

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

RIVER FALLS SCHOOL DISTRICT

and

**WEST CENTRAL EDUCATION ASSOCIATION
RIVER FALLS UNIT**

Case 53
No. 66441
MA-13529
(Nordgren Grievance)

Case 55
No. 66918
MA-13683
(Ammann Grievance)

Appearances:

Barry Forbes, Esq., Staff Counsel, Wisconsin Association of School Boards, 122 W. Washington Ave., Madison, Wisconsin, on behalf of the District.

Brett Pickerign, Esq., Executive Director, West Central Education Association, 105 21st Street North, Menomonie, Wisconsin, on behalf of the Association and the Grievants.

ARBITRATION AWARD

Pursuant to the labor agreement, the parties selected Arbitrator Sharon A. Gallagher from a panel of five WERC Staff Arbitrators in the Nordgren Grievance; thereafter, they jointly requested that Arbitrator Gallagher also serve as arbitrator of the Ammann Grievance. The Undersigned then agreed to serve as arbitrator in both cases. Hearing in both matters was originally scheduled to be held on March 15, 2007, but the hearing was cancelled and then rescheduled and heard on August 20, 2007, at River Falls, Wisconsin. No stenographic transcript of the proceedings was made. The parties presented documentary evidence as well as the testimony of four witnesses in the Nordgren case and two witnesses in the Amman case. The parties then agreed to submit briefs postmarked October 12, 2007, and they agreed to waive the right to file reply briefs. After one agreed-upon extension for briefing, the Undersigned received the parties' briefs by October 22, 2007, whereupon the records in these cases were closed.

STIPULATED ISSUES:

The parties stipulated to the following issues for determination in these cases:

Nordgren:

1. Did the District violate the collective bargaining agreement when it denied Barb Nordgren's request to convert unused sick days to pay for either WEA dental insurance or her portion of her costs for a non-WEA plan?
2. If so, what remedy should be granted?

Ammann:

1. Did the District violate the Collective Bargaining Agreement when it denied Duane Ammann his separation grant?
2. And if so, what is the appropriate remedy?

**RELEVANT CONTRACT LANGUAGE –
SECRETARIAL UNIT:**

ARTICLE XIV – INSURANCE

- A. The Board of Education will pay the full premium of single or family plan hospital/surgical group health insurance for full-time secretaries and a proration of the premium based upon the percentage of hours employed in relation to (x/1,968) 1,968 hours for part-time employees. Effective January 1, 2004, the Board will contribute \$1,000 per month for family health insurance premiums and \$400 per month for single health insurance premiums and a proration of the premium based upon the percentage of hours employed in relation to (x/1,968) hours for part-time employees. Effective July 1, 2006, the District will contribute \$1,075 a month for family or \$428 a month for a single District selected health insurance.

- B. The Board of Education will pay the full premium of single or family coverage under the district-selected dental plan for full-time secretaries, and a proration of the premium based upon the percentage of hours employed in relation to (x/1,968) 1,968 hours for part-time employees. Effective January 1, 2004, the Board will contribute \$75 per month for family dental insurance premiums and \$25 per month for single dental insurance premiums and a proration of the premium based upon the percentage of hours employed in relation to (x/1,968) hours for part-time employees.

The health and dental insurance plan selected by the Board shall be the same as that used in the certified staff master contract and as changed from time to time pursuant to the Master Contract.

- C. The Board of Education will contribute toward life insurance premiums at the rate prescribed by the retirement fund.
- D. The Board will pay for a long term disability plan for each employee contracted by the Board subject to carrier approval. The plan shall be a ninety (90) day plan with a 90% benefit level and a cost of living provision. This provision will be in effect upon ratification of the 1991-93 contract.
- E. Insurance Option: Eligible employees who do not take the district health and/or dental insurance will receive \$801 in lieu of health insurance and/or \$108 in lieu of dental insurance in a lump sum payment in June, provided that their written notification of their election of the insurance option is received by the district prior to the previous November 15.

ARTICLE XV – RETIREMENT

- A. The Board of Education will contribute the total amount of the employee's portion of retirement.

- B. Employees retiring at fifty-five (55) years of age or older with ten (10) years of continuous service to the School District of River Falls will be allowed to convert unused sick leave days to pay for health insurance premiums. The amount of money provided will be equal to the number of sick days accumulated multiplied by the employee's daily rate of pay at the time of retirement.

