STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WILLIAMS BAY EDUCATION ASSOCIATION, Complainant, vs. WILLIAMS BAY PUBLIC SCHOOLS, Respondent.	Case IV No. 23999 MP-930 Decision No. 16767-A

Appearances:
Mr. Michael L. Stoll, Staff Counsel, Wisconsin Education Association Council, for the Association.
Godfrey, Neshek, Worth, Howarth & Leibsle, S.C., Attorneys at Law, by Mr. John R. Zwieg, for the Employer.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Williams Bay Education Association, herein referred to as "the Association," having filed a complaint of prohibited pracitces with the Wisconsin Employment Relations Commission; and the Commission having appointed Stanley H. Michelstetter II, a member of its staff, to act as Examiner and to make and issue findings and orders as provided in Section 111.07(5), Wis. Stats.; and hearing having been conducted on March 13, 1979 before the Examiner in Williams Bay, Wisconsin; and the Examiner having considered the evidence and arguments of the parties and being fully advised in the premises makes and issues the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That the Association is a labor organization with its principal offices at 202 East Chestnut Street, Burlington, Wisconsin.

2. That the Employer operates a public school system with its principal offices at 139 Congress Street, Williams Bay, Wisconsin.

3. That at all relevant times the Employer has recognized the Association as the exclusive representative of certain of its employes; that

in June, 1978 the Employer and the Association executed a comprehensive collective bargaining agreement, in effect from September 1, 1978 until August 31, 1979, which collective bargaining agreement provides for a procedure for the resolution of grievances, culminating in a method for their final disposition by arbitration, which agreement does not contain any provision restricting the use of parol evidence, and which agreement provides in relevant part:

" . . .

ARTICLE VI

Fringe Benefits

1. The Board shall provide group health insurance at a monthly rate of not to exceed $30.50 (single plan) and not to exceed $80.00 (family plan) for the 78-79 school year as per signed contract with the carrier.

2. The Board agrees to pay $3600 for the 1978-79 school year toward a group Long Term Disability/Life Insurance package.

   Excess premium costs, if any, will be equally divided among the entire teaching staff.

. . . "

4. That at all relevant times, until his death, Richard Scherff was an employe of the Employer in the instant bargaining unit represented by the Association and subject to the terms of the aforementioned collective bargaining agreement.

5. That Article VI, Section 2, of the Employer and the Association's next preceding comprehensive collective bargaining agreement provided:

"ARTICLE VI

2. The Board agrees to pay $3100 for the 1977-78 school year toward a group Long Term Disability/Life Insurance package.

   Excess premium costs, if any, will be equally divided among the entire teaching staff."

That pursuant to the agreement of the parties and the foregoing provision, the Employer entered into two separate contracts of insurance, covering

all bargaining-unit employes, both with the Wisconsin Education Association Insurance Trust, herein referred to as "WEAIT," one for long-term disability coverage and the other for life insurance; that said contract of life insurance had a death benefit of $8,000 per death, payable to the named beneficiary; and that said contract of life insurance continued in effect until September 22, 1979.

6. That at all relevant times Michael Anzalone and Daniel Bice were representatives of the Association, authorized on its behalf to engage in collective bargaining for the aforementioned agreement; that at all relevant times Robert Anderson and Jo Ann Hobbs were members of the Employer's school board and were representatives of the Employer, authorized on its behalf to engage in collective bargaining for the aforementioned agreement; and that at all relevant times Ron Koch was the superintendent of the Employer's schools and a representative of the Employer.

7. That on February 21, 1978, the Employer and the Association exchanged their initial proposals but did not meet; that, inter alia, the Association proposed that the Employer increase the life insurance coverage then in effect to provide a death benefit equal to the deceased employe's salary rounded to the nearest one thousand dollars and that the Employer pay the full cost of the improved life insurance and present long-term disability life insurance; that said proposal was based on the Association's understanding that WEAIT would provide said benefit; that, in fact, at all relevant times the only relevant insurance WEAIT would provide was insurance with a death benefit equal to the next highest thousand dollars of the deceased's annual salary; and that representatives of neither party became aware of the foregoing error until September, 1978.

