BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
SCHOOL PROFESSIONAL EMPLOYEES ASSOCIATION OF KENOSHA COUNTY, TREVOR ELEMENTARY	Case 14 No. 48030 MA-7485
and	
SALEM JT. 7 SCHOOL BOARD	

Appearances:
Mr. Dennis G. Eisenberg, Executive Director, Southern Lakes United Educators, or
Mr. Barry Forbes, Staff Counsel, Wisconsin Association of School Boards, Inc., C

ARBITRATION AWARD

The above-entitled parties, herein the Association and District, are privy to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in Trevor, Wisconsin, on January 14, 1993. The hearing was not transcribed and the parties thereafter filed briefs which were received by March 1, 1993.

Based upon the entire record, I issue the following Award.

ISSUE

The parties have stipulated to the following issue:

> Did the District violate the contract when it refused to pay for the equivalent of grievant Mary Lee Fenske's insurance benefits for the months of July and August, 1992, and, if so, what is the appropriate remedy?

DISCUSSION

After signing her individual teaching contract in April, 1992, Fenske requested and was placed on unpaid child rearing leave for the first half of the 1992-1993 school year. The District subsequently refused to pay the equivalent of Fenske's insurance benefits for July and August, 1992 on the ground that she was on unpaid leave for the first half of the 1992-1993 school year and because it maintained that employes earn health insurance benefits for July and August only by working the first semester of the next school year.

In support of Fenske's grievance, the Association primarily argues that Article XVII, Section "A", of the contract is clear and unambiguous in mandating the payment of health insurance benefits for employes whose contracts are renewed; that other parts of the contract support "the conclusion that summer health insurance benefits must be paid to all employees"; and that the testimony here supports its position.

The District, in turn, maintains that its refusal to pay the equivalent of Fenske's insurance "is allowed under the contract"; that a past practice supports its interpretation; and that other parts of the contract relied upon by the Association do not obligate the District to make such payments.

The resolution of this issue must first start with looking at Article XVII, Section B, 2, of the contract which provides:

> "Insurance coverage will be from July 1st through June 30th of the following year, provided that the teacher's contract is renewed for the next school year. When a teacher terminates his/her contract, insurance premiums already paid must be reimbursed to the District by the affected teacher."

This language is not a model of clarity. Thus, it is possible to construe it to mean that insurance is to be provided under all circumstances, provided only that a teacher be renewed for the following year. But that assumes too much because it is hardly likely that the parties ever agreed that such insurance must be paid if an employe is on an unpaid leave for that entire year, which is possible if a teacher is renewed, and then asks to be on unpaid leave for the next school year. An unpaid leave, after all, means just that - no pay. That carries over to insurance contributions since they are a form of pay. That is why the District is correct when it states: "Insurance benefits paid during the summer obviously are earned by work performed during the school year."

This language therefore is unclear since it does not expressly address what is to happen when a teacher is on unpaid leave for part of a school year.

As to that, the record shows that the District did not pay the equivalent of Fenske's July and August health insurance premiums when she took a prior unpaid child rearing leave in the 1990-1991 school year. While the Association asserts that it had no knowledge of this situation, the fact remains that it is the only time that this specific issue has arisen and that Fenske did not object to it at that time. As a result, the Association is unable to establish that this language ever has been applied to provide for the benefit sought here - i.e., for the payment of insurance benefits when a teacher was on an unpaid leave of absence and not doing any work to earn that benefit.

Moreover, the record fails to establish that the District ever applied Article XVII, Section B, 2 differently than it did here. For contrary to the Association's claim, it does not appear that the District paid for such premiums when former teacher Sharon Lay left her employment. Board President Bonnie Monroe testified here that that was a "very messy situation" - one which, if anything, supports the District's position since the District did not pay for Lay's July and August premiums.

The Association also cites various other parts of the contract --- Article VI, Paragraph "A"; Article IX, Article "A"; Article XV, Paragraphs "A" and "D"; Article XVIII, Paragraph "B"; Article XIX, Paragraph "B"; and Article XIX, Section "C" --- to support its position. None of these provisions, however, is directly on point because none of them expressly negate Article XVII, Section "B", 2's requirement that employes must work to earn the insurance coverage provided for therein.

Furthermore, it is entirely logical for the District to reimburse Fenske under Article XV for the course work she took in the summer of 1992 and to thereafter advance her on the salary schedule for the 1992-1993 school year when she returned to work because it ultimately received something of value for that - i.e., Fenske's supposed greater expertise as a teacher which she gained as a result of that course work and which she subsequently demonstrated when she returned back to work. No such similar value was obtained when Fenske did not work during her unpaid leave of absence, which is why it was not required to pay for the equivalent of her health insurance for July and August, 1992.

It thus is immaterial that the District would have been required to pay for the July and August payments if Fenske was on sick leave, rather than an unpaid leave of absence. For it was Fenske's choice to forego sick leave in favor of her unpaid leave of absence. Thus, the situation here is governed

under the latter part of the contract, rather than the sick leave provision.

In light of the above, it is my

AWARD

That the District did not violate the contract when it refused to pay for the equivalent of grievant Mary Lee Fenske's insurance benefits for the months of July and August, 1992; the grievance is therefore denied.

Dated at Madison, Wisconsin this 30th day of April, 1993.

By Amedeo Greco /s/
Amedeo Greco, Arbitrator