BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between TEAMSTERS LOCAL UNION NO. 563 and TOWN OF GRAND CHUTE SANITARY DISTRICT	Daniel Nielsen, Arbitrator Case 16 No. 54711 MA-9768 Payroll Deductions

Appearances:

Previant, Goldberg, Uelman, Gratz, Miller & Brueggeman, S.C., 1555 North Rivercenter Drive, Post Office Box 12993, Milwaukee, WI 53212, by Mr. Frederick C. Miner, Attorney at Law, appearing on behalf of the Union.

Herrling, Clark, Hartheim & Siddall, 800 North Lyndale Drive, Appleton, WI 54914, by Mr. Roger Clark, Attorney at Law appearing on behalf of the Employer.

ARBITRATION AWARD

Pursuant to the provisions of their collective bargaining agreement, Teamsters, Chauffeurs and Helpers Union No. 563 (hereinafter referred to as the Union) and the Town of Grand Chute Sanitary District No. 1 and No. 2 (hereinafter referred to as either the Employer or the Town) requested that the Wisconsin Employment Relations Commission designate a member of its staff to serve as arbitrator of a dispute over payroll deductions for insurance premiums. The Commission designated Daniel Nielsen. A hearing was held on April 7, 1997 at the District's offices in Appleton, Wisconsin, at which time the parties were afforded full opportunity to present such testimony, exhibits, other evidence and arguments as were relevant to the dispute. The parties submitted post-hearing briefs, and reserved the right to submit reply briefs. The Union submitted a reply brief on May 31, 1997, whereupon the record was closed. The parties requested that the arbitrator issue an expedited Award, consisting of a statement of the issue, a very brief statement of the background, and several paragraphs explaining the essential reasoning for the result, within a period of thirty days from the close of the record.

Now, having considered the evidence, the arguments of the parties, the relevant contract language, and the record as a whole, the arbitrator makes the following Award.

I. Issue

The parties stipulated that the following issue should be determined herein:

1. Did the Employer violate the collective bargaining agreement when it made deductions from employee wages for the purpose of paying heath and welfare premiums? If so,

2. What is the appropriate remedy?

II. Pertinent Contract Language

1993 - 1995 COLLECTIVE BARGAINING AGREEMENT

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ARTICLE 14 - GRIEVANCE PROCEDURE

Section A. - Grievances shall be processed as follows:

1. The grievance shall be presented to and discussed with the employee's immediate supervisor, by the employee and Steward, if requested.

2. If not settled satisfactorily within ten (10) days of Step 1, the grievance shall be reduced to writing and referred to the Management designee. The Management designee will note his statement or solution in writing and return it to the Union. If the grievance is not resolved, it may be taken to Step 3 provided it is done within ten (10) work days from the date the written statement is received by the Union.

3. The grievance will be referred to the General Manager of the Employer and the Business Representative of the Union.

If not settled satisfactorily in this discussion, either party may notify the other within ten (10) days (including Sundays and Holidays) after a deadlock in Step 3 of their desire to arbitrate.

4. Any grievance must be presented within ten (10) calendar days of its occurrence or discovery or it shall not he subject to the

grievance procedure herein before set forth.

5. A grievance is defined to be any matter involving an alleged violation of this Agreement by the Employer as a result of which the aggrieved employee or Local Union maintains that his or its rights or privileges have been violated by reason of the Employer's interpretation or application of the provisions of this Agreement.

Section B. - Arbitration

1. Any grievance relative to the interpretation or application of this Agreement, which cannot be adjusted by conciliation between the parties, may be referred by either party hereto, within ten (10) days to the Wisconsin Employment Relations Commission for the appointment of an arbitrator from its staff.

2. The arbitrator shall conduct hearings and receive testimony relating to the grievance and shall submit his findings and decisions. The decision of the arbitrator shall be final and binding on the Employer, the Union and the employee.

3. The expense of the Arbitrator shall be divided equally between the parties to this Agreement. The losing party shall pay the WERC filing fee.

4. It is understood that the Arbitrator shall not have the authority to change, alter or modify any of the terms or provisions of this Agreement.

