STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In the Matter of the Petition
from the
WISCONSIN PROFESSIONAL POLICE
ASSOCIATION/ LEER DIVISION
and
THE CITY OF HUDSON (Police Department)

CASE NO. 27
NO. 50037 MIA 1838
Decision No. 28047-A

I APPEARANCES

For Hudson WPPA/LEER
Marty Jensen, Patrol Officer
Jeff Knopps, Patrol Officer
Edward P. Rankin, Patrol Officer
Richard T.Little, WPPA/LEER, Spokesperson

For City of Hudson
Denny Darnold, Administrator
Richard Trende, Chief of Police
Beth Ritchie , Mgr. Local Plans State of WI
Clarence Ranello, Consultant, City of Hudson
Stephen L. Weld, Atty., Spokesperson

II BACKGROUND

On November 8, 1993 The Hudson Unit of the Wisconsin Professional Police Association, hereinafter called the Association filed a petition with the Wisconsin Employment Relations Commission to initiate arbitration pursuant to Sec. 111.77(3) of the Municipal Employment Relations Act. The petition was filed for the purpose of resolving an impasse between the Association and The City of Hudson, hereinafter called the Employer . A finding of fact conducted by the Commission concluded that the Association was the exclusive collective bargaining agent for the non-supervisory law personnel of the Employer. An investigation into the impasse was conducted by the Commission on February 10, 1994, reflecting a continuing deadlock. The parties submitted their final offers on May 17, 1994. The Commission's investigator notified the parties and the Commission

the investigation was closed and the parties remained at impasse. Subsequently, the Commission rendered a FINDINGS OF FACT, CONCLUSIONS OF LAW, CERTIFICATION OF THE RESULTS OF INVESTIGATION, an ORDER requiring arbitration.

III PROCEDURE

The parties selected Donald G. Chatman as Arbitrator for this matter on June 16, 1994. An Arbitration hearing was held on September 1, 1994, in the Offices of the City of Hudson, 505 Third Street, Hudson, Wisconsin. At this hearing all parties were given full opportunity to present their evidence, testimony and proofs, to present witnesses and to engage in their examination and cross-examination. After presentation of their evidence and documentation the parties elected to summarize their final arguments in the form of written briefs. The briefs were received on October 3, 1994. The hearing was closed on October 5, 1994 at 5:00 P.M.. Based on the evidence, testimony, arguments and criteria set forth in Section 111.77(6) of the Municipal Employment Relations Act, the Arbitrator renders the following award.

The parties stipulate, no other issues besides those presented are at impasse. The issues in dispute are as follows:

> 1. HEALTH INSURANCE: The issue in dispute is unique in that the issue is not cost, premium portion payments, or other monetary issues. The sole issue in dispute is the level of benefits.

The Existing Agreement clause is as follows:

> ARTICLE XVIII - MEDICAL INSURANCE
> **Group Coverage** The city agrees to pay the full monthly premium for the group hospital and medical insurance program (in effect on January 1, 1986) covering City employees participating in the program, for both single

and family coverage.

Rate Increase: Should any increase occur in the rates for the above coverages the City agrees to pay these increased costs for the insurance program provided.

Carrier: The Present medical and hospitalization benefits will not be reduced, but the City may from time to time change the insurance carrier if it elects to do so, The City agrees to notify the Association before any such change is implemented and the terms of the proposed change.

ASSOCIATION

Amend Section A of Article XVIII, to provide the following:
Group coverage: The City agrees to pay the full monthly premium for the group hospital and medical insurance (in effect on Janauary 1, 1993,or it equivalent) covering city employees participating in the program, for both single and family coverage. Appendix A, (Association Exhibit 4).

DISTRICT

The Health Insurance Program -Wisconsin State Department Employee Trust Insurance Program.

IV *CONTENTIONS OF THE PARTIES*

The Association contends its offer is within the legal parameters of the Employer, and the Employer has the authority to implement the Association's final offer. Further, that with the almost unaminous agreement on other issues in the successor agreement the stipulations of the parties should have no bearing on the resolution of the health benefit payment clause.

The Association contends its final offer is one which gives consideration to the intangibles of the work position such as morale and unit pride. The Association further maintains that its stipulated agreements on settled issues are lower then its comparable units. The selection of the Employer's final offer along with this lower wage settlement would produce lower income and raise

out of pocket expenses for certain health costs. The Association argues this reduction is not in the best interest and welfare of the public. The Association contends the the Employer has the financial ability to meet the costs of the associations final offer.

The Association contends that arbitral authority supports its position. They maintain that Wisconsin interest arbitrators are unwilling to change working conditions through arbitration without a demonstrative need by the moving party. (Imes, 4724, 1989; Reynolds 1667, 1993; Malumud 24678, 1988; Yaffe 19714, 1983). The Association's argument is first, the proposing party must demonstrate a need for change. Second, must reasonably provide a quid pro quo for the proposed change. The Association maintains the Employer's final offer does not provide this demonstrated need, thus the Association's final offer is preferable.

