BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

UNITED NORTHEAST EDUCATORS

and

SHAWANO-GRESHAM SCHOOL DISTRICT

Case 21
No. 55413
MA-10008

Appearances:

Mr. James A. Blank, Executive Director, United Northeast Educators, 1136 North Military Avenue, Green Bay, Wisconsin 54303, on behalf of United Northeast Educators.

Godfrey & Kahn, S.C., Attorneys at Law, by **Mr. Dennis W. Rader**, 333 Main Street, Suite 600, P.O. Box 13067, Green Bay, Wisconsin 54307-3067, on behalf of the District.

ARBITRATION AWARD

According to the terms of the 1994-97 collective bargaining agreement between Shawano-Gresham School District (District) and Shawano-Gresham Educational Support Personnel Association (Association), the parties jointly requested that the Wisconsin Employment Relations Commission designate Sharon A. Gallagher to hear and resolve a dispute between them regarding benefits for reduced/laid-off school year employes. The Commission designated Sharon A. Gallagher to hear and resolve the dispute in accord with the parties' joint request. A hearing was held at Shawano, Wisconsin on November 11, 1997. A stenographic transcript of the proceedings was made and received by December 2, 1997. The parties agreed to submit their initial briefs postmarked January 2, 1998, to be exchanged by the undersigned, and that reply briefs would be postmarked by January 16, 1998 and sent directly to the parties and to the Arbitrator.

ISSUES

The parties were unable to stipulate to an issue or issues to be determined in this case. The Association suggested the following issue for determination:

Did the District violate the collective bargaining agreement and past practice when it failed to pay the District's share of the Grievants' health and dental insurance premiums for July and August, 1997 after the Grievants had completed their work year? If so, what is the appropriate remedy?

The Employer agreed that the Association's issue would be an appropriate one if the phrase "and past practice" were removed from the first issue. The parties stipulated that the Arbitrator should select between the issues of the parties after having considered the relevant evidence and argument in this case. Based upon this stipulation and the relevant evidence and argument herein, I find that the District's issues should be determined in this case.

RELEVANT CONTRACT PROVISIONS

ARTICLE XI - REDUCTION IN PERSONNEL, LAYOFF AND RECALL

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Section 11.03: . . . Laid off employees may have their health, dental and life insurance benefits continued by paying the regular monthly prescriber group-rate premium for such benefits to the Employer.

• • •

ARTICLE XX - INSURANCE

Section 20.01: Health, Dental and Vision Insurance. The Board will pay the following portion of the annual single or family-combined health, dental and vision insurance premium according to the following chart:

For all employees hired prior to July 1, 1995:

Hours Worked for Fiscal Year	Percent of Board Payment
1,260 hours and above	94% of family and single premium under Section 125 of the IRS Code

All other employees scheduled to work twenty (20) hours for thirty-six (36) weeks (720) hours or more, will be eligible for a prorated percentage payment based on 1,260 hours constituting 94%.

. . .

Section 20.01.1: Employees will contribute six percent (6%) of the anticipated funding level for participating in the medical, hospitalization, vision and dental insurance programs.

. . .

16.0 FRINGE BENEFITS

16.1 The District shall self-fund group hospital and medical coverage, HMP coverage, dental and vision coverage. Such coverages shall be provided to all employees working seventeen (17) hours or more per week and shall provide all benefits as set forth in WPS Policy #1252.1 including amendments thereto issued prior to the date of this Agreement, and are considered a part of this Agreement.

. . .

16.4 Premium Equivalent

1. The District shall pay the full cost of all self-funded plan(s).

. . .

STIPULATIONS OF THE PARTIES

The parties stipulated that there is no timeliness issue in this case. The parties also stipulated that the District pays the health and dental insurance premiums through the Summer for employes if those employes are to come back to work in the Fall for the District.

BACKGROUND

The parties entered into their initial contract, covering the years 1991 through 1994 as a result of an interest-arbitration award. The District won the arbitration case that resulted in that contract. During negotiations for that contract prior to impasse, the Association proposed the following language relating to employes' work year:

ARTICLE XIV - WORK SCHEDULE AND OVERTIME

14.01 Work Year: The normal work year for each employee shall be the same as he/she enjoyed during the 1990-91 fiscal year of the District. The number of days worked by employees during the District's fiscal year may be changed by the District with the providing of two weeks notice to the employee and to the Association. Any reductions in the length of any employee's work year shall not result in any reduction in pro-rated benefits for that fiscal year. This section shall not be deemed to restrict the ability of the District to implement provisions of Article XII, Layoff, of this Agreement. . .

