 2008 and 5% in 2009. This amount, however, is below the current employee contribution.

The Arbitrator finds the Employer's offer more reasonable and more in conformity with the comparables and the trend regarding the issue. The Employer's offer of a \$1,750/\$3,500 pick up is reasonable because it limits the employees' liability to \$250/\$500 which is a reduction from the present \$620/\$920 exposure. With regard to contributions to insurance premiums, the Union's offer would be as reasonable as the Employer's if expressed in percentages. But, the Union's offer capping employees' contributions encumbering the Employer with future increases is simply out of step with what's occurring in the field. With the rate of increases in insurance premiums, shared responsibility is now well-established and commonly accepted by unions. For instance, of the eleven external comparables only one is at a fixed amount; the rest are all percentage based. Plus, when it comes to benefits, internal comparables are important. All employees of the City are under the same insurance plan as offered and on a percentage basis. The Employer, however, maxed its deductible pick up at \$1,500/\$3,300 with the Utility/Streets employees; some \$250/\$200 less than its offer to the instant unit.

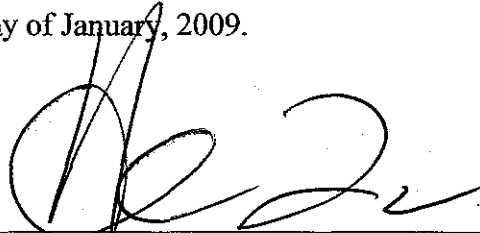
Based upon the application of the statutory criteria to the parties' final offers and the evidence presented with regard thereto, the Arbitrator finds the Employer's final offer to be the more reasonable of the two final offers based on both the internal and external comparables.

AWARD

The Employer's final offer is to be incorporated in the 2007-2009 collective bargaining agreement between the parties, along with those provisions agreed upon during the negotiations,

as well as those provisions in their expired agreement that they agreed were to remain unchanged.

Dated at Madison, Wisconsin, this 23rd day of January, 2009.

A handwritten signature in black ink, appearing to read 'H. Torosian', written over a horizontal line.

Herman Torosian, Arbitrator

A

FINAL OFFER

**VILLAGE OF ELLSWORTH
to the
LABOR ASSOCIATION OF WISCONSIN
on behalf of the
POLICE DEPARTMENT EMPLOYEES**

January 8, 2008

1. **ARTICLE 16 - INSURANCE, Section 16.2 - Health Insurance**
 - A. 2007 and 2008: Blue Access Option P8 with Rx Option S
 - B. Effective January 1, 2009: The Village implements the Blue Access for Health Savings Accounts Option HP3 (\$2,000 single deductible/\$4,000 family deductible) with the Village agreeing to fund each eligible employee's Health Savings Account pursuant to applicable IRS rules and regulations as follows:

2009: \$1,750 (single) or \$3,500 (family)
 - C. Employee premium contribution of 3% in 2007, 4% in 2008 and 5% in 2009.
2. **ARTICLE 16 - INSURANCE, Section 16.2 - Health Insurance, last sentence - Delete all after the word "plan."**
3. **ARTICLE 16 - INSURANCE, Section 16.2 - Health Insurance - Delete all after the word "copay" in the first line of the second paragraph.**
4. **ARTICLE 23 - WAGES - Revise the wage rates to reflect the following:**

Effective 1/1/2007:	2.75% increase
Effective 1/1/2008:	2.75% increase
Effective 1/1/2009:	3.0% increase
5. All tentative agreements previously agreed to by the parties.

VILLAGE OF ELLSWORTH

POLICE DEPARTMENT EMPLOYEE'S ASSOCIATION

B

Final Offer

January 7, 2008

1. Article 16 – Insurance, Section 16.2 - Health Insurance

- a. Blue Access Option P8 Insurance Plan with Rx Option S – status quo for 2007 and 2008
- b. Village will implement the HSA Plan effective January 1, 2009 (see attached HSA document) and the Village shall fund HSA deductibles at 100%.
- c. Premium contribution:
 - i. Jan. 1, 2007 - 97% (Village) and 3% (Employee)
 - ii. Jan. 1, 2008 – Employees pay \$50/month (Family) and \$20/month (Single)
 - iii. Jan. 1, 2009 – Employees pay \$50/month (Family) and \$20/month (Single)
- d. Section 16.2 shall remain in the contract:

“16.2 – Health Insurance. The Village shall provide hospital, surgical, major medical, and dental insurance for each employee, and his dependents. Effective June 1, 2004, participating employees will pay 3% of the health insurance premium for similarly situated (i.e., single, limited family or family) employees in the 45 to 49 age group. The coverage shall be subject to change upon thirty (30) days written notice to the Union and a meet and confer session. The Village will pay the employee’s health insurance through eligibility for Medicare on early retirement. This does not apply to spouses of employees. Early retirement is defined as any retirement after twenty (20) years of service at age 55 or thereafter, but prior to eligibility for Medicare. Employees shall pay all deductibles and co-pays of the current health insurance plan; however, such out-of-pocket expenses will be capped at a maximum employee exposure of:

Within PPO

\$500/Yr. For Single Plan

\$800/Yr. For Family Plan

Outside PPO

\$850/Yr. For Single Plan

\$1,500/Yr. For Family Plan

Employees shall pay a prescription co-pay of up to \$120/annually, and the Village shall pay any prescription co-pay in excess of \$120/annually.”