The Association contends that it should be unlocked from internal comparables. They maintain that there is no requirement that benefit levels be uniform, or that some "uniform" benefit package become the ceiling for bargaining units within a municipality. The Association maintains that Arbitrator's have in some instances given internal comparables limited weight (Bellman 26111, 1990), and even removed law enforcement personnel from such comparisons as being significantly different from other personnel within a political sub-division (Fleischli 41434, 1989). Thus, uniformity should not be a a compelling reason for selection of the Employers final offer. The Association argues its final offer is the most reasonable and should be accepted.

The Employer contends its final offer on health insurance is more reasonable because it reflects the employer's years-long past

practice. The City maintains since 1986 when health insurance policies were enacted. There was provision for a dual choice. The Choices were a standard health insurance plan, and a health maintenance organization plan (HMO). The benefits provided in 1986 through Employers Insurance (A Division of Firemens Insurance) has been the contractual standard since that 1986 period. The 1986-87 contract agreement provided that medical and hospitalization benefits available in January 1986, would not be reduced, and the Employer would pay the full monthly premiums. The Agreement did provide for the employer to change carriers at its discretion.

In October of 1987, the Employer exercised the option to enter into the Wisconsin Employers Group health Insurance Plan, hereinafter called the State Plan, which provided a standard health plan and provisions for two HMO's. While, providing for full payment of monthly health insurance premiums The switch to the State Plan changed several health insurance benefits from the 1986 level. Thus the Employer's health insurance benefits have not been in compliance with the 1986 health care provisions since 1987.

The Employer contends that the Employer has remained in the State Plan from 1987, through the present date. The Employer contends the State plan remained unchanged through 1989. In 1989 changes in benefits were implemented, such as drug co-payment increases. In 1990 benefit levels changed such as requirement of a $25.00 participant charge for Emergency room visits. During this period the Employer and Association negotiated a successor agreement containing the 1986 language. The Employer contends that benefit levels changed in 1991 with reductions in certain health care

benefits. The benefits changed in 1991 while still maintaining the 1986 benefit standard. In 1992 negotiations the Employer attempted to implement a 5.0% monthly employee contribution to health care payments. The Negotiations were settled by an Arbitration Award (Keynolds 27329, 1993) with no change in employee payments. Neither party proposed a change in the 1986 benefits standard and it remained in the agreement.

The Employer contends that in 1993 the State Plan actual benefits changed with deletion of some benefits and addition of some other benefits. In 1994 the State Plan mandated a uniform plan for all carriers, rather than benefit plans which were substantially equal. Thus, the Employer contends that neither party to the agreement had previously sought to change the 1986 benefit language, even though it had been out of compliance for over seven years.

The Employer contends that its proposal would provide agreement compliance in a dynamic health insurance benefit environment. The Employer maintains that since both parties are requesting change in the existing language the standards considered for a change in status quo are not applicable in this instance. The Employer argues the Association's position that the 1993 standard is a continuation of the 1986 standard is in error. The health benefits changed practically every year since 1986 with no questions raised by the Association.

The Employer maintains the Association was aware of the 1987 change in health insurance carriers from Employers' insurance to the State Plan, because they received the Plan booklet every year. The Employer maintains that their final offer attempts to bring the agreement into compliance with the actual insurance benefit

practices. The Employer contends the Association's final offer will subject the employer to an unreasonable burden. The Association's final offer will force them out of the State Plan because, all state plans are uniform. The Employer contends the 1993 health insurance standard is no longer applicable. They maintain that to seek a separate insurance policy that would comply with the State Plan 1993 standards for benefit payments places an onerous burden on the Employer for participating group size and consistency.

The Employer contends that as the result of the 1992 arbitration award the Employer pays one-hundred percent of the premium. Thus, the Employer would have to absorb the full-costs of such a tailored health insurance benefit plan. The Employer maintains it needs more "bang for its buck". The Employer contends that great consideration should be given to internal patterns. All other City employees are covered by the same State Health Plan, and there is no substantial inequity from accepted arbitral standards which would lend to deviation from the internal standard.

The Employer contends that the self funding of the differences between the 1993 plan and 1994 benefits payment places an unreasonable burden on the Employer. The Employer maintains this would place them in the insurance business, and lead to varience in the uniform health benefit plan. This self-funding varience if implemented would defeat the very purpose of uniform benefit health insurance. For all the above reasons the Employer argues it final offer is the most reasonable and should be accepted.

VI DISCUSSION AND CONCLUSIONS

There appear to be two unresolved questions of arbitral process

in this case. Other considerations normally found in the determination of an interest arbitration dispute have been stipulated to be not at issue by the parties. The arbitral questions arise as a direct result of an approximately seven year ommission in abiding by the clear and unambigeous language of Article XVIII, Section A,. This ommission has raised a delemma as to the present status of Article XVIII (A) since both parties have sought to modify the language in their final offers for a successor agreement.

