BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

PACE INTERNATIONAL, LOCAL 7-0889

and

METSO MINERALS

Case 2
No. 61223
A-6017

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by **Attorney Marianne Goldstein Robbins,** 1555 North Rivercenter Drive, Suite 202, P.O. Box 12993, Milwaukee, Wisconsin 53212, appearing on behalf of the Union.

Davis & Kuelthau, S.C., by **Attorney Dennis W. Rader,** 200 South Washington Street, Suite 401, P.O. Box 1534, Green Bay, Wisconsin 54305-1534, appearing on behalf of the Company.

ARBITRATION AWARD

Metso Minerals (Milwaukee), Inc., hereafter Company, and Local 7-0889 of the PACE International Union, AFL-CIO, CLC, hereinafter Union, are parties to a collective bargaining agreement that was in effect at all times relevant to this proceeding which provides for final and binding arbitration of certain disputes. A request to initiate grievance arbitration was filed with the Wisconsin Employment Relations Commission on May 17, 2002. Commissioner Paul A. Hahn was appointed to act as Arbitrator on May 22, 2002. The hearing took place on June 20, 2002 in the City of Clintonville, Wisconsin on the Company premises. The hearing was transcribed. The parties were given the opportunity to file post hearing briefs. Post hearing briefs were received by the Arbitrator on July 8, 2002. The parties were given the opportunity but declined to file reply briefs. The record was closed on July 11, 2002.

ISSUE

The parties stipulated to the following issue:

> Did the Company violate the parties' collective bargaining agreement by denying full pension with no reduction to terminated employees with 15 years of service when they reach age 62 and denying a full pension less only .5% per month for each month after age 60, but before age 62, that he or she applies for pension?
>
> If so, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE

ARTICLE XIX (PENSION PLAN)

Section 1. **Pension Plan**. The COMPANY and the UNION have agreed upon a pension plan, which is made a part of this contract and is subject to the approval of the Internal Revenue Service.

The monthly benefit shall be as follows:

Effective September 16, 2000.
$25.25 per month per year of credited service.

Effective September 16, 2002.
$26.00 per month per year of credited service.

Effective September 16, 2003.
$27.00 per month per year of credited service.

The deferred vested retirement requirement is five (5) or more years of credited service.

The COMPANY will make revisions in the Plan to comply with the Employee Retirement Income Security Act (ERISA).

Effective September 16, 1984, a surviving spouse benefit has been added to the pension plan. The amount of the benefit will be the spouse's benefit under the 50% joint and survivor annuity option. The benefit will be payable **upon the death of the employee**.

Effective September 16, 1986, the Company will provide early retirement at age 62 and with 15 years of service at no reduction. The reduction for retirement between age 60 & age 62 will be 0.5% per month for each month the employee retires before age 62.

STATEMENT OF THE CASE

This grievance involves Metso Minerals of Clintonville, Wisconsin, and Local 7-0889 of the PACE International Union. (Jt. 1) The Union alleges that the Company violated the collective bargaining agreement by refusing to provide early retirement benefits to employees who leave the Company prior to early retirement age at 62 even though the employee has 15 years of service. (Jt. 2) The grievance was filed on April 22, 2002 and denied by the

Company on April 24, 2002. (Jt. 2 & 3) The Company and its predecessors manufactured crushing equipment, removal equipment and conveyors typically used in gravel pit and mining operations.

On April 9, 2002, the Company gave International Union representative Donald Schaeuble the WARN Act notice that the Company's plant in Clintonville, Wisconsin would officially close on or before June 30, 2002 and that all employees as of that date would be terminated. (U. 9) The grievance arose because the Union became aware of a pension dispute when the Company provided to Union Committee member Gary Schuelke two alternative calculations of pension benefits. (U. 7) The calculations showed that if Schuelke took his pension before being terminated, since he had 15 years of service, his pension would be reduced by .5% per month for the months between his age (60 and 2 months) and age 62. However, the second calculation stated that if Schuelke waited until after being terminated before receiving his pension it would be reduced 0.5% for each month before he reached the age of 65. The second calculation was contrary to the Union's understanding of the parties' collective bargaining agreement.

The Company had some form of a pension plan for its employees since 1972. (Er. 1 and Tr. 51) The pension plan included an early retirement pension and a deferred vested pension. In the parties' 1984-1986 labor agreement the parties agreed to a pension plan which was made part of their labor agreement subject to the approval of the Internal Revenue Service and providing for a deferred vested pension requirement of ten or more years of credited service. (U. 1)

In 1986 the parties negotiated an early retirement benefit into their labor agreement.

> Effective September 16, 1986, the Company will provide early retirement at age 62 and with 15 years of service at no reduction. The reduction between age 60 and age 62 will be 0.6% per month for each month the employee retires before age 62. (U. 5)

This was in addition to the previously mentioned deferred vested retirement with the requirement of ten or more years of credited service. The 1986-1988 collective bargaining agreement continued to make the Pension Plan a part of the contract and subject to the approval of the Internal Revenue Service. (U. 4 & 5) Following this negotiated contract the pension plan was amended to reflect the parties' 1986-1988 agreement. (Jt. 4) In 1988, the parties negotiated a decrease in the percentage reduction per month for each month the employee retired before age 62 from .6% to .5%. (U. 6)

This dispute arises over the different interpretation of the early retirement language initially incorporated in the parties' 1986-1988 agreement and modified only as to the percent reduction in the 1986-1988 and 1988-1990 agreements. The Union's argument essentially is that to receive early retirement benefits the employee does not have to be actively employed at age 60 or 62 to receive the early retirement benefit as long as the employee has 15 years of active service before the employee terminates. The Company interprets the provision to require that employees cannot receive early retirement benefits (reduced from age 62) unless they retire from active employment at or after age 60. If they retire from active employment before reaching age 60, the employee then receives a deferred vested retirement benefit upon reaching age 65, the issue clearly being whether an employee has to be actively employed at the time he or she reaches the age of 60 to receive early retirement benefits.

