BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

MID-STATE TECHNICAL COLLEGE

and

MID-STATE ASSOCIATE STAFF ORGANIZATION

Case 81
No. 61851
MA-12080

Appearances:

Linoria Anthony, UniServ Director, Central Wisconsin UniServ Council, 625 Orbiting Drive, P.O. Box 158, Mosinee, Wisconsin 54455-0158 and **Karen West** and **Stephen Pieroni**, Legal Counsel, Wisconsin Education Association Council, P.O. Box 8003, 33 Nob Hill Drive, Madison, Wisconsin 53708-8003, appearing on behalf of the Mid-State Associate Staff Organization.

Michael, Best & Friedrich, Attorneys at Law, 100 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-4108, by **Thomas W. Scrivner**, appearing on behalf of the Mid-State Technical College.

ARBITRATION AWARD

Mid-State Technical College, hereafter College or Employer, and Mid-State Associate Staff Organization, hereafter Staff Association, are parties to a collective bargaining agreement that provides for the final and binding arbitration of grievances. The Staff Association, with the concurrence of the College, requested the Wisconsin Employment Relations Commission to appoint a member of its staff to hear and decide the instant grievance. Coleen A. Burns was so designated on April 3, 2003. The first day of hearing was held on July 11, 2003 in Wisconsin Rapids, Wisconsin and a second day of hearing was held on August 26, 2003 in Madison, Wisconsin. The hearing was transcribed. The record was closed on October 28, 2003 upon receipt of post-hearing written argument.

ISSUES

On the first day of hearing, the Staff Association framed the issue as follows:

What is the baseline to be used to determine the 18% cap amount?

The College framed the issues as follows:

Was Section 1301.1 of Joint 1 violated when the 18% Employer premium cap for 2002-2003 insurance year was applied to the costs that the College paid for medical insurance for the previous year, rather than the full insurance premium cost?

If so, what remedy, if any, is appropriate?

At the second day of hearing, the Staff Association proposed an additional issue as follows:

If the Arbitrator finds that the Employer's interpretation of the 18% cap is sustained, then the second issue becomes, in the following year, does the Employer apply the percentage increase in the premiums or an 18% cap?

The Employer agreed to arbitrate this issue, subject to a procedural timeliness objection.

RELEVANT CONTRACT PROVISIONS

ARTICLE II
MANAGEMENT RIGHTS

Section 201 – Board Responsibilities

. . .

201.2 - To administer, manage and control all fiscal matters within the District including establishment of the authorized tax levy, disbursement of funds, collection of revenue, and establishment of an annual budget as deemed necessary by the Board."

. . .

ARTICLE XI
GRIEVANCE PROCEDURE

Section 1102 – Grievance Steps

STEP ONE - An earnest effort shall first be made to settle the matter informally between the grievant and the grievant's immediate supervisor. If the matter is not so settled, the grievance shall be presented in a written "statement of grievance" by the grievant to the immediate supervisor no later then [sic] ten (10) days after the facts upon which the grievance is based first occurred. The "statement of grievance" shall state the name of the grievant involved, shall state the facts giving rise to the grievance, shall identify all the provisions of the Agreement alleged to be violated, shall state the contention of the employee with respect to these provisions, and shall suggest the relief requested. . . .

. . .

ARTICLE XI
GRIEVANCE PROCEDURE

Section 1103 – Arbitration

. . .

1103.2 – The arbitrator so selected will confer with representatives of the Board and the Union and hold meetings promptly, and will issue a decision on a timely basis. The arbitrator's decision will be in writing and will set forth the findings of fact, reasoning and conclusions on the issue submitted. It is understood that the function of the arbitrator shall have no power to make salary adjustments unless there has been an improper application of the salary provisions of this Agreement, or add to, subtract from, alter or modify any terms of this Agreement. The decision of the arbitrator will be final and binding on both parties.

. . .

ARTICLE XIII

INSURANCE

Section 1301 – Health and Dental Insurance

1301.1 – The Board agrees to maintain a group policy of health insurance and will pay, for 2001-2002, the sum of $814.64 per month towards the premium for each full-time employee electing dependent coverage. The Board further agrees to pay the sum of $371.04 per month towards the premium for each full-time employee electing single coverage. It is understood that any portion of the total premium not covered by the Board must be paid by the employee. There will be an 18% cap on health insurance each year.

1301.2 – The Board agrees to maintain a group policy of dental insurance. The dollar amounts will reflect the rates for family and single premium costs for each year of the contract. For 2001-2002 the Board will pay the sum of $63.50 per month towards the premium for each full-time employee electing dependent coverage and the sum of $25.10 per month towards the premium for each full-time employee electing single coverage.

. . .

ARTICLE XIV
MISCELLANEOUS

Section 1402 – Extent of Agreement

In reaching this Agreement, the parties hereto have fully exercised and complied with any and all obligations to bargain and have fully considered and explored all subjects and matters in any way material to the relationship between the parties. In negotiating and consummating this contract, all matters concerning which the parties could contract have been considered and disposed of. This Agreement supersedes any previous agreement or practices between the parties, whether oral or in writing.

RELEVANT BACKGROUND

On or about August 14, 2002, College Representative Bob Beckstrom distributed a memo to Associate Staff that included the following:

> Health insurance premiums continue to rise rapidly. Our total premium costs effective September 1st will be $1,058.06 per month for family coverage and $473.22 per month for single coverage, representing a 22.5 increase over last year's premium costs.
>
> Therefore, effective September 1st and in accordance with the language of your union agreement, employee contributions for those with family coverage will be $96.78 per month and for those with single coverage, $35.38 per month. These contributions will be made through payroll deduction and will be split between the first and second payrolls of each month. All deductions will be made on a pre-tax basis, which will minimize the effect of the above contribution.
>
> If you have any questions, please contact Suzanne Kinyon, Leslie Kozicki or me.

When Staff Association bargaining unit member and Local representative, Dave Curtis received this memo, he did not agree that Staff Association employees were contractually obligated to pay the premium amounts identified in the memo. Thereafter, Curtis filed a grievance that challenged the College's interpretation of Sec. 1301. The materials submitted by Curtis in support of the grievance included the following:

Statement of Grievance

- Compounding. The Associate Staff Organization when working on the contract did not understand compounding. What we understood was, what was done in past practice. Each year was a new year and there was cap of the premium up to 18 percent. Then we would pay the difference. There was not any carried over from the year before. Here is what we understood the way the formula would work.
  2002-03 $846.64 x 18% = $152.30+= $998.42-$1058.06 =$59.64.
  So our payment for 2002-03 would be $59.64. Not $96.76.

