BEFORE THE ARBITRATOR

In the Matter of the

Arbitration of a Dispute Between

GENERAL TEAMSTERS UNION LOCAL 662

and

CLARK COUNTY (HEALTH CARE CENTER)

Case 102
No. 55013
MA-9866

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, by **Mr. Frederick Miner**, appearing on behalf of the Union.

Weld, Riley, Prenn & Ricci, S.C., Attorneys at Law, by **Ms. Kathryn J. Prenn**, appearing on behalf of the County.

ARBITRATION AWARD

The Union and the County are parties to a collective bargaining agreement which provides for final and binding arbitration of grievances. Pursuant to the parties' request, the Wisconsin Employment Relations Commission appointed the undersigned to decide a grievance. A hearing, which was not transcribed, was held on June 24, 1997, in Owen, Wisconsin. Afterwards, the parties filed briefs and reply briefs, whereupon the record was closed on September 10, 1997. Based on the entire record, the undersigned issues the following Award.

ISSUE

The parties were unable to stipulate to the issue to be decided in this case. The Union framed the issue as follows:

> Whether the Employer has breached the parties' labor agreement by prorating full-time employes' health insurance premiums? If so, what is the appropriate remedy?

The County framed the issue as follows:

Has the County violated the collective bargaining agreement by prorating the County's health insurance premium contributions for full-time employes whose hours worked and hours of paid leave fall below the 2,080 hour standard for full-time employment? If so, what is the appropriate remedy?

Having reviewed the record and the arguments in this case, the undersigned finds the Union's proposed issue appropriate for purposes of deciding this dispute. Consequently, the Union's proposed issue will be decided herein.

PERTINENT CONTRACT PROVISIONS

The parties' 1996-1997 collective bargaining agreement contains the following pertinent provisions:

ARTICLE 1 - RECOGNITION

Section A. The Employer hereby recognizes the Union as the exclusive collective bargaining agent for the purpose of conferring and negotiating with the Employer, or its authorized representatives, on questions of wages, hours and conditions of employment for all regular full-time and regular part-time employees of the Clark County Health Care Center, including the Farm, excluding professional, supervisory, managerial, confidential and casual employees and LPN-Supervisors as set forth in Decision No. 26429-A.

. . .

ARTICLE 5 - SENIORITY

Section A. For the purpose of establishing the seniority list for employees hired before January 1, 1991, credited seniority in effect as of December 31, 1990, shall be used. For employees hired on or after January 1, 1991, seniority shall be established according to the most recent date of hire. Seniority for part-time employees shall be credited according to the equivalent of full-time hours worked (2080 hours equal one (1) year) and hours of paid leave. No employee may, however, be credited with more than eighty (80) hours within a two (2) week period for seniority purposes.

. . .

ARTICLE 12 - VACATIONS

Section A. Full-Time Employees. All full-time employees shall earn vacation according to the following schedule:

Years of Service	Amount of Paid Vacation
After 1 year	40 hours
After 2-7 years	80 hours
After 8-13 years	120 hours
After 14 years	160 hours

Section B. Part-Time Employees. Vacation time for part-time employees working less than 2080 regular hours per year shall be prorated based on the total number of regular hours worked, or paid as worked, in the preceding year compared to 2080 hours.

. . .

ARTICLE 14 - LEAVES OF ABSENCE

. . .

Section F. Extended Unpaid Leave.

1. The County may, in its sole discretion, grant additional unpaid leave to an employee for personal reasons. The County's decision regarding an unpaid leave request shall not be subject to review under the grievance procedure. While on such leave, the employee shall not receive or accrue any fringe benefits or seniority. Failure to return to work following expiration of the leave shall be cause for dismissal. Use of unpaid leave for personal reasons shall not preclude use of unpaid medical leave, as provided below in Section 2, if otherwise eligible.

. . .

