BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

IOWA-GRANT EDUCATION ASSOCIATION OF PROFESSIONAL STAFF AND SUPPORT PERSONNEL

and

IOWA-GRANT SCHOOL DISTRICT

Case 25
No. 65939
MA-13375

(Paul Messling II Grievance)

Appearances:

Mr. Tom Fineran, Executive Director, South West Education Association, 960 North Washington Street, P.O. Box 722, Platteville, Wisconsin 53818-0722, on behalf of the Union.

Lathrop & Clark, LLP, **by Attorney Shana R. Lewis,** 740 Regent Street Suite 400, P.O. Box 1507, Madison, Wisconsin 53701-1507, on behalf of the District.

ARBITRATION AWARD

At all times pertinent hereto, the Iowa-Grant Education Association of Professional Staff and Support Personnel (herein the Union) and the Iowa-Grant School District (herein the District) were parties to a collective bargaining agreement dated January 23, 2006 and covering the period from July 1, 2005 through June 30, 2007. On May 31, 2006, the Union filed a request with the Wisconsin Employment Relations Commission (WERC) to initiate grievance arbitration over a dispute concerning the extent of the District's obligation to provide early retirement benefits to bargaining unit member Paul Messling II. The Undersigned was selected from a panel of WERC staff members to hear the dispute and a hearing was conducted on August 15, 2006. The proceedings were transcribed. The parties filed their initial briefs on September 29, 2006 and the Union filed a reply brief on October 23, 2006. The District declined to file a reply brief and the record was closed.

ISSUES

The parties did not stipulate to a statement of the issues. The Union frames the issues, as follows:

Did the District violate the Early Retirement provision found in Article XXI of the collective bargaining agreement when it allowed the WEA Insurance Trust to pay for one year or more of the eight years of post-retirement insurance benefits to be paid by the District for Paul Messling II's post-retirement benefits?

If so, what is the appropriate remedy?

The District frames the issues, as follows:

Did the District violate Article XXI, Section J of the 2005-2007 collective bargaining agreement when it denied Paul Messling's request to postpone the start of his retirement benefits until his waiver of premium expired?

The Arbitrator frames the issues, as follows:

Did the Iowa-Grant School District violate Article XXI, Section J of the 2005-2007 collective bargaining agreement when it denied Paul Messling II's request to postpone the commencement of his early retirement benefits until a time of his choosing?

If so, what is the appropriate remedy?

PERTINENT CONTRACT LANGUAGE

XXI. COMPENSATION

F. Insurance – Insurance benefits shall be available according to the following schedule. Note: Persons employed on a 70% or more FTE basis shall be eligible for the full benefits as described below. Persons employed on a less that 70% FTE shall receive a pro rated benefit as per the contracted FTE, i.e. a 45% FTE shall receive benefits at 45% of the level described below.)

1.) Health and Hospitalization Insurance as provided through SWEA Insurance Cooperative (Consortium).

a)	Family Plan	$1304.23/mo.	2005-2006
		92.5% of the family premium stated as a dollar amount	2006-2007
b)	Single Plan	Full single premium	
c)	Both spouses	Full family premium	

2.) Dental Insurance as selected by the Association, with Board Concurrence.

a.)	Family Plan	$76.63/mo.	2005-2006
		92.5% of the family premium stated as a dollar amount	2006-2007
b.)	Single Plan	Full single premium	
c.)	Both spouses	Full family premium	

3.) Long Term Disability Insurance as selected by the Association, with Board concurrence, will be provided at no cost to the employee for every employee covered by this contract.

J. Early Retirement – Teachers who have at least 20 years service with the Iowa-Grant School District and elect to retire from teaching in the Iowa-Grant School District shall be eligible to have up to 110% of the family medical insurance contribution as defined in Article XXI, Section F, Part 1 above paid by the District toward their family medical insurance premium under the same plan as currently being provided under the IGEAPSSP contract. This eligibility shall continue for a maximum of eight years. Persons wishing to take advantage of this early retirement provision shall provide the Superintendent with written notice of their intentions on or before March 15th of the year in which they intend to retire.

BACKGROUND

The Iowa-Grant Association of Professional Staff and Support Personnel and the Iowa-Grant School District are parties to a collective bargaining agreement that provides a variety of benefits to Association members. One such benefit is long-term disability insurance, which is obtained by the District through the WEA Trust, which also provides the District's health insurance plan. By virtue of WEA being the provider of both plans, the District is able to, and does, additionally contract for a waiver of health insurance premiums for any District employee receiving long-term disability benefits. The parties' contract also includes early retirement benefits for any bargaining unit member who qualifies for them at the time of retirement, said benefits being a contribution of up to 110% of family medical insurance premiums for a maximum of eight years after retirement.

