

REGULAR MEETING, VILLAGE BOARD OF TRUSTEES
THURSDAY, NOVEMBER 10, 2011
7:30 P.M.

PRESENT: Mayor Marty Hubbard, Trustees Marc Angelillo, John Crompt, Sue Jones, and Mary Sennett, Director of Municipal Operations (DMO) Bob Lotkowitz, Police Chief Lloyd Perkins, SFD Chief and Codes Enforcement Officer (CEO) Eric Sell, Clerk to the Boards Dennis Dundon, Village Attorney Mike Byrne

OTHERS: Carrie Chantler Skaneateles JOURNAL
Jason Emerson Skaneateles PRESS
Jim Lanning 12 Hannum Street
Sue Dove Chamber of Commerce Executive Director
Julie Sharpe* 52 East Genesee Street
Daniel Coon* 11 Paul Street, Marcellus, NY
Channel 10 cameraman*

Public Hearing on Local Law #3 of 2011 – At 7:30 p.m. Mayor Hubbard opened the Public Hearing on Local Law #3 of 2011 – Off-street Parking and Parking Trust Fund. Trustee Sennett read a statement as follows:

The changes to the parking law are the result of a collaborative effort by residents, business owners and representatives from different boards and led by John Crompt. The community was very involved in giving feedback on what they would like changed in the law and the new law reflects those requests.

The result is a complete revision of Chapter 225 of the Zoning Law regarding Off Street Parking. Some minor changes were made that primarily benefit private property owners. One request we heard was to modify the restriction against tandem parking. There is still a prohibition but the law accommodates occupants of a single dwelling unit and businesses that have employees arriving and leaving at a common time.

Recognizing that the economic climate is different today than when the law was previously changed, the off-street parking fee has been eliminated. In an effort to support economic development, businesses in the downtown district can increase demand for parking, with one exception, without a penalty. The one exception is for structures that provide overnight accommodations such as residences, hotels, and bed and breakfasts. The law defines the parking requirements based on the type of structure or business. A property owner who modifies a structure but does not add habitable units is not subject to this requirement. New or additional habitable units trigger the necessity to add parking.

The Parking Trust Fund will remain and continue to grow through revenues from the current municipal lot and other municipal parking lots that are developed. The section of the local law regarding the Parking Trust Fund is being moved to Chapter 212 but the intent, purpose and guidelines remain the same. We feel this is a well conceived and fair law and urge support of Local Law #3.

Trustee Crompt thanked Trustee Sennett, Village Attorney Byrne, Bob Eggleston, Sue Dove, Arnie Rubenstein, and Sarah Wiles for their work and input on this local law. He said they all “gave a darn good shot at making it fair”. Mayor Hubbard noted that Local Law #3 of 2011 has been on the Village’s website for some time now and he welcomed public comment. Chamber of Commerce Executive Director Sue Dove thanked Trustees Sennett and Crompt for spending a significant amount of time on this local law and for listening. She said she thinks the committee came up with a creative way to make the local law work while supporting economic development. Mrs. Dove said she talked to many Chamber members and they are in favor of the Local Law. She applauded everyone’s efforts. With no additional comments from the floor, at 7:37 p.m. Mayor Hubbard closed the Public Hearing. **Resolution #2011-181:** On the motion of Trustee Sennett, seconded by Trustee Crompt, it was resolved and unanimously carried (5-0 in favor) to adopt Local Law #3 of 2011 to Amend Chapter 225, Article XII (“Off-Street Parking”) and Chapter 212 (“Vehicles and Traffic”), Article V (“Municipal Parking Facilities”), Section 212-37 (“All-day Parking Area Restrictions”). Mayor Hubbard commended Trustees Sennett and Crompt for all their time and effort. *Julie Sharpe and Channel 10 cameraman left the meeting.

Minutes – Resolution #2011-182: On the motion of Trustee Jones, seconded by Trustee Sennett, it was resolved and unanimously carried (5-0 in favor) to approve the Minutes of the Regular Meeting of October 27, 2011, as presented.