ARTICLE XVI – LEAVES OF ABSENCE

A. Personal Sick Leave:

1. Cumulative Days: Sick leave shall be cumulative up to 144 days.
2. Employees under contract for a twelve (12) month period shall be granted twelve (12) days of sick leave for each year.
3. The School District may require the Employee to furnish a medical certificate from a physician as evidence of illness or disability, indicating such absence was due to illness or disability, in order to qualify for sick leave pay. In the event that a medical certificate will be required, the Employee will be so advised during the time of the illness. The Employee shall go to a physician selected from a panel of three (3) physicians to be furnished by the School District. The School District shall pay for the cost of the physician's service.
4. In cases of serious illness or injury to a member of one's immediate family or a death in the family, the Employee will be granted reasonable time, with full compensation, to handle the emergency situation subject to the approval of the immediate supervisor, and the Superintendent.
5. Emergency leave shall be deducted from sick leave benefits.

**RELEVANT CONTRACT LANGUAGE –
CUSTODIAL UNIT**

ARTICLE XIV – RETIREMENT

- A. Employees retiring after ten (10) continuous years of service to the School District will be granted a separation grant by the District equal to the number of days of accumulated sick leave multiplied by the employee's daily rate of pay at the time of retirement. This separation grant shall be paid out over a two year period in equal installments.

- B. The Board of Education will contribute the total amount of the Employee's portion of retirement.

FACTS:

Nordgren Case:

Grievant Barb Nordgren (hereinafter Nordgren) was hired by the District on September 13, 1982 as a paraprofessional and continued in that position until she transferred into a District secretarial position (85% of full-time) in August, 1987. Thereafter, Nordgren was continuously employed by the District until she retired effective June 16, 2006. Nordgren never served on the Association's bargaining team.

During her employment at the District, Nordgren chose not to take the District's health insurance but she did take District life insurance and family dental insurance. Because Nordgren was covered by her husband's health insurance plan, she elected not to take District health insurance. Therefore, from 1998 (when pay in lieu of became available) until her retirement, Nordgren received \$801 per year in lieu thereof, for each year of her continued employment pursuant to Article XIV, Section E, a total of \$ 6,408.00. At the end of her employment, Nordgren did not change her health insurance election, although she could have opted to begin taking District health insurance had she done so prior to November 15, 2005. When Nordgren retired as of June 16, 2006, she had 122.4 days of accumulated sick leave and her ending rate of pay was \$14.40 per hour.¹

¹ At 85% of full time, Nordgren's 144 accumulated sick days would equal 122.4 eight hour sick days. At \$14.40 per hour, Nordgren's end rate, these 122.4 days would have been with \$14,100.48.

Nordgren received no counseling from the District regarding her retirement before her last day of work. Rather, Nordgren initiated e-mail and telephone inquiries regarding her options at retirement. Nordgren had expected the District to pay her dental insurance premiums after retirement under Article XV, B because she had taken that benefit during her employment. But when Nordgren e-mailed the District's central office in April or May of 2006 to request this, she was notified that she was not eligible to apply for the benefit; that unused sick leave could only be used to purchase WEA health insurance. Nordgren was shocked by this news. By letter dated July 12, 2006, the Association requested that the District pay a portion of her husband's health insurance, which request the District also denied Nordgren on August 30, 2006 (Exhs. N-2 and N-3).

Director of Personnel Donna Hill (for the past four years) stated that she could find no District records to show that the District had ever denied an Article XV, B request by a retiring employee or that any other retiring employee had ever requested to receive District-paid dental insurance under Article XV, B or to use that provision to pay for non-District health insurance premiums. Hill stated that Nordgren never requested to be covered by the District's group health plan prior to retirement, although she could have done so during a regularly offered open enrollment period prior to November 15, 2005, as stated in Article XV, Section B.