5. Any time limitations in this Article may be extended by mutual agreement.

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ARTICLE 20 - HEALTH AND WELFARE

Effective November 3, 1993, the Employer shall contribute to the Central States, Southeast and Southwest Areas Health and Welfare Fund the sum of One Hundred Twenty-Two Dollars and Seventy Cents ($122.70) per week for each employee covered by this Agreement who has been on the payroll sixty (60) days or more. Effective November 3, 1994, the Employer shall contribute to the Central States, Southeast and Southwest Areas Health and Welfare Fund the sum of One Hundred Thirty-Four Dollars and Seventy

Cents ($134.70) per week for each employee covered by this agreement who has then been on the payroll sixty (60) days or more.

By execution of this Agreement, the Employer binds himself and becomes party to the Trust Agreement establishing the Central States, Southeast and Southwest Areas Health and Welfare Fund and authorizes the Employer parties thereto to designate the Employer Trustees as provided under such Agreement, thereby waiving all notice thereof and ratifying all actions already taken or to be taken by such Trustees within the scope of their authority.

A. The Employer shall pay the weekly billing for the aforementioned insurance benefits on the employee for the month billed if the employee performs any work.

B. If an employee is absent because of illness or off-the-job injury, the Employer shall pay the weekly billing for the aforementioned insurance benefits for the first full week following the week in which the employee last worked.

C. If an employee is injured on the job, the employer shall continue to pay the weekly billing for the aforementioned insurance benefits for up to twelve (12) months following the month in which the employee last worked.

D. The Employer and the Union agree that any second year increase in health and welfare rates will not exceed eight dollars ($8.00) per week.

. . .

F. It is acknowledged by the parties that the Employer may have an opportunity to receive comparable health insurance for its employees from a different insurance carrier during the term of this agreement. Should comparable insurance become available to Employer, Employer will provide a representative to present the facts pertaining to such insurance coverage to the employees. Upon the mutual agreement of the parties, insurance carriers may be changed during the term of this agreement, provided comparable health insurance is provided, and at a reduced cost to Employer.

. . .

ARTICLE 31 - TERMINATION

This Agreement shall be in full force and effect from November 3, 1993 to and including November 2, 1995 and shall continue from year to year thereafter unless written notice of desire to cancel or terminate the Agreement is served by either party upon the other at least ninety (90) days prior to the date of expiration.

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FOR THE EMPLOYER
3 - 22 - 94

FOR THE UNION:

TOWN OF GRAND CHUTE

GENERAL DRIVERS AND DAIRY EMPLOYEES LOCAL NO. 563

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1995 - 1997 COLLECTIVE BARGAINING AGREEMENT

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ARTICLE 20 - HEALTH AND WELFARE

Effective this agreement, the Town will provide HMO health and dental insurance and pay the full cost of the monthly premiums for such coverage for all covered employees who has (sic) been on the payroll for sixty (60) days or longer under this contract.

The Town may from time to time change the insurance carrier or method of funding for health and dental coverage if it elects to do so, provided the plan(s) provide(s) coverage that is equivalent to the aggregate or better than the plans then in existence for employees in the bargaining unit. The Union will be given at least thirty (30) days advance notice of any such change in carriers. It is understood that any change in carriers or method of funding will not result in an increase of any employee-paid fees during the term of this agreement.

The employer shall provide both long and short-term disability insurance and life insurance during the term of this agreement.

Short term disability insurance shall provide coverage in the amount of $250.00 per week and life insurance in the amount of $20,000.00

per covered employee.

A. The Employer shall pay the monthly billing for the aforementioned insurance benefits on the employee for the month billed if the employee performs any work.

B. If an employee is absent because of illness or off-the-job injury, the Employer shall pay the weekly billing for the aforementioned insurance benefits provided accumulated sick leave or unused vacation is available. After all paid time is exhausted, see Article 10 - Leave of Absence.

C. If an employee is injured on the job, the employer shall continue to pay the monthly insurance benefits for up to twelve (12) months following the month in which the employee last worked.

. . .