ARTICLE 16 - INSURANCE

For all eligible employees, the Employer shall pay 100% of the cost of the single health insurance premium and 85% toward the family health insurance premium. For part-time employees hired after the ratification of the 1991-93 contract by the parties, the Employer's contribution toward the health insurance premium shall

be prorated on the basis of 2080 hours and said employees must work or be paid as if worked for at least eighty (80) hours per month to be eligible for participation in the health insurance program. For part-time Clark County Health Care Center employees hired before the date of ratification of the parties' 1991-93 collective bargaining agreement, health insurance contributions shall be paid pursuant to past practice. In order to be eligible for such contributions, such part-time employees hired on or before May 1, 1987, must work, or be paid as if worked for sixty-four (64) hours per calendar month, and such part-time employees hired after May 1, 1987, but before the date of ratification of the 1991-93 collective bargaining agreement, must work, or be paid as if worked, for at least eighty (80) hours per calendar month. The Employer may, from time to time, change the insurance carrier and/or self-fund its health care program, provided the level of benefits remains equivalent to the current level of benefits. Any unpaid benefits at the time of a carrier change (i.e. from self-funding to a risk carrier) will be the responsibility of the County.

. . .

ARTICLE 19 - LONGEVITY

. . .

Section B. In the event a regular part-time employee subsequently becomes a regular full-time employee without a break in employment, the employee may count his/her service as a part-time employee from his/her last date of hire as a permanent employee on a prorated basis toward his/her years of service for longevity payment purposes. Such part-time service shall be prorated on the basis of 2,080 hours being equivalent of one (1) year of service.

. . .

ARTICLE 22 - MEMORANDUM OF AGREEMENT

Section A: This Agreement, reached as a result of collective bargaining, represents the full and complete agreement between the parties, and supersedes all previous agreements and past practices between the parties. Any supplemental amendments to this Agreement shall not be binding on either party unless executed in writing by the parties thereto. Waiver of any breach of this Agreement by either party shall not constitute a waiver of any future breach of this Agreement.

. . .

FACTS

Prior to the parties' first labor agreement, full-time and part-time employes at the Health Care Center had to work at least 64 hours per month in order to qualify for participation in the Employer's health insurance program. Insofar as the record shows, the Employer's health insurance contributions were not prorated for part-time employes.

In their initial contract negotiations in 1991, the parties agreed to grandfather the existing part-time employes so the County's contribution toward their health insurance premiums were not prorated, and to prorate on the basis of 2,080 hours the County's contribution toward the health insurance premiums for part-time employes hired after the ratification of the parties' first contract. They also agreed to grandfather the monthly minimum number of hours needed to participate in the health insurance program at 64 hours for some employes and to raise the monthly minimum to 80 hours for other employes. They did this by creating three groups of part-time employes: group one consisted of those employes hired before May 1, 1987; group two consisted of those employes hired after May 1, 1987 but before contract ratification (January, 1992); and group three consisted of those employes hired after ratification of the 1991-1993 contract (January, 1992). Group one employes have to work or be paid as if worked for 64 hours per month, and group two and three employes have to work or be paid as if worked for 80 hours per month.

The parties ratified this contract in January, 1992 and executed it in February, 1992. This contract had a duration of 1991 through 1993.

On February 1, 1992, the County began prorating its health insurance contributions using a full-time standard of 2,080 hours a year. This process works as follows. The County computes its share of the health insurance premiums by using a standard of 173.33 hours per month. 173.33 is 1/12th of 2,080 hours. If an employe works 173.33 hours or more in a month, the County pays either 100% of the premium for single coverage or 85% of the premium for family coverage. If an employe works less than 173.33 hours in a month, the County pays a prorated share. The prorating is done to the nearest quarter hour, and the Health Care Center annually prepares schedules which are used to determine the prorated contributions for those employes whose total hours fall below this standard. The County has been prorating its health insurance premium contributions in this fashion since February, 1992.

