

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**DODGELAND EDUCATION ASSOCIATION**

and

**SCHOOL DISTRICT OF DODGELAND**

Case 27  
No. 61799  
MA-12067

(health insurance grievance concerning retiree V\_\_ S\_\_)

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**Appearances:**

**Mr. Timothy S. McKeon**, Director, Winnebagoand UniServ Unit-South, 325 Trowbridge Drive, Fond du Lac, WI 54935, appearing on behalf of the Association.

**Mr. Mark A Herman**, Lathrop & Clark, LLP, 740 Regent Street, Suite 400, P.O. Box 1507, Madison, WI 53701-1507, appearing on behalf of the District.

**ARBITRATION AWARD**

At the joint request of the parties, the Wisconsin Employment Relations Commission (WERC) designated the undersigned, Marshall L. Gratz, as arbitrator to hear and decide a dispute concerning the above-noted grievance under the parties' 1999-2001 Master Contract (Agreement).

The Arbitrator heard the dispute on February 25, 2003, at the District office in Juneau, Wisconsin. The hearing was not transcribed, but the parties authorized the Arbitrator to maintain a tape recording of the evidence arguments for his exclusive use in award preparation.

The parties summed up their positions in written briefs exchanged by the Arbitrator on April 10, 2003, marking the close of the hearing.

### ISSUES

The parties authorized the Arbitrator to decide ISSUE 1, below, and agreed that the remedy, if any, shall be as stated in ISSUE 2, below.

1. Has the District violated the Master Contract - Side Letter of Agreement (Retirees) by refusing to reimburse V\_\_ S\_\_ for the cost of the Medicare Part B payments billed to her husband?

2. If so, the parties agree that the remedy shall be that the District shall pay the disputed Medicare B amount beginning February 1, 2002, until V\_\_ S\_\_ becomes eligible for Medicare, up to a maximum of \$75 per month, with the payment previously received by V\_\_ S\_\_ to be treated as a credit balance.

### PORTIONS OF THE AGREEMENT

#### XXI. GRIEVANCE PROCEDURE

. . .

D. . . . The arbitrator shall have no power to . . . add to, subtract from, modify or amend any terms of this agreement.

. . .

#### SIDE LETTER OF AGREEMENT

The Dodgeland Education Association and the Dodgeland School District enter into this Side Letter of Agreement regarding retirement benefits for teachers in the District during the 1999-2000 and 2000-2001 contract years. This Side Letter of Agreement will be effective upon ratification by the parties and shall expire on February 28, 2001. The parties agree as follows:

1. Eligibility: This plan shall be available to all teachers who have been employed full time in the District for at least the last fifteen (15) consecutive years, and who will reach the age of fifty-seven (57) before the effective date of retirement. For the purposes of eligibility, years of service to the Dodgeland School District as an employee of CESA shall be deemed to be years of service as an employee of the Dodgeland School District.

2. Notification: Notification of election of retirement benefits must be filed with the District Administrator no later than April 30, 2000, for retirement effective at the end of the 1999-2000 school year; and no later than February 28, 2001, for retirement effective at the end of the 2000-2001 school year. The notifications shall specify which of the two effective dates for retirement is being elected.

3. Benefits: Subject to the rules, regulations, and eligibility requirements of the District health insurance carrier, upon election by the retiree the District shall pay the retiree's premium for single or family health insurance in the District health insurance program for a total of ninety-six (96) months at which time the retiree may continue coverage at his/her own expense. The District reserves the prerogative to provide modified benefits and premium payments upon the retiree's eligibility for Medicare. Upon the death of the retiree, this benefit shall cease unless his/her spouse elects to continue coverage until such time as the ninety-six (96) months are exhausted; spousal eligibility dependent upon the rules, regulations, and eligibility requirements of the health insurance carrier at that time. Should the parties change health insurance carriers, they shall make reasonable efforts to maintain coverage for the retirees (and spouses) who retire pursuant to the terms of the Side Letter of Agreement consistent with the terms hereof.