The issue is critical to the employees being terminated because of the plant closing as many of them will have 15 years of service at the time they are terminated but will not have reached age 60. If the Union's position is accepted they would be eligible for full retirement at age 62, if the Company's position is accepted they would be eligible for the deferred pension benefit at age 65.

The parties failed to achieve resolution through the grievance procedure. (Jt. 2 & 3) The matter was appealed to arbitration. The Company in its response to the grievance and at the arbitration hearing raised a timeliness issue. However, the Company did not pursue the timeliness issue in its post hearing brief and therefore the grievance will be considered timely and arbitrable. Hearing in the matter was held by the Arbitrator on June 20, 2002 in Clintonville, Wisconsin.

POSITIONS OF THE PARTIES

Union

It is the position of the Union that the express language of the collective bargaining agreement requires that all employees who obtain 15 years of service be allowed to receive pension at age 62 with no reduction. The Union argues that the Company position that the early retirement pension language refers only to employees who retire from active employment is not found in the language which the parties negotiated. The Union submits that the only requirement provided to receive a full pension are 15 years of service and age 62 or between age 60 and 62 with 0.5% reduction for each month the employee takes the benefit before age 62. According to arbitration case law, the Union argues that where the language is clear and unambiguous it should be enforced.

The Union submits that if there are any ambiguities they are resolved by past practice and the bargaining history. Citing evidence in the record, the Union submits that two employees left employment with 15 years of service substantially before they applied for pension benefits. In both cases, the employees received a benefit calculation from the Company for retirement at age 60 which only reduced the benefit by .5% until the employee reached age 62. (U. 8, Er. 15) The Union submits that neither of these two employees have been informed that they would not receive the benefit as calculated for them in 1988 for one employee and 2000 for the other employee. Not only the calculations by the Company but the summary plan description of 1990 give them the early retirement benefit even though not actively employed at age 60. (U. 8, Er. 15, U. 10)

The Union further submits that the parties' bargaining history indicates a straight forward agreement to provide full benefits at age 62 as long as participant had 15 years of service. The Union submits that there is nothing in the parties' bargaining history which suggests a common understanding that, notwithstanding the language found in the parties' labor agreement, the negotiated benefit for pension without reduction would not apply to individuals who left employment before applying for a pension. The Union argues that it is undisputed that the language used to describe the parties' agreement was drafted by the Company, and, as such, if there were any ambiguity remaining, the contract should be interpreted against the Company.

The Union takes the position that the effects bargaining that occurred after the announcement in April of 2002 that the Company was going to close its Clintonville plant supports the Union's position that it had always understood that age 62 full retirement benefits continue to be available even when an employee had terminated his employment before retirement age. The Union proposal submitted on February 19, 2002, requested "to reduce the early retirement age to age 60." (Er. 11, 12; Tr. 85) The Union submits that there would have been no purpose in making the request for improved early retirement benefits if, as the Company argues, early retirement benefits would not be available to employees after they were terminated. The bargaining request underscores the Union's understanding that early retirement benefits would be available to employees after the plant closed and employees had been terminated.

Turning to the Company's argument that the pension plans and summary plan descriptions control, the Union takes the position that ultimately it is the collective bargaining agreement which the Arbitrator is to interpret and at any rate the pension plans and summary plans descriptions are consistent with the collective bargaining agreement because the Union posits, they do not exclude a terminated employee from a full early retirement benefit at age 62. The Union bolsters its argument by saying that if the SPD (Summary Plan Description) is different from the Pension Plan, the Federal Courts have held that in a conflict between a Plan and the SPD the SPD controls. This is true because the SPD represents the main method of

informing an employee participant of his rights and obligations. The Pension Plan itself is not the document used to convey to employees what benefits they have. The Union argues that even under the Plan a participant is defined as any employee of the Company on or after the effective date, which is July 1 of 1988. There is no requirement that the participant still be an active employee, and there is no definition of retirement which requires that it be from active employment. Early retirement age simply means that the participant has reached his 60th birthday and completed 15 or more years of service. (Er. 7)

The Union argues that there is no conflict between the deferred vesting benefit and the early retirement benefit. The early retirement simply provides a greater benefit by requiring 15 years of vested service. This point, the Union argues, was made explicit in the summary plan description of December of 1990. (U. 10) The Union posits that the Company is not authorized to reduce benefits articulated in the 1990 summary plan description; such would be violative of the Internal Revenue code. Moreover, the deferred vested retirement provisions of the current 2002 Plan or any of the prior plans do not bar participants who have terminated their employment from obtaining early retirement if they have previously terminated employment provided they obtain early retirement age. (60th birthday and 15 years or more of service) Vested benefits may require different levels of service, initially 10 years and then 5 years, but that does not preclude greater benefits provided when an employee has 15 years service.

