BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

NORTHLAND PINES BOARD OF EDUCATION

and

NORTHLAND PINES EDUCATION ASSOCIATION, NORTHLAND PINES EDUCATIONAL SUPPORT TEAM – ADMINISTRATIVE STAFF, AND NORTHLAND PINES EDUCATIONAL SUPPORT TEAM

Case 60
No. 69586
MA-14660

Case 61
No. 69587
MA-14661

Appearances:

Kirk D. Strang, Attorney at Law, Davis & Kuelthau, S.C. 10 West Doty Street, Suite 401, Madison, Wisconsin, appeared on behalf of the Employer.[1]

Fred Andrist, Director, Northern Tier UniServ, 1901 River Street, Rhinelander, Wisconsin, appeared on behalf of the Union.

INTERIM ARBITRATION AWARD

Northland Pines Education Association (herein "NPEA"), Northland Pines Educational Support Team – Administrative Staff (herein "NEST 2"), and Northland Pines Educational Support Staff Team (herein "NEST 1"), herein collectively referred to as the "Association," and Northland Pines School District, herein referred to as the "Employer," 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 arbitrator held a hearing in Eagle River, Wisconsin, on November 11, 2010. Each party filed a post-hearing brief, the last of which was received March 8, 2011. Thereafter, the matter was held in abeyance pending discussions between the parties until August 10, 2011.

[1] Erin E. Kastberg of the same firm appeared on brief.

ISSUES

The parties stipulated to the statement of the issues:

1. Did the Northland Pines School District violate the terms of the applicable collective bargaining agreements by implementing the HRA plan in dispute as set forth in the grievances under the arbitration submission agreement of the parties?
2. If so, what is the appropriate remedy?

FACTS [2]

The Employer is a Wisconsin school district. The NPEA represents professional teachers employed by the Employer. NEST 1 represents food service and custodial employees of the Employer. NEST 2 represents non-professional secretarial and clerical employees of the Employer.

The parties to the NPEA (teachers') agreement negotiated two consecutive two-year collective bargaining agreements during one negotiation process which was concluded in March, 2008. They were the July 1, 2007 to June 30, 2009, agreement and the 2009-11, agreement. The Wisconsin Education Association Trust was the health and related benefit provider under the next preceding collective bargaining agreement. The Employer sought to have the parties change health insurance carrier to Security Health. The plan health insurance deductible under the prior health plan was $1,000 for those taking single coverage and $2,000 for those taking family coverage.[3] They changed their health insurance carrier from the Wisconsin Education Association Trust to a Security Health point of service plan, effective January 1, 2008, with a $250/$500 deductible. It also included provisions for Health Reimbursement Accounts (herein HRA's), but the parties did not exercise any of those provisions at that time.

Thereafter, the parties experienced two annual renewals with the Security Health Plan. One was for a 9% increase and the second was for a 12.9% increase.[4] The monthly premium increase for October 1, 2009, was from $745.59 single and $1,610.22 family to $841.77 single and $1,817.94. (Herein "s/f")

The Employer sought ways to reduce its cost of providing health insurance. With help from its insurance representative, it settled upon a plan of exercising the HRA option

[2] More facts are stated in the "Discussion" section.
[3] The single and family deductibles are expressed with a "/" herein.
[4] Tr. p. 176

under the Security Health plan in effect and raising the individual deductible under the plan from $250/$500 to $2,000/$4,000. The Employer effectively paid the difference such that the employee would continue to only be paying the $250/$500 deductible. The resulting premium with the change was to a premium of $709.75 and $1,532.8. Employees pay a percentage of the monthly premium. The amount they paid was proportionately reduced. The Employer expected that by paying that share of the deductible employees actually used on an actuarial basis, its total cost for insuring employees would be less. There were no significant differences in the administration of the new plan from that of the old plan for the individual beneficiaries of the health insurance plan.