Since the County began prorating its health insurance premium contributions in 1992, it has done so for both the part-time employes hired after the ratification of the parties' first contract (i.e. the non-grandfathered part-time employes), and also for full-time employes. With regard to the latter, the County has prorated its health insurance premium contribution when the full-time employe worked less than 173.33 hours in a month. Employer Exhibit 8 indicates that

between January, 1995 and May, 1997, there were 82 instances where full-time employes had their health insurance premiums prorated because they worked less than 173.33 hours in a month. An analysis of Employer Exhibit 8 shows that 41 of these instances involved employes who worked more than 160 hours in a month, 20 involved employes who worked between 150 and 160 hours in a month, eleven involved employes who worked between 140 and 150 hours in a month, eight involved employes who worked between 130 and 140 hours in a month, and two involved employes who worked less than 130 hours in a month. The Employer's records were no longer available for the years prior to 1995, but Office Manager Joanne Jalling testified that the number of incidents where full-time employes had their health insurance premiums prorated would be similar for the time period between 1992 and 1994.

From February 1, 1992 to September, 1995, the Union did not question the County's authority to prorate health insurance premium contributions for full-time employes who did not work 173.33 hours in a month. This changed in September, 1995, when the Union filed a grievance challenging the County's prorating of health insurance contributions for full-time employes. Union Business Agent James Newell testified he first learned of the Employer's prorating for full-time employes at a September, 1995 bargaining session. The parties subsequently agreed to hold the grievance in abeyance pending the outcome of the negotiations for the 1996-97 collective bargaining agreement. The grievance/issue was not addressed during those negotiations, so the Union reactivated the grievance in August, 1996. The grievance was not resolved and was ultimately processed to arbitration.

The record indicates that the health insurance language has not changed since it was originally negotiated in 1991.

Additional facts will be set forth in the **DISCUSSION** section.

POSITIONS OF THE PARTIES

Union's Position

The Union contends that the County is violating the collective bargaining agreement by prorating health insurance premiums for full-time employes. As the Union sees it, this prorating has no contractual basis. The Union makes the following arguments to support this contention.

The Union notes at the outset that several contractual provisions make distinctions in fringe benefit entitlements between full-time and part-time employes. The Union avers that full-time employes are entitled to the full range of fringe benefits, while part-time employes are entitled to limited, usually prorated benefits. To support this premise, it cites the contract language covering seniority (Article 5), vacations (Article 12), and sick leave (Article 13).

The Union submits that the same principle applies to health insurance (Article 16). It avers that full-time employes are entitled "to the full benefit of the County's health insurance pledge (which is 100% of the cost of the single insurance premium and 85% toward the family insurance premium"). According to the Union, the Agreement provides no authority for any payment of any other amount on behalf of full-time employes. The Union asserts that part-time employes, by contrast, are limited to prorated premium contributions after working the required monthly minimum. The Union argues that each statement in Article 16 pertaining to prorated benefits (including the phrase "work or be paid as if worked") applies only to part-time employes, and does not apply to full-time employes. The Union therefore contends that the County should not be allowed to prorate health benefits for full-time employes under contract language which is expressly limited to part-time employes. As the Union sees it, the parties had the opportunity to negotiate language providing authority for prorated insurance premiums for full-time employes, but they chose not to do so.

The Union contends that since the contract language contained in Article 16 is clear, unambiguous, and unmistakable, there is no need in this case to resort to either the parties' bargaining history or to an alleged past practice. According to the Union, the County's reliance on bargaining history and on an alleged past practice is an attempt to obfuscate the clear language of Article 16.

However, if the arbitrator does review the parties' bargaining history to assist in the interpretation of Article 16, the Union asserts that the evidence offered at the hearing concerning same does not support the County's interpretation of Article 16. In its view, the County's advocate at the arbitration hearing provided self-serving testimony that the County attempted to bargain an understanding regarding health insurance proration. The Union cites the testimony of Union negotiator James Newell for the proposition that it was insurance for part-time employes, not full-time employes, that was central in the parties' first contract.