Lastly, the Union submits that there is nothing in the pension plans or summary plan descriptions submitted by the Company in the arbitration record that change the contractual labor agreement to provide full benefits at age 62 once an employee has 15 years of service, regardless of whether or not he has terminated employment. All documents introduced into the record are consistent with the Union's understanding that the full benefit at age 62 applies to all employees once they reach 15 years of service regardless of whether they reach that age 62 while still in active service or employment. In conclusion the Union requests that the Arbitrator sustain the grievance and hold that the Company violated the parties' collective bargaining agreement by refusing to provide employees with 15 years of service, but whose employment was previously terminated, with full pension at age 62 or with a pension reduced by .5% for each month prior to age 62 that the employee retires and that the Arbitrator order the Company to comply with the contract language and make participants whole for any losses resulting from its contract violation. The Union requests that the Arbitrator retain jurisdiction for 60 days if there is any dispute as to implementation of the award.

Company

It is the Company's initial position that the Pension Plan provisions specifically require that an early retiree terminate his/her employment with the Company as an active employee

after he/she obtains the age of 60. The Company argues that there is a clear difference between early retirement benefits and deferred vested retirement benefits as set forth in the applicable pension plan. (Er. 7) The Company posits that the key language in this dispute is the definition of the early retirement date. The early retirement date is the first date of the calendar month next following the month in which the participant's employment with the Company terminates (quoting pension language from Er. 7) and therefore such termination must be after the employee has obtained early retirement either 60 with 15 years of service with benefits reduced by .5% per month from age 62 when they would receive the full early retirement benefit. The Company argues that pension language is clear that an early retiree must terminate his or her employment with the Company after age 60, not before, in order to meet the definition of an early retiree. The Company submits that the deferred retirement date language in which there is no reference to a required timeframe within which the employee's employment must terminate makes it obvious that the benefit is a deferred benefit and not an early retirement benefit. The Company submits that the Union cannot delete the words in effect that the participant or employee must be in employment when the employee terminates for early retirement. The pension language, the Company argues, requires that the early retirement definition of the pension plan requires that the employee/participant in order to receive early retirement benefits must terminate his employment after age 60 with 15 years of service. The Company concludes this portion of its argument by saying that its cited case law supports its position and interpretation of the applicable contract and pension plan language.

The Company next argues that other provisions of the labor agreement make it logical that to receive life and medical insurance for early retirees its employees must be actively employed when they reach early retirement otherwise it is nonsensical that an employee could terminate and then years later having reached the age of 60 now claim health insurance and life insurance. Such exercise in "absurdity" the Company submits is a violation of arbitrable standards that require that when an interpretation of an ambiguous contract, will lead to harsh, absurd and nonsensical results while an alternative interpretation, equally consistent would lead to just and reasonable results, the latter interpretation will be used. This argument, the Company states, is supported by the letter to an employee who retired before age 60 in which the Company's Human Resource Administrator informed the employee that he would be resigning with a deferred vested pension and informing him that "retirees' life insurance and medical insurance for early retirees do not apply to your situation." (U. 8)

Responding to the Union's argument that the contract supersedes the Pension Plan, the Company notes that the collective bargaining agreement by its language in Article XIX – Pension, Section 1, states that the Company and the Union have agreed that the Pension Plan is made a part of the labor agreement. The Company notes that despite Union 10, the SPD from 1990 that refers to vested pension benefits prior to age 62 and not 65, all the official Plan documents since 1986 refer to reduction of benefits for participants receiving deferred retirement benefits based on 65 and not age 62. The Pension Plan document that governs the

SPD and the official plan document will always supersede the SPD. (Jt. 4, Er. 5, 6 & 7) The Company notes that with only the exception referred to in Union 10 in 1990, all summary plan descriptions reference 65 as the date from which deferred benefit reductions are calculated. (U. 16, Er. 3, 4, 2) The Company, in concluding this argument, notes that even Union Exhibit No. 10 the 1990 SPD voids the incorrect reference to payments prior to age 62 by stating within the Summary Plan Description that the official Plan document governs, requiring age 65 prior to receiving a full vested pension benefit.

It is the position of the Company that the general pension language in Article XIX, containing only six paragraphs, would hardly be acceptable under the Internal Revenue Service code and that by making the pension plan a part of the contract obviously makes the pension plan the appropriate document setting forth the employees' pension benefits. This position, the Company avers, is supported by clear arbitral case law that the specific language of a pension plan governs the more general labor agreement language. The specific language defining early retirement date, requiring termination of employment after age 60, never changed from 1984 to present. (Jt. 4 & Er. 7) The Company takes the position that what is critical is that despite the broad language on early retirement inserted into the contract in 1986, the very specific language of the pension plan and definition of early retirement date and early retirement age were not changed and that these technical and specific definitions of early retirement under the pension have never changed since 1984. The real issue, the Company submits, is not that early retirement calculations were changed in 1986 from age 65 to age 62 but the real issue is whether the definition of early retirement changed in 1986 and upon comparing the pension plan documents from 1984-1986 to present, the definitional early retirement age in the Plan never changed; one always had to retire from active employment with the Company after age 60 in order to qualify for early retirement.

