

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

DANE COUNTY (PUBLIC HEALTH)

and

DISTRICT 1199W/UNITED PROFESSIONALS FOR
QUALITY HEALTH CARE, SERVICE
EMPLOYEES INTERNATIONAL UNION,
AFL-CIO

Case 149
No. 52979
MA-9183

Appearances:

Mr. Paul Burmeister, Staff Representative, District 1199W/United Professionals for Quality Health Care, SEIU, AFL-CIO, 1619 Monroe Street, Madison, Wisconsin 53711-2021, on behalf of the Union.

Ms. Maureen A. Plunkett, Assistant Corporation Counsel, Room 419, City-County Building, 210 Martin Luther King, Jr. Blvd., Madison, Wisconsin 53709, on behalf of the County.

ARBITRATION AWARD

According to the terms of the 1993-95 collective bargaining agreement between Dane County (hereafter County) and District 1199W/United Professionals for Quality Health Care (hereafter Union), the parties jointly requested that the Wisconsin Employment Relations Commission appoint Sharon A. Gallagher to hear and resolve a dispute between them regarding whether Nancy Garde should have received salary continuation insurance benefits from approximately early April, 1994 through February 10, 1995. A hearing was held on November 14, 1995 at Madison, Wisconsin. A stenographic transcript of the proceedings was made and received by November 30, 1995. The parties agreed upon a briefing schedule and all briefs were timely received by the undersigned by February 12, 1996. The record was thereupon closed.

Issues:

The parties stipulated to the following substantive issue to be determined in this case.

Did the Employer violate Section 14.06 of the collective bargaining agreement?

If so, what is the appropriate remedy?

As with Case No. 148 (the Kretschman grievance) the Union and the Employer agreed that the instant case should be heard and decided and that the Undersigned could address the Employer's issue whether the contract covers the instant grievance in determining the ultimate outcome of this case.

Relevant Contract Provisions:

ARTICLE XIV - INSURANCE/RETIREMENT

. . .

Section 14.06 Salary Continuation. There shall be available to employees on a share cost basis as determined by the plan, a salary continuation insurance plan which shall be a part hereof by reference. Such plan shall become effective when the required percentage of enrollment of employees has been met. Should such required enrollment fail, the Employer's funds allocated for the purpose of implementing the plan shall be directed to the salary of each employee. This Section shall be subject to renegotiation in the event the Employer shall propose a substitute plan.

. . .

Relevant Provisions of the United Wisconsin Insurance Company Short Term Disability Plan:

. . .

**SCHEDULE OF BENEFITS
SHORT TERM DISABILITY COVERAGE**

Eligible Classes:

All eligible employees.

Service Waiting Period:

1st of the month following 6 months of employment.

Elimination Period

- Illness: 30 working days or 6 weeks.

- Injury: 30 working days or 6 weeks.

Benefit Period:

46 weeks.

Benefit Amount:

65% of weekly Earnings to a maximum of \$1,000.

Benefit Offset From Earnings Received From Rehabilitation:

50%

. . .

SHORT TERM DISABILITY

This booklet summarizes Your Benefits. It is not a policy, but all parts of it depend on the policy. We issued the policy as a contract with the Policyholder. The policy insures You.

DEFINITIONS

ACTIVELY AT WORK or **ACTIVE WORK** means You must be physically capable of working:

1. for the Group on a regular Full-Time or Part-Time basis and be paid regular earnings; and
2. at least 20 hours per week at either:
 - a. the Group's usual place of business; or
 - b. a location to which the Group's business requires You to travel.

If You meet this criteria, We consider a holiday or a vacation day on the effective date as a work day.

. . .

DATE OF LOSS means the date You are seen, treated, and certified as Totally Disabled by a Physician. It does not include the

last date worked unless:

1. You worked less than 1/2 of Your normal scheduled work hours on that date; and
2. You became Totally Disabled on the same day.

. . .

ELIMINATION PERIOD means a set number of days in a row beginning on the Date Of Loss. The number of days is shown in the schedule. You must be Totally Disabled throughout the Elimination Period. You must be personally seen, treated, and certified as Totally Disabled by a Physician before the Elimination Period begins.

. . .

ILLNESS means any disease, sickness, or pregnancy. The Illness and disability must begin while You are covered under the policy.