Similarly, if the arbitrator does look to the alleged past practice for guidance in resolving this contractual dispute, the Union argues it was not aware of the County's manner of insurance contribution computation (i.e. prorating health insurance for full-time employes as it did for part-time employes) until it filed the grievance. To support this premise, it cites Newell's testimony that neither the County nor any bargaining unit member ever informed him that the County was prorating health insurance for full-time employes. The Union asserts that since Newell did not know the County was prorating health insurance for full-time employes, it was neither "readily ascertainable" nor "accepted by both parties" as a true past practice must be. The Union also notes that the County does not even attempt to argue that the Union condoned or endorsed the County's alleged practice. Finally, the Union relies on the contractual "zipper clause" (Article 22) for the proposition that the language of the agreement is primary and controlling over any alleged past practice. The Union argues that is especially true here where the alleged

past practice of prorating full-time employes' health insurance premiums contradicts the plain meaning of Article 16.

In order to remedy this alleged contractual breach, the Union asks that the arbitrator sustain the grievance and order the County to reimburse the affected full-time employes for those premium contributions improperly withheld. The Union further requests that the arbitrator retain jurisdiction of this matter to resolve any disputes that may arise out of computations of reimbursements to employes.

County's Position

The County contends that it is not violating the collective bargaining agreement by prorating health insurance premiums for full-time employes whose hours worked and hours of paid leave fall below the 2,080 hour standard for full-time employment. It makes the following arguments to support this contention.

The County notes at the outset that several contractual provisions tie the definition of full-time and part-time to hours worked and/or hours paid as worked. To support this premise, it cites the contract language covering seniority (Article 5, Section A), vacation (Article 12, Section B) and longevity (Article 19, Section B.)

The County avers that this same principle applies to health insurance (Article 16). According to the County, Article 16 defines full-time employment as 2,080 hours worked and/or paid as worked. In the County's view, this clear and unambiguous language means that if an employe (either full-time or part-time) falls below this 2,080 hour standard, the Employer can prorate its health insurance premium contributions. The County asserts that this gives it the contractual basis for prorating health insurance contributions for employes who do not work and/or are not paid as worked hours equal to the equivalent of 2,080 hours per year. The County submits that if the Union's interpretation of Article 16 is adopted (and there was no prorating of insurance premium contributions for full-time employes when they fall below the 2,080 hour standard), this would mean that a full-time employe would be deemed to have worked full-time hours prospectively for any and all purposes. According to the County, this would obliterate and nullify the language of Article 16 with respect to the standard defining full-time employment (i.e. 2,080 hours worked and/or hours paid as worked).

As just noted, the County contends that the contract language is clear and unambiguous. However, in the event that the arbitrator finds otherwise, and needs assistance in interpreting Article 16, the County invites the arbitrator to review the parties' bargaining history and past practice.

The County asserts that the parties' bargaining history supports the County's interpretation of Article 16. To support this premise, it cites the testimony of County negotiator Kathryn Prenn for the proposition that insurance for full-time employes was central in the parties' first contract.

The County also believes that if there is any ambiguity with respect to the prorating referenced in Article 16, the parties' past practice "clarifies" the arguably ambiguous language. To support this premise, it avers that the County has prorated health insurance premiums continuously since February, 1992, for those full-time employes and those non-grandfathered part-time employes who were below the monthly threshold. Focusing on the full-time employes, the County calls the arbitrator's attention to the fact that Employer Exhibit 8 shows that for the period of January, 1995 to May, 1997, there were about 80 instances where full-time employes had their health insurance premiums prorated because they had not worked or been paid as worked for 2,080 hours. It also cites Office Manager Jalling's testimony that although the records were no longer available for the years prior to 1995, the pattern of frequency and number of incidents would have been similar going all the way back to February, 1992. The County notes that during this time period, it never received any questions from employes regarding the County's authority to prorate the health insurance premium contributions for full-time employes who did not work 2,080 hours. Given the foregoing, the County believes there is a practice which is binding as an enforceable term of the contract, and gives it the authority to prorate health insurance premium contributions for full-time employes.

