BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**SCHOOL DISTRICT OF LANCASTER**

and

**LANCASTER EDUCATIONAL SUPPORT PERSONNEL**

Case 19
No. 66415
MA-13521

**Appearances:**

**Scott R. Mikesh**, Wisconsin Association of School Boards, Staff Counsel, 122 West Washington Avenue, Madison, Wisconsin, appearing on behalf of the District

**Joyce Bos**, South West Education Association, Executive Director, 960 Washington Street, Platteville, WI 53818-1169, appearing on behalf of the Association

## ARBITRATION AWARD

Lancaster Education Support Personnel, herein referred to as the "Association," and School District of Lancaster, herein referred to as the "District," jointly selected the undersigned from a panel of arbitrators from the staff of the Wisconsin Employment Relations Commission to serve as the impartial arbitrator to hear and decide the dispute specified below. The parties stipulated to the facts and submission of documentary evidence and otherwise waived formal hearing. Each party filed post-hearing briefs; the last of which was received February 13, 2007.

## ISSUES

The parties did not stipulate to the statement of the issues, but they do not disagree as to the issues. I state them as follows:

1. Was the grievance timely filed and/or processed?

2. If so, did the District violate Article 20 as to the percentage it contributed toward grievant Streif's health insurance for the 2006-07 school year?

3. If so, what is the appropriate remedy?

## RELEVANT AGREEMENT PROVISIONS

". . .

## ARTICLE 3 – MANAGEMENT RIGHTS

Management retains all rights of possession, care, control and management that it has by law, and retains the right to exercise these functions under the term of the collective bargaining agreement. The exercise of such powers, rights, authority, duties and responsibilities by the Board, the adoption of policies, rules, regulations and practices in furtherance thereof, and the use of judgment and discretion in connection therewith shall be limited only to the precise extent such functions and rights are explicitly, clearly and unequivocally restricted by the express terms of this Agreement and then only to such specific and express terms hereof are in conformance with the Constitution and laws of the State of Wisconsin and the United States. These rights include, but are not limited by enumeration to, the following rights:

A. To direct all operations of the District;

B. To establish and require observance of reasonable work rules and schedules of work;

C. To hire, promote, transfer, schedule and assign employees in positions and to create, combine, modify and eliminate positions within the District;

D. To suspend, demote, discharge and take other disciplinary action against employees;

E. To relieve employees from their duties;

F. To maintain efficiency of District operations;

G. To take whatever action is necessary to comply with state or federal law, or comply with state or federal court or agency decisions or orders;

H. To introduce new or improved methods or facilities;

I. To select employees, establish quality standards and evaluate employee performance;

J. To determine the methods, means and personnel by which school system operations are to be conducted;

K. To take whatever action is necessary to carry out the functions of the school system in situations of emergency;

L. To judge to the extent to which the required work shall be performed by employees covered under this agreement;

M. To discontinue operations or services or their performance by employees of the district;

N. To determine the educational policies of the school district.

The Board and Association understand and agree that this article does not describe any rights of the Association or of employee(s).

. . .

## ARTICLE 7 – GRIEVANCE PROCEDURE

7.01 Grievance Definition: A grievance is defined as and limited to a dispute concerning the interpretation or application of the express terms of this Agreement. Any grievance that is based upon events that occur after the collective bargaining agreement terminates are expressly excluded from this grievance procedure and are subject to the prohibited practice complaint procedure set forth by state law.

7.02 Grievance Definition: A grievant may be any employee or group of employees, or the Association.

7.03 Day Definition: The term "days," except where otherwise stated, means calendar days, excluding weekends and holidays.

7.04 Purpose: The purpose of this Article is to resolve at the lowest possible administrative level disputes which may from time to time arise. This Article provides for the exclusive method for resolving grievances. A determined effort shall be made to settle any grievance at the lowest possible level in the grievance procedure.