Correspondence and Announcements – Mayor Hubbard announced the following:

- Reminder – second meeting in November rescheduled to Monday, Nov. 28, 2011
- Invitation from Seneca Falls Mayor Diana Smith – Luncheon Roundtable discussion – November 22, 12:30 p.m. at the Holiday Inn, Liverpool. Mayor Hubbard and Village Attorney Byrne plan on attending; Clerk Couch will RSVP for them.
- Cornell University’s Design Connect Spring 2012 Project Application
- NYS DOT CHIPS reimbursement scheduled on or about Dec. 16, 2011 – DMO Lotkowitz confirmed that the request for payment was submitted 11/2/11.
- Skaneateles Lake Watershed Stakeholder Meeting Monday, Dec. 5, 2011, 6:15 p.m. at the First Presbyterian Church – Trustee Crompt said he plans to attend and Trustee Sennett said she will check her calendar so that Clerk Couch can RSVP.
- Receipt of Treasurer’s Reports for October, 2011
- Receipt of GFNB LOSAP Summary for October, 2011
- Meeting Scheduled with Brown & Brown to discuss 2012 insurance rates Wed., Nov. 16, 4:00 p.m. at the Village Office. Trustees Sennett and Angelillo indicated that they both will attend.
- Arbitration Decision. Trustee Angelillo read the following statement:
On the agenda is the item listing discussion of the arbitration decision involving the Village’s health insurance change in January 2011.

By way of background, the Village changed health insurance plans in January 2011 from an Excellus EPO plan to another Excellus plan called Healthy Blue. All employees at the Village with health insurance were transitioned to Healthy Blue. The two unions that represent certain Village employees – Council 82 for the police and CSEA for the street and water – were advised in late 2010 of the change. Council 82 expressed no objection to making the change.

CSEA, however, objected to the change as one the Village was not authorized to make unilaterally under the collective bargaining agreement. Specifically, the Union maintained that the Village could change an insurance carrier but not the insurance plan, and because we were staying with an Excellus product, we were not able to make the change without the Union’s approval.

The Union filed a grievance and demanded arbitration of the matter before an impartial arbitrator. A hearing was held in August. The Village and CSEA submitted briefs to the arbitrator, who then issued an Opinion and Award.

In her decision, the arbitrator concluded that the Village did not violate the collective bargaining agreement when it changed to the Healthy Blue insurance program for all employees, including CSEA employee. Specifically, the arbitrator concluded “that the contract permits the Village to change the health insurance product it offers to (CSEA) employees, whether it entails a change in carrier or plan, provided that the level of the benefit remains substantially similar.” Because the Healthy Blue plan was found to be “substantially similar” to the previous product, the Village was authorized to make the change without obtaining the Union’s consent.

From my perspective, I am very pleased with the result in this case. All along, our intention has been to provide our Village employees with fair wages and benefits and follow our contractual commitments. Of course, we also have a responsibility to the Village residents, whose taxes pay these wages and benefits.

We will continue to work with the union’s bargaining representatives in negotiations for a new collective bargaining agreement, as the current one expired in May of this year. Over the course of the spring and summer, we had several meetings with the Union but have not been able to reach an agreement on a new contract. We will continue to meet and bargain with the union in good faith and, hopefully, will reach an agreement in the near future.

Mayor Hubbard said copies of this statement and the American Arbitration Association Opinion and Award are available for the press and will be put on the Village’s website.

(Insert American Arbitration Association Opinion and Award)

Police Department – Chief Perkins provided Clerk Couch with the list of street lights that are out as reported by Officer Wawro on November 9, 2011. Chief Perkins read the Police Monthly Activity Report for October reporting: 213 calls for service; 9 misdemeanors; 62 V&T tickets; 15 truck tickets; 116 parking tickets; 360 courtesy cards; 2 MV accidents; 4 property damage; 3 larcenies; 27 assist Fire/SAVES; 1 alarm call; 744 property checks; 4 car lockouts; and 36 courtesy UTT's. Chief Perkins introduced Daniel Coon whose resume was previously distributed to the Village Board. Given that Reid Renner has moved to Georgia and Dan Balloni is leaving Skaneateles for full-time employment in Baldwinsville, Chief Perkins said he is recommending hiring Mr. Coon as a part-time Police Officer. He has more than 30 years in law enforcement and is retired from the Onondaga County Sheriff's Office. Trustee Sennett said Mr. Coon graduated with her brother; Trustee Crompt said he also knows Mr. Coon. **Resolution #2011-183:** On the motion of Trustee Sennett, seconded by Trustee Crompt, it was resolved and unanimously carried (5-0 in favor) to hire Daniel R. Coon as a part-time Police Officer at the part-time Police Officer pay rate of \$26.52 effective immediately. *Mr. Coon thanked the Board and left the meeting.