8. That on March 6, 1978, representatives of the Employer and the Association first met to discuss the aforementioned proposals; that at this and throughout all relevant subsequent collective bargaining sessions leading to the 1978-79 comprehensive collective bargaining agreement, Michael Anzalone acted as chief spokesman for the Association and that,

inter alia, Daniel Bice was a member of the Association's bargaining team and Robert Anderson acted as chief spokesman for the Employer and, inter alia, Ron Koch was a member of the Employer's bargaining team; that during said session, Anderson stated two reasons why the Employer was not then willing to grant the Association's request for additional insurance benefits, including the request specified above; and that the two reasons were that, first, the Employer wanted the Association to gather and provide information as to how much the benefit would cost and, second, that the Employer was not interested in changing fringe benefits, because there was a lot of "paper work" and it would tie up the administrator and his secretaries too much; that in a heated exchange Anderson insisted that the Association provide cost data; that because the Association was not then prepared to provide such data, the matter was not discussed further in this meeting.

9. That on March 20, 1978 and April 13, 1978 the parties had their next collective bargaining sessions; that during one of those sessions, when the parties discussed the Association's proposal with respect to long-term disability and life insurance, the Employer again raised its "paper work" objection; that immediately, in response thereto, Anzalone made a statement to the effect that if this were the only problem which prevented the Employer from granting the benefit, the Association could take care of the paper work; that later in the same meeting someone asked specifically what the paper work was which was required for the life insurance and long term-disability benefit; that in response thereto, Bice stated that all that was required was that the Employer provide each teacher's age, sex, social security number, and salary to WEAIT; that in response thereto, Koch stated he was already gathering that information; that a member of the Employer's bargaining team then asked Koch if he could continue to provide that information and Koch agreed he could; that because the Association was still unprepared to provide cost information, the Employer continued to refuse to agree to the Association's long-term

disability/life insurance proposal; and that this issue was not otherwise discussed at either session.

10. That the parties next met on April 19, 1978, at which session the parties reached tentative agreement on the 1978-79 comprehensive collective bargaining agreement; that sometime prior to the following acts, the Association reported to the Employer that the additional cost of its life insurance proposal was $500 per year but that $500 per year was, in fact, the cost of insurance were the death benefit equal to the deceased's annual salary rounded to the next highest thousand dollars; that near the end of the session, the Association made a proposal to reduce the tentatively agreed-to salary in order to provide the funds necessary for the increased life insurance benefit; that when the Employer accepted said proposal, Anderson stated to the Association's representatives ". . . and any additional paper work would be borne by the Union," or words of similar effect; that although the Association's bargaining team members must have heard the statement, they remained silent; that thereafter, in June, 1978, the parties executed the 1978-79 comprehensive collective bargaining agreement as specified above; that by having remained silent under the circumstances, the Association accepted the Employer's proposal that the Employer would provide the age, sex, social security number, and salary for each teacher subject to the benefit; and that the Association would be responsible for any administrative responsibilities which the Association could perform, which were required for said insurance benefit, in addition to the foregoing.

11. That at all relevant times prior to September 22, 1978, neither the representative of the Employer nor of the Association was cognizant of the additional administrative tasks necessary to initiate the increased life insurance benefit with WEAIT and that in addition to providing the aforementioned information to WEAIT upon request, there were two administrative tasks which WEAIT required in order to provide the increased life insurance coverage: first, either the Employer or the Association had to, at least orally, notify WEAIT that the benefit had

been increased (if the Association had notified WEAIT, the Employer would have been required to verify, upon request, that the benefit had been increased) and, second, the Employer had to execute a contract of insurance with WEAIT.

12. That at no time thereafter, until September 22, 1978, did either the Employer or the Association notify WEAIT that they had agreed to increase the life insurance benefit to be effective September 1, 1978.

13. That solely as a result thereof, the life insurance covering bargaining-unit employes was not increased to provide a death benefit greater than $8,000 until September 22, 1978 and that effective September 22, 1978, and at all relevant times thereafter, the death benefit was increased to the deceased's salary rounded to the next highest thousand dollars.

14. That on September 3, 1978 Richard Scherff died; that shortly thereafter WEAIT paid his designated beneficiary $8,000; and that for purposes of life insurance, Scherff's annual salary was $18,122.

15. That the Employer and WEAIT each individually have refused to pay any further death benefit to anyone on the basis of Scherff's death.

On the basis of the above and foregoing Findings of Fact, the Examiner makes and issues the following

CONCLUSION OF LAW

That since, under the terms of the collective bargaining agreement, the Employer was not responsible to notify WEAIT of the Employer and the Association's agreement to increase the life insurance benefit, the Employer, by having failed to do so, did not commit, and is not committing, a prohibited practice within the meaning of Section 111.70(3)(a)5, Wis. Stats.

