BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**WISCONSIN FEDERATION OF TEACHERS,
LOCAL 395, AFT, AFL-CIO**

and

WISCONSIN INDIANHEAD TECHNICAL COLLEGE

Case 55
No. 56817
MA-10425

(Arlen Burke Insurance Grievance)

Appearances:

Mr. William Kalin, Staff Representative, Wisconsin Federation of Teachers, appeared on behalf of the Union.

Mr. Stephen L. Weld, Weld, Riley, Prenn & Ricci, S.C., Attorneys at Law, appeared on behalf of the College.

ARBITRATION AWARD

The above-captioned parties, hereinafter the Union and College or Employer, respectively, were parties to a collective bargaining agreement which provided for final and binding arbitration of grievances. Pursuant to a request for arbitration, the Wisconsin Employment Relations Commission appointed the undersigned to decide a grievance. A hearing, which was not transcribed, was held on December 9, 1998, in Shell Lake, Wisconsin. Afterwards, the parties filed briefs whereupon the record was closed on January 26, 1999. 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:

> Is the Employer in violation of the collective bargaining agreement by requiring the grievant to co-pay the health and dental insurance premiums for the 1998-99 school year? If so, what is the appropriate remedy?

The College framed the issue as follows:

> Did the Employer violate the collective bargaining agreement when it prorated the grievant's health and dental insurance premiums for the 1998-99 school year, pursuant to the Conditions of Employment agreed upon on February 25, 1998? If so, what is the appropriate remedy?

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

PERTINENT CONTRACT PROVISIONS

The parties' 1996-98 collective bargaining agreement contained the following pertinent provisions:

ARTICLE I – RECOGNITION OF THE UNION

Section A. Recognition and Implementation

1. The Board recognizes the Union as the bargaining representative for all teachers teaching at least 50% of a full teaching schedule in their area. . .

> a. To clarify the bargaining unit definition set forth above, the parties agree that teachers teaching ten consecutive weeks or less, or carrying less than 50% of a full-time teaching schedule are not included in said definition. The parties recognize that what constitutes a "full teaching schedule" will vary depending upon the requirements of the projects/programs involved. Such teachers are not covered by the terms and provisions of this contract.

. . .

ARTICLE V – SALARY AND FRINGE BENEFITS

Section A. Salary Schedule

1. The regular schedules attached as Appendix "B" shall be adhered to for all teachers. Teachers shall remain in their present classification until a higher classification is earned.

. . .

Section E. Health Insurance

1. For employees represented by this agreement, the Board will provide medical care benefits as described in the WCTC master Plan Document as of July 1, 1987, and amended as of March 22, 1990, and pay the monthly premiums of $381.64/family and $148.66/single. If the premiums for these benefits increase during the term of this agreement, the Board will pay the increased amount.

. . .

Section K. Dental Insurance

1. The Board agrees to pay the monthly premium of $45.38 for family and $13.52 for single for dental coverage on all bargaining unit personnel and their dependents. If these premiums increase during the term of this agreement, the Board agrees to increase its premium payment accordingly.

FACTS

WITC operates a technical college which has four campuses – New Richmond, Rice Lake, Ashland and Superior. The Union represents a bargaining unit of all teachers at WITC's campuses teaching at least 50% of a full teaching schedule. The school year for most full-time teachers is 38 weeks.

The parties' labor agreement compensates all bargaining unit members at full salary. Historically, those teachers whose teaching load constitutes less than a full load (as defined in the labor agreement) have been assigned additional duties or responsibilities by the College in order to create a workload equivalent to that of a full time teacher. Thus, prior to the instance involved here, no bargaining unit member has been paid less than a full-time salary (i.e. 100%). Also, pursuant to the labor agreement, all bargaining unit members receive fully paid health, dental, life, liability and disability insurance. Thus, prior to the instance involved here, no bargaining unit member has ever had to pay a portion of their insurance premiums.