Paul Messling II, the Grievant herein, was a teacher in the Iowa-Grant School District and a member of the Iowa-Grant Association of Professional Staff and Support Personnel for 36 years. On March 19, 2005, Messling became totally disabled and, as of May 18, 2005, qualified for benefits under the District's long-term disability insurance plan, including the waiver of health insurance premiums for up to 30 months and Messling and the District were notified on June 16, 2005 that the premium waiver was in effect.

On January 20, 2006, Messling submitted his resignation to the School Board and, due to the health insurance premium waiver then in effect, stated that he would notify the District when his early retirement benefit of health insurance premium contribution should take effect. On February 9, 2006, the District notified Messling that it had accepted his resignation and, furthermore, according to its interpretation of the collective bargaining agreement, that his eight years of eligibility for health insurance premium contributions would commence on September 1, 2006.

On February 24, 2006, Messling submitted a grievance based on the District's interpretation and application of the early retirement provision and asked that he be made whole by being provided with a full eight years of health insurance premium contributions after expiration of the premium waiver under the long-term disability plan. The District denied the grievance at each stage of the grievance procedure. Subsequent to the Step 3 denial of the grievance on April 17, 2006, on April 20 the District Administrator issued a memorandum to Messling, as follows:

> To: Paul Messling II
> From: Terrance Slack
> CC: IGEAPSSP, PR File
> Date: April 20, 2006
> Re: Post Retirement Insurance Benefits
>
> This memorandum is issued as a statement of understanding between all of the involved Parties (Iowa-Grant Board of Education, Iowa-Grant Association of Professional Staff and Support Personnel, and yourself) regarding the payment of post-retirement insurance benefits. Pursuant to the conditions stated in Article XXI, Section J of the 2005-2007 Master Contract Agreement covering the above named parties; you and/or your surviving spouse will receive family health and medical insurance with premiums fully paid by the Iowa-Grant School District from September 1, 2006 through August 31, 2014.
>
> The insurance coverage will be under the same plan as is provided to the IGEAPSSP members at the same time and you will be carried on the District's census as an active employee until August 31, 2014. Should there be changes in policy conditions, such as deductibles, covered conditions, drug card surcharges, etc.; the same changes will be applicable to your insurance coverage.
>
> At the time of termination of your benefits on August 31, 2014, you and/or your surviving spouse will be eligible for all continuation rights as afforded under the then current state and federal regulations.

The memorandum was subsequently signed by Messling, the IGEAPSSP President, the School Board President and the School Board Clerk. The memorandum did not dispose of the

grievance, however, and the matter proceeded to arbitration. Additional facts will be referenced, as necessary, in the **DISCUSSION** section of this award.

POSITIONS OF THE PARTIES

The Union

The Union asserts that Paul Messling II informed the District that he would notify it when he wished to have his eight years of health insurance premium contributions commence based on his understanding of the language of Article XXI, Sec. J, which articulates the early retirement benefit as a health insurance premium contribution by the District. Inasmuch as no premium contribution was required while he was under the premium waiver provision of the long-term disability plan, Messling believed the premium contribution under the early Retirement language would not commence until the waiver had expired.

The Union disputes the District's assertion that such a postponement has never been allowed in the past as evidence that such a construction of the language is invalid. N fact, there has never been an instance in the past where an employee has retired whil on long-term disability, making this situation unique.

The Union also disputes the District's argument that by providing both health insurance and long-term disability insurance to Messling it is, in fact, paying for his post-retirement benefits, even while the waiver is in effect. This argument is erroneous. The Association had to bargain and make concessions to obtain the waiver of premium language. Further, while the waiver is in effect, neither the District nor the Grievant are paying premiums, so the District is not "paying" toward his post-retirement benefit as the contract calls for. The contract language is clear. Messling is entitled to have the District pay up to 110% of the family medical insurance contribution defined in Article XXI, Sec. F. The District never attempted to negotiate a change in this language to cover situations where the retiree was on long-term disability or otherwise qualified for a premium waiver.

Under the "plain meaning rule," if words are plain and clear there is no need to resort to rules of interpretation in applying them. If the District did not want to follow the plain meaning of the language in this contract, it should have attempted to negotiate a change, which it did not do. Messling will be under the premium waiver until approximately November 18, 2007. Until that time, the District has no obligation to pay toward his health insurance coverage and so, by the terms of the contract, his early retirement benefits should not commence until that time.