Hill stated that Nordgren's Article XV requests were denied because such requests had never been honored before and because it was commonly understood that accumulated sick leave could only be used to pay for WEA health insurance post-retirement. In this regard, former District Finance Director Jacobson who had served on the Districts' bargaining team for the labor agreements covering 1995 through 2006 stated without contradiction that during bargaining, the District made it clear that the proposed payout of accumulated sick leave at retirement could only be used to buy the current insurance at the District, WEA insurance. Jacobson also stated that use of accumulated sick leave to pay dental premiums was omitted because other bargaining units had to include dental to get health insurance. The language of Article XV, B was therefore changed in the 1998-2000 agreement to read as it does in the current agreement. In addition in the 1998-2000 contract, the parties agreed to increase the cap on accumulated sick leave from 100 days to 120 days (Exh. N-8). It is undisputed that no unit employee has received payment of District dental premiums or payment of non-District health insurance premiums to Article XV, Section B.

Jacobson also stated that before the 1995-98 contract no provision existed for sick leave payout in this bargaining unit. Rather, the only retirement benefit available to this unit was WRS according to the following language:

ARTICLE IX – RETIREMENT

The Board of Education will contribute the total amount of the employee's portion of retirement, not to exceed six point two (6.2%) percent of the employee's gross salary. As part of the 1995-98 agreement, provision is made that if the WRS retirement percentage changes, the District will continue to contribute the total amount of the employee's portion of retirement.

The language which now appears in Article XV B was first placed in the agreement in the 1998-00 agreement (Exhs N-8 and N-9). Before the 1998-00 agreement, different language existed on this point, Article XI E, at which read as follows:

Secretaries retiring after ten continuous years of service to the School District of River Falls will be granted a separation grant by the district equal to the number of days of accumulated sick leave, up to 100, multiplied by \$ 25.00.

However, Jacobson also stated that before 1995, there was a practice at retirement of allowing unit employees to select to receive either a cashout of accumulated sick leave or to have the District pay WEA insurance premiums using accumulated sick leave. At this time, a grievance was filed regarding the cash payout/premium payment options and one result thereof was that the parties learned that the IRS could tax both options if employees were given a cashout option. Thereafter for each year, the Board of Education allowed unit employees to decide as a group whether they wished to have only the cashout option available to retiring employees or only the insurance premium option. As a result, the unit went back and forth on the benefit two or three times selecting one or the other option to avoid taxation of the health premiums option.

The undisputed evidence herein (Exh. BN-1) showed that the following unit employees retired between 2000 and 2006 with the years of service and their ages listed next to their names; those who were taking District health insurance at the time they retired, received payment of District health insurance premiums from then accumulated sick leave and those who were not taking District health insurance at the time they retired received no benefit:

Year	Secretary Retirees	District Health Insurance	Sick Leave Toward District Health Insurance	Age at Retirement	Years of Service
2000	Marge Mittelstadt	Yes	Yes	65	27
2002	Elleen Briggs	No	No	56	20
2002	Virginia Luka	No	No	55	35
2002	Sharon Paulson	Yes	Yes	60	24
2006	Barb Nordgren	No	No	62	24

It is also undisputed that in each year following the inclusion of Article XIV E, the District has sent a notice to each school requesting that every employee indicate whether they wanted cash in lieu of insurance payment referred to as the “insurance buyout” or they wished the District to pay their WEA health premiums. And in the annual notice sent, the District quoted the language of Article XIV E.

Ammann Case:

Facts:

The parties stipulated to the following facts in this case:

Prior to terminating his employment, Duane Ammann was a custodian for the district and a member of the association’s bargaining unit. He was first employed by the district on August 1, 1987. He worked for the district continuously until February 7, 2007. At the time he left the district, he had accumulated 144 days of sick leave. His hourly rate of pay was \$14.35, he worked an 8 hour day and also received a longevity payment of \$20 per month. Ammann was age 50 at the time he terminated his employment. Ammann is not old enough to receive a retirement annuity under the Wisconsin Retirement System at this time.

District custodians are a separate bargaining unit which was organized after the secretarial unit, in 2000. Prior to 2000, the District applied its "Personnel Practices for Custodians" to custodial employees which contained the following provision:

ARTICLE X – RETIREMENT

- A. Employees retiring at fifty-five (55) years of age or older with ten (10) years of continuous service to the School District of River Falls will be allowed to convert unused sick days to pay for health insurance premiums. The amount of money provided will be equal to the number of sick days accumulated multiplied by the employee's daily rate of pay at the time of retirement.

