

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**SIREN EDUCATION ASSOCIATION**

and

**SCHOOL DISTRICT OF SIREN**

Case 36  
No. 67221  
MA-13805

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**Appearances:**

**Attorney Laura Amundson**, Staff Counsel, Wisconsin Education Association Council, 33 Nob Hill Drive, P.O. Box 8003, Madison, Wisconsin 53708-8003, on behalf of the Association.

Weld, Riley, Prens & Ricci, S.C., by **Attorney Andrea M. Voelker**, 3624 Oakwood Hills Parkway, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030 on behalf of the District.

**ARBITRATION AWARD**

At all times pertinent hereto, the Siren Education Association (herein the Association) and the School District of Siren (herein the District) were parties to a collective bargaining agreement covering the period from July 1, 2005 through June 30, 2007. On August 20, 2007, the Union filed a request with the Wisconsin Employment Relations Commission (WERC) to initiate grievance arbitration over a dispute concerning an allegation that the District had failed to provide Carol Benson, the Grievant herein, the appropriate early retirement benefits provided for in the collective bargaining agreement. The parties requested a panel of WERC arbitrators and the undersigned was selected to hear the dispute. A hearing was conducted on February 27, 2008. The proceedings were not transcribed. The parties filed their initial briefs by March 31, 2008 and reply briefs by April 30, 2008, whereupon the record was closed.

**ISSUES**

The parties stipulated to the following statement of the issues:

Did the District violate Section C of Addendum A of the parties' 2005-07 collective bargaining agreement when it paid 75% of the Grievant's health insurance premiums upon her retirement?

If so, what is the appropriate remedy?

**PERTINENT CONTRACT LANGUAGE**

**ADDENDUM A**

**EARLY RETIREMENT**

Early retirement shall be available to unit members at age 57 and above when they resign their regular, full-time duties.

An applicant for early retirement must be a regular full-time, degree holding member who has at least 10 consecutive years of service to the District.

Upon early retirement, unit members under this program shall be entitled to receive the following:

- a. \$275.00 per month up to sixty (60) months. Deductions will be made only as required by law.
- b. Unit members and retirees who become eligible for full state retirement benefits shall not be eligible for receipt of the stipend payments provided in paragraph a of this addendum.
- c. Under current law, teachers who are at least 57 and who have at least thirty (30) years of experience at the time of retirement are eligible for full state retirement benefits, and thus, are not eligible for the stipend payments.

If eligible, the retiree shall be entitled to be a member of the employer's health insurance group. The employer shall pay for the health insurance premiums in full until Medicare.

Employees who apply for retirement after July 1, 1990 shall receive the above mentioned insurance with District paying ninety-five percent (95%) of the premiums for employees retiring at the age of 59 or older, eight-five [sic] percent (85%) of the premium for employees retiring at the age of 58, and seventy-five percent (75%) of the premium for employees retiring at the age of 57.

Employees whose date of initial employment is after July 1, 2004, the District agrees to pay the cost of health insurance premiums at the above mentioned percentages based on the actual

cost of the insurance premiums on the employee [sic] last date of employment. The employee shall receive a percentage increase to the insurance premium payment equal to the current year's cost of living increase (measured on June CPI-U). The employee shall be responsible for any additional increases to health insurance costs.

- d. A person retiring at age 55 with 15 consecutive years of teaching in the District would be eligible for the \$275.00 per month payment. At age 57, the retiring person will be given the one time option of selecting a \$275.00 per month payment for 36 months or the District's payment of 75% towards the monthly health insurance premium to Medicare eligibility. In order for the retiree to be eligible for the health insurance payment, the retiree must be enrolled in the District's health plan from the time of their retirement.

All benefits under this addendum terminate upon death.

The parties agree that these payments shall be in lieu of unemployment compensation benefits, if any, for which the employee may be eligible. Should unemployment compensation benefits be required by the state, the retiree shall be obligated to take all substitute teacher assignments offered within his/her certification.

These benefits cannot be used in conjunction with long term disability insurance.

The payments shall be twice per month commencing with the month subsequent to the month in which payment for regular employment was last made.