- The Memorandum of August 14, 2002, which was sent to all associate staff states that there is a "22.5% increase over last year's premium costs." But your "Support/Association Staff Health Insurance Premiums" worksheet shows us a 25.05% for family and 22.90% for single. Something is not right. We do no understand which numbers are right. To come up with the right portion for us to pay.

The Staff Association's grievance was denied at all steps and, thereafter, submitted to grievance arbitration.

POSITIONS OF THE PARTIES

Staff Association

Considering the history and context of the relevant contract language, the Employer's interpretation is an unfounded, after-the-fact interpretation, designed to reduce the Employer's contribution towards health insurance in ways not contemplated by the contract language. The plain language of the contract states:

> It is understood that any portion of the total premium not covered by the Board must be paid by the employee. There will be an 18% cap on health insurance each year.

The first sentence quoted above was included in the contract prior to the addition of the 18% cap language. This sentence explicitly refers to the employee's obligation to pay any portion of the "total premium" not covered by the Board. There is nothing ambiguous about the phrase "total premium". "Total premium" means the total cost of the premium, not the Employer's share of the premium. Construing the provision as a whole, it must be concluded that, when the parties added the second sentence quoted above, the 18% cap applied to the "total premium" referred to in the sentence directly preceding it.

If there were any doubt about the meaning of these two sentences, that doubt must be dispelled by the use of the term "each year". In context, this phrase must mean that each year the employee's obligation to contribute to health insurance is calculated on the basis of two criteria stated in the contract: 1) that portion of the total premium which 2) exceeds 18%. Thus, contrary, to the Employer's interpretation, the use of the words "each year" conveys the simple mathematical concept of applying the 18% cap to the total premium each year, rather than a percentage increase in the Employer's insurance costs year after year.

Had the parties intended that the employee's contribution towards health insurance would be based upon the amount the Employer paid toward health insurance in the previous year, the language would have easily expressed that concept. The Employer's interpretation abolishes the 18% cap, as defined by the contract, and places employees in a situation where they will pay an accelerated amount of every increase in future insurance rates. The Employer's interpretation should be rejected on this basis alone.

Historically, the Employer agreed to contract language that stated the amount of money the employer would pay towards health insurance in the first year of the contract. In the first

year of the contract, the amount of money the Employer would pay toward health insurance covered the full cost of the premium. Prior to the adoption of the 18% cap language, if the premium in the second year of a two-year contract exceeded the stated dollar amount, the contract language obligated employees to pay any portion of the total premium not covered by the Board.

Given the language in the 1987-89 and 1989-90 contracts, which requires employees to pay "any portion of the total premium not covered by the Board", there would be no economic reason for the Board to demand an 18% cap. By agreeing to the 18% cap, the Employer gave up significant protection against paying for double-digit rate increases. In this context, it makes no sense to presume that the parties contemplated that the 18% cap would be applied to the Employer's contribution in the previous year.

The Arbitrator should consider the context in which the Board agreed to the 18% cap language. As indicated in the testimony of Jermitt Krage, insurance rates had increased between 18 and 21% in each of the previous three years. In 1990, the Employer agreed to pay $391.08 per month for family health insurance and the 18% cap was added to the insurance provision. By agreeing to the 18% cap, the Employer, therefore, agreed to greatly expand the previous threshold of an employee contribution from the contractual standard of "any portion" of the total premium over $391.08 per month (family) to an employee contribution of any portion over 18% of the total premium. Without convincing evidence of the parties' intent, it is absurd to believe that the parties intended the 18% cap to apply to the Employer's contribution toward the total premium in the previous year.

In the context of the 1990 negotiations, the concept of limiting the application of the 18% cap to the Employer's contribution toward the total premium in the previous year would have been *de minimis* compared to the significant expansion of the employee threshold to an 18% cap. More likely, the Employer would have insisted upon a lower threshold than 18% rather than press for the obscure concept of applying the 18% cap to the Employer's contribution towards health insurance in the previous year.

In 1990, the Employer knew that the insurance rates had exceeded 18% increases in each of the previous years. The Employer had agreed to pay the full premiums in each of those years. In this context, the 18% cap was related to the recent increases in the total premium. It is obvious that the Employer agreed to pay up to an 18% increase in the total premium. Absent relevant bargaining history, it must be concluded that, at the time the 18% cap was negotiated, the parties did not think of, discuss nor agree to, the contrived concept that the 18% cap would only be applied to the Employer's contribution towards health insurance in the previous year.

The Employer's reliance upon the collective bargaining agreements covering the clerical and faculty bargaining units is unpersuasive and should be rejected for several reasons. Beckstrom did not negotiate the insurance language in any of the three collective bargaining agreements. Thus, Beckstrom's asserted understanding that the 18% cap was to be applied the same to all bargaining units is without any probative foundation and must be rejected.

Moreover, the clerical contract language is consistent with the custodian's interpretation in this case. The clerical contract states as follows: For each year of the agreement there will be an 18% cap on the Board's contribution above the previous year's premium amount. These words, which could not be clearer, express the same interpretation advanced in the instant grievance.

The Employer asserts that its interpretation of the 18% cap is justified because the union representing the clerical employees did not grieve Beckstrom's application of the 18% cap. This evidence proves nothing because we do not know why OPEIU did not file a grievance.

Looking to the faculty contract, the pertinent language is somewhat different from each of the other two collective bargaining agreements. The language is as follows:

> . . .There will be an eighteen percent (18%) cap on the Board's contribution above the premium amount paid in 1996-97 and 1997-98, respectively.

On its face, this language could be interpreted to be either consistent or inconsistent with the instant grievance. The context and bargaining history behind this language would be helpful in understanding the parties' intent, but was not developed in this record. It is not relevant that the Faculty Association elected to agree to pay a flat percentage of the total premium in the last round of negotiations.

By demonstrating that the percentage increase in the cost of health insurance to the employer exceeds 18% year to year, the Employer concludes that the Arbitrator should deny the grievance. This conclusion, however, is not based upon the actual contract language. The effect of the contract language upon the parties' respective contributions towards health insurance premiums does not have any probative value.