The District

The District assets that the Association bears the burden of establishing the violation of the contract, that it has failed to do so, and that the grievance should be dismissed on a variety of grounds. In the first instance, the District points out that the parties entered into a

memorandum of understanding on April 20, 2004 in which they agreed in writing that the Grievant's early retirement insurance benefits would expire on August 31, 2014. Therefore, any contention that his benefits should extend beyond that date should be barred by the parties' agreement.

Additionally, the clear language of the contract specifies that early retirement benefits exist for a maximum of eight years from the date of retirement. Where clear language leads to only one plausible interpretation it should be applied as written. Here, the language of Article XXI, Sec. J. can only be interpreted to mean that early retirement benefits extend for eight total years after retirement. There is no language providing for eligibility after eight years, nor is there language allowing the employee to designate when the eligibility period begins. The pertinent language has gone through many changes over the years, yet the Association has not sought to change it to provide for a delay in retirement benefits and the Arbitrator is barred by the contract from adding to the contract, which he would have to do to achieve the result the Association seeks.

Over the years, retiring employees have occasionally sought to postpone activation of retirement benefits, but the District has consistently refused to allow them to do so. On no occasion has the Association grieved the District's actions. Thus, in considering the normal usage and past interpretation applied by the parties to this language, the Arbitrator must conclude that there has never been an understanding by the parties, nor a past assertion by the Association that such a right exists. It is likewise true that on occasion the District's premiums in providing insurance benefits to retirees have gone down, as, for instance, when a retiree or spouse has become eligible for Medicare. Yet, never before has the Association contended that a reduction in the District's premiums is a basis for extending the length of the benefit. Thus, the fact that the District benefited from a premium waiver at the time of the Grievant's retirement should not be a basis for extending the benefit period here. The language does not require the District to pay a specified amount. Rather, it states that an employee is eligible to have up to a specified percentage of premium paid by the District. This does not permit an employee to "bank" payments during a period of premium waiver until the employee chooses to use it. The Grievant also failed to make the argument during his employment that the District was required to, in some way, credit him for non-payment of premiums during his initial premium waiver period while employed, so he should not be permitted to make the argument now.

Finally, the Association cannot argue that the District has failed to pay for the Grievant's insurance coverage while he has been on long-term disability. The District has paid the premiums for the Grievant's long-term disability coverage and has also paid for the health insurance rider that provides for the premium waiver. Thus, the District has provided for insurance coverage for the Grievant during his early retirement period as it is required to do. That it is able to do so at a reduced cost due to negotiating the premium waiver should not be a basis for increasing the District's liability to the Grievant.

The Union in Reply

The argument submitted by the District contains significant inaccuracies. First, it is true that the District has never permitted a retiring employee to delay the onset of retirement benefits. However, no previous retiree has been on long-term disability. In those cases, the retirees sought to postpone benefits until the retirement of a spouse. This is a different situation. Here, the Association is arguing that the District must pay eight fully ears of benefits after the waiver period has expired, or must pay the premiums into a Health Savings Account or Tax Sheltered Annuity during the waiver period to be used, as needed, at a later date.

The District also claims that it has paid for the premium waiver. The record shows that while Paul Messling is on long-term disability the District will not be paying his health insurance premiums. Also, while the District argues that it paid for the premium waiver, the contract shows that this cost is computed as part of the Association's total compensation package, so to the extent that money is paid for the benefit it is taken away from salary increases or other benefits. Thus, this is not a case of altruistic behavior by the District, but, rather, is a case where the Association bought the premium waiver by giving away other benefits.

The contract is clear that the District is required to pay up to 110% of health insurance premiums for early retirees for up to eight years. The District does not have to pay premiums during the waiver period, so the benefit period should not commence until the waiver expires, or the District should be required to deposit the amounts it would otherwise be paying into a Health Savings Account or Tax Sheltered Annuity.

The District in Reply

The District declined to file a reply brief.

DISCUSSION

In this case, the parties dispute the appropriate application of Article XXI, Section J. of the contract as it applies to an employee who is on long-term disability at the time of retirement. The key inquiry is what significance, if any, to attribute to the fact that, under the terms of the long-term disability benefit, the Grievant's health insurance premiums are waived until November 2007, although he retired in 2006. It is the Association's contention that the provision requires the District to pay the specified health insurance premium on the Grievant's behalf for eight years. Thus, either the District must make the specified premium contribution for a full eight years after the Grievant's long-term disability premium waiver expires, or the District must pay the cash equivalent of the specified premium contribution into a Health Savings Account or Tax Sheltered Annuity for the Grievant while the waiver is in effect and then make the premium contribution for the balance of the eight years after the waiver expires. The District, on the other hand, argues that the language merely requires that the District pay for the cost of insurance benefits up to a specified limit until eight years after the Grievant's

retirement, and that the Grievant is entitled to no additional consideration as a result of the waiver.