Director of Municipal Operations (DMO) – DMO Lotkowitz reported that "Mother Nature" let loose and the DPW has been busy picking up leaves – they have one-third of the Village to do. Other recent work includes fixing a major leak on Genesee Street in front of the City Gate House, replacing the transformer in the back of Rubenstein's building (2 East Genesee Street), installing additional water meters, and the Light Department has been doing stray voltage testing. Relative to the bollards on the Rubenstein property, DMO Lotkowitz answered Atty. Byrne that they will be installed this year if possible. When he determines when they can be done, he will advise Atty. Byrne. Relative to the UV Disinfection project, DMO Lotkowitz said the electrician is roughing in, the asbestos change order is done, and we are waiting on the equipment delivery. West Lake Street is done for the year, as is Onondaga Street.

Codes Enforcement – Mayor Hubbard recognized our "codes team" of Dennis Dundon as Clerk to the Boards and Eric Sell as Code Enforcement Officer (CEO). He said he is proud to have both representing the Village. CEO Sell submitted the following report:

- Parkside Subdivision – Issued a Certificate of Occupancy to Harmony Homes 101 Sinclair; footer and foundation is up at 115 Orchard Road.
- 9 building permits were issued this month.
- Several inspections were done on construction sites.
- Just went through an ISO Inspection for the Building Department. This is done every five years. CEO Sell explained that the inspection used the 2010 data under former CEO Jorge Batlle, so there shouldn't be any change in rate.

Skaneateles Fire Department – SFD Chief Sell submitted the following report:

- NYS Vehicle Inspection, ground ladder, hose testing, annual vehicle maintenance, pump testing, UL on the ladder truck, and the fire house sprinkler system all serviced and inspected in October. Only minor problems and they are being taken care of.
- Calls for the month of October: 11 fire; 0 rescue; 3 EMS (SAVES); 1 water rescue; 6 mutual aid; 21 total calls; 12.14 average personnel; 123.4 personnel hours.
- 2011 Calls: 339 total calls; 12.37 average personnel; 2,509.83 personnel hours.
- Drills for October: 4 drills; 20 average personnel; 208.5 personnel hours.

Chief Sell said October was the slowest month all year. Trustee Jones commented that the SFD deserves a quiet month. She recognized that it is quite a testament to the SFD that the Chestnut Cottage will reopen soon.

WWTP – Trustee Angelillo gave a WWTP report for the month of October, 2011, noting precipitation still high, monthly rolling average below permitted rolling average, no violations, and the plant met requirements for BOD and suspended solids removal. RBC #2 is still off line and that topic will be discussed later in this meeting.

Consider a Local Law for Placement of Traffic Devices, and Parking Meters – Mayor Hubbard said the list of items to consider will be pared down for another parking law. Trustee Sennett recalled that we also talked about looking at the rate schedule for the kiosks and free and paid parking for the Fennell Street lot at the old Fire Station. Mayor Hubbard recollected discussion about adding a credit card option to the kiosks. Chief Perkins said that is worth researching again. He added that we should look at upgrading the kiosks as they are starting to show some wear. In response to Mayor Hubbard, Chief Perkins said we had an extended maintenance plan, but now we don't. Clerk/Treasurer Couch will add these items to the list and re-distribute it.

Status of Tallcot Lane Water Service – Mayor Hubbard said letters were sent to the four impacted property owners. DMO Lotkowitz confirmed that he is securing quotes for the surveys.

Status of Local Government Efficiency Grant Work Plan – Mayor Hubbard advised that the meeting with NYS Department of State Land Use Training Specialist Myra Fedyniak is scheduled for Thursday, November 17, 2011 at 8:00 a.m. at the Village Office. Town of Skaneateles Supervisor Roney has been notified and Kara O'Donnell from Mackenzie Hughes is planning to attend.

Savage Wedding Ceremony Request – Trustee Jones reported that Mr. and Mrs. Savage have worked out some arrangement with the race committee relative to the port-a-potties in the park over Labor Day weekend 2012. She suggested approving the request and using it as a test case. Mayor Hubbard recalled that the commander of the American Legion endorsed the wedding ceremony in upper Shotwell Park west of the flagpole. Trustee Sennett said that since this request was first considered at the October 27 meeting, she has thought about the fact that a local family is seeking permission and that makes a difference and is important. Trustee Sennett said she agrees with Trustee Jones' suggestion to see how this goes – a trial that she'd support. **Resolution #2011-184:** On the motion of Trustee Jones, seconded by Trustee Crompt, it was resolved and unanimously carried (5-0 in favor) to authorize the Savage wedding ceremony in upper Shotwell Park on Saturday, September 1, 2012 at 4:30 p.m. Clerk/Treasurer Couch will formally notify Mr. and Mrs. Savage of the Board's decision.