4. The parties expressly agree that the benefits granted under this Side Letter of Agreement do not constitute an addition or change to "existing fringe benefits," within the meaning of Section 111.70(1)(nc)1.a. of the Wisconsin Statutes, and thus, that this Side Letter of Agreement does not compromise the District's ability to maintain all fringe benefits in a successor Master Contract within the meaning of that section.

5. The parties of this Side Letter of Agreement shall not make claim in any proceeding of any kind that is contrary to paragraph 4, above.

6. If any party to this Side Letter of Agreement makes any claim in any proceeding that is contrary to paragraph 4, above, or if any tribunal of competent jurisdiction determines that this Side Letter of Agreement constitutes a "fringe benefit" under the above named state statute, this Side Letter of Agreement shall be null and void.

7. If any aspect of this Side Letter of Agreement is found to be in violation of any state or federal legislation, that specific portion of the Side Letter of Agreement shall be immediately reopened to bargain a successor clause to replace the voided language.

8. The teacher, by voluntarily accepting this retirement incentive, agrees to execute a waiver/release drafted by the District which unequivocally and explicitly protects releases as identified by the District from any and all claims as defined by the District arising out of or relating to the teacher's employment by the District and/or his or her resignation from the District, including any claims to back pay, reinstatement or other damages to which the teacher may have under the Federal Age Discrimination in Employment Act of 1967 (29 U.S.C. Sec. 621, et. seq.) as amended by the Older Workers Benefits Protection Act of 1990 and the Wisconsin Fair Employment Act (Wis. Stat. Secs 111.31 and 111.33). The Association shall also execute said waiver/release as it relates to the teacher's employment and resignation.

9. The Side Letter of Agreement is to be considered non-precedential for any future negotiations between the parties regarding provisions of the Master Contract.

10. The terms of this Side Letter of Agreement expire on February 28, 2001; it is expressly understood that the terms and conditions of the 1999-20012 Master Contract between the parties shall be in effect during any contractual hiatus and during bargaining for a successor Master Contract.

This Side Letter of Agreement is made and entered into on this 27th day of March 2000.

### **BACKGROUND**

The Association and District have been parties to a series of collective bargaining agreements covering the District's certified professional teaching personnel not including substitute teachers. The Agreement under which this dispute arises covers the period July 1, 1999-June 30, 2001. The Agreement included the above-quoted Side Letter of Agreement concerning retirees (Side Letter), to which reference is made in ISSUE 1.

The Side Letter was agreed upon as a result of a cooperative negotiation process. It is disputed which party first drafted the language that was ultimately executed by the parties. However, it is undisputed that the settlement summary unilaterally prepared and presented by the Association to its members in connection with the Association's ratification of the Agreement included a statement describing the early retirement element of the proposed settlement as follows:

Retirement package for those 57 years old (or more) and 15 years consecutive service in the district:

-8 years full paid health insurance (once attain Medicare age, then receive Medicare supplement)

- if die, spouse receives remainder of insurance
- if retire beginning 2000-2001, must notify board by April 30, 2000
- if retire beginning 2001-02, must notify board by February 28, 2001
- package ceases after February 28, 2001

V\_\_ S\_\_ was one of the members of the Association bargaining unit who attended the Association's ratification meeting. She subsequently retired from her employment as a District certified teacher effective at the end of the 2000-2001 school term. She gave the required notice and met all of the Side Letter requirements for eligibility for the benefits specified in the Side Letter.

Both before and for a period of time after her retirement from the District, V\_\_ S\_\_ and her husband, W\_\_ S\_\_, were covered by WEA Trust family insurance for which the entire premium billed by WEA Trust was paid by the District, and for which V\_\_ S\_\_ and her husband paid no insurance premiums of any kind.

On September 7, 2001, a WEA Trust Eligibility Representative notified W\_\_ S\_\_ by letter, as follows:

RE: Eligibility for Medicare Benefits

Dear W\_\_ S\_\_:

I am writing to notify you that since you started receiving Social Security Disability Income (SSDI) in January 1991, you will be eligible for Medicare as of October 1, 2001, because you have been receiving SSDI benefits for more than 24 months, and your spouse is retiring from the Dodgeland School District.

When you have coverage under an employer group health plan and are eligible for Medicare, a federal law known as the Medicare Secondary Payer law determines which plan pays first on medical bills. Let me explain what this means to you.