One of the unresolved considerations in this case is whether a past practice exists. The Association makes some related corrollary contentions in its argument that "Wisconsin Interest Arbitrators" are unwilling to change working conditions without demonstrable need shown by the moving party. The Association maintained the Employer did not demonstate such need, nor offer a reasonable quid pro quo for such change. This argument seems to assume that the Association seeks to maintain the status quo of the previous agreement language. In this instance that is not the case, as the Association is also seeking a change in the Language of Article XVIII (A) in their final offer.

Arbitral standards for past practices are generally known and have long precedence. The generally accepted understanding is, that the practice must be (1) unequivocal; (2) clearly enunciated and acted upon and, (3) readily ascertainable over a reasonable period of time as a fixed and established practice accepted by both parties. In the present dispute there is a mixed result. The language of the existing Article XVIII, A., is unequivocal and clear on its face, "(in effect on January 1, 1986)". However, the health

insurance carrier was changed in October of 1987, altering the terms. That alteration continues to the present The Association was aware of this change, but never raised an issue for six years. There is clear documentation that the Association was informed of the carrier change and annual benefit changes by the annual report of health provisions each bargaining unit member received. The change was never clearly enunciated, but was clearly acted upon in successive years and successive agreements. The Language in Article XVIII (A), did not change but the terms of the health insurance policy and its benefits did change, but apparently were not readily discernible as an Agreement violation by either party. In a grievance proceeding the Agreement language in its unequivocal state would be the compelling factor. However, this is a total final offer interest proceeding in which both parties are requesting a change in Article XVII (A), thus, the dispute does not meet sufficient arbitral criteria for a past practice and the issue of past practice is not applicable.

The Second arbitral procedural issue is whether "acquiescence" occurred by the actual manner in which Article XVIII (A) was utilized from 1987 to the present. In this case whether " the clear language of the written agreement has been amended by mutual action or agreement" (Elkouri & Elkouri 4Ed.). The record is uncontested that the health insurance policy was changed in 1987, from the Employers Insurance Plan to the Wisconsin State Plan. The State Plan remains in effect through the present. The record is clear that the parties negotiated at least two successor Agreements while the language of Article XVIII (A) remained unchanged (1986). The record is clear that in 1992 while negotiating a third sucessor agreement

the parties went to impasse, held mediation sessions and an interest arbitration on Article XVIII (A), without attempting to change the base benefit date (1986). In fact, the base benefit date was not an issue in that interest arbitration proceeding.

> Similarly, the failure of the adversely affected party even to raise the issue of change in sequent negotiations has been held to constitute a presumption of acqiescence. (Fairweather's, 1990)

From the documentation and arguments presented it appears that there was acquiscence in the acceptance of the benefit base. Both parties final offers on this issue are attempts to correct that acquiscence. The Association's final offer attempts to move the base benefit date forward to 1993. From testimony and documentation (Employer Exhts.5, 25) this advancement of date would fully cover the extensive medical costs incurred by one of the association members.

The Employer's final offer appears to be an attempt to bring Article XVIII(A) into agreement compliance. The Employer alleges that there was a past practice in effect by default. This alleged practice stems from the ommission of both parties. That was further exacerbated by the continued ommission of this agreement provision before and after an interest arbitration on this specific provision in 1992. The Employer's claim of a past practice is not meritorious because the situation fails to meet arbitral standards for a past practice.

The Association raised arguments with regard to arbitral decisions. In the instant case there is no past practice basis for a status quo return. It is impossible to return to the 1986 basis for

health insurance coverage. The Association's final offer does not seek such a return. This contention is not favored.

The Association argues it should not be held to the internal health benefits insurance standards of the other political sub-division employees as a rationale for accepting the Employers final offer. The Association in this instance has the burden of proving why they should be exceptions. The Association has not requested a continuance of the status quo. They are requesting a new standard of benefits from another health insurance carrier for a date seven years after the agreement provision. The evidence and documentation presented on this position is not convincing.

In summary the final offers of both Association and Employer must stand or fail on their contribution to a workable successor agreement between the parties. It is this arbitrator's opinion that neither has any support from past practice or precedent. The Association's final offer of insertion of a 1993 date, sets a benefit coverage basis which is obsolete from the changes already in health insurance coverage during the pendency of this dispute. The acceptance of the Associations final offer would necessitate additional funding, administration, accounting and, auditing costs which are unwarranted without supportive cause. The Employer's final offer does bring the agreement into compliance with the reality of the existing health coverage practices. However, the Employer's final offer would insert a specific health coverage plan into the Agreement which would require bi-lateral negotiation for future health coverage plan change. The Employer's final offer is preferred.

VII AWARD

The Successor agreement between the City of Hudson (Employer) and The Wisconsin Professional Police Association/LEER (Association) shall contain all stipulations agreed to by the parties and, the disputed final offer of the Employer.

Dated this 4th day of November, 1994, at Menomonie, Wisconsin.

Donald G. Chatman, Arbitrator