As a general rule, in contract interpretation cases the Union bears the burden of establishing a violation of the contract language. Here, the Union asserts that the contract is clear and unambiguous, inviting only one reasonable interpretation, specifically, that the early retirement language entitles the Grievant to eight years of insurance premium contributions in a specified amount, or the equivalent in cash for any period within the eight years in which premiums are waived. The District contends that the language is just as clear that insurance benefits, however paid for, only extend for a total of eight years from retirement. In my view, the language is less clear than either party believes on this point and, therefore, requires some analysis to determine how it bears on the issue at hand.

The pertinent language from Article XXI, Section J. states:

> "Early Retirement - Teachers who have at least 20 years service with the Iowa-Grant School District and elect to retire from teaching in the Iowa-Grant School District shall be eligible to have up to 110% of the family medical insurance contribution as defined in Article XXI, Section F, Part 1 above paid by the District toward their family medical insurance premium under the same plan as currently being provided under the IGEAPSSP contract. This eligibility shall continue for a maximum of eight years."

This language has undergone several changes over the years before attaining its current form and it is necessary to examine the bargaining history in order to determine how it is properly to be interpreted and applied.

In the 1988-90 collective bargaining agreement, there was no Section J in Article XXI and the only contractual retirement benefit beyond pension contributions for teachers who retired after 20 years was a payout of ½ of their accumulated sick leave pursuant to Article XXI, Section I. (Jt. Ex. #1) Section J was added in the 1990-91 contract and provided, as follows:

> "Early Retirement - Teachers who have at least 20 years service with the Iowa-Grant School District and elect to retire and begin collecting their STRS annuity before the age of 65 shall be eligible to have up to 110% of the family medical insurance contribution as defined in (XXI. F. 1.) above paid by the District toward their family medical insurance premium under the same plan as currently being provided under the IGEA contract. This eligibility shall continue for a maximum of five years or until the teacher reaches the age of 65, whichever occurs first." (Jt. Ex. #2)

In the 1997-99 contract, Art. XXI, Sec. J was modified to increase the potential extent of the benefit from five years to eight, but maintained age 65 as the ultimate terminal point of

the benefit and added a March 15 deadline for notifying the District of intention to retire. (Jt. Ex. #4)

The language was modified to its current form in the 1999-2001 collective bargaining agreement. (Jt. Ex. #5) According to Judith Reddy, the District's Administrative Assistant, the language was changed at that time in response to action by the Equal Employment Opportunities Commission against school districts with similar early retirement language predicated on age discrimination grounds. The change that was made was essentially to eliminate the reference to age 65 as the cutoff date for the benefit, effectively making it an eight year benefit regardless of the age at which the teacher chooses to retire. This is significant information because it provides insight into the original intent of the parties in adding that provision to the contract.

It is clear that what the parties originally intended was to provide a health insurance benefit as an incentive for early retirement for teachers who had more than 20 years of service with the District, but who had not yet reached the age of 65, at which point they would become eligible for Medicare. Originally the benefit applied for up to five years, but was later expanded to up to eight years. Therefore, the phrase "for a maximum of," tied to the number of years of eligibility, must be read in the context of a benefit that, in any event, terminated at age 65. Thus, under the 1997-99 language, a teacher with 20 years service who retired at 57 would qualify for the entire eight years of insurance benefits, but a teacher who retired at 60 would only qualify for five years of benefits and a teacher who retired at 64 would only qualify for one. It was exactly this feature of the provision that concerned the EEOC, because older teachers arguably received less of a benefit and, thus, were potentially victims of age discrimination. Taking out the reference to age 65 effectively meant that any retiree is now eligible for eight years of benefits, regardless of when they retire, so in reality the provision is no longer an "early retirement" benefit, but is a benefit that applies to all retirees regardless of their age at retirement.

Looked at in this context, it is clear that what the parties originally intended was a benefit that would help bridge the age gap between early retirement and eligibility for Medicare and retirees had no expectation of receiving the full complement of years of benefit unless they retired at least five, and later eight, years prior to age 65. It is further obvious that the intent of the provision was not to commit a certain number of dollars to the retirement package, but to insure health insurance coverage for a specified period of time. In my view, when the parties modified the language to comply with the EEOC requirements there was no design to change the structure or intent of the provision, beyond removing the age-based sliding scale. The result was a provision that is now designed to provide eight years of health insurance coverage to all retirees, which is arguably a more expensive benefit for the District, since it now applies for the full eight years in nearly all cases, although there are some cost savings that are realized when Medicare eligibility arises and premiums decrease somewhat. As I read the provision, however, the District's responsibility is to provide "up to 110% of the family medical insurance contribution" as defined in Art. XXI, Sec. F, for the purpose of offsetting the cost of insurance for eight years.