For disabled people, this law says that Medicare is the primary insurer over the employer group health plan if your spouse is no longer actively working for the employer. Since your spouse is no longer actively working for the Dodgeland School District, Medicare will be your primary insurer as of October 1, 2001.

Because you will be eligible for Medicare, your spouse's WEA Trust rate will change and you will be in a Special Medicare classification effective October 1, 2001. Please refer to the enclosed chart [chart omitted] for a more detailed explanation regarding this classification. The current monthly rate is \$756.90. The monthly rate may change when your spouse's school district renews its health insurance contract on October 1, 2002.

Important Notice: Since Medicare will be your primary insurance as of October 1, 2001, it is essential that you enroll in both Parts A and B of Medicare. WEA Trust will be your secondary insurer effective October 1, 2001. Please notify your providers to submit claims to Medicare first as of that date. WEA Trust will process claims as your secondary insurer and pay any additional benefits available under your WEA Trust plan.

If you do not enroll in both parts of Medicare, WEA Trust will process your claims as though Medicare Parts A and B are in effect. You will then be responsible for the amount Medicare would have covered. In most cases, this means that you will be responsible for paying 80% of the claim. If you have not enrolled in Medicare Parts A and B, please contact the social security office as soon as possible to enroll.

. . .

Please send me a copy of your Medicare card in the enclosed envelope by November 10, 2001, if you have received it from social security by that date or, as soon as possible. This will enable me to update your records to ensure that we process your claims and charge premium correctly.

If you need more information or have any questions, please call me.

As of October 1, 2001, WEA Trust changed V\_\_ S\_\_'s coverage from Family to what it calls "Special Medicare." As a result, beginning on that date, the amount for which WEA Trust billed the District as regards V\_\_ S\_\_'s coverage was reduced to an amount approximately \$132.42 lower than the WEA Trust Family premium but higher than the WEA Trust "Family Medicare" premium.

In order to avoid the reduction in insurance coverage described in the WEA Trust's above-quoted letter, W\_\_ S\_\_ enrolled in both Medicare A and B benefits. He paid the Medicare B premiums by allowing them to be withheld from his monthly Social Security benefit check. Those premiums, which are adjusted annually, were initially \$50 per month.

It is undisputed that none of the Association and District negotiators involved in negotiations leading up to the Agreement were aware of the possibility that a retiree could be faced with a notice like the one from WEA Trust to V\_\_ S\_\_ quoted above.

V\_\_ S\_\_ testified that that notice came as a complete surprise to her because it was her understanding, based on communications from the Association, that teachers retiring under the Side letter would receive eight years of insurance for which the District would pay all of the premiums, and that the insurance coverage would remain unchanged except for a change to Medicare Supplement coverage when the retiree became eligible for Medicare.

Following communications among V\_\_ S\_\_, the Association and District administration, District Superintendent Howard Moon verbally agreed that the District would reimburse V\_\_ S\_\_ for the \$50 per month Medicare B premium. When V\_\_ S\_\_ subsequently pointed out that the Medicare B premium is annually adjusted, Moon verbally agreed that the District would reimburse for the premium up to \$75 per month. Consistent with that verbal understanding, and in anticipation that the required School Board approval would be forthcoming, the District issued a check to V\_\_ S\_\_ for \$474 to cover W\_\_ S\_\_'s Medicare B premiums from October of 2001 through June of 2002. However, when a written memorandum of agreement finalizing the Superintendent's verbal commitment was presented for what the Association and District agree was the necessary signature by the School president signifying School Board approval, that School Board approval and signature were not forthcoming. As a result, the District so informed the Association and later informed V\_\_ S\_\_ that District's reimbursements regarding Medicare B premiums had not been approved. V\_\_ S\_\_ stated in her testimony that she would pay the District back the \$474 if the Arbitrator concludes that the District is not responsible for reimbursing her for her husband's Medicare B premiums.

The grievance giving rise to this arbitration was filed and denied, leading to the instant arbitration and the submission of the ISSUES, above. At the arbitration hearing, the parties presented testimony by District Financial Controller Caroline Hintz, Teachers and Co-Head Association Negotiators Marcia Modaff and Robert Orłowski, and V\_\_ S\_\_.