NPEA, NEST 1 and NEST 2 all filed grievances. Each grievance essentially protested that the implementation of the HRA and increase of the plan deductible violated the respective collective bargaining agreement. Each essentially requested that the Employer return to a $250/$500 plan deductible and that all affected employees be made whole for any costs incurred.

RELEVANT AGREEMENT PROVISIONS

NPEA AGREEMENT JULY 1, 2009, TO JUNE 30, 2011[5]

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ARTICLE XIV – INSURANCE

Section A. Medical Plan: All teachers shall be provided the following plans, single or family coverage with the total dollar amount per teacher not to exceed 95% of the cost of family coverage. Payment of medical and dental insurance premiums by the District for regular part-time teachers shall be made pro rata, according to the percent of time of employment for such regular part-time teachers. All full-time and part-time teachers hired before the school year 1987-88 are grandfathered from pro-rated insurance coverage.

1. The Security Health Point of Service Plan that went into effect April 1, 2008, WEA Insurance Trust that was in effect through March 31, 2008, or other equivalent plan.

[5] The relevant terms of the July 1, 2007 to June 30, 2009 agreement are identical.

2. Any increase in premium for coverage under this Article XIV for medical plan coverage (which includes health, dental and prescription drug coverage) from year to year in excess of 11% shall result in the Association adjusting plan coverage so that an overall cost increase of 11% does not result or employees covered by this plan shall pay such additional costs of coverage, disregarding the limits set forth in Section A above. In the event the premium increase is less than 11%, the difference between the percentage increase and 11%, from a dollar perspective for the District, shall be paid to employees as an increase on the salary schedule, on a pro-rata basis.

3. Dental Insurance Plan I, with the WEA Insurance Trust as carrier, or other equivalent plan.

4. Teachers will pay his/her own health insurance deductible when applicable.

5. Starting with April 1, 2008, the drug card will be $5/$15/$30 and the health insurance deductible will be $250/$500.

6. Those individuals who have family coverage through a spouse's employment with an employer other than the District may elect to discontinue coverage under the District's Medical Plan and have an amount equal to ninety percent (90%) of the single rate for Medical Plan coverage made available to him/her under a Section 125 Flexible Benefits Plan.

7. The district will cover the waiver of liability insurance premium with the following language:

   Waiver of health Insurance Premium: After a covered employee is disabled for more than 60 continuous calendar days, the monthly premium required for coverage of the covered employee and his or her covered dependents will

be waived and paid by the district. The premium will be waived until the earliest of the following dates:

a. The date the covered employee ceases to be disabled as determined by Long Term Disability.

b. The date the covered employee becomes eligible for Medicare benefits.

c. The date the covered employee dies.

d. The date the covered employee fails to furnish proof satisfactory to Long Term Disability carrier of continued disability.

e. The date the policy with the District terminates.

f. The date the covered employee ceases to be eligible for coverage under the terms of the policy with the District.

The premium will be waived for a maximum of 30 months for any one Period of Disability. This also includes payment of the alternate benefit, not to exceed 30 months.

Premium payment must be resumed beginning with the month in which the covered employee resumes his or her regular job duties as a member of the eligible class of employees specified by the employer.

8. All employees upon retirement may elect to continue participation in the district's group health plan (family or single coverage) at their own expense by making premium payments to the insurance company thirty (30) days in advance of the due date. This policy shall apply wherever group insurance permits.

Section B. Additional Insurance: The Board agrees to furnish each teacher an insurance package including: (1) term life

insurance in an amount equal to his/her annual salary rounded to the next thousand dollars, as provided by the WEA Insurance Trust; (2) Long Term Disability Income Plan with monthly benefits of 90% of salary with offsets for a maximum benefit period as specified in the contract.

Section C. The District will provide for pretax premium payment for medical reimbursement and dependent care. These benefits will be provided on a salary deferral basis. The District retains the right to select the vendor.