Status of GHD Wastewater Treatment Plant RBC Evaluation – DMO Lotkowitz advised that the GHD WWTP Rotating Biological Contactor (RBC) Evaluation report recommended replacing the broken RBC No. 2 and RBC Nos. 3 & 4 given that they are more than 30 years old and beyond their useful life. Subsequently, specifications were prepared and the Village will advertise for bids. Mayor Hubbard asked if we have heard from the DEC. DMO Lotkowitz said we have not. Mayor Hubbard clarified that we will seek quotes for three RBCs and specify the density. We will go to public bid for materials only. DMO Lotkowitz said bids will be due by 2:00 p.m. on Monday, November 28, 2011 at which time they will be opened and publicly read aloud. Mayor Hubbard said we have a municipal obligation to let a bid. Syracuse Builders Exchange and McGraw-Hill Construction should also receive notice. Trustee Crompt noted that it will be approximately four months before installation. Mayor Hubbard said we think we have enough funds to purchase the RBCs and will attempt not to bond. **Resolution #2011-185:** On the motion of Trustee Angelillo, seconded by Trustee Jones, it was resolved and unanimously carried (5-0 in favor) to authorize publication of an Advertisement for Bids for three replacement RBCs. In discussing the motion, Atty. Byrne noted that the Village will reserve the right to reject any or all bids. Mayor Hubbard noted that the base bid will be for three RBC units and one as an alternate.

Appoint Carol Young to the Historical Landmarks Preservation Commission (HLPC) – Mayor Hubbard said Carol Young of 46 West Lake Street applied for the HLPC vacancy and was endorsed by HLPC Chair Chuck Williams and Corinne Buterbaugh (103 E. Genesee Street). This information was passed on to the HLPC as suggested by HLPC Member Pat Blackler who, unfortunately, is not present this evening. **Resolution #2011-186:** On the motion of Trustee Crompt, seconded by Trustee Sennett, it was resolved and unanimously carried (5-0 in favor) to appoint Carol Young to the HLPC.

Status of Intermunicipal Agreement for West Lake Street (WLS) – Atty. Byrne said a draft has been done and is being reviewed. Mayor Hubbard said he will talk to Town Supervisor Roney about the status of the agreement.

Consider a Local Law to Change Term of Office from 2 Years to 4 Years – Mayor Hubbard said consideration is being given to changing the term of office from 2 years to 4 years as elections are now more costly and because of the length of union contracts. Trustee Angelillo said he is into his fifth year as a Trustee and thinks more than a two-year term is needed to be effective. He added that he doesn't see a longer term as a burden and thinks four years is the right amount of time to be in office. Additionally, four year union contracts wouldn't be passed on to a Board who hadn't voted on the contract. Mayor Hubbard noted that according to a 2007 NYCOM survey, about 50% of the NYS villages have 2-year terms and about 50% have 4-year terms. Atty. Byrne said that under State law, a change in term of office can be done by a resolution or a local law that requires a Public Hearing. Both procedures are subject to a Permissive Referendum and any citizen requesting a referendum must present a petition within 30 days. Atty. Byrne said 4-year terms also raise the question of wanting to conduct staggered elections or biennial elections. If the term of office is simply changed from two to four years without altering the election schedule, we'd have a schedule of staggered elections held in 2012 & 13, 2016 & 17, 2020 & 21, etc. If the Trustees prefer to hold biennial elections, that can be included in the new local law. The Board concluded that there is merit to biennial elections on odd years. Atty. Byrne clarified that no incumbent's term of office would be affected. Atty. Byrne will re-draft the Local Law and Clerk/Treasurer Couch will post it on the Village's website. **Resolution #2011-187:** On the motion of Trustee Jones, seconded by Trustee Sennett, it was resolved and unanimously carried (5-0 in favor) to authorize advertising for a Public Hearing on Thursday, December 8, 2011 at 7:30 p.m. to consider Local Law #4 of 2011 – Terms of Office of Mayor and Trustees and Biennial Elections.

Weitsman Property Utility Easements and Right-of-way – **Resolution #2011-188:** On the motion of Trustee Sennett, seconded by Trustee Crompt, it was resolved and unanimously carried (5-0 in favor) to authorize the acceptance of the Weitsman Property Utility Easements and Right-of-way and authorize Mayor Hubbard to execute the conveyance documents on the behalf of the Village. In discussing the resolution, Atty. Byrne noted that the documents have been signed by Mr. Weitsman. DMO Lotkowitz confirmed that there are new manholes, new line, etc., but that nothing has changed.

