STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MERCER EDUCATION ASSOCIATION and JANIS FLESCH, Complainants, vs. SCHOOL DISTRICT OF MERCER, BOARD OF EDUCATION, Respondents.	Case 14 No. 32855 MP-1563 Decision No. 21486-A

Appearances:

Mr. Gene Degner, Director, WEAC UniServ Council #18, 25 East Rives Street, Rhinelander, WI 54501, for the Complainant.

Drager, O'Brien, Anderson, Burgy & Garbowicz, Attorneys at Law, P.O. Box 639, Eagle River, WI 54521, by Mr. Steven C. Garbowicz, for the Respondents.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Mercer Education Association and Janis Flesch having on February 9, 1984, filed a complaint with the Wisconsin Employment Relations Commission alleging that the School District of Mercer, and the Board of Education had committed prohibited practices in violation of Sec. 111.70(3)(a)1, 2, and 5, 1/ of the Municipal Employment Relations Act; the Commission having appointed Jane B. Buffett, a member of its staff, to act as Examiner, to make and issue Findings of Fact, Conclusions of Law and Order pursuant to Sec. 111.07(5), Stats.; and hearing having been held at Hurley, Wisconsin on April 18, 1984; and transcript having been received on May 22, 1984, and briefs having been filed, the last of which was received on July 5, 1984; and the Examiner, having considered the evidence and arguments of the parties, makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Mercer Education Association, hereinafter the Association, is a labor organization with offices at 25 East Rives Street, Rhinelander, Wisconsin 54501, and that Janis Flesch is a municipal employe.

2. That School District of Mercer, hereinafter the District, and the Board of Education are municipal employers with offices at Mercer, Wisconsin 54547.

3. That the Association is the exclusive collective bargaining representative of certain District employes in a unit of:

all certified regular full-time and regular part-time teachers.

4. That the Association and the District are parties to a collective bargaining agreement which governs wages, hours, and conditions of employment and which contains the following pertinent provisions:

1/ At the hearing, the Association amended the pleadings to withdraw the allegation that the District had violated Sec. 111.70(3)(a)1 and 2 by refusing to provide information.

. . .

SECTION V - GRIEVANCE PROCEDURE

1. Definition: The purpose of this procedure is to provide an orderly method of resolving differences arising during the term of this agreement. The "grievance" shall mean a complaint by an employe in the bargaining unit that there has been a violation in some aspect of the collective bargaining agreement or other condition of employment.

2. Grievances shall be processed in accordance with the following procedure:

Step 1: a.) An earnest effort shall first be made to settle the matter informally between the teacher and his/her administrator. b.) If the matter is not resolved, the grievance shall be presented in writing by the teacher to the Administrator within ten (10) school days after the facts upon which the grievance is based first occur. The immediate supervisor shall give a written answer within ten (10) school days of the time the grievance was presented in writing.

Step 2: If not settled in Step 1, the grievance may within ten (10) school days be appealed to the School Board. The Board shall give a written answer within thirty (30) school days after receipt of the appeal.

3. The written grievance shall give a clear and concise statement of the alleged grievance including the facts upon which the grievance is based, the issue involved, the specific section(s) of the Agreement alleged to have been violated, and the relief sought.

4. The employe is entitled to representation. When a teacher is not represented by the MEA, the Association shall be notified of all proceedings beyond Step 1 and shall have the right to have its representative present and the right to state the views of the Association on such grievance commencing at Step 1.

. . .

SECTION XV - PROFESSIONAL COMPENSATION

. . .

2. All teachers shall be paid on a 12-month basis, on the 2nd and 4th Fridays of the month during the school year and on an optional basis for the summer months.

. . .

4. The Board will pay the full premium for either the Single Plan or Family Plan (head of household) of WEA Trust Hospital/Medical Plan. Percentage of premium paid by the Board shall be negotiated annually. District will reimburse non-participating teachers a comparable amount (single plan) toward another insurance plan of their choice.

. . .

SECTION XVII - LAYOFF

1. If necessary to decrease the number of teachers by reason of a substantial decrease of pupil population, or lack of adequate funding, or for any other reason within the school district, the governing body of the school system or school may layoff the necessary number of teachers in the inverse order of the appointment of such teachers within a department

based on qualifications. Department shall be defined as K-8 and high school; qualifications shall include certification by the state, past experience within the system, and ability of individual to perform in alternate positions. No teacher may be prevented from securing other employment during the period he/she is laid off under this subsection. Such teachers shall be reinstated in inverse order of their being laid off, if qualified to fill the vacancies. Such reinstatement shall not result in a loss of credit for previous years of service. No new or substitute appointments may be made while there are laid off teachers available who are qualified to fill the vacancies. Teacher re-employment rights shall extend two (2) years from completion of last contract.