The County further asserts that the past practice involved here is the type of past practice which cannot be unilaterally repudiated without an accompanying revision of the ambiguous language. The County submits that in this case, the Union neither repudiated the past practice of prorating health insurance contributions for full-time employes nor changed the underlying contract language so the long-standing past practice should remain in place. The County also argues that the contractual "zipper clause" (Article 22) does not extinguish the past practice involved here because the practice is one which clarifies arguably ambiguous contract language.

In conclusion then, it is the County's view that no contract violation has occurred. It therefore asks that the grievance be denied.

DISCUSSION

The issue here is whether the County can contractually prorate its health insurance premium contributions for full-time employes. The County contends that it can while the Union disputes that assertion.

In contract interpretation cases such as this, the undersigned normally focuses attention first on the contract language and then, if necessary, on the evidence external to the agreement

such as bargaining history or an alleged past practice. In this case though, I have decided to structure the discussion so that this normal order is reversed. Thus, I will address the bargaining history and the alleged past practice before looking at the contract language. My reason for doing so is this: if I address the contract language first and find it to be clear and unambiguous, there would be no need to look at any evidence external to the agreement (i.e. bargaining history and an alleged past practice) for guidance in resolving this contract dispute. Were this to happen, the case could be decided without any reference whatsoever to either the parties' bargaining history or the alleged past practice. The problem with this approach is that the County relies heavily on those two arguments as part of its overall case. I have therefore decided to use this unique structural format so that the County's arguments concerning same are directly addressed.

Attention is focused first on the parties' bargaining history. Bargaining history is a form of evidence arbitrators commonly use to help them interpret ambiguous contract language. Such evidence has two traditional forms: documentary and oral. In this case, no documentary evidence was offered concerning the language in question, who drafted it, or how it came to be incorporated into the contract. Instead, only oral evidence was offered. I find that evidence to be of no use in resolving this dispute because it did not establish that the parties reached a specific understanding concerning prorating health insurance premium contributions for full-time employes. As a result, this case will be decided on other grounds.

Having found that the bargaining history is not dispositive, attention is turned to the County's past practice argument. Past practice is a form of evidence commonly used or applied to clarify ambiguous contract language, to implement general contract language, or to establish an enforceable condition of employment where the contract is silent on the matter. The rationale underlying its use is that the manner in which the parties have carried out the terms of their agreement in the past is indicative of the interpretation that should be given to the contract in the situations just noted. Said another way, the actual practice under an agreement may yield reliable evidence of what a particular provision means. In order to be binding on both parties, the practice must be the understood and accepted way of doing things over an extended period of time. Additionally, it must be understood by the parties that there is an obligation to continue doing things this way in the future. This means that a "practice" known to just one side and not the other will not normally be considered as the type of mutually agreeable item that is entitled to arbitral enforcement.

The County asserts that its practice has been to prorate its health insurance premium contributions for full-time employes just as it does for those part-time employes hired after February, 1992. There is no question that this is what the Employer has been doing. The following proves this. Employer Exhibit 8 shows that in the time period between January, 1995, and May, 1997, the Employer prorated its insurance premium contributions for full-time employes over 80 times. Additionally, while the Employer's records are not available for the

years prior to 1995, there is no reason to dispute the testimony of Office Manager Jalling that this pattern of frequency and number of incidents would be similar going all the way back to 1992. This establishes that the Employer has been prorating its health insurance premium contributions for full-time employes for five years with dozens of instances occurring each year.