To avoid taxation, the above provision was elected. However, the other non-elected provision which follows may be negotiated next contract as the elected provision: Employees retiring after ten (10) continuous years of service to the School District will be granted a separation grant by the district equal to the number of days of accumulated sick leave, up to 120, multiplied by \$40.00.

- B. The Board of Education will contribute the total amount of the Employee's portion of retirement.
- C. Conflict of Law: If any aspect of this article is found to be discriminatory or violative of the Federal Age Discrimination in Employment Act, the Wisconsin Fair Employment Act, or any other state or federal law by any court of administrative agency of competent jurisdiction, then that specific portion of the article shall be considered null and void. Subsequently, the parties shall meet to discuss a successor clause to replace the voided language.

The first contract in the custodial unit covered the years 2000 through 2002. In that agreement the parties agreed to allow unit employees to accumulate 144 days of sick leave and the following provision:

ARTICLE XIV – RETIREMENT

- B. Employees retiring after ten (10) continuous years of service to the School District will be granted a separation grant by the District equal to the number of days of accumulated sick leave multiplied by the employee's daily rate of pay at the time of retirement. This separation grant shall be paid out over a two year period in equal installments.
- C. The Board of Education will contribute the total amount of the Employee's portion of retirement.

The above quoted "Retirement" provision remained unchanged in the effective 2004-07 agreement. Grievant Duane Ammann (Ammann) was employed full time by the District for 19 years as a custodian, from 1987 until he terminated his employment at age 50 to take another job in Spooner, Wisconsin, in 2007. At the time he terminated his District employment, Ammann submitted and signed a written resignation form to the District in February 2007. Because he had 10 continuous years of service to the District, Ammann believed he should receive a "separation grant" or cash payout pursuant to Article XIV of the custodial unit contract equal to his accumulated sick leave (144 days, at 8 hours per day) paid at his "daily rate of pay." The District denied Ammann's grievance (filed by letter dated February 16, 2007) on March 7, 2007 because Ammann had not "retired" in 2006 and because he terminated from his District portion "to work somewhere else" (Exh. A-2).

It is undisputed that in the past 10 years (the only time frame for which records are available) the following five custodians each received Article XIV separation grants (their years of service and ages are listed next to their names):

- 1) Larry Walen: 19 years; Age 61
- 2) Larry Johnson: 28 years, Age 61
- 3) Jim Killian: 10 years, Age 63
- 4) Dan Langer: 24 years, Age 65
- 5) Duane Huppert: 16 years, Age 62

It is also undisputed that the District has no practice of asking employees, at the time they exit, whether they intend to retire or they intend to find other employment. Finally, at the instant hearing, Ammann admitted that he has been employed by Wisconsin Indianhead Technical College since leaving his District position; that his current position is covered by WRS; and that as of the hearing date he was not receiving a WRS pension.

POSITIONS OF THE PARTIES - NORDGREN:

Association:

The Association argued that the language of Article XV, Section B is clear and unambiguous - - the only conditions precedent employees must meet in order to convert their unused sick leave to "health insurance premiums" at retirement are that they be 55 years of age and have 10 years of continuous service to the District. As Nordgren was age 56 and had 24 years of continuous District employment when she retired, she should have been allowed to convert her accumulated sick leave into premium payments toward her health insurance, provided through her husband's employer. Therefore, the Arbitrator must apply the clear language of the agreement and sustain the grievance.

The Association asserted that the District's interpretation, that Article XV requires that 1) employees be covered by District health insurance prior to retirement; 2) that only payments to the District's health plan are allowed, 3) which the District will then make for the employee. In this regard, the Association noted that Article XV, Section B is written in the passive voice so that the eligible retired employee, not the District, is expected to pay their own health premiums. In addition, Article XV states only that unused sick days may be converted to pay for health insurance premiums; the language does not state it must be the District's plan, a District-selected or contracted plan, or that retiring employees must be covered by District's insurance. Also, close analysis of the entire agreement, interpreting it as a whole, shows that Article XIV indicates that when the parties wished to do so they clearly stated the health and dental insurance plans to be used and the payor of insurance. In contrast, Article XIV, E and XV, B both utilize passive voice and state employee rights/stipends over which only the employee has control.

