BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

WHITE LAKE EDUCATION ASSOCIATION

and

WHITE LAKE SCHOOL DISTRICT

Case 12
No. 51958
MA-8791

Appearances:

Mr. Stephen Pieroni, Staff Counsel, Wisconsin Education Association Council, 33 Nob Hill Drive, P.O. Box 8003, Madison, Wisconsin 53708-8003, on behalf of the White Lake Education Association.

Godfrey & Kahn, S.C., Attorneys at Law, by **Mr. Robert W. Burns**, 333 Main Street, P.O. Box 13067, Green Bay, Wisconsin 54307-3067, on behalf of the White Lake School District.

ARBITRATION AWARD

On December 20, 1994, the White Lake Education Association, hereinafter the Association, and the White Lake School District, hereinafter the District, jointly requested that the Wisconsin Employment Relations Commission appoint a staff arbitrator to hear and decide the instant dispute, in accord with the grievance and arbitration procedures contained in the parties' Collective Bargaining Agreement. Thereafter, the Commission designated James W. Engmann, a member of its staff, to arbitrate in the dispute. Hearing was held before Arbitrator Engmann on July 18, 1995, in White Lake, Wisconsin. Due to Arbitrator Engmann's leaving the Commission's employ, Jane B. Buffett, a member of the Commission's staff, was designated to replace Mr. Engmann as Arbitrator. The Association subsequently moved to have Arbitrator Buffett hear the case *de novo*. The District opposed the motion and the parties filed briefs in support of their respective positions on March 4, 1996. On March 8, 1996, Arbitrator Buffett issued her ruling granting the Association's motion. Arbitrator Buffett subsequently became unavailable due to illness, and the Commission designated David E. Shaw, a member of its staff, to arbitrate in the dispute. Thereafter, the parties entered into discussions regarding entering into a stipulation to supplement the record made by Arbitrator Engmann. On July 24, 1997, the parties submitted a "Stipulation in Lieu of Additional Testimony" in the matter, as well as their initial briefs. By August 14, 1997, the parties submitted their reply briefs in the matter.

Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following Award.

ISSUES

The parties were unable to stipulate to a statement of the issues and have agreed the Arbitrator will frame the issues to be decided.

The Association would state the issues as being:

> Did the Employer violate the collective bargaining agreement when it denied the Grievants, Eileen Vaudt, Marian Wahleithner, Kim Koelzer and Sharon Tainter, the option plan pursuant to Article XXVII? If so, what remedy is appropriate?

The District would state the issues as follows:

> Are unit members who work less than 20 hours per week ineligible to receive health insurance benefits?

The District also raises an issue as to the timeliness of the grievance.

The Arbitrator frames the issues to be decided as follows:

(1) Is the grievance timely?

If so, then:

(2) Did the District violate Article XXVII, Sections A, B and C, of the parties' 1993-1995 Collective Bargaining Agreement when it denied the Grievants the benefits provided by these provisions of the Agreement? If so, what is the appropriate remedy?

CONTRACT PROVISIONS

The following provisions of the parties' 1993-1995 Agreement have been cited, in relevant part:

ARTICLE I

RECOGNITION

The board acting for said District recognizes the Association as the exclusive and sole bargaining representative for the following unit of employees whether under contract, or on leave, employed or to be employed by the District all as are included in the certification instrument (Case II: No. 17603 Decision No. 12545) issued by the Wisconsin Employment Relations Commission on the 30th day of April, 1974:

It is HEREBY CERTIFIED that a majority of the eligible employees who voted at said election in the collective bargaining unit consisting of all full-time and regular part-time certified personnel teaching at least 50% of a regular teaching schedule, but excluding supervisors, managerial employees, confidential employees and all other employees, have selected White Lake Education Association as their representative; and that pursuant to the provisions of Section 111.70, Wisconsin Statutes, said labor organization is the exclusive bargaining representative of all such employees for the purposes of collective bargaining with the Municipal employer, or its lawfully authorized representatives, on questions of wages, hours and conditions of employment.

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ARTICLE VI

GRIEVANCE PROCEDURES

A. Definitions:

1. A "Grievance" is a claim based upon an event or condition which affects the wages, hours and conditions of employment of a teacher or group of teachers as it pertains to the interpretation, meaning or application of any of the provisions of this agreement. A grievance must be initiated within fifteen (15) days after the occurrence or event upon which a grievance is based.