Section D. All bargaining unit members shall receive Long Term Care (LTC) insurance provided by WEAIT at each employee's expense. The rate shall be the group rate as determined by WEAIT and regular payroll deductions shall be made from each employee's paycheck to cover the cost of the yearly premium. If this benefit is an eligible benefit for coverage under Section 125 of the Internal Revenue Code, and applicable state law, the District shall amend its cafeteria plan to allow for such benefit to be paid by employees on a pre-tax basis.

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LETTERS OF UNDERSTANDING – FIVE (5)

These letters of understanding are issued pursuant to the negotiated agreement between the Northland Pines School District Board (hereinafter referred to as "Board") and Northland Pines Education Association (hereinafter referred to as the "NPEA") bargaining representatives for certified staff, for the contract years of July 1, 2007, through June 30, 2009.

Note: Signatures of the representatives of the Board and the NPEA will appear at the end of the five (5) letters of understanding.

I – LETTER OF UNDERSTANDING
RE: INSURANCE CAP

The Board and NPEA agree that during the course of this contract, Article XIV, Insurance, Section A., 2. will be suspended for the term of this contract. This Letter of Understanding is only for the duration of this contract period.

JANUARY 1, 2008 – DECEMBER 31, 2009 AGREEMENT[6]

NORTHERN PINES EDUCATIONAL SUPPORT TEAM

(NEST 1)

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ARTICLE XI-COMPENSATION

C. Fringe Benefits

1. Medical Insurance: All employees working an average of thirty-two (32) or more hours per week, shall be provided the following plans, single or family coverage. The District shall pay an amount not to exceed 90% of the hospital/surgical/major medical family premium. Any full time employee eligible for health insurance throughout the district who wishes to opt out and provides proof of other insurance through a source other than the District, may elect to discontinue coverage under the District's Medical Plan and shall receive the alternate benefit of 90% of the single rate of the medical premium in either a Section 125 Flexible Benefits Plan, TSA or cash option.

   a. Starting January 1, 2008, Security Point of Service (POS) or equivalent plan.

   b. Any increase in premium for coverage under this Section for medical plan coverage (which includes health and prescription drug coverage) from year to year in excess of 10% shall result in the Association adjusting plan coverage so that an overall cost increase of 10% does not result or employees covered by the plan shall pay such additional costs of coverage or a

[6] The relevant terms of the January 1, 2010 to December 31, 2011, agreement are identical.

salary adjustment for that amount, disregarding the limits set forth in Section C above. Any increase in premium for coverage under this Section for medical plan coverage (which includes health, dental and prescription drug coverage) from year to year less than 10% shall result in a salary adjustment for that amount. Note: See side letter for current contract language for this section b.

2. Dental Insurance: Employees shall be provided with a dental plan equal to that provided to the professional employees. The District shall pay an amount not to exceed 90% of the family premium for such insurance. Any employee who elects to participate in the alternate benefit shall not have to pay the 10% portion of the premium for dental insurance.

3. Employees will pay his/her own health insurance deductible, if any, starting with the 2003-04 contract year.

4. Starting January 1, 2008, the drug card will be $5-$15-$30 through Security Point of Service (POS) or equivalent.

5. All employees working twenty (20) or more hours up to thirty-two (32) hours per week will be provided coverage listed in paragraphs 1 and 2 above on a prorated basis; provided the insurance carrier will accept such employees.

6. Long Term Disability Insurance. The District shall provide, without cost, a long term disability insurance policy with monthly benefits of 90% of salary for sickness and/or accident as provided by the WEAIT.

7. Waiver of Health Insurance Premium. After a covered employee is disabled for more than 60 continuous calendar days, the monthly premium required for coverage of the covered employee and his or her covered dependents will be waived and paid by the district. The premium will be waived until the earliest of the following dates:

   a. The date the covered employee ceases to be disabled as determined by Long Term Disability.

b. The date the covered employee becomes eligible for Medicare benefits.

c. The date the covered employee dies.

d. The date the covered employee fails to furnish proof satisfactory to Long Term Disability carrier of continued disability.

e. The date the policy with the District terminates.

f. The date the covered employee ceases to be eligible for coverage under the terms of the policy with the District.