On the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Examiner makes and issues the following

ORDER

That the complaint filed in the above-entitled matter be, and the same hereby is, dismissed.

Dated at Milwaukee, Wisconsin, this 4th day of March, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stanley H. Michelstetter II
Stanley H. Michelstetter II
Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT
CONCLUSION OF LAW AND ORDER

During the course of negotiations leading to the current (1978-1979) collective bargaining agreement, the parties entered into an agreement, the purpose of which was to increase the life insurance fringe benefit then enjoyed by unit employes from an $8,000 death benefit to a death benefit equal to the deceased's salary rounded to either the next highest or nearest $1,000. The increased benefit was to be effective with the commencement of the agreement, September 1, 1978; however, because neither party notified the carrier, the insurance coverage was not increased until September 22, 1978. On September 3, 1978 unit-employe Richard Scherff died. The carrier, WEAIT, paid a death benefit of only $8,000. Neither the Employer nor WEAIT will pay the difference.

The Association filed a grievance concerning the matter and processed it through all of the steps of the grievance procedure and requested arbitration. The Employer refused to submit the matter to arbitration. Thereafter, the Association filed the instant complaint, on January 11, 1979, wherein it alleged the Employer committed prohibited practices within the meaning of Section 111.70(3)(a)1 and 5, Wis. Stats., by refusing to arbitrate the matter and committed a prohibited practice within the meaning of Section 111.70(3)(a)5 by having failed to secure the agreed-upon insurance coverage. During the course of hearing, the parties waived the grievance-and-arbitration provision and agreed to have the matter heard on its merits. Accordingly, the Complainant withdrew its refusal-to-arbitrate allegations.

The Association takes the position that the agreement provision and surrounding verbal agreements establish the Employer has agreed to provide the increased life insurance benefit, not just the premium payment. Thus, it alleges the Employer should be held responsible for notyifying the carrier by being required to reimburse Scherff's designated beneficiary for

the benefits she would have received had the Employer properly notified the carrier. Alternatively, the Association argues that it is the Employer's fundamental responsibility to provide agreed-upon insurance benefits. It urges this position because the Employer is ordinarily the one to initiate any benefit changes. Thus, it concludes the Employer must bear the burden of proof to establish, by a clear and satisfactory preponderance of the evidence, that the Association adopted this responsibility. In any case, it argues that both past practice and bargaining history support the view that the Employer adopted the responsibility to initiate this change. Finally, the Association argues that the following facts justify imposition of liability on the Employer: (1) Only the Employer was aware that the benefit was not implemented. (2) While the Employer provided other information to the insurance carrier about life insurance, it failed to notify it of the changed benefit. (3) The Employer did not provide the Association with information or forms necessary to increase the benefit. (4) The Employer had notice of the situation when it received premium statements and had not received an insurance contract.[1/] The Association seeks an order requiring the Employer to make the deceased's named beneficiary whole for all lost benefits. It contends the appropriate amount is what the insurance would have paid to the next highest thousand dollars of the deceased's salary.

The Employer takes the position that the agreement clearly and unambiguously limits the responsibility to paying the premium only and not providing the benefit. Alternatively, if the agreement is viewed as ambiguous, the Employer argues that there is no definitive past practice. It concedes the agreement must be construed against its drafter, the Employer, but that the burden of proof remains with the Association. It contends that during the negotiations leading to the current agreement, the Employer accepted

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1/ In view of pages 199-200 of the transcript, I conclude that the Association also lists a fifth factor of ability to pay.

the Association's offer to undertake the administration of this benefit in exchange for the Employer's willingness to provide an increased premium payment. With respect to the remedy, it argues that the Commission lacks authority to order it to make a payment to a nonemploye. Finally, it argues that the benefit agreed upon in negotiations was to the nearest one thousand dollars of salary. Thus, at best, the Employer should be required to make up the difference to $18,000, not $19,000.

Discussion

In general, it is an employer's responsibility to institute changes agreed to in collective bargaining. Ordinarily, it is only the employer who can make such changes. In other situations, it is a responsibility which is best allocated to the employer. However, it is a responsibility which can be allocated by contract.

Article VI of the 1978-79 collective bargaining agreement provides in relevant part:

"ARTICLE VI

. . .

2. The Board agrees to pay $3600 for the 1978-79 school year toward a group Long Term Disability/Life Insurance package.

. . ."