The Company argues that the common sense understanding of early retirement benefits as compared with deferred vested retirement benefits reinforces the Company's interpretation of the relevant language. The Company argues that when employees are asked to defer a right or a benefit, they are asked to delay or take it at a later time what they have the right to at the present, accordingly, an employee who earns retirement benefits after five years of service with the Company and then terminates the employment may receive retirement benefits after age 60. The benefit, although earned before age 60 cannot be taken then but is deferred to a later date. From the vantage point of the former employee, the receipt of the retirement benefit is put off from the time when the benefit is actually earned. Benefits for the former employee are always described in the past tense, as deferred. On the other hand, when a current employee who is at least 60 receives a benefit entitled early retirement, it is natural that a person consider the receipt of the retired benefits to be early at age 62 or 60. There is no concept of deferral of benefits, only the realization that normal benefits are received prior to the normal retirement age. Early retirement benefits for the current employee are always described in a future sense, earlier than normal.

The Company submits that according to the Union's position the only difference between early retirement benefits and deferred benefits is that the benefits for former employees with 15 years of service are reduced from age 62, not 65. According to the Union's position, early retirement benefits are merely a more generous subset of deferred benefits because full retirement can be reached at 62 and not as in deferred benefits, 65. The Company argues that under the Union's rationale there is no reward for an employee for continued employment with the Company until age 62. Retirement for a former employee with 25 years of service would be no different at age 62 than a current employee with 25 years of experience who retires at age 62. The Company submits that under the Union's rationale, early retirement is no incentive for developing a stable work force.

Responding to Union testimony at the hearing and Union argument, the Company argues that it never represented to the Union that employees could receive an early retirement benefit if they retired prior to age 60 and no early retirement benefits have ever been paid to employees who terminated before age 60. The Company argues that it is not reasonable that an employee can retire in the future when an employee has already quit and is no longer employed by the Company. The Company submits to the Arbitrator that just because the Company gave incorrect information of a deferred retirement benefit in the 1990 summary plan description (U. 10) and to two employees thereafter, does not mean that it modified the conditions for receiving early retirement benefits. Vested deferred benefits, as has consistently been argued throughout the Company's position, are different from early retirement benefits. The early retirement interpretation posited by the Company is articulated in every summary plan description submitted into evidence. The only employees that have received early retirement benefits are those employees who retired from active employment after reaching age 60 and with 15 years of service. (Er. 8, 9 & 10)

In conclusion, the Company argues that there is no basis in the collective bargaining agreement or the actual Pension Plan or the current Summary Plan Description which substantiates the Union's position that any former employee or employee terminated due to the plant closing who were not age 60 at the time of their termination should receive full benefits at age 62. The pension plan is incorporated into the contract and requires that before anyone can be eligible for early retirement benefits (full benefits at age 62), they must retire from active employment after age 60. There is no special exception under Article XIX, Pension, which states that full retirement benefits at age 62 shall be earned by laid off employees under age 60. Laid off employees shall receive deferred retirement benefits just as those former employees who voluntarily terminated prior to age 60. The Company requests that the Arbitrator dismiss the grievance as being without merit.

DISCUSSION

This is a contract interpretation case. The Union alleges that the Company has and will violate the parties' labor contract by its interpretation of the early retirement provisions under

the pension article of the labor agreement in that the Company will not pay early retirement benefits unless the employee is actively employed when the employee reaches age 60 (reduced benefit) or age 62 (full early retirement benefit). Since this is primarily an issue interpreting language in the collective bargaining agreement, the Pension Plan and the Summary Plan Descriptions, I will address those language provisions first and then consider other arguments raised by the parties at hearing and in their post hearing briefs.

The original collective bargaining agreement language was placed in the parties' 1984-1986 labor agreement. Language under Article XIX (Pension Plan) stated as follows:

> Section 1. Pension Plan.
>
> The Company and the Union have agreed upon a pension plan which is made a part of this contract and is subject to the approval of the Internal Revenue Service.
>
> The deferred vested retirement requirement is 10 or more years of credited service.
>
> The Company will make revisions in the Plan to comply with the Employee Retirement Income Security Act (ERISA). (U. 1)
>
> ***(Please note that I have only included in the quoted language those aspects of the contractual pension plan language that are at issue. I have not quoted for example the benefits received for years of credited service which are not at issue).***

The parties engaged in extensive negotiations for the 1986-1988 collective bargaining agreement and a provision for early retirement benefits was placed in that contract. (U. 2, 3 & 4) The pertinent pension language in the 1986-1988 contract read as follows:

> Section 1. Pension Plan.
>
> The Company and the Union have agreed upon a pension plan which is made a part of this contract and is subject to the approval of the Internal Revenue Service.
>
> The deferred vested retirement requirement is ten or more years of credited service.

> The Company will make provisions in the plan to comply with the Employee Retirement Income Security Act (ERISA).
>
> Effective September 16, 1986, the Company will provide early retirement at age 62 and with 15 years of service at no reduction. The reduction between age 60 and 62 will be 0.6% per month for each month the employee retired before age 62. (U. 5)

There essentially has been no change in the collective bargaining language for Article XIX quoted above except that in the 1990-92 collective bargaining agreement the deferred vested service requirement was modified from ten years to five years. (U. 11) In the 1988-1990 collective bargaining agreement the reduction between age 60 and 62 for early retirement benefits was modified from 0.6% to 0.5%. (U. 6) The early retirement benefit language has remained the same in the collective bargaining agreement to date. (U. 11, 12, 13, 14 & Jt. 1)

It is clear from the collective bargaining agreements that were introduced into the record that the language making the pension plan a part of the collective bargaining agreement has been in effect since 1986 to date. This language is as follows:

> Article XIX (Pension Plan)
>
> Section 1. Pension Plan.
>
> The Company and the Union have agreed upon a pension plan which is made a part of this contract and is subject to the approval of the Internal Revenue Service. (U. 1)

As stated, this language making the pension plan a part of the collective bargaining agreement has been consistently followed in all contracts from the 1984-1986 contract to date. (U. 5, 6, 11, 12, 13, 14 & Jt. 1)

Turning to the actual Pension Plan Document language, although there appears to be an older 1974 plan, I have chosen to start my review of the actual Pension Plan language with what the parties jointly introduced at hearing, the 1984 pension plan with 1986 amendments. (Jt. 4) That plan provided early retirement benefits as follows:

3.2 Early Retirement Benefits

(a) Eligibility. A Participant shall be eligible to receive an early Retirement Benefit under the Plan upon his termination of employment with the Company after he has attained his Early Retirement Age. A Participant may retire at any time after he obtains his Early Retirement Age.

(b) Amount. At the Participant's Early Retirement date, he shall be entitled to a monthly Retirement Benefit which is computed in the same manner as a normal Retirement Benefit, based upon the Plan provisions in effect as of the date he terminates his employment with the Company and upon his Service and Credited Service as of his Early Retirement Date; reduced by .6% for each complete month by which commencement of his early Retirement Benefit precedes the first day of the month coincident with or next following his 65th birthday.

(c) Commencement and Duration. Monthly early Retirement Benefit payments shall commence on the later of the last day of the month in which Participant's Early Retirement Date occurs or the last day of the month next following the month in which the Participant makes application for such benefit, and shall be payable in the form provided in Section 3.6.

Under Section 2, 2.1 Definitions, early retirement age is defined as follows:

(p) "Early Retirement Age" means a Participant's age when he has attained his 60th birthday (but not his 65th) and completed 15 or more years of service.

. . .

(t) "Early Retirement Date" means the first day of the calendar month next following the month in which the Participant's Service terminates (for reasons other than Disability) after he has attained his Early Retirement Age.

The 1984 plan also provided for deferred retirement benefits under Section 3.4 as follows:

(a) Eligibility. A Participant shall be eligible to receive a deferred vested retirement benefit under the Plan upon his termination of employment with the Company after he has attained his deferred vested retirement age.

(b) Amount. A terminated Participant shall be entitled to a monthly Retirement Benefit which is computed in the same manner as a normal retirement benefit based upon the Plan provisions in effect on the date he terminates his employment with the Company and upon his Service, Credited Service and Monthly Compensation as of such date; reduced by .6% for each complete month by which his initial deferred vested retirement benefits precedes the first day of the month coincident with or next following his 65th birthday.

(c) Commencement and duration. Monthly deferred vested Retirement Benefit payments shall commence on the last day of the month in which the Participant's Deferred Vested Retirement Date occurs and shall be payable in the form provided in Section 3.6.

Under Section 2.1 deferred vested retirement age is defined:

(q) "Deferred Vested Retirement Age" means the age of a Participant who has completed 10 or more years of service.

(u) "Deferred Vested Retirement Date" means, for a Participant who has obtained his Deferred Vested Retirement age and whose Service terminates (for reasons other than Disability), the first day of the calendar month next following and later to occur of (i) the month in which he obtains age 60 or (ii) the month in which he makes an application for a Deferred Vested Retirement Benefit. (Jt. 4)

The amendments to the Pension Plan occurring in September of 1986 amended the retirement portion of the pension as follows:

Section 3.2 (b) is amended to read as follows:

b. Amount. At the Participant's Early Retirement Date, he shall be entitled to a monthly Retirement Benefit which is computed in the same manner as a normal Retirement Benefit, based upon the Plan provision in effect as of the date he terminates his employment with the Company and upon his Service and Credited Service as of his Early Retirement Date, reduced by .6% for each complete month by which commencement of his Early Retirement Benefit precedes the first day of the month coincident with and next following his 62nd birthday. (Jt. 4)

The next plan introduced was the 1988 pension plan. (Er. 5) In that plan the early retirement benefits are as follows:

3.2 Early Retirement Benefits.

a. Eligibility. A Participant shall be eligible to receive an early Retirement Benefit under the Plan upon his termination of employment with the Company after he has attained his Early Retirement age. A Participant may retire at any time after he attains his Early Retirement Age.

(b) Amount. At the Participant's Early Retirement Date, he shall be entitled to a monthly Retirement Benefit which is computed in the same manner as a normal Retirement Benefit, based upon the Plan provisions in effect as of the date he terminates his employment with the Company and upon his Service and Credited Service as of his Early Retirement Date; reduced by .5% for each complete month by which commencement of his Early Retirement Benefit precedes the first day of the month coincident with or following his 62nd birthday.

The definitions of "early retirement age" and "early retirement date" subsection (p) and (t) are the same as set forth in the 1984 plan. The deferred retirement benefits language set forth in the 1988 document under section 3.4 is exactly the same previously stated for the 1984 document except under subsection (b) Amount, the reduction is changed from .6% to .5%. In Section 2.1 definitions regarding deferred vested benefits subsection (q) has been modified as follows:

"Deferred Vested Retirement Age" means the age of a Participant who has completed 10 or more years of service (5 years of service for a Participant with an Hour of Service on or after January 1, 1989).

Subsection (u) regarding Deferred Vested Retirement Date is exactly the same. (Er. 5)

The next Pension Plan introduced into the record was the 1994 plan. (Er. 6) Again early retirement benefits are defined and described under Section 3.2 and deferred benefits are defined and described under section 3.4. The language of the 1994 plan is the same as the 1988 plan under both of those provisions.