The premium will be waived for a maximum of 30 months for any one Period of Disability. This also includes payment of the alternate benefit, not to exceed 30 months.

Premium payment must be resumed beginning with the month in which the covered employee resumes his or her regular job duties as a member of the eligible class of employees specified by the employer.

8. Life Insurance. The District shall provide, without cost to the employee, life insurance to the next $1,000 higher than the salary for each employee.

9. The District will provide for pretax premium payment for medical reimbursement and dependent care. The District shall add additional qualified benefits, if permitted by law, at the expense of the employee. These benefits will be provided on a salary deferral basis. The District retains the right to select the vendor.

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ARTICLE XIV – COMPENSATION – FOOD SERVICE

C. Fringe Benefits

1. Medical Insurance: All employees working an average of thirty-two (32) or more hours per week, shall be provided the following plans, single or family coverage. The District shall pay an amount not to exceed 90% of the hospital/surgical/major medical family premium.

   Any full time employee eligible for health insurance throughout the district who wishes to opt out and provides proof of other insurance through a source other than the District, may elect to discontinue coverage under the District's Medical Plan and shall receive the alternate benefit of 90% of the single rate of the medical premium in either a Section 125 Flexible Benefits Plan, TSA or cash option.

   a. Starting January 1, 2008, Security Point of Service (POS) or equivalent plan.

   b. Any increase in premium for coverage under this Section for medical plan coverage (which includes health and prescription drug coverage) from year to year in excess of 10% shall result in the Association adjusting plan coverage so that an overall cost increase of 10% does not result or employees covered by the plan shall pay such additional costs of coverage or a salary adjustment for that amount, disregarding the limits set forth in Section C above. Any increase in premium for coverage under this Section for medical plan coverage (which includes health, dental and prescription drug coverage) from year to year less than 10% shall result in a salary adjustment for that amount. Note: See side letter for current contract language for this section b.

2. Dental Insurance: Employees shall be provided with a dental plan equal to that provided to the professional employees. The District shall pay an amount not to exceed 90% of the family premium for such insurance. Any employee who elects to participate in the alternate benefit shall not have to pay the 10% portion of the premium for dental insurance.

3. Employees will pay his/her own health insurance deductible, if any, starting with the 2003-04 contract year.

4. Starting January 1, 2008, the drug card will be $5-$15-$30 through Security Point of Service (POS) or equivalent.

5. All employees working twenty (20) or more hours up to thirty-two (32) hours per week will be provided coverage listed in paragraphs 1 and 2 above on a prorated basis; provided the insurance carrier will accept such employees.

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LETTER OF UNDERSTANDING

This letter of understanding is issued pursuant to the negotiated agreement between the Northland Pines School District Board and Northern Educational Support Team (NEST) bargaining representatives for custodians and cooks. The Board agrees that during the course of the contract, being a period of January 1, 2010, to and including December 31, 2011, Section C, Fringe Benefits, 1. Paragraph b. will be suspended for the term of this contract. This Letter of Understanding is only for the duration of this contract period.

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2010-2011 NORTHLAND PINES EDUCAIONAL SUPPORT TEAM-ADMINISTRATIVE SUPPORT STAFF AGREEMENT (NEST 2)

ARTICLE XI COMPENSATION

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B. Fringe Benefits

1. Medical Insurance: All employees working an average of thirty-two (32) or more hours per week, shall be provided the following plans, single or family coverage. The District shall pay an amount not to exceed 90% of the hospital/surgical/major medical family premium. Any full time employee eligible for health insurance throughout the district who wishes to opt out and provides proof of other insurance through a source other than the District, may elect to discontinue coverage under the District's Medical Plan and shall receive the alternate benefit of 90% of the single rate of the medical premium in either a Section 125 Flexible Benefits Plan, TSA or cash option.