2. A "Grievant" may be a teacher or group of teachers or the Association.

3. The term "Days" when used in this article shall, except where otherwise indicated mean working days; thus, weekend or vacation days are excluded

B. Purpose:

1. The purpose of this procedure is to secure, at the lowest possible administrative level, equitable solutions to the problems which may from time to time arise pertaining to the interpretation, meaning or application of any of the provisions of this agreement.

C. General Procedures:

1. Since it is important that grievances be processed as rapidly as possible, the number of days indicated at each level should be considered as a maximum and every effort should be made to expedite the process. The time limits specified may, however, be extended by mutual agreement.

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D. Initiating and Processing:

1. Level One - The grievant will first discuss his/her grievance with his/her principal or immediate supervisor, either directly or through the Association's designated representative. The principal shall be told that this is a grievance and not just conversation. In the event of a grievance, the employee shall perform his/her assigned work task and grieve his/her complaint later unless it endangers his/her health or safety.

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ARTICLE XII

PROFESSIONAL QUALIFICATIONS AND ASSIGNMENTS

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E. Teacher volunteering to take additional loads because of nonavailability of substitutes, shall be compensated at the rate of 1/7th of the substitute daily pay per high school class period, however, this shall not apply to study hall situations (unless a class sent to study hall results in that teacher supervising more than fifteen (15) students above that hour's normal load for that class period).

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ARTICLE XXIII

TEACHING HOURS AND CLASS LOAD

A. The school day shall begin at 7:45 A.M. with teachers on duty in the building. The school day shall end at 3:15 P.M. except for those teachers with extra-curricular and co-curricular duties and teacher bus drivers. Teachers are encouraged to remain for a sufficient period after the close of the pupil's school day to attend to those matters which properly require attention at that time, including consultations with parents when scheduled directly with the teacher, except that on Fridays or on days preceding holidays or vacations, the teacher's day shall end at the close of the pupil's day.

B. The weekly teaching load for all teachers shall be thirty (30) high school class periods of student contact time. Contact time is defined herein as any time a teacher is assigned to direct the learning or supervise the behavior of students. Without his/her consent, no teachers shall be assigned to more than thirty (30) high school class periods of pupil contact per week. Each teacher shall be assigned a minimum of five (5) non-contact high school class periods per week.

C. All teachers shall receive a duty free uninterrupted lunch period of thirty (30) continuous minutes.

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ARTICLE XXV

PROFESSIONAL COMPENSATION

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D. The teacher's pro rata hour/daily rate shall be determined in the following manner:

1. Teacher's Scheduled Annual Salary / No. of Contracted Days (189) = Pro Rata Daily Rate

2. Pro Rata Daily Rate / Maximum Teaching Periods (7) = Pro Rata Hourly Rate

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ARTICLE XXVII

INSURANCE PROVISIONS

A. The Board shall make payment of insurance premiums for each employee to assure insurance coverage for a full twelve (12) month period for all employees who complete their contractual obligation. If an employee terminates his/her employment for reasons other than illness prior to June, his/her subsidy shall terminate.

B. In the event that an employee, absent because of illness or injury, has exhausted sick leave accrual, the hospital-surgical-medical insurance shall continue throughout the balance of the contract year as defined in Section A above.

C. 1. The Board shall provide 100%, less a $42.90 per family or $22.94 per single teacher contribution per month ($44.25 family/$23.66 single for 1994-95), of the cost of hospital-surgical-major medical and dental insurance premiums. This contribution to begin upon ratification of this Agreement.

2. If a teacher does not carry health insurance with the school because of dual coverage, the school agrees to pay for an option plan at the cost of 100% less the $22.94 ($23.66) teacher contribution, single rate coverage. This is to give the employee the right to insurability.

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BACKGROUND

The employes involved, Koelzer, Tainter, Vaudt, and Wahleithner, are four part-time teachers employed by the District for the 1994-95 school year. The parties stipulated that all four employes were assigned the equivalent of at least 15 high school class periods of student contact time per week, but none was assigned more than 19 such periods, and that each was assigned at least 2 1/2 non-contact class periods per week. Individually, Koelzer, Vaudt and Wahleithner were assigned to teach 19 hours per week. Tainter was initially given a teaching contract for 18 hours per week, which included a P.O.P.S. Co-Coordinator assignment, and subsequently (mid-September, 1994) was issued an "administrative contract" for P.O.P.S. Coordinator for 1 hour per week and a teaching contract for 17 hours per week.