If any aspect of this provision is found to be discriminatory or otherwise violative of the Federal Age Discrimination in Employment Act, or any other state or federal law by any court then the sentence or provision will be null and void and parties will negotiate a replacement.

I have read and fully understand the foregoing negotiated policy of the Siren School District. I hereby make application for Early Retirement under the terms of this policy. The following information is submitted for this purpose:

\_\_\_\_\_  
Teacher's name (please print)

\_\_\_\_\_  
Birth date

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Teaching in years in Siren Schools

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Teacher's Signature/Date

Board Clerk's Signature/Date

### **BACKGROUND**

The Siren Education Association and School District of Siren are parties to a collective bargaining agreement, which has for many years provided an early retirement incentive provision. Originally, the provision provided for early retirement at age 59 for teachers with at least 10 consecutive years of experience in the District. The benefits included a monthly stipend of \$250.00 per month up to age 65 and eligibility for health insurance coverage with the District paying premiums in full until the retiree became eligible for Medicare. The stipend was not available for retirees who were eligible for full state retirement benefits and would cease once a retiree became eligible.

Over the years, the early retirement incentive provision has undergone numerous changes. I will highlight those that are pertinent to this matter. In the 1989-91 contract, the District's health insurance premium contributions were reduced to 95% for employees retiring after July 1, 1990. Coincidentally, the premium contribution for employees in the bargaining unit was also reduced to 95% as part of this bargain and remains at that level at present. In the 1991-93 contract, the age of eligibility was lowered to 57 and the stipend was increased to \$275.00 per month. In addition the District's health insurance premium contributions were further reduced, remaining at 95% for employees retiring after July 1, 1990 at age 59, but going to 85% for employees retiring at age 58 and 75% for employees retiring at age 57. In the 1997-99 contract, a sentence was added to Section (c), as follows:

“Under current law, teachers who are at least 57 and who have at least thirty (30) years of experience at the time of retirement are eligible for full state retirement benefits, and thus, are not eligible for the stipend.”

The remainder of Section (c) remained unchanged. An additional provision was added as Section (d) which provided that persons retiring at age 55 who had 15 years of experience would qualify for the stipend, but at 57 would have to make an election between continuing to receive the stipend and receiving the 75% contribution toward health insurance premiums. In the 2001-2003 contract, eligibility for the stipend was reduced to a maximum of 60 months and eligibility for the stipend for those retiring at 55 with 15 years' experience was reduce to a maximum of 36 months beyond age 57. In the 2003-05 contract an additional paragraph was added to Section (c) reducing the post-retirement insurance benefit for those retiring after July 1, 2004 to the specified percentage at the rate in effect at the time of retirement, with annual adjustments based on the increase in the cost of living.

Carol Benson, the Grievant herein, taught in the Siren Scholl District from 1974 until her retirement in 2007. She also served on the Association's bargaining team from the mid-nineteen nineties until her retirement. In early 2007, the Grievant was 57 years of age and decided to retire, in part due to the benefits offered under the early retirement incentive provision. To that end, she drafted a letter announcing her plans to retire, as follows:

May 11, 2007

Scott Johnson  
Siren School Board

This is a letter of intent for consideration of early retirement beginning August 30, 2007.

I am asking the board to consider a waiver of the April 15<sup>th</sup> application deadline for early retirement as stated in addendum A in the master contract.

On receiving my annual statement of benefits from the Wisconsin Retirement System on the last week of April, I noted that I am eligible for full state retirement benefits according to early retirement, addendum A, of the master contract, part C, paragraphs one and two.

Since I do not turn 57 years of age until August 29, 2007, I am requesting that I remain insured with the district's health insurance plan until August 30, 2007 and remain on the payroll from June 7, 2007 to August 30, 2007.

Effective August 30, 2007, my intended retirement date, I am eligible to be a member of the Siren School District's health insurance group and the district shall pay for the health insurance premiums in full until Medicare; as stated in addendum A, early retirement, part C, paragraphs one and two.

If this does not meet board approval, consider my turned in, signed contract for the school year 2007-2008 a binding agreement to return to my elementary position.