INJURY means bodily Injury resulting:

1. directly from an accident; and
2. independently of all other causes.

The Injury must occur and Total Disability must begin while You are covered under the policy.

. . .

PHYSICIAN means a person who is:

1. operating within the scope of his license; and either
2. licensed to practice medicine and prescribe and administer drugs or to perform surgery; or
3. legally qualified as a medical practitioner and legally required to be recognized under the policy.

. . .

TOTAL DISABILITY or TOTALLY DISABLED means Your complete inability, due to Injury and/or Illness, to perform with reasonable continuity any of the material and substantial duties of Your regular occupation. You must be under the Regular Care and Treatment of a Physician. You must provide documentation of this. We may require You to see a Physician of Our choice for an independent medical examination.

. . .

ELIGIBILITY

A. ELIGIBILITY

You become eligible for coverage under the policy when:

1. the Group meets all of Our eligibility requirements for participation; and

. . .

CONTINUITY OF COVERAGE

Even if You were not Actively At Work on the policy effective date, We pay benefits to You if You:

1. were covered by the prior carrier at the time of coverage transfer; and
2. were not Actively At Work on a Full-Time basis due to Injury or Illness; and
3. meet the policy's eligibility requirements other than that for Actively At Work.

The Benefit amount We pay under this section is the prior policy's benefit amount, less any benefit paid or payable by the prior carrier.

If You are not Actively At Work, You are not eligible for coverage and the Benefit will not be paid under this policy until after the prior group carrier has paid any extended benefits for which it is liable.

We pay benefits for any Total or Partial Disability resulting from a pre-existing condition if You:

1. were covered by the prior carrier at the time the coverage was transferred; and
2. were Actively At Work on a Full-Time basis on this policy's effective date.

. . .

TERMINATION OF COVERAGE

Your coverage terminates upon the first to occur of any of the following:

1. the date the policy is cancelled; or
2. the date the policy is modified to exclude coverage for the class to which You belong; or
3. the date You fail to make, when due, any required contribution toward the cost of the coverage; or
4. the time You terminate employment; or
5. the date You are no longer a member of the class of employees eligible for coverage; or
6. the time You are laid off, resign, retire (unless Totally or Partially Disabled before retirement), or are dismissed from employment; or
7. the day before the date You start a leave of absence, except a disability leave; or
8. the date You are placed on a part-time employment basis; or
9. the date of work stoppage which is the result of a labor dispute; or
10. the date We pay Your maximum Benefit entitlement for a period of Total Disability.

. . .

GENERAL PROVISIONS

A. LEGAL ACTIONS

You may not bring legal action against Us:

1. before the end of a 60 day period that starts on the date written proof of loss is first required to be provided to Us; or
2. after the end of a 3 year period that starts on the Date Of Loss.

We may decide to mediate or arbitrate a dispute.

B. STATEMENTS BY YOU

We will not use a statement made by You in any legal contest unless We give You, or other party to the contest, a copy of the document that contains the statement.

We deem any statement You make to be a representation, not a warranty. We will not use such a statement to void Your coverage, reduce Your benefits, or defend a claim unless it is in a written application signed by the Group or You. We will give You or Your beneficiary a copy of that application.

C. TIME LIMIT ON CERTAIN DEFENSES

Except for fraudulent statements, We will not use a statement You made relating to Your coverage to contest Your coverage after Your coverage has been in force for 2 years.

D. NOTICE OF CLAIM

You must give Us written notice of claim within 30 days of the Date Of Loss, or as soon as it is reasonably possible.

When We receive that notice, We will send claim forms to You. If You do not receive the claim forms within 15 days of the notice, You have complied with the requirements of proof of loss when We receive verifiable documentation that establishes:

1. Your eligibility; and
2. the date and cause of Your Total or Partial Disability; and
3. the Physician(s) treating You for that disability.

E. PROOF OF LOSS

1. The proof must provide:
 - a. the Date Of Loss; and
 - b. objective medical evidence. You must cooperate in obtaining the medical information; and
 - c. dates and type of treatment; and
 - d. certification of Total or Partial Disability; and
 - e. standard nomenclature diagnosis.
2. You must give Us proof of loss no later than 90 days from the Date Of Loss.
3. If it is not possible to give Us proof within this time, You may give it as soon as reasonably possible, as long as We are not hurt by the delay. You may not give Us proof of loss later than 15 months after the Date Of Loss.
4. You must give Us proof of continued Total or Partial Disability and Regular Care and Treatment of a Physician within 30 days of Our request for the

proof.