In the alternative, if the Arbitrator found the language to be ambiguous, the Association contended that the grievance must be sustained as well. In this regard, the Association argued that Article XV, B was drafted with the intention of allowing retired employees to convert the value of their unused sick days in a way that minimizes negative income tax consequences and that best met the employees' needs, and this approach should be adopted by the Arbitrator. On this point, the Association noted that although retired Finance Director Jacobson stated herein that the District made it clear at bargaining that the Article XV, B would be limited to "the District-provided WEA insurance plans," Jacobson's testimony showed that the purpose of District never intended to exclude employees, to encourage or discourage participation or to limit eligibility to employees covered by District insurance. Rather from 1995 to 2001 Article XV, B was designed and intended to meet the needs of retiring employees giving those covered by District insurance premium payments and those not covered a cash stipend post-retirement. The Association then noted that the interest arbitration case covering the 2001-03 labor agreement concerned only wages and health and dental insurance, but if this Arbitrator ruled in favor of the District herein, this would essentially change the outcome of the 2001-03 arbitration, contrary to its prior application and intent, to exclude employees from using it based on their insurance status.

Finally, the Arbitrator should apply principles of fairness and equity in declaring the proper interpretation of Article XV, B. Also, the Association observed that the District made no effort to notify Nordgren of her responsibilities or her rights prior to her retirement and as Nordgren had been receiving pay in lieu of insurance under Article XIV, E, she needed timely and specific notice that she had to seek coverage of the District's health insurance to be eligible for the Article XV, B benefit post-retirement. The District failed to give Nordgren such notification. For these reasons the Association urged the Arbitrator to sustain the grievance and make Nordgren whole.

District:

The District asserted that its decision to deny Nordgren's request to convert her unused sick days at retirement to pay either her District dental premiums or for some or all of her husband's health insurance premiums did not violate the agreement. The District noted that here, the Association has the burden of proof. The District argued that the language of Article XV, B is ambiguous, making admission and analysis of bargaining history and past practice appropriate. In this regard the District noted that the contract simply states, without elaboration, that unused sick leave may be used "to pay for health insurance premiums" - - it fails to state what plan(s) can be paid for under the provision. Thus, in its view, the District's uncontradicted evidence regarding bargaining history and past practice must be used to fill in the blanks in Article XV, B.

Concerning bargaining history, the District noted that former Director of Finance Jacobson, the sole witness in the case on this point, stated that when the District and Association agreed to place the language of Article XV, B into the agreement in 1998, the District made it clear that only District health insurance premiums would be paid for by converted unused sick leave. The Association undisputedly acquiesced to this position.

Concerning the past practice evidence Personnel Director Hill, provided information concerning four prior unit retirees. Of these four, all four were 55 or older and had served the District for more than 10 years, two were covered by District health insurance and they received premium payments from their converted accumulated sick leave; two others were not covered by District health insurance during their employment but had received the cash in lieu of insurance benefit (under Article XIV, E) and they received no benefit under Article XV, B at retirement. No grievances were filed on behalf of the latter two retirees.

The District then cited CUBA CITY SCHOOL DISTRICT, CASE 23, NO. 64841, MA-13027 (JONES 6/06) in which no evidence of bargaining history or past practice was proffered. The District quoted from the above award regarding the proper arbitral approach when contract language is clear and the proper approach to be used when contract language is ambiguous. In all of these circumstances, the District urged the Arbitrator to deny and dismiss the grievance.

POSITIONS OF THE PARTIES - AMMANN:**Association:**

The Association argued that the language of Article XIV-Retirement is clear and unambiguous – that the only condition employees must meet to receive a “separation grant” equal to up to 144 days accumulated sick leave paid at the employee’s daily is that they have 10 continuous years of service to the District at the time of separation. In this regard, the Association strongly disagreed with the District’s instance that the use of the words “retiring” and “retirement” requires a conclusion that employees seeking an Article XIV separation grant must be retiring. Rather, the Association asserted that all that is required by the language is 10 years of tenure accumulated sick days and that the employee has “severed” employment. Here, Ammann had 19 years of service to the District and he had accumulated 144 days of sick leave.