WEA Representative Charlie Garnier who represented the Association at negotiations for the 1991-94 contract, stated that the Association's goal in proposing Section 14.01 was to maintain certain levels of benefits throughout the work year even if an employe suffered a reduction in hours during the year. Garnier also stated that he did not recall the parties ever discussing what would happen to nine-month employes if they were issued layoff notices outside their 180-day work year.

During negotiations for the initial contract, the Association also proposed the following language regarding the reduction in personnel, layoff and recall as well as the maintenance of fringe benefits, as follows:

10.1 When the District eliminates a job or reduces hours of employment because of reduced workloads, budgetary or financial limitations, or for reasons other than performance or conduct of the employee, the following procedure shall be used within each classification:

. . .

10.5 In the event of a reduction in the work hours within a given classification, employees with the greater seniority may use same to maintain his/her normal work schedule by displacing employees with less seniority on the work schedule. In no case shall a reduction in any employee's work hours take effect until ten (10) workdays after written notice to the affected employee is given by the Employer.

• • •

Initially, the Association had proposed that the District would maintain insurance benefits for laid-off employes for 60 days after their layoffs. In its preliminary final offer of December 14, 1991, the Association changed this proposal by deleting the reference to 60 days and inserting a reference to 30 days, as follows:

> 12.03 . . .Laid-off employees may continue their health, dental, and life insurance benefits by paying the regular monthly per-subscriber group rate premium for such benefits to the Employer after the first thirty (30) days of such layoff, during which time all such fringe benefits will be continued by the Employer. . .

• • •

WEA Representative Garnier stated that over the period of negotiations, he became convinced that the comparables would not support a listing of the length of the employe work year or work week and that the Association then decided to attempt, in their final offer, to maintain benefits during the fiscal year if employes were reduced in hours. Therefore, the only proposal the Association made in its final offer regarding the maintenance of insurance benefits for employes who were reduced or laid off was contained in Article 14.01, quoted above. All other proposals in this area were withdrawn by the Association. As the District prevailed in the interest-arbitration case, no language regarding a guarantee of the continuation of District payment for reduced or laid-off employes' insurance benefits was contained in the 1991-94 Agreement.

Prior to August, 1996, the District had four separate kitchens which served meals to students in five schools. In each of these four kitchens, there was a Head Cook and food service employes to assist that Cook in preparing and serving meals. In one of the four kitchens, the employes prepared meals to be served at the fifth school which contained only a satellite kitchen in which meals were served by food service employes after being received from the main kitchen.

In 1996, the District reduced some food service employe hours due to a drop in food service participation by students. This was the first time that food service workers had their hours reduced. On July 23, 1996 (during the Summer break) the District sent letters to thirteen food service employes reducing their hours effective August 22, 1996. Sometime in August, 1996, the Association complained that the District should have followed seniority in laying off or reducing employes. The District agreed to do so, and by letters dated September 6, 1996 the District reduced the least-senior employes to accomplish cutting a total of nine hours per day. However, in each instance where the District cut hours of work of food service employes in 1996, it included in its written communications to those employes that health insurance costs

would be prorated according to the Master Contract - Article XX. District Administrative Assistant for Finance, Gail Mosch, stated that the reduction in hours which occurred in 1996 was effective August 22, 1996; and because there were no pay periods in July of 1996, and only a short period of time between August 22, 1996 and September 6, 1996, the District decided not to make any deductions for health and dental premiums from food service employes whose hours had been reduced. One employe was laid off entirely in 1996 due to this reduction in hours. Employes Teetzen and Schultz' hours, although scheduled to be reduced by the District in 1996, were never actually reduced. Rather, as a result of the Union's complaint, a Memorandum of Clarification was entered into by the parties regarding Teetzen and Schultz which read as follows:

> The District will reimburse the two employees, Judy Schultz and Kathy Teetzen, for the additional payments they made on their health insurance during the summer due to their partial layoff at the end of the 1996-97 school year.
>
> This is being done on a nonprecedent setting basis because, in this unique situation, these two employees never actually worked less than seven hours per day at the beginning of the 1997-98 school year and will be working a regular day of seven hours for the rest of the school year.
>
> This clarification refers only to the two individuals noted above and does not apply to those other employees who were given notice of a partial layoff at the end of the 1996-97 school year and whose hours have not been restored at the current time.