Consider Purchase of CUSI Utility Billing Software – Trustee Jones said she'd like to discuss this at an Operations Meeting – the Board scheduled a meeting for 5:00 p.m. on Monday, November 21, 2011.

Authorize Publication of Notice of Offices to be filled in the General Election on March 20, 2012 – **Resolution #2011-189:** On the motion of Trustee Angelillo, seconded by Trustee Sennett, it was resolved and unanimously carried (5-0 in favor) to authorize publication of Notice of Offices to be filled in the General Election March 20, 2012. In discussing the resolution, Clerk/Treasurer Couch confirmed that the notice does indicate the terms of office as two-years because a new local law has not yet been adopted.

Formally Endorse SRCT's Conceptual Approach of Converting from National Grid Electric to Village Electric – **Resolution #2011-190:** On the motion of Trustee Jones, seconded by Trustee Crompt, it was resolved and unanimously carried (5-0 in favor) to formally endorse SRCT's conceptual approach of converting from National Grid electric to Village Electric.

Red Kettle Campaign – Trustee Jones said she'd like to make a plea to fellow Trustees and others to consider volunteering as a bell ringer for this year's Red Kettle campaign. Skaneateles Chamber of Commerce Executive Director Sue Dove is asking people to contemplate helping for an hour or two during this holiday season. Trustee Jones said she has volunteered in past years and it is a fun, rewarding experience that she highly recommends. Ninety percent of the money raised stays right here in Skaneateles to help those in need. Last year \$4,380.00 was raised in the Red Kettle campaign in Skaneateles by those who volunteered time to bell ring for the Salvation Army. Trustee Jones said she'd provide a copy of Mrs. Dove's letter that lists the one hour shifts available.

American Legion – Trustee Crompt reported that Atty. Byrne has a copy of the Electric Service Easement Agreement between the Skaneateles Legion Corporation and the Village of Skaneateles signed by Skaneateles Legion Corporation President Kurt Reilley. Atty. Byrne explained that the Legion wants to go underground with the electrical service. That is a benefit to both them and the Village and an

easement is needed. Atty. Byrne said he reviewed the easement agreement and it is fine – the Village needs to accept it and authorize Mayor Hubbard to sign it. Regarding access to the easement, Atty. Byrne said in this case there is an easement 25 foot in width. **Resolution #2011-191:** On the motion of Trustee Crompt, seconded by Trustee Jones, it was resolved and unanimously carried (5-0 in favor) to accept the Electric Service Easement Agreement and authorize Mayor Hubbard to execute it.

Five Minute Recess

Bills and Adjustments – **Resolution #2011-192:** On the motion of Trustee Sennett, seconded by Trustee Crompt, it was resolved and unanimously carried (5-0 in favor) that bills from Abstract #11 be audited and paid as follows:

General Fund	Vouchers #427- 466	Checks #13397-13436	\$75,320.08
Sewer Fund	Vouchers #134- 144	Checks # 3975- 3985	\$12,245.11
Water Fund	Vouchers # 70- 78	Checks # 3243 - 3251	\$14,759.37
Electric Fund	Vouchers #133- 139	Checks # 4546 - 4552	\$19,049.73

Adjourn – The meeting adjourned at 9:15 p.m.

Patty Couch
 Patty Couch
 Village Clerk/Treasurer

AMERICAN ARBITRATION ASSOCIATION
LABOR ARBITRATION TRIBUNAL

In the Matter of the Arbitration Between

VILLAGE OF SKANEATELES,

Employer,

and

CIVIL SERVICE EMPLOYEES ASSOCIATION,

Union,

Re: Health Insurance.

Before SHEILA S. COLE, Impartial Arbitrator

AAA Case No.
15 390 00024 11

OPINION
~~AND~~
AWARD

Appearance:

D. JEFFREY GOSCH, ESQ.
COLIN LEONARD, ESQ.

For the Union
For the Employer

OPINION

On 2011, the parties submitted the following issue to arbitration by me:

Did the Employer violate the applicable provisions of the collective bargaining agreement when it changed health benefit plans on January 1, 2011?

If so, what shall the remedy be?