Koelzer worked 19 hours per week in both the 1992-93 and 1993-94 school years and did not receive any insurance benefits in those years, and did not grieve. All four employes were informed by Superintendent Brennan when they were hired that they were not eligible for insurance benefits. Under the District's contract with its health insurance provider, WEA Insurance, only employes in this group "who work 20 or more hours per week" are eligible for health insurance coverage, and that has also been the case for at least the six years prior to the 1994-95 school year. Koelzer was included on the seniority lists published by the District for 1993-94 and 1994-95; Vaudt and Wahleithner were included on the 1994-95 lists, and Tainter was included on the list published August 19, 1994, but not on the list published on October 31, 1994 or February 24, 1995.

At the beginning of the 1994-95 school year, prior to the first payroll, the Association's Treasurer, Debra Syrjala, received a memorandum dated August 24, 1994 from Superintendent Brennan stating that seven teachers would not have their Association dues withheld from their paychecks, including the four employes in this case. Syrjala inquired of the District's Bookkeeper as to why and was referred to Brennan. Brennan explained that those seven employes were not covered by the parties' Master Agreement and therefore were not eligible for the payroll deduction. Syrjala then informed the Association President, Kayle Wahleithner, of the District's action. Wahleithner discussed the matter with Brennan on or about August 25th, and asked that those employes working at least 19 hours be covered by the voluntary dues

deduction. Syrjala was informed on September 19, 1994 by the Bookkeeper in the next payroll period that Koelzer, Vaudt and Marian Wahleithner would have dues deducted. In the past, any teacher who had submitted authorization for the deduction of Association dues, had the dues deducted from their paychecks, regardless of the number of hours per week they worked. In discussions on this matter, the subject of how part-time employes were being treated was discussed with regard to their bargaining unit status and their rights under the Master Agreement. In the course of those discussions, it became evident that the parties differed on who was covered by the Master Agreement and entitled to benefits under that Agreement, with the Association asserting that teachers with a workload of at least 17.5 hours per week qualify and the District asserting that 20 hours per week is the minimum required to entitle its teaching employes to benefits.

On October 4, 1994, the Association filed the instant grievance alleging violations of Article XXVII, Sections A, B and C of the Agreement. The parties were unable to resolve their dispute and proceeded to arbitration on the grievance.

POSITIONS OF THE PARTIES

Association

The Association argues that the parties' Agreement defines a full-time teaching schedule so as to easily be able to calculate a 50% teaching schedule for purposes of defining the bargaining unit status, i.e. 17.5 hours per week. Under the Agreement's Recognition clause, employes must teach 50% of a regular teaching schedule to be included in the unit. An employe in the bargaining unit is entitled to insurance benefits pursuant to Article XXVII. Article XXIII defines a school day as lasting from 7:45 a.m. until 3:15 p.m. with a half-hour duty-free lunch, i.e., the school day is 7 hours. Thus, a regular teaching schedule is 35 hours of work a week. This position is buttressed by Article XII, E, which provides that teachers taking additional loads due to unavailability substitutes shall be compensated at the rate of 1/7th of the substitute day pay. Similarly, Article XXV, D defines a teacher's *pro rata* hourly/daily rate as 1/7th of the teacher's daily rate thus recognizing the teacher's work day as 7 hours. Further, Article XXIII, B, defines work load for all employes as 30 high school class periods of student contact time and each full-time teacher is also entitled to a minimum of five non-contact high school periods per week. It was stipulated that each of the employes was assigned the equivalent of at least 15 high school class periods of student contact time per week, and at least 2 1/2 periods of non-contact time per week. Thus, they were assigned the equivalent of at least 50% of a full-time teacher's workload. Accordingly, those four employes were bargaining unit employes and therefore should have been offered the option plan under Article XXVII of the Agreement.