7.05 Time Limits: The time limits set forth in this Article shall be considered as substantive, and failure of the grievant to file and process the grievance within the time limits set forth in this Article shall be deemed a waiver of the grievance. The number of days indicated at each level should be considered a maximum and every effort should be made to expedite the process. The time limits specified may, however, be extended (60) calendar days of the hearing or within sixty (60) calendar days of the filing of the final briefs in the matter, whichever is applicable. The arbitrator shall have no power to add to, subtract from, modify of amend any term of this agreement. The arbitrator shall have no authority to impose liability on the District for events arising before the effective date of this agreement. A decision of the arbitrator, within the scope of his or her authority, be binding upon the parties.

. . .

7.09 Costs of Grievance Arbitration: The parties shall share equally in the costs of the arbitrator. In the event both parties request a transcript of the hearing, the parties shall split the costs of the transcript. In the event only one party request (sic) a transcript, that party shall bear the full cost of the transcript. Each party shall bear the expense of preparing and presenting its own case.

7.10 Grievant's Right to Representation: Any grievant may be represented at all stages of the grievance procedure by a representative(s) of the Association. When an employee is not represented by the Association, the Association shall have the right to be present and to state its views at all stages of the procedure. No grievance shall be required to discuss any grievance if the Association's representative is not present.

7.11 Consolidation of Grievances: Grievances of the same type, and with similar fact situations, may be consolidated.

7.12 Group Grievances: Group grievances involving more than one employee, or more than one supervisor, and grievances involving an administrator other than the immediate supervisor may be initially filed at Step 2.

7.13 Employee Security: No reprisals shall be taken by the board or administration against an employee because of his/her participation in a grievance.

. . .

7.06 Grievance Processing Procedures: Grievances shall be processed in accordance with the following procedures:

Step One – Informal Resolution: An earnest effort shall first be made to settle the matter informally between the employee and/or the Association and the immediate supervisor. A grievance may be initiated through an informal meeting and discussion with the immediate supervisor, the employee and the Association's designated representative, within thirty (30) days after the occurrence of the events giving rise to the grievance. The immediate supervisor will give an answer to the grievance, the aggrieved employee, and the Union representative within five (5) days. The grievant(s) shall be required to state the purpose of the discussions and event(s) upon which the discussions are based. If the matter cannot be resolved, the grievant(s) may file a written grievance.

Step Two – Written Grievance: If the grievance is not resolved at Step One, the grievant(s) shall file a written grievance with the immediate supervisor within five (5) days of the response in Step One above. The written grievance shall include a clear, concise statement of the facts upon which the grievance is based, the issues involved, the specific sections and articles of the agreement allegedly violated and the relief sought. The grievance shall be signed and dated by the grievant. The principal or immediate supervisor shall respond to the grievance in writing within five (5) days.

Step Three – Appeal to District Administrator: If the grievance is not resolved at Step Two, the grievant may file the written grievance with the District Administrator within five (5) days after the response at Step Two. The District Administrator shall meet with the grievant(s) and/or the Association's designated representative and the principal or immediate supervisor within five (5) days after receiving the written grievance. The District Administrator shall respond to the written grievance within five (5) days of the meeting.

Step Four – Appeal to Board of Education: If the grievance is not resolved at Step Three, or if no decision has been rendered within the time limit specified, the grievance may be referred to the School Board within five (5) days after the Step Three decision. At the next regularly scheduled Board meeting, or at a meeting mutually agreeable to the parties, the Board shall meet with the grievant and/or the Association's designated representative(s) for the purpose of resolving the grievance. The Board shall render a written decision within five (5) days after the meeting.

Step Five – Appeal to Grievance Arbitration: If the grievance is not resolved or if no decision has been rendered within the time limits specified, the Association may appeal the grievance to arbitration within twenty (20) days after receiving the Board's written decision. If no appeal is made within twenty (20) days, the grievance will be deemed resolved at Step Four.

