BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

PLYMOUTH EDUCATION ASSOCIATION

and

PLYMOUTH JOINT SCHOOL DISTRICT

Case 53
No. 59398
MA-11278

(Ted Harris Grievance)

Appearances:

Mr. James Carlson, UniServ Director, Kettle Moraine UniServ Council, N7778 Rangeline Road, Sheboygan, WI 53083, appearing on behalf of the Association.

Davis & Kuelthau, S.C., by **Attorney Paul C. Hemmer**, P.O. Box 1287, Sheboygan, WI 53082-1287, appearing on behalf of the District.

ARBITRATION AWARD

Pursuant to the provisions of the collective bargaining agreement between the parties, Plymouth Education Association (hereinafter referred to as the Association) and Plymouth Joint School District (hereinafter referred to as the Employer or the District) requested that the Wisconsin Employment Relations Commission designate a member of its staff to serve as arbitrator of a dispute over a claim by Ted Harris for retirement benefits. The undersigned was so designated. A mediation was held in an attempt to resolve the matter, but no settlement was reached. A hearing was held on April 24, 2001, at the District's offices in Plymouth, Wisconsin, at which time the parties were afforded full opportunity to present such testimony, exhibits, other evidence and arguments as were relevant to the dispute. The parties submitted post-hearing briefs and reply briefs, the last of which were received on June 29, 2001, whereupon the record was closed.

Now, having considered the testimony, exhibits, other evidence, contract language, arguments of the parties and the record as a whole, the undersigned makes the following Award.

ISSUES

The issues before the Arbitrator are:

1. Did the District violate the collective bargaining agreement when it denied Mr. Harris the benefits provided in Article 12.16, Post-Employment Benefits, at the end of the 1999-2000 school year?

2. If so, what is the appropriate remedy?

The parties stipulated that the dispute is limited to a single school year and has been resolved for future school years. They further stipulated that there were no procedural impediments to arbitration and that the grievance had been timely filed and processed.

RELEVANT CONTRACT PROVISIONS

1997-1999 Collective Bargaining Agreement

12.17 Retirement Benefits

Bargaining unit members, upon retirement, who have completed 20 years of service in Plymouth District, including Lightfoot service in the district, will receive a lump sum payment of $10,000. Bargaining unit members, upon retirement, who have completed 15-19 years of service in Plymouth District, including Lightfoot service in the district, will receive a lump sum payment of $7,500. This provision will be in effect only for the 1997-98 school year.

Retiring teachers shall be allowed to continue in the group hospital and medical plans subject to the following conditions:

12.17.1 The retiring teacher must have completed a minimum of 9 years service with the district including Lightfoot service in the district.

12.17.2 The teacher must make a written request to the district 45 days in advance of retirement;

12.17.3 The teacher agrees to deposit with the district three (3) months' premium in advance;

12.17.4 The terms of the insurance contract in effect control.

. . .

1999-2001 Collective Bargaining Agreement

12.16 Post Employment Benefits

12.16.1 Post employment benefits will be available to any bargaining unit member who:

1. Reaches the age of 55 years old by December 30 in the first year following employment severance, and
2. Notifies the District by April 15 prior to the year of retirement, and (Exception: Notifications after April 15 will be permitted if there is an extenuating circumstance and the District's staffing needs are not unduly disrupted.)
3. Has thirteen (13) years of continuous service or eighteen (18) years total service to the Plymouth School District, including Lightfoot service in the District, and
4. Agrees to complete twenty (20) days of service to the District. Said days or service shall be completed prior to the end of the second full school year following the employee's severance of employment. Said service may be any combination of the following options:

A. Substitute teaching at the rate in place at the time.
B. The following are options available without compensation:
   1. Any duties cited in 15.8.2 (Extra duty).
   2. Curriculum work as authorized by the District.
   3. Homebound instruction (every one (1) hour of instruction counts as two (2) hours of service) as authorized by the District.
   4. Other tutoring authorized by the District that would otherwise be paid.
   5. Schedule "C" assignments as agreed to by the District.

Service shall be in increments not less than two (2) hours.

If an employee fails to complete the above service within the timeframe provided, all benefits provided in Article 12.16 shall cease, and said employee is responsible for repaying the District an amount equal to the benefits received to date. Said employee retains the rights provided in 15.17.5.