The Staff Association did not acquiesce in the Employer's interpretation of the disputed language. On July 16, 2001, Staff Association representatives would have had no reason to pay particular attention to Beckstrom's calculations because there was no apparent disagreement over the interpretation of the 18% cap language and the focus of Beckstrom's presentation was the Board's directive to reduce health insurance costs by either adopting a lower-quality plan and/or increasing employee contributions.

Beckstrom's calculations for the 2001-2002 school year are consistent with the Staff Association's interpretation of the disputed language. That is so because the Employer had paid 100% of the premium the previous year. Even if Staff Association representatives had looked at the calculations for 2001-02, there would have been no dispute because they understood that the employees were obligated to pay that portion of the premium that exceeded 18%.

Goetz's inquiry at the July 16, 2001 bargaining session does not reveal that Goetz understood the significance that the Employer would eventually attach to these calculations. Nor does it appear that Goetz was speaking on behalf of the entire team when he asked his questions. There is no evidence that other team members understood (1) why Goetz asked his questions; or (2) the potential significance of that question to the instant dispute. Without more context, it is impossible to discern what, if anything, Goetz understood about the contract language currently in dispute.

From Curtis' testimony, it is fair to conclude that Curtis did not become aware of this contract dispute until after the negotiations were completed. To suggest that Curtis should have picked up on this issue based upon his years of experience on the bargaining team assumes a higher degree of sophistication on the part of Curtis than is reasonable.

The instant grievance was filed in response to Beckstrom's memo to associate staff dated August 14, 2002. The extraordinary increase in the employee contributions caught the attention of Curtis and his bargaining unit colleagues.

As part of the grievance, Curtis advised Hjelle in writing on August 24, 2002, that the bargaining team did not understand the concept of "compounding." If Beckstrom had clearly conveyed his interpretation of the 18% cap to Curtis and other bargaining team members, then Curtis presumably would have raised an objection before August 2002. On balance, their failure to object to Beckstrom's calculation leads to the more realistic conclusion that Beckstrom's hypothetical calculations for 2002-03 did not make the Staff Association bargaining team aware that the Employer's interpretation of the 18% cap is different from the Staff Association's.

The testimony of Conlon demonstrates that Conlon became aware of Beckstrom's interpretation in mid to late-December, 2001 when he met with faculty representatives to discuss the status of their bargain. This was after the Staff Association had reached tentative agreement on a successor collective bargaining agreement. Neither Conlon, nor any other Staff Association representative, was aware that there was an issue with respect to the interpretation of the 18% language until after the parties reached an agreement in December, 2001.

Beckstrom did not refer back to his July 16, 2001 calculations or his interpretations of the 18% cap during the subsequent bargaining sessions with the custodians. At the October 9, 2001 mediation session, Beckstrom explained the current 18% cap language to the mediator and illustrated the acceleration effect of that language on contribution amounts in subsequent years.

When Beckstrom met with the custodian bargaining team two days later on October 11, 2001, he did not mention this acceleration effect. If Beckstrom had wanted to sell a 7% employee contribution, he could have conveyed that his interpretation of the 18% cap could generate an employee contribution to family health insurance premiums during 2002-2003 in excess of 9%. Instead, Beckstrom was content to "retain current cap language for health insurance," which suggests that Beckstrom may not have wanted to clearly convey his interpretation of the 18% cap to the custodian bargaining team.

The burden is on the Employer to establish, by clear and unequivocal evidence that the Staff Association acquiesced in Beckstrom's interpretation. Beckstrom's failure to clearly convey his interpretation to the Staff Association's bargaining team must result in a ruling in favor of the Staff Association on this point.

From Beckstrom's testimony (Transcript 1, 62, lines 3-10) it is apparent that Beckstrom believes that the amount of the increase in the premium in the second year establishes the cap on the Employer's contribution. This interpretation is at odds with the language that states: "There will be an 18% cap on health insurance each year."

In Beckstrom's hypothetical, he multiplied the premium increase of 17% times the employer's contribution in the previous year. ($814.64 x 17% = $953.13) The full cost of the hypothetical premium was $989.96. ($846.12 x 17%) Assuming that the Employer's interpretation of the disputed language is correct, Beckstrom's calculations should have been as follows: $814.64 x 18% = $961.27. The latter figure of $961.27 is less than the full cost of the new premium in Beckstrom's hypothetical ($989.96). Therefore, Beckstrom should have utilized the following calculation: $989.96 less 961.27 = $28.69 per month. Instead, Beckstrom's method of calculation resulted in an employee paying $36.83 per month ($989.96-$953.13=$36.83 per month, a difference of $8.14 per month.)

The conceptual fallacy in Beckstrom's calculation is that he utilized the percentage increase in the premium times the Employer's contribution in the previous year. To be consistent with the 18% cap language, even assuming the Employer's interpretation prevails, Beckstrom should have multiplied the previous year's premium times 18% and deducted that amount from the full premium if it was less than the full premium.

At hearing, the Staff Association raised an issue that can be stated as follows:

> If the arbitrator finds that the employer's contribution toward health insurance in the previous year is the basis for the application of the 18% cap, then should the employer's contribution towards the premium be multiplied times the percentage increase in the premium or the 18% cap?

The Employer claims that this issue is not timely because it was not raised within ten days after the facts upon which the grievance is based first occurred. The Staff Association responds that this issue is timely because it anticipates an Employer breach of the parties' contract. Moreover, the circumstances giving rise to this issue are such that it would be unreasonable to require strict compliance with the ten-day time limit specified in the contract.

The Employer is not prejudiced by the Staff Association's timing in raising this issue because the parties stipulated that this issue applied prospectively to future premium increases that do not exceed 18% (August transcript, 92-94). It has no applicability to the time frame of 2001-2002.

It is efficient and practical and in both parties' interests for the instant arbitrator to rule on this issue because of her familiarity with the original issue. Should the arbitrator rule in favor of the Employer on the original issue, then the parties will know the full extent of their respective rights and obligations with respect to this secondary issue. Obviously, if the grievance is sustained, the secondary issue becomes moot. The Staff Association acted timely in raising this issue during the course of a hearing, rather than waiting for the Employer to actually implement its hypothetical calculation at some indefinite time in the future.

The Employer's interpretation must be rejected for the reasons stated. The Arbitrator should sustain the grievance and require the Employer to refund to each bargaining unit employee the excess insurance contributions wrongly withheld. The Staff Association also requests that the Arbitrator retain jurisdiction to resolve any disputes regarding the make-whole order.