Grievant Arlen Burke is an instructor in the Farm Business and Production Management Program at the New Richmond campus. He has been a teacher with WITC since December, 1987. His teaching responsibilities primarily include providing individualized instruction to students at their farms and small group instruction at designated locations. He spends most of his time in the field, not at the New Richmond campus. As part of his job, he also seeks out and registers students for the Farm Business Program. He works an extended year contract – 48 weeks per year.

The grievant has a long history of inadequate record keeping. In 1993, Albert Schultz, the Dean of Instructional Operations and the grievant's supervisor, began documenting problems with that aspect of the grievant's job performance. Between November, 1993 and September, 1997, Schultz wrote Burke nine different memos relating to Burke's poor record keeping, late reports, and failure to get students registered for the Farm Business Program in a timely fashion. Several of these memos established timetables for Burke to submit his weekly itineraries and activity logs to Schultz so that Schultz could track Burke's activity and substantiate his workload. Several of these memos also indicated that if he did not take corrective action to improve his recordkeeping performance, discipline would follow.

On September 23, 1997, Schultz, Vice-President for Human Resources Wayne Sabatke and Vice-President of Operations Vasant Kumar met with Burke to discuss his job performance. At this meeting, Burke told the management representatives that he had a long history of chiropractic treatment for pain and musculoskeletal ailments, and that he had a medical condition known as fibromyalgia. Burke also told them that his health was adversely affecting his ability to do his job. In this meeting, Burke reported that 41 students had been registered for the program. Following this meeting, Schultz directed Burke to get the 41 students officially registered by October 10, 1997.

On October 13, 1997, the management representatives identified above met again with Burke to discuss his job performance problems. In that meeting it was determined that Burke did not have 41 students officially registered. He was suspended for five days for failing to comply with the directives issued at the September 23 meeting and for giving false information concerning the number of students registered in the program.

Following his suspension, Burke advised the College that he could not continue working full time for medical reasons, and asked to have his teaching load reduced. In response to this request, Sabatke sent Burke the following letter on December 9, 1997:

RE: Employment Status

Dear Mr. Burke

The purpose of this letter is to summarize your employment status. WITC has serious concerns about your recent performance. You allege that your performance has been adversely affected by health problems. WITC has responded by allowing you to work as a part-time employee. In the interim, participation in your program has declined to an unacceptable level.

WITC is hopeful that your performance will improve and the program restored. However, in case it does not, WITC wishes to enter into a Last Chance Agreement with you. This Last Chance Agreement will address the terms and conditions of your future employment. We will review this agreement at the Tuesday, December 13 meeting, 3:30 PM at the New Richmond Campus.

Arlen, WITC has gone the extra mile for you, I hope you will take advantage of this opportunity.

Very truly yours,

Wayne Sabatke /s/
Wayne Sabatke
Vice President, Human Resources

This letter was copied to Union Representative Bill Kalin and Union President Tracy Mahrer. The Last Chance Agreement attached to this letter was a three-page document. That document is not reproduced here. One of its terms was the following:

> a. Teacher shall be employed on a 67% FTE contract for 1997-98. His wages and benefits shall be prorated accordingly.

On December 16, 1997, the grievant and Kalin met with Sabatke, Schultz and Kumar and discussed the Last Chance Agreement at length. In doing so, they agreed that his workload would be reduced to 67% FTE for the remainder of the 1997-98 school year. Since 270 credits/90 students equaled a 100% teaching load, a reduction to 67% FTE required 180 credits/60 students. When this matter was being discussed, neither Kalin nor the grievant objected to the second sentence of section "a" of the Last Chance Agreement which provided that the grievant's "wages and benefits shall be prorated accordingly."

Aside from that, what else was said and/or agreed upon at this meeting about the second sentence of section "a" is disputed.

The grievant and Kalin testified that Kalin asked Sabatke whether the grievant's benefits would be paid in full, and that Sabatke responded that as long as employee was over 51% (meaning carrying at least a 51% workload), benefits would be fully paid by WITC.