As the definitions under Section 2.1of the 1994 plan are different than the 1988 plan set forth above as Employer Exhibit 5, I quote them as follows:

> (n) "Early Retirement Age" means a Participant's age when he has obtained his 60th birthday (but not his 65th) and concluded 15 or more years of service.
>
> (o) "Early Retirement Date" means the first day of the calendar next following the month in which the Participant's employment with the Company terminates (for reasons other than Disability) after he has obtained his early retirement age.
>
> (i) "Deferred Vested Retirement Age" means the age of a Participant who has completed 10 or more years of service (5 years of service for a Participant with an Hour of service on or after January 1, 1989).
>
> (j) "Deferred Vested Retirement Date" means, for a Participant who has obtained his Deferred Vested Retirement Age and whose employment with the Company terminates (for reasons other than Disability), the first day of the calendar month next following the later to occur (i) the month in which he obtains age 60 or (ii) the month in which he makes application for deferred vested Retirement Benefit. (Er. 6)

The current pension plan as amended and restated effective January 1, 2002, is the plan that covers the dispute under the current collective bargaining agreement (Jt. 1) and was introduced into the record as Employer Exhibit 7. The definition and description of early retirement benefits and deferred retirement benefits are found under sections 3.2 and 3.4 of section 3 of the 2002 pension plan. The requirements of early retirement benefits under section 3.2 and subsection (a) eligibility, (b) amount and (c) commencement and duration are no different than has been set forth above. The same is true under section 3.4 deferred retirement benefits under (a) eligibility, (b) amount and (c) commencement and duration. The same can be said for the definitions under section 2.1 under (i) deferred vested retirement age (j) deferred vested retirement date (n) early retirement age and (o) early retirement date. (Er. 7)

One of the arguments made by the Union is that the collective bargaining agreement language of Article XIX, Pension, should supersede any language of the actual pension plan that is in conflict with the collective bargaining agreement. I do not find the pension plan language to be contrary to the collective bargaining agreement language, and I cannot agree that the collective bargaining agreement language supersedes the pension plan language.

The Plan contractually is made a part of the collective bargaining agreement in section 1 of Article XIX. It would be highly unusual for parties to a collective bargaining agreement to write into their agreement the entire pension plan language or for that matter language contained in a Summary Plan Description. The whole idea of referencing the Plan in the pension provisions of a collective bargaining agreement is to make that Plan a part of the contract without having to add pages and pages of legal language that is typically found in a pension plan based on requirements of the Internal Revenue Service. By making the Plan a part of the agreement the parties to this agreement accept that the specific language of the Plan is what will be followed in determining applicable pension benefits for the employees. Incorporating the pension plan document into the contract is no different than letters of understanding or memorandums of agreement that are attached to a collective bargaining agreement and which are enforceable by an Arbitrator no different than the main language in the collective bargaining agreement.

Pension plan documents are always accessible to individual employees and union representatives, and I find based on the recitation of the provisions of the pension plan above that any unilateral changes have been to the benefit of the employees and, as appropriate, have been restated in the labor agreement both as to the recitation of the early retirement benefits and deferred vested retirement benefits. It is also clear, and I so find, that there is a difference between an early retirement benefit and a deferred vested retirement benefit. Before making a finding on whether an employee has to be actively employed at age 60 or 62 to receive an early retirement benefit, I will set forth the summary plan description documents.

There is not any dispute that summary plan descriptions which are typically given to the employees are to be written in a language that interprets the actual pension plan in a manner that allows employees to understand their pension benefits. In 1981 the SPD provided the following description of eligibility for early retirement.

> If you've completed at least 15 years of service and have reached your 60th birthday (but not your 65th), you may decide to retire and receive an early retirement benefit.

The SPD describes a deferred vested retirement benefit for the employee as follows:

> A deferred retirement benefit makes it possible for you to receive a monthly benefit from Rexnord when you retire, even though you may not have been employed by the company for many years. You are eligible for a deferred retirement benefit when you have completed 10 years of service. At that time your right to a retirement benefit is "vested," that is, you cannot lose it even if your employment with Rexnord terminates for any reason. (U. 15)

It should be noted that the eligibility language under early retirement and deferred vested retirement is significantly different. The vested eligibility retirement clearly contemplates that an employee might receive a benefit even though an employee terminated his employment with the Company and had not been employed by the Company for many years. The eligibility for early retirement contemplates that the employee is still employed upon reaching his 60th birthday and then decides to retire after completing at least 15 years of service. The language in the 1985 SPD is no different than what was set forth in the 1981 SPD. (U. 16) The 1986 SPD introduced by the Company as Employer Exhibit 3 describes early retirement as follows:

> The plan pays early retirement benefits if you retire at or after age 60 with at least 15 years of vesting service.
>
> If you retire early, your monthly pension is reduced. The reason for the reduced benefit amount is you would expect to receive the pension over a longer period of time, so each payment will be less.
>
> The deferred vested pension is described in the SPD as follows:
>
> Once you have 10 years of vesting service, the pension you've earned is protected even if you leave Rexnord before reaching retirement age.
>
> This pension is called a deferred vested pension. It is calculated in the same way as a normal retirement pension based on your final average monthly pay and benefit service when you leave Rexnord.
>
> If you leave, you will receive a statement telling you what your deferred vested pension would be if you have payments begin at age 65. The statement also tells how you can apply for your pension. Although the statement would show your age 65 pension, your deferred vested pension can actually begin at any time between age 60 and 65. Deferred pension benefits are reduced by .6% by each month payments begin prior to age 65. (Er. 3)