7.07 Grievance Arbitrator Selection Procedure: The parties agree to the following procedure in selecting an arbitrator to resolve the dispute: First, the parties will attempt to mutually agree to an arbitrator. Second, if the parties are unable to mutually agree to an arbitrator the parties will request the Wisconsin Employment Relations Commission (WERC) to provide a panel of five (5) potential arbitrators from the WERC's staff. The panel of potential arbitrators shall be reduced to one (1) by the process of alternate striking of names by both parties until one (1) arbitrator remains. This person will act as an arbitrator in resolving the grievance. The party to strike first shall be determined by the toss of a coin. Third, if the parties are unable to mutually agree to an arbitrator and the WERC will not provide a panel of five (5) potential arbitrators from the WERC's staff, then the WERC shall appoint an arbitrator from its staff. No grievance may be submitted to arbitration without the consent of the Association.

. . .

## ARTICLE 8 – REDUCTION IN FORCE, POSITIONS & HOURS

. . .

8.04 Seniority: Seniority shall be defined as the employee's number of years of continuous service in the District, calculated from the employee's date of hire in a position now in the bargaining unit or hereafter determined to be part of the bargaining unit. A year of service shall be calculated based on an employee working a full or part-time year in the District. In the event two or more employees have the same date of hire, the employee who is senior shall be determined by acknowledging substitute work in the District. If the employees continue to tie, the tie will be broken by a coin toss. The District will annually produce a length of service list and forward that list to the president of the Association by January 31st. The Association will raise any objections to the proposed length of service list within fifteen (15) calendar days of receipt or it will be considered as accurate as prepared.

. . .

## ARTICLE 10 – PAID VACATIONS

10.01 Calendar Year Full-Time Employees: Paid vacation will be provided to Calendar Year full-time employees according to the following schedule:

| | |
|---|---|
| After one (1) year of service | 1 week paid vacation (5 days) |
| After two (2) years of service | 2 weeks paid vacation (10 days) |
| After ten (10) years of service | 3 weeks paid vacation (15 days) |
| After fifteen (15) years of service | One additional day of vacation will be provided per year of service to a maximum total of 4 weeks of paid vacation (20 days). |

("Years of Service" as set forth in this Article refers to years of service in the Lancaster School District as a calendar year full-time employee.)

. . .

## ARTICLE 20 – INSURANCES

20.01 Health Insurance: Employees will become eligible to receive health insurance, from the health insurance carrier selected by the Board, if they are scheduled to work at least 1040 hours in a fiscal year. If an employee is scheduled to work at least 1040 hours, but less than 2080 hours, the District will pay up to XXX.XX per month toward the cost of the single plan (insert a dollar amount equal to 10/12's of the cost of the single plan.) or the District will pay up to XXX.XX per month toward the cost of the family plan (insert a dollar amount equal to 10/12's of the cost of the family plan). If an employee is scheduled to work 2080 hours, the District will pay up to XXX.XX per month toward the cost of the single plan (insert a dollar amount equal to the full cost of the single plan) or the District will pay up to XXX.XX (insert a dollar amount equal to 95% of the cost of the family plan) per month toward the cost of the family plan or a maximum of ninety-five percent (95%) of the monthly premium amount per month.

20.02 Health Insurance for Employees Hired After January 1, 1991: New hires starting in January 1, 1991, will receive a prorated employer health insurance premium contribution as follows:

A. First year the District will pay seventy-five percent (75%)_ of the premium agreed to in section 20.01. The employee is responsible for the remaining portion.

B. Second year the District will pay eighty percent (80%) of the premium agreed to in section 20.01. The employee is responsible for the remaining portion.

C. Third year the District will pay eight-five (sic) (85%) of the premium agreed to in section 20.01. The employee is responsible for the remaining portion.

D. Fourth year the District will pay ninety percent (90%) of the premium agreed to in section 20.01. The employee is responsible for the remaining portion.

E. Fifth year the District will pay ninety-five percent (95%) of the premium agreed to in section 20.01. the employee is responsible for the remaining portion.

F. Sixth year the District will pay one hundred percent (100%) of the premium agreed to in section 20.01. The employee is responsible for the remaining portion.