ARTICLE 31 - TERMINATION

This Agreement shall be in full force and effect from November 3, 1995 to and including December 31, 1997 and shall continue from year to year thereafter unless written notice of desire to cancel or terminate the Agreement is served by either party upon the other at least ninety (90) days prior to the date of expiration.

. . .

FOR THE EMPLOYER FOR THE UNION:

TOWN OF GRAND CHUTE GENERAL DRIVERS AND
SANITARY DISTRICT #1 & 2 DAIRY EMPLOYEES UNION
LOCAL NO. 563

. . .

DATE: 9-18-96

III. Trust Fund Participation Agreement

THIS AGREEMENT, made and entered into this ____ day of ___ ___ by and between the Employer and the Union signatory hereto by their duly authorized representatives.

WITNESSETH

WHEREAS, the Union and the Employer have entered into a collective bargaining agreement which provides for participation in the CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION AND/OR HEALTH AND WELFARE FUND in order to obtain retirement and/or health benefits for Employees represented by the Union and employed by the Employer.

NOW, THEREFORE, for an in consideration of the promises and mutual covenants herein contained and subject to the written acceptance of the parties as participants by said Trust Fund(s), the Union and the Employer hereby agree as follows:

1. The Union and the Employer agree to be bound by, and hereby assent to, all of the terms of the Trust Agreement creating said CENTRAL STATES SOUTHEAST AND SOUTHWEST AREA PENSION AND/OR HEALTH AND WELFARE FUND, as amended, all of the rules and regulations heretofore adopted by the Trustees of said Trust Fund(s) pursuant to said Trust Agreement(s), and all of the actions of the Trustees in administering such Trust Fund(s) in accordance with the Trust Agreement and rules adopted.

4(b). In accordance with the collective bargaining agreement, the effective date of participation in the health and welfare fund is

. . .

5(b). The Employer shall contribute to the CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS HEALTH AND WELFARE FUND the following amounts per week for its bargaining unit Employees pursuant to the terms of the collective bargaining agreement, and only for such employees:

Effective Date: 11/3/93……Amount: $122.70 per week
Effective Date: 11/3/94……Amount: $134.70 per week
Effective Date: 11/3/95-11/2/96…….Amount: $149.70 per week

5(c) If the Employer signs and enters into a new collective bargaining agreement with the Union, or modifies such current collective bargaining agreement, the Employer must notify the Trust Fund(s) of such contractual change, and further agrees that no applicable Statute of Limitations shall begin to run until such notice

of contract change has been received by the Fund(s).

. . .

7. This Agreement shall continue in full force and effect until such time as the Employer notifies the Fund(s) by certified mail (with a copy to the Local union) that the Employer is no longer under a legal duty to make contributions to the Fund(s). The Employer shall set forth in the required written notice to the Fund(s) the specific basis upon which the Employer is relying in terminating its obligation to make contributions to the Fund(s). The Employer expressly agrees and hereby acknowledges by the signing of this Agreement that its obligation to make contributions to the Fund(s) shall continue until the above-mentioned written notice is received by the Fund(s) and the Trustees acknowledge the Employer's termination in writing.

. . .

9. On or before the fifteenth (15th) day of the month after the prepared date of a bill, the Employer must report to the Fund(s) any changes in the status of Employees that are applicable to the period billed. Failure of an Employer to file a written report, on a form provided by the Fund(s) within said period constitutes automatic acceptance of and liability for the amounts due on the Employees listed. After said period has expired, an Employer will not be able to receive credit for any changes of employee status, regardless of actual terminations, leaves of absence, sick leaves, layoffs or other changes. No Statute of Limitations made applicable as a result of any change in Employee status shall begin to run until said report of such change has been delivered to the Funds.

. . .

12. This Agreement and any interpretation thereof will be governed according to the law of the State of Illinois.

. . .

IN WITNESS WHEREOF said Employer and Union have caused this instrument to be executed by their duly authorized representatives, the day and year first above written.

. . .