As of the beginning of the 1997-98 school year (August 25, 1997), the District had finished building a new central kitchen in which it planned to prepare all school lunches for the District, and to send all meals from the central kitchen to each of the five schools, so that they could be served to students. Prior to the end of the 1996-97 school year (June 2, 1997), the Grievants were notified that their hours would be cut significantly, effective August 25, 1997. In addition, these letters, sent to employes who worked less than 4 hours per day due to the reduction, contained the following language:

> According to the Master Contract, Articles VII, XX and XXI, you will not be eligible for employee benefits (health, life, ltd, retirement, sick and other leave). Effective June 30, 1997, your benefits will terminate. Under the Cobra Law, you may continue the health insurance for 18 months at your cost.

• • •

The District had anticipated reducing food service hours by 96 hours per day, but in fact it reduced work hours by only 65 food service hours per day on and after August 25, 1997. After the central kitchen was built, the District found that it needed more food service hours than it had anticipated to set up the kitchen as well as to accommodate increased participation in food service by students. Thus, two employes who had previously received reduction notices were never actually reduced in their work hours.

Three District employes, Shirley Thorne, Genevieve Polzin and Leila Little, each of whom had worked for the District for between 12 and 23 years, stated that in every year prior to 1996, the District always paid the health and dental premiums for food service employes who had finished their 180-day work year. These employes also stated that often they did not know until approximately two weeks before school began each year, whether they would be asked to return to employment with the District. These witnesses also stated that they recalled receiving a letter from Dr. Hess for the past three years stating that they could expect to be reemployed in the Fall. An example of such a memo from Dr. Hess dated June 5, 1996 read as follows:

> The 1995-96 school year is coming to an end. I want to thank you for all that you have done to make this a successful year for our students.
>
> As the 1996-97 school year rapidly approaches, it is our intent to employ all current support staff next school year. If you are not planning to continue employment in the Shawano-Gresham School District, please notify my office as soon as possible.
>
> Best wishes for an enjoyable and relaxing summer. See you at the end of August.

One witness stated that she believed that prior Superintendent Davel had sent letters to all support staff employes stating that they would be reemployed in the following year at the end of each prior school year. Finally, the Union submitted documentation indicating that if it prevailed herein, the following employes should receive reimbursement for health and dental insurance premiums which the District failed to pay for July and August of 1997: Little, Hanson, Baumann, Fobel, Dickelman, Polzin, Thorne, Baker, Miller.

POSITIONS OF THE PARTIES

The Association

The Association urged that insurance premium payments to be made in June, July and August are earned as indirect or deferred compensation by employes if employes complete work in the preceding school year. The Association noted that all of the Grievants had completed their work for the 1996-97 school year. When the District notified the Grievants that their hours

would be reduced for the next school year (effective August 25, 1997), these employes nonetheless expected to return to work in August, 1997 and could not be considered laid off. Yet the District refused to pay its share of the Grievants' health and dental premiums for the months of July and August, 1997. The Association cited several cases for the proposition that insurance premium payments are an accrued benefit which become payable due to employes' past service, whether the employes are expected to return to work the following year or not. Thus, in the Association's view, absent termination of an employe or that employe's failure to "earn" insurance premiums by his/her failure to complete the work year, the District must be found to have violated the contract by refusing to pay the Grievants' Summer insurance premium payments.

The Association contended that if the labor agreement is read in its entirety, the Association should prevail in this case. The Association pointed out that Article VII which defines full- and part-time employes, fails to make a distinction between school year and twelve-month employes, using only annual hours worked. However, the length of an employes' work year determines, pursuant to the effective agreement, employe entitlements to the following benefits under other Articles of the Agreement as listed below: Article XV -Holidays; Article XVI - Vacations and Article XVII - Sick Leave. In addition, Article XXI calls for annual premiums to be paid by the District based upon the hours that employes work during the year. The Association found it significant that Article XX does not mention or make any distinction based upon whether an employe is a school-year employe or a twelve-month employe.