With regard to Tainter, it is obvious that the District changed her initial 18 hour per week contract in order to avoid paying her benefits under Article XXVII, C, 2. The P.O.P.S. assignment was not an administrative position in a legal sense, and had no administrative duties. The assignment was consistent with the duties of a bargaining unit teacher and she was given no pay increase for administrative duties connected with the assignment. The facts support Tainter's assertion that the assignment must be counted toward her bargaining unit status. Further, Tainter, like the other three employes, was listed on the District's seniority list which evidences an acceptance of those employes as bargaining unit employes.

With regard to the employes' entitlement to insurance benefits, the parties' Agreement provides an option plan, i.e., a tax-sheltered annuity (TSA) for bargaining unit employes who do not carry health insurance with the school because of dual coverage. The District's arrangement with the insurance carrier to provide benefits only to those employes working 20 or more hours per week is not dispositive. Rather, the issue is whether these employes were employed at least 50% of a regular teaching schedule, and if so, were they entitled to the TSA option part of the negotiated fringe benefit package. As none of them sought health insurance coverage, the District's unilateral decision to provide benefits to employes working 20 or more hours per week is irrelevant. Further, if there is a conflict between the Agreement and the insurance policy obtained by the District, the Agreement must control. Citing Elkouri and Elkouri, How Arbitration Works (4th Edition, 1985) at 363. The Association also cites a number of arbitration awards wherein the arbitrator found that where there was a conflict between the insurance contract and the collective bargaining agreement, the latter prevailed and the employer was required to provide the benefits which the parties had negotiated, but which were not covered by the insurance policy. Similar to the situation in GAF CORPORATION, 77 LA 256 (Rezler, 1981), the Association was not privy to the District's arrangement with the insurance carrier to provide insurance to employes who are employed 20 or more hours per week. The eligibility for health insurance was unilaterally adopted by the District and should not determine whether or not an employe is eligible for the TSA option. Rather, the outcome should be determined on the basis of whether or not the four employes worked at least 50% of a regular teaching schedule. Further, the Association reasonably assumed the District would purchase insurance to cover employes who taught at least 50% of a regular teaching schedule. The policy was never shared with the Association, and the District never raised the issue. Prior to this grievance, the Association had no reason to question whether the District was complying with the Agreement. Further, the District can arrange for the carrier to provide the insurance benefits or the TSA option to employes who work 17 1/2 hours or more per week at any time upon its demand.

The Association also asserts that there is no binding past practice which is dispositive in this case. The District's reliance upon Koelzer's having worked 19 hours during the 1993-1994 school year without grieving the refusal to provide health insurance benefits is misplaced. The evidence in this case does not meet the criteria for finding a valid past practice. First, one

instance does not qualify as a past practice. Further, the Association was not informed that the carrier could provide benefits to employes who were employed at least 17 1/2 hours per week. Finally, a past practice cannot overcome clear and unambiguous contract language. Here, the four employes meet the threshold requirement for bargaining unit status set forth in the Recognition clause of the parties' Agreement. Thus, they were entitled to the TSA option referenced in Article XXVII, paragraph C, 2.

In its reply brief, the Association responds to the timeliness issue raised by the District. The Association asserts that the grievance arose because the District removed some part-time employes from the voluntary dues deduction list, which action led to a discussion as to who was in the bargaining unit and what benefits those employes in dispute should receive. The instant grievance was timely filed upon the Association's learning of the District's unilateral arrangement with the insurance carrier to provide insurance benefits for employes who were employed 20 or more hours per week. With regard to the District's reliance upon Koelzer's having been employed at 19 hours per week during the previous two school years, the testimony of Wahleithner reveals that she was not asked by Koelzer to file a grievance and that Koelzer mentioned in a casual conversation that she did not receive health insurance benefits, but is not clear she mentioned to Wahleithner that she was employed 19 hours per week. Further, Wahleithner testified that she was unaware of the insurance provisions before the 1994-95 school year. It was only in the fall of 1994 that she became aware of the contradiction between the 20 hour per week cutoff that the Superintendent had negotiated with the insurance company and the language in the Agreement. This is understandable as there were only a few part-time employes who were employed either considerably above the 50% teaching schedule or considerably below it. At some point, Brennan informed Wahleithner that the insurance company would not cover employes unless they were employed 20 hours per week. Wahleithner did not perceive a need to question that information, as it was not presented in the context of a dispute regarding a particular employe's entitlement to insurance or TSA benefits. Thus, there is no evidence of a knowing waiver by the Association concerning this issue, as it had not arose prior to the fall of 1994, nor were there any specific discussions between the Association and management concerning the interface between the contract language and the 20 hour per week minimum in the insurance contract.