F. TIMELY PAYMENT OF CLAIMS

We pay claims incurred while the policy is in force when We receive and validate due written proof of loss. We pay Benefits at the end of the month or lesser period for which We are liable. If any Benefit is unpaid when Your Total or Partial Disability ends, We pay that Benefit after We receive proof of that disability.

Stipulation of the Parties:

The County and the Union stipulated that the undersigned should consider the preliminary testimony of each witness from the hearing in Case 148 (Kretschman grievance), which occurred on November 13, 1995 as background in this case.

Facts:

Nancy Garde, the Grievant, has worked for Dane County since July 6, 1981. The first job that Garde had with Dane County was as an employe in the 911 Center. Thereafter, Garde worked in the Department of Administration as a Clerk Typist. In the position of Clerk Typist at DOA, Garde worked approximately half-time for the Director of the Department of Administration and half-time Typist for the Department of Employee Relations. Garde stated that as a DOA employe, she never performed any work for the Risk Management Department (which was then a part of DOA) and that she was not familiar with the work done by Risk Management at that time. In January, 1989, Garde began working at the Badger Prairie Health Care Center (BPHCC) as a Clerk Typist II. In approximately April, 1993, Garde began working as a Registered Nurse at BPHCC and worked in that capacity thereafter. It is undisputed that during the year 1993, Garde changed her FTE status five times, all in the space of one calendar year.

On November 26, 1991 the County sent a memo to "All Eligible Dane County Employees (at least 20 hours per week)" 1/ which read in relevant part as follows:

RE: SHORT TERM DISABILITY(STD)/LONG TERM
DISABILITY(LTD) INSURANCE (WAGE
CONTINUATION)

1/ Massachusetts Mutual was the salary continuation insurance carrier that covered County employes before UWG became the County's Carrier for that benefit. Massachusetts Mutual had the same requirement that employes must work at least 20 hours per week to be eligible for coverage.

Disability can strike at any time, leaving you without sufficient income to "make ends meet." Dane County will continue to offer its employees the option of enrolling in an insurance program that will provide wage continuation during periods of short-term and long-term disability. The disability insurance contract for 1992 was awarded to United Wisconsin Insurance Company (UWIC) also called United Wisconsin Group (UWG). The plan was recommended by the Employee Management Insurance Advisory Committee and approved by action of the Dane County Board of Supervisors on November 21, 1991.

The benefits are basically the same as last year except for caps in maximum benefits. The benefit for short-term disability is 65% of your wages up to a maximum of \$1,000 per week. The benefit for long-term disability is 65% of your wages up to a maximum of \$4,000 per month. Short-term disability benefits are paid for up to a year. If you continue to be disabled after one year, short-term disability benefits discontinue and the long-term disability benefits will begin.

Because the County has a new carrier, ALL eligible employees must complete an application. this is an open enrollment. Your application must be returned to your department's payroll clerk no later than DECEMBER 13, 1991.

YOU MUST RETURN THE DISABILITY APPLICATION TO CONTINUE DISABILITY COVERAGE (WAGE CONTINUATION) WITH DANE COUNTY.

All employee enrollment forms are due no later than 4:30 p.m. December 13, 1991.

Coverage will be effective January 1, 1992 at the following rates:

Short Term Disability \$.38/\$10 of covered payroll
Long Term Disability \$.40/\$100 of covered payroll

Dane County, as your employer, pays a part of this premium cost. As an employee, you may pay none, some, or all of the premium.

An attachment provides a simplified example to show you approximately what the total monthly premium will be.