All three WITC representatives in attendance (Sabatke, Kumar and Schultz) testified they did not recall Kalin asking that question. The three also could not recall any discussion that health insurance would be treated differently than salary (meaning that insurance would be prorated just like salary). Sabatke denied agreeing during the meeting to fully pay the grievant's insurance premiums. He testified that the Employer's position was that both the grievant's wages and benefits would be prorated, and that if he had made any exception for Burke's insurance premiums, he would have made a note of that, which he did not. Kumar testified that he did not recall any discussion to the effect that wages were to be prorated but benefits were not. It was his understanding that wages and benefits were to be prorated. Schultz testified he could not recall any discussion related to how health insurance would be treated, or any discussion regarding benefits.

Kalin's copy of the Last Chance Agreement document from that meeting contains various notations. One of the notations is that he underlined the word "benefits" in section "a" and wrote "over 50%" underneath it.

On February 20, 1998, WITC President David Hildebrand sent Burke a letter notifying him that the College was submitting a partial teaching contract to him for the 1998-99 school year. This letter provided in pertinent part:

> This contract is a partial reduction in your weekly work load. Your work load is set at 67% per week for 48 weeks. Compensation and benefits will be prorated accordingly.

Two documents were attached to this letter. The first was a form letter of intent which indicated that the College was offering him (Burke) a 67% workload for the 1998-99 school year and requested a written response from Burke on that form letter concerning his intent to return (as a teacher) for the 1998-99 school year. The first paragraph of this form letter provided as follows:

> Employee Name ARLEN BURKE

> I hereby (accept) or (reject) the continuing employment of 67% workload per week for 48 weeks for the 1998-99 fiscal year with the Wisconsin Indianhead Technical College, subject to salary, working conditions, and staff reduction provisions as established by the Wisconsin Indianhead Technical College Board and contractual agreements.

This form letter of intent did not say anything about prorating the grievant's salary or insurance benefits during the 1998-99 school year. The second document enclosed with Sabatke's letter was entitled Conditions of Employment. This document was a rewritten version of the Last Chance Agreement which had been discussed and modified at the December 16, 1997 meeting. In that meeting, the parties had retitled the document Conditions of Employment rather than Last Chance Agreement.

On February 25, 1998, the parties met again to discuss the document now entitled Conditions of Employment. With the exception of Kumar who was not at this meeting, the same people were present: the grievant, Kalin, Sabatke and Schultz. At this meeting, two changes were made to the first sentence of section "a" in that document (i.e. the sentence providing "teacher shall be employed on a 67% FTE contract for 1997-98"). The first change was that the grievant's 67% contract was made retroactive to October 31, 1997. The second change was that the grievant's 67% contract was extended for the duration of the 1998-99 school year. After these two changes were made, the sentence read as follows:

> Teacher shall be employed on a 67% FTE contract for 1997-98 starting October 31, 1997 and for the school year 1998-99.

The second sentence of section "a" of that document (i.e. the sentence providing "his wages and benefits shall be prorated accordingly") was not changed.

Aside from that, what else was said and/or agreed upon at this meeting about the second sentence of section "a" is disputed.

Kalin testified he told Sabatke: "Arlen will be over 50%, so we're OK with the insurance," to which Sabatke responded in the affirmative. The grievant testified Sabatke said he (Burke) would get full benefits because he was over a 51% teaching load.

Sabatke testified that he did not recall Kalin asking about insurance proration. He specifically did not recall Kalin saying "Since he's over 50%, there's no problem with the insurance." He also testified that if he had agreed to anything other than what was in the draft agreement, he would have noted the change. Schultz testified that he had no recollection of either Kalin or the grievant asking how health insurance would be treated, nor did he recall

Sabatke or Kalin suggesting that since the grievant was over 50%, he would be OK on the fringes. Schultz also testified that he did not recall Sabatke saying that the grievant would receive full insurance.