In accordance with my authority under the parties' collective bargaining agreement (Joint Exhibit 1), I conducted a hearing in this matter on August 10, 2011, in

Skaneateles, New York. Both parties appeared by attorney and were afforded full opportunity to adduce evidence, cross-examine witnesses, and make argument in support of their respective positions. The parties submitted post-hearing briefs, and neither party has raised objection to the fairness of these proceedings.

On the record so produced, I find the following relevant facts.

The Civil Service Employees Association, Inc., Local 1000 (CSEA or Union) and the Village of Skaneateles (Village or Employer) are parties to a collective bargaining agreement for the period June 1, 2007 through May 31, 2011. The parties have not adopted a successor agreement.

The Union alleges that the Employer unilaterally changed the health insurance plan it provides to unit members in violation of the parties' collective bargaining agreement. Article 13.1 of the Agreement, Health Insurance Coverage, provides in relevant part:

.... the Employer shall provide the Excellus Blue EPO Option 11 health insurance plan.The summary plan features included in the Excellus Blue EPO Option 11 are subject to change, without notice, by Excellus and any such change shall be effective under this Agreement. The Employer reserves the right to change insurance carriers as it deems appropriate so long as the new coverage and benefits are substantially similar to the Excellus Blue EPO Option 11 health insurance plan.

[Joint Exhibit 1.]

In October 2010, Douglas Grucza, Regional Sales Manager of EBS RMSCO, a subsidiary of Blue Cross-Blue Shield, met with the Village's health insurance committee to provide information about health insurance plans that were being considered for 2011. Then-Mayor Robert Green, Village Clerk/Treasurer Patty Couch, CSEA President Dave Short, and Skaneateles Police Officers Union (Council 82) President David Wawro attended the meeting. Mr. Grucza provided information and answered questions concerning benefits and projected rates for Excellus Blue EPO Option 11 (EPO Balance 11), Healthy Blue HP-C-46B (Healthy Blue) and Simply Blue SB-C-11 (Simply Blue). Mayor Green asked the union presidents

whether they would object to a change in plans. Mr. Short stated that he did not object because it looked like a new plan would save the Village and employees money. Mr. Grucza informed the committee that, if the Village decided to switch to either Healthy Blue or Simply Blue, it must inform him by December 1, 2010

The Employer provided an opportunity for all Village employees to meet with Mr. Grucza on November 8, 2010, to learn about the Healthy Blue plan. At the meeting, Mr. Grucza handed out a comparison of benefits between the EPO Balance 11 and Healthy Blue plans. Employer Exhibit 4. The Union's Labor Relations Specialist, Terri Hoffman, attended the meeting and did not then express opposition to a change in health insurance plans.

A few days after the meeting, Mr. Short advised Mayor Green that the Union wanted to negotiate the terms of a new contract as a condition of agreeing to change to the Healthy Blue plan. Mayor Green told Mr. Short that he did not think it would be possible to complete contract negotiations by the date it needed to advise Mr. Grucza of a change. Council 82 agreed to the change in writing. CSEA did not.

On December 13, 2010, the Village approved Healthy Blue as the health insurance plan to be provided to Village employees for 2011. Changing health insurance plans was expected to save the Village more than \$64,000 in 2011. There record includes evidence concerning the Village's loss of sales tax revenues, increase in other revenues, and layoff of unit employees. The Union grieved this action on December 21, 2010.

In March 2008, the Village unsuccessfully attempted to negotiate a change in the applicable contract provision to allow a change in "plans" as well as "carriers."

Mr. Grucza testified that no benefit available under EPO Balance 11 is unavailable under Healthy Blue. The costs of some benefits have increased under Healthy Blue. Healthy Blue offers some benefits not available under the old plan. For example, under Healthy Blue, the co-pay for an office visit to a primary care physician (for some patients), obstetrician/gynecologist, or chiropractor is increased by \$5. The co-pay to see a specialist is \$10 more per visit under

Healthy Blue. There is a \$150 co-pay for each hospital (excluding maternity and newborn nursery), skilled nursing home or in-patient physical therapy admission, where there were none under the old plan. The co-pay for emergency room visits, emergency ambulance service, and outpatient surgery is \$25 more under Healthy Blue. Under Healthy Blue, the maximum number of days in a skilled nursing facility is decreased and a limit is imposed on the number of days home health care is covered. On the other hand, in contrast to EPO Balance 11, there is no co-pay under Healthy Blue for primary care physician visits for dependents up to age 19. Annual physicals exams are fully covered for all beneficiaries. There is no co-pay for prenatal and postnatal care. Although the eye exam co-pay is \$10 more, an eye exam is covered annually instead of bi-annually and an eyewear allowance is available annually instead of bi-annually. Healthy Blue includes an out-of-network benefit. EPO Balance 11 does not. The Healthy Blue monthly premium for an individual employee is \$81.85 less than it would have been under the EPO Balance 11 plan. An employee with family coverage saves \$203.07 each month under the new plan. Employer Exhibit 1. In addition, under Healthy Blue, an employee can earn up to \$1,000 per year in healthy lifestyle incentives.