The amount you pay is currently calculated on the percentage of sick leave you have earned and used. We will continue paying on the percentages that are currently in effect until any change is negotiated. The percentages are as follows:

PRIOR YEAR'S UNUSED SICK LEAVE % OF PREMIUM PAID BY EMPLOYEE

64 hours & greater	0%
56 - 63.9 hours	40%
48 - 55.9 hours	60%
40 - 47.9 hours	80%
39.9 hours or less	100%

These figures are all pro-rated for employees who work less than full time. Effective January 1, 1992, the insurance premium deduction procedure will be changed to take the deduction the month prior to the month of coverage (ie January deduction would be for February coverage). Therefore there will be two deductions in January; one on January 17th for January and the February deduction will be taken on January 31, 1992.

Please bear in mind that this is a starting point. The final employee share of premium will be determined through collective bargaining.

Please be advised that if you do not elect coverage during the enrollment period, you must complete a separate form and undergo medical underwriting to reapply at a later date. At that time, the insurance company may either accept or reject your coverage request. If you enroll now, medical underwriting will not be required.

If you have any questions, please contact any of the following people:

Tone Diedrich 266-4116	Patty McCarthy 266-4965
Trish Ward 266-1591	Barbara Wegner 266-4134

Garde stated at the instant hearing that she did not recall receiving a copy of the above-quoted memo. On December 13, 1991, Garde timely signed and submitted an application form to become covered by United Wisconsin Group Insurance (UWG) salary continuation insurance.

On May 7, 1993, the County's Risk Manager sent a memo 2/ to "All Eligible Employees (Employees working at least 20 hrs/week)" regarding "Disability Insurance Program Changes": which read in relevant part as follows:

. . .

Dane County is offering you new and improved Disability Insurance options from which you may choose. the new programs will be effective July 1, 1993. An application is attached and is due back to your payroll clerk no later than 4:00 p.m. Friday, May 21, 1993.

This is an OPEN ENROLLMENT. If you are enrolled in the current disability program, any change you make will become effective July 1, 1993. If you are not in the current plan, and wish to enroll, you may do so without undergoing medical underwriting. Current enrolles who do not wish to make a change do not have to complete a new application.

If you are not currently enrolled in the disability program, you will undergo a six month waiting period before your plan takes effect. That is, if you are not in the current program and enroll during this open enrollment period, your disability insurance plan will become effective 6 months after July 1, 1993 or on January 1, 1994.

Option 1A: Current Program

Dane County currently offers eligible employees a disability insurance plan which consists of a combination Short-Term Disability/Long-Term Disability (STD/LTD) plan. The rates are \$.38/\$10 of coverage for the STD and \$.40/\$100 of coverage for the LTD. The County is continuing this current plan as one option you may choose.

2/ The County proffered evidence from BPHCC employe Madding regarding the Center's method of distributing important County memos to employes like the November 26, 1991 and May 7, 1993 memos. Madding stated that important documents are stapled to employe paychecks; that employes must pick up their paychecks personally at the central switchboard at BPHCC, handed to them by the switchboard operator; that if memos must be distributed immediately, they are routed to supervisors for their distribution directly to employes; and that BPHCC also maintains stacks of less important information near the switchboard if employes wish to collect it.

Under this plan, the premium is determined by your salary. The amount you pay toward the premium is determined by prior year sick leave usage. If as a full-time employee you use less than 4 days of sick leave per year, your premium is paid in full by the County. (Note: Sick leave is pro-rated for part-time employees). If as a full-time employee you use more than 4 days of sick leave per year, your premium may be partially paid by the County or you may have to pay the premium in full with no County contribution. Again, sick leave is pro-rated for part-time employees.

Whenever the County pays all or part of your premium and you become disabled, your benefit check from United Wisconsin Group (UWG) will be taxed in full or in part depending upon the amount the County contributes. For example, if the County pays 100% of your premium, the total amount of the benefit will be taxed. If the County pays 40% of your premium, the benefit you receive will be taxed on a pro-rated basis or on 40% of the benefit total.

. . .

Option 1B - Long-Term Disability Insurance Only

The EMIAC also recommended adding another disability insurance plan. Along with the current STD/LTD plan, UWG has agreed to offer a Long-Term Disability only (LTD only) policy. Because short-term disability insurance coverage is more expensive, and because employees with accumulated sick leave time and/or personal savings may not need short-term coverage, this plan may be better for some employees.