At the end of the meeting, all the participants initialed and dated the hand written changes made on the Conditions of Employment document to indicate they agreed with them. There is a set of initials and dates on the left side of section "a" next to the words "starting October 31, 1997" and "for the school year". In section "a", the phrase "his wages" is underlined. During that meeting, Burke also signed the letter of intent document wherein he indicated he accepted continued employment at WITC at 67% workload. After Burke signed the document, he handed it to one of the Employer's representatives.

On March 10, 1998, Sabatke sent Burke and Kalin a retyped copy of the Conditions of Employment document which incorporated all the changes which had been made to that document at the February 25, 1998 meeting. This draft specifically included the phrases "starting October 31, 1997" and "for the school year" in section "a". Neither Kalin nor Burke objected to this draft of this document or indicated it was incorrect in any way. The document does not contain signature lines at the end for any of the parties. As a result, neither Kalin nor Burke signed this document.

Sometime thereafter, the College began paying Burke 67% of a full-time employe's salary. Prior to this, Burke was paid a full salary (i.e. 100%). Thus, the College began prorating Burke's salary. It did not prorate his insurances though. Instead, the College continued to pay the grievant's health and dental insurances in full for the remainder of the 1997-98 school year.

Sabtake testified that following the February 25, 1998 meeting previously referenced, he unilaterally decided to continue paying all of Burke's health and dental insurance premiums for the remainder of the 1997-98 school year, and to not implement proration of same until the beginning of the 1998-99 school year. Sabatke testified he did so for the following reasons: 1) it was late in the school year; 2) the fact that Burke worked an extended work year made retroactive proration difficult; and 3) he (Sabatke) had concerns about what proration formula to use.

On July 20, 1998, the College notified the grievant that his monthly health and dental insurance premiums would be prorated based on a 67% contract for 1998-99 and that he would therefore be required to pay 33% of the premiums.

On August 10, 1998, the Union grieved the College's decision to prorate the grievant's health and dental insurance premiums for the 1998-99 school year. The grievance contended that Article V, Section E of the collective bargaining agreement requires payment of full

premiums for all bargaining unit personnel and that the agreement to have the grievant work at a 67% workload did not include proration of health and dental insurance premiums. The grievance was subsequently appealed to arbitration.

POSITIONS OF THE PARTIES

Union

The Union contends that the Employer violated the collective bargaining agreement by not paying all of the grievant's health and dental insurance premiums for the 1998-99 school year. It makes the following arguments to support this contention.

It notes at the outset that it is undisputed that bargaining unit members are contractually entitled to full salary and benefits. It further notes that the grievant is a bargaining unit member. Building on these premises, the Union reasons that the grievant is contractually entitled, like any other bargaining unit employe, to have the Employer pay his full health and dental insurance premiums. Since the Employer is not doing that, but is instead having the grievant pay 33% of those premiums, the Union believes that the Employer is in violation of Article V, Sections E and K.

Next, the Union makes several arguments which essentially challenge the enforceability of the side agreement which the Employer relies on. First, it submits that no union representative ever signed a document waiving the collective bargaining agreement with respect to the grievant's health and dental insurance. Second, the Union calls attention to the fact that the grievant never signed the side agreement. According to the Union, it expected that the Employer would redraft the Conditions of Employment document in an agreement form for the parties' signatures. It notes that was never done.

Next, the Union avers that when the parties negotiated the side agreement, they agreed that although the grievant's pay would be prorated, his insurance premiums would not; instead, the Employer would continue to pay all of the grievant's insurance premiums. To support this premise, it cites several forms of bargaining history. First, the Union relies on the testimony of the grievant and Kalin who were present at both of the meetings when the matter was discussed. According to their testimony, health and dental insurance was discussed at both meetings and the Employer agreed that since the grievant has more than a 50% workload, his health and dental insurance would be fully paid by the Employer. To support this premise, it cites Kalin's testimony that he told Sabatke "Arlen will be over 50% so we're OK with the insurance", to which Sabatke responded in the affirmative. Second, the Union relies on some notations which exist on the documents which were discussed at the meetings held on December 16, 1997 and February 25, 1998. The Union notes that on Kalin's copy of the Last Chance Agreement document from the first meeting, the word "benefits" in section