Sincerely,

Carol E. Benson

Prior to submitting the letter, the Grievant had it reviewed by UniServ Director Pete Gust and Association President Darrell Imhoff. On May 16, the Grievant gave the letter to District Administrator Scott Johnson. Johnson told her he would forward the letter to the Personnel and

Negotiations Committee the next day, but did not see a problem. Johnson did not compare the letter to the cited contract language at that time. The Personnel and Negotiations Committee met on May 17 and approved the request to retire, but only discussed the requested deadline waiver. The recommendation then went to the full board, which approved her retirement request without discussion or comment on May 29. Thereafter, Johnson wrote the Grievant to tell her that her request had been approved, as follows:

Dear Carol:

I am pleased to inform you the Siren Board of Education took action last night to approve your request for early retirement. The Board also recognized your 31 years of service and for that I would like to express my thanks and appreciation for dedicating such a significant part of your life to education.

I wish you the best of luck in your retirement.

Sincerely,

Scott Johnson  
District Administrator

On May 30, the Grievant emailed the District Bookkeeper Sharon Peterson, about her employment and benefit status, as follows:

Hi Sharon, Just wanted to check with you before the end of the year. Our health insurance is paid through August for this school year. Then in September when my retirement takes affect [sic], you (school district) will continue to see that my premium is paid in full. Thanks, Carol

She followed up with another email on June 4, as follows:

Hi Sharon, I just wanted to check with you before the end of the year. I am checking as far as the health insurance. I know that we are paid with our insurance through August. So then will you take care of seeing that the insurance is paid 100% starting in September for the school district when my retirement starts? Is there anything I have to do as far as calling WEA or anything else? Thanks, Carol

Peterson responded on June 6<sup>th</sup>, as follows:

I haven't forgotten about you! I will get back to you by tomorrow morning regarding your retirement.

On June 7, Peterson emailed the Grievant as follows:

First of all, you are paid and receive benefits through August 21, 2007 to complete your compensation for the school year of 2006-2007.

However, I do not understand your request regarding the district paying 100% of your health insurance starting in September of 2007. Please refer to the Certified Staff Agreement, Addendum A, Part C, Paragraph 3. This paragraph states that employees who apply for retirement after July 1, 1990, will receive 75% of the premium for employees retiring at the age of 57, which is where I interpret you will be.

Sharon

The Grievant called Peterson and told her she had been assured by Johnson and the Board that she would have 100% coverage. Peterson told the Grievant she would have to discuss the matter with Johnson personally and then passed the information on to Johnson. Later on June 7<sup>th</sup>, the Grievant and Imhoff met with Johnson to discuss the insurance coverage issue. Johnson told her the Board did not discuss the insurance question in considering her request and that he would have to consult the Board about her request. Later that day, after speaking with the Board members and the District's attorney, Johnson informed the Grievant that she would only be eligible for a 75% contribution to her insurance premiums.

On June 8, 2007, Johnson wrote to the Grievant regarding her request, as follows:

Dear Carol,

As per your request, this is a letter to state the district's position on your retirement status.

On Tuesday, May 29, 2007, the Siren Board of Education approved your request for early retirement pursuant to the terms outlined in Addendum A – Early Retirement of the collective bargaining agreement.

Sincerely,

Scott Johnson  
District Administrator

The Grievant shared Johnson's letter with Imhoff, who wrote to Johnson on June 13<sup>th</sup>, as follows:

Mr. Johnson,

The purpose of this letter is to obtain a written statement on the position of the Siren School Board on the status and terms of Mrs. Carol Benson's early

retirement. The Siren Education Association and its affiliates will be assisting and possibly representing Mrs. Benson in this matter. The Siren Education Association can obtain this information per Wisconsin State Statute 103.13.

Thank you for your time and effort.

Sincerely,

Darrell Imhoff

On June 19<sup>th</sup>, Johnson replied, in pertinent part:

Dear Darrell,

You have requested a written statement on the school board's position pertaining to the status of Carol Benson's early retirement. I am attaching a copy of the letter I sent to Carol, who asked for the same thing last week. You will find Carol's status is retired pursuant to the terms of the collective bargaining agreement.

...

Please feel free to call me to discuss any of these matters.