This new option will have a 90 working day waiting period at a cost of \$.62 per \$100 of coverage. This compares to the STD/LTD cost of \$.38/\$10 (or \$3.80/\$100) for STD and \$.40/\$100 for LTD with a 30 working day elimination period for STD and a 365 working day elimination period for the LTD. (For new enrollees, there is still a 6 month eligibility period for any option you select. If you become disabled after the insurance is in force, you will then have a 90 working day elimination period to fulfill.)

Option 2B - Long-Term Disability Insurance Only Tax Free Benefit Plan with Health Employee Bonus

Another option is to elect the Long-Term Disability Insurance Only (as in 2A), but on a tax free benefit basis. You will pay 100% of the premium and get an offsetting Healthy Employee Bonus. NOTE that the bonus is based on the costs of the combined STD/LTD premium.

SUMMARY OF OPTIONS

You have a choice of the following options:

- 1A. STD/LTD status quo.
This is the current program. The County may pay part of your premium, depending on your prior year sick leave usage. Your benefit may be taxed, depending on the percentage of premium you pay versus the percentage the County pays. The STD plan has a 30 working day elimination period and the LTD plan has a 365 working day elimination period.
- 1B. STD/LTD Healthy Employee Bonus
With this option, you will pay for 100% of your premium, allowing you a tax free benefit. Whether or not you receive a bonus will depend on your prior year sick leave usage. This elimination periods are the same as in 1A.
- 2A. LTD Only - No healthy bonus
This is similar to option 1 above in that your benefit may or may not be taxed when you receive it. There are two major differences; 1) you will not have the STD plan, and 2) there is a 90 working day elimination period.
- 2B. LTD Only - Health Employee Bonus
This is similar to option 1B above in that you pay the entire premium and your benefit will not be taxed. The major coverage differences are the same as in 2A.
3. No disability insurance

I have attached an example of the pricing calculation (see Attachment A). If you have any questions regarding these options you may contact your Employee-Management Insurance Advisory representative or any of the following people:

Tone Diederich 266-4116 Barbara Wegner 266-4134
Trish Ward 266-1591 Patty McCarthy 266-4965

REMEMBER - Your application must be returned to your payroll clerk no later than 4:00 p.m. Friday, May 21, 1993.
APPLICATIONS WILL NOT BE ACCEPTED AFTER THE DEADLINE.

Garde stated that in early to mid-December, 1993 she talked to Anthony Diederich, County Payroll Supervisor at his office. Garde told Diederich that she was anticipating making a change in her work time at the County. (At this time, Garde was working .5 FTE or half-time). Garde stated that when she spoke to Diederich she had not decreased her FTE as yet from .5 to .2, and she asked Diederich what benefits would continue if she were to reduce her FTE. Garde stated that she specifically asked Diederich about "all" of her insurances.

Diederich responded that Garde would be eligible for everything that she had been previously eligible for, but on a prorated basis of 20 percent paid by the County and 80 percent of the premiums paid by her. 3/

According to Garde, as a result of her conversation with Diederich, she reduced her FTE from .5 to .2 by a letter to her supervisor dated December 19, 1993. Garde's change in her FTE status became effective at BPHCC January 1, 1994, pursuant to her December 19, 1993 written request. On January 27, 1994 Badger Prairie Health Care Center issued a memo to all BPHCC employes, including Nancy Garde, regarding EACH EMPLOYEE'S wage continuation insurance status. The memo that Garde received read as follows:

. . .

The new payroll deduction for wage insurance will be effective February 25, 1994. Your 1994 salary continuation insurance

3/ Garde stated at the instant hearing that she specifically asked Diederich about all of her insurances, including income continuation insurance, and that she received the above-described response. Diederich stated that he did not recall having any conversation with Garde in December, 1993, although he recalled having several conversations with Garde over the past several years. Diederich stated that he did not recall ever having any conversation with Garde in which she told him how much time she was working for the County. Diederich stated that he keeps no records of inquiries made by employes, as the County has approximately 2,000 employes and he often receives between 25 and 30 calls per day regarding payroll and other issues. Finally, Diederich stated that if Garde had made an appointment in advance to see him, that would have been reflected in his day book, and that no such entry was made in his day book for 1993.

premium will be allocated as follows:

Employee deduction	\$8.71
County contribution	\$5.81
Total premium	\$14.52

The premium for full-time employees are calculated on the following basis:

<u>Prior Year's Unused Sick Leave</u>	<u>Percentage of Premium Paid by Employee</u>
64 hours & up	0%
56 - 63.9	40%
48 - 55.9	60%
40 - 47.9	80%
Less than 39.9	100%

These figures are all prorated for employees that work less than full-time. 4/

...