Town of Grand Chute
by /s/ Don Novak

Local Union No. 563
by /s/ James R. Peterson

IV. Background Facts

The facts are largely undisputed. The Town operates a Sanitary District. The Union and the Town have been parties to a series of collective bargaining agreements setting forth the wages, hours and working conditions of the Sanitary District's non-exempt employees. The Union gave notice to open the 1993-95 contract for negotiations over a successor agreement in July of 1995. The parties met, exchanged proposals, and negotiated without reaching a new agreement by the time the contract expired on November 2, 1995.

The 1993-95 contract provided health insurance benefits, with the Employer paying $134.70 per week to the Teamsters' Central States Health and Welfare Fund ("Central States"):

> Effective November 3, 1993, the Employer shall contribute to the Central States, Southeast and Southwest Areas Health and Welfare Fund the sum of One Hundred Twenty-Two Dollars and Seventy Cents ($122.70) per week for each employee covered by this Agreement who has been on the payroll sixty (60) days or more. Effective November 3, 1994, the Employer shall contribute to the Central States, Southeast and Southwest Areas Health and Welfare Fund the sum of One Hundred Thirty-Four Dollars and Seventy Cents ($134.70) per week for each employee covered by this agreement who has then been on the payroll sixty (60) days or more.

Among the employer's proposals for the new contract was a change in insurance providing for a ten percent employee contribution to premiums, and the right for the Town to change insurers from the Central States to another carrier. As of November 5, 1995, after the contract expired, Central States notified the Town that it was increasing the premiums to $149.70 per week. This was the amount specified in an undated participation agreement with Central States that had been executed by Union Secretary-Treasurer James R. Peterson and Town Administrator Don Novak.

The Town initially refused to pay any amount in excess of $134.70 per week, citing the expiration of the agreement and the resulting hiatus. Central States continued to bill $149.70 per week, and threatened to sue the Town for its arrearage citing the participation agreement. Central States also raised the possibility of reducing employee benefits if the full contribution was not made. On March 21, 1996, Town Administrator Don Novak wrote to Central States, telling them that the Town would not pay more than the $134.70 specified in the expired agreement. As for the participation agreement, Novak wrote:

> If I erred in signing a document which provided for payments beyond the terms of our contract, so be it. I clearly was not authorized to make this commitment.

The Town wrote to the local Union, asking whether it wished to pay the increased amount or to have the difference deducted from employee paychecks. The Union responded that the Town was obligated to maintain benefits during the hiatus, and that this included paying the full amount of the insurance. The Union also took the position that any unauthorized deduction from employee paychecks would violate Chapter 109 of Wisconsin Statutes, governing wage claims.

In June, the Town determined that it would pay the arrearage and make $15 per week deductions from employee paychecks to cover the increased cost of coverage and ultimately repay the Town for the arrearage payment. This grievance was filed on June 20th, protesting the deductions.

Negotiations continued over the successor labor agreement, with the arrearage and payroll deduction issues added to the substantive proposals on health insurance. On August 5, 1996, the Town made a comprehensive final proposal on insurance, which was described in a letter from Sanitary District President Michael Marsden to Peterson and Sprague:

> Ref: Final Proposal for Labor Agreement Commencing November 3, 1995
>
> . . .
>
> The Grand Chute Sanitary District proposes the following changes to the Labor Agreement:
>
> * Health Insurance will be with Network Health
> - Network will cover a hearing exam with a $10 co-pay. Hearing aid coverage is being looked at
> * Dental, Life, AD&D, Short & Long Term Disability will be with Standard Insurance Co.
> - Short Term Disability will increase to $250 per wk per covered employee.
> - Long Term Disability is an add on to the contract and is already in effect.
> - Life Insurance is $20.000.
>
> * Vision Coverage will be self funded for glasses or contacts. The Sanitary District will reimburse each covered individual (employee or family member otherwise covered by health insurance benefits) for the

> cost of prescription glasses/contact lenses up to $100 per two (2) year period. To receive such reimbursement a copy of the paid receipt shall be submitted to the employer. Exams are covered through Network plan with a $10 co-pay.
>
> All insurance coverage will go into effect the beginning of the month following the signing of the contract, except for Long Term Disability, which is already in effect.
>
> Payroll deduction for the arrearage for Central States Health and Welfare will continue until paid in full. It is imperative that this issue be settled with this contract.
>
> These changes and other language changes have been highlighted in bold text within the contract document for review. Should you have any questions concerning any of these changes, please contact either Sally or me.