The Association noted that the parties stipulated that the District pays health and dental insurance premiums through the Summer for employes who return to work the following Fall. As none of the Grievants was terminated prior to August, 1997, further proration or discontinuation of insurance benefits due to hours reductions could not take effect until the beginning of the 1997-98 school year. Even if the Grievants had been totally laid off, the Association urged, they could not be considered terminated as they would have recall rights under Article XI. The Association pointed out that if the District won this case, the District could (with impunity) annually lay off or reduce all food service employes for the next school year to avoid paying each of them their Summer insurance benefits.

The Association asserted that the District's actions were contrary to the contract and to past practice. The Association contended that in 1995 and 1996 the District laid off food service employes yet paid the appropriate portion of each employe's health and dental premiums and that this constituted a past practice binding herein. The Association noted that prior to 1995, the District had traditionally continued insurance premium payments over the Summer, despite the fact that the District often did not notify food service employes of future employment until within two weeks before the start of the school year. In the Association's view, the District's practice of deducting food service employes' prorated share of their Summer insurance premiums from their last paycheck in June each year, supports the Association's arguments herein. In

addition, the Association argued that the evidence of bargaining history offered by the District merely proved that the parties never considered or discussed benefit continuation after the end of the work year in a layoff/hours reduction situation.

In the Association's opinion, this case concerns premature termination of benefits due to an anticipated reduction in work hours for the next school year. In the Association's view, as employes' work hours were not to changed until after the 1997-98 school year began, benefit levels should not have been impacted until the change in hours actually became effective, and therefore, the grievance herein should be sustained and the Grievants made whole.

The District

The District argued that the contract language is clear and unambiguous and makes no distinction between full and partial layoffs. As such, the District urged, food service employes were not entitled to continue insurance premium benefits after they received notice of their partial layoffs on June 2, 1997, pursuant to Section 11.03 of the labor agreement. The District noted that no contract language guarantees the payment of Summer premiums for laid off employes, and that Section 11.03 specifically requires laid off employes to pay the premiums if they wish to continue health and dental benefits after their lay off.

The District also argued that the bargaining history supports its position herein. In this regard, the District pointed out that during negotiations over the parties' initial labor agreement, the Association made two proposals which would have bound the District to pay health and dental premiums for laid off employes for the first sixty or thirty days of lay off respectively. The Association ultimately dropped these proposals prior to certification of its final offer at interest arbitration on the initial contract. The District noted that the Association placed in its final offer a provision that would have required the District to continue all fringe benefits for the fiscal year even after an employe's work year had been reduced. Thereafter, the Association lost at interest arbitration. Thus, the District contended, the Association either dropped or lost its position regarding continuation of insurance benefits and it should not now be allowed to obtain through grievance arbitration what it had failed to win in negotiations and interest arbitration.

The District urged that the Association's past practice arguments should be found unpersuasive. The District pointed out that the circumstances extant in 1996 and 1997 were distinguishable, and that prior to 1997, food service employes had never been reduced in hours or laid off. In addition, the District asserted that in its 1996 and 1997 letters to employes, it made clear that employe health insurance costs would be prorated according to Article XX. The District noted that it sent its 1997 layoff notices to employes on June 2, 1997, prior to the expiration date of the collective bargaining agreement on June 30, 1997. Because the contract contains no language guaranteeing insurance payments after a notice of layoff/reduction is sent,

and because the Association failed to prove a past practice to the contrary, the grievance should be dismissed.

The District disputed evidence proffered by the Association that because the District failed to properly notify employes of their continued employment in the past, the District must pay Summer insurance premiums in this case. The District asserted that the record actually showed that each year, food service employes knew that they would be re-employed for the next school year. Nonetheless, the District urged that after the Grievants' hours were reduced effective June 30, 1997, only Article 11.03 was applicable to the Grievants' situation, and health and dental premium payments therefore did not need to be continued. The District noted that it made no deduction from laid off employes' last paychecks of 1997 for prorated premiums, as that benefit was to be terminated effective June 30, as stated in the District's June 2nd notice. Finally, the District argued that because Article XXV of the labor agreement is a traditional "zipper" clause, it effectively requires rejection of the Association's past practice argument.