College

Construing Article 1301, as a whole, clearly establishes that the College has correctly interpreted Section 1301.1 to involve base-year college costs, rather than the base year total premium. The section begins by discussing specifically stated fixed dollar amounts that the College would pay toward the cost of single and family coverage for the first insurance year of the collective bargaining agreement. The employee is required to pay any portion of the "total premium not covered by the specified College-rate". It follows, therefore, that the 18% cap for the second medical insurance year would be determined by reference to the specific cost numbers that were contractually stated as the College's costs for the first year. Those numbers for single and family coverage are exact, certain and plain and provide the most reasonable starting point when applying the insurance cap.

The 18% cap is intended to limit employer paid costs for medical insurance. Thus, the assumption should be that the first year cost numbers are the starting point because these numbers fix the College's costs against which to apply the cap. This is the only interpretation that allows for the cap to adjust College-paid costs, which is what an employer medical insurance cap is intended to do.

The Staff Association's interpretation, unlike the College's interpretation, would never cap the College's costs at 18%. Rather, the Staff Association's interpretation would increase College costs substantially in excess of 18%. Thus, the 18% employer cap language would be a nullity if the Staff Association's interpretation were to be accepted.

The only "total premium" reference is in the third sentence regarding the first year premium arrangement. Had "total premium" been intended in connection with the 18% cap, the fourth sentence would have repeated the "total premium" reference. By using "total premium" in the third, but not the fourth sentence of Section 1301.1, the parties expressed their intentions that College costs, not total premium, would be the base for medical insurance cap purposes. Inasmuch as the fourth sentence of Section 1301.1 speaks for itself, there is no need to look beyond this language to find its meaning.

As reflected in the dental insurance provision of Section 1301.2, when the parties wanted a total premium cost to be used, they specifically stated this intention. Harmonizing all sections of 1301 yields a plain meaning, *i.e.*, the base year medical insurance cap is to be determined by college costs, not total premium.

A medical insurance cap is intended to limit the costs of the Employer as premiums increase. Such a cap means the Employer will pay a fixed amount of the premium costs, but not amounts above the cap. Absent a clearly expressed contrary meaning, the base amount for cap purposes has to be college costs, because it is college costs that the cap is to limit. Such a conclusion is consistent with the evidence of the 1990 bargaining history.

To accept the Staff Association's argument, *i.e.*, that the College must pay the full premium of the previous year, would be to eliminate the cost protection that is provided by a cap. Inasmuch as the Staff Association's interpretation defeats the purpose of the cap and the College's "actual cost" interpretation makes the cap meaningful, the College's interpretation should be accepted by the Arbitrator.

The testimony regarding the 1990 negotiations consists of conclusory recollections. It is well established that bargaining history that is general, vague or speculative is insufficient. It is possible that the general intent in 1990 was to use total premiums for the base year number, but such intention would have been for that contract only.

For many years, "total premium" was the base because the contractually specified premium amounts agreed to in negotiations happened to be 100% of the total premium. However, when the contractually specified amounts were set for the 2001-2002 insurance year, the parties undisputedly agreed not to use the total premium costs. At that point, it became unreasonable to use first year total premium numbers to calculate rates for the 2002-2003 insurance year. A use of first year total premium numbers would replace contractually stated numbers; unnecessarily eliminate the contributions employees paid in the base year; and cause employee premium contributions to vary dramatically from one year to the next. It is well established that an interpretation causing unreasonable consequences should be rejected in favor of the interpretation causing a reasonable consequence.

At the first negotiations meeting on July 16, 2001, the College made a bargaining table presentation in which the College's now challenged interpretation of the 18% was fully explained. Beckstrom clearly explained that, due to the projection of a 22% increase in premiums during the first year of the contract, employees would have to pay a portion of the medical insurance premium cost for the first time and that the 2001-02 cost for family coverage was capped at $814.64. Beckstrom also clearly explained that, in the second year, the 18% cap would be calculated against the College's prior year costs and based upon actual premium increases in the new insurance year. By using the hypothetical 17% increase in premiums in the second year, Beckstrom clearly demonstrated that the 18% cap provided for in Sec. 1301 is an "up to" number and not the flat cap maximum argued by the Staff Association.

In response to this explanation, a member of the Staff Association bargaining team asked one question, *i.e.*, if the base year employee contributions would continue if total premium did not increase for the 2002-2003 insurance year. Beckstrom correctly and directly answered that employee contributions would continue. This bargaining exchange put the Staff Association on notice in the staff negotiations that the 18% cap was an "up to" number based on actual premium increases.

At no time during the 2001 negotiations did the Staff Association dispute the College's interpretation, or offer an alternative interpretation. The Staff Association did propose to increase the 18% cap to 22%, but the College did not accept this proposal. The evidence of the faculty negotiations regarding the 18% cap reinforces the conclusion that the College's interpretation was acquiesced to by the Staff Association.

This negotiations history means one of three things: (1) the Staff Association acquiesced to the interpretation of the College; (2) the Staff Association heard the interpretation of the College and failed to offer and obtain a binding and contrary interpretation or (3) the Staff Association harbored, but did not express, a conflicting interpretation. Each conclusion is fatal to the grievance.

The evidence of the 2001 collective bargaining negotiations sheds controlling light on the meaning of the fourth sentence of Section 1301.1. In the face of this bargaining history, previous agreements or understandings have no force and effect. Section 14.02 contains express contract language that requires that result because contract provisions must supersede "any previous agreement or practices between the parties, whether oral or in writing."

To argue that it could stand silent without risk and expect its undisclosed understanding to prevail in grievance arbitration is not good faith negotiation. It places disputes in the grievance procedure that should be resolved at the bargaining table. Accordingly, the arbitrator should reject the Staff Association's unstated interpretations in favor of the controlling 2001 bargaining history.

Alternatively, the Staff Association argues that it did not understand what the College was proposing. Given the evidence of specific discussions at the Staff Association, as well as the faculty, bargaining table this argument is questionable. Moreover, numerous arbitrators have concluded that a unilateral claimed misunderstanding is no basis for rejecting a fully discussed contractual interpretation.

Although the contractual provisions for the faculty and clerical bargaining unit are not identically worded, Beckstrom testified that the underlying intentions were the same for all three bargaining groups and that the College's general approach of maximum uniformity of fringe benefit programs had been explained to the Staff Association, including at the bargaining table. As Curtis testified, the staff and clerical negotiating teams were aware of shared issues and attempted to coordinate responses and strategies.