20.03 Dental Insurance: Employees will become eligible to receive dental insurance, from the dental insurance carrier selected by the Board, if they are scheduled to work at least 1040 hours in a fiscal year. If an employee is scheduled to work at least 1040 hours, but less that 2080 hours, the District will pay up to XXX.XX per month toward the cost of the single plan (insert a dollar amount equal to 10/12's of the cost of the single plan) or the District will pay up to XXX.XX per month toward the cost of the family plan (insert a dollar amount equal to 10/12's of the cost of the family plan). If an employee is scheduled to work 2080 hours, the District will pay up to XXX.XX per month toward the cost of the single plan (insert a dollar amount equal to the full cost of the single plan) or the District will pay up to XXX.XX (insert a dollar amount equal to the full cost of the single plan) per month toward the cost of the family plan or a maximum of ninety-five percent (95%) of the monthly premium amount per month.

20.04 Dental Insurance for Employees Hired After January 1, 1991: New hires starting in January 1, 1991, will receive a prorated employer dental insurance premium contribution as follows:

A. First year the District will pay seventy-five percent (75%) of the premium agreed to in section 20.03. The employee is responsible for the remaining portion.

B. Second year the District will pay eighty percent (80%) of the premium agreed to in section 20.03. the employee is responsible for the remaining portion.

C. Third year the District will pay eighty-five (85%) of the premium agreed to in section 20.03. The employee is responsible for the remaining portion.

D. Fourth year the District will pay ninety percent (90%) of the premium agreed to in section 20.03.

. . . ."

**FACTS**

According to Article 20 – Insurances, of the 2006-2008, contract between the Lancaster School District and the Lancaster Education Support Personnel an employee must be scheduled for at least one thousand and forty (1040) hours in a fiscal year in order to qualify for District's health insurance or dental insurance. This contract language has been in effect since July 1, 1997 and precedes the hiring of Mrs. Streif.

According to Article 20 – Insurances, of the 2006-2008, contract between the Lancaster School District and the Lancaster Educational Support Personnel an employee must be scheduled to work at least twenty (20) or more hours per week in order to qualify for District's life insurance or long term disability insurance.

Brenda Streif has been continuously employed by the Lancaster School District since March of 1998. The Lancaster School District hired Mrs. Brenda Streif on March 11, 1998 as a part-time dishwasher. Mrs. Streif worked two hours per day, which was a total of 360 hours, for the contract year 1997-1998. Due to the limited number of hours worked during that contract year, she did not qualify for District-funded insurance benefits. On December 9, 2004 the District hired Mrs. Streif to work 576 hours for contract year 2003-2004 as a teacher assistant at the Winskill Elementary School in the Lancaster School District. On September 15, 2005 the District hired Mrs. Streif as a Special Education Teacher Assistant, who was scheduled to work 792 hours, for the contract year 2005-2006. Even though her hours increased, she was still scheduled to work less than the required (1,040) hours per contract year needed to meet the number of hours to be eligible for District-funded health and dental benefits. On June 14, 2006 the District voted to hire Mrs. Streif for the 2006-2007 school year as a full-time Special Education Teacher Assistant for 2,350 hours per contract year. This is the first time Mrs. Streif was scheduled to work at or above 1,040 hours.

On June 14, 2006 Mrs. Streif was hired by the District as a full-time Teacher Assistant for the District's Middle School Special Education program. Mrs. Streif was contracted to work for the District 1,350 hours for the contract year of 2006-2007. Mrs. Streif was now,

for the first time, meeting the minimum number of hours needed to make her eligible to receive District-paid health and dental premiums.

On June 19, 2006 Mrs. Streif called the District to inquire as to the percentage of the District-paid health and dental premiums in which she qualified, once her 2006-2007 contract had begun. A telephone conversation was held between herself and the District Administrator, Mr. Wagner at which time Mr. Wagner informed her she would be placed at step "A" (75%) of the insurance scale according to Article 20.02 and 20.04 of the Collective Bargaining Agreement.