This language, with the exception of the amount, was carried over unchanged from the parties' prior agreement. It could mean that the Employer has the sole obligation to pay the specified dollar amount and does not have any contractual responsibility for the initiation or administration of the benefit. Under this theory, the Association or someone else could bear full, or part, responsibility for the administration of the benefit. If the Employer had any administrative responsibility, its responsibility could be the matter of a separate oral or written agreement. An alternative meaning might be that the Employer bears implicit responsibility for all or some of the administration of the benefit purchased by the specified premium. In the absence of any other evidence, I

would prefer the latter reading; however, the evidence of bargaining history clearly demonstrates that the instant language came to mean that the Employer was relieved of certain of the administrative responsibility for this benefit (including the notification of the carrier).[2/]

Under the circumstances, it is necessary to construe this ambiguity in the light of bargaining history. Nothing in the agreement or the parties' ground rules (see p. 12) precludes using parol evidence to construe this ambiguity.

CREDITED FACTS

There is little important dispute about the discussions which took place in the parties' negotiations leading to the 1978-1979 collective bargaining agreement. The facts with respect to these negotiations are derived from the testimony of Association witnesses Curry, Anzalone, Bice, and Koepnick and Employer witnesses Anderson, Travis, Koch, and Hobbs. I am satisfied, from the demeanor, the degree of consistency of testimony, and the willingness of each of the above to unhesitatingly admit facts adverse to their position, that each of the above was attempting to tell the truth as he or she saw it. Therefore, I have concluded that errors or inconsistencies are attributable to lack of memory at the time of hearing. To minimize this effect, I have relied on the essentially contemporaneous minutes of then Board Member Hobbs for background information, the testimony of those persons who spoke for their own actions or statements, unless they did not remember, and Anderson and Bice for the sequence of events. (In view of Bice's testimony as to when he gained knowledge of the census data necessary for life insurance, Anzalone's testimony as to the finding of the "paper work" discussion taking place in the March 6 meeting is not possible.)

On January 23, 1978 the parties met in their first negotiation session for the 1978-1979 agreement. There were no discussions of substantive

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2/ If the oral agreement were construed to be a separate agreement, I conclude it would supersede any conflicting interpretation of this provision. Since the result would be the same, I have not considered the issue.

issues. Instead, the parties merely established the procedural rules for their negotiations. One such procedural agreement is stated in the minutes thereof as:

> "All individual proposals will be signed and dated as they are agreed to."

Thereafter, on February 21, 1978, the parties exchanged their initial proposals but did not meet. On March 6, 1978 the parties next met. At this and all subsequent meetings, the Employer was represented, inter alia, by Anderson, Travis, Koch, and Hobbs (except she was not present at the meeting conducted after the April 19 meeting, at which the parties reached tentative agreement). At this and all subsequent meetings, the Association was represented by, inter alia, Anzalone, Bice, and Koepnick. (Craig Curry observed one or two meetings, plus the April 19 meeting.) At this time the Association presented its proposal that the Employer pay the full cost of the present long-term disability insurance program and the cost of an improved life insurance program. The Association proposed that the present fixed $8,000 death benefit be increased to a benefit equal to a deceased employe's annual salary rounded to the nearest one thousand dollars. The Employer's representative then, in essence, stated that it was not interested in increasing benefits, because it did not want to add to the administration's "paper work" burden. It also was concerned about the cost of the Association's program. In a heated exchange, Anderson did insist that the Association provide cost data for its proposals. Because the Association was not prepared with cost data, the matter was not discussed further on March 6.

On March 20 and April 13, 1978 the parties had their next two collective bargaining sessions. In one of the sessions the following discussion of life insurance took place. When the parties discussed the Association's life insurance/long-term disability proposal, the Employer again raised its "paper work" objection. In response to this objection, Anzalone made a statement to the effect that if this were the only problem which prevented

the Employer from granting the benefit, the Association could take care of the paper work. Later in the same discussion, someone asked what the paper work was which was required for the life insurance. Bice stated that all that was required was each teacher's age, sex, social security number, and salary. Koch stated he was already compiling that information for insurance purposes and costing of collective bargaining proposals. A Board member asked him if he could provide this information to the carrier with respect to this benefit. Koch said he could. At this point, the Employer continued to deny the benefit on the basis of cost and continued to demand that the Association provide cost.

The parties next met on April 19, 1978, during which they reached tentative agreement on all but five issues. Near the end of the meeting, the Association made a proposal to reduce the previously agreed-upon tentative salary in order to provide funds to pay for the proposed increased life insurance benefit. This the Employer accepted. At this point, there is a substantial dispute as to what occurred. The Employer alleges that Anderson stated ". . . and any additional paper work would be borne by the Union." It alleges the Association's bargaining team merely remained silent in a context which manifested assent.[3/] The Association apparently denies this statement was made.