2. If a layoff is necessary, teachers to be laid off shall be notified as soon as possible. Since teachers do have re-call rights up to two (2) years, it is their responsibility to keep the Board notified as to their whereabouts.

5. That Janis Flesch was employed by the District as an elementary teacher for seven years before she was laid off, effective at the end of the 1982-83 school year; that on February 25, 2/ she received preliminary notice of layoff; that on March 14, she received general notice of layoff; and that she sought and received a meeting with the Board at which the Board stated declining enrollments as the reason for her layoff.

6. That on June 3, Flesch received with her final paycheck a written notice that her health insurance premiums would not be paid by the Board after June; that said notice informed Flesch of her right to continue as a member of the group plan by paying the premiums herself; that Flesch did not discuss the notice with either District Administrator James M. Kenyon or the Association; that Flesch decided not to pay the premiums herself and did not return said notice; and that in June, Flesch did not believe that she was contractually entitled to continued payment of insurance premiums for July and August.

7. That in September, Flesch discussed with Teacher Alice Voss her son's appendectomy during the preceding summer and the discontinuance of the insurance payments; that Voss opined the insurance premium should have been paid; that at the September 21 Association meeting, the subject of Flesch's summer insurance premiums arose and Association President Helen Kaurala first learned that the District had not paid the summer premiums; that on September 22, Kaurala and Flesch met with Kenyon to discuss the premiums, confirming with the District Bookkeeper Clara Hoover that her premiums were not paid by the District; that Kenyon understood at the September 22 meeting that the Association contended the District should have paid the July and August premiums; that following the meeting, Kenyon made telephone inquiries to Wisconsin Education Association (WEA) Insurance Trust, Blue Cross/Blue Shield and Wisconsin Physician's Service; that the Association met on October 8 with WEA Trust Representative Paul Bickel; that on October 12, Bickel wrote to Kenyon stating in pertinent part:

> The position of the WEA Insurance Trust is as follows. As the case presently stands, Mrs. Flesch is terminated from the health plan effective July 1, 1983. She was offered the right to continue in the group plan at her own expense and chose not to do so. Should the issue of coverage during July and August, 1983, be settled in favor of the association at some future date, the WEA Insurance Trust would provide coverage for Mrs. Flesch at the request of the Mercer School District.

that on October 21, Flesch and Kaurala had another meeting with Kenyon who again contended the Board was not responsible for the disputed premium payments; that on October 24, Flesch, represented by Teacher Jeff Arntsen, met with the Board in executive session; and that on November 14, Kaurala met with the Board to request a formal response and that on November 16, Kenyon wrote to Flesch denying the premium payment.

2/ Unless otherwise noted, all dates herein refer to 1983.

8. That on November 22, Kaurala wrote to Board President Jack Kunath and Board Clerk William C. Altman inquiring whether the Board considered the formal grievance requirements satisfied; that on November 30, Kenyon responded to Kaurala (in pertinent part):

> I am responding to your 11-22-84 communication for the Board (Regarding the above matter).
>
> Even though the positions of both sides are clear, the formal grievance procedure has not been initiated.
>
> In other words, the Board does not feel that the grievance has been satisfed at the local level.

that on December 13, Flesch wrote a written "Statement of Grievance" to Kenyon stating her position that the July and August premiums should be paid; that shortly thereafter, Kenyon wrote to Flesch stating (in pertinent part):

> Your grievance has been reviewed and is being returned with no action taken.
>
> 1. I do not have the authority to pay health insurance premiums.
>
> 2. The School District of Mercer does not make insurance premium payments for employes who have been non-renewed, laid off or transferred. That is an established district practice. The district offers employes the option to continue coverage at their own expense, as required by law.
>
> 3. I question the timeliness of this matter. The violation you allege occurred on 7/1/83. It was not until the second week of October that the district office was made aware of your concern.

that on December 20, Flesch reiterated the grievance to Kenyon as a Step 2 grievance; that on January 24, 1984, the Board wrote to Flesch denying the grievance and that on February 9, 1984, the Association filed a complaint with the Wisconsin Employment Relations Commission alleging that the District violated the collective bargaining agreement and interfered with employe rights by refusing to pay July and August premiums for Flesch's health insurance.