The definition of a "grievance" does not require finding that this grievance was untimely filed. The Agreement defines "grievant" to include the Association. In this case the Association is the Grievant and it filed the grievance within fifteen days of its learning that certain employes were employed at least 50% of a regular teaching schedule and had been denied insurance benefits. The "event" is the Association's knowledge that insurance benefits were being denied to employes who were employed at least 50% of a regular teaching schedule. Further, the grievance can be seen as a continuing contract violation with the District's conduct constituting a separate violation for every paycheck the affected individuals were denied the TSA contribution. The Association notes that it is not seeking to recover compensation for the period

of time prior to the filing of the grievance, and that the remedy only applies to the 1994-95 school year.

The Association also asserts that the language in the Agreement that "at least 50 percent of a regular teaching schedule" is clear and unambiguous, especially in light of Article XXIII - Teaching Hours/Class Load. The stipulation that the four employes were assigned the equivalent of at least 50% of a full-time teachers' workload further supports the contention that the they were employed at least 50% of a regular teaching schedule. Accordingly, they were entitled to the TSA benefit pursuant to Article XVII, C, 2 - Insurance Provisions. The individual insurance contract does not create a latent ambiguity in the collective bargaining agreement.

The Association reasserts that there is no binding past practice supporting the District's actions. Apparently Brennan told the employes that they were not eligible for insurance benefits and they relied upon his representations and did not ask the Association to investigate. At best, Brennan got away with individual bargaining until the Association became aware of it. There was never a formal bargaining proposal or serious discussion had with the Association representatives regarding a 20-hour per week minimum. Brennan negotiated the 20-hour rule with the insurance company on his own. The parties' Agreement does not refer to the 20-hour requirement and there is nothing in the insurance policy which would prevent the insurance company from offering coverage/TSA option to employes employed 17 1/2 hours per week. The record evidence reveals a lack of mutual understanding between the District and the Association as to whether or not the contract language permitted insurance benefits to be denied employes employed 17 1/2 hours per week and that makes untenable the District's claim of a binding past practice.

The District's assertion that the insurance contract must be read in conjunction with the Agreement, in that the recognition clause in the Agreement determines which employes are eligible to be in the bargaining unit and the insurance contract limits eligibility for insurance benefits, leads to absurd results and therefore should be disfavored. That argument requires the Arbitrator to change the plain meaning of the recognition clause and the plain meaning of Article XXIII - Teaching Hours and Class Load. The Arbitrator would have to add five (5) hours to the workweek in order to make the collective bargaining agreement correspond to the insurance contract, which would be impermissibly adding terms and conditions to the parties' Agreement. Further, Article XXVII applies to all bargaining unit employes regardless of whether or not they work 50% of a regular teaching schedule or more and is not limited to employes working 20 hours or more per week. Under the District's logic, it could avoid many benefits of the collective bargaining agreement by merely bargaining with a third party to diminish the terms and conditions of that agreement. Such an analysis is not rational, nor persuasive. Lastly, the fact that sustaining the grievance will cost the District money it did not wish to pay or anticipate paying begs the issue, and is irrelevant. The Association requests that the District be ordered

to contribute to the four employes' TSA account at the single rate amount for the 1994-95 school year.