Into this discussion now comes the long-term disability plan, under which the Grievant was covered at the time of his retirement. This benefit includes a waiver of health insurance premiums for up to 30 months, which will continue to be in effect for Mr. Messling until November of 2007. The Association argues that the premium waiver tolls the early retirement provision until it expires or, in the alternative, requires the District to pay the equivalent of its normal premium obligation into a separate account for Messling's future use while the waiver is in effect. Given my reading of the intent of the early retirement provision, however, I do not believe this is a reasonable conclusion to draw.

As originally worded there was no question that the early retirement benefit lasted no more than a specified number of years and ended, in any event, not later than age 65. Its intent was to offset the cost of insurance coverage from the date of retirement until Medicare eligibility, assuming that the employee retired within the window provided in the provision. Removing the reference to age 65 from the language made Medicare eligibility moot, but did not change the fact that the benefit was designed to operate from the date of retirement forward, and not as of an indefinite date to be determined at the convenience of the employee. This conclusion is supported by the fact that on a number of occasions in the past retirees have sought to delay the onset of the retirement benefit and the District has refused, without objection from the Association. Further, as indicated by District Exhibits #8-10 and the supporting testimony, this has been the accepted policy since at least 1993, when the original language of Article XXI, Sec. J was in effect, and has continued under the current language.

The Association contends that the other cases are not relevant because they involve situations where the employees had access to other insurance through a spouse, rather than a premium waiver under the long-term disability plan. I do not see this as a meaningful distinction. In each case, the retiree sought to delay the early retirement benefit due to access to concurrently paid benefits from another source – in one case a spouse's insurance, in another case the long-term disability plan. In each case, the intention was to maximize coverage over as many years as possible by making the coverages consecutive rather than concurrent. And in each case the District refused on the basis that the contract benefit commences at retirement, regardless of the availability of other coverage, or a premium waiver.

The Association argues that the contract specifies that the District must pay eight years of premium benefits at a specified amount, that being 110% of the contribution defined in Art. XXI, Sec. F, and should not be excused from that obligation due to the effect of the premium waiver, but I disagree. The language clearly states that the retiree is eligible to have "up to" 110% of the family medical insurance contribution paid by the District. The phrase "up to" implies circumstances where the District's liability may be less than the maximum contribution computed in actual dollars. For instance, if the full premium is somewhat less than the total potential contribution, the District's obligation is capped at whatever the premium is. There is no requirement that the difference be paid into a separate account for the retiree's future use. Nor does it appear that if the retiree elected single coverage at retirement that the District would be required to pay the difference between the single and family premiums into a

similar account merely by virtue of a reference to the family medical insurance contribution in the provision. Here, there is a premium waiver in affect, making it possible to provide full medical coverage to the Grievant at no cost to himself or the District, beyond the District's cost in including the premium waiver rider in the long-term disability plan and, as long as the coverage is provided at no cost to the Grievant, the District has met its obligation. In my view, therefore, while the premium waiver certainly provides a savings to the District, that, in and of itself, does not entitle the Grievant to those savings now, or in the future.

The Association also appears to suggest that the wording of the April 20, 2005 Memorandum of Understanding regarding the Grievant's retirement benefits amounts to an admission of liability by the District as to its obligation to pay eight years of premiums or the equivalent amount into a health savings account or annuity. I disagree. The Memorandum was drafted and signed by the parties after the grievance was filed and denied, but does not purport to dispose of it. I do not, therefore, see it as an acknowledgement or admission by either party of the correctness of the other's position. Specifically, the Memorandum states that the Grievant "will receive family health and medical insurance with premiums fully paid by the Iowa-Grant School District from September 1, 2006 through August 31, 2014." This is no more than to say that the Grievant will receive full health insurance coverage at the District's expense, however much or little that expense may be, for eight years from his retirement, which is consistent with the position the District has taken here. There is no requirement that the District pay any specified amount, nor that any money saved due to the premium waiver be deposited for the Grievant's future use. For the reasons set forth above, therefore, and based upon the record as a whole, I hereby issue the following

AWARD

The Iowa-Grant School District did not violate Article XXI, Section J of the 2005-2007 collective bargaining agreement when it denied Paul Messling II's request to postpone the commencement of his early retirement benefits until a time of his choosing. The grievance is denied.

Dated at Fond du Lac, Wisconsin, this 16th day of April, 2007.

John R. Emery /s/

John R. Emery, Arbitrator

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