It is again notable that with early retirement under the SPD an employee can retire after reaching age 60 but must have 15 years of service. There is no requirement under deferred vested pension that an employee needs more than 10 years of service. An employee can receive that pension even if the employee leaves the Company before reaching retirement age. Both the early retirement and the deferred vested require reduction of .6% for each month prior to age 65. The difference is that with early retirement an employee has to retire at or

after age 60 and have 15 years of service where there is no such requirement for the deferred vested pension benefit under the 1986 SPD. (Er. 3) The 1986 SPD was modified in November to allow, while under early retirement, a full retirement benefit after reaching age 62 with 15 years of service but allowing the employee to retire between age 60 and 62 with a reduction of .6% for each month that the employee retires after reaching age 60 but before reaching age 62. The deferred vested benefit described in the November 1986 SPD has no modification from the earlier SPD discussed in Employer Exhibit 3. (Er. 4) The modification in November to the early retirement benefit parallels the change in the collective bargaining agreement language and the pension plan itself.

The next SPD introduced was the 1990 SPD introduced as Union Exhibit 10. The Union, citing to the 1990 SPD, quotes language under the deferred vested pension as follows:

> If you leave, you will receive a statement telling you what your deferred vested pension would be if you have payments begin at age 65. The statement also tells you how you can apply for your pension. Although the statement would show your age 65 pension, if you have at least 15 years of vesting service a deferred vested pension can actually begin at any time between age 60 and 65. Deferred vested pension payments are reduced by .5% for each month payments begin prior to age 62.

This would seem, as argued by the Union, that one would not have to be actively employed and merely could receive vested pension benefits after 15 years of service with a .5% reduction prior to age 62. Under the Union's argument, the only difference between early retirement and deferred vested pension would be that with deferred vesting an employee needed ten years of service, five if employed after January 1, 1989 and that an employee would have to wait until age 65 to receive a full pension whereas with the early retirement an employee could receive a deferred vested pension between age 60 and 65, only being reduced by .5% prior to age 62. The Union makes the argument that longer service means an employee can receive a full benefit at 62, shorter service requires an employee to be age 65 to receive a full benefit and neither benefit requires an employee to be actively employed. The Company points out in its argument that this SPD is in conflict with the applicable pension plan document and quotes from page 13 of the 1990 SPD as follows:

> The official plan document governs the actual rights and benefits to which you may become entitled. If there is any conflict between this summary and the official plan document, the plan document will govern in all cases.

The current SPD dated in 1999 and introduced as Employer Exhibit 2 clears up what I regard as erroneous language in the 1990 SPD described in Union Exhibit 10. The 1999 SPD describes deferred vested pension as follows:

> If you leave, you will receive a statement telling you what your deferred vested pension would be if you have payments beginning at age 65. The statement also tells how you can apply for your pension. Although the statement would show your age 65 pension, if you have at least 5 years of vesting service, your deferred pension can actually begin at any time between age 60 and 65. Deferred vested pension payments are reduced by 5/10 of 1% under the Nordberg plan and 6/10 of 1% under the Rexnord plan for each month payments begin prior to age 65. (Er. 2)

This language I find parallels the language of the applicable pension document. The early retirement language under the 1999 SPD discusses early retirement between age 60 and 62 with at least 15 years of service. I find this language differentiates again from the deferred vested benefits by allowing full payment of pension under early retirement plan with 15 years of service at 62 reduced by .5 tenths of a percent for each month retiring after reaching retirement age of 60 but before age 62. This language is consistent with the applicable pension plan. The Union argues that benefits under the IRS code cannot be retroactively reduced. However the deferred vested benefits in the 1999 SPD are greater than described in the 1990 SPD (15 yrs. Vs. 5 years vesting) so there could be no retroactive reduction. As to the early retirement benefits, both the 1990 and 1999 SPD's provide the same description of early retirement benefits, so no retroactive reduction. (U. 10, Er. 2)

Based on the collective bargaining agreement, the Pension Plans past and present and the SPD's past and present, I find that to receive early retirement benefits the employee must be actively employed until age 60 or 62 and have 15 years of service. To rule otherwise and find that current employment was not involved would merely mean to have two different alternatives under a deferred vested pension plan based on length of service. There would be no need for an early retirement plan. I find that early retirement means and can only mean that an employee is actively employed when he or she decides to end employment and take early retirement.

I next address other evidence and arguments advanced by the parties to determine if there is a reason that I should alter this finding.

The testimony as to the bargaining history is inconclusive. Witnesses testified that the Company never said that to receive the early retirement benefit the employee would have to be

actively employed, but at the same time, they admitted that the Company never said that an employee did not have to be actively employed to receive an early retirement benefit. The Union witnesses further stated they knew of no one who had left after 15 years of service but before reaching 60 or 62 who had received the retirement benefit. (Tr. 19, 21 32, 48) Company witness Grzeca the site manager testified that no former employee has ever received early retirement benefits if they terminated their employment before 60 or 62 but rather has received vested benefits under the deferred vested benefit plan. (Tr. 59 & 61) To bolster this argument the Company introduced examples of employees who have received an early retirement benefit but received it at the time that they actively ceased their employment. (Er. 8, 9 , 10; Tr. 61-63) While these examples may merely reflect individuals who happened to be actively employed when they retired, the fact remains there is no conclusive evidence that any employee has received early retirements from the Company unless they were actively employed when they reached age 60.