Sincerely,

Scott Johnson  
District Administrator

On June 24<sup>th</sup>, Imhoff responded as follows:

Mr. Johnson,

Thank you for the letter sharing the status of Carol Benson's retirement. Carol Benson and the Siren Education Association would like to know the percentage the school district is paying for her health insurance for her retirement.

Thank you for your time and effort.

Sincerely,

Darrell Imhoff

On June 27<sup>th</sup>, Johnson replied in a memorandum, as follows:



TO: Darrell Imhoff

FR: Scott Johnson

DA: June 27, 2007

RE: Carol Benson Retirement

In response to your June 24, 2007 letter requesting to know the percentage the school district is paying for Carol's health insurance for her retirement, once Carol's early retirement benefits begin, the district is scheduled to pay 75% of the premium, in accordance with Addendum A, Early Retirement of the collective bargaining agreement.

Upon receipt of Johnson's June 27 letter, the Association filed a grievance on Benson's behalf. The grievance proceeded through the contractual process and was denied at each step, resulting in this arbitration. Additional facts will be referenced, as necessary, in the **DISCUSSION** section of this award.

### **POSITIONS OF THE PARTIES**

#### **The Association**

The Association asserts that the language of Addendum A, Section (c), is ambiguous, in that one paragraph provides for full health insurance premium coverage, whereas another paragraph provides for only a percentage. The arbitrator must, therefore construe the language reasonably and equitably. The arbitrator should give effect to all the language of the agreement, including the word "full" in paragraph two of Section (c). To interpret the agreement as the District proposes would render the word "full" a nullity. The proper interpretation is to read it together with the previous paragraph to give full coverage to teachers 57 years of age with thirty years' experience who do not qualify for the stipend. The Association understood that full coverage was intended for those persons in recognition of their long service and the fact that they did not qualify for the stipend.

The arbitrator should also sustain the grievance under his authority to impose an equitable remedy. Both parties bear responsibility for the ambiguity of the contract. It would be unfair, therefore, to place the full burden on the Association when its members reasonably believed they were assuring a benefit for teachers with long service who did not qualify for the stipend. The Association's interpretation is clearly stated in Ms. Benson's retirement letter. Neither the Administrator, nor the Board objected to the content of the letter and questions only arose when the Bookkeeper raised the issue. Ms. Benson reasonably relied on the District's representations both when she decided to retire and later when she decided against returning to teaching. Thus, the arbitrator should sustain the grievance, even if he also finds the language ambiguous and orders the parties to negotiate a new provision.

## The District

The District asserts that it complied with the clear language of the contract when it paid 75% of the Grievant's health insurance premiums. Where language is capable of only one plausible interpretation, there is no ambiguity, and that is the situation here. The Grievant was 57 years of age and the language of paragraph three clearly provides her with 75% premium coverage. Section (d) also underscores the point that retirees who are 57 only 75% premium contributions. The language is clear. While the language of paragraph two could have been clearer, the record shows it was intended to apply to teachers retiring before July 1, 1990.

The Association implies there is a link between stipend eligibility and full insurance coverage, but the language does not support this. Eligibility for the stipend is unrelated to insurance premium contributions. To interpret the contract as the Association suggests would require the arbitrator to significantly modify the contract, whereas the District's interpretation gives full and reasonable effect to all its terms.

Even if the arbitrator finds the language to be ambiguous, however, the consistent application of the language and the bargaining history support the District's position. Since its adoption, the District has routinely interpreted this language in the way it proposes here. The last teacher in the District to receive full health insurance benefits retired June 1990, before the third paragraph of Section (c) took effect. Eighteen teachers have retired since, four with over 30 years' experience, and none have received full premium coverage. Testimony as to the bargaining history also shows that it was always in the parties' contemplation that after July 1, 1990, retirees would receive reduced premium contributions based on their age at retirement. It is illogical to assume that the parties intended to increase the benefit from 95% coverage for retirees at age 59+ to 100% for retirees at age 57 with 30 years experience without making a direct reference to that intent. The additional paragraph added in 1997-99 was not intended to add a benefit, but to clarify the existing state of WRS eligibility. There is no bargaining history to support the Association's interpretation.