The Union argues that the County's past actions should not be characterized as a binding past practice because Business Agent Newell testified he did not learn of the Employer's prorating for full-time employes until he was informed of same at a September, 1995 bargaining session. Thus, the Union asserts it did not have notice of same until then. The problem with this argument is that notice of an employer's practice does not always have to be given to the Union's designated business representative. Sometimes notice can be given to another union agent, such as a steward. That is what happened here. The following shows this. One of the individuals who served on the Union's bargaining team which negotiated the parties' initial 1991-93 collective bargaining agreement was union steward Lisa Pomputis. Pomputis works in the Health Care Center's business office where one of her job duties is to check the hours worked by employes to determine the appropriate monthly prorated premium contribution. Pomputis has performed this function since February, 1992. Newell acknowledged that when he learned the Employer had been prorating health insurance premium contributions for full-time employes, Pomputis told him that this prorating for full-time employes had been happening "for quite a while". Since Pomputis knew of the Employer's practice of prorating health insurance premium contributions for full-time employes, and she was a union steward, her notice of same is imputed to the Union. I therefore find that notwithstanding the Union's contention to the contrary, the Union was on notice of the Employer's "practice" of prorating insurance premium contributions for full-time employes well before it filed the instant grievance in 1995 challenging same. The question of whether this practice is entitled to contractual enforcement and is determinative of the outcome herein will be addressed and decided later.

Having so found, attention is now turned to the contract language. Both sides agree that the contract language applicable here is Article 16. It provides:

> For all eligible employees, the Employer shall pay 100% of the cost of the single health insurance premium and 85% toward the family health insurance premium. For part-time employees hired after the ratification of the 1991-93 contract by the parties, the Employer's contribution toward the health insurance premium shall be prorated on the basis of 2080 hours and said employees must work or be paid as if worked for at least eighty (80) hours per month to be eligible for participation in the health insurance program. For part-time Clark County Health Care Center employees hired before the date of ratification of the parties' 1991-93 collective bargaining agreement, health insurance contributions shall be paid pursuant to past practice. In order to be eligible for such contributions, such part-time employees hired on or before May 1, 1987, must work, or be paid as

> if worked for sixty-four (64) hours per calendar month, and such part-time employees hired after May 1, 1987, but before the date of ratification of the 1991-93 collective bargaining agreement, must work, or be paid as if worked, for at least eighty (80) hours per calendar month. The Employer may, from time to time, change the insurance carrier and/or self-fund its health care program, provided the level of benefits remains equivalent to the current level of benefits. Any unpaid benefits at the time of a carrier change (i.e. from self-funding to a risk carrier) will be the responsibility of the County.

An overview of this language follows. The first sentence provides that the Employer will pay a specified percentage of the health insurance premium (namely 100% of the cost of the single and 85% of the cost of the family) "for all eligible employes". The second sentence provides that for certain part-time employes (namely those hired after ratification of the parties' 1991-93 contract), the Employer's contribution toward the health insurance premium will be prorated on the basis of 2,080 hours. The same sentence then goes on to establish a monthly minimum floor of at least 80 hours per month in order to be eligible to participate in the Employer's health insurance program. Thus, this sentence deals with two different components: prorating of the Employer's insurance premium contribution for certain part-time employes and establishing an eligibility requirement for those employes. The third sentence provides that for those part-time employes "hired before the ratification of the parties' 1991-93" contract, health insurance contributions "shall be paid pursuant to past practice." The sentence does not describe what that "past practice" is. The fourth sentence provides that: "In order to be eligible for such contributions", the part-time employes hired before May 1, 1987 must work or be paid as if worked for 64 hours per month. That same sentence then goes on to provide that those part-time employes hired after May 1, 1987, but before the date of ratification of the 1991-93 contract must work or be paid as if worked for 80 hours per month. The fifth sentence gives the Employer the right to change the insurance carrier and/or self-fund. The sixth sentence provides that the Employer is responsible for unpaid benefits if the Employer changes carriers.

The last two sentences of Article 16 have no bearing on this case while the first four sentences do. Consequently, those sentences will be analyzed further.