All of the Employer's witnesses who were present during the April 19, 1978 session (Anderson, Travis, Koch, and Hobbs) affirmatively testified that the disputed statement was made.[4/] Hobbs' testimony was supported

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3/ Only Koch testified as to further conversation with respect to this topic at the April 19 meeting. His testimony was marked by admissions of lack of memory and, fairly read, suggests that he merely confused the timing of the "paper work" discussion. Further, his testimony may have been intended to show his understanding of his willingness at the time to supply census data as expressed in the parties' "paper work" discussion, as opposed to what was actually said on April 19, 1978.

4/ Hobbs based her view on her ntoes, more than on an independent recollection.

by her essentially contemporaneous minutes of the meeting. They state:

> "At this point Mr. Anzalone said the teachers would accept a lowered base of $9,990. in order to generate the approximately $500. needed for insurance as requested. It was understood that a maximum of $3,600. would be available for long term disability and life insurance; the Board will provide a list of teachers' names, ages and salaries to the WEA Trust and additional paper work will be the Trust's responsibility and cost." 5/

By contrast, of the Association's witnesses who were present then (Curry, Anzalone, Bice, and Koepnick), none gave testimony indicating the statement was made. Curry did not see all of the negotiations on April 19 and, therefore, could have missed this statement. Anzalone testified, at page 105 of the transcript, that the Employer did not ask the Association to do the paper work. However, it appears that this statement was made with respect to the March 20 and April 13 meetings only. At page 105 he also testified, apparently, with respect to the entire course of the negotiations, that the Association did not agree to undertake the responsibility for the paper work. Even assuming both statements were made with respect to the entire course of negotiations, this form of testimony is substantially weakened by the fact that it contains a necessary element of legal conclusion and, therefore, is not necessarily a denial that Anderson did make the disputed statement. Anzalone and others of the Association's team drew the legal conclusion that since all of the work that was then believed to be necessary was already being done by the Employer, the Employer abandoned its "paper work" objection. See pages 103-4 of the transcript for an example of Anderson's drawing this conclusion. It is, indeed, very possible that the Association's team heard Anderson's disputed statement but did not understand its legal effect.

At page 142 of the transcript 6/ Bice did specifically deny that the

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5/ Exhibit A-5.

6/ See also page 137, Transcript.

issue of paper work came up in the April 19 meeting. Clearly, this testimony cannot be reconciled with that of Anderson's. I do note that both Anzalone's and Bice's testimony contain substantial factual errors which demonstrate that, at the time of hearing, they were having difficulty remembering some of the details of what happened. Thus, because both were drawing an incorrect legal conclusion as to the effect of Anderson's disputed statement, it is possible that they entirely forgot its existence by the time of hearing in this matter.

Koepnick, who is apparently the daughter of deceased employe Scherff,[7/] is the only person who testified in rebuttal of Anderson's assertion that he had made the disputed statement. She testified, at page 229 of the transcript, in response to a question by Attorney Stoll, that she did not recall any statement by Anderson during the April 19 meeting to the effect that any additional paper work would be the burden of the "Trust." This wording appears in Hobbs' minutes of the meeting, Exhibit A_5', but the Employer has not asserted that the word "Trust" was actually used by Anderson. She further remembered that there had been a discussion of placing the burden of additional paper work on the "Association" but did not remember on which evening it occurred. In view of the obvious lack of memory as to when this conversation occurred, during this testimony, it is entirely possible that she did not accurately remember the April 19 meeting.

By contrast, Hobbs gave testimony in support of her minutes of the April 19, 1978 meeting. While she clearly had little recollection of the actual negotiations, she had a definite recollection as to how her minutes were prepared. Her testimony was forthright and gave no indication of untruthfulness. She indicated that within approximately twenty-four hours of a negotiation session she would prepare minutes of the meeting

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7/ See page 230, Transcript.

from only her notes and independent recollection. As such, her minutes were prepared both essentially contemporaneously with this dispute and prior to it. I am satisfied that, on the basis of these mintues and the testimony of other Employer witnesses, Anderson did, in fact, make the disputed statement on April 19, 1978. Further, since so many of the Employer representatives heard the statement made, it is highly unlikely that the Association representatives did not hear it.