The Grievant's letter also cannot alter the meaning or effect of contract language. The arbitrator's authority comes from the contract and it is the language of the agreement that determines the outcome of the grievance, not an attempt at individual bargaining. To find that the Grievant is entitled to prevail because of her letter rather than the language of the agreement would be unreasonable and would violate accepted arbitral principles. The record shows that the Administrator and Board did not consider the insurance reference in reviewing her retirement letter, nor did she bring it up, and she was never told she would receive full benefits, but was consistently told she would receive the benefits provided for in Appendix A.

Further, the Grievant's actions suggest bad faith on her part. She did not mention the issue of full coverage until after her retirement was accepted and repeatedly thereafter claimed the acceptance of her retirement letter entitled her to the benefit. She knew, or at least suspected, that the contract language did not support her position and tried to "slide one by" the District and then use their oversight to later support her claim for the unmerited benefit.

The arbitrator should not reward her behavior. The arbitrator also should not impose the substantial burden on the District of now having to provide 100% coverage to all teachers retiring at age 57 with 30 years of experience. The District has worked over many years to reduce its unfunded liabilities and to essentially return retiree benefits to pre-1990 levels would undo much of that work, as well as exceeding the arbitrator's authority under the language of the contract.

### **The Association in Reply**

If the language is unambiguous, the arbitrator must find that it supports the Association's position because it states: "The employer shall pay for the health insurance premiums in full until Medicare." If, however, it is deemed to be ambiguous, the arbitrator must construe its appropriate interpretation. The Association's interpretation of that language is the most coherent and does not require the arbitrator to add to the contract. If paragraphs one and two of Section (c) are read together, it is clear that retirees who are 57 and have 30 years' experience receive full insurance coverage. This interpretation is supported by the testimony of the Grievant and Bert Lund. To read the language as the District suggests would penalize retirees with 30 years' experience by providing them with lesser benefits than retirees with less experience.

There was no attempt at individual bargaining in the Grievant's retirement letter, since she has been advised by the Association throughout the process. Further, the District appeared to agree with her interpretation until the percentage issue was raised by the Bookkeeper and the District consulted outside counsel. It is unfair to suggest that Ms. Benson was attempting to get away with something. She submitted her letter several weeks before the Board met, Johnson read the letter, spoke with her about it and said it looked fine. Thus, the District also bears responsibility for any misinterpretation. It is unfair for the District to now attack her character and suggest she tried to trick them into giving her something to which she was not entitled.

Even if the arbitrator finds the language to be ambiguous and not wholly supportive of the Association's position, he may still sustain the grievance on equitable grounds. There appears to be a good faith dispute about the meaning of the language. The arbitrator may address the District's concern about burdensome and unanticipated costs by sustaining the grievance even if the language is not held to apply to future retirees in similar circumstances.

### **The District in Reply**

The Association incorrectly asserts that the arbitrator has broad discretion to fashion an equitable remedy. In fact, the arbitrator's power is defined in the agreement and prevents him from altering or adding to the contract. Rather, he must apply the language of the contract as written, which specifies that retirees who are 57 years old receive 75% contribution to their health insurance premiums. Also, the Association's argument that only its interpretation of the language is coherent is without merit. The Association does not address the language of paragraph three, which clearly shows that employees who retire after July 1, 1990 do not

receive full health insurance contributions. It would be unreasonable to rule that the more general language of paragraph two trumps the specific language of paragraph three. The 100% benefit language is clearly a “grandfather clause,” only applying to employees who retired before July 1, 1990.

There is no merit to the argument that the Association’s negotiators were guileless volunteers. The Association was represented by a labor professional with many years’ experience in bargaining the language in question. Further, it is incomprehensible how the Association can assert that there was a mutual understanding between the District and Grievant as to her retirement benefits. As soon as the grievant raised the issue with the Bookkeeper, the District made its position clear and not even the Grievant asserted that she was ever assured of anything more than the contract provides. She can only appoint to the District’s acceptance of her controversial letter to support her cause. There is no need to reform the contract. The language is clear and the grievance should fail.