REPLY BRIEFS

The Association

The Association urged that the contract clearly states that if employes work at least twenty hours per week for 36 weeks, they are entitled to the District's annual percentage of insurance contributions. As all of the Grievants finished their 1996-1997 work year, each was entitled to July and August premium payments to be made by the District. The Association asserted that the District should not be allowed to avoid its obligations by sending its notice of reduction of hours containing a premature and fictional effective date, when in fact the hours reductions could not occur until the start of the following school year, on August 23, 1997.

The Association denied that it was attempting to gain by this Award what it had failed to win in negotiations and/or interest-arbitration. The Association noted that only a small amount of evidence regarding the parties' initial bargain and interest-arbitration case was submitted herein, and that this evidence actually proved that the parties never discussed the effect of a layoff on Summer insurance benefits. Thus, in the Association's view, the bargaining history proffered by the District herein is inapplicable to this case and should be rejected.

The Association asserted that the 1996 layoff incident is indistinguishable from the 1997 layoffs, as the effective dates of both layoffs were essentially the same. The fact that food service employes' work status has been subject to change in the past supported the Association's case in its view. On reply, the Association argued that the fact that the District did not deduct prorated insurance premium payments from affected employes' final paychecks in June, 1997 was neither a true justification for the District's actions nor relevant to this case. Finally, the Association urged that because the District has always provided Summer insurance premium payments for employes who completed the prior work year, and because this practice does not

conflict with the terms of the contract, the weak "zipper" clause (contained in Article XXV) cannot abrogate the past practice proven by the Association.

The District

The District argued that the contract does not guarantee health insurance benefits for employes whose hours have been reduced. Where, as here, the District's June 2, 1997 notice of reduction in hours was to be effective at the end of the labor contract (June 30, 1997), no obligation to pay reduced employes' insurance benefits continued after the end of the contract year. The District took issue with the Association's analysis and interpretation of the cases the Association cited in its initial brief, as well. In this regard, the District noted that the cases cited concerned salaried teachers who were bound not only by collective bargaining agreements but by individual employment contracts, not school year hourly-paid employes who have no individual contracts like the Grievants in this case. Thus, the accrued benefit/deferred compensation arguments which are applicable to teachers cannot be applied to the Grievants.

Furthermore, the District urged that the record reveals no convincing evidence that a clear, long-standing and mutually-acceptable and acted-upon past practice favoring the Association has been in effect. In addition, the District contended that the evidence of bargaining history strongly supports its claims. A comparison of the clear language of Section 11.03, which the District won in interest-arbitration, with the Union's proposals (which it either dropped or lost in arbitration) for language that would have given it what it seeks in this case, support the denial of the instant grievance. Given the history of bargaining between the parties, therefore, the District argued that the Association's assertion that the parties never discussed layoffs after the end of the school year was internally contradictory. The extension of the Association's arguments regarding the use of "annual hours worked" and the lack of a contractual distinction between school year and twelve-month employes, would lead to inconsistencies and illogical results, in the District's view. The District admitted that the Grievants were not "terminated" but were partially laid off. The District also denied that if the District prevailed herein, it would lay off employes every Summer to avoid paying insurance benefits during the Summer months.

The District urged that the true prerequisite for Summer insurance premium payments is a return to work in the new school year by the employe in question at the same level of work as that employe enjoyed in the prior school year. The District pointed out that the contractual layoff language is clear and broad, making no distinction between full and partial layoffs or between schoolyear and twelve month employes, and leaving the District with broad discretion in this area. In all of the circumstances, the District sought denial and dismissal of the grievance in its entirety.

DISCUSSION

In my opinion, the language of Article XI, Section 11.03 is clear and unambiguous as far as it goes. As the contract fails to make any distinctions between full, partial layoffs, layoffs which occur during the school year, and layoffs which occur during the Summer months, Section 11.03 must be read to apply to all layoffs and reductions in work hours whenever they occur. This conclusion is further supported by the fact that Article XI is entitled "Reduction in Personnel, Layoff and Recall" and the fact that Section 11.01 addresses the procedure to be used when the District "eliminates a job or reduces hours of employment because of reduced workloads, budgetary or financial limitations, or for reasons other than performance or conduct of the employe."