If an employee dies (or is otherwise unable to complete said service because of reasons relating to health or disability) within the first two (2) full school years following the severance of employment, all service obligations will be waived and shall not be the responsibility of the surviving spouse and/or dependent

12.16.2 Effective September 1 following severance of employment, the District will pay the monthly health insurance coverage for the employee and his or her dependents until such time as the money determined by the formula below is exhausted.

A. Determine the annual salary amount found in the "B5" lane for Step 21.
B. Determine the annual salary amount found in the "B2" lane for Step 2. Subtract the value of B from the value of A. Multiply this result by 3.15. (B5 Step 21 — B2 Step 2)*3.15

. . .

[Note: Example of coverage for hypothetical employee omitted]

. . .

In the event that coverage changes in the future for bargaining unit members (i.e., drug cards, change in carrier, etc), the former employee's coverage will also change unless the change specifically excludes former employees (i.e., the addition of Long Term Care coverage is not retroactive to former employees). If coverage excludes a benefit effecting former employees, the cost change (or the actuarial equivalent) for coverage will not include any excluded benefit.

The above formula will be applied to the salary schedule in place during the first year following the bargaining unit member's severance of employment. If the District and the Plymouth Education Association have not agreed to a successor salary schedule by September 1 of the first year following employment severance, the above formula will be applied to the salary schedule in place during the bargaining unit member's last year of employment with retroactive adjustments made after agreement on a successor salary schedule is reached.

If the District and the Plymouth Education Association agree to an altered salary schedule or if any changes occur in the salary schedule as to impact the integrity of the above formula, the parties will negotiate a successor formula. Any such successor formula will, at minimum, maintain the health insurance coverage, the value generated by the salary schedule in place just prior to the alterations of the salary structure, and comparable annual increases.

12.16.3. If a former employee dies while receiving a benefit under this Article (Section 12.17) and is survived by a spouse or dependent, such person(s) shall

be eligible to receive any unused portion of the former employee's benefit including the right to remain in the group plans at the group rate.

Benefits payable to the spouse or dependent(s) will not exceed, in combination with those already provided to the former employee before his/her death, those that would have been available to the former employee if (s)he had survived.

12.16.4 Former employees (and surviving spouses and/or dependents) entitled to extended group health insurance coverage as described above may elect to receive, in lieu of such coverage, monthly cash payment for the same period of time that the insurance coverage (single or family, regular or Medicare coordinated) would have been extended.

This election shall be made in writing annually prior to September 1 of each year. If a cash payment election is made for one year, then cash payments must be elected for subsequent years unless group health plan coverage is available for those subsequent years. Each monthly payment equals the premium charged by the group health insurer for family health insurance coverage for that month (subject to applicable payroll taxes).

To avoid adverse income tax consequences to employees who elect the insurance coverage, both the extended coverage and the cash shall be available only under the District's Section 125 cafeteria plan, consistent with IRS rules governing Section 125 plans. Prior to any employee being eligible to elect this option, the District shall, if necessary, create or amend its Section 125 plan to provide coverage to such employees.

12.16.5 Employees meeting the eligibility criteria shall be allowed to continue in the group hospital and medical plans after employment ceases subject to the following:

12.16.5.1 Premiums for insurance, including COBRA continuation rights, will be paid to the District by the teacher on or before the last day of the month preceding the month's coverage unless the District is providing paid health insurance to the former employee.

12.16.5.2 The terms of the health insurance contract with the insurance carrier in effect control all aspects of plan coverage, except for the eligibility and the right to stay in the group plan at group rates required by the contract.

. . .

14. GRIEVANCE PROCEDURE

. . .

14.3.7 The arbitrator shall have no authority to alter the terms of this Agreement.

. . .

15.10 Wisconsin Retirement System

. . .

15.10.2 Teachers may elect to retire subject to the laws governing the Wisconsin Retirement System as may be in effect and applicable at the time of their election to retire.

BACKGROUND

The Grievant, Ted Harris, was employed by the Plymouth School District as a math teacher beginning in 1967. In 1998, he submitted a letter of resignation, and applied for retirement benefits under the Wisconsin Retirement System. He began drawing a pension effective with the termination of his active employment on June 8, 1998. At the time of his resignation, he also applied for a $10,000 lump sum payment provided by the collective bargaining agreement for teachers retiring with 20 or more years of service. One of his reasons for retiring in 1998 was that the lump sum payment was due to sunset at the end of that contract year, and he feared that it would not be available if he postponed his retirement.

