BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

ALMOND AREA EDUCATION ASSOCIATION

and

ALMOND-BANCROFT SCHOOL DISTRICT

Case 8
No. 54691
MA-9762

Appearances:
Mr. David W. Hanneman, Executive Director, Central Wisconsin UniServ Council-South, P. O. Box 158, Mosinee, Wisconsin 54455-0158, appearing for the Almond Area Education Association.

Ruder, Ware & Michler, Attorneys at Law, by **Mr. Jeffrey T. Jones**, 500 Third Street, P. O. Box 8050, Wausau, Wisconsin 54402-8050, appearing for the Almond-Bancroft School District.

ARBITRATION AWARD

The Almond Area Education Association, herein the Association, requested the Wisconsin Employment Relations Commission to designate a member of its staff as an arbitrator to hear and to decide a dispute between the parties. The Almond-Bancroft School District, herein the District, concurred with said request and the undersigned was designated as the arbitrator. Hearing was held in Almond, Wisconsin, on March 24, 1997. A stenographic transcript was made of the hearing, a copy of which was received on April 2, 1997. The parties completed the filing of post-hearing briefs on June 4, 1997.

ISSUE

The parties were not able to stipulate to the issue and agreed that the arbitrator should frame the issue.

The Union stated the issue as follows:

> Was the 1995-97 Agreement between the Almond-Bancroft School District and the Almond Area Education Association violated when the grievants (Karen Kehring, Donna Sutliff and Annette Nehls) were not allowed to enroll in family dental insurance when the carrier for dental insurance changed on October 1, 1996, from Sun Life Assurance Company of Canada to the WEA Insurance Group? If so, what shall be the remedy?

The District stated the issue as follows:

> Whether the District violated the terms of the collective bargaining agreement by permitting only one spouse of a married couple employed by the District to enroll (as a policyholder) in the family dental insurance plan? If so, what is the appropriate remedy?

The undersigned believes the following to be an accurate statement of the issue:

> Did the District violate the collective bargaining agreement by not allowing the grievants to enroll in the family dental insurance plan? If so, what is the appropriate remedy?

BACKGROUND

For at least the period of time commencing with the 1986-87 school year to date, the District has been obligated by the collective bargaining agreements, herein contracts, between it and the Association to provide a dental insurance policy for employes covered by the contracts. From the 1987-88 school year through the 1995-96 school year, the dental insurance policy was provided by the Sun Life Assurance Company of Canada, herein Sun Life. Apparently, under the terms of the Sun Life dental plan, when both spouses worked for the District, the couple was not permitted to have two separate family dental insurance plans. Rather, one spouse was listed as the policyholder and the other spouse was listed as a dependent under the dental plan. There is some confusion on this point arising from the individual letters sent annually to each teacher by the District, which letters set forth their placement on the salary schedule and the dollar value for each of the fringe benefits the individual teacher was receiving. Each of the separate letters, dated August 11, 1988, received by Donna Sutliff and Dennis Sutliff contained a benefit cost of $371.04 for the annual premium for dental insurance coverage. Said amount represented the then

applicable annual premium for family coverage. The Sutliffs were

married and were both employed by the District for the 1988-89 school year and remained so employed as of the date of the hearing herein. Donna Sutliff, one of the grievants herein, received a similar letter for the 1989-90 school year which showed the dollar value of the dental insurance coverage to be the cost of the family premium. Karen Kehring, another grievant, and her husband both were, and continue to be, employed by the District, and received individual letters for the 1988-89 school year, which letters contained the same information concerning the cost of dental insurance as the Sutliffs received. Karen Kehring testified that she had received payment for the part of the cost of a crown which was not covered under her husband's dental insurance policy, because she had her own family policy and a dental insurance number which was different than her husband's dental insurance policy number. Subsequent to the 1988-89 school year, Karen Kehring asked the District for a dental insurance policy in her own name, in addition to the family dental insurance policy issued to her husband. She was told by the District Administrator, Harold Poock, that the dental insurance carrier, Sun Life, did not allow dual coverage for spouses. The third grievant, Annette Nehls, and her husband also were both employed by the District as of the hearing. Nehls' husband held a position of counselor, which position is not in the bargaining unit represented by the Association and is not covered by the contract between the parties. Nehls' husband is enrolled for the family dental insurance plan provided by the WEA. None of the three grievants, nor any other employe, filed a grievance over the District's refusal to issue separate family policies to both spouses during the period of time that Sun Life was the dental insurance carrier.

During the negotiations for the 1992-94 contract, among the proposals made by the Association was the following:

> 2. Dental Insurance: All eligible employees may enroll in the dental insurance plan. The District will contribute the full cost of the single or family premium for eligible full-time employees on (sic) a pro-rata amount for eligible part-time employees.

During said negotiations, the Association also proposed that employes with dependents who were provided health and dental benefits through a spouse's plan would receive a contribution to a tax sheltered annuity in an amount reflecting the cost of the single and family health and dental insurance premiums. Neither of the foregoing proposals was included in the 1992-94 contract.