On these facts, the Union argues that the Employer violated the parties' collective bargaining agreement when it unilaterally changed health insurance plans.

The Union avers that the applicable contract language is clear and unambiguous that the Village may change carriers, not plans, and then only if the new health benefits and coverage are substantially similar to those replaced. CSEA charges that the Village may not unilaterally change plans, as it did here, even if the new plan is substantially similar to the one it replaced.

The Union maintains that, even if the health insurance industry has changed in the twenty years prior to 2010, so that there are now more plans and fewer carriers, the parties did not modify their contract language to reflect this change. There is no evidence in the record to the effect that changes in the health insurance industry changed the meaning of the words "carriers" and "plans." The Village's own witness, Douglas Grucza, testified that EPO Balance 11 and Healthy Blue are "plans," not "carriers."

The Union asserts that the Employer failed to deal with it fairly and in good faith. The Village failed to obtain written or oral agreement to implement the change from CSEA, as it did from Council 82.

The Union maintains that the Employer's excuses for its conduct lack merit.

CSEA insists that did not waive its right to grieve the change in health insurance plans. Participation in informational meetings does not indicate acquiescence in the change. Although the Union had no duty to speak, as it had a binding Agreement concerning the health insurance benefit, it did speak by proposing to enter into collective negotiations concerning a proposed change in plans. No such collective negotiations occurred.

The Union submits that the new plan is not substantially similar to EPO Balance 11. The Union maintains that the increased co-pays far outweigh the few instances in which co-pays were decreased or eliminated. Moreover, the savings realized by the Employer demonstrates the reduction in benefits provided to unit members.

The Union asserts that the Village's action was not necessitated by exigent financial circumstances. The sales tax revenues it lost were more than made up by infrastructure improvement grants and reduction in the number of bargaining unit members employed by the Village.

The Union seeks immediate reinstatement of the EPO Balance 11 health insurance plan. It asks that savings realized by the Village, with interest, be returned to CSEA employees on a pro-rata basis. In addition, the Union requests that individual bargaining unit members be reimbursed for any additional health care costs they incurred as result of the change in plans.

The Employer, on the other hand, argues that it did not violate Section 13.1 of the Agreement because the Village has the right to provide different insurance coverage so long as the benefits and coverage are not diminished. Arbitrators have found that, unless restricted by express contract language, an employer is free to select the plan administrator or insurance

carrier of its choice. Here, the Agreement does not limit the Village's right to change the insurance program – whether the change is to the “plan” offered, the “carrier” selected, or some other aspect relating to insurance – so long as the benefits and coverage levels are not diminished. The Employer posits that the bargain struck at the table between union and employer is not for the name the insurance company uses in marketing its product, but for a certain level of benefits.

The reservation of rights language in Section 13.1 permits the Village to change “carriers.” Nothing prohibits the Village from changing “plans.” To prevail, the Union must convince the arbitrator to add language to the Agreement. In the Employer's view, the Union seeks to use the reservation of rights language as a sword against the Village by interpreting it to prohibit a change in “plans.”

Logic requires a conclusion that the Village acted appropriately. The sentence immediately preceding the reservation of rights language indicates that Excellus may, without notice, change the summary plan features of Blue EPO 11. If Excellus were to revise Blue EPO 11 and raise the doctor's office visit co-pay, for example, a grievance challenging that change would fail.

The Employer asserts that it would be error to place too much emphasis on a distinction between the word “carrier” and “plan.” When the language in question was adopted, over twenty years ago, each carrier offered one indemnity product. The Employer suggests that the word “carrier” was used because there were no such things as other “plans” as exist today. The reservation of rights language was intended to enable the Village to make changes in health insurance provided to employees, so long as what the employees received was substantially similar to the prior offering.