I note that Section 11.02, which addresses the identification of positions to be eliminated or reduced as well as notification to employes of their employment status, fails to state a time limit for the proper notification to employes of reduction in hours. In addition, the contract contains no language which would require the District to make prorated insurance premium payments for laid off/reduced employes after they have received their layoff notices. Rather, Section 11.03 clearly states that laid off employes may only receive health, dental and life insurance benefits by paying to the District the regular monthly prescriber group rate premium for such benefits. 1/

The Association has argued that because Article XX, Section 20.01 refers only to "annual" insurance premiums and fails to distinguish between school-year and twelve-month employes, the District is bound to pay its contractual share of insurance premiums for the Summer months to cover employes who complete the prior school year. The Association thus appears to have assumed that the term "annual" might refer to the school year. The Association's arguments must fail. The effective labor agreement runs from July 1, 1994 through June 30, 1997. As no evidence to the contrary was proffered by the Association, the term "annual" used in Section 20.03 must refer to each contract year, July 1 through June 30, not to each school year. In this regard, I note that the record showed that the contract year is the same as the District's fiscal year. Therefore, whether the Grievants completed the 1996-97 work year can have no bearing upon the level of annual insurance premium benefits the District is obliged to pay for each of them during the next year, July 1, 1997 through June 30, 1998.

In addition, in my view, the cases cited by the Association 2/ are distinguishable from the instant case. Those cases dealt with salaried teachers who were subject not only to a collective bargaining agreement but also to individual employment contracts, unlike the Grievants herein. The method by which they were compensated as well as the teachers' contractual relationships with their employers make those cases inapposite.

The Association has argued that the District prematurely terminated the Grievants' insurance premium benefits herein by anticipating a reduction in hours for the next school year. There is nothing in the labor agreement which requires that the District wait until the start of the school year to issue accurate notices of layoffs/reductions in hours to affected employes. The fact that the District anticipated its 1997-98 food service needs and notified affected employes of their reduced hours prior to the end of the school year (and prior to the end of the contract year) is precisely the reason why the District can avoid paying the July and August insurance premium payments for the affected employes. However, had the District attempted to recoup insurance premium payments it made in July and August, 1997, based upon the reduction in hours which employes suffered beginning in August, 1997, at the beginning of the next contract year (July, 1998), a union claim regarding such recoupment would have met with a different result as such recoupment would have been untimely.

The parties have argued at length regarding the significance of the District's actions in 1996 and prior thereto. The Association urged that the 1996 reduction in hours was identical to that suffered by food service employes in 1997, and that the District's actions prior to 1996 whereby it failed to advise employes with certainty whether they would be re-employed in the following school year as well as the District's consistency in paying Summer insurance premiums, demonstrated a true past practice in favor of the Association applicable to this case. In my opinion, the circumstances surrounding the 1996 reduction in hours were significantly different from those which pertained in 1997. Significantly, in 1996, the notices of layoff came to employes in late July, 1996, while the 1997 layoff notices were issued prior to the end of the employer's fiscal year and the contract year on June 2, 1997. Furthermore, the District's alleged failure, prior to 1996, to consistently advise employes whether they would be re-employed in the next school year does not, in my opinion, demonstrate a true past practice which is applicable to this case, as no layoffs occurred in any year prior to 1996. In any event, the occurrence of one layoff situation prior to the layoffs in dispute in 1997, fails to meet the definition of a true past practice, which must necessarily be clear, long-standing, mutually agreeable and acted upon with consistency over a period of years by the parties. 3/

The facts and circumstances surrounding the District's attempt to reduce hours in 1996 also generally support the District's claims in this case. In this regard, I note that the 1996 notification given to employes indicated specifically that insurance and benefits would be prorated pursuant to Article XX and that in 1997, the District included similar language regarding the proration of health insurance premiums in its layoff notice to employes. Furthermore, the settlement regarding employes Teetzen and Schultz, was specifically stated as non-precedent setting between the parties. In addition, I note that the Teetzen/Schultz settlement agreement itself demonstrates by implication, that the District was then applying the contract year (not the school year) to the Teetzen and Schultz' situations. I note that in that settlement agreement, the District explained that it had inappropriately deducted increased insurance premium payments from Teetzen and Schultz during the Summer months after July 1st and prior

to their anticipated reduction in hours, requiring the District to reimburse those employes for the increased insurance premium payments incorrectly deducted when the employes' work hours were not in fact cut during the 1996-97 school year. In addition, the fact that the District did not deduct increased insurance premium payments from the final check of the Grievants in June, 1997, also supports the District's arguments in this case.

