BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

NORTHERN EDUCATIONAL SUPPORT TEAM (NEST)

and

LAC DU FLAMBEAU SCHOOL DISTRICT

Case 26
No. 61557
MA-11982

Appearances:

Mr. Gene Degner, Executive Director, Northern Tier UniServ – Central, P.O. Box 1400, Rhinelander, WI 54501, appearing on behalf of the Union.

Ruder Ware, S.C. by **Attorney Ronald J. Rutlin,** 500 Third Street, Suite 600, Wausau, WI 54402-8050, appearing on behalf of the School District.

ARBITRATION AWARD

The Northern Educational Support Team (NEST), hereinafter referred to as the Union, and the Lac du Flambeau School District, hereinafter referred to as the District or Employer, are parties to a collective bargaining agreement (CBA) which provides for final and binding arbitration of certain disputes, which agreement was in full force and effect at all times mentioned herein. The parties asked the Wisconsin Employment Relations Commission to assign an arbitrator to hear and resolve the Union's grievance regarding the District's interpretation and implementation of the salary adjustment clause contained in the CBA under Article XX, paragraph H. The undersigned was appointed by the Commission as the Arbitrator and held a hearing into the matter in Lac du Flambeau, Wisconsin, on December 10, 2002, at which time the parties were given the opportunity to present evidence and arguments. The hearing was transcribed. The parties filed post-hearing briefs by March 3, 2003, marking the close of the record. Based upon the evidence and the arguments of the parties, I issue the following decision and Award.

ISSUE

The parties were not able to stipulate to a statement of the issue and left it to the Arbitrator to frame the issues in this award.

The District proposes the issue as follows:

1. Is the District's interpretation of the language in Article XX, Paragraph H, as set forth in Employer Exhibit 1 in violation of the Collective Bargaining Agreement?

2. If so, what is the appropriate remedy?

The Union did not propose issue language.

The Arbitrator phrases the issue as follows:

1. Did the District properly interpret and apply the terms of Article XX, paragraph H, when it determined the respective contributions of the District and the employees toward the combined health and dental insurance premium increases and did it correctly compute the hourly wage reduction contemplated by that Article?

2. If not, what is the proper remedy?

RELEVANT CONTRACTUAL PROVISIONS

. . .

ARTICLE XX – FRINGE BENEFITS

. . .

H. In the second year of the contract, the District will absorb the first ten percent (10%) increase in the health and dental combined insurance premiums. The remainder will be shared between the Board and the employes [sic]. The salary rates shall then be decreased one cent (1¢) for each two percent (2%) above ten percent (10%)." (.5 and up is rounded up, less than .5 is dropped)

BACKGROUND

The Lac du Flambeau School District and NEST are parties to a collective bargaining agreement covering the contract years 2001–2002 and 2002–2003. This CBA contains the language set forth above under Article XX, paragraph H. This language has been incorporated

in the parties' collective bargaining agreements since contract year 1990. The terms of this paragraph were first applied by the District for the 2002–2003 contract year as a result of the increases in the combined health/dental insurance premiums over those experienced in contract year 2001–2002. In contract year 2002–2003, the combined rates for the family plan coverage increased 29.1% over the 2001–2002 rates and the combined rates for the single plan increased 27.05% for the same period.

Following the District's mathematical interpretation of the terms of this language (the details of which are reviewed in detail below) and the subsequent application of these calculations to the wages of the unit membership, the Union notified the District of its disagreement with the District's interpretation of the language and this grievance followed.

There are no procedural impediments to this grievance coming to arbitration and the case is properly before the Arbitrator.

THE PARTIES' POSITIONS

The Union

The Union agrees with the District in that this case is limited strictly to the interpretation of Article XX, paragraph H. This is the first time the language has been applied and the Union does not agree with the District's interpretation of it.