"a" is underlined with the phrase "over 50%" written underneath it. The Union also notes that on the Conditions of Employment document from the second meeting, the words "his wages" in section "a" are underlined. The Union believes these notations establish that the parties mutually intended to treat wages differently from benefits, namely that wages would be prorated but benefits would not. Third, the Union cites the Individual Employment Contract document which the grievant signed which provides, in pertinent part, that his "continuing employment of 67% workload per week" is "subject to" the "contractual agreement". As previously noted, the contractual agreement provides that employes are entitled to full wages and benefits (including health and dental insurance). The Union implies that since this document did not say anything about prorating the grievant's salary and benefits, the Employer relinquished the right to prorate the grievant's wages and benefits.

As the Union sees it, the bargaining history referenced above establishes that the parties intended that the grievant's health and dental insurance would be fully paid by the Employer and not prorated. The Union asks the arbitrator to give effect to that mutual intent and direct the Employer to pay all of the grievant's health and dental insurance premiums.

Employer

The Employer contends that the grievant's health and dental insurance must be prorated pursuant to the agreed-upon Conditions of Employment document. It makes the following arguments to support this contention.

First, for background purposes, the Employer acknowledges that bargaining unit members are contractually entitled to full salary and benefits. It further acknowledges that the grievant is a bargaining unit member.

The Employer avers that notwithstanding this contractual right to full salary and benefits, the parties voluntarily made a side agreement for the grievant which altered that contractual right. In other words, the parties made a side agreement which modified the labor agreement's salary and benefit provisions as it relates to the grievant. According to the Employer, this happened when the grievant decided he could no longer work full-time because of his health, and he requested a workload reduction. The Employer notes that the parties subsequently agreed on a reduced workload for the grievant, specifically a 67% workload. As the Employer sees it, by making this side agreement for a 67% workload, the grievant and the Union waived his contractual right to full salary and benefits. To support this premise, the Employer cites the language contained in section "a" of the Conditions of Employment document (i.e. the side agreement). According to the Employer, that language clearly and unambiguously provides that the grievant will have a 67% FTE contract, and that "his wages and benefits shall be prorated accordingly." The Employer contends this language means

exactly what it says (namely that his wages and benefits will be prorated) and provides no exceptions. That being so, the Employer argues there are none and the grievant's health and dental insurance must be prorated pursuant to the written side agreement.

Next, the Employer responds to the Union's assertion that the parties' bargaining history (for that side agreement) supports the Union's view that the grievant's health and dental insurance should be paid in full rather than prorated. Specifically, it denies that assertion. In doing so, it cites the testimony of the Employer representatives who were present at those meetings and who unequivocally testified that health insurance was not even discussed. According to the Employer, the Employer representatives present at those meetings never made any oral agreement or commitment to continue to pay the grievant's full insurance premiums, but rather took the position that all benefits, including health and dental insurance, would be prorated in accordance with the grievant's reduced contract. Given the foregoing, the Employer avers that the Union's assertion to the contrary lacks credibility. The Employer submits that the Union had the opportunity at the December 16, 1997 and February 25, 1998 meetings to propose language that would have excluded health insurance from the benefits to be prorated, but it did not do so.

Finally, the Employer acknowledges that it continued to pay all the grievant's health and dental insurance for the balance of the 1997-98 school year. In its view, the fact that it was generous and did not implement the proration of the insurance premiums until the start of the 1998-99 school year does not somehow preclude it from implementing the proration at that time. It asserts that it has the right, pursuant to the side agreement, to prorate the grievant's benefits (specifically his health and dental insurance) for the 1998-99 school year. The District therefore asks that the grievance be denied.