During the summer of 1996, the District and the Association discussed changing dental insurance carriers. Those discussions involved Poock on behalf of the District, Dennis Sutliff on behalf of the Association and Joe Cronick on behalf of the WEA Insurance Trust. The District did not insist on any limitations to facilitate the change in carriers. In fact, the discussions primarily dealt with the costs of the respective plans and the level of benefits provided by each of the

insurance plans. During those discussions, the Association never stated

its belief that the change in carriers would allow both spouses to have separate family insurance plans. Since the carrier is not specified in the contract, the only changes in the insurance provisions of the contract were the amounts of the contributions toward the premiums which would be made by the District. The parties agreed to change from Sun Life to the WEA dental plan, effective on October 1, 1996.

POSITION OF THE ASSOCIATION

The clear and unambiguous language of Article V, Section A, requires the District to pay the premium for family dental insurance coverage for every employe, since the word "employees'" is the plural of the word "employee" and clearly means each employe is entitled to their own dental insurance policy. Neither marital status nor gender has anything to do with defining an individual as an employe. Prior to the instant grievance, the District never asserted that the contractual phrase "per family coverage" meant only one family plan per married couple would be allowed. Rather, the District previously had asserted only that Sun Life would not allow dual family coverage.

Since the language of Article V, as it relates to dental insurance, is clear, then any past practice while Sun Life was the dental insurance provider is irrelevant. Even if there had been a past practice under Sun Life of not allowing dual family coverage, any such practice was eliminated when the WEA became the carrier on October 1, 1996. The WEA Dental Plan does allow dual family coverage, which means the circumstances have changed.

The dental insurance carrier was changed by mutual agreement from a company which did not allow dual family coverage to a company which did allow dual family coverage. The District either knew or should have known about that change. The District cannot now claim a lack of knowledge of such a change. The District did not place any restrictions on the change from the Sun Life plan to the WEA plan; therefore, there was no need to change the clear contractual language. By ratifying the change in carriers, the District waived its ability to object to the provision of the WEA plan allowing dual family coverage for dental insurance.

Although the husband of Annette Nehls is employed by the District, he is employed in a position which is specifically excluded from the bargaining unit. Because of said exclusion, Nehls' husband has no entitlement to the benefits of the contract. There is no way that a bargaining unit member can be prevented from receiving a benefit under the contract even if the member's non-unit spouse has the same benefit.

The total cost to the District of providing a family dental policy for the three grievants for the budget year of 1996-97 would be only $1,782.00. It would appear that said cost could easily

be covered by the difference in salaries between employes who left the District at the end of the 1995-96 school year and the employes who were hired to replace the teachers who left.

The Association asks that the grievants be made whole for any out-of-pocket expenses which they incurred for dental services performed on or after October 1, 1996, and that the grievants be enrolled immediately in a family dental plan in their own name with the WEA insurance provider. The Association believes that Nehls should receive additional compensation for the denial of dental insurance in her own name.

POSITION OF THE DISTRICT

Article V does not specifically address dual enrollment in the dental insurance plan. Rather, the language simply states that dental insurance will be paid for by the District. Thus, the language is ambiguous.

The primary intent of the parties in agreeing to the language in Article V was to insure that the bargaining unit members would be provided dental insurance coverage at an agreed-to cost per family or single coverage. As a dependent under their spouse's plan, each grievant is provided the same dental insurance coverage as any other District employe enrolled in the plan. If the Association's interpretation of the language is accepted, then the grievants will be provided dental insurance benefits greater than those provided to other employes.

The parties' past practice supports the District's interpretation of the contested language. The District has never permitted married couples employed by the District to have more than one family dental insurance plan. In approximately 1990, at least one of the grievants herein, Sutliff, and possibly other members of the Association were advised by the District that they were not eligible for separate family dental insurance plans, since each one was already covered under their spouse's plan. A grievance contesting such an interpretation was never filed, prior to the instant grievance. Sutliff's spouse is employed by the District and has been the head of the Association's team in contract negotiations since 1988.

Under arbitral law, it is well established that the terms of a contract are controlling with respect to a conflicting provision within an insurance policy. Therefore, the change in dental insurance providers did not eliminate the past practice.

The District's position is supported by the bargaining history. During the negotiations which culminated in the 1992-94 contract, the Association proposed language which would have required the District to provide separate family dental insurance plans to each spouse of a married couple working for the District. Also during said negotiations, the Association proposed that teachers with dependents who were provided health and dental insurance benefits through a spouse would receive a contribution to a tax-sheltered annuity equal to the cost of the premiums for the single health and dental insurance plans. The District did not agree to either of those proposals.

During the discussions between the District and the Association which resulted in changing dental insurance providers in the fall of 1996, the Association never advised the District of its belief that the change would allow both spouses of a married couple to enroll in separate family dental insurance plans. Neither did the Association propose to revise the language of Article V, except to update the school years it encompassed and the contribution amounts stated therein.