The evidence of bargaining history proffered by the District is relevant and I find that it does in fact support the District's case. I note that during negotiations for the initial agreement between the parties, the Association proposed Section 10.05, which required ten working day's notice of a reduction in hours before such reduction could become effective. The Association later dropped Section 10.05 before submitting its preliminary final offer in that case. In addition, although the Association proposed, and later amended, Section 12.03 to include in the parties' initial agreement a requirement that the District maintain insurance premium payments for laid off employes for sixty days after layoff, the Association later deleted the 60 day requirement, and inserted a 30 day requirement of maintenance of health insurance premiums in the initial contract negotiation case. The Association ultimately dropped all references to the maintenance of insurance benefits as originally stated and later amended in Section 12.03 before submitting its final offer to the interest-arbitrator. WEA Representative Garnier stated herein that the Association decided to rely solely upon its final offer provision in Section 14.01 to maintain insurance premium payments following any full or partial layoffs. As I read it, Section 14.01 would have guaranteed District-paid insurance premiums to employes reduced in hours to the end of the fiscal year in which the employes' hours were reduced. 4/ Ultimately, in this area, the arbitrator-imposed agreement contained only the language of Article XI, Section 11.03 which requires employes to pay the full cost of insurance premiums in order to continue their insurance benefits following (implicitly) any layoff at any time.

The Association argued that the parties never negotiated regarding Summer insurance benefits for laid off employes. Based upon the record evidence and the analysis herein, this assertion is technically true. However, this technicality cannot abrogate the clear language of Article XI, Section 11.03, especially in light of the Union's failure to win inclusion of Section 14.01 in the parties' initial labor agreement.

In all of the circumstances of this case, and given the relevant evidence of bargaining history which supports the District's arguments herein and the lack of evidence demonstrating a relevant past practice, 5/ I issue the following

AWARD

The District did not violate the collective bargaining agreement when it failed to pay the District's share of the Grievants' health and dental insurance premiums for July and August, 1997 after the Grievants had completed their work year. The grievance is therefore denied and dismissed in its entirety.

Dated at Oshkosh, Wisconsin this 9th day of March, 1998.

Sharon A. Gallagher /s/
Sharon A. Gallagher, Arbitrator

ENDNOTES

1/ Although the contract appears to exclude personnel who are reduced in hours from the right to continue their health insurance benefits by the exclusion of the mention of reduced employes, it is clear from the tenor of the agreement as well as the general language contained in Articles XI and XX that employes, whether laid off or reduced in hours, are entitled to continue their insurance benefits by paying the proper monthly premium or portion thereof.

2/ The Association cited several cases in its initial brief without proper citation: NORTHEAST WISCONSIN TECHNICAL INSTITUTE, DEC. NO. 12491 (Bellman, 7/74); NORTH FOND DU LAC SCHOOL DISTRICT, DEC. NO. 12361 (Fleischli, 6/74); BOSCOBEL AREA PUBLIC SCHOOLS, A/P M-90-169 (Bessman, 7/90). The District attached copies of these cases to its reply brief herein.

3/ In any event, in regard to the Association's accrued benefit/deferred compensation argument, such an argument could only be effective across the parties' contract year, as only that contract term is applicable to food service workers who have no individual employment contracts and are hourly paid.

4/ I note that in the evidence proffered in the interest-arbitration case, the District analyzed Section 14.01 as I have done in this case, and that the Union failed to correct the District's assertions on this point (contained in its initial brief in the interest-arbitration case), supporting a conclusion that the Association agreed with the District's interpretation of Section 14.01.

5/ As I have found that the evidence is insufficient to support a relevant past practice in this case, I need not, and have not, addressed the District's argument regarding the effect hereon of Article XXV.

SAG/gjc
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