STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ONDOSSAGON DRIVERS, CUSTODIANS, COOKS, AND SECRETARIES' UNION,	:	
Complainant,	:	Case 23 No. 33121 MP-1584 Decision No. 21594-B
vs.	:	
ONDOSSAGON PUBLIC SCHOOLS,	:	
Respondent.	:	

Appearances:

Mr. Barry Delaney, Executive Director, Chequamegon United Teachers, Route 1, Box 1055, Hayward, Wisconsin, 54843, for the Complainant.

Dr. Michael J. Wallschlaeger, District Administrator, Ondossagon Public Schools, Route 3, Ashland, Wisconsin, 54806; and Mulcahy & Wherry, S.C., Attorneys at Law, 21 South Barstow, P. O. Box 1030, Eau Claire, Wisconsin, 54702, by Mr. Michael J. Burke, for the Respondent.

ORDER MODIFYING EXAMINER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Examiner Jane B. Buffett having on March 26, 1985 issued Findings of Fact, Conclusions of Law and Order in the above matter wherein she concluded that Respondent Ondossagon Public Schools had violated a collective bargaining agreement with Complainant Ondossagon Drivers, Custodians, Cooks, and Secretaries' Union by failing to make certain monetary payments to an employe, and had thereby committed a prohibited practice within the meaning of Sec. 111.70(3)(a)5 Stats; and based upon her conclusion in that regard, the Examiner having ordered Respondent to take certain remedial action; and Respondent having on April 10, 1985, timely filed a petition for review with the Wisconsin Employment Relations Commission pursuant to Secs. 111.07(5), 111.70(4)(a), Stats., seeking Commission review of the Examiner's conclusion that Respondent had violated Sec. 111.70(3)(a)5 Stats., and the parties having made several unsuccessful efforts to resolve their dispute informally prior to filing written arguments with the Commission; and the parties having ultimately submitted written argument in support of and in opposition to the petition for review the last of which was received on November 5, 1985; and the Commission having considered the Examiner's decision, the record, the petition for review and the parties' written arguments and having concluded that the Examiner erred when finding Respondent to have violated Sec. 111.70(3)(a)5 Stats; and the Commission therefore being satisfied that the Examiner's Finding of Fact, Conclusions of Law and Order should be modified;

NOW, THEREFORE, it is

ORDERED 1/

A. That Examiner's Findings of Fact 1 - 8 and 10 are hereby affirmed and adopted as the Commission's:

1/ Pursuant to Sec. 227.11(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

(Footnote 1 continued on page 2.)

B. That Examiner's Finding of Fact 9 is hereby set aside and that the following Finding of Fact is substituted and adopted as the Commission's:

9. That Swanson is not entitled to option plan payments pursuant to ARTICLE X, B and C; and that the District, by not

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(Footnote 1 continued from page 1.)

227.12 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.12, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.11. If a rehearing is requested under s. 227.12, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.20 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

providing such option payments, did not violate the collective bargaining agreement.

C. That Examiner's Conclusions of Law 1 and 3 are hereby affirmed and adopted as the Commission's.

D. That Examiner's Conclusion of Law 2 is hereby set aside and that the following Conclusion of Law is substituted and adopted as the Commission's:

2. That the District by failing to pay Walter Swanson $200 and $800 pursuant to Article X, B and C of the parties' 1983-1985 collective bargaining agreement, did not violate said agreement and therefore did not commit a prohibited practice within the meaning of Sec. 111.70(3)(a)5 Stats.

E. That the Examiner's Order is hereby modified and the following Order substituted as the Commission's:

ORDER

That the complaint is hereby dismissed in its entirety.

Given under our hands and seal at the City of Madison, Wisconsin this 21st day of November, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Herman Torosian, Chairman

_____
Marshall L. Gratz, Commissioner

_____
Danae Davis Gordon, Commissioner

ONDOSSAGON SCHOOL DISTRICT

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

BACKGROUND

Complainant alleged that Respondent had violated the parties' 1983-1985 contract by: (1) failing to pay Walter Swanson (herein Grievant) $200 and $800 respectively pursuant to Article X, B and C of the contract and (2) by failing to pay Grievant a supplemental $1.65 per hour wage payment pursuant to Article IX, E of the agreement.

The Examiner concluded that no contractual violation had been committed by the Respondent regarding the supplemental $1.65 per hour wage payment issue and dismissed the complaint as to that allegation. However, the Examiner concluded that Respondent had violated the contract by failing to make the $800 and $200 payments to Grievant and ordered Respondent to take certain remedial action. She reasoned that the pertinent contract language was ambiguous and that bargaining history required that it be interpreted in a manner consistent with Complainant's position.

Respondent filed a petition for review of the Examiner's conclusion regarding the $800 and $200 payments. Complainant did not petition for Commission review of the Examiner's conclusion as to the supplemental $1.65 per hour wage payment.