The language of the article is clear and this clear language should prevail in its interpretation. The first sentence unequivocally states that the first 10% increase in the health and dental combined insurance premiums is absorbed by the District. The second sentence, "The remainder will be shared between the Board and the employes," answers the question of what happens to the amount remaining beyond the initial 10% but does not tell us how that amount, i.e. in what shares, will be divided between the Board and the employees. The third sentence, says the Union, clearly answers this question. It says "The salary rates shall then be decreased one cent (1¢) for each two percent (2%) above ten percent (10%). (.5 and up is rounded up, less than .5 is dropped)" This provides the "method" by which each party's share of the remaining amount is determined: ". . . by rolling back the previously agreed upon salary schedule as contained in the appendix."

The Union asserts that the "only confusion" might be whether "the 10% in the third sentence related to the 10% in the first sentence?" If it does then the Union agrees that the District has applied the language correctly with the exception of one required adjustment: the salary schedule roll back of 1¢ for each 2% increase in combined premiums should be uniform. In other words, it should not be based on single versus family coverage but should be "uniform." "Therefore, a uniform ten cents ($.10) should be rolled off the salary schedule to create a new schedule."

The Union membership questions "whether the 10% refers to how the union deals with its share is [sic] to be divided." If the 10% referred to in the third sentence of Article XX, paragraph H, refers to the Union's portion of the remainder then the assumption must be made that each party will absorb the remainder equally.

Another way to view the language in the third sentence is to construe it to mean that it gives the Union an additional 10% "cushion" prior to the salary schedule roll back. In other words, once the initial 10% to be paid by the District is determined, an additional 10% is subtracted from the remainder which leaves the actual percentage to be absorbed by the employee.

The District's position is dependent on a "nexus between the Lac du Flambeau Education Association contract and the Northern Educational Support Team contract;" "the NEST contract and employees being covered by the Qualified Economic Offer;" "a lack of acknowledgement about percentages that are in the first and third sentences;" and "a lack of acknowledgement that the third sentence talks about an adjustment to the salary schedule by decreasing the salary according to a percentage increase in the split that is to be shared by both parties."

The Union says that the language in Article XX, paragraph H, is clear if read in the order it is written:

A) Sentence one states that the first 10% of the increase in insurance is to be absorbed by the board.

B) Sentence two states that the remainder is to be shared between the parties.

C) Sentence three states how it is to be shared. It is to be shared by decreasing the wage rates on the salary schedule one cent (1¢) for each 2% increase in that remaining share.

The District

The District takes the position that the resolution of this matter is uncomplicated due to the clear and unambiguous language found in Article XX, paragraph H. The parties do not quarrel over the meaning of the first sentence which requires the District to absorb the first 10% of any increase in the combined premiums of the health and dental coverage in the second year of the agreement. The second sentence calls for the parties to share any remaining premium increase (i.e. any increase in excess of the initial 10%) equally. The third sentence describes the mechanism by which the Union's payment of its share will be collected, i.e. the salary rates of employees taking either plan (family or single) will be reduced by one cent for each 2% premium increase above the initial ten percent already absorbed by the District.

The District reminds the Arbitrator that well established arbitral law requires that clear and unambiguous language be given effect and where the language is plain and unambiguous the Arbitrator may not resort to a matter of construction and must enforce the contract according to its terms.

The Union does not challenge the District's interpretation of the first two sentences of the subject language. Regarding the Union's challenge to the District's interpretation of the third sentence, the District argues that there can only be one interpretation, its own, not three as put forth by the Union. The District interprets the language in paragraph H as follows:

First sentence: "In the second year of the contract, the District will absorb the first ten percent (10%) increase in the health and dental combined insurance premiums."

The first year of the agreement was 2001-2002, the second year was 2002-2003. The increase in the health and dental combined premium in contract year 2002-2003 for the family plan was 29.1%. ($1,217.80 in year 2002-2003 less $943.36 in year 2001-2002 = $274.44 = 29.1% increase over $943.36) The increase for the single plan for the same period was 27.05%. ($533.30 in year 2002-2003 less $419.78 in year 2001-2002 = $113.52 = 27.05% increase over $419.78) The District is required to absorb the first 10% of these increases leaving a balance of 19.1% (29.1% less 10%) for the family plan and 17.05% (27.05% less 10%) for the single plan to be paid equally by the Union member participants and the District.