Additional background facts are set forth in the summaries of the POSITIONS OF THE PARTIES and in the DISCUSSION, below.

### POSITIONS OF THE PARTIES

#### The Association

The District is required to reimburse V\_\_ S\_\_ for her husband's Medicare B premiums by the language and bargaining history of the Side Letter, by the District Superintendent's verbal agreement to reimburse up to \$75 per month, and by fundamental principles of fairness and equity.

The Side Letter language requires the District to "pay the retiree's premium . . . in the District health insurance program." Once the WEA Trust complied with the Medicare Secondary Payer law, the Medicare A and B benefits and the applicable Medicare B premiums became a part of the rules and regulations of the WEA Trust and hence a part of the District health insurance program for which the District is responsible to pay the premium under the Side Letter. When W\_\_ S\_\_ was required to pay Medicare B payments in order to retain the level of insurance coverage the District had agreed to provide to eligible retirees, it became the District's responsibility to reimburse those premium payments.

The Association's bargaining notes state "[e]arly retirement - whatever the existing insurance coverage as is for the employees and retirees," and the Board bargaining notes state that at the same meeting at which retiree insurance was discussed, "[t]he union team mentioned their union members would not agree to any changes in their insurance plan or any sharing of payments toward insurance." To the same effect, Association negotiators Modaff and Orłowski testified that they understood that the agreement reached on early retirement would maintain for retirees the same coverage and for the District the same premium obligations as those in effect for active employees, with the only deviation occurring when the retiree reaches Medicare age at which point the coverage would change to Medicare Supplement and the District's premium obligation would be reduced accordingly. The record also reflects that the District insisted, and the Association agreed, that the District would retain all of the turnover savings enjoyed when higher paid teachers retired and were replaced by lower paid teachers. Thus, the bargaining history shows that the purpose of the Side Letter was to provide a fair and equitable benefit package for teachers who retired in 2000 and 2001 and to have the District receive all of the resultant cost savings. The District's refusal to reimburse the Medicare B payments is inconsistent with the underlying purpose of the Side Letter to provide a fair and equitable benefit package to the retirees. Because the evidence also establishes that the District rather than the Association was primarily responsible for the drafting of the Side Letter, any uncertainty about the meaning of its language should be resolved against the District's interests.

The District's refusal to reimburse the Medicare B payments is also generally unfair and inequitable. The District seeks to retain the full difference between the Special Medicare and the Family premium rate, without reimbursing the portion of that savings that is represented by the Medicare B payments W\_\_ S\_\_ has had to pay to maintain the insurance benefits provided by the Side Letter. In contrast, the Association and V\_\_ S\_\_ have agreed to limit the District's reimbursements to \$75 per month and to cut off that obligation when V\_\_ S\_\_ reaches Medicare age. Dr. Moon's initial verbal agreement to those arrangements and the District's initial payment pursuant to it, show, at a minimum, that he recognized the fairness of V\_\_ S\_\_'s claim. In that regard, Dr. Moon's letter advising V\_\_ S\_\_ that the District would not be honoring Moon's verbal agreement stated "[p]ayment was begun in good faith anticipation that the school board would routinely approve the recommendation."

The Arbitrator should therefore answer "yes" to ISSUE 1 and direct the District to abide by the agreed-upon remedy set forth in ISSUE 2.

### **The District**

The District's obligations are set forth in the bilaterally-negotiated Side Letter, not in the unilaterally-prepared and unilaterally-presented Association summary of the Side Letter's provision. The evidence suggests that the Association drafted the Side Letter in its initial form. However, because the meaning of the Side Letter is clear, it makes no difference which party drafted it.



The Side Letter limits the District's obligations by making them "subject to the rules, regulations and eligibility requirements of the District health insurance carrier." The carrier's enforcement of its coordination of benefits rules and regulations has caused the change in insurance classification to Special Medicare status that V\_\_ S\_\_ has experienced, not anything the District has done or failed to do. As required by the Side Letter, the District is "pay[ing] the retiree's premium . . . in the District health insurance program." Medicare is not part of "the District's health insurance program." The Side Letter does not require the District to make additional payments to the retiree for insurance coverage that her husband has voluntarily chosen to take from the federal government. Strictly speaking, the rules of WEA Trust do not require W\_\_ S\_\_ to enroll in Medicare; they only treat W\_\_ S\_\_ as if he has enrolled in that Medicare A and B whether he has done so or not. Limiting V\_\_ S\_\_ to no more than the benefits described in the Side Letter is neither unfair nor inequitable.