Peterson and Marsden discussed the proposal, and Peterson sent a letter to Marsden on August 22nd noting that the Town's final proposal misstated the understanding on arrearages:

> RE: Our telephone conversation August 21, 1996
>
> Dear Mr. Marsden,
>
> This letter is to confirm our phone conversation August 21, 1996 regarding a statement contained in the Town's final proposal for a new Labor Agreement. It was agreed that the issue of the arrearage for the Central States Health and Welfare would be resolved either by arbitration or the courts. That portion of the proposal was deleted.

With that change, a tentative agreement was reached and the contract was signed on September 18th. Health insurance coverage was switched to the HMO as of October, 1996. The $15.00 per week deduction continued, however, in order to pay off the arrearage.

V. The Positions of the Parties

A. The Position of the Union

The Union argues that the Employer violated the contract by failing to pay the full cost of the Central States coverage. While the contract does not specify the premium amounts due after

November 3, 1995, it does contemplate a second year increase of up to $8.00 per week. Moreover, the Town agreed, through the participation agreement executed by its Administrator, to a weekly contribution of $149.70 as of November 3, 1995. This agreement did not expire with the collective bargaining agreement. It remained in effect, filling the silence of the labor contract on the key issue of premiums after November 2, 1995 and extending the health insurance provisions of that contract. If, as the Employer argues, the participation agreement did not control premium amounts, it would not have specified such premium amounts. They would have been meaningless. Yet both parties signed the participation agreement, clearly accepting the amounts specified therein. Thus, through September 18, 1996, the date on which the successor agreement was signed and the insurance benefits were changed, the Town was committed to pay $149.70 per week for each employee.

Nothing in the contract suggests, much less authorizes, the deduction of any amounts from employee checks for insurance coverage. As Sprague testified at the arbitration hearing, where employee contributions are required, the contract clearly specified that obligation. There is no such language in this contract. The arbitrator must instead be guided by the law in interpreting this agreement. Chapter 109 of the Wisconsin Statutes contains an absolute prohibition on payroll deductions which are not authorized by a labor agreement. For all of these reasons, the Union asks that the affected employees be made whole for all amounts illegally deducted from their pay.

B. The Position of the Employer

The Employer takes the position that the arbitrator lacks jurisdiction over this grievance. This grievance was filed during a contract hiatus, a period of time during which, by law, there is no right to grievance arbitration. Arbitration is a creature of contract, and there is no contract during the hiatus. Even though the deductions have continued during the new contract, the obligations being paid were incurred during the hiatus and the method of payment was established during the hiatus. The Union may not reach back and bootstrap jurisdiction by waiting until after signing the contract to advance the grievance to arbitration. Nor does the Town waive its rights by processing the grievance, since the grievance procedure itself remains in effect during a contract hiatus and the Town is obligated to continue processing grievances. The Union is in the wrong forum with its complaint, which is more appropriately determined by the courts or a state administrative agency.

Turning to the merits, the Town asserts that there is no provision of the collective bargaining agreement nor any principle of applicable law which obligates it to pay more for fringe benefits during the contract hiatus than it had under the expired agreement. The 1993-95 contract specified a dollar amount which the Town was to pay on a weekly basis for health insurance. The Town continued to make that payment after expiration. Thus the status quo ante was maintained during the hiatus. The participation agreement cited by the Union expressly limits the Employer's obligations to those imposed by the collective bargaining agreement, and since the contract was expired, it has no effect whatsoever on this case.

The Union's complaint that the payroll deductions themselves were improper is without merit. It was the Union that created the problem by refusing to agree to either reduced benefits or employee payments. The Town was legally obliged to maintain the level of benefits provided under the expired agreement. The Town was also obliged to pay a set amount and no more. There was no reasonable alternative to payroll deductions if both of these obligations were to be met. For all of these reasons, the arbitrator must conclude either that he lacks jurisdiction, or that there was no contract violation. In either case, he should dismiss the grievance.