a. Hospital/Surgical/Major Medical Security Point of Service (POS) plan or equivalent.

b. Any increase in premium for coverage under this Section for medical plan coverage (which includes health and prescription drug coverage) from year to year in excess of 13% shall result in the Association adjusting plan coverage so that an overall cost increase of 13% does not result or employees covered by the plan shall pay such additional costs of coverage or a salary adjustment (decrease) for that amount, disregarding the limits set forth in Section E.1. above. Any increase in premium for coverage under this Section for medical plan coverage (which includes health and prescription drug coverage) from year to year less than 13% shall result in a salary adjustment (increase) for that amount. Note: See side letter for current contract language for this section b.

2. Dental Insurance: Employees shall be provided with a dental plan equal to that provided to the professional employees. The District shall pay an amount not to exceed 90% of the family premium for such insurance. Any employee who elects to participate in the alternate benefit shall not have to pay the 10% portion of the premium for dental insurance.

3. The drug card will be $5-$15-$30 through Security Point of Service (POS) or equivalent.

4. Long Term Disability Insurance. The District shall provide, without cost to the employee, a long term disability insurance policy with monthly benefits of 90% of salary for sickness and/or accident. This coverage will be provided through WEAIT.

5. Waiver of Health Insurance Premium. After a covered employee is disabled for more than 60 continuous calendar days, the monthly health insurance premium required for coverage of the covered employee and his or her covered dependents will be waived and paid by the district. The premium will be waived until the earliest of the following dates:

a. The date the covered employee ceases to be disabled as determined by Long Term Disability.

b. The date the covered employee becomes eligible for Medicare benefits.

c. The date the covered employee dies.

d. The date the covered employee fails to furnish proof satisfactory to Long Term Disability carrier of continued disability.

e. The date the policy with the District terminates.

f. The date the covered employee ceases to be eligible for coverage under the terms of the policy with the District.

The premium will be waived for a maximum of 30 months for any one Period of Disability. This also includes payment of the alternate benefit, not to exceed 30 months.

Premium payment must be resumed beginning with the month in which the covered employee resumes his or her regular job duties as a member of the eligible class of employees specified by the employer.

6. Life Insurance. The District shall provide, without cost to the employee, life insurance to the next $1,000 higher than the salary for each employee.

7. All employees, upon retirement, may elect to continue participation in group insurance, subject to the terms and conditions of the insurance carrier, at their own expense by making premium payments to the insurance company thirty (30) days in advance of the due date.

8. All employees working twenty (20) or more hours up to thirty-two (32) hours per week will be provided coverage listed in paragraphs 1 and 2 above on a prorated basis; provided the insurance carrier will accept such employees.

C. The District shall provide all bargaining unit employees the option of enrolling in the District's Section 125 Flexible Benefit Plan.

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LETTER OF UNDERSTANDING

This letter of understanding is issued pursuant to the negotiated agreement between the Northland Pines School District Board and Northern Educational Support Team (NEST) bargaining representatives for administrative assistants and secretaries. The Board agrees that during the course of the contract, being a period of January 1, 2010, to and including December 31, 2011, Section B, Fringe Benefits, 1. Paragraph c. will be suspended for the term of this contract. This Letter of Understanding is only for the duration of this contract period.

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POSITIONS OF THE PARTIES

Association

The teacher agreement clearly requires that the health insurance plan must be the Security Health Point of service plan that went into effect April 1, 2008, or other equivalent plan. Further, however, it states that the health insurance deductible will be $250/$500. The Employer has shown through its earlier documents that it recognized that the term "deductible" applied to the plan deductible and not merely to the out-of-pocket deductible for individual employees.

If there were any question as to the meaning of the word "deductible," the bargaining history at the time the parties drafted the language shows that the parties never discussed "out-of-pocket" deductibles. High deductible plans were considered at that time, but it was only in the context of employees paying the high deductible.