In addition, Ammann stated herein, as the only witness regarding bargaining history, that the change made in 2000 in Article XIV which removed the reference to or requirement that employees be 55 years of age in order to receive a separation grant, that he could not recall why the age reference was removed from Article XIV. This change, the Association contended, is central to the proper analysis and application of Article XIV in this case. Also, the Association contended that acceptance and application of the District’s approach here would render meaningless the deletion of the age 55 requirement.

The Association also took issue with the District’s citation and use of two cases, CITY OF KENOSHA, CASE 14, NO. 44546, MA-6372 (MAWHINNEY, 1991) and CITY OF ASHLAND, CASE 53, NO. 42668, MA-5769 (BIELARCYK, 1991). The Association argued that the latter case actually supports its arguments herein and the latter is factually distinguishable from this case. In addition, the Association observed that here the past practice does not weigh against Ammann prevailing as this situation (an employee separating to take another job) has never presented itself to the District before. The Association also urged the Arbitrator “to consider meaning that has not been communicated during negotiations” as evidence.

As Ammann, a member of the Association’s bargaining team stated herein, the District never made clear that its use of the term “retire” in Article XIV meant that eligible employees would have to retire under WRS to receive the benefit. Analysis of the 2000-02 bargaining documents shows that the parties agreed that the District could pay for the Article XIV benefit for any employee who left, by hiring a replacement employee at a lower rate, which demonstrated the parties’ intention that all employees who separated could and should receive the benefit.

Finally, the Association asserted that this Arbitrator should apply principles of fairness and equity to sustain this grievance. In this regard, the Association noted that Ammann was a loyal 19 year employee of the District who saved his sick leave; and that Ammann could have used more sick days if he had known he was ineligible for an Article XIV benefit. In all of the circumstances here, the Association urged the Arbitrator to sustain the grievance and make Amman whole.

District:

The District asserted that this Arbitrator cannot sustain Ammann's grievance because the clear and unambiguous language of Article XIV – Retirement requires employees, to be eligible, must be “retiring” after at least ten years of continuous employment to be paid a separation grant equal to up to 144 accumulated sick leave days paid out at their “daily rate at the time of retirement.”

The District noted that Ammann was only 50 years of age, too young to be entitled to a WRS annuity, at the time he quit to take another position (covered by WRS) in Spooner, Wisconsin. As the terms “retiring” and “retirement” are generally understood to involve withdrawing from or leaving the workforce due to age, disability or illness to live on a pension, Ammann did not meet this clear requirement of Article XIV. In addition, the District noted that the five other custodians who retired before Ammann had all worked for the District for at least 10 years and they were all over 60 years of age and eligible to apply for and receive a WRS annuity when they left District employment.

The District argued that CITY OF ASHLAND, SUPRA and CITY OF KENOSHA, SUPRA are on point, and they demonstrate that employees must meet all conditions precedent before they are eligible for sick leave payouts, and that all words of the contract involved must be given meaning so that if the contract states an employee must retire to receive the benefit, employees must, in fact, retire.

Therefore, the District urged that this Arbitrator must apply the words of Article XIV. Further support for this approach can be found in Article IX B which describes when seniority will be broken:

- B. Loss of Seniority: Seniority and the employment relationship shall be broken and terminated if any employee:
1. Quits;
 2. Is discharged;
 3. Fails to report to work within seven (7) working days after having been recalled from layoff;
 4. Fails to be recalled from layoff after a period of one (1) year from the date of layoff; or
 5. Is retired.

The fact that the parties removed the age requirement from Article XIV, in the District's view, does not require a conclusion that the Arbitrator must read out the words "retiring" and "retirement" from the Article. Rather, the District urged that all this deletion means is that employees must retire, but they need not be 55 years of age to do so. Because it is undisputed Ammann never retired, he was not entitled to receive an Article XIV separation grant and the Arbitrator must deny and dismiss this grievance.