DISCUSSION

My discussion begins with an overview of the applicable contract language. The parties agree that the contract provisions applicable here are Article V, Sections A, E and K. Those provisions establish that all teachers working 50% or more receive full salary and have their health and dental premiums fully paid by the Employer. In other words, those teachers receive full salary and fully paid health and dental insurance premiums. The record indicates that the Employer tries to assign teachers as close to a 100% workload as possible in order to avoid paying full compensation and benefits for less than full time work. If a unit member's teaching schedule does not include a full time teaching load, the teacher is given additional tasks such as curriculum, recruiting or program development in order to achieve a full workload.

It is against this contractual context that the instant matter unfolded. What happened was that the grievant, a full-time employe, decided he could no longer work full time because of his health. He therefore requested a reduction in his workload. The parties subsequently negotiated over same and ultimately agreed on a reduced workload for the grievant. Specifically, they agreed that he would go from a 100% workload to a 67% workload for the 1997-98 school year effective October 31, 1997 and for all of the 1998-99 school year. Other details of their agreement will be reviewed later.

It is apparent from the foregoing that the parties made a side agreement which modified some of the terms of the labor agreement as it relates to the grievant. The parties to a labor agreement (namely the Union and the Employer) may amend or add to it by subsequent agreement if they wish. While the labor agreement is the chief instrument that guide the parties in their relationship, on occasion it becomes necessary to clarify, add to, or make exceptions to the labor agreement in some manner. This is what a side agreement does. Such side agreements are very common in labor relations. In this case, the parties made a side agreement which reduced the grievant's workload from 100% to 67% for most of the 1997-98 school year and the entire 1998-99 school year. That was their call to make.

The Union makes several arguments which essentially challenge the enforceability of that side agreement. First, it submits that no union representative ever signed a document waiving the collective bargaining agreement with respect to the grievant's health and dental insurance. That is true; no such waiver document exists. Be that as it may, there is no question that when Kalin and the grievant left the February 25, 1998 meeting, they had agreed with the Employer on a side agreement which established certain conditions of employment for the grievant. As will be noted later, that side agreement modified the contractual wage and benefit provisions. Second, the Union calls attention to the fact that the grievant never signed the side agreement. That is also true. However, while the norm for side agreements is that they are ultimately signed by the parties, there is no formal requirement that signatures must be affixed to a side agreement in order for it to be binding and enforceable. In this case, the document contains the initials of the parties involved. I find that was sufficient. Since neither of these challenges to the enforceability of the side agreement have been found persuasive, it is held that the parties' February 25, 1998 side agreement is binding.

Before the language of the side agreement is reviewed, the undersigned has decided to note what is and is not disputed about same. The latter is addressed first. The parties agree that the side agreement reduced the grievant from a full salary to a 67% salary (i.e. 67% of a full-time employe's salary). Thus, the grievant's wages are not in dispute. The record indicates that the grievant has been paid at that level (i.e. 67% of a full-time employe's salary) and the Union does not challenge that proration. What is disputed is the grievant's health and dental insurance under the side agreement. The Employer is currently prorating the grievant's

health and dental insurance premiums at 67%. The Union avers this is incorrect. It contends the grievant's health and dental insurance premiums should not be prorated, but rather should continue to be fully paid by the Employer.

The focus now turns to the side agreement itself. Just one small section of that agreement is pertinent herein. It is section "a" which provides as follows:

> a. Teacher shall be employed on a 67% FTE contract for 1997-98 starting October 31, 1997 and for the school year 1998-99. His wages and benefits shall be prorated accordingly.