The Union bears the burden of proving that the two programs are not substantially similar. The two experts, Douglas Grucza and Margaret Gannon, did not conclude that any substantial diminishment had occurred by the change to Healthy Blue. The Village acknowledges that some costs are higher under the new plan. It contends that those increased

costs are more than offset by enhanced benefits for the types of services adults and families regularly use, and addition of the incredibly valuable out-of-network benefit.

Even assuming the Village did not have the right to make the change to Healthy Blue, the Employer contends that the Union's failure to object to the change until after it was made constitutes a waiver. The Union's request to bargain does not alter the fact that, having been advised of the proposed change, the Union did not notify the Village that it considered such a change to constitute a breach of contract.

The Employer urges that, should a contract violation be found, the remedy should be limited to reinstatement of the EPO Balance 11 program and appropriate offsets to the Village and employees. Any make-whole remedy would have to account not only for increased co-pays but also for savings employees realized in their premiums as a result of the Village's election to change from Blue EPO Option 11 to Healthy Blue.

On the entire record before me, the grievance is denied.

It is the arbitrator's job to give effect to the parties' intended meaning of contract language. When that language is clear and unambiguous, an arbitrator need not look beyond it to ascertain the parties' intent because it is manifest in the words themselves. The Union argues that, because a health insurance **carrier** is not a health insurance **plan**, the clear and unambiguous language of the contract permits the Village, in certain circumstances, to change the health insurance carrier, but not the health insurance plan it offers to unit members. The contract language in issue appears clear and unambiguous on its face. But sometimes, as here, seemingly clear language is not so clear as it appears.

The Union is correct that a "carrier" is not a "plan." To end the inquiry with that observation, however, would ignore the parties' expressed intent. Understanding the structure of the health care industry over time gives context to the environment in which

the language was negotiated more than twenty years ago and to the environment in which it is to be implemented today.

The parties expressed their intent to allow flexibility to the Village in selecting a health insurance program offered to employees, provided that the level of the benefit remained substantially similar. At a time when it was typical for a health insurance carrier to offer only one product, it made sense to say that the Village could change insurance "carriers." It would have made no sense then, when carriers did not offer a choice of plans, to say that the Village could change insurance "plans." The Union would have this decision rest on one word that no longer accurately reflects the state of the health insurance industry, in the face of language that expresses the parties' intent to permit a change in health insurance product so long as the benefit provided to employees remains substantially similar. I find that the contract permits the Village to change the health insurance product it offers to employees, whether it entails a change in carrier or plan, provided that the level of the benefit remains substantially similar.

I reach this conclusion even though the Village attempted, without success, to add the word "plan" to the contract during negotiations in 2008. Usually, a party cannot obtain in arbitration what it was unable to achieve at the bargaining table. In this case, however, the change the Village sought would have done nothing to alter the parties' expressed intent. The Union offered no evidence to demonstrate that the proposed addition would have done anything but make the contract language accurately reflect the current state of the health insurance industry.

Having determined that the Employer has the right to change insurance plans, it remains to determine whether Healthy Blue is "substantially similar" to the Blue EPO Option 11 plan it replaced. The new plan is less generous with respect to some benefits and more generous with respect to others. An individual employee, depending upon his unique medical and family circumstances, might fare better under one plan than the other. For example, an employee who is admitted to a hospital as an in-patient would incur a \$150 co-pay under the new plan, where he would pay nothing under the old plan. On the

other hand, an employee whose family's medical needs are more ordinary might find the new plan advantageous. The out-of-network benefit has enormous value, but only to those employees who might avail themselves of it. All employees realize a reduction in the cost of premiums under the new plan. The plans are not equal but that is not what the contract requires. It requires substantial similarity. The Union's expert witness, Margaret Gannon, testified that certain things in the new plan are better but certain out-of-pocket expenses are greater. She stated that she thought the new plan was a "bit of a diminishment." That conclusion did not take into account the savings employees would enjoy under the new plan due to the lower premium. Ms. Gannon conceded that her analysis was not complete. She stated that, taking premium cost into consideration, "there is not a clear answer," and it would depend on each individual's experience.

Based on a comparison of the benefits and costs of the old and new plans, including cost of premiums, and taking into consideration the testimony of the Union's witness, Ms. Gannon, and the Employer's witness, Mr. Grucza, I find that the Union did not meet its burden of proving that the two plans are not substantially similar.

By reason of the foregoing, I issue the following

AWARD

The Employer did not violate the applicable provisions of the collective bargaining agreement when it changed health benefit plans on January 1, 2011.

Dated: October 28, 2011
Delmar, New York


SHEILA S. COLE, Impartial Arbitrator