9. That the parties' collective bargaining agreement provides that the District is obligated to pay July and August Medical/Hospital Plan premiums for teachers who complete the contracted school year, but are laid off after the last day of school.

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

CONCLUSIONS OF LAW 3/

1. That the parties' 1983-1985 collective bargaining agreement provides a grievance procedure but does not provide for final and binding arbitration of disputes concerning the agreement's application and interpretation, and that the District, by its actions, waived any procedural objections concerning the exhaustion of said grievance procedure, and, therefore, the Examiner will exercise the

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3/ Paragraph IV.,(f), of the complaint states:

> On or about September 23, 1983, in response to Association concern for the tenmonths premium payment, Mr. Kenyon indicated he bargained that individually with the grievant and denied to pay the two months premiums or be responsible for claims. (Footnote 3 continued on page 5)

jurisdiction of the Wisconsin Employment Relations Commission to determine the alleged contractual violation under Sec. 111.70(3)(a)5, of the Municipal Employment Relations Act.

2. That the District, by not paying July and August, 1983 premiums for the Hospital/Medical Plan for Grievant Janis Flesch following her layoff June, 1983, after she completed the contracted school year, violated SECTION XV, 4, of the parties' collective bargaining agreement, and therefore, the District committed a prohibited practice within the meaning of Sec. 111.70(3)(a)5, MERA.

3. That the Association has not met its burden of proof that the District violated Sec. 111.70(3)(a)1, Stats.

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

ORDER 4/

IT IS ORDERED that the School District of Mercer, its officers and agents shall immediately:

1. Cease and desist from violating SECTION XV, 4, of the parties' collective bargaining agreement by failing to pay July and August premiums for the Hospital/Medical Plan for Janis Flesch subsequent to her layoff after her completion of the contracted school year of 1982-83.

2. Take the following affirmative action which the Examiner finds will effectuate the policies of the Municipal Employment Relations Act:

(a) Make Janis Flesch whole for all monetary losses suffered and liabilities incurred as a result of the District's

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3/ (Continued)

Inasmuch as the separate issue of individual bargaining was not addressed in either the Association's opening statement at hearing or its brief and a violation of Sec. 111.70(3)(a)4, is not alleged, this Examiner interprets the above-quoted subparagraph to be merely a recitation of Kenyon's explanat ion of events rather than an allegation of a prohibited practice.

4/ Any party may file a petition for review with the Commission by following the procedures set forth in Sec. 111.07(5), Stats.

Section 111.07(5), Stats.

(5) The commission may authorize a commissioner or examiner to make findings and orders. Any party in interest who is dissatisfied with the findings or order of a commissioner or examiner may file a written petition with the commission as a body to review the findings or order. If no petition is filed within 20 days from the date that a copy of the findings or order of the commissioner or examiner was mailed to the last known address of the parties in interest, such findings or order shall be considered the findings or order of the commission as a body unless set aside, reversed or modified by such commissioner or examiner within such time. If the findings or order are set aside by the commissioner or examiner the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the commissioner or examiner the time for filing petition with the commission shall run from the time that notice of such reversal or modification is mailed to the last known address of the parties in interest. Within 45 days after the filing of such petition with the commission, the commission shall either affirm, reverse, set aside or modify such findings or order, in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another 20 days for filing a petition with the commission.

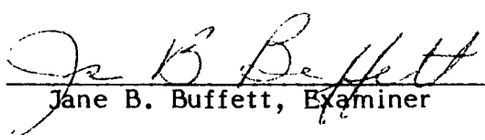
failure to pay July and August 1983 premiums for the Hospital/ Medical Plan referenced in SECTION XV, 4, of the parties' agreement. The District shall pay interest on any out-of-pocket expenditures made by Flesch as a result of the District's aforementioned failure.

(b) Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days following the date of this Order, as to what steps shall be taken to comply herewith.

3. It is further ordered that the complaint be dismissed as to violations of MERA alleged, but not found herein.

Dated at Madison, Wisconsin this 9th day of November, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Jane B. Buffett, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER

POSITIONS OF THE PARTIES

The Association contends the grievance is timely since the Grievant's failure to object to the June 30 termination of insurance premium payments was a result of her not knowing her contract right. It points out it immediately registered its objection concerning the unpaid premiums to District Administrator James M. Kenyon the morning after it became aware of the situation. It argues the grievance procedure was in fact initiated long before the formal filing of the grievance on December 12 in response to the Board's memo to the Association asserting the formal grievance procedure had not been initiated, and it cites arbitration awards to support its position that the grievance should be considered timely.