Second sentence: "The remainder shall be shared between the Board and the employees."

After the District absorbs the initial 10% increase, this sentence requires that the District and the employees share the remaining 19.1% (family plan combined premium increase over and above the first 10%) and the remaining 17.05% (single plan combined premium increase over and above the first 10%) equally. Consequently, after the District absorbs the initial 10% of the premium increase for the family plan, the remaining 19.1% increase is shared equally by the District and the employee, as is the remaining 17.05% premium increase in the single plan. Thus, since the family plan premium increase over and above the initial 10% absorbed by the District is $180.10 [$1,217,80 – ($943.36 + 10% = $1,037.70) = $180.10], the District's portion is one-half or $90.05 and the employee's portion is the same. Likewise, the single coverage premium increase over and above the initial 10% absorbed by the District is $71.54 [$533.30 – ($419.78 + 10% = $461.76) = $71.54]. The District's contribution is one-half of this amount or $35.77 and the employee's portion is the same.

Third sentence: "The salary rates shall then be decreased one cent (1¢) for each two percent (2%) above ten percent (10%)." (.5 and up is rounded up, less than .5 is dropped). It is the District's interpretation of this sentence with which the Union takes issue.

This third sentence requires the District to determine "how much over ten percent (10%) the 'health and dental combined insurance premiums' increased." Since the increase in the family plan has been established at 29.1% and at 27.05% for the single plan, then the percentage increases in excess of 10% are 19.1% and 17.05% respectively. Once these figures are determined, the language requires the District to divide them by two because "salary rates shall then be decreased one cent (1¢) for each two percent (2%) above ten percent (10%)." (Emphasis added.) Thus, 19.1% divided by 2 = 9.5% and 17.05% divided by 2 = 8.5%. The language requires that these figures be rounded up to 10% and 9% respectively. Finally, the language requires that the salary rates of the employees enrolled in the family or single plan be reduced by one penny for each percentage point or 10¢ and 9¢ respectively.

The District argues that if the undersigned concludes that the contract language at issue here is ambiguous its interpretation must still prevail because it does, in fact, carry out the mutual intent of the parties and any ambiguity "usually means that the parties have failed to express that intent with clarity. . ." citing Elkouri and Elkouri, How Arbitration Works, 5th Edition, pp. 471-472 (1997).

Since the Union proposed the language at issue here any ambiguity therein should be construed against it. Again citing Elkouri & Elkouri, the District says that "enforcement of this rule is practical because it promotes careful drafting of language and careful disclosure of what the drafter intends by his language." Elkouri and Elkouri, How Arbitration Works, 5th Edition, pp. 509-510 (1997).

The District maintains that an interpretation of the language in the way suggested by the Union's president would lead not only to a misguided result but would also necessarily change the language to conform to that interpretation. The Union's president, Phyllis West, testified that the third sentence of paragraph H. refers to the amount above that percentage finally determined to be the responsibility of the Union. This would result in the employees paying nothing toward the increased premiums in this case because their share is 10% for the family plan and 9% for the single. Since there is no amount "above 10%" then there would be no employee contribution due. In order for this interpretation to prevail, says the District, it is necessary to rewrite the third sentence of paragraph H, to read "The salary rates shall then be decreased one cent (1¢) for each two percent (2%) above the employee's share if the employee's share is above ten percent (10%)."

Regarding the Union's alternative interpretation which would result in the employee's share being 5¢, the District argues this is a distortion of the language in paragraph H, because it requires that the initial 10% absorbed by the Board be set aside and ignored in the computation of the portion of the percentage increase to be borne by the employees.