On June 19, 2006 Mrs. Streif called the Lancaster Education Support Personnel President to hold a conversation relative to the District's responsibility of percentage of payment toward health and dental premiums.

On June 21, 2006 Mrs. Streif held a conversation with the District's bookkeeper, Mrs. Reuter relative to the District's percentage of payment toward health and dental premiums in which she was informed she would be placed at step "A" (75%) of the insurance scale according to article 20.02 and 20.04 of the Collective Bargaining Agreement.

In August of 2006, Mrs. Streif contacted Ms. Joyce Bos, South West Education Association Executive Director and held a conversation relative to the District's responsibility for a percentage of payment toward health and dental premiums. Ms. Bos instructed Mrs. Streif to request to receive a written statement from the District relative to the District's percentage of payment toward health and dental premiums. The District's two written responses are included in the stipulated Joint Exhibits.

The district did have a support staff member in the fall of 2003 find themselves in the same situation, P.C.. Mrs. Clauer had been an employee of the District for two years serving as a bus driver. Mrs. Clauer was then offered a full-time teacher assistant position and became eligible for the health, dental, life and long-term disability insurances. Mrs. Clauer asked the District Bookkeeper what the cost would be for the health and dental insurance. Mrs. Clauer was responded back in writing through email and informed she would pay the equivalent to what is stated in step "A" (75%) of the Collective Bargaining Agreement due to this being the first year of her eligibility. Mrs. Clauer did not take the health and dental insurance benefit.

There is no dispute between the District and the grievant that the grievant is eligible to receive District-paid insurance, however, the parties disagree as to the appropriate percent of District funded health and dental premium to be paid to the grievant.

The District claims a timeliness problem pertaining to the initial filing of the grievance according to Collective Bargaining Agreement Article 7.06. The Association will stipulate to the fact that the District and the grievant held a preliminary conversation initiated by the grievant as to the percentage of District-paid health and dental plan premium coverage during

the summer of 2006. The Association will not stipulate to the fact that the grievant knew, in absolute certainty, the percentage of District-paid health and dental premiums at that time.

## POSITIONS OF THE PARTIES

### Association

The grievance was initiated in a timely manner. Step 1 requires that the grievance be filed within thirty days of "the events giving rise to the grievance." The step 1 informal grievance process was commenced before the beginning of the school year. The District did not violate the agreement until it made its first improper health insurance contribution. This occurred after the school year. The grievance process was therefore initiated in a timely manner.

The District's claim that the Association failed to timely move the grievance to step two is without merit. The District argues that the step two response was filed on August 30, 2006, more than nine days after the "response" of the bookkeeper and the district administrator on August 16 and 17, respectively. However, neither of these people are Grievant's immediate supervisor. Her immediate supervisor is Principal Mark Uppena. He gave his response August 30, 2006. Her appeal was timely.

The language of Article 20 is clear and unambiguous. It refers to years of service. If there were any doubt one need only look at comparable language in the collective bargaining agreement. Article 8 defines a year of service for layoff purposes as working full-or part-time in any year. The salary schedule also progresses on the basis of years of service. The phrase "date of hire" is used as the date first employed elsewhere in the agreement.

The situation with P.C. is not a "past practice." There is no evidence that the Association ever knew about this incident. Further, there is no evidence as to whether Ms. Clauer received health insurance through other sources. The one instance cited by the District is not sufficient to show a continuing pattern of acceptance by the Association of the District's position. The Association asks that the arbitrator require the District to offer her health and dental insurance at the sixth level of payment. The Association further requests that the arbitrator taken any other action he may see fit to make the grievant whole.

### District

This grievance is untimely. The Association initiated this grievance on August 16, 2006, more than 42 days past the second time (June 21, 2006) the bookkeeper notified the Grievant of her decision to prorate the health benefit at 75%. This violates the first step which requires that the grievance process be initiated within 30 days of the events giving rise to the grievance.

The Grievant received her step 1 response from the bookkeeper on August 16, 2006, and from the District Administrator on August 17, 2006. Grievant filed her step 2 appeal on August 30, 2006, more than 9 days later. This is beyond the 5 days allowed.