District

The District asserts that the grievance is untimely pursuant to Article VI of the Master Agreement, which provides that grievances must be initiated within fifteen (15) days after the occurrence or event upon which the grievance is based, and which further provides that the time limits in the grievance procedure are to be considered a "maximum period". The parties stipulated at hearing that the Association did not grieve this issue until the instant grievance, despite the fact that the four employes all worked less than 20 hours per week prior to the 1994-95 school year and had been told they were ineligible for benefits because of their hours. Pursuant to the grievance procedure, the Association should have initiated the grievance within a maximum of fifteen (15) days after the first employe working less than 20 hours per week, but more than 17 1/2 hours per week, was denied eligibility for health insurance benefits. The Association instead waited at least two years to file a grievance, and it is therefore untimely. The assertion that the Association had not "discovered" the alleged violation before then is irrelevant. Wahleithner testified that the Association neglected to file the grievance previously because it had always presumed that an employe needed to work 20 hours per week to be eligible and did not realize, until now, that unit members were allegedly eligible for health insurance benefits if they worked only 17.5 hours per week. The Association cannot claim that it did not know about the insurance contracts, since they are referenced specifically in the Agreement and are public records, fully accessible to the Association. Moreover, the date upon which the Association "discovered" the alleged violation, how it discovered it and why it perceived a grievance are irrelevant. The grievance procedure does not incorporate the "discovery rule". The 15-day limitation in the contract begins to run from "the occurrence or event upon which the grievance is based". That date is the date upon which the employes first contracted to work less than 20 hours per week and as a result, were denied health insurance benefits. Thus, by its own stipulation, the Association waited long after the 15 day limitation period had run in order to initiate the grievance, and therefore the grievance should be dismissed.

With regard to the substantive issues, the District first asserts that the Master Agreement and the insurance contract must be read together. It is a basic tenet of contract interpretation that the contract must be construed as a whole. By focusing attention solely on the "fifty percent" language in the Recognition clause, the Association improperly isolates that part of the contract from Article XXVII, E, with which it must be read. That latter provision expressly refers to the health insurance contract, which in turn, limits eligibility to 20 or more hours per week. Construing the Agreement and the insurance contract as a whole, the proper conclusion is that the Recognition clause determines which employes are eligible to be in the bargaining unit

and the insurance contract limits eligibility for insurance benefits to those unit employes who work more than 20 hours per week.

The Association improperly seeks to change the terms of a binding insurance contract and its members' total compensation package. The health insurance contract is binding upon both parties. Article XXVII, E, provides that it is changeable only by mutual agreement. Superintendent Brennan testified that it was his understanding that the individual contracts with the carrier that have been in existence to this point have been in existence by mutual agreement of the parties. In asking the Arbitrator to decide if 17.5 hours rather than 20 hours is the cutoff for insurance eligibility, the Association essentially seeks to unilaterally change the terms of a binding insurance contract. Additionally, the Association seeks to change the total compensation package to its members. Superintendent Brennan testified that to comply with the remedy sought, the eligible class in the plan would have to be changed and that would result in a change in the cost of the program. Just as the District cannot lawfully make such changes unilaterally, neither may the Association.

Next, the District asserts that the Association's position in this matter would lead to an absurd result and should therefore be avoided. Brennan testified that if there in fact had been an agreement with the Association that 19 hour people got benefits, it would result in two 19 hour people costing the District more than if it had hired one full-time person. The District has consistently implemented cost controls over the past five or six years, including contracting with certain teachers at 19 hours per week, just below the 20- hour cutoff, to save benefit costs. To have ever agreed to a 17.5 hour cutoff would not result in a cost savings in hiring 19-hour employes and would be absurd.

The Association's counsel testified that the District's counsel stated at Board hearings involving the reduction in hours of Wahleithner, Koelzer and Vaudt for the 1995-96 school year that the hours were being reduced to under half-time, i.e. from 19 hours per week to 17 hours per week, in order to render them ineligible for benefits. The Association erroneously concludes from the comment that the District impliedly conceded the Association's argument that the eligibility cutoff for benefits is 17.5 hours per week, rather than 20 hours. The Association's representative later admitted on cross-examination that the District's attorney never conceded in his comments that the cutoff was anything less than 20 hours per week. Also, what the District did with respect to the 1995-96 school year is irrelevant as to this grievance involving the 1994-95 school year. Given the controversy that existed at the time the employes' hours were reduced for the 1995-96 school year, the District had every right to hedge its bets by reducing their hours to a level where there would be no dispute. Thus, it cannot be implied that the District somehow conceded the 17.5 hour cutoff.

The Association's contention that the District's inclusion of the four employes on its seniority list constitutes an admission that the cutoff point is 17.5 hours per week is also meritless. The Superintendent testified that he prepared those seniority lists and included the employes on those lists despite their part-time hours, because he perceived a controversy within the Association about whether part-time teachers were unit members under the Master Agreement. Brennan testified that being uncertain as to how that controversy would be resolved, he included those employes on the seniority lists.