Turning to the substance of the grievance, the Association asserts the contract language unambiguously requires payment of insurance premiums for July and August by providing "the Board will pay the full premium . . . ." Furthermore, the provision in SECTION XV, that teachers be paid on a twelve-month basis indicates that insurance premiums must be paid for twelve months. It refers to the District's introduction of the cost of health insurance calculated on a twelve-month basis during the Interest Arbitration proceeding. It contends that Flesch, as a teacher who is on layoff after completing the school year, should have the same benefits over the summer as a continuing teacher. All teachers who taught the academic year should receive the same benefits regardless of whether they return the following year. Referring to the District's evidence that other teachers who did not return in the fall did not have insurance premiums paid, the Association asserts there is no past practice that is so clear, unequivocal and widely known that it was binding on the parties. Additionally, it cites an arbitration award which determined that a Grievant cannot be bound by the failure of other employes to grieve allegedly similar situations. Addressing the problem of equity, the Association points out the unfairness of treating teachers who worked the entire academic year differently based on their returning or not returning to work the succeeding fall.

The District claims the grievance was untimely, since the Grievant had notice June 3 that her benefits would be terminated but failed to object until October and did not file a formal grievance until December 5. It contends that the Grievant herself was liable for understanding the terms of the agreement and objecting to any alleged contract violation. It contends additional unexcused delay was caused by the Association which learned of the premium termination September 21, and discussed it with the Administrator, on October 21, and did not file a formal grievance until December 5.

As to the merits, the District contends it has a clear past practice of terminating insurance premiums of employes as soon as they terminate their employment. It argues that this policy is not discriminatory in spite of the resulting variation of the last month of insurance coverage. Finally, it argues the contract does not include language providing for a full year's insurance payment even though there is a provision that salary be paid on a twelve-month basis, thereby emphasizing the lack of full year provisions for insurance. It contends its exhibit before the Interest Arbitrator calculating the cost of insurance premiums on a twelve-month basis was necessary as the District could not foresee the terminations at the end of the academic year; however, such calculations should not bind the District to a full year's payment.

DISCUSSION

I. Timeliness

Inasmuch as the parties' collective bargaining agreement does not provide for final and binding arbitration of alleged violations of the agreement, the merits of this grievance can be determined in a prohibited practice proceeding if the Examiner will exercise the Commission's jurisdiction under Sec. 111.70(3)(a)5, MERA, to determine the merits of the alleged violations if the parties' grievance

procedure has been exhausted or such exhaustion has been excused. 5/ The District's contention that the grievances are barred by untimeliness, in essence, is an argument that the grievance procedure was not exhausted and the Examiner should decline to exercise the Commission's jurisdiction.

Flesch was informed by written notice on June 3 that her health insurance coverage would cease at the end of June and she did not object to the District's action until September 22, whereas the agreement requires the presentation of the grievance within ten school days of the occurrence being grieved. 6/ Flesch explained that prior to September, she did not believe she was entitled to July and August health insurance coverage. The Association did not advise her because it had not been informed of the cessation of premium payments. The significant fact here, however, is not Flesch's ignorance of her contractual rights or the Association's ignorance of the District's action, but the District's failure to raise the timeliness issue until mid-December. Starting with September 22, Kenyon had two conferences with Flesch and Kaurala, and he made inquires regarding the dispute with three insurance carriers, including the carrier underwriting the health insurance during the relevant time period. Additionally, the Board had two meetings with Flesch and correspondence regarding her dispute was exchanged between Flesch, the Association and the Board. 7/ Even when Flesch inquired, on her own initiative, whether the Board considered the formal requirements of the contractual grievance procedure satisfied, Kenyon did not object on the basis of timeliness. Only after Flesch began, on December 13, the pro forma compliance with the grievance procedure by submitting a written Statement of Grievance to Kenyon, did Kenyon raise timeliness objections. In the light of the three months of discussions of the merits of the dispute the Association could reasonably rely on the inference that it had access to the grievance procedure, and, if necessary, to a hearing before the Commission pursuant to Sec. 111.70(3)(a)5, to resolve the substance of the dispute.