Most significant is the fact that, in 1990, both the clerical and the staff unions agreed to 18% cap language. The 18% cap was certainly intended to be the same for both groups when it was first negotiated in 1990. Therefore, it is significant that the clerical group did not file a grievance to dispute the medical insurance issues the Staff Association is now arbitrating. By denying the Staff Association's grievance, the Arbitrator will assure consistency between clerical and staff employees regarding the 18% medical cap insurance.

The parties' conduct and successive contract negotiations makes clear that specifically stated first-year cost numbers, not total premiums, were to be used when the 18% employer cap was applied. Through a succession of contracts during the 1990's, the College's first-year cost numbers were always specifically stated as fixed dollar amounts. The contract did not read, and has never read, that the 18% employer cap will be measured against base year total premiums.

Throughout the course of the processing of this grievance and until the final hours of the arbitration, it was mutually understood by the Staff Association and the College that actual

premium increases up to 18% determine the amount of the College cap costs. At the second day of the arbitration hearing, the Staff Association, for the first time, erroneously asserted that a flat 18% should be applied to the College's prior year costs and, thus, the employee contribution for 2003-04 should be $50.54/month, rather than $108.37/month.

Read fairly and when applied to other than the first contract year, the third sentence has to mean that the amount of the employee premium is to be influenced by premium costs. The fourth sentence, in turn, references the 18% cap, which determines College costs and employee contributions after the first insurance year. The College's interpretation allows all provisions of Sec. 1301 to be harmonized and given effect. The Staff Association's interpretation ignores the third sentence and interprets the fourth sentence as if the words "health insurance" were not there. Inasmuch as the Staff Association's interpretation nullifies significant portions of Sec. 1301, it should be rejected.

Under the Staff Association's interpretation, the 18% cap is neither a cap on College costs nor on actual premium rates. Divorcing the 18% cap from the amount of actual premium increase makes no sense.

Under the Staff Association's interpretation, the 18% cap is a minimum, not a maximum, with regard to college costs. This is a complete relocation of the cart and the horse.

Under the Staff Association's interpretation, a premium decrease would mean employees would have no contribution and employer costs would increase substantially. Additionally, modestly increased insurance costs could extinguish employee contributions and produce substantially increased employer costs. Divorcing the 18% from the amount of actual premium increase produces hopelessly unreasonable results.

The Staff Association's interpretation may indirectly accomplish a starting and stopping of employee contributions from one year to the next. This conflicts with the 2001 bargaining history, which demonstrates that employee premium contributions were expected each year.

The flat cap calculation method should be rejected because it has not been raised within the timelines of the contractual grievance procedure; it disregards the language in Section 1301.1; and is in conflict with the previously shared understandings of the College and Staff Association. An additional unmet procedural requirement is that a grievance, when filed, shall state the contention of the employee and shall suggest the relief requested. As to the new issue, this did not happen until the August 26 hearing. Under the contract, the arbitrator's authority is limited to setting forth "the findings of fact, reasonings and conclusions of the issues submitted."

The Staff Association's failure at the bargaining table to voice its proposed calculation method, or to object to the College's fully explained conflicting method, is acquiescence on this issue also. The 18% cap calculation issue is another attempt by the Staff Association to obtain through arbitration what it could not obtain through collective bargaining negotiations.

As described by both parties on the first day of hearing, the 18% calculation issue was not submitted to the arbitrator. Nonetheless, the College agreed the issue could be submitted to the Arbitrator subject to the procedural timeliness objection noted.

The grievance should be denied.

DISCUSSION

Timeliness

The grievance that was initially filed by the Staff Association on August 24, 2002 grieves "the interpretation of Sec. 1301.1 Health Insurance. The portion covered by the board and the 18 percent cap on health insurance." The "Statement of grievance" that were presented at various times during the processing of the grievance confirms that the Staff Association is grieving the College's application of Sec. 1301.1 and questioning the method by which the College is calculating the 18% cap on health insurance.

There is no dispute that this grievance is appropriately before the undersigned. The undersigned is persuaded that the scope of the grievance filed and processed by the Staff Association is sufficiently broad to encompass the issue that was addressed by the Staff Association at the second day of hearing. Accordingly, the undersigned rejects the College's argument that the issue addressed by the Staff Association at the second day of hearing is not timely.

Issues

The parties did not stipulate to a statement of the issue. The undersigned is persuaded that the issues are appropriately stated as follows:

1. How is the 18% cap set forth in Sec. 1301.1 of the Staff Association "2001-2003 and 2003-2005 Collective Bargaining Agreements" calculated?

2. Did the College violate Sec. 1301.1 of the Staff Association collective bargaining agreement when it required Staff Association employees to contribute $96.78 per month toward family insurance and $35.38 per month toward single insurance, effective September 1, 2002?

3. If so, what is the appropriate remedy?

Merits

The parties do not agree upon the interpretation of Sec. 1301.1, which states as follows:

> Section 1301 – Health and Dental Insurance
>
> 1301.1 – The Board agrees to maintain a group policy of health insurance and will pay, for 2001-2002, the sum of $814.64 per month towards the premium for each full-time employee electing dependent coverage. The Board further agrees to pay the sum of $371.04 per month towards the premium for each full-time employee electing single coverage. It is understood that any portion of the total premium not covered by the Board must be paid by the employee. There will be an 18% cap on health insurance each year.

This Sec. 1301.1 language is found in a document entitled "2001-2003 2003-2005 Collective Bargaining Agreements." Thus, the language of Sec. 1301.1 is applicable to four contract years.

Under the College's interpretation of Sec. 1301.1, the 18% cap is applied to the College's prior year's monthly health insurance contribution and the percent increase applied to the College's prior year's monthly health insurance contribution is the percent increase in the premium rate, up to 18%. Under the College's interpretation of Sec. 1301.1, the College's contribution towards the family monthly premium in the 2002-2003 insurance year is calculated as follows: $814.64 x 118% = $961.28 and the College's contribution towards the family monthly premium in the 2003-2004 insurance year is $961.28 x 112%. (Although Employer Exhibit 13 calculates this amount to be $1076.45, the correct amount is $1076.64.) The full 18% is applied in the first calculation because the increase in the premium from insurance years 2001-2002 to 2002-2003 was more than 18% and 12% is applied in the second calculation because the increase in the premium from insurance years 2002-2003 to 2003-2004 was 12%. Given that the family monthly premium contribution for insurance year 2002-2003 is $1,058.06, under the College's interpretation, the employee would pay $96.78. Given that the family monthly premium contribution for insurance year 2003-2004 is $1,184.82, under the College's interpretation, the employee would pay $108.18. Inasmuch as the same formula is applied to both the single and family premiums, the undersigned has limited her examples to calculations of the family premium.