The Company also points to other provisions of the collective bargaining agreement to support its position that an employee must be actively employed at the time they reach early retirement. Sections 2 and 8 of Article XVIII (Group Insurance) allow employees who retire after age 62 (Early Retirees) to receive a life and health benefit. (Jt. 1) As the Company argues, it does not seem logical that these benefits would be available if an employee terminated his employment before age 62.

The Union submitted two examples that it argued support its position. One example involved an employee by the name of Dietz and another involved an employee by the name of Kettenhoven. Mr. Dietz testified that he retired from the Company in 1998 (Tr. 34). Union Exhibit 8 is a memorandum dated January 20, 1998 that Mr. Dietz received from Linda Arndt the Company's Human Resources Administrator. Dietz was 59 at the time of the arbitration hearing and had applied for but had been turned down for a disability retirement. The memorandum from Arndt stated that "because you have at least 15 years of vesting service, your pension can actually begin at any time between age 60 and 65. Deferred vested pension payments are reduced by .5% for each month payments begin prior to age 62." These two sentences by themselves would support the Union's position. However, the memorandum also goes on to state "Retiree's life insurance and medical insurance for early retirees do not apply to your situation." Further the memorandum also states "therefore, you would be resigning with a vested pension." (U. 8) Further Dietz testified that he interpreted Union Exhibit 8 that he would receive a deferred pension not early retirement and that he was never told that he would be terminating with an early retirement benefit. (Tr. 37-39)

Employee Kettenhoven retired as of December 1, 2000. A memorandum to Mr. Kettenhoven from the Summary Plan Description in effect at that time stated that "Deferred vested pension payments are reduced by .5% for each month payment begins prior to age 62." That calculation of benefit and memorandum from Arndt to Kettenhoven dated

January 26, 2000 was corrected in a March 21, 2000 memorandum by the Company's Milwaukee benefits department which informed Kettenhoven that under the deferred pension benefit the correct age is not 62 but 65. This correction was highlighted in the memorandum to Kettenhoven from Arndt dated March 21, 2000. (Er. 15) While the Union states that it never received the corrected letter from Arndt to Kettenhoven, I do not find that it was necessary that the Union receive the March 21, 2000 memorandum and Kettenhoven could have always shown it to a Union representative but chose not to. What these two examples show is that Ms. Arndt was not always accurate in her interpretation of the Plan and the Summary Plan Description and in the case of Kettenhoven it confirms that the 1990 SPD that Arndt evidentially used to calculate Kettenhoven and Dietz' retirement benefits was incorrect. These two errors were not made in bad faith and there is no allegation by the Union to that effect. I cannot overrule the clear pension plan language or language found in all SPD's introduced into the record based on two administrative errors.

Union Representative Schaeuble testified that he had not seen and was not aware of the difference between Union 10 (1990 SPD) and Employer 2 (1999 SPD) until the day before the hearing. I am not sure what that is supposed to prove other than local union representatives at the Company never shared the SPD's with International Representative Schaeuble until preparation for the hearing in this matter. It does not prove the Company had any obligation to forward these documents to the International Representative as there is nothing in the labor agreement requiring the Company to do so and the SPD's were shared with local union representation.

I do not find fault or bad faith on either party in their relationship as regards the Pension Plan. The issue basically is a misunderstanding as to the requirement of active employment at the time an employee retires at or after age 60 with 15 years of service to receive early retirement benefits. I have considered the key cases cited by both the Union and the Company in their arguments. 1/

1/ In re KIMBERLY-CLARK CORP., AND I.A.M.A.W. LOCAL 1828, 112 LA 794 (1999)
HANSEN V. CONTINENTAL INS., CO. 940 F.2D 971 (5th CIR., 1991)

In HANSEN, the employee relied on a description of a death benefit in a Booklet to claim a certain benefit when his wife died. The Court awarded the greater benefit than the Company argues was appropriate under the master policy finding that applicable ERISA regulations require that the booklet or summary is binding resolving ambiguity against the drafter and plan. In this case the Union relies on the SPD in Union Exhibit 10 regarding requiring 15 years service for a deferred vested pensions. The Union argues this supports its early retirement position. I do not agree. The SPD language clearly is discussing deferred benefits, not early retirement. The same SPD has specific language for normal retirement and early retirement, language that is consistent with the Plans and SPD's discussed above. Further, there is not any retroactive dimunition of deferred vested benefits in the subsequent 1999 SPD or 2002 Plan as those documents correctly state that a deferred vested benefit occurs after only five years of service not fifteen. The 1990 SPD, Union Exhibit 10, is not ambiguous as to early retirement benefits.

The Union has the burden of proof in this case to sustain its grievance. I find that under a preponderance of the evidence standard, typical for such a case, the Union has not met that standard.

Based on the foregoing and the record as a whole, I issue the following

AWARD

The Company did not violate the parties' collective bargaining agreement by denying full pension with no reduction to terminated employees with 15 years of service when they reach age 62, and denying full pension less .5% per month for each month after age 60 but before age 62 that he or she applies for pension. The grievance is denied.

Dated at Madison, Wisconsin, this 18th day of July, 2002.

Paul A. Hahn /s/

Paul A. Hahn, Arbitrator

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