Garde stated that she did not recall receiving the short term and long term disability benefits booklet from UWG, which was sent by UWG to County employees in June, 1992. After Garde reduced her FTE status to .2 as of January 1, 1994, the County continued to deduct \$8.71 from her pay to cover the employee portion of the salary continuation insurance premium. These deductions continued in error through April 22, 1994. However, the County reimbursed all deductions made to Garde on May 20, 1994, when the County discovered its error.

After Garde reduced her FTE to .2, she suffered an injury to her foot which was not related to work in March, 1994. Garde went to a medical doctor who placed her foot in a brace, and ordered her to perform only sedentary work for approximately three months. The County gave Garde an unofficial leave which was thereafter extended and in the meantime Garde was also given sedentary secretarial work in the office of BPHCC, from approximately March, 1994 to February, 1995.

Sometime in April, 1994, Garde spoke to Patty McCarthy, Assistant County Risk Manager. Garde simply requested an application to claim salary continuation benefits; Garde gave McCarthy no information regarding her FTE status or her injury and asked McCarthy no substantive questions. McCarthy gave Garde the application form she had requested. Garde

4/ Both Payroll Supervisor Diederich and BPHCC employe Rebecca Madding stated that the above-quoted memoranda were based upon information that was present in the County's files as of January 27, 1994. Diederich stated that it was often difficult to get FTE status change forms properly processed at the end of the calendar year, as all of the end of the year reports must be processed at that time and requests such as Garde's to go from a .5 FTE status to a .2 FTE status might be mislaid, lost, or delayed in processing. Diederich stated that obviously, the information on the memo which Garde received regarding her salary continuation benefit premiums and status was incorrect.

returned the application for salary continuation benefits to McCarthy by mid- to late April, 1994, because (she stated) she understood that there was a six-week waiting period before an employee could apply for this benefit. Garde stated she thought she had a few weeks before she needed to get the form filled out. Garde stated that she does not recall who gave her information about the necessary waiting period.

After Garde returned the completed application for salary continuation benefits, McCarthy phoned her and stated that Garde was ineligible because her status was .2 FTE. McCarthy told Garde that she did not submit the application to UWG on this basis. On December 6, 1994 Union Representative Judy Pearson submitted a grievance on Garde's behalf which stated in relevant part, as follows:

Grievant given erroneous information by personnel regarding wage continuation eligibility/status.

The grievance sought the following remedy:

Make grievant whole in every way including but not limited to restoring sick leave, vacation leave and holiday time unnecessarily used. Also reinstatement of wage continuation. 5/

Although Garde stated on direct examination that she did not believe she would have changed her FTE status had she known that she would thereby become ineligible for salary continuation benefits, Garde also stated on cross examination that she did not believe her physical condition would have allowed her to remain half-time after the March, 1994 injury to her foot.

Briefs:

Union:

The Union urged that the County must bear the responsibility to provide its employees with accurate information regarding the use of contractual benefits. Because Garde was given incorrect

5/ Garde stated that she never asked for a wage continuation insurance booklet after she failed to receive one in June, 1992; Garde stated that she never called the Risk Management Office to determine the possible implications of her decision to reduce her FTE from .5 to .2. Garde also admitted that she normally never reads insurance application forms or plan booklets until she needs to apply for benefits. However, Garde also stated that she never made any attempts to check her salary continuation benefit coverage after December, 1993. Garde stated that her first contact with Risk Management was in April, 1994 when she asked McCarthy for a salary continuation benefit claim form.

information by an agent of the County, which she relied upon to her detriment in deciding to decrease her FTE from .5 to .2., Garde was injured because she became ineligible for the salary continuation benefit, a benefit which she expected to cover her when she suffered a non-work injury in March, 1994. The Union noted that none of the County's witnesses disputed the basic facts testified to by Grievant Nancy Garde. In addition, the Union noted that Garde could not recall having received the UWG salary continuation benefit booklet, the County memorandum regarding salary continuation eligibility dated November 26, 1991, and the May 7, 1993 memo from the Risk Management Department regarding salary continuation benefits. The Union also observed that Garde stated, without contradiction, that she had no copies of these documents among her records.