The NEST 1 and NEST 2 contracts do not have the same terminology but rely upon what plan the teachers have. The Association asks that the arbitrator sustain the grievances and order an appropriate remedy. The obvious remedy would be to order the Employer to pay the pre-high deductible HRA plan and to then let the negotiation process take place.

Employer

The Employer did not violate the agreement by invoking the HRA. The Employer's actions were consistent with the parties' construction of the applicable agreement language, and the parties' bargaining history. The agreement requires only a $250 deductible for each individual and a $500 deductible for each family. While the deductible for the Security Health Point of Service plan is, standing alone, higher than before the HRA was adopted, the employee's deductible has not. Even if this were to be considered a change in the insurance plan within the meaning of the collective bargaining agreement, it is an equivalent health insurance plan because it has the identical carrier, benefits, coverage, and out-of-pocket annual deductible payments for employees. The difficulty with the Union's case is that it presumes that the contract language solely concerns plan design. However, the specified amounts in the contract were meant to only capture the employee's contributions. The more fundamental problem is that it treats the Security Health Insurance Plan as a completely severable instrument. The HRA is an integrated part of the plan. Thus, even if the plan design were determinative of the meaning of the collective bargaining agreement, the Security Health Insurance Plan and the HRA maintain the same deductible.

Mr. Foster's testimony at pp. 23-4 indicated that the parties construe the term "deductible" to be the amount the employee pays. In this case, the employees pay the same deductible they always paid. This is bolstered by the fact that the Employer had front-end deductibles which were not referenced in the contract because the employee did not pay them. This is also consistent with the Mr. Kolling's testimony at tr. pp. 199-200.

In any event, Mr. Foster's testimony and Mr. Kolilng's testimony are not inconsistent with the plan design. Thus, if we were to assume that the dollar amounts appearing the collective bargaining agreement are solely and exclusively concerned with plan design, rather than the amounts that an employee is obligated to pay for the insurance pays, the Union's grievances would still be unsubstantiated because the employee deductibles are exactly as they appear in the collective bargaining agreement under the health plan now offered by the Employer.

Implementation of the HRA is consistent with the parties' bargaining history. In the past, the Employer paid the deductible for employees by paying them the amount of the deductible without the employee actually incurring the full deductible in the form of medical expenses. This lasted from at least 1996 until 2003 when the employees became responsible for paying their own deductible.

The collective bargaining agreement for the Northern Educational Support Team does not specify a deductible. It merely provides that the employees are responsible to

pay the deductible. The language was adopted when the parties changed from the Employer paying the deductible to having the employees pay the deductible. The Employer has not violated the agreement by making the instant change. There is no evidence that the employees' deductibles have been modified in any way. Daniel Welzein testified on behalf of the NEST 1 that the deductible specified in the agreement related to the employee's deductible. (Tr. p. 140) The deductible wording was added effective for the 2003-04, school year when employees first became responsible to pay their own deductibles. The NEST 1 health plan has historically been the same as that offered to the teachers. The Employer's action with respect to NEST 1 is consistent with the parties' interpretation of that agreement.

The disputed insurance plan qualifies as an "equivalent" plan within the meaning of all three agreements. There has been no change which has an impact on any individual. There has been no impact on administrative matters such as speed of processing and claim filing procedures because Security Health administers the claim filing and processing procedure just as it did before the change. The parties agreed at the hearing that the changes are functionally equivalent except for errors in administration which may have occurred. The Union has failed to show that there were any significant errors in administration. The Employer asks that the arbitrator dismiss the NPEA, NEST 1 and NEST 2 grievances in their entirety.

Association Reply

The Employer's use of terms in its brief is inconsistent with the language of the agreement. However, the Employer's position is still to change the clear language of the agreement. The reason that the parties used the words that they chose was to describe the specific plan and not merely the employee's deductible. The Employer argues that no one is disadvantaged and, therefore, there is no violation of the agreement. However, even if that were true there could still be a violation of the agreement. The quote at pp. 22-24 is not consistent with the Union position and is based upon a question asked in a different way. The NEST 1 and NEST 2 agreements are based upon those units having the same policy of insurance as the teachers.

