BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

NORTHWEST UNITED EDUCATORS

and

UNITY SCHOOL DISTRICT

Case 28
No. 54993
MA-9858

Appearances:
Mr. Kenneth J. Berg, Executive Director, for Northwest United Educators.
Mr. Richard J. Ricci, Attorney, for the District.

ARBITRATION AWARD

Under the terms of their contract, the parties asked the Wisconsin Employment Relations Commission to assign a member of its staff to act as arbitrator over an insurance grievance. I was assigned to the case.

Hearing was held in Balsam Lake, Wisconsin, on May 14, 1997. No transcript was made of the hearing and the parties filed briefs, the last of which was received June 25, 1997.

ISSUE

The parties agreed that the issue I am to decide is:

> Did the District violate the collective bargaining agreement by denying health insurance benefits to an employe who is regularly scheduled for less than 20 hours per week? If so, what is the remedy?

CONTRACT LANGUAGE

ARTICLE XVII - INSURANCE

> The District agrees to pay toward health plan coverage for employees pursuant to the following schedule:

A. Twelve-month full-time employees: Twelve-month full-time employees receiving health insurance shall pay $25.00 per month toward the family premium and $10 per month toward the single premium. The level of benefits for 1996-98 shall remain the same as in effect during the 1987-88 school year.

B. All other eligible employees working twenty or more hours per week may elect to participate in the family or single plan coverage with the Board contributing on a pro rata basis equal to the ratio of hours worked by the employee in the previous year to 1600 hours except that employees in their first year with the District, working twenty (20) or more hours per week, may elect to participate in the family or single health plan coverage at the completion of their probationary period with the Board contributing on a pro rata basis equal to the number of hours worked by employes versus the number of hours a twelve (12) month full-time employee could have been compensated in the probationary period.

DISCUSSION

The parties' dispute boils down to the question of whether health insurance eligibility is determined by: (1) the number of hours an employe is working during the school year in which coverage is requested, or (2) the average number of hours the employe worked during the school year prior to the year coverage is requested.

Each party correctly notes that for the contract language to clearly reflect the meaning the opponent would give it, words need to be added to the contract. NUE cites the absence of the word "scheduled" from the disputed contract language when attacking the District's position. The District counters by noting that the words "averaging" and "previous year" are not found in the first line of Article XVII (B). While both parties are correct that the language is not a model of clarity, I find the language nonetheless provides an adequate basis for determining the parties' intent as to insurance eligibility.

In my view, the difference in meaning between "working" and "worked" resolves this case. "Working" refers to the present; "worked" refers to the past. Article XVII (B) uses the word "working" when it speaks to the issue of eligibility. Thus, employes working twenty or more hours at the time they seek health coverage are eligible for coverage under Article XVII (B). The hours they worked in the prior year are not relevant to their eligibility. Because "working" is a present time concept, the average number of hours worked (which requires a look to the past) is also irrelevant to eligibility. Again, it is how much the employe is working when they seek the benefit which is determinative.

How should the amount an employe is presently working be measured? It can be argued that the number of hours the employe actually works the week of the request for coverage is the answer. However, such an approach would have eligibility turn on the happenstance of whether

an employe performed extra assignments that week or became ill and missed work. It seems highly unlikely the parties would intend such arbitrary results. Instead, the employe's regularly scheduled weekly hours at the time the benefit is sought is a much more rational, and thus more likely, intention as to how hours will be measured.

Given the foregoing, I am satisfied that an employe who is regularly scheduled for less than 20 hours per week at the time the benefit is sought is not eligible for health insurance coverage under Article XVII (B).

Dated at Madison, Wisconsin this 22nd day of September, 1997.

Peter G. Davis /s/
Peter G. Davis, Arbitrator

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