BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
BONDUEL SCHOOL DISTRICT	Case 20 No. 44638 MA-6368
and	
BONDUEL EDUCATION ASSOCIATION	

Appearances:

Mr. James A. Blank, Executive Director, United Northeast Educators, 1136 North Military Avenue, Green Bay, Wisconsin 54303, on behalf of the Local Union.

Mr. Robert W. Burns, Godfrey & Kahn, S.C., Attorneys at Law, 333 Main Street, Suite 600, P.O. Box 13067, Green Bay, Wisconsin 54307-3067, on behalf of the District.

ARBITRATION AWARD

According to the terms of the 1989-90 collective bargaining agreement between the Bonduel School District (hereafter the District) and the Bonduel Education Association (hereafter the Union), the parties requested that the Wisconsin Employment Relations Commission appoint a member of its staff to act as impartial arbitrator of a dispute between them involving the District's refusal to continue paying the full cost of health and dental premiums during the most recent contractual hiatus period. The undersigned was designated arbitrator and made full written disclosures to which no objections were raised. Hearing was held on December 6, 1990 at Bonduel, Wisconsin and a stenographic transcript of the proceedings was made. The parties filed their written briefs including reply briefs, by February 27, 1991 which were thereafter exchanged by the undersigned. The parties also agreed at the hearing to waive the contractual requirement (Article XIX) that the undersigned must issue a written decision herein "within 30 days of the hearing."

ISSUES:

The parties were unable to stipulate to the issue or issues herein but they stipulated that the undersigned could frame the issues and they suggested the following issues:

> Union: Did the School District violate Article II of the Maintenance of Standards Clause of the Master Contract when it refused to pay the full amount of the increase in the health and dental insurance premiums beginning September 14, 1990 and on each subsequent paycheck? If so what is the appropriate remedy?
>
> District: Does the District violate Article X of the collective bargaining agreement when it pays the insurance premiums specified therein? If so, what is the appropriate remedy?

Based upon the relevant evidence and argument here, I conclude that the issues herein shall be as follows:

> Did the District violate the collective bargaining agreement and/or any relevant past practice when it paid the dollar amounts listed in Article X-A toward health and dental insurance coverage for bargaining unit members beginning in September, 1990?
>
> If so, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE:

> ARTICLE II - MAINTENANCE OF STANDARDS
> Section A:
> Conditions of employment will be maintained at not less than the highest minimum standards set by the Federal government and State government and the local school district unless nature, an act of God, or other conditions outside the control of the school district require otherwise. Conditions of employment shall be improved for the benefit of the teachers as required by the express provision of this agreement. The agreement will not be interpreted or applied to deprive staff members of contractual advantages heretofore enjoyed

unless the Wisconsin Department of Public Instruction so demands a curriculum change.

. . .

ARTICLE X - INSURANCE PROGRAMS

. . .

a. The Board will make the following monthly contributions toward teacher insurance:

1989-90

	Single	Family
Medical	125.50	327.50
Dental	18.76	55.18
Life	29% of the premium for each employee . . .	

ARTICLE XIX - GRIEVANCE PROCEDURE

. . .

5. Arbitration

. . .

c) The arbitrator so selected will confer with the representatives of the Board and the grievance committee and hold hearings promptly and will issue his/her decision within thirty (30) days of the hearing. The arbitrator's decision will be in writing and will set forth his/her findings of fact, reasoning, and conclusions of the issues submitted. The arbitrator shall be without power or authority to make any decision which requires the commission of an act prohibited by law or which is in violation of the terms of this agree-ment. The decision of the arbitrator will be final and binding on the parties.

. . .

ARTICLE XXVI - TERMS OF AGREEMENT

. . .

B. This agreement may be altered, changed, added to, deleted from or modified only through the voluntary mutual consent of the parties in writing and signed amendment to this agreement.

. . .

BACKGROUND: 1/

The parties have had a collective bargaining relationship for many years. In the labor agreement covering the 1974-75 school year, the insurance coverage language indicated that the Board would pay "the full premium" for both health and dental plans. Also contained in this agreement was the following:

ARTICLE II - MAINTENANCE OF STANDARDS

Conditions of employment will be maintained at not less than the highest minimum standards unless nature, an act of God, or other conditions make improvement necessary in the future. Conditions of employment

1/ The District objected to the receipt and consideration of the facts stated in this section of the decision on the grounds that the 1989-90 labor agreement is clear and any evidence of bargaining history and past practice offered to alter the clear language of Article X should be ruled irrelevant and inadmissible parol evidence. This background information is stated here merely to flesh out the history of the parties' negotiations and agreements relating to the disputed language of Article II and X. It is not intended to constitute my ruling on the ultimate admissibility of this evidence and its bearing, if any, upon the merits of this case.

shall be improved for the benefit of teachers as required by the express provisions of this agreement. The agreement will not be interpreted or applied to deprive staff members of advantages heretofore enjoyed unless the Wisconsin Department of Public Instruction so demands a curriculum change.