Overall, sentences two, three and four provide for prorated premium contributions and establish monthly minimums for participation in the Employer's insurance program. The following shows this. The first part of the second sentence provides that the County's contribution toward the health insurance premiums for those part-time employes hired after the ratification of the parties' 1991-93 contract (which occurred in January, 1992), will be prorated on the basis of 2,080 hours. The third sentence then goes on to provide that the County's health insurance contributions for those part-time employes hired before the ratification of the parties' 1991-93 contract will be "paid pursuant to past practice". With this language, the parties grandfathered those part-time employes so that the County's contribution toward their health

insurance premiums were not prorated. These sentences create three groups of part-time employes: those hired before May 1, 1987, those hired after May 1, 1987 but before ratification of the first contract (January, 1992), and those hired after ratification of the first contract (January, 1992). The first group of employes have to work or be paid as if worked for 64 hours per month, while the other employes have to work or be paid as if worked for 80 hours per month. Thus, the monthly minimum number of hours needed to participate in the Employer's health insurance program varies depending on when the part-time employe was hired.

It has just been noted that sentences two through four deal with two separate matters: prorated premium contributions and monthly minimums for participation in the Employer's insurance program. This case involves the former (i.e. prorated premium contributions) but not the latter (i.e. monthly minimums for participation). Article 16 clearly gives the Employer the right to prorate insurance premium contributions for those part-time employes hired after January, 1992. The question here is whether Article 16 also gives the Employer the right to do so for full-time employes.

Based on the following rationale, I find that Article 16 does not give the Employer the right to prorate insurance premium contributions for full-time employes. The first sentence of that article provides that the Employer is to pay 100% of the cost of the single insurance premium and 85% of the cost of the family insurance premium "for all eligible employes". Although the phrase "all eligible employes" is not defined, a review of the contract (and particularly the Recognition Clause) reveals there are just two categories of potentially "eligible employes": full-time employes and part-time employes. Sentences two, three and four of Article 16 refer explicitly to just one category of employe, namely part-time employes. The following shows this. Sentence two begins: "For part-time employes. . ." Sentence three begins: "For part-time Clark County Health Care Center employes. . ." Finally, sentence four begins: "In order to be eligible for such contributions, such part-time employes. . ." If the parties had intended these sentences to apply to both full-time and part-time employes, they could have said that. They did not. Instead, they used plain and unambiguous terms which limited these sentences to just part-time employes. This means that the prorating referenced in Article 16 applies only to part-time employes, and not to full-time employes.

This distinction in the level of benefits between full-time and part-time employes also exists elsewhere in the Agreement. Where it occurs, full-time employes are entitled to the full level of the benefit, while part-time employes are entitled to limited, usually prorated benefits. Such is the case in Article 12 (Vacations) where full-time employes are credited with fully-paid vacations in accordance with their years of service whereas part-time employes receive vacations "prorated based on the total number of regular hours worked", and in Article 13 (Sick Leave) where full-time employes earn one sick day per month while part-time employes earn sick leave on a prorated basis.

Having previously discussed both the Employer's existing practice of prorating premium contributions for full-time employes and the applicable contract language (Article 16), the next question is whether the two can be reconciled. I find they cannot. The Employer's existing practice of prorating premium contributions for full-time employes has no contractual basis because Article 16 only authorizes prorating of premium contributions for part-time employes. Thus, the Employer's existing practice and the contract interpretation just noted conflict and cannot be reconciled. One therefore has to be picked as decisive over the other. If the County's practice is found to be controlling over the contract language, then the County wins. On the other hand, if the contract language is found to be controlling over the practice, then the Union wins.

The general rule in arbitration is that when a past practice conflicts with clear and unambiguous contract language, the contract language trumps the practice. That is the case here, so Article 16 governs over the practice. Simply put, I cannot compel continued adherence to a practice which contradicts the plain meaning of Article 16. It is therefore held that the Employer has breached the parties' collective bargaining agreement by prorating full-time employes' health insurance premiums.