In my view, the meaning of both sentences is clear and unambiguous. The first sentence provides in plain terms that the grievant is to be employed at a 67% contract for a major portion of the 1997-98 school year and the entire 1998-99 school year. Although this language does not say so, the record indicates that the grievant's previous contract had been 100%. Since he previously had a 100% contract, this sentence reduced the grievant from a 100% contract to a 67% contract. The second sentence provides that during that time period, "his wages and benefits shall be prorated accordingly." When something is prorated, it is divided; it is less than full or 100%. Since the first sentence explicitly sets the grievant's workload at 67%, the second sentence implicitly sets his "wages and benefits" at that same level (i.e. 67%). As previously noted, it is undisputed that this language reduced the grievant's salary from 100% to 67%. Since the words "and benefits" follow the word "wages", the grievant's "benefits" are to be reduced from 100% to 67% as well. When the second sentence references "benefits", it does not list any exceptions or exclude any benefits from the proration. If the parties had meant that some benefits would not be prorated, they would have said so. They did not. In point of fact, the language does not contain an exception for health and dental insurance. Since no exceptions were listed to prorated benefits, none will be inferred. The second sentence therefore clearly envisions that all benefits will be prorated. In labor relations, health and dental insurance are considered "benefits". That being so, there is no basis whatsoever in the language itself for excluding health and dental insurance from the proration.

The Union contends that notwithstanding this written language, the parties orally agreed during their bargaining that the Employer would continue to pay the grievant's full insurance premiums. Thus, according to the Union, the parties agreed that the grievant's insurances would not be prorated even though his salary was to be prorated. The Employer expressly denies that to be the case. In its view, it made no oral agreement or commitment to continue to pay the grievant's full insurance premiums.

In my view, what the Union wants me to do in this case can be fairly stated thus: 1) I should review the disputed testimony about what was or was not said at the parties' meetings on December 16, 1997 and February 25, 1998 about section "a" and find that the union witnesses' testimony regarding same is more credible than that of the Employer witnesses; 2) I should find that the fact that Kalin underlined the word "benefits" on his copy of the Last Chance Agreement and that the words "his wages" were underlined on the Conditions of Employment document which was initialed establish that the parties mutually intended that wages were to be prorated and benefits were not; and 3) I should then give effect to that intent (i.e. that the grievant's health and dental insurance not be prorated but remain fully paid by the Employer) even though that result was not expressed in the written language itself. Based on the following rationale, I decline to do so.

A basic principle which arbitrators traditionally follow in contract interpretation cases is that a written agreement may not be changed or modified by any oral statements made by the parties in connection with the negotiation of the agreement. Under this principle, known as the parol evidence rule, a written agreement consummating previous oral and written negotiations is deemed to embrace the entire agreement. Thus, parol (i.e. oral) statements are not allowed to vary the clear meaning of a written agreement. One exception to this principle is when the written agreement is ambiguous. When the language is ambiguous, arbitrators sometimes use parol evidence and bargaining history to help them interpret the ambiguous language. The key word in the previous sentence is "ambiguous". The reason that word is key is because that is not the case here. Specifically, the language in section "a" is not ambiguous. That language has previously been reviewed and its meaning has been found to be plain, clear and unambiguous. That being so, there is no need for the undersigned to resort to using any parol evidence and/or bargaining history to determine the parties' intent concerning the meaning of section "a" of the side agreement. That language speaks for itself and presumably incorporates the parties' mutual intent that all benefits, including health and dental insurance, are to be prorated. Given this finding, the undersigned will not comment on 1) the disputed testimony about what was or was not said at the parties' two meetings about section "a"; 2) the significance of the fact that Kalin underlined the word "benefits" on his copy of the Last Chance Agreement and that the words "his wages" were underlined on the Conditions of Employment document which the parties initialed; and 3) the form letter of intent (also known as the individual employment contract) which the grievant signed on February 25, 1998.

Since the side agreement provides that the grievant's benefits will be prorated, the Employer's actions herein in prorating the grievant's health and dental insurance for the 1998-99 school year comport with the side agreement. The fact that the grievant's health and dental insurance were not prorated for the latter portion of the 1997-98 school year does not change this result. Accordingly, no contract violation has been found.

In light of the above, I issue the following

AWARD

That the Employer did not violate the collective bargaining agreement when it prorated the grievant's health and dental insurance premiums for the 1998-99 school year, pursuant to the Conditions of Employment agreed upon on February 25, 1998. Therefore, the grievance is denied.

Dated at Madison, Wisconsin this 31st day of March, 1999.

Raleigh Jones /s/

Raleigh Jones, Arbitrator

REJ/gjc
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