The Staff Association argues that the 18% cap is applied to the total premium each year. Under the Staff Association's calculations, the 2002-2003 insurance year employer's contribution would be $846.12 (the family premium for 2001-2002) x 118% = $998.42,

yielding an employee share of $59.64. The $59.64 is yielded by subtracting $998.42 from the 2002-2003 monthly premium of $1058.06. Applying this same formula to the 2003-2004 insurance year, produces an employer contribution of $1,058.06 (the family premium for 2002-2003) x 118% = $1248.51. Inasmuch as this amount is more than the 2003-2004 insurance year family premium, the employee would not make any premium contribution for the 2003-2004 insurance year.

The language agreed upon by the parties is not clear and unambiguous. Indeed, the sentence "There will be an 18% cap on health insurance each year" is sufficiently ambiguous to encompass either party's interpretation.

Article XIV, relied upon by the College, states "This Agreement supersedes any previous agreement or practices between the parties, whether oral or in writing." The undersigned does not consider this language, or any other language of Article XIV, to preclude the undersigned from considering evidence of bargaining history and past practice to determine the parties' mutual intent with respect to ambiguous contract language. Accordingly, the undersigned turns to bargaining history and past practice to determine if there is evidence of the parties' mutual intent.

The earliest record evidence of the language of Sec. 1301.1 is the parties' 1987-89 contract. Sec. 1301.1 of the 1987-89 collective bargaining agreement states as follows:

> 1301.1 – The Board agrees to maintain a group policy of hospital and surgical insurance and, effective July 1, 1987, will pay the sum of $247.22 per month towards the premium for each full-time employee electing dependent coverage. Effective July 1, 1987, the Board further agrees to pay the sum of $94.84 per month towards the premium for each full-time employee electing single coverage. It is understood that any portion of the total premium not covered by the Board must be paid by the employee. The group policy of hospital and surgical insurance shall be available at employee's expense for a maximum of three (3) years if the employee chooses to voluntarily retire before the age of 65.

There is no evidence of bargaining history with respect to the language of this Sec. 1301.1.

The amounts specified as the Board's (a/k/a College) contributions are equivalent to the family and single premiums in effect for the 1987-88 insurance year. Accordingly, the most reasonable interpretation of this language is that, during the term of the 1987-89 agreement, the College must pay an amount equivalent to the premiums in effect for the 1987-88 insurance year and that, if the premiums increase during the 1988-89 insurance year, then any such increase must be paid by the employee.

To be sure, the parties entered into a MOU that states, for the 1988-89 school year, the College agrees to pay the full premium for insurance coverage. By its terms, however, this MOU was not precedential "for a future determination of health insurance contributions." Thus, the plain language of Sec. 1301.1 of the 1987-89 agreement evidences intent to specify and limit the College's health insurance contributions to its 1987-88 contributions.

The subsequent contract was for one year, *i.e.*, 1989-90. Sec. 1301.1 of this contract states as follows:

> 1301.1 – The Board agrees to maintain a group policy of hospital and surgical insurance and, effective July 1, 1989, will pay the sum of $345.28 per month towards the premium for each full-time employee electing dependent coverage. Effective July 1, 1989 the Board further agrees to pay the sum of $132.26 per month towards the premium for each full-time employee electing single coverage. It is understood that any portion of the total premium not covered by the Board must be paid by the employee. The group policy of hospital and surgical insurance shall be available at employee's expense for a maximum of three (3) years if the employee chooses to voluntarily retire before the age of 65.

The total premium cost for dependent and single coverage, effective with the insurance year beginning September, 1989, was $345.28 and $132.26, respectively.

There is no evidence of bargaining history with respect to the language of this Sec. 1301.1. The most reasonable interpretation of this language is that, during the term of the 1989-90 agreement, the College must pay an amount equivalent to the premiums in effect for the 1989-90 insurance year. The fact that the College's contributions are defined by a sum certain evidences an understanding that the College does not automatically assume the costs of premium rate increases.

The 18% cap language was first negotiated into the 1990-92 agreement. During the bargaining on the 1990-92 contract, Tom Cunningham represented the College and UniServ Director Jermitt Krage represented the Staff Association. Krage, but not Cunningham, testified at hearing.

Krage recalls that, prior to these negotiations, the College had been paying 100% of the premium (T., Vol. I at 21); that, during these negotiations the College expressed a concern about escalating premiums (T. Vol. I at 24); and that the solution agreed upon by the parties was "from that point on the cap, there would be a cap on the amount of money that the District would be paying for insurance, and that cap was 18% of the premium. (T., Vol. I at 24) Subsequently, Krage reiterated that it was the College's desire to place some kind of limit on what the District would be paying towards insurance (T., Vol. I at 26). Krage also recalled

that he and Cunningham discussed how the 18% cap would be implemented "and it was agreed that the cap would be based on the premiums set by the insurance company." (Id.)

Staff Association member David Curtis, who has functioned as "a contract negotiation person" throughout his twenty-four year tenure with the College, was present at the negotiation of the 1990-92 agreement. When asked if he remembered discussing how the cap would work, Curtis responded: "To the best of my recollection is each year would be a new year and it would be on the premium times 18%, would then be subtracted from the premium and the difference would be paid by the employee." (T., Vol. I at 48-49) When asked to clarify his testimony, Curtis confirmed that, at the time that the parties entered into the 1990-92 agreement, the premiums for the first year of the contract were known and that it was these first year premiums that were intended to serve as the base for the 18% cap that was agreed upon by the parties. (T., Vol. I at 49-50)

The language that codified the agreement reached during the 1990-92 negotiations is as follows:

> 1301.1 – The Board agrees to maintain a group policy of hospital and surgical insurance and will pay the sum of $391.08 per month towards the premium for each full-time employee electing dependent coverage. The Board further agrees to pay the sum of $151.26 per month towards the premium for each full-time employee electing single coverage. It is understood that any portion of the total premium not covered by the Board must be paid by the employee. Beginning July 1, 1990, there will be an 18% cap on Health Insurance each year. The group policy of hospital and surgical insurance shall be available at employee's expense for a maximum of three (3) years if the employee chooses to voluntarily retire before the age of 65.