DISCUSSION – NORDGREN

The Association has argued that the language of Article XV, B is clear and unambiguous while the District argued the exact opposite - - that the language of Article XV, B is ambiguous making evidence of past practice and bargaining history relevant to flesh out the parties' agreement. I must agree with the District on this point for the following reasons. First, Article XV, Section B refers only to "health insurance premiums" - - it does not state which premiums should be paid (e.g., District-selected/contracted plan, the District health insurance plan, etc.). I note that Article XIV provides WEA group health insurance for District employees who are eligible and wish to be covered thereby. Although it is logical that the premiums the parties intended to be paid under Article XV, B were those described by the contract and no others, the language of Article XV, B does not so state. And I note that in other areas of this contract the parties were more specific in referring to District benefits. In these circumstances, the contract language is certainly susceptible of two different, logical interpretations as evidenced by the above analysis and the parties' strong arguments on both sides of the issue. In my view, therefore, extrinsic evidence of past practice and bargaining history must be admitted and considered in this case to determine the parties' true intent when drafting Article XV, B.

Regarding bargaining history, it is undisputed by the parties that in negotiations over the 1998-00 agreement, the District made it clear, and the Association failed to object or make a counter proposal thereon, that the Article XV, B benefit would be limited to paying for District-provided health insurance using converted unused sick leave. This evidence went uncontested by the Association herein. This evidence could not be clearer and it weights heavily in this case in favor of the District's assertions.

The only argument proffered on this point by the Association was that the parties never intended to exclude employees from Article XV, B benefits or to limit eligibility to the benefit only to employees covered by District health insurance prior to retirement and that the practice prior to 1998 demonstrated that the parties intended to meet the needs of retiring employees on a year-by-year basis, giving those retiring each year either cash or insurance premium payments as the group wished. I disagree. In my view, the practice as it existed prior to 1998 ended when the parties placed Article XV, B in the agreement and they thereby made it clear that cash payments would no longer be granted.

In addition, the evidence of past practice - the treatment of four unit employees who retired after Article XV, B was placed in the agreement--showed that at no time did the District give any Article XV, B benefits to retiring unit employees who were not members of the District's WEA group health plan. Rather, the evidence showed that the District only converted unused sick leave and paid for retired employees' District health insurance and that employees not covered by the District's health insurance plan at retirement received nothing. This is strong evidence which supports the District's arguments herein and concerning which the Association proffered no evidence to the contrary

The Association has argued that Article XV, B was written in the passive voice which requires a conclusion that the retired employees must be given a stipend to pay whatever health insurance premiums they choose and that the District must have no control over the stipend once the retiring employee proves eligibility - - that they are at least 55 years of age and have served the District for 10 continuous years. Were this the case, the IRS could determine employees had received cash payments so that all Article XV, B benefits would become taxable to all retired employees. This result was clearly not intended by the parties.

The Association urged that a ruling in favor of the District herein would essentially change the outcome of the 2001-03 interest arbitration (in which Article XV, B was not at issue) to exclude retired employees from the benefit based upon their insurance status at retirement. Again, I must disagree. The record evidence is clear that the parties intended that only District health insurance premiums should be paid for by conversion of unused sick leave. In my view, there is no evidence to show that a ruling in favor of the District herein would abrogate the 2001-03 interest arbitration award.

The Association has also argued that the affect of the District's actions herein is patently unfair to Nordgren, a 24 year employee of the District, who was given no exit counseling regarding her rights/benefits at retirement and no notification in 2006 that she would be waiving her rights under Article XV, B by continuing to receive the \$801 per year cash in lieu of insurance benefits payment under Article XIV, E. To me, this is the strongest Association argument but in my view it is insufficient to require a ruling in favor of Nordgren. The District should have counseled Nordgren; it should have assisted her prior to retirement to understand and appreciate her post-retirement benefits.

However, the only evidence we have in this record regarding when the District first knew Nordgren was considering retirement was when she began e-mailing and calling the Central office in April or May, 2006 to inquire about her post-retirement benefits. This was clearly not within the time frame prior to November 15, so that Nordgren could have refused the \$801 payment in lieu of insurance and requested to be

covered by District health insurance to preserve her Article XV, B benefit. Also, the timing of Nordgren's inquiries appeared to be entirely within her control, and not within the District's control. Finally, there is no evidence to show that Nordgren sought and was denied more in depth counseling, that the District failed or refused to give her any information she requested or that the District took any affirmative action which lead Nordgren to the mistaken belief that she was entitled to an Article IV, B benefit. In all of the circumstances, the Association's equity/fairness argument is insufficient to overcome the stronger evidence of past practices and bargaining history.² This grievance will, therefore, be denied.