In similar cases, when the employer has entertained the merits of a grievance without raising an objection to alleged untimeliness, the Commission has deemed the timeliness objection waived and exercised its jurisdiction to determine the merits of the grievance. 8/ Accordingly, the District, by failing to raise this procedural objection until after three months of discussions and exchange, effectively waived this procedural objection. Similarly, this Examiner also rejects the District's implied contention that the insurance premiums were not grieved until the formal process was begun on December 13, when Flesch wrote the "Statement of Grievance." The formal grievance procedure requirements found in many collective bargaining agreements serve to give notice to the employer that the grievant has decided to seek redress for the perceived harm and also serve to make definite and certain the grievant's contention regarding the employer's error and the appropriate remedy. In the instant case, the exchanges between the parties accomplished those purposes. Kenyon testified that after the September 22 meeting with Flesch and the Association President Helen Kaurala, he understood Flesch's position and at no time did the District argue that it was surprised by the Grievant's position. Consequently, the meeting September 22 and the subsequent exchanges were sufficient to fulfill the requirements of the grievance procedure. Inasmuch as the Examiner rejects the District's procedural defenses, she exercises the Commission's jurisdiction to determine the merits of the alleged violation of the collective bargaining agreement.

II. The Merits

Despite the District's contention, a comparison of SECTION XV, 2, which provides that salary be paid on a twelve-month basis, with SECTION XV, 4, which does not specify the months of insurance premium payments, does not yield the

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5/ CESA No. 4, Dec. No. 13100-E, (Yaffe, 12/77) aff'd. and modified on other grounds, Dec. No. 13100-G, (WERC, 5/79).

6/ Flesch received the notice on the last day of the 1982-83 school year. No evidence was presented as to the number of school days that had elapsed in the 1983-84 school year prior to September 22.

7/ See Finding of Fact 7.

8/ Winter Joint School District No. 1, Dec. No. 17867-C (WERC, 5/81); Whitewater Schools, Dec. No. 14221-B (WERC, 3/77).

conclusion that the parties intended that the insurance not be paid on a twelve-month basis. Although the language specifying months is lacking from the insurance provision, the parties indeed specified that the full premium be paid. Furthermore, their intent that the Board was obligated to pay the full premium for a full year is reflected in the provision that the percentage of the District's payment will be negotiated annually, thereby obligating the District to pay the full premium for a full year. Therefore, although the parties did not, in Subsection 4, use identical language to that in Subsection 2, the intention to compensate the teachers over a year period is clear.

Arguing in the alternative, the District asserts that it has a past practice of ceasing to pay insurance premiums effective at the end of the month in which a teacher resigned. It is unnecessary to evaluate the alleged past practice to determine whether it was sufficiently clear, long-established, and widely-known to govern the contract interpretation. Rather, it is merely necessary to note that the alleged past practice is irrelevant to the instant dispute inasmuch as it related to teachers who resigned their employment with the District. As our Supreme Court has ruled, 9/ a layoff is a temporary, not a permanent, separation from employment. The parties have provided in SECTION XVII - LAYOFF, that laid off employes shall have recall rights for two years. Therefore, the employer-employe relationship between the District and Flesch was not severed, and she was a standby employe, waiting to be called to active employment anytime within two years when her work was needed. Flesch's situation was radically different from that of a resigned or discharged employe who had completely severed the employer-employe relationship, and the history regarding discontinuance of premium payments for resigned teachers is not probative to this dispute.

The past practice which is significant, however, is the District's payment of July and August premiums for teachers scheduled to return in the fall. 10/ This payment reflects an understanding that although the teachers are contracted for no more than 186 working days pursuant to SECTION VIII - SCHOOL CALENDAR, their fringe benefits are viewed as an accrued right and paid throughout the calendar year in the same manner as salary, which is paid on a twelve-month basis pursuant to SECTION XV, 2. Therefore Flesch, who, like the teachers scheduled to return in the fall, has taught the full school year and by virtue of her recall rights retains her employe status, is, like the returning teachers, entitled to premium payments for July and August. A layoff effective after Flesch has rendered to the Board her professional services in fulfillment of her contract obligation cannot release the Board from its obligation to pay summer health insurance premiums on her behalf. 11/

III Alleged Violation of Sec. 111.70(3)(a)1, Stats.