Because Garde did not receive correct information from Payroll Supervisor Diederich, she had to use 192.2 hours of accrued leave time during the period from April 8, 1994 to February 10, 1995 while she was off work without salary continuation benefits. Garde took reasonable action to inquire regarding her benefits before she reduced her FTE, and relied to her detriment upon the inaccurate information given to her by Payroll Supervisor Diederich. Because Garde was therefore unable to use a contractual benefit for which she had paid, the Union urged the undersigned to find that the Employer should replenish the sick leave, holiday and vacation banks of Nancy Garde as part of a make whole remedy in this case.

County:

The County contended that the labor agreement was not violated in Garde's case because the County fully met its contractual responsibility by making a disability plan available. In this regard, the County noted that reported arbitration decisions related to disability benefits tend to focus only upon such issues as an employer's contribution to the cost of the benefit, an employer's failure to obtain coverage, an employer's attempt to discontinue coverage previously provided, retirees' entitlement to such benefits, or the proper value of the benefit. Thus, the County urged that not only does the contract fail to require the Employer to instruct employees regarding the availability of benefits, but the case law does not appear to make it a subject for arbitration.

Nonetheless, the County contended that accurate information about the salary continuation plan was either made available to Garde or provided to her. The County noted that although the Grievant could not recall receiving any information regarding the salary continuation plan, she timely signed an application to be covered by the plan in 1991. Furthermore, the County observed, Ms. Garde asked Mr. Diederich about her "insurances" making it unlikely that Diederich would have responded with a specific answer regarding salary continuation benefits. The County also pointed out that Diederich did not recall meeting with or talking to Garde regarding her insurances and that he did not recall that Garde ever told him that she was considering changing her FTE status from half-time to .2 working time.

The County also noted that it was highly unlikely that Garde had failed to receive three

separate pieces of information regarding salary continuation insurance benefits, and that Garde admitted at the instant hearing that she did not normally read insurance applications or booklets or other information regarding benefits until such time as she needed to apply for benefits. In these circumstances, the County urged that Garde had the means of gaining full knowledge regarding salary continuation benefits and her eligibility therefor, but that she did not attempt to acquire this knowledge. Therefore, the County asserted that Garde should be charged with full knowledge of what she would have known had she reasonably inquired.

Thus, the County asserted that the grievance should be denied and dismissed in its entirety.

Reply Briefs:

Union:

The Union argued that the grievance is certainly arbitrable under the language of the contract. As the insurance carrier was not at fault in administering the policy or giving Garde incorrect information, the County must be held responsible for the harm to Garde. The Union urged that the County had failed to prove that Garde actually received the County memos dated November 26, 1991 and May 7, 1993. The Union noted that one other bargaining unit member testified at the instant hearing that in 1992 she did not receive the UWG booklet regarding salary continuation benefits. Because Garde remembers the specific conversation she had with Diederich, the Union urged, her testimony should be credited over Diederich's.

The Union asserted that Garde could not have reasonably noticed a change in the premium for her salary continuation benefits because that premium was not only based on a proration amount but also on a formula of hours worked and sick leave used in the prior calendar year. Thus, the Union urged, had the Employer given Garde correct information regarding the impact of her FTE status on her salary continuation benefits, Garde would have been a half-time employe at the time of her non-work injury and she would therefore have received salary continuation benefits. In the Union's view, Garde's reasonable reliance upon incorrect information given to her by an agent of the County which resulted in harm to her, must be remedied by the County pursuant to the County's implied contractual obligation to give accurate information and full accessibility to all employes regarding negotiated benefits.

County:

The County urged that even if the undersigned were to find that the County had an implied duty to provide insurance information to employes, such duty should be limited to the provision of accurate and sufficient information about benefits at the time the employe decides whether or not to apply for such benefits, and that the ultimate responsibility for any detailed knowledge of the benefit plans should rest upon the employe. In the County's view, after approval of an application

for insurance, the employe should look to the insurance carrier for specific information regarding eligibility.