During negotiations for the 1995-97 contract, the QEO prepared by the District indicated that the insurance costs were based on nine single and twenty-five family plans. The Association received a copy of the QEO. The Association never objected to the settlement costs as contained on the QEO forms.

The District asks that the grievance be denied.

RELEVANT CONTRACTUAL PROVISIONS

ARTICLE V FRINGE BENEFITS

A. Insurance

1. Insurance will be paid by the school district for single and family health insurance, dental insurance, life insurance, and long term disability insurance. The carrier for any of the above plans may be changed only by mutual agreement between the AAEA and the Almond-Bancroft School District.

2. For the 1996-1997 contract term, the amount paid for the health family insurance plan shall not exceed $5,982.80 per year, the amount for single health insurance shall not exceed $2,632.60 per year. Payment for dental insurance will be 792.00 per family coverage and $289.20 for single coverage. A $25,000 life insurance policy will be provided at a cost not to exceed $60 per employee.

For the 1995-1997 school year, the School District shall make the same percentage contribution, but set forth in a dollar figure, towards the employees' health, dental and life insurance cost's (sic) as the School District did in the 1994-1995 school year.

. . .

DISCUSSION

The Association asserts that the word "employees" in Article V, Section A. 2., is the plural

of "employee" and, therefore, the clear and unambiguous language means every employe

is entitled to their own insurance plan. A review of Article V does not support the Association's contention that the language of Article V is unambiguous. Although it is true that the word "employees" is the plural of the word "employee" and, therefore, means more than one employe, it does not necessarily mean all employes. Moreover, it could be argued that said word simply refers to the District's required contribution for each of the affected employes, i.e., those employes for whom the District made contributions during the 1994-95 school year, but does not speak to the question of whether a married couple can have two family dental insurance policies. Thus, the language is unclear as to whether married couples are entitled to one or two family plans when both of the spouses are employed by the District. Consequently, the meaning given to the word "employees" by the Association is not clear from simply reading the disputed language.

Paragraph 1 of Article V, A. 2. specifies the maximum dollar amounts which the District must pay for the family plan and the single plan for both the health insurance and the dental insurance policies. Said provision also specifies the maximum cost per employe to the District of a life insurance policy. However, only the life insurance cost is specified to be on a per employe basis. The health and dental insurance costs are expressed in terms of family and single plans or coverage. Such a distinction does not support the Association's position that each spouse is entitled to a separate family plan when both spouses are employed by the District. If the parties had intended such a result, then they could have chosen language to clearly state such an intent. The phrase "per family coverage" could be given the Association's interpretation that each spouse is entitled to a separate family plan when both spouses are employed by the District. On the other hand, the language could also be given the District's interpretation that, when both spouses of a married couple are employed by the District, each spouse must be covered by a family policy, but the two spouses are not entitled to enroll in two separate family plans. Therefore, the language is not clear and unambiguous.

Because the relevant language is ambiguous, it is necessary to look to other criteria to establish a meaning for the language. One criterion frequently relied on by arbitrators is the past practice associated with the language. For a number of years, since at least 1990, there is no record of any dual family policies for married couples when both of the spouses were employed by the District. Even if it exists, the Association believes such a practice has no relevance to the instant dispute because Sun Life did not allow dual family coverage for dental insurance whereas WEA does allow dual family coverage for dental insurance. The record is clear that during the meetings between representatives of WEA, the District and the Association, there was no discussion of dual family coverages. Thus, although the WEA plan does permit dual family coverages, there is nothing to show that the parties agreed to interpret Article V to allow such dual family coverages when they switched carriers. If the Association believes that the language of Article V allows dual family coverage, then it could have grieved at a much earlier date the District's failure to replace Sun Life with a carrier which provided such coverage. In numerous decisions, arbitrators have held that a collective bargaining agreement controls over an insurance

contract. Since the Association did not so grieve, it must be concluded that it did not believe

Article V provided for dual family policies. Such a conclusion is supported by the Association's proposal, in the negotiations resulting in the contract which was effective July 1, 1992, to provide both spouses of a married couple working for the District with separate family dental insurance plans. During those negotiations, the Association also proposed that teachers, who were provided health and dental insurance coverage through a spouse's District provided plans, would receive a contribution to a tax-sheltered annuity. Neither of those proposals were adopted by the parties. Those proposals support a conclusion that the Association did not believe the existing language of Article V required the District to provide separate family dental insurance policies to both spouses when they both worked for the District. The undersigned is not persuaded that the addition of a second paragraph to Article V, A. 2. in the 1993-95 contract placed such a requirement on the District.

Based on the foregoing and the record as a whole, the undersigned enters the following

AWARD

That the District did not violate the 1995-97 collective bargaining agreement between the parties by permitting only one spouse of a married couple, both of whom were employed by the District, to enroll in a family dental insurance plan and by denying the request of the three grievants to each enroll in their own family dental insurance policy; and, that the grievance is denied and dismissed.

Dated at Madison, Wisconsin, this 30th day of October, 1997.

Douglas V. Knudson /s/
Douglas V. Knudson, Arbitrator

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