Employer Reply

The Employer did not change the deductible within the meaning of the agreement for the reasons stated in the initial brief. The Associations argued that the Employer through Dr. Richie made specific references to "changing" the employee deductibles. It implies that the Employer's actions are an admission that this was, in fact, a change. This is not true because Dr. Richie stated at the time that he believed this was authorized by the agreement. In any event, this is not a proper inference from his conduct. It is

undisputed that the HRA plan is an "equivalent" plan and the Employer is allowed to make this change by the terms of the agreement.

If the arbitrator were to find a violation of the agreements has occurred, the Association's requested remedy is founded upon an argument which it is implying, but did not directly make. Early in the Association's brief, it makes a passing reference to contract language which has to do with the parties' insurance carriers from the WEA Trust to the Security plan, the resulting change in health insurance premiums and the adjustments to salary and wages that followed from the premium rates. This language has nothing to do with the current dispute. In any event, the only remedy the Association ever requested in the grievances is that the employer ceases and desist from changing the health insurance benefit plan and that employees be made whole for any expenses incurred as a result of the disputed change. The Association has only sought to have the savings inure to the Association rather than the Employer. The Employer does not know if the Association means to suggest such a thing, but if they do, it isn't before the arbitrator because it has never been made part of the Association's grievances. In any event, the language cited by the Association is suspended during the term of the agreements by a side letter. The same is true of the NEST 1 and 2 agreements. The Association's brief fails to note that the same insurance premium language and letter of understanding carried over into the successor agreements. Consequently, the parties have expressly agreed that the contract language concerning the premiums and wages does not apply during the term of the operative agreements. Thus, the agreements establish that that claim cannot be established.

Finally, the Association has never endorsed the Employer's implementation of the HRA. The parties have agreed that a remedy can issue if there was a violation, but they have never agreed that a remedy can issue if there was no violation. If the Employer was permitted to make the change, then the inquiry should end.

DISCUSSION

1. Standards

It is the responsibility of the arbitrator to apply the agreement of the parties as it is written. If a provision is ambiguous, the arbitrator has to determine what the parties intended when they wrote that provision. A provision in a collective bargaining agreement is ambiguous if it is fairly susceptible to more than one interpretation. An ambiguity can be patent: that is, it is obvious from the language itself. An ambiguity can also be latent; that is: it becomes apparent only when it is applied to a set of facts. If the agreement is ambiguous it is the responsibility of the arbitrator to determine the correct interpretation and apply it. To do this, the arbitrator looks to the bargaining history of the disputed provision, the purposes behind the provision, the specific context of the terms used, the parties' "past practice,"

industry practice and the time honored principles of contract interpretation applied by the courts and arbitrators.

2. NPEA Agreement

One of the central issues litigated by the parties is the meaning of Section 14.1 A 5's reference to "health insurance deductible." The Employer contends it refers only to the employee's individual deductible and not the plan's deductible. However, I conclude that it refers to the insurance plan deductible.

It is highly unlikely that the parties considered a potential that there would be a difference between the plan deductible and the employee's deductible. The only reason for having a difference between the individual's deductible and the plan deductible was to use a plan such as the HRA for the Employer to reimburse the difference. However, using an HRA for that purpose was not in the contemplation of the parties at the time of these negotiations. The HRA plan was contained in the Security Health insurance plan when it was adopted by the parties. However, the Security system of integrating claims payment directly with the administration of the HRA was relatively new and essentially unique to Security Health. The parties were not aware of the integrated HRA process and its cost-saving advantages at the time they negotiated to change from the WEA Trust to the Security Health plan.[7] There is no evidence that the parties ever discussed going to an HRA system of any type or that the Employer ever, itself considered one. I note that although the Employer had used an HRA system some years before, it was expensive because the Employer paid the difference between the health plan deductible and the employee's deductible whether the employee actually used that amount or not. It also was cumbersome, to administer. The Employer had previously abandoned it because it was ineffective. Thus, it is highly unlikely that the parties contemplated ever having a plan deductible which was different than the employees' personal deductible.