The 1978-80 labor agreement contained a change in the wording of Article II to reflect the language that is contained in the 1989-90 agreement at Article II-A which applies to this case. 2/ Notably, the 1978-80 agreement also contained a change in the insurance coverage provision to reflect premium dollar amounts (equal to the full the cost of the premiums in 1978-79) but added language in which the Board promised to pay any increase in premiums, as follows:

ARTICLE X - INSURANCE PROGRAMS

A. The Board will pay $82.08 monthly toward family coverage; $30.82 toward single coverage under the WEA Insurance Trust Medical and Hospital Insurance ($100 deductible) Plan. Any increase in premiums for the 1979-80 school year will be paid by the Board.

B. The Board will pay $24.10 toward family coverage; $8.09 toward single coverage under the Wisconsin Physicians Service Dental Rider - Plan 1. Any increase in premiums for the 1979-80 school year will be paid by the Board.

. . .

In the 1980-82 agreement, dollar amounts for premiums were again placed in the agreement. These dollar amounts again reflected the full cost of premiums effective in 1980-81 and the Board again agreed to pay any increases in premiums for the 1981-82 school year.

In the 1982-85 labor agreement, the parties changed the insurance coverage language again and, inter alia, dropped the language contained in previous agreements in which the Board had promised to pay any increases in premiums in the second and third years of that agreement, as follows:

ARTICLE X - INSURANCE PROGRAMS

A. The board will make the following monthly contributions toward teacher insurance:

	Single	Family
Medical	49.56	128.48
Dental	15.02	47.46
Life	29% of the premium for each employee	

B. The Board will provide insurance coverage with benefits equal to those in effect during the 1981-82 school year. Prior to any change of carriers, the association will be notified of the carrier being considered and will be given a copy of the benefits under consideration.

. . .

The 1986-87 labor agreement was the result of an arbitration award issued on August 12, 1987 which incorporated the Union's final offer into the agreement. The 1987-89 agreement executed on March 21, 1988, provided the following relevant insurance coverage language:

ARTICLE X - INSURANCE PROGRAMS

A. The board will make the following monthly contributions toward teacher insurance:

	1987-88		1988-89	
	Single	Family	Single	Family
Medical	82.18	214.50	100.88	263.24

2/ There is no dispute herein regarding the application of the language currently contained in Article II-B and I need not and do not include any analysis of Article II-B in this decision.

Dental 17.62 55.18 17.62 55.18
Life 29% of the premium for each employee

B. The Board will provide insurance coverage with benefits equal to those in effect during the 1981-82 school year. Prior to any change of carriers, the association will be notified of the carrier being considered and will be given a copy of the benefits under consideration.

. . .

It is undisputed that until September 1990, going back as far as 26 years, the District always paid any increases in insurance premiums no matter what the effective labor agreements have said, and the District has paid these costs even during long periods, up to 13 months,when the parties have worked without a contract, pending successful contract negotiations or the issuance of an interest arbitration award. The Union's contracts have run from school year to school year, beginning July 1 and expiring on June 30th. The District offered no evidence of bargaining history and the evidence submitted by the Union regarding why past contract language was changed and any discussions surrounding such changes was sketchy at best and amounted to hearsay.

FACTS:

The facts giving rise to the instant grievance are not in dispute here. The parties have entered into negotiations for a successor agreement to the 1989-90 contract which expired on June 30, 1990. No agreement has yet been reached. The Union and the District are currently in mediation with a WERC mediator and the District's preliminary final offer contained a proposal that the Union membership pay a portion of the insurance premiums in a successor agreement.