C. The Union's Reply Brief

The Union dismisses the Town's argument that the arbitrator lacks jurisdiction. There is a presumption in favor of arbitrability, and this presumption can only be overcome by clear and convincing evidence that the matter was expressly excluded from the scope of the arbitration clause. The instant dispute plainly falls within the broad definition of a grievance under this contract. Moreover, the 1995-97 agreement was made retroactive to November 3, 1995 and thus encompasses the events giving rise to this grievance. Even if there was an issue of arbitrability over the deductions made before the new agreement was signed, the deductions continued thereafter, and thus constitute a continuing violation.

The Employer's claim that employees were somehow obligated to pay a portion of the increased insurance cost has no basis in the contract. Nothing in the agreement makes reference to employee payments of premiums. The only entity identified as having a duty to pay premiums in the 1993-95 labor contract, the participation agreement and/or the 1995-97 labor contract is the employer. The two contracts are bridged by the participation agreement, and nothing within or outside of these documents authorizes the payroll deductions made here.

VI. Discussion

This case presents three issues for resolution. The threshold issue is whether the arbitrator has jurisdiction over the matter or whether, instead, it is substantively inarbitrable. If the dispute is arbitrable, the issue becomes whether the Employer was obligated to bear the increased cost of health insurance in the hiatus between the 1993-95 and 1995-97 collective bargaining agreements, or if the increase was instead the responsibility of the employees. Finally, even if the employees had an obligation to contribute to the insurance, the Union questions whether the Employer may properly make deductions from employee paychecks to collect that contribution. Each of these issues is addressed in turn.

A. Arbitrability

Granting the Employer's point that arbitration is not available during the contract hiatus, the arbitrator finds that the issues raised by this grievance are properly before him. The settlement of the 1995-97 contract included an agreement to settle the dispute over payroll deductions through either court action or arbitration. The tentative agreement did not specify a means for electing between the two forums, and prior to the submission of briefs the Town raised no objection to the choice of arbitration. Further, there is no evidence that the Town has sought to resolve the dispute in the courts. Given that the tentative agreement is ambiguous, but at least contemplates proceeding to arbitration, and that the Town through its actions up to the filing of briefs gave every indication that it intended to arbitrate the dispute, the tentative agreement may reasonably be interpreted to confer jurisdiction on the arbitrator. Thus that portion of the dispute which arose prior to the signing of the new contract is at least arguably before the arbitrator via agreement of the parties. As to the deductions made after the new contract was signed, the propriety of these deductions is clearly before the arbitrator. This is a continuing dispute, and each new deduction gives rise to a new cause of action. While there are limits on the doctrine of continuing violations, they do not apply in this fact situation. The Union promptly made its objections known, and proceeded to arbitration within a reasonable period of time after the dispute arose.

B. Merits - The Substantive Obligation to Pay

The 1993-95 collective bargaining agreement required the Employer to pay set dollar amounts each week for each employee's health insurance benefits. Effective November 3, 1993, that amount was $122.70, which equaled the full cost of the insurance. Effective November 3, 1994, the amount increased to $134.70, again a figure representing the full cost of the insurance. The contract expired on November 2, 1995 and the contract makes no mention of the contribution amount past that point. 1/

On the face of the 1993-95 contract, the limit of the Employer's obligation is to pay $134.70 for insurance. The contract involves two parties, both of whom agree to purchase a benefit, but neither of whom controls the purchase price. Thus the language used to define contributions apportions the risk of a price increase between the parties. Where a labor contract commits an Employer to purchase a benefit for employees, and also uses dollar amounts rather than percentages or words such as "full" to define what the Employer will pay, the usual implication is that amounts in excess of the specified amount are the obligation of the employee. 2/

1/ The Union asserts that §D of Article 20 does in fact contemplate an increased payment after November 2, 1995: "The Employer and the Union agree that any second year increase in health and welfare rates will not exceed eight dollars ($8.00) per week." The reference to the second year of a two year contract cannot logically be interpreted as applying to the year after expiration, which would in effect be year three.