The District argues that in the alternative, it has established a past practice of providing health insurance benefits only to those unit members working more than 20 hours per week. If the argument that the health insurance contract modifies the Recognition clause is rejected, the two provisions must still be reconciled, since a contract cannot be interpreted to render one provision meaningless. The only way to reconcile the "50 percent" language of the Recognition clause and the 20-hour language of the health insurance contract is to presume that the "50 percent" language is ambiguous, i.e. that "50 percent" in this context means 20 hours, not its dictionary definition of "one-half". Accepting the presumption of ambiguity, the District then prevails because it has established a past practice of providing health insurance benefits only to those employes working more than 20 hours per week. The Superintendent testified that the 20 hours has been the cutoff for the six years he has been in the District, and Association President Wahleithner testified that she, Koelzer, and everyone else in the Association has always, until now, operated under the notion that 20 hours was the cutoff. Thus, a past practice exists and is one which the Association has "made mutual" by failing to object to it for so long.

In its reply brief, the District asserts that the Association's entire case is built upon the "50 percent" language in the Recognition Clause and that it leaps to the conclusion that every bargaining unit member is entitled to insurance benefits. The Association ignores the fact that the parties have expressly incorporated the terms of the insurance policy within their collective bargaining agreement. Therefore, even if the Association is correct that the four employes should be viewed as bargaining unit members under the Recognition clause, it is unable to avoid the fact that the very terms of the contract it incorporated exclude employes who work less than 20 hours per week. The District could not unilaterally change the hours eligibility provision of the insurance contract anymore than it could unilaterally change the deductible provisions for payment arrangements. Clearly, the Agreement requires that it be applied in harmony with the insurance contracts and that is consistent with the actual practice of the parties' using the 20-hour cutoff for insurance purposes. The Association's excuse that it had no reason to look into the issue prior to the 1992-1993 school year because there were only a few part-time employes either employed considerably above 50 percent or considerably below 50 percent is both unsupported by any reference to the record and is a tacit admission that the parties have historically used the 20-hour cutoff. The awards cited by the Association with regard to resolving conflicts between a collective bargaining agreement and an insurance policy are inapplicable since they dealt with instances where there was a conflict between the two

documents. Here, the insurance policies are incorporated into the parties' Agreement. The basis of the Association's argument in this area assumes language exists stating that bargaining unit members receive insurance regardless of the terms of the policy. To the contrary, the Agreement states that bargaining unit members receive insurance pursuant to the terms of the insurance policies. Those terms exclude employes who work less than 20 hours per week. There is no merit to the Association argument that the District never shared the policy with the Association and never raised the issue. The parties' mutually negotiated Agreement specifically references the insurance policies, which presumably both parties had at their disposal during those negotiations. If the Association never read them, that was their choice, but they have clearly been comfortable with the District's application of those policies until the instant grievance. The Association asks that the District only disregard those terms of the policies with which it takes issue, however, the parties' decision to "bootstrap" the insurance contract into their Agreement must be respected in total, not selectively applied. The District disputes that it would be a harsh result to deny these employes the TSA option. It is not a harsh result to apply the contract in the manner those employes fully expected in the first place. They were specifically informed they would not be eligible for insurance prior to entering into their 1994-95 contract and nothing was taken away which they had expected. Lastly, if the Association took issue with the P.O.P.S. assignment of Tainter, it should have filed a grievance as to the issuance of that administrative contract. Since no such grievance was filed, the Association should not be permitted to convert this coverage issue into a question regarding that assignment, as that latter issue is not before this Arbitrator.

DISCUSSION

Timeliness

Article VI, Section A, 1, of the Agreement provides that, "A grievance must be initiated within fifteen (15) days after the occurrence or event upon which a grievance is based." Section C, 1, of that Article provides, "Since it is important that grievances be processed as rapidly as possible, the number of days indicated at each level should be considered as a maximum and every effort should be made to expedite the process."