The County found it curious that Garde had received and retained the January, 1994 document from BPHCC indicating what her future salary continuation premiums would be based upon, yet she could recall receiving no other information relating to the plan. The County urged that it gave Ms. Garde two specific memos regarding salary continuation benefits; that Garde could have talked to staff at Risk Management at any time; and that she could have requested a plan booklet from UWG or the County. Thus, the County asserted that it was unreasonable for Garde to rely upon the information she asserted she received from Diederich in December, 1993, when many other better sources of information were available to her.

Finally, the County observed, even if the problem had been detected earlier regarding Garde's eligibility for salary continuation benefits, and even if she had reinstated her position to .5 FTE she would not have been eligible for salary continuation coverage in March, 1994, according to the plan documents. The fact that the County had deducted four months of premiums from her pay for salary continuation benefits did not affect Garde's options. In all of these circumstances, the County urged that the grievance should be denied and dismissed.

Discussion:

The Union's main argument in this case is that the County has an obligation to provide employees with accurate information regarding their contractual benefits. Neither the contract nor the UWG salary continuation plan contain language to support such a conclusion and no evidence of past practice was adduced to show that the County had voluntarily shouldered this responsibility. Absent express language in the contract or a document incorporated therein and absent an accepted practice on the subject, any obligation to provide on-going accurate benefits information should logically fall upon both the Union and the County as negotiators of the labor agreements affecting employees.

Both the effective labor agreement and the salary continuation benefit plan show that when Garde reduced her FTE from .5 to .2, she became ineligible for plan coverage. Thus, the County is not responsible for Garde's loss, despite the errors the County made, because Garde was not eligible for salary continuation benefits to begin with. It should be noted that if Garde had been eligible for coverage on the date of her injury (that is, if Garde had been a .5 FTE for more than six months prior to her injury), and if the County had failed, for example, to properly submit or process her original application for coverage, then the County would have been responsible for the harm that came to Garde. However, this hypothetical situation is distinctly different from the factual situation proven in this case.

In the instant case, assuming that Garde's testimony is credited in its entirety over Diederich's, the record facts do not prove a violation of the effective labor agreement, the salary

continuation insurance benefit plan or any relevant past practice. In this regard, I note that Garde's change of her FTE status from half-time to .2 working time caused her to become ineligible for salary continuation benefits as of January 1, 1994. The fact that Diederich and others may have given Garde incorrect information does not require a different conclusion.

Although it is disturbing that Garde was given incorrect information by Diederich regarding her benefits, that her FTE change was not promptly processed by the County, and that the County issued Garde a memo late in January, 1994, showing the prorated salary continuation insurance premiums which were in fact deducted from Garde's pay for several months after her FTE change, 6/ Garde's lack of diligence in pursuing and becoming informed about her benefits is equally upsetting. Garde's willingness to apply for a benefit she knew nothing about, her failure to request a copy of the benefit plan when she did not receive one, her failure to contact anyone other than Diederich about the effect of her FTE status on her "insurances," her admission that she did not attempt to check her salary continuation coverage from December, 1993 through mid-April, 1994, all show that Garde failed to act reasonably and with due diligence in regard to her salary continuation benefits. In addition, the record failed to support the Union's assertion that Garde would not have changed her FTE status as of January 1, 1994 had she known that she would thereby become ineligible for salary continuation benefits. In the circumstances of this case, Garde's reliance upon Diederich's statements in December, 1993, regarding Garde's insurance eligibility after changing her FTE status was not reasonable.

This case demonstrates that there are some injuries which are unforeseen by the contracting parties and for which the parties provided no contractual remedy. The facts of this case detail error upon error by the County as well as a lack of diligence on the part of the Grievant that would be hard to believe were the facts herein not generally undisputed. Unfortunately, the contract, plan documents and past practice provide no basis upon which to grant Ms. Garde the remedy she has requested. Therefore, based upon the relevant evidence and argument in this case, I issue the following

AWARD

The Employer did not violate Section 14.06 of the collective bargaining agreement. The grievance is therefore denied and dismissed in its entirety.

Dated at Oshkosh, Wisconsin this 6th day of May, 1996.

6/ The County's return of the partial premiums deducted in error from Garde's pay has fully corrected this error.

By Sharon A. Gallagher /s/
Sharon A. Gallagher, Arbitrator