The District asked Harris if he would be willing to work part-time as a math teacher after his retirement, and he agreed. He worked as a half-time high school math teacher during the 1998-1999 and 1999-2000 school years. During this time, he received the benefits due part-time employees under the collective bargaining agreement and was paid the appropriate contractual rate. He also received his WRS pension.

The 1999-2001 collective bargaining agreement substantially changed the retirement benefits for long-term teachers, replacing the lump sum payment with a post employment benefit using a formula that provided paid health insurance based upon the difference between the B5 lane of the salary schedule at Step 21, and the B2 lane at Step 2, multiplied by 3.15. The benefit provided under the new formula was substantially more than the $10,000 the Grievant had received in 1998. While the negotiations over this new benefit were painstaking and lengthy, none of the negotiators discussed what application it would have, if any, to an employee in the Grievant's situation.

In the Spring of 2000, the Grievant gave the District notice that he intended to retire at the end of the school year, and he requested the health insurance benefits provided for in the new contract language. The District refused to provide these benefits, asserting that the benefit was not available to employees who had already retired. The instant grievance was thereafter filed, asserting that the Grievant had met all of the qualifying conditions for receiving the post employment benefit. It was not resolved in the lower steps of the grievance procedure and was referred to arbitration.

Additional facts, as necessary, are set forth below.

ARGUMENTS OF THE PARTIES

The Position of the Association

The Association takes the position that the Grievant isperfectly entitled to receive the retirement benefits provided under Article 12.16 of the 1999-2001 collective bargaining agreement. The Grievant provided 31 years of service to the District before leaving at the end of the 1997-98 school year. He returned in the Fall of 1998 at the District's request, and served half-time as a math teacher and continued on in that capacity through the 1999-2000 school year. In early 2000, he advised the District he that he would again leave their employment, and he requested the post-employment benefits provided by Article 12.16.

The District refused his request, asserting that he was ineligible. There is no basis for this contention. The language of Article 12.16 is clear and unambiguous as to eligibility. There are three criteria for eligibility:

1. Reaching age 55 by December 20 in the first year following severance of employment;
2. Notifying the District of his retirement before April 15th;
3. Having either 13 years of continuous service or 18 years of total service to the District before retirement.

The Grievant satisfied all three of these criteria. The exception suggested by the District – that employees who have previously retired cannot participate – is not listed in the contract and was never discussed in negotiations over Article 12.16.

If there is a cardinal rule in contract interpretation, it is that clear language must be applied, and an arbitrator is not free to ignore it. Here, the clear language as applied to the Grievant yields but one conclusion – he is entitled to the insurance benefits provided by Article 12.

The District's argument that there is ambiguity in this language cannot be accepted. There is no basis for it. The District's argument depends upon the absence of evidence, to wit, the testimony of District and Association negotiators that no one contemplated or discussed the possibility that an already retired employee would claim this benefit. This evidence is, at best, equivocal. It does not demonstrate an intent to include the Grievant, nor does it show an intent to exclude the Grievant. The Arbitrator cannot interpret this lack of intent as having some substantive impact.

Neither does the fact that the Grievant was a retiree who had claimed both the former retirement benefit under the contract and a pension from WRS somehow disqualify him from receiving this new benefit. Again, there is no such exception in the contract language and it is the plain language that controls this case. Neither is there any equitable or logical basis for the District's position. Retirement is no longer a one-time event. Many employees retire and then begin a second career. Sometimes that career is in a different field, sometimes it is in the same field. Sometimes that career is with a different employer, sometimes it is with the same employer. Given that second careers are common, there is no reason to think that employees embarking on such careers would or should be excluded from the benefits available to all other employees.

The District is understandably uncomfortable with the Grievant's claim. Even though he was employed at the time this language was negotiated, it did not contemplate the Grievant's situation when it agreed to Article 12.16. That discomfort, even anger, does not allow the District to simply pretend that the language says something other than what is says. Neither may the Arbitrator ignore the language to reach a result he may believe is preferable. The clear language of the contract requires payment of the post-employment benefit to this Grievant, and the Arbitrator must sustain the grievance.

The Position of the District

The District takes the position that the Grievant's claim for post-employment benefits is without merit and that his grievance must be denied. The Grievant was a retired employee who came back as a part-time teacher. He is claiming a benefit under a contract provision that has specific eligibility criteria:

1. Reaches the age of 55 years old by December 30 in the first year following employment severance, and
2. Notifies the District by April 15 prior to the year of retirement, and

. . .