The Arbitrator should therefore answer "no" to ISSUE 1 and order no remedy.

### DISCUSSION

ISSUE 1 essentially turns on whether, under the terms of the Side Letter, the District or the retiree's Medicare-eligible spouse is responsible for paying Medicare B premiums necessary to avoid the reduction in insurance coverage described in the WEA Trust's September 7, 2001 letter.

Under Agreement Sec. XXI.D., the Arbitrator's role is not to determine whether, in general, it is more fair and equitable for the District or W\_\_ S\_\_ to bear that cost in the circumstances. Rather, the Arbitrator, in answering ISSUE 1, must interpret and apply the Side Letter language on which the Association and District agreed.

The Arbitrator finds the language of the Side Letter sufficiently clear to make immaterial to this dispute the question of which party initially drafted it.

Regarding benefits and premium payments, the Side Letter requires that ". . . the District shall pay the retiree's premium for single or family health insurance in the District health insurance program . . ." and that the District's payment of that premium shall be "[s]ubject to the rules, regulations, and eligibility requirements of the District health insurance carrier." Under the WEA Trust's rules, regulations, and eligibility requirements, (1) a retiree's spouse in W\_\_ S\_\_'s circumstances after October of 2001 is only eligible for limited secondary WEA Trust coverage that treats the spouse as if the spouse has primary Medicare A and B coverage whether the spouse has enrolled in the Medicare A and B programs or not; and (2) the retiree's WEA Trust premium for family health insurance in the District's health insurance program in the circumstances of V\_\_ S\_\_ and her husband in and after October, 2001, was the lower Special Medicare rate.

While W\_\_ S\_\_ was effectively required to enroll in Medicare A and B in order to avoid the substantial reduction in insurance coverage described in the WEA Trust letter of September 7, 2001, his submitting the application for Medicare A and B was not something that W\_\_ S\_\_ was legally required to do. Had he chosen not to do so, he and his wife would have received "the family health insurance in the District health insurance program" to which they were entitled under "the rules, regulations, and eligibility requirements of the District health insurance carrier." While that insurance coverage would have been less than the S\_\_s expected, it is all of the coverage that the language of the Side Letter provides. Because Medicare A and B benefits are optional in nature, and because they are a part of the federal government's health insurance program rather than part of the District's WEA Trust health insurance program, the Arbitrator concludes that the Medicare A and B coverage for which W\_\_ S\_\_ applied was not a part of "the family health insurance in the District health insurance program" as that term is used in the Side Letter.

While it is undisputed that none of the negotiators realized that the rules and regulations of the WEA Trust would reduce the WEA Trust benefits for a family in the S\_\_'s October, 2001, circumstances, the parties did clearly agree that the Side Letter benefits and the District's premium payment obligation were subject to those rules and regulations.

The Side Letter's only reference to Medicare provides that "[t]he District reserves the prerogative to provide modified benefits and premium payments upon the retiree's eligibility for Medicare." There is no parallel provision granting the District any prerogative to provide modified benefits and premium payments upon the retiree's spouse's eligibility for Medicare. However, as noted, it is undisputed that the parties' negotiators did not realize that the benefits and premium payments provided for in the rules and regulations of the District's health insurance program change not only upon the retiree's eligibility for Medicare, but also upon the retiree's spouse's eligibility for Medicare. Therefore, the above-quoted sentence is susceptible to two interpretations. It could mean that the benefits and premium payments in the event of the retiree's spouse's eligibility for Medicare must be determined strictly in accord with the terms of the Side Letter and not subject to any District prerogative to modify them. Or, it could mean that the District has the prerogative to adjust the benefits and premium payments as necessary to conform to the changes that arise under the District's health insurance program upon the retiree's spouse's Medicare eligibility for Medicare, just as the District has the prerogative to adjust to the changes that arise from the retiree's Medicare eligibility. Read either way, that language supports the District's position in this case. Read together with the rest of the Side Letter benefits paragraph, the above-quoted sentence cannot be interpreted as a flat prohibition against any changes in benefits or premium payments except upon the retiree's eligibility for Medicare because it is undisputed that the rules and regulations of the District's health insurance plan provide for a change in, among other things, the applicable premium category upon the retiree's spouse's eligibility for Medicare.