Having found a contractual breach, the focus now turns to the remedy. The undersigned is satisfied that a make-whole remedy is appropriate under the circumstances. Accordingly, the County is directed to reimburse the affected full-time employes for those premium contributions which were improperly withheld. Although the Union's briefs do not specify how far back the remedy should go, I find that this remedy is to go back to the date of the filing of the grievance (i.e. September 27, 1995). Pursuant to the Union's request, I will retain jurisdiction of this matter for at least sixty (60) days from the date of this Award in order to resolve any disputes that may arise out of computations of reimbursements to employes.

In an effort to minimize the number of computation disputes which may result, the undersigned has decided to make the following comments. It is expressly noted that these comments are not dicta; they are part of this award.

The record indicates that the Employer has been prorating its insurance premium contributions for both full-time and part-time employes by using a standard of 173.33 hours per month. That figure comes from dividing 2,080 hours by 12 months. Thus, the Employer has been using the figure of 173.33 hours per month as the standard for determining whether the Employer's insurance contributions are prorated or not. If an employe works 173.33 hours or more in a month, the County has not prorated its insurance premium contribution for the employe; however, if the employe works less than 173.33 hours in a month, the County has prorated its insurance premium contribution for the employe.

The figure which the Employer is using as a cutoff point (i.e. 173.33) is not found in Article 16 or anywhere else in the contract. Thus, the contract does not say that the Employer has to use 173.33 hours as the standard for determining full-time status. The Employer has simply decided to use that figure since it is 1/12th of 2,080 hours. If an employe works 2,080 hours in a year, the employe will work, on average, 173.33 hours a month. However, the figure of 173.33 is not an absolute which is constant each and every month; it is simply the average number of hours per month when considered on a yearly basis. In reality, the number of Monday through Friday workdays varies each month from 20 to 23 depending on the calendar's rotation. When the month consists of 23 workdays, there are 184 hours in that month (i.e. 23 days times 8 hours a day equals 184 hours). When the month consists of 22 workdays, there are 176 hours in that month (i.e. 22 days times 8 hours a day equals 176 hours). When the month consists of 21 workdays, there are 168 hours in that month (i.e. 21 days times 8 hours a day equals 168 hours). When the month consists of 20 workdays, there are 160 hours in that month (i.e. 20 days times 8 hours a day equals 160 hours). The figures just listed demonstrate that a standard of 173.33 poses problems in those months which have 20 or 21 workdays in them. In those months, even if an employe worked or was paid as if worked for every single workday in the month, they would still be below 173.33 hours for the month. This is because it is not possible to work 173.33 regular hours when the month has just 20 or 21 workdays in it. As a result, a standard of 173.33 hours for each month sets the proverbial bar too high for those months which have less than 173.33 regular work hours in them. To illustrate this point, one need look no further than the current month (November) which has 20 regular work days in it. If a bargaining unit employe works or is paid as if worked for all 20 of those workdays (i.e. 160 hours), they have worked full-time in the traditional sense of the word. Consequently, they should not have their insurance premiums prorated at all.

Having found that the monthly figure of 173.33 hours which the Employer has been using to determine full-time status does not pass muster, it is necessary to determine what figure does. In my view, the figure of 160 hours passes muster for determining full-time status since it is low enough to cover those months (such as the current month) which have just 20 workdays (i.e. 160 hours) in them. I therefore find that the cutoff point for determining full-time status is 160 hours. Thus, if an employe works or is paid for 160 hours or more in a calendar month, the Employer is not to prorate their insurance premium contribution. If an employe works or is paid for less than 160 hours though, the Employer can prorate their insurance premium contribution because that employe has not worked full-time.

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

AWARD

The Employer has breached the parties' collective bargaining agreement by prorating full-time employes' health insurance premiums. In order to remedy this contractual breach, the Employer shall reimburse the affected full-time employes for those premium contributions which were improperly withheld.

The undersigned will retain jurisdiction for at least sixty (60) days in order to resolve any disputes that may arise out of computations of reimbursements to employes.

Dated at Madison, Wisconsin, this 24th day of November, 1997.

Raleigh Jones /s/
Raleigh Jones, Arbitrator

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