### DISCUSSION

This is a contract interpretation case involving the proper application of the parties’ early retirement incentive language, which is a provision that has undergone numerous changes over the years. At issue in particular is Section (c) of Appendix A, which sets forth the health insurance benefits to which retired teachers are entitled. The Grievant and the Association assert that the language provides full health insurance premium contributions for retirees, such as the Grievant, who are 57 years of age and who have at least 30 years of teaching experience in the District. The District, to the contrary, maintains that the language only provides for a 75% premium contribution for the Grievant and similarly situated retirees.

The language of Section (c) states:

- c. Under current law, teachers who are at least 57 and who have at least thirty (30) years of experience at the time of retirement are eligible for full state retirement benefits, and thus, are not eligible for the stipend payments.

If eligible, the retiree shall be entitled to be a member of the employer’s health insurance group. The employer shall pay for the health insurance premiums in full until Medicare.

Employees who apply for retirement after July 1, 1990 shall receive the above mentioned insurance with District paying ninety-five percent (95%) of the premiums for employees retiring at the age of 59 or older, eight-five [sic] percent (85%) of the premium for employees retiring at the age of 58, and seventy-five percent (75%) of the premium for employees retiring at the age of 57.

The three paragraphs of Section (c) were added at different times. Originally, Section (c) was comprised of only what is now paragraph two. The term “eligible,” as used therein, is not defined, but the parties have applied the language in practice to mean “eligible for early retirement benefits” and that is the meaning I ascribe to it. At the time, to be eligible for early retirement one had to be a regular, full-time, degree-holding member of the bargaining unit, who was at least 59 years of age and had at least 10 consecutive years of service in the district. Since then the age requirement has been lowered to 57 years, but the other criteria remain.

What is now paragraph three was added in 1991-93. The effect of this addition was to grandfather employees who retired before July 1, 1990, so that they would continue to receive 100% premium contributions on their health insurance. Employees who retired after July 1, 1990 had their premium contributions calculated according to a sliding scale depending on their age at the time of retirement. Those retiring at 57 received a 75% contribution, those retiring at 58 received an 85% contribution and those retiring at 59 or more received a 95% contribution. It is uncontroverted that prior to the instant case, the premium contributions for all retirees after July 1, 1990 were calculated according to this scale.

Paragraph one was added as part of the 1997-99 bargain. According to the Association, the point of the addition was to provide full health insurance premium contributions for retirees who retired at 57 with at least 30 years of experience, because they would not be eligible for the stipend available to retirees who were not yet eligible for full WRS pension benefits. The District asserts that the language was added merely to clarify the current status quo as to WRS pension benefits and was not intended to confer any new benefit. Since the language in paragraph one was added, no retiree prior to the Grievant has met the criteria of being 57 years of age and having 30 years of experience, so the proper interpretation and application of this language is what is at issue here.

It seems clear that this provision is capable of more than one interpretation and the differing views of the parties is evidence of that fact. Thus, the language is ambiguous and requires construction. Paragraph one is an odd provision. If, as the District suggests, it is merely intended to clarify the status quo as to WRS pension eligibility, one wonders why the parties bothered to put it in the contract? Whatever the state of the pension rules, under Section (b) any teacher qualifying for full pension benefits would not be eligible for the stipend set forth in Section (a). Paragraph one of Section (c) adds nothing that is not already there. Further, if it was intended to refer to stipend eligibility, why put it in Section (c), which deals with health insurance, rather than Section (b), which deals with stipend eligibility?

On the other hand, there is no reference in paragraph one to health insurance, nor any clear nexus with the other paragraphs in Section (c). To accept the Association’s position, therefore, one is required to read between the lines to find an intent to add an additional benefit for 57 year old teachers with 30 years’ experience. This proposition also has substantial difficulties to overcome. First, it ostensibly purports to add a benefit without stating as much in clear language. Second, if accepted, it would add a benefit increasing the insurance premium