2/ The arbitrator notes that the parties made use of the word "full" in describing the employer's obligation to pay the cost of the HMO coverage in the 1995-97 collective

The Union argues that the participation agreement signed by Novak and Peterson operated to extend the contractual agreement beyond the expiration date, and to increase the Employer's obligation to $149.70. This is not a plausible argument. The participation agreement sets out the rights and obligations of the Town and the Union vis-a-vis the Central States Fund. It binds the Town to abide by the rules of the Fund and to serve as the payment agent for the premiums specified therein. Clearly the Town, as the payment agent, was obligated to forward the higher premiums after November of 1995. Had the Town persisted in its refusal to pay the higher rates and thereby caused a cancellation or reduction of the coverage, an argument could be made out that the violation of the participation agreement also constituted a violation of the collective bargaining agreement, in that it would have denied the employees the bargained-for benefit. However, the participation agreement does not purport to regulate the financial arrangements between the Employer and the bargaining unit for the internal apportionment of increased premium costs. The logic of the Union's argument is that the Town was violating the participation agreement by making these deductions. Yet from the

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bargaining agreement.

Fund's perspective, the Employer was in compliance with the participation agreement after it made the payroll deductions, and was out of compliance when it was not making the deductions. In short, the Fund does not concern itself with the actual root source of the premium payments, so long as the Employer passes the full amount along when payment is due.

There is no contractual basis for the Union's theory that the Employer was obligated to pay more than $134.70 per week for insurance coverage after the 1993-95 contract expired. The contract's express terms contradict that assertion, and the participation agreement does not bear on the question of how insurance costs are to be apportioned when they increase beyond the negotiated limits of the Employer's contribution.

C. Merits - The Propriety of Making Deductions

Even though the Employer had the right to assess the excess cost of the insurance premium against the employees, the Union contends that it violated the contract by making payroll deductions to achieve that end. The contract clearly contemplates the possibility of employee contributions to health insurance costs, both in the provision setting Employer contributions at a specific dollar amount, and in the provision capping second year cost increases at $8.00. 3/ Since as noted above the parties cannot control the cost of the benefit, these provisions must logically be read as opening the door to an employee contribution. Section A of Article 20 requires that it be the Employer that makes the payments on the weekly billing, echoing the participation agreement. If the Employer is obligated to pay these amounts as they are invoiced from the Fund, the parties must also have contemplated some effective mechanism for collecting the employees' share of the cost. Granting that there is nothing in the contract specifically authorizing the use of payroll deductions to collect the employee contribution, the only alternatives to deduction would be voluntary payments or withholding benefits for employees who had not paid their share. The latter would clearly conflict with the Employer's obligation to make the payments "if the employee performs any work." The former is not an absolutely impossible interpretation, but it would be a unique arrangement in the employment setting, and the difficulties of enforcing the payments and administering such a system make it quite unlikely that the parties ever intended to hinge insurance benefits to voluntary employee contributions.

While the question of the method of paying the employee's share of the insurance is not as clear-cut as the underlying obligation to make the payment, on balance the contract may reasonably

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3/ Presumably this provision was negotiated before the participation agreement was signed, as a hedge against larger than expected increases from the Fund.

be read to allow payroll deductions for this purpose. The parties have negotiated a system which clearly contemplates the possibility of an employee contribution to the premium,

while obligating the Employer to act as the payment agent for the full amount of the Fund's invoice. The implication is that the parties also intended that the employer have an effective means of collecting the employee share. 4/

On the basis of the foregoing, and the record as a whole, I have made the following

AWARD

1. The grievance is substantively arbitrable.

2. The Employer did not violate the collective bargaining agreement when it made deductions from employee wages for the purpose of paying heath and welfare premiums.

3. The grievance is denied.

Dated at Racine, Wisconsin this 2nd day of July, 1997.

By Daniel J. Nielsen /s/
Daniel J. Nielsen, Arbitrator

4/ The Union asserts that the deductions violate Wisconsin's wage claim law. I have concluded that the collective bargaining agreement implicitly authorized the deductions. The Union still has the option of pursuing its statutory argument in another forum, but the Union itself concedes that the law provides an exception for deduction authorized by a collective bargaining agreement.