2. **Article 23 – Wages.** **3.0% ATB** – January 1, 2007
 3.0% ATB – January 1, 2008
 3.0% ATB – January 1, 2009

3. **Article 25 – Duration.** *Modify all dates to reflect a 3-year Agreement effective January 1, 2007, through and including December 31, 2009.*

4. *All Tentative Agreements dated 01-07-08.*

ASSOCIATION PROPOSAL
HEALTH SAVINGS ACCOUNT (HSA) PLAN

Village of Ellsworth will implement a Health Savings Account (HSA) plan effective January 1, 2009.

Effective January 1, 2009 employees shall pay \$20.00 per month toward the single health insurance premium and \$50.00 per month toward the family health insurance premium.

Current year HSA monies can also be used to reimburse employees for linked and coordinated health plan expenses.

Unspent HSA monies will roll over from calendar year to calendar year with no maximum cap.

Roll over HSA monies may be used to reimburse employees for expenses incurred, and for eligible IRC Section 213 medical claims.

Employees with Village of Ellsworth at the time employment separation occurs will be eligible to utilize the post employment benefit portion of the HSA plan under the following scenarios:

- a. **Employee termination/resignation:** The former employee, spouse, and dependents can only use for eligible IRC Section 213 medical claims and Village of Ellsworth health insurance premium under COBRA upon termination/resignation. Any administrative fees of the HRA program would be the responsibility of the former employee upon termination/resignation.
- b. **Employee retirement:** Retiree can use for eligible IRC Section 213 medical claims and individual health insurance premiums upon retirement. Any administrative fees of the HRA program would be the responsibility of the retiree. Retiree will be held to similar benefits of the deductible as a current employee.
- c. **Death of employee:** HSA monies can be used to pay for the deceased employee's medical bills, eligible spouse and dependent eligible IRC Section 213 medical claims, and individual health insurance premiums, or Village of Ellsworth health insurance premiums under COBRA. Any administrative fees of the HRA program would be the responsibility of family upon the employee's death.
- d. **Death of single employee with no dependents:** HSA monies can be used by the estate to pay for the deceased employee's medical bills incurred before the death.

C

TENTATIVE AGREEMENTS
Between the
VILLAGE OF ELLSWORTH
and the
LABOR ASSOCIATION OF WISCONSIN
on behalf of the
POLICE DEPARTMENT EMPLOYEES

January 7, 2008

1. **ARTICLE 3 - GRIEVANCES AND ARBITRATION, Section 3.5 - Correct Step 3** (to create two sentences), as follows:

If the grievance is not resolved at Step 2, it may be submitted to arbitration within ten (10) workdays after receipt of the written decision in Step 2. Notice shall be submitted, in writing, to the Employer indicating the Grievant's intent to submit the matter to arbitration. . . .

2. **ARTICLE 4 - DISCHARGES AND SUSPENSIONS, Section 4.5.2 - Reprimands - Delete** the following sentences:

~~Reprimands will be preceded by a verbal warning. A record of such warnings should be maintained in an appropriate department or division file. Three (3) reprimands in a twelve (12) month period, for the same violation, may be cause for suspension. Any five (5) reprimands in a twelve (12) month period may be cause for a termination hearing. The employee's immediate supervisor may initiate a reprimand, but concurring signatures are required from the Village Board. All reprimands may be appealed.~~

3. **ARTICLE 4 - DISCHARGES AND SUSPENSIONS, Section 4.5.4 - Termination - Modify** the section as follows:

~~The employee may choose the appropriate Grievance Procedure preceding a termination appeal a suspension/termination under the provisions of Section 62.13, Wis. Stats.~~

4. **ARTICLE 4 - DISCHARGES AND SUSPENSIONS, Section 4.7 - Employee Appeal - Modify** as follows:

~~An employee suspended or terminated for causes relating to personal conduct must (before the disciplinary action) be given a copy of the charges against him/her, and be allowed to respond in writing, and be given a prompt written statement of the decision by the Village Board. An employee who has been suspended may, within three (3) days after receiving notice, file a written demand for review with the Village Board. An employee, or authorized Association representative, may elect to challenge the Village Board's decision through the Grievance Procedure appeal~~

such action to the Village Police and Fire Commission pursuant to § 62.13, Wis. Stats., and not through the Grievance Procedure.

5. **ARTICLE 15 - WORK WEEK.** Insert the following language into Section 15.2 - Overtime:

All paid leave time shall be counted as hours worked for purposes of computing overtime hours.

6. **ARTICLE 15 - WORK WEEK, 15.5 - Jury and Witness Duty -** Revise by replacing "him" with "him/her" and by replacing "he" with "he/she."

7. **ARTICLE 16 - INSURANCE, Section 16.2 - Health Insurance -** Replace "age 65" with "eligibility for Medicare" (two locations).

8. **ARTICLE 22 - MEETINGS AND SCHOOL.** Revise the language in Section 22.1 as follows:

Section 22.1. Should the Village require any employee to attend seminars, meetings, or training sessions, the Village shall pay the cost of tuition and materials together with mileage, if using a personal automobile, and shall pay for meals and lodging. Payment of wages will be at the straight time rate. Hours worked pursuant to this Section, beyond the employee's regular schedule, shall be paid at either the overtime rate or he/she shall receive compensatory time, at the employee's election.

9. **ARTICLE 25 - DURATION** - Revise to reflect a new three (3) year contract term.

10. **SIDELETTER (p. 16)** - Continue "Interim Employees" Sideletter.