The total premium cost for dependent and single coverage, effective with the insurance year beginning September, 1990, was $391.08 and $151.26, respectively. The total premium cost for dependent and single coverage, effective with the insurance year beginning September, 1991, was $393.42 and $152.74, respectively.

In summary, the evidence of the 1990-92 contract bargaining history demonstrates that the parties reached the following understanding: that the College would pay an amount equal to 100% of the premiums during the first year of the contract and that, in the second year of the contract, the College would be liable for additional increases up to 18% of the first year's premium. Under this understanding, the College's contribution in the second year of the contract would increase by the same percentage of the second year's premium increase, up to and including an 18% increase.

The language agreed upon by the parties in their 1992-95 and 1995-97 agreements is consistent with the language reached in the 1990-92 agreement, *i.e.*, in the first year of each of these contracts, the College's contribution is identified as an amount that is equal to 100% of the first year's premiums. It not being evident that the parties discussed the application of Sec. 1301.1 when the parties agreed upon their 1992-95 and 1995-97 contracts, the most reasonable conclusion to be drawn from this evidence of bargaining history is that the understandings reached by the parties in 1990-92 continued into the 1992-95 and 1995-97 contracts.

In each of these contracts, the premiums in the second year of the contract did not increase by more than 18% of the College's first year contributions and the College paid 100% of the second year's premium. Thus, the College's contributions in the 1992-95 and 1995-97 contracts are consistent with the Krage's and Curtis' understanding of the agreement reached in 1990-92.

On or about May 12, 1998, the parties executed a document entitled "1997-1999 1999-2001 COLLECTIVE BARGAINING AGREEMENTS between MID-STATE TECHNICAL COLLEGE DISTRICT BOARD and MID-STATE ASSOCIATE STAFF ORGANIZATION." There is no evidence of bargaining history other than the language that was agreed upon by the parties. This language is as follows:

> 1301.1 – The Board agrees to maintain a group policy of health insurance and will pay, for 1998-99, the sum of $566.28 per month towards the premium for each full-time employee electing dependent coverage. The Board further agrees to pay the sum of $260.22 per month towards the premium for each employee electing single coverage. It is understood that any portion of the total premium not covered by the Board must be paid by the employee. Beginning July 1, 1998 there will be an 18% cap on Health Insurance each year.
>
> . . .
>
> 1603.1 – The document reflects two new Agreements, the first of which is effective July 1, 1997 and binding through June 30, 1999, with a subsequent Agreement effective July 1, 1999 and binding through June 30, 2001.

The $566.28 and $260.22 referenced above reflect the premiums in effect for the 1998-99 insurance year. The total premium cost for dependent and single coverage, effective with the insurance year beginning September, 1999, was $601.04 and $275.20, respectively. The total premium cost for dependent and single coverage, effective with the insurance year beginning September, 2000, was $690.38 and $314.44, respectively.

The amounts identified as the College's contributions are not 100% of the premiums for the first year of a two-year contract. Rather, they are 100% of the premiums for the second year of a two-year contract and no premiums amounts are identified in any year of the second two-year contract. The parties' conduct in modifying the contract language that resulted from their 1990-92 understandings reasonably gives rise to an inference that these 1990-92 understandings are no longer in effect.

In the 1999-2000 and 2000-2001 insurance years, the premiums did not increase by more than 18% and the College continued to pay 100% of the premium. The amount of the College's contributions under the 1992-95 and 1995-97 contracts is consistent with either party's interpretation and, thus, does not provide evidence of a clear intent.

In the "2001-2003 2003-2005" agreements, the parties agreed upon Sec. 1301.1 language that expressly identifies the amount of the College's health insurance contributions in the first year of the first two year contract, but does not expressly identify the amount of the College's health insurance contributions in any year of the second two-year contract. Additionally, the expressly identified College contribution is less than 100% of the premium in effect during the first year of the contract.

As discussed above, the parties conduct in modifying the Sec. 1301.1 language that resulted from the parties' 1990-92 understandings provides a reasonable basis to infer that these understandings are no longer in effect. Such an inference is strengthened by the modifications to the "2001-2003 2003-2005." Specifically, by identifying the College's contribution as less than 100% of the premium, the parties have expressly rejected the 1990-92 understanding that, in the first year of the contract, the College will pay 100% of the premium. Given this rejection, one may reasonably infer that the parties no longer intended the sentence that caps the College's insurance contributions during the term of the contract, *i.e.*, "There will be an 18% cap on health insurance each year," to be construed as obligating the College to pay, in the second year of the contract, an amount up to 118% of the first year's premium. The undersigned turns to the other evidence of the "2001-2003 2003-2005" bargaining history for assistance in determining the parties' mutual intent.

On July 16, 2001, the College and the Staff Association met to bargain the agreement to succeed that which expired on June 30, 2001. At this meeting, which was the parties' initial negotiations session, the College was represented by its Vice-President of Human Resources, Bob Beckstrom. The Staff Association's bargaining team included CWUC UniServ Director Jim Conlon, who acted as Chief Spokesperson, and Custodian Dave Curtis.

At this meeting, Beckstrom presented the College's bargaining proposals. During this presentation, Beckstrom advised the Staff Association's bargaining team that the WEA Trust had recently informed the College that, with the new insurance year, effective September 1,

2001, there would be a premium increase of 22.6% for family coverage and, that with the 18% premium cap increase in the current bargaining agreement, this premium increase would create a required employee contribution. Beckstrom also distributed two sheets of calculations to those members of the Staff Association's bargaining team who were in attendance, including Conlon and Curtis, which illustrated the insurance contributions that would be required by the College and the employee under the current health insurance language.