To support its allegation that the District violated Sec. 111.70(3)(a)1, Stats., the Association must meet a burden of proving by a clear and satisfactory preponderance of the evidence that the actions and statements made by Kenyon or other District agents contained either threat of reprisal or promise of benefit which would tend to interfere with, restrain, or coerce employes in the exercise

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9/ Mack v. Joint School District No. 3, 92 Wis.2d 476 (1979), at 486.

10/ No direct evidence that the District paid July and August premiums was presented at the hearing, but the Examiner infers from the evidence of the eight teachers who have resigned since 1977, for whom the District did not make premium payments, that the District made July and August payment on behalf of all teachers scheduled to return in the fall.

11/ This decision does not rely upon the Association's argument based on bargaining history. In proceedings before the Interest Arbitrator, the District presented cost calculations for the 1982-83 contract which included a full twelve months of Medical/Hospital insurance premiums, thereby, according to the Association's reasoning, indicating an understanding that the District is unconditionally obligated to pay twelve months of premiums. The District is persuasive in its explanation that the costing calculations merely reflected the District's understanding of its maximum potential liability, and did not reflect whether or not that liability would be less if one or more teachers resigned or were laid off. This Examiner, therefore, does not determine that the bargaining history is the basis for deciding this complaint in the Association's favor.

of rights guaranteed by Sec. 111.70(2), Stats. 13/ The Association does not indicate, either in its oral argument at the hearing or in its briefs, what actions and statements it believed constituted such threats or promises. Upon examining the record as a whole, the Examiner does not find clear and convincing proof of this allegation and has, accordingly, dismissed that portion of the complaint.

IV Remedy

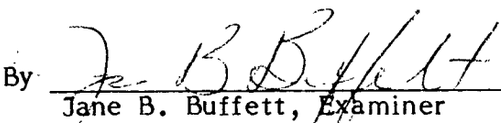
Although objections to the delayed filing of this grievance are deemed waived, that delay, however, raises questions regarding the remedy. Ordinarily, an employer will not be held liable for the increased harm caused by such a delayed filing. That is to say, in cases such as this, in which the arbitrator deems the timeliness objection waived, or finds timeliness by virtue of the employer's continuing violation, the remedy is limited to the period after the grievance filing date, since that was the first time at which the employer knew it had to either take corrective action or else be exposed to the cost of an arbitrator's order to make the grievant whole. Applying that rationale to this case, it becomes obvious that if the District had known the Association's contentions in June, it could have had the choice to correct its actions by paying the premium, thereby reducing its cost should the contract be determined to vindicate the Association's contention. When the District is not notified until after the period in question, under ordinary circumstances, it could not buy insurance coverage retrospectively, and thereby would have lost the opportunity to lessen the harm. However, the facts in the instant dispute are unique in that after the District learned the Association's contentions, the insurance carrier offered to provide insurance for the Grievant retrospectively, thereby minimizing the District's losses. At this point, the District's decision not to pay the premiums retrospectively was made in the full knowledge of its potential liability. Therefore, the District will be held to an entire make-whole remedy despite the delayed filing of the grievance.

While the evidence indicates that Flesch did not pay the premiums to extend the group policies, the record does not reveal what, if any alternative medical insurance coverage she had or bought. Similarily, the record does not indicate the exact amount of expenses she incurred which would have been paid by the insurance carrier if the District had paid the July and August premiums. Therefore, the Examiner orders a general make-whole remedy to include both any sums paid to procure alternative insurance coverage, and liability incurred as a result of the Hospital/Medical Plan not being in force for Flesch during July and August.

Consistent with the Commission's ruling in Wilmot Union High School District 12/, the Examiner orders interest pursuant to Sec. 814.04(4), Stats., at the 12 percent per year rate, which was in effect on February 9, 1984, at the time the complaint was filed. This interest shall be paid on all out-of-pocket expenses caused by the District's statutory violation and paid by Flesch prior to this decision. The Examiner finds this remedy consistent with the Commission's ruling that interest is due on a monetary benefit lost by the Employer's prohibited practice. However, no interest is ordered on monies for which Flesch is liable, but which were not paid prior to this decision. The Examiner has fashioned this interest remedy in order to assure that Flesch receive interest on all monetary losses she suffered at the same time that she not be unjustly enriched by receiving interest on any sums she may owe for medical and hospital fees, but has not actually paid.

Dated at Madison, Wisconsin this 9th day of November, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Jane B. Buffett, Examiner

12/ Dec. No. 18820-B (WERC, 12/83).

13/ Beaver Dam Unified School District, Dec. No. 20283-B (WERC, 5/84).