The District did not violate Article 20 when it placed her at step A of the health insurance progression. The Association's claim is that she is entitled to credit for the previous years she worked even though she did not qualify for health insurance on those years. In order to succeed on its claim, the Association must show the parties' mutual agreement that part-time employees ineligible for health insurance were able to advance through the schedule. This they cannot do.

The Association's position is inequitable. It allows the Grievant to reap great rewards for only working a minimum number of hours.

The meaning of Article 20.02 must be determined in relation to other Articles dealing with "of service." This provision should be compared with Section 10.02 vacation which provides that employees receive benefits based upon years "of service." Further, the meaning of Article 20.02 must be determined in relation to the broad grant of authority found in the management rights clause. Article 3 states that management functions ". . . shall be limited only to the precise extent such functions and rights are explicitly, clearly and unequivocally restricted by the express terms of this Agreement." The Association has failed to establish such a limitation exists in Article 20.

The past practice evidence supports the District's position that the parties did not intend to place employees on the steps of Sec. 20.02 based upon years of service. The District followed its view in one prior instance. The employee was P.C. who did not grieve the District 's decision.

The District objects to the remedy proposed by the Association, granting her health insurance at the 95% rate and paying 100% of her medical bills for the period in which she was denied health insurance. She is entitled to only 10/12 of the benefit. Further, the payment of expenses is not allowed under the agreement. In its view, this remedy exceeds the arbitrator's authority. The District concludes that the grievance should be dismissed.

## DISCUSSION

### 1. Procedural Issues

The first procedural issue is whether the grievance was initiated in a timely manner. Step 1 provides that a grievance be initiated ". . . within thirty (30) days after the occurrence of the events giving rise to the grievance . . . " This is a situation in which the parties anticipated that there might be an issue before the "event" actually occurred. The "event" actually occurred when the District first failed to pay the correct amount of health insurance premium or when the employee first made a choice not to accept health insurance based on the

District's stated position. In a situation of this nature the grievance time line starts when the grievant knows that he or she has a different interpretation of the agreement and that the District disagrees with that view. Otherwise, it starts at the "event."

The District bears the burden of proof to establish that the grievance was not initiated in a timely manner. In the situation in which the parties anticipate an issue might occur, the decision as to whether a waiver has occurred is done on a case-by-case basis. In this situation, the grievance involved an individual employee. The employee inquired about the position of the District, but the evidence is insufficient to establish that she knew about the position of the Association until August. If the Association had agreed with the District, I doubt Grievant would have pursued the matter. Thus, the evidence is insufficient to show that she knew there was a dispute. The first step of the grievance procedure is an informal process. The purpose of the process, however, is to not have any grievances at all. The construction of the time limits sought by the District seems convenient to it in this case, but it would lead to more grievance filings than is necessary. The event giving rise to the grievance is the first date the District failed to pay the appropriate benefit.

The step 2 filing is also timely. Greivant filed her step 2 appeal on August 30. It appears that the "event" had not yet occurred and it is unclear when she received an answer from her principal who was her immediate supervisor.

**2. Merits**

It is the responsibility of the arbitrator to interpret the collective bargaining as it is written by the parties. Accordingly, if the language of a collective bargaining agreement is clear and unambiguous, the arbitrator must apply it as it was written by the parties. Language is ambiguous if it is fairly susceptible to more than one meaning. It is important to note that words are given their ordinary meanings unless they are technical. If they are technical, they are given their technical meaning. When language is ambiguous, it is the responsibility of the arbitrator to interpret the language, by looking at the context it of its usage, the purpose of the provision, the usage of similar phrases in the agreement, the history of the language, and the "past practices" of the parties. Arbitrators also use the rules of contract construction ordinarily used by arbitrators and the courts.