The District's insurance contracts have generally run school year to school year, with premium increases effective July 1st of any year and such insurance contracts have normally expired the following June 30th. Effective July 1, 1990, the District's insurance rates increased, as follows (with the increases from 1989 rates shown next to the 1990 premiums):

INSURANCE	1990 Premiums	Increase
Family Health	$383.04	$ 55.54
Single Health	$149.28	$ 23.78
Family Dental	$ 57.02	$ 1.84
Single Dental	$ 21.76	$ 3.00

The District paid the increases in premium rates in July and August 1990. District Administrator Peter Behnke stated that in general, District teachers are given six completion paychecks at the end of each school year, on approximately June 1st and that the rest of the year, teachers are paid biweekly; that some teachers, such as Instrumental Music Instructor DeFries, receive four completion checks and because they work during the summer pursuant to summer work contracts, they then receive two summer paychecks on June 15 and June 30. Behnke stated that he believed that the paychecks and completion checks for the 1989 school year properly belonged to the contractual obligations incurred in 1989. Therefore, Behnke explained, the District did not deduct 1990 insurance premium increases from the teachers' July and August 1989 completion paychecks.

On September 10, 1990, the Board of Education met and decided to deduct premium increases from teachers' paychecks beginning with the first general payroll for 1990, which fell on September 14, 1990. Inserted in each teacher's paycheck envelope was a notice that the deductions had been made from the checks based upon the teacher's enrollment in the insurances. There is no dispute that the notice contained in the September 14th paychecks was the first official notice of the District's decision to deduct insurance premium increases in 1990 from teachers' pay. The Union thereafter timely filed the instant grievance.

POSITIONS OF THE PARTIES

Union

The Union asserted that the language of Article II as well as long-standing past practice (since at least 1974), requires the District to continue to pay the full cost of insurance premiums even if those costs rise during the hiatus period between collective bargaining agreements. The Union contended

that the status quo standard as well as the practice between the parties has been for the District to pay full health and dental premiums at all times. In support of this argument, the Union pointed to general arbitral principles that contracts must be interpreted as a whole and that maintenance of standards clauses are meant to protect working conditions across contracts. In this regard, the Union cited Arbitrator Yaffe's decision in City of Greenfield, 77 L.A. 10 (6/23/81). Fully paid health and dental insurance, the Union asserted, constituted an Article II "contractual advantage" that the District could not deny teachers.

The Union also argued that the "highest minimum benefit" standard language of Article II means that the District must maintain the status quo (fully paid insurances) until each and every contract is settled otherwise. The Union disagrees with an anticipated District argument that the highest minimum standard language of the agreement means that the District is obliged to pay only the dollar amounts list in Article X-A. In support of its arguments, the Union pointed to record evidence demonstrating that the District has never, before the instant case, made any payroll deductions for increased health and dental premiums no matter what the language of the then-effective labor agreements stated.

The Union urged that the District's unilateral decision to deduct the premium increases as well as the timing of the deductions demonstrates that the language of the agreement is unclear. Furthermore, the Union contended that the circumstances of this case also indicate that the District merely wished to pressure the Union's negotiators and membership into accepting insurance concessions in negotiations. Therefore, because the language of the agreement is unclear, the Union asserted, the consistent evidence of past practice it submitted may be considered to flesh out the contract. Therefore, the Union urged that the grievance be sustained and the employes made whole, including interest.

District

The District urged that it has and continues to fully comply with the clear and express terms of the effective collective bargaining agreement; no violation of the agreement has occurred and past practice evidence is irrelevant. The District asserted that because the language of the agreement is clear and unambiguous, the undersigned must give effect, by a reasonable construction, to the thoughts expressed by the words used. In this regard, the District pointed out that Article X-A uses the words "monthly contributions for teachers insurance . . ." rather than using words as, "100% of," "full" or "entire." Article X-A also specifically states the dollar amounts of these "contributions." Thus, the District urged, the parties must have intended that the District would be expected only to pay the listed amounts even if the premiums were to rise during the contract.

The District contended that even the Union's witnesses could find no ambiguity or lack of clarity contained in the words of Article X-A. Nor did the Union's witnesses assert that the District had failed to follow the letter of Article X-A. Because Articles XVI and XIX further prohibit an arbitrator from modifying, etc., the express terms of the agreement, the District urged the undersigned to deny and dismiss the grievance.

In addition, the District asserted that the Union's Article II arguments should be rejected. In this regard, the District urged that by its own terms, Article II only applies to protect conditions of employment "as required by the express provisions" of the agreement. Thus, the District argued, it has lived up to both Articles II and X by paying the insurance contributions listed in Article X.