For those reasons, the Arbitrator finds it necessary to conclude that the District did not violate the Side Letter when it refused to reimburse V\_\_ S\_\_ for her husband's Medicare B premiums.

The evidence concerning the Side Letter's history of bargaining and administration does not persuasively establish that the parties mutually intended the Side Letter to have a different meaning than that attributed to it, above.

The Association's contention that the parties mutually intended the Side Letter to provide retirees with a fair and equitable insurance benefits package is not a persuasive basis on which to avoid the above conclusion drawn from the language the parties used to reflect their agreement. It is undisputed that the negotiators who reached agreement on the language of the Side Letter were not aware of the possibility that a retiree's spouse could be required to pay Medicare B premiums in order to avoid the substantial reduction in insurance coverage described in the September 7, 2001 WEA Trust letter. It follows that, by paying only the Special Medicare rate for V\_\_ S\_\_'s family insurance benefits, the District is enjoying a saving relative to what the District would have paid for the normal family rate, which saving was not something either party anticipated at the time the Side Letter was negotiated. However, the record also establishes that by paying health insurance increases well in excess of the high end of the range considered by the parties' negotiators when the Side Letter was being worked out, the District is also experiencing costs that are significantly higher than those anticipated by the parties when the Side Letter was agreed upon. In neither respect, however, does the unanticipated nature of those outcomes warrant the conclusion that the Side Letter should not be interpreted to mean what it plainly says.

Neither does the fact that the Superintendent verbally agreed that the District would pay for the Medicare premiums up to \$75. It is undisputed that the Board President's signature reflecting School Board approval was necessary for that agreement to bind the District. While the Superintendent may have verbally agreed to what he thought the Side Letter required or to what he thought the School Board would agree is the fair thing for the District to do in the circumstances whether the Side Letter required it or not, the terms verbally agreed upon by the Superintendent cannot be reconciled with the language of the Side Letter which the parties have called upon the Arbitrator to interpret by their formulation of ISSUE 1.

Finally, the Association's unilaterally prepared and presented ratification summary description of the Side Letter as providing "8 years full paid health insurance (once attain Medicare age, then receive Medicare supplement)" is also not a persuasive basis on which to require the District to reimburse for W\_\_ S\_\_'s Medicare B premiums. As noted above, the District is, in a technical sense at least, providing "8 years full paid health insurance," albeit at a substantially lower level of benefits if a dependent in W\_\_ S\_\_'s circumstances chooses not to subscribe to Medicare A and B. However, that substantially lower level of benefits is fully consistent with the "rules, regulations and eligibility requirements of the District's health insurance carrier," WEA Trust. The absence from the Association's summary of any reference to the Side Letter being "[s]ubject to the rules, regulations and eligibility requirements of the District's health insurance carrier" and the absence of any reference to the Side Letter's limited "reasonable efforts" language concerning the consequences of a change in insurance carrier, both show that the summary was not designed to convey the contents of the Side Letter in full or precise detail. For that reason, it is not a persuasive basis by which to determine the full and precise meaning of the Side Letter.

**DECISION AND AWARD**

For the foregoing reasons, and based on the record as a whole, it is the decision and award of the Arbitrator on the ISSUES noted above that

1. No. The District has not violated the Master Contract - Side Letter of Agreement (Retirees) by refusing to reimburse V\_\_ S\_\_ for the cost of the Medicare Part B payments billed to her husband.

2. In light of the conclusion reached in 1, above, no remedy is ordered.

Dated at Shorewood, Wisconsin, this 9<sup>th</sup> day of February, 2004.

Marshall L. Gratz /s/

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Marshall L. Gratz, Arbitrator