Section 20.02 is clear and unambiguous as to the points in question. The language "[n]ew hires starting in January 1, 1991 . . ." refers to the date of initial hire. Section 20.02 applies only to people hired after that date. The term "hire" is used in two senses in education. The first sense is the initial date of hire. The second sense is appointment in successive years as the individual employment contracts are renewed or revised each year. However, in this context it could only mean initial date of hire. "First year" and the successive references to "year" are to years of employment without regard to hours of service. It is impossible that they mean annual renewal. It is possible, but very strained, to interpret "year" as year of eligibility for the benefit. Article 8 defines "year of service" as follows:

> A year of service shall be based on an employee working a full or part-time year in the District.

The language of this Sec. 20.02 refers to "year." Unless the parties clearly identified it otherwise, it would normally refer to "year of service" as that term is used by the parties and ordinarily used in labor relations.

If there were any ambiguity in this provision, one need only look to Article 10, the vacation provision. Vacation is afforded only to full-year employees for obvious reasons. It provides for increasing vacation for years of service. The terms "year of service" in that provision and in Sec. 20.02 are substantially parallel. If there were any further ambiguity one need only look at the purpose the provision which is to reward long service and encourage part-time people working few hours to remain employed and seek advancement. This is essentially the same purpose as Article 10, to encourage longevity in employment.

By contrast, the District's position (year of eligibility) leads to harsh and absurd results. It could lead to the result that employees who have worked far fewer hours for the District in their career would receive substantially more benefit under this provision than those that have devoted many years of less than qualifying service. That interpretation also would incorporate ambiguities as to whether eligibility starts over again if there is a break in service. A perusal of the other terms of the agreement demonstrates that the parties are of sufficient skill that they would not have introduced this unresolved ambiguity.[1]

The District relied upon its one instance of alleged "past practice." Past practice evidence is useful when the number of occurrences over time demonstrate that the interpretation of the agreement they support is established and accepted between the parties. The one instance offered by the District is hardly such evidence. There is no evidence the Association ever was aware of this incident. This is not significant evidence of past practice.

Accordingly, since the District violated Section 20.02 in the manner it offered to pay for Greivant's health insurance, the grievance filed herein is sustained.

**3. Remedy**

The prospective aspects of the remedy are not in dispute. The District shall forthwith offer Grievant health insurance at the appropriate level. The purpose of the remedy is to put the employee in the same position she would have been in had the District not violated the agreement. The record is not clear as to whether the Grievant obtained health insurance elsewhere, took health insurance from the District at the lower rate, or went without insurance. The appropriate remedy in this case is to order the District to make her whole. If she took health insurance at the lower amount offered by the District she shall be made whole for the difference between what the District paid toward health insurance and what it should have

[1] The other provisions are too numerous and lengthy to set out.

paid. This is to be done as a direct payment to her or may be done by an increased contribution to health insurance until the total amount is paid. If she obtained health insurance elsewhere, she is entitled to be paid the full amount of the premium the District should have paid without offset for the fact that health insurance was paid by other means. If she went without health insurance, she is entitled to be made whole with the greater of the premium the District should have paid, or the expenses which would have been covered, but not both. It will be necessary to have further hearing to determine what, if any, health expenses were properly incurred and are properly payable.

## AWARD

1. Since the District violated Article 20 by not properly paying its share of health and dental insurance contribution, it shall immediately start paying its proper share of health and dental insurance at the appropriate rate.

2. The District shall make Grievant whole for the lost benefit, by paying her all premiums it would otherwise have paid had it properly complied with Article 20, from the date of the filing of the grievance until it pays the proper portion.

3. If Grievant was otherwise uninsured during this period, the Grievant may be entitled to reimbursement of some of her uncovered medical and/or dental expenses in excess of the premium make-whole benefit ordered in 2 above. I reserve jurisdiction over issues arising from the specification of this remedy if either party requests that I do so, copy to opposing party, within sixty (60) days of the date of this award.

Dated at Madison, Wisconsin, this 11th day of July, 2007.

Stanley H. Michelstetter II /s/
Stanley H. Michelstetter II, Arbitrator

SHM/gjc
7161