The District noted that were the undersigned to rule in favor of the Union here, the District would never be able to negotiate a diminished insurance benefit because the language of Article II would overrule any express insurance provision whenever premiums rose above contractually stated levels. Thus, the District argued, a ruling in favor of the Union would convert the specific and limiting language of Article X to "full premium" language. As premium contri-butions are currently a subject of contract negotiations between the parties, were the undersigned to issue an award in favor of the Union here, this would effectively remove the insurance issue from negotiations, leaving the District with no quid pro quo for such a change, while granting the Union an "unbargained automatic benefit." The District, therefore, urged the denial and dismissal of the grievance.

REPLY BRIEFS:

Union

The Union asserted that the District's initial brief arguments missed the point of this case entirely. In this regard, the Union noted it has proved a

clear practice on the part of the District to pay the full cost of insurance premiums during contract hiatus periods, notwithstanding the wording of the contractual language on the subject. This has nothing to do with the amount of insurance premiums the District must pay, as listed in the agreement, during the term of that agreement, in the Union's view. This proof of past practice, therefore shows that the teachers could reasonably believe that they had gained the contractual advantage of full District premium payments during hiatus periods. The Union noted further that the evidence it submitted regarding the District's premium payment practice meets all of the traditional requirements of a valid past practice which is effective to modify or to fill in the contract's terms. The Union argued in addition that if fully paid health and dental benefits are not "contractual advantages" pursuant to the Maintenance of Standards Clause, it cannot conceive of what would constitute such benefits.

The Union asserted that the District's argument that it would never be able to negotiate a change in premium contributions if the Arbitrator ruled in favor of the Union here is entirely specious. Thus, a voluntary agreement or an interest arbitrator's award could easily accomplish this change. The Union then cited several cases which, it asserted, were instructive and on point here:

> Louisiana - Pacific Corp., 79 LA 664 (1982);
> Evening News Association, 54 LA 719-720 (1970);
> Vlasic Foods, Inc., 74 LA 1216-1218 (1980).

In conclusion, the Union contended that the Arbitrator "can only find for the Association in this grievance."

District

The District asserted that the Association's initial brief shows that the Arbitrator would have to 1) ignore the clear language of Article X of the contract and 2) give effect to general language of the Maintenance of Standards Clause over the specific terms of Article X. This, the District urged, would effectively eliminate the parties' ability to negotiate insurance contributions in future years. Specifically in regard to item 2) above, the District cited portions of Elkouri and Elkouri, How Arbitration Works, (3rd Edition), not cited by the Union in its initial brief when it cited that treatise, which the District contended show that the arbitral rule that the specific must control the general terms of an agreement must be applied here. Furthermore, even if the Maintenance of Standards language is applicable here, the District asserted that the "contractual advantage" language of Article II has been misconstrued by the Union: the "advantage" here must be the specific dollar amounts listed in Article X.

The District also urged that the Union's reliance on the history of occurrences during hiatus periods regarding insurance is misplaced. The District pointed out that the facts here make what occurred during prior hiatus periods inapplicable because teacher insurance premium contributions were not in issue in those prior years. During the current hiatus period, insurance premium contributions by teachers remain an issue in negotiations.

Finally, the District asserted that the timing of the first deductions from the teachers' pay for insurance premium increases was uniform and logically placed in the 1990 school year. Thus, this minor issue should not affect the outcome herein, in the District's view. For the District to have done otherwise would have affected teachers electing to receive their pay over nine months differently from teachers electing to be paid over a twelve month period. The real issue here, the District concluded, is whether the District is required to pay more toward insurance premiums than the contract specifically requires. The District urged that there is no basis here for concluding that the District must do more than the contract requires.

DISCUSSION:

The pivotal question in this case is whether the language of Article X-A is clear or whether it is ambiguous. In regard to this question, I note that in Article X-A, the District agreed to make "monthly contributions toward teacher insurance." The use of the words "contributions" and "toward" with reference to specific dollar amounts listed thereafter, clearly indicates an intent by the parties that the District pay only the dollar amounts listed in the agreement (which could equal less than the full amount of premiums charged for such insurance) during the life of the agreement. Notably, the parties did not use such terms as "100%," "entire," "full" or "all" in describing the District's responsibility for payment of insurance premium amounts. In addition, I note that in the 1982-85 agreement between the parties, the parties deleted language previously used in Article X, wherein the District had agreed to pay any insurance premium increases above the dollar amounts listed during

the last school year covered by that agreement. The deletion of such a promise along with the remaining language of Article X, should have put the Union on notice that the District had put itself in a position to require teachers to pay insurance premium increases which might occur during contract hiatus periods. Thus, in the circumstances of this case, I believe the language of Article X-A is clear on its face.