contribution for that class of retirees from 75% to 100%, which is beyond what even active teachers receive. This is improbable considering the District's efforts over a period of several consecutive bargains to curtail the cost of the early retirement incentive. Finally, and most significantly, to my mind, is the genesis of the language itself. Paragraph one was a District proposal in the 1997-99 bargain. This is reflected by District Ex. #6, which is May 1, 1997 correspondence from the District's attorney, Kathryn Prenn, to District Administrator James Bucher attaching the District's initial bargaining proposals for the 1997-99 contract. This contains what became paragraph one of Section (c), nearly verbatim, and also makes it clear that the language was merely intended for clarification, as Attorney Prenn testified. To my mind, it is clear the District did not propose that language with the idea that it would add a new benefit and it is highly unlikely that the District's bargaining team would have agreed to its inclusion on that understanding. On balance, therefore, I find that the District's interpretation of Section (c) is more likely the correct one and, further, that interpreting it in this fashion is logically consistent with the bargaining history of the parties and the other provisions of Addendum A. Thus, it is my view that the correct interpretation of Section (c) is that the Grievant, and all other similarly situated retirees, are entitled to a health insurance premium contribution of 75% until she reaches Medicare eligibility.

Part of the Association's argument for its interpretation is based on an assumption that an inequitable disparity exists because teachers who retire at 57, but who do not have 30 years' experience, receive the \$275.00 per month stipend, whereas those with 30 years' experience do not because they are eligible for full WRS pension benefits. Giving 30 year teachers full insurance premium contributions, it is argued, was intended to offset this inequity. I do not agree. Historically, it is clear that the stipend was intended to provide an early retirement incentive for teachers who did not yet qualify for full WRS pension benefits and, thus, did not feel they could afford to retire. Once full pension eligibility was achieved, the stipend was intended to disappear. So, it is not true that teachers with less than 30 years experience receive superior benefits to those who have more than 30 years' experience; it is simply a recognition that those with less experience are not yet able to receive the same full pension benefit as those with more experience under WRS rules.

I also do not agree with the argument that the District's acceptance of the Grievant's resignation letter somehow constituted agreement with her interpretation of Addendum A. It is clear from the testimony that the District Administrator and School Board were more focused on the request for a waiver of the deadline for notification than on the language regarding insurance benefits. It is not, to my mind, inconceivable that the Administrator and the Board would overlook the words "in full" in the body of the letter, nor compare the letter with the contract language to see whether the language lined up. What actually happened is more likely – that the District's bookkeeper, who actually administers the retirement benefits, would notice the discrepancy and bring it to the attention of the parties. Further, both the resignation and the District's response make it clear that both parties agreed that the language of Addendum A would control, but it also was clear that they disagreed as to how it was to be interpreted. Interestingly, the Grievant's emails to the bookkeeper suggest to me that she, too, had some doubt about how the insurance benefit would be administered, as on two occasions, prior to the

District taking any position on the issue, she pointedly asked for reassurance that her insurance premiums would be 100% covered.

I am likewise not persuaded by the Association's argument that equity requires that the Grievant be awarded full insurance benefits due to her reliance on the District's actions. Her resignation letter of May 11, 2007 is written in the alternative and was accompanied by a signed contract for 2007-08, making it clear that if the Board did not agree with her request she intended to continue teaching. Less than a month later, and within days of the acceptance of her resignation, she learned that the District did not agree with her interpretation of the early retirement language. She indicated to the Administrator at that time, however, that she considered the Board's action accepting her retirement letter to be binding and had no intention to return to teaching. In my view, as of June 7, the Grievant was aware that the Board did not agree with her reading of Addendum A and would not voluntarily pay more than 75% of her health insurance premiums. At that time, she could have acted on her stated intention of returning to teaching in 2007-08 and chose not to do so, apparently at the urging of the Association, which wanted to test the language of Addendum A. In my view, by making that choice, because she voluntarily changed her position with her eyes wide open, she sacrificed any argument that she somehow relied to her detriment on the District's action and therefore, should prevail on equitable grounds.

For the reasons set forth above, therefore, and based on the record as a whole, I hereby issue the following

**AWARD**

The District did not violate Section C of Addendum A of the parties' 2005-07 collective bargaining agreement when it paid 75% of the Grievant's health insurance premiums upon her retirement. The grievance is denied.

Dated at Fond du Lac, Wisconsin, this 25th day of June, 2008

John R. Emery /s/

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John R. Emery, Arbitrator

JRE/gjc  
7310