3. Has thirteen (13) years of continuous service or eighteen (18) years total service to the Plymouth School District, including Lightfoot service in the District, and
4. Agrees to complete twenty (20) days of service to the District. Said days or service shall be completed prior to the end of the second full school year following the employee's severance of employment. . . .

Certainly the Grievant meets the age requirement, and overall it can be argued that he meets the years of service requirement. However, he has not and cannot meet the second criterion. The Grievant cannot give notice by April 15 of the year prior to retirement because he retired in 1998. The notice he provided in April of 2000 was provided after his "year of retirement." This is not mere word play or a technicality. Retirement has specific meaning under the collective bargaining agreement. Section 15.10.2 of the contract defines retirement in the same terms as does the Wisconsin Retirement System:

> Teachers may elect to retire subject to the laws governing the Wisconsin Retirement System as may be in effect and applicable at the time of their election to retire.

The Grievant retired under the WRS in 1999, and began drawing his pension. That is a "retirement" within the meaning of the contract and it refutes the Association's claim that teachers may "retire" multiple times.

The Grievant not only retired at the end of the 1997-98 school year, he admittedly did so in order to claim the supplemental retirement benefits available under the contract as it then existed. The Grievant accepted $10,000 from the District, a benefit he feared might be discontinued after that contract year. In other words, the Grievant retired in 1998 in order to claim his retirement pension and to take advantage of a District paid retirement benefit. It cannot now be plausibly argued that he can retire anew two years later and qualify for an entirely different retirement benefit. It is obvious that he was already retired. As such, he cannot qualify for Article 12.16.

The clear language of the contract makes Article 12.16 available only to those employees who are retiring. Retirement has a specific meaning under the contract. The Grievant cannot retire, within the meaning of the contract, a second time. However, assuming for the sake of argument that "retirement" is something other than what the contract says it is, the contract is rendered ambiguous. If that is the case, the intent of the negotiators becomes relevant, and the Grievant's claim cannot survive analysis in light of the negotiators' intent. Every witness agreed that the negotiations over Article 12.16 were exhaustive, and that the detailed language they arrived at addressed every conceivable circumstance to which the benefit might apply. All agreed that the language was designed to accommodate employees with breaks in service, including multiple breaks in service. All agreed that they did not contemplate paying benefits to an employee who had already retired from the District.

Article 12.16 of the contract is detailed and comprehensive. It provides a very valuable benefit to eligible employees, but it was not intended to apply to retirees such as the Grievant and, by its express terms, it does not apply to the Grievant. He cannot meet the eligibility requirements, because the negotiators did not intend that he be eligible. The Association's representative, Deb Streblow, admitted this to the Superintendent of Schools in the course of the grievance procedure. The Arbitrator must reach the same conclusion, and deny this grievance in its entirety.

Reply Brief of the Association

The Association rejects the District's analysis as flawed and contradicted by its own actions and the undisputed evidence at the hearing. The District asserts that the Grievant did not give notice in a timely manner, because his April, 2000 notice was not in the year prior to his retirement. If that was the case, the District should have rejected his April, 2000 notice. They accepted it and, by their own action, admitted that the notice was proper. Likewise, the District's argument that the Grievant's retirement under the WRS somehow disqualifies him is flatly contradicted by the unrefuted testimony of Brad Volbrecht. Volbrecht testified that a retired teacher could qualify for benefits under Article 12.16 by working for the District for 13 consecutive years after his retirement. Volbrecht also testified without contradiction that such a teacher would qualify even if he or she had claimed retirement benefits from another District before starting with the Plymouth Schools. There is no conceptual difference between that situation and the Grievant's. He may have claimed the $10,000 payment on retirement in 1998, but nothing in Article 12.16 even suggests that this has a bearing on his right to the newer post-employment benefit. He is indisputably eligible for all other benefits under the contract, and there is no logical or equitable basis to deny him this benefit. Finally, the claim that the parties intended to exclude the Grievant from the benefits of Article 12.16 is simply not true. At most, the record discloses that the parties did not contemplate the situation, and thus, had no intent one way or the other. For these reasons, the District's arguments must be rejected and the grievance must be sustained.