In this case, the "event" grieved is the District's refusal to make contributions toward the TSA option under Article XXVII, Section C, 2, of the Agreement on behalf of the four employes involved (those working 17.5 hours per week, but less than 20). In Koelzer's case, that first occurred when she was hired to work 19 hours per week for the 1992-93 school year, and first occurred as to Tainter, Vaudt and Wahleithner with the start of the 1994-95 school year. Each had been told when they started that they were not eligible for insurance benefits. While the Association filed the grievance in this case, it is based upon the District's actions with regard to those employes, and their knowledge of the District's actions must be imputed to the Association for the purpose of determining compliance with the contractual time limit for filing a grievance. That said, this is nevertheless a classic example of a "continuing violation". If the

Association's interpretation of the Agreement is found to be correct, i.e., that employes working 17.5 hours per week or more are entitled to the benefits under Article XXVII, C, 2, then each month the District refused to provide the benefit to those employes constituted a separate violation. In such circumstances, the failure to grieve in the past does not result in a waiver of the right to grieve that same action in the future. The employes' failure to grieve the denial of the benefit before October 4, 1994 results in a waiver of any claims they might have had more than 15 days prior to that date, but it does not constitute a waiver of their right to challenge the District's actions from that date forward. Therefore, it is concluded that the grievance is timely as to the alleged violations occurring after October 4, 1994 with regard to the four employes.

Merits

Substantively, this grievance first requires a determination of who is eligible for insurance benefits under the terms of the parties' Agreement. If it is determined that all employes covered by the Agreement, i.e., all employes in the bargaining unit, are eligible for such benefits, it will then be necessary to decide the question of what constitutes "50% of a regular teaching schedule", as set forth in the parties' description of the bargaining unit in Article 1, Recognition.

With regard to the first question, it is the employes' rights under the Master Agreement that are at issue. In determining those rights, one must first look to the terms of the Agreement. The relevant language of Article XXVII, Section A, provides:

> "The Board shall make payment of insurance premiums for each employee to assure insurance coverage. . . for all employees who complete their contractual obligation."

That language is broad and appears to encompass "all employes" in the bargaining unit "who complete their contractual obligation." However, the parties have also expressly referenced specific insurance contracts in Article XXVII, Section E, of the Agreement. Having negotiated the reference to the specific insurance contracts with WEA Insurance into their Agreement, the parties are deemed to have been aware of the terms of those contracts when they did so, especially with regard to something as basic as who is eligible for coverage under those contracts.

The unrebutted testimony of Superintendent Brennan was that the District's health insurance contract with WEA Insurance provided for an eligibility class of employes working 20 or more hours per week when he first came to the District in 1989. Contrary to the Association's assertion, there is no evidence in the record that the District unilaterally and without the Association's knowledge, went to WEA Insurance and changed the eligibility class. The testimony cited by the Association (Tr. p. 98) establishes that since the threshold for insurance coverage was already established at 20 hours per week when he arrived in the District,

Brennan has had no reason to discuss the matter with any Association representative before the instant dispute arose. The evidence in the record indicates that the contract with WEA Insurance for health insurance has contained a 20 hour per week threshold to be eligible for coverage since at least 1989, and there is no evidence that it was anything different before Brennan's arrival in the District. That being the case, and reading Sections A and E of Article XXVII together, as must be done, it is concluded that the parties intended that the eligibility threshold requirement in the insurance contract modify Section A to the extent that "all employees" is to be read to mean all employes who are eligible pursuant to the terms of the insurance contract. Thus, the 20 or more hours per week threshold in the insurance contract applies to this dispute. Since all four individuals in issue in this dispute worked less than 20 hours per week during the 1994-95 school year, none of them were eligible for insurance benefits. While there is some indication in the record that the carrier would be willing to reduce the 20 hours per week requirement, that is an issue for the parties to address in negotiations.

The Association asserts that the four individuals were entitled to the TAS option provided under Article XXVII, Section C, of the Agreement for the 1994-95 school year. As the TAS option is provided for those teachers who do not carry health insurance through the District "because of dual coverage", it follows that teachers who are not eligible for the District's health insurance coverage in the first instance, are not entitled to receive a benefit for not carrying that coverage. Thus, assuming *arguendo* that the four individuals were in the bargaining unit at the time, the District did not violate Article XXVII of the parties' Agreement by denying them the insurance benefits or TAS option under that provision for the 1994-95 school year.

Based upon the foregoing, the evidence, and the arguments of the parties, the undersigned makes and issues the following

AWARD

The grievance is denied.

Dated at Madison, Wisconsin this 14th day of January, 1998.

David E. Shaw /s/
David E. Shaw, Arbitrator

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