EXISTENCE OF AN ORAL AGREEMENT
EXPLAINING CONTRACT

Throughout the negotiation period, the Association was attempting to get the Employer to agree to pay for increased life insurance benefits. In an attempt to induce the Employer to do so, Anzalone made the statement, during the March 20, 1978 meeting, to the effect that if the additional "paper work" burden were the only thing standing in the way of the Employer's willingness to grant the Association's request, the Association would be willing to do the additional paper work. While Anzalone may have only intended this statement as an attempt to discover any other objections the Employer had to the proposal, he knew, or very clearly should have known, that his statement could reasonably have been construed by the Employer as an offer to do the "paper work" if the Employer would grant the benefit. This "offer" was not then accepted, because the Employer was not prepared to accept the then unknown cost; however, the discussion over census data later that morning clearly demonstrated that the Employer considered the statement an offer to do the additional work. In this context, and in the context of the Employer's April 19 changed willingness to pay the then specified additional cost, Anderson's statement at the April 19 meeting was a clear and unmistakable indication that the Employer understood the Association's position of March 20 to be a continuing offer which the Employer was accepting. Silence taken with the Association's acceptance of the increased premium contribution can only mean that the Association thereby manfifested assent to the Employer's proposal.

TERMS OF THE ORAL AGREEMENT EXPLAINING CONTRACT

While the Employer used the term "paper work," its expressed concern was to protect its staff from the then unknown aspects of the administrative burden of benefits which, its experience had shown, were likely to require the time of staff personnel. Taken in this context, the term "paper work" should be given its common meaning of "administrative burden."

While Anderson used the term "additional paper work," it is not clear that he stated on April 19 specifically which part of the administrative burden was to be done by the Employer and which was "additional." However, under the circumstances, I conclude this statement was a reference to Koch's statement, at the "paper work" bargaining session, that he would provide the specific census data which Bice had said was the only paper work necessary to institute this benefit--namely, providing unit teachers' ages, social security numbers, salaries, and sex. Even though the Association's representatives apparently broadly construed this statement, I conclude that, in view of the Employer's concerns, the referent of "additional" was merely this work and no other work, whether formerly done by the Employer or of a type formerly done by the Employer.

Finally, since the Association was clearly adopting what is normally an Employer function, there is an implicit condition in any such agreement that the Employer would continue to do, or provide, those aspects of the administrative burden which only it could do. For example, only the Employer could execute the contract of insurance with the carrier; thus, requiring the Association to attempt to do so in the name of the Employer would render the benefit a nullity.

ALLOCATION OF RISK OF FAILURE TO NOTIFY

I am satisfied that the responsibility for informing WEAIT of the change of the life insurance benefit should be allocated to the Association. As stated above, the Employer's stated purpose in raising the objection was to avoid the then unknown aspects of the administrative

burden of benefits, which its experience had shown, were likely to require a substantial amount of its staff's time. The clear method the Employer chose and the Association accepted was to allocate to the Association the responsibility for the then unforeseen administrative burden, and not merely those parts of it which were time-consuming.[8/] It is clear that no one in the Association clearly understood what was required to initiate any benefit change, although Bice arguably initiated the last life insurance benefit increase after Utrie's inquiries. Similarly, no one on the Employer's bargaining team had any idea of what was required, including its chief spokesman, Anderson. While Koch may have initiated with other carriers changes with respect to benefits other than life insurance and long-term disability, it does not appear that he fully realized the process therefor or even thought about it. It is clear that he did not know what was required for the WEAIT Trust benefits. Under the circumstances, I can only conclude that the necessity and the nature of the process were unforeseen at the relevant times by the relevant representatives of both sides.

Nor does this administrative function constitute something which only the Employer could do. Utrie testified, at pages 79-80 of the transcript, that either the Association or the Employer could have notified WEAIT of the increased benefit. Under the circumstances, the notification does not fall within the implied exception to the parties' oral agreement explaining this provision.

On the basis of the foregoing, I conclude that the Association agreed to accept the risk of failing to perform administrative responsibilities with respect to the increased life insurance benefit, which responsibilities included notifying the carrier that the benefit had, in fact, been increased. Since it was not the Employer's responsibility to initiate

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8/ Because notification could have just as easily involved the filing of a written application or other more formal and time-consuming processes, I conclude it falls within the scope of the term "paper work."

such a contract with the carrier, I conclude that the Employer did not violate the parties' 1978-1979 collective bargaining agreement when it failed to do so. I have, therefore, dismissed the complaint filed in this matter.

Dated at Milwaukee, Wisconsin, this 4th day of March, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stanley H. Michelstetter II
Stanley H. Michelstetter II
Examiner