Reply Brief of the District

The District argues that the Association's brief ignores the structure and intent of Article 12. The Association asserts that the Grievant gave notice of intent to retire in 2000, when the evidence clearly establishes that the notice of retirement was given two years earlier. The Association attempts to evade this fact by referring to the Grievant's intent to "sever his employment." That term is meaningless. Notice of intent to sever employment is not mentioned anywhere in Article 12. That provision refers to notice being given in the year prior to retirement. Retirement has specific meaning, and it means retirement under WRS. Read as a whole, Article 12 requires that at least 13 years of service be provided to the District before retirement, and that the benefit be claimed upon retirement. Thus, the only way for the

Grievant to qualify for Article 12 benefits would have been to forego his benefits under WRS, reclaim his status as a participating employee under WRS, and make a fresh application for retirement and for Article 12 benefits. He did not do so.

The contract does not clearly apply to the Grievant, and the District negotiators plainly did not intend that it apply to him. Thus, there can have been no meeting of the minds between the parties on extending benefits to the Grievant. Absent such meeting of the minds, the Arbitrator cannot find that an agreement exists requiring the District to pay such benefits.

DISCUSSION

The question before the Arbitrator is whether the Grievant is qualified for post employment benefits under Article 12.16 of the 1999-2001 collective bargaining agreement.

In 1998, the Grievant applied for and received a pension from the Wisconsin Retirement System and also applied for and received a retirement benefit from the District under then-existing terms of Article 12.17 of the contract:

> Bargaining unit members, *upon retirement*, who have completed 20 years of service in Plymouth District, including Lightfoot service in the district, will receive a lump sum payment of $10,000. . . . This provision will be in effect only for the 1997-98 school year. [Emphasis supplied.]

Having returned to teach on a part-time basis in the 1998-1999 and 1999-2000 school years, the Grievant attempted to take advantage of a newly bargained post-employment benefit, available to bargaining unit members who met the following conditions:

1. Reaches the age of 55 years old by December 30 in the first year following employment severance, and
2. Notifies the District by April 15 *prior to the year of retirement*, and . . .
3. Has thirteen (13) years of continuous service or eighteen (18) years total service to the Plymouth School District, including Lightfoot service in the District, and
4. Agrees to complete twenty (20) days of service to the District. . . . [Emphasis supplied.]

It is evident that the Grievant "retired" from the District in 1998, since retirement was a condition for receiving the $10,000 lump sum payment. It is equally evident that "retirement" from the District in the year following application for post-employment benefits is a condition precedent to receiving the benefit under the new language of Article 12.16. The second criterion specifies "the year of retirement" as the benchmark for determining a timely notice.

Contrary to the ingenious argument of the Association, retirement from the District is not the same as simply terminating employment. Certainly employees may pursue various careers, and may retire from more than one employer. That is not relevant to this case. The question here is whether an employee may retire twice from the Plymouth School District within the span of two years, with each retirement separately qualifying under the contract for retirement benefits.

Article 12.16 itself uses different terms to describe the status of the employment relationship. In several areas, the contract refers to "severance of employment" and "employment severance." However, in Section 12.16.1(2) the contract refers to "retirement." It is a basic principle of contract interpretation that parties use different words to describe different things. If "retirement" meant "severance of employment," the parties would presumably have used that term in Section 12.16(2), as they did in other portions of Article 12.16. The fact that they did not do so necessarily indicates that retirement is a distinct event, requiring something more than a severance of employment. While the District's argument that receipt of a WRS pension defines retirement is not unreasonable, I do not find it necessary to narrowly or precisely define what constitutes a "retirement" under the contract. Nor is it necessary to determine whether a retired employee could re-qualify for benefits under Article 12.16 by working 13 consecutive years after retirement, as suggested by the testimony of Volbrecht. It is sufficient for the purposes of this case to conclude that retirement from the District for the purposes of Article 12 is a discrete event that cannot recur every year or two. For the Grievant, retirement from the District occurred when he himself filed documents with the District in 1998, attesting that he was retiring, then proceeded to accept retirement benefits under the contract. Having done so, he cannot again give notice of "retirement" in 2000.

Since giving notice by April 15 in the year prior to retirement is a pre-condition to receiving benefits under Article 12.16, and since the Grievant did not satisfy that pre-condition, it follows that he is not entitled to receive those benefits.

On the basis of the foregoing, and the record as a whole, I have made the following

AWARD

The District did not violate the collective bargaining agreement when it denied Mr. Harris the benefits provided in Article 12.16, Post Employment Benefits, at the end of the 1999-2000 school year. The grievance is denied.

Dated at Racine, Wisconsin, this 28th day of September, 2001.

Daniel Nielsen /s/
Daniel Nielsen, Arbitrator

DN/ans
6277.doc