DISCUSSION – AMMANN

Association:

The Association argued that Article XIV clearly and unambiguously states that Grievant Ammann only needed to have accumulated unused sick leave and to have worked at least 10 continuous years for the District before terminating his employment for any reason to be eligible to receive a "separation" grant for the two years following his termination. Although I agree that Article XIV is clear and unambiguous, I disagree as to the meaning of the language.

It is significant, in my view, that adopting the Association's interpretation of Article XIV would require that two words "retiring" and "retirement" would have to be read entirely out of the provision. Such a drastic deletion of two words would be frowned upon in arbitration as general arbitration, principles bind arbitrators to read each labor agreement as a whole and to interpret contract language so that full effect is given to every written word if possible. Here, had the parties intended to make Article XIV benefits available only to employees who were otherwise eligible who terminated their employment for any reason, they should have said so, as they did in Article IX, B:

- B. Loss of Seniority: Seniority and the employment relationship shall be broken and terminated if any employee:
1. Quits;
 2. Is discharged;
 3. Fails to report to work within seven (7) working days after having been recalled from layoff;
 4. Fails to be recalled from layoff after a period of one (1) years from the date of layoff; or
 5. Is retired.

² I find that CUBA CITY SCHOOL DISTRICT, SUPRA, cited by the District is factually distinguishable from the instant case.

The parties did not do this. Therefore, in my view, the language of Article XIV clearly states that employees must be “retiring” and eligible for the Article XIV benefit at the time of retirement.

The Association has asserted that in 2000 when Article XIV was amended, the District never made it clear that employees wishing to receive an Article XIV benefit had to retire to receive it. Also, the Association urged that the evidence of past practice herein is not relevant because no other employee has terminated employment prior to age 55 to take another job elsewhere. Regarding the former assertion, the word “retire” has a very specific meaning which does not include quitting to take another job elsewhere. Also, I note that even the definitions of “retire” cited by the Association demonstrate that all of them require a withdrawal from business “because of advanced age” or after reaching “retirement age.” (Assoc. Br., p 5), as did the definition cited by the District. There is simply no way one could logically and reasonably interpret Article XIV to mean any type of severance of employment would meet the “retirement” eligibility requirement of that provision.

Concerning the latter argument regarding past practice evidence, in my view, this evidence tends to support the assertion District’s contentions herein. This is so because every one of the prior retirees was over 55 years of age when they applied for their Article XIV benefit. Furthermore, I note that the evidence in this case showed that no one remembers why the age 55 requirement was removed from Article XIV. The Association argument by changing the provision from pay at a dollar amount per day to pay at each employees’ daily rate, the parties agreed that the provision would pay for itself. As there was no testimony herein to show the parties’ true intent in agreeing to make the change they made in Article XIV in the 2000-02 agreement, this Association argument must be found to constitute mere speculation.

Finally, the Association contended that “meaning not communicated” at negotiations should be considered and that consideration of equity should be given weight in this case. It is difficult for this Arbitrator to imagine under what circumstances she would apply meanings never communicated between the parties to interpret disputed contract language. In any event, this is not such a case. Here, the contract language under consideration clearly requires otherwise eligible employees to retire (no matter what their age)³ to receive an Article XIV separation grant, and given the fact that Ammann admittedly never retired from District service, Ammann was not entitled to an Article XIV separation grant and this grievance must also be denied.⁴

³ I note that Article XIV does not refer to the WRS in any way. I have not and I need not decide whether Article XIV also requires employees to be eligible to apply for and receive a WRS annuity in order to be considered “retired” under Article XIV. I also find that under Article XIV of this agreement, age is irrelevant.

⁴ The cases cited by the District herein were factually distinguishable.

AWARDS

Nordgren: The District did not violate the collective bargaining agreement when it denied Barb Nordgren's request to convert unused sick days under Article XV, B to pay for either WEA dental insurance or her portion of her cost for a non-WEA plan. Therefore, the grievance is denied and dismissed in its entirety.

Ammann: The District did not violate the collective bargaining agreement when it denied Duane Ammann an Article XIV separation grant.

Therefore, the grievance is denied and dismissed in its entirety.

Dated in Oshkosh, Wisconsin this 1st day of February, 2008.

Sharon A. Gallagher /s/

Sharon A. Gallagher, Arbitrator