The first sheet states as follows:

HEALTH INSURANCE

FAMILY		***SINGLE***
$690.38	PRESENT PREMIUMS	$314.44
$846.12	NEW PREMIUMS	$385.06
-814.64 ($690.38 x 18%)	MSTC CONTRIBUTIONS	-371.04 ($314.44 x 18%)
$31.48 PER MONTH	EMPLOYEE CONTRIBUTIONS EFFECTIVE 9/1/01	$14.02 PER MONTH

The second sheet states as follows:

HEALTH INSURANCE

2002-03 PREMIUMS (ASSUMING A 17% INCREASE)

FAMILY		***SINGLE***
$989.96 (846.12 x 17%)	NEW PREMIUMS	$450.02 (385.06 x 17%)
- 953.13 ($814.64 x 17%)	MSTC CONTRIBUTIONS	- 434.12 ($371.04 x 17%)
$36.83 PER MONTH	EMPLOYEE CONTRIBUTIONS EFFECTIVE 9/1/02	$16.40 PER MONTH

Following a Staff Association caucus, Conlon distributed the Staff Association's written proposal. This proposal included a request to revise the health and dental premium rates set forth in Sec. 1301. Neither Conlon, nor Curtis, commented on Beckstrom's health insurance calculations.

The parties held their fifth negotiations session on October 11, 2001. At that time, the College proposed a 7% employee contribution to health insurance premiums. Conlon

responded to this proposal by stating that the Staff Association was unwilling to give any contribution to health insurance without something significant in return, but that there was nothing significant enough to justify a 7% employee contribution. Beckstrom responded that the Associate Staff was currently paying an employee contribution and that this payment was 3.7% of the premium. Beckstrom stated that, if the Associate Staff's preference was to retain the current language, then the College was not opposed to leaving the current contract language in place.

At the next negotiations session, on November 1, 2001, Conlon presented a Staff Association offer that included a proposal to increase the health insurance cap language from 18 to 22%. The College considered, but ultimately rejected, this proposal. The parties reached a contract settlement at their next negotiations session, which was held on December 11, 2001 and, on December 17, 2001, the parties executed the document that is entitled "2001-2003 2003-2005 Collective Bargaining Agreements Between Mid-State Technical College District Board and Mid-State Associate Staff Organization."

As discussed above, Curtis' understanding of the agreement reached at the 1990-92 bargain was that the College would pay 100% of the premium in the first year of the contract and, in the second year of the contract, the College would be liable for an insurance contribution of 118% of the first year's premium. The documents provided to Curtis and other Staff Association bargaining team members on July 16, 2001 establish that the College was not interpreting Sec. 1301.1 in that manner. Specifically, these documents show that the College is not paying 100% of the premium in the first year of the contract period; that the College is not liable for 118% of the first year's premium in the second year of the contract; and that the 18% cap is calculated by multiplying the percent increase in the premium by the amount of the College's prior year contribution.

It may be, as the Staff Association argues, that it did not understand the significance of Beckstrom's calculations on July 16, 2001. However, given the clarity of Beckstrom's calculations, the failure of the Staff Association to object to Beckstrom's calculations provides a reasonable basis to infer that the Staff Association has acquiesced to these calculations.

Given the difference in the 18% cap language of the OPEIU and Faculty Association contracts, as well as the failure of the record to demonstrate that the three unions bargain jointly on the issue of health insurance, the evidence regarding these other bargaining units, including their negotiations and grievance history, is not dispositive of the College's and Staff Association's rights under the Staff Association contract.

In summary, the most reasonable conclusion to be drawn from the evidence of the "2001-2003 2003-2005" bargain is that the understandings reached by the parties in their 1990-92 negotiations are no longer in effect. Construing the Sec. 1301.1 language agreed

upon by the parties during their "2001-2003 2003-2005" bargain in a manner that is consistent with their bargaining conduct, leads the undersigned to the following:

Conclusion

The amount generated by the 18% cap provided for in Sec. 1301.1 of the parties' "2001-2003 2003-2005" collective bargaining agreements is calculated by multiplying the College's prior year's monthly premium contribution by the percent of the increase in the new monthly premium rates, up to and including an increase of 18%. This amount is then applied to the College's prior year's monthly premium contribution to yield the Colleges' current year's monthly premium contribution.

The "2001-2003 2003-2005" contract expressly defines the College's 2001 premium contributions as $814.64 per month for family and $371.04 per month for single insurance. Thus, under Sec. 1301.1, the College's 2002 monthly family premium contribution is calculated by multiplying $814.64 x 18% = $146.64 and adding this amount to $814.64 and the College's 2002 monthly single premium contribution is calculated by multiplying $371.04 x 18% = $66.79 and adding this amount to $371.04. (The shorthand method of calculating these contributions is $814.64 x 118% and $371.04 x 118%.) The full 18% cap is applied to the 2001 College premium contributions because the premium increases from 2001 to 2002 were more than 18 percent.

In summary, under Sec. 1301.1, the College's contributions for the 2002-2003 insurance year are $961.28 per month for family premiums and $437.83 per month for single premiums. Under Sec. 1301.1, the portion of the total premium not covered by the College is required to be paid by the employee. By requiring employees to contribute $96.78 per month for family insurance and $35.38 per month for single insurance, effective September 1, 2002, the College required employees to pay the portion of the total premium not covered by the College and, thus, the College did not violate Sec. 1301.1 of the parties' collective bargaining agreement.

The record demonstrates that the monthly family premium for the 2003-2004 insurance year is $1,184.82. (Employer Exhibit 13a) Inasmuch as the monthly family premium for the 2002-2003 insurance year was $1,058.06 (Joint Exhibit 13), the percent increase in new premium rates is 12%. Thus, under Sec. 1301.1, the College's contribution for the 2003-2004 insurance year monthly family premium would be $1076.64. This contribution is calculated by multiplying $961.28 x 12% = $115.35 and adding this amount to $961.28. (The shorthand method of calculating this contribution is $961.28 x 112%) The full 18% cap is not applied to the College's 2002 monthly family premium contributions because the premium increase from 2002 to 2003 was less than 18%.

Based upon the above and foregoing, and the record as a whole, the undersigned issues the following:

AWARD

1. The 18% cap set forth in Sec. 1301.1 of the Staff Association "2001-2003 and 2003-2005 Collective Bargaining Agreements" is calculated as set forth in the above "Conclusion."

2. The College did not violate Sec. 1301.1 of the Staff Association collective bargaining agreement when it required Staff Association employees to contribute $96.78 per month toward family insurance and $35.38 per month toward single insurance, effective September 1, 2002.

3. The Arbitrator retains jurisdiction for the sole purpose of resolving disputes regarding the implementation of this Award that are presented to the Arbitrator within forty-five (45) days of this Award.

Dated at Madison, Wisconsin, this 1st day of April, 2004.

Coleen A. Burns /s/

Coleen A. Burns, Arbitrator

CAB/gjc
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