DISCUSSION

A contractual provision is ambiguous if it is reasonably susceptible to more than one meaning unless, of course, the parties agree as to its meaning. In such event, it is irrelevant that more than one meaning may be drawn from the language. Such is the case here with regard to the first two sentences of Article XX, paragraph H.

The parties agree that the language found in the first sentence, "In the second year of the contract, the District will absorb the first ten percent (10%) increase in the health and dental combined insurance premiums" means that if the total increase in premiums equals 10% of the prior year's premiums, or less, the District will absorb the first 10% *of the prior year's premiums* as that percentage, expressed in dollars and cents, represents an increase in premium over the prior year. No matter that the sentence is susceptible to more meanings, this is the one the parties agree upon and this is the one which establishes the meaning of the language and the intent of the parties, absent substantial flaws, which do not exist here. Hence, if the last year's premiums were $100.00 and the current year's premiums were $120.00, the total increase in premiums this year over last year would be twenty percent (20%), or $20.00, and the District's portion would be *one half* of that increase, or $10.00. (By way of illustration, if the second year's premiums were $150.00, the increase would be fifty percent (50%) of the last year's premium and the District would absorb 10%, or $10.00, of the prior year's premium, or *one fifth* of the percentage increase, leaving the remaining 40% to be divided by the parties. In either case, the District absorbs the same amount of money, i.e. 10% of the prior year's premium, or $10.00.)

The second sentence of paragraph H, "The remainder will be shared between the Board and the employes" instructs the parties that, following the subtraction of the Board's initial 10%, they are to share the rest of the increase. It does not specifically inform the parties as to their respective shares of the remainder and so the reasonable conclusion, that they are to share the remainder equally, should be drawn. And, in fact, the Union's president testified that this was her interpretation of the language. Had the parties intended the shares to be other than equal they surely would have, and could have, said so. It is also only reasonable to conclude that the reference to "employes" means employees who purchase either family or single coverage. Thus, only covered employees would be called upon to share in the increase.

This leaves us with the final sentence in paragraph H, "The salary rates shall then be decreased one cent (1¢) for each two percent (2%) above ten percent (10%)." The Union questions whether this means above the initial 10% absorbed by the Board or above the initial 10% to be absorbed by the Board *plus* another portion. If the undersigned were to adopt the latter interpretation, the employees would benefit from an additional "cushion" (the Union's word). Certainly, the language does not support such an interpretation and, once again, if the parties had truly intended for this to be the case they would have certainly said so, especially in light of the fact that it was the Union representative himself who penned the language. The most reasonable interpretation of the language contained in this sentence is that it refers to that

amount of premium increase which remains after the initial 10% absorbed by the District is subtracted. This is the interpretation implemented by the District. (There is no controversy regarding the meaning of the language in parenthesis following the third sentence.)

In the instant case, the premium increase for the family plan was 29.1%. ($1,217.80 - $943.36 = $274.44 or 29.1% of the first year's premium.) The District absorbed the "first ten percent" of that increase leaving 19.1% ($180.10) to be shared by the District and the employees in equal shares, or $90.05 each. 19.1% is the amount over the 10% initially absorbed by the District so this value is divided by 2 ("for each two percent [2%] above ten percent [10%]") leaving 9.5% and then multiplied by one (one cent for each two percent) to give a final share of 9.5¢. Since the language instructs the parties to round .5 up, this value becomes 10¢. The District then reduced the hourly salary rates of the family plan participants by 10¢ to implement the share plan. The same formula was used to arrive at the salary rate reduction for the employees enrolled in the single plan resulting in a reduction of 9¢ per hour.

AWARD

The District properly interpreted and applied the terms of Article XX, paragraph H, when it determined the respective contributions of the District and the employees toward the combined health and dental insurance premiums and correctly computed the hourly wage deduction contemplated by that Article.

Therefore, the grievance is hereby denied.

Dated at Wausau, Wisconsin, this 20th day of May, 2003.

Steve Morrison /s/
Steve Morrison, Arbitrator

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