The Union has put in a great deal of evidence here regarding the District's alleged past practice of paying all insurance premium increases during contract hiatus periods. The District objected to the receipt and consideration of this evidence on the grounds that it is irrelevant. I allowed the admission of this evidence and indicated I would rule finally on its admissibility and relevance in this decision. The District's objections were well-found. I find and conclude that the parties' practices during contract hiatus periods are not relevant in this grievance arbitration case. 3/ As such, this evidence proffered by the Union has not been considered here. In addition, in my view, the cases cited by the Union were not persuasive of the issues before me. 4/

The Union has argued that Article II, Maintenance of Standards, applies in this case to preserve the District's past practice of paying insurance premium increases during contract hiatus periods. I disagree. The District's arguments regarding the proper construction of Article II are persuasive on this point. The term "highest minimum standard" refers specifically and solely to standards "set" by Federal and State governments and the District. As the District pointed out, there are no set standards, either District, Federal or State, that require the District to pay more than the amounts expressly listed in the agreement for insurance premiums. In addition, I note that it is a matter of settled arbitral law that Maintenance of Standards clauses such as Article II lapse upon contract expiration and are therefore not applicable to grievances arising during hiatus periods. Thus, even if one could say that the District set an Article II "standard" by paying insurance premium increases during previous contract hiatus periods, such a "standard" would lapse with the end of the 1989-90 agreement and be inapplicable to a grievance arbitration case such as this case, alleging a violation of the expired agreement, which violation occurred after contract expiration. In this type of case, the arbitrator's authority is limited to interpretation of the specific contract terms contained in the expired agreement.

Furthermore, the second sentence of Article II supports the District's arguments. There, it clearly states that conditions of employment shall be "improved" "as required by the express provisions of this agreement." (emphasis supplied) The District is correct that the specific (Article X-A) should control the general (Article II) under generally accepted principles of construction. Thus, Article X-A expressly states the amount of insurance premium contributions required of the District. These are the exact amounts paid by the District during the agreement as well as after its termination. 5/ Also, I note that no specific reference is made to past practice in any portion of Article II. Thus, it appears that this clause is not a traditional maintenance of standards clause in this respect. Finally, I find that the last sentence of Article II is inapplicable here: It relates the term "contractual advantages" to curriculum changes and D.P.I. requirements thereon.

After having considered all of the relevant evidence and argument herein, I have found that the language of the expired agreement is clear and unambiguous, and therefore, the instant grievance is denied, as follows

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3/ This is not a complaint case alleging a statutory violation and I am not an Examiner herein. I am a grievance arbitrator. Hence, this decision should not be read as deciding what relief might be attainable by the Union on these facts in a complaint case forum. See e.g. School District of Wisconsin Rapids, Dec. No. 19084-C (WERC, 3/85); Sun Prairie Joint School District No. 2, Dec. No. 22660-B (WERC, 7/87) aff'd Dane County Circuit Court, Case No. 87-CV-4883 (11/87) and cases cited therein.

4/ The cases cited by the Union were not on point. I note that Louisiana - Pacific Corp., 79 LA 664 (1982) and Vlasic Foods, Inc., 74 LA 1216-1218 (1980), are factually distinguishable from the instant case. In City of Greenfield, 77 LA 8 (1981), the contract was completely silent regarding the disputed benefit therein which the employer terminated mid-term of the agreement despite the existence of a Maintenance of Standards clause which the Arbitrator found was applicable to preserve such a benefit. In Evening News Association, 54 LA 716 (1970), the employer attempted to change a long-standing past practice which was contrary to the express terms of the then-effective collective bargaining agreement.

5/ The fact that the District Board met and voted in early September 1990 to cease paying insurance premium increases it had been paying since July 1, 1990 and facts surrounding how the Union and employes were notified of this change are not relevant here, as these facts are part and parcel of the past practice proof submitted by the Union.

AWARD

The District did not violate the collective bargaining agreement or any relevant past practice when it paid the dollar amounts listed in Article X-A toward health and dental insurance coverage for bargaining unit members beginning in September, 1990.

Therefore, the grievance is denied and dismissed in its entirety.

Dated at Madison, Wisconsin this 1st day of April, 1991.

By _____
Sharon Gallagher Dobish, Arbitrator