POSITIONS OF THE PARTIES

Respondent argues that the Examiner erred by concluding that the Grievant was entitled to the $800 and $200 payments. Respondent contends that in order to receive such payments under the pertinent contractual language, an employe must both be eligible for insurance "elsewhere" and no longer remain in the Respondent's dental and/or health insurance plans. In the Respondent's view, Grievant did not satisfy either of these two conditions and is therefore ineligible for the payments.

Respondent contends that the Examiner's conclusion that the "elsewhere" requirement can be satisfied through a spouse's insurance policy with Respondent is contrary to both the common usage of the word "elsewhere" and to the parties' bargaining history. In this regard the Respondent notes that it has never provided a husband and wife the option of taking out two insurance policies to cover the same family and therefore argues that duplication of insurance for two employes within the Respondent's employ was never a concern which was addressed during bargaining. Respondent asserts that the Examiner's decision failed to address the second requirement that the employe not remain covered by the Respondent's insurance plans. Because Grievant continues to be covered under the Respondent's insurance plans through his wife's policy, Respondent contends that Grievant also fails to meet the second eligibility requirement for the monetary payments.

Given the foregoing, Respondent asks that the Examiner's conclusion that the Respondent violated the contract as to said payments be reversed.

Complainant urges the Commission to affirm the Examiner. It argues that the Examiner correctly analyzed the evidence of bargaining history when determining the meaning of the contractual term "elsewhere". Complainant also contends that the Examiner's definition of "elsewhere" is appropriately consistent with the use of "elsewhere" in the insurance pamphlet from which Respondent borrowed the language in question. Complainant therefore requests that the Commission affirm the Examiner but seeks clarification of the remedy ordered as regards the method of calculating interest on the back pay ordered.

DISCUSSION

The contractual language in question states:

> ARTICLE X - INSURANCE AND RETIREMENT
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> . . .
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> B. The Board shall provide, without cost to the employee, complete dental care protection (Plan I Dental insurance) through the WEA Insurance Trust for single or family plan as is applicable to all employees.
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> . . .
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> An employee who is eligible for group dental insurance benefits elsewhere, may choose to be provided monies for a fringe benefit option in lieu of remaining in the District's dental plan. The amount of money contributed by the District shall not exceed $200.00. If the premium exceeds $200.00, the additional amount will be deducted from the employee's payroll checks. (emphasis added)
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> C. The Board shall provide, without cost to the employee, complete health care protection (hospital - surgical - major medical insurance) through the WEA Insurance Trust for single or family plan as is applicable to all employees.
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> . . .
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> An employee who is eligible for group health benefits elsewhere, may choose to be provided monies for a fringe benefit option plan in lieu of remaining in the District's health plan. The amount of money contributed by the District shall not exceed $800.00. If the premium exceeds $800.00, the additional amount will be deducted from the employee's payroll checks. (emphasis added).

The issue before the Examiner was whether Grievant is entitled to the $800 and $200 payments when both the employe and his spouse are employed by Respondent and Grievant receives insurance benefits under his spouse's policy provided by Respondent.

When interpreting contractual language, it is well established that absent persuasive evidence to the contrary, parties are properly presumed to have intended the commonly accepted meaning for the words they have used in their contract; that contract terms should be given the meaning most consistent with the contractual context in which they are used; and that where contractual language is clear and unambiguous, there is no need to resort to interpretative aids such as bargaining history. Application of these principles to the above quoted language leads us to conclude that the Examiner erred when finding that Respondent violated the parties' agreement by failing to make the $800 and $200 payments to Grievant.

The word "elsewhere" is commonly defined as meaning "in or to some other place" or "somewhere else". Webster's New World Dictionary, Second Edition. In our view, application of the common usage of the word to the situation at hand yields a conclusion that "elsewhere" means from somewhere other than the Respondent. Thus, Grievant's coverage under his wife's policy which is obtained through the Respondent does not render him eligible for insurance benefits "elsewhere".

The conclusion that Grievant is not eligible for the payments draws further support from the remainder of the language in the contract sentence in question. Said language specifies that the $800 and $200 payments are " . . . in lieu of remaining in the District's . . . plan." Since, in our opinion, the Grievant "remained in the District's plan" when he continued to be covered by Respondent's plans by reason of his wife's employment, it follows that the Grievant is not eligible for the contractual payments at issue.

Because we have found the meaning of the disputed language to be clear, we need not and do not resort to the bargaining history. 2/ Given the foregoing, we have reversed the Examiner's decision as to the $800 and $200 payments.

Given under our hands and seal at the City of Madison, Wisconsin this 21st day of November, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Herman Torosian, Chairman

_____
Marshall L. Gratz, Commissioner

_____
Danae Davis Gordon, Commissioner

2/ Had a review of bargaining history been necessary, we would have concluded that it did not provide persuasive support for either party's position.