By contrast, it is likely that the parties actually contemplated that Section 14.1 A 1's reference to a deductible was to the plan's deductible and not the employee's deductible. The nature of negotiations strongly supports this conclusion. The negotiation process with the NPEA involved not only specifying the benefits to be obtained for employees from the health insurance plan, but the cost of the premiums and total cost of insurance to the Employer. The parties were negotiating at time when the legal context of negotiations made these considerations important to both parties.[8] The parties' agreement also has language in the Section 14.1 A 2 reflecting that the cost of the insurance to the Employer was a mutual consideration of the parties. The better view of

[7] See, tr. pp. 252-3.
[8] The parties negotiated under the Qualified Economic Offer limitations then in effect. See, Wis. Rev. Stat. (2007-08), Sec. 111.70(1)(nc) . Also, see, tr. p. 74.

Section 14.1 A 5 is that Section 14.1 A 1 refers to a specific Security Health Point of Service Plan and Section 14.1 A 5 refers to a plan deductible of $250/$500.

The Employer next asserts that Section 14.1 A 1's phrase "or other equivalent plan" authorizes it to make the disputed changes and to retain the savings it makes as to the cost of health insurance. I conclude that the two provisions conflict and that they must be harmonized. The "other equivalent" provision is general language carried over from the parties' past agreements. It is a common provision in collective bargaining agreements. It is language which preserves to the Employer a general right to change insurance carriers with the caveat that it be an "equivalent plan." The ordinary purpose of these provisions is to further the parties' mutual self-interest by allowing an employer to deal with unforeseen premium increases or other unforeseen issues with respect to an insurance carrier. In this regard one of the main functions of this provision is to allow an employer to take action to obtain savings or protect an insurance plan where the failure to take action would result in needless cost or loss of benefits. The exercise of that power is usually in the parties' mutual self-interest. This may include, for example, the power to make changes pending a resolution of issues concerning whether a new plan is "equivalent." In those situations, it may be left to an arbitrator exercising remedy authority as to how to resolve the effect of a change. This dispute is somewhat different than the customary dispute because the Employer did not change insurance carriers but, instead, implemented a feature of the existing Security Plan. Even if it makes common sense to broadly construe this provision, in general, to allow the Employer to take the decisive action of exercising the provisions of the existing Security Health plan to make the savings in dispute rather than forcing it to change insurance providers to get the same benefit, it does not necessarily follow that the general "equivalent plan" provision supersedes Section 14.1 A 5. This situation arises not because of unforeseen circumstances, but because the parties failed to recognize the HRA option when they evaluated plans. In this situation, the reason Section 14.1 A 5 was written the way it was written was because the parties failed to recognize that option. Accordingly, the Employer's action still violates Section 14.1 A 5 and the two provisions must be reconciled in the remedy phase of this proceeding.

3. NEST 1 AND 2 AGREEMENTS

The Association's position with respect to the two support staff bargaining units is that their agreements are intended to have the same meaning as the teacher's agreement. The factual circumstances and contract language between these units and the teachers' unit requires a different result. In essence, because these to agreements do not contain the same contractual restrictions, the Employer is free to make the disputed changes in those units. Unlike the teachers who bargained under the Qualified Economic Offer law specified above, these units did not bargain under that law. Even though the parties may have intended to have the same general insurance plan, the cost of health insurance was

important, but less controlling, in the bargaining in the NEST units. These units allowed greater authority to the Employer in administering those plans. For example, the 2010 – 2011 NEST 2 Administrative Support Staff Agreement is ambiguous as to whether it required the same Security Health plan as the teachers had or merely one with identical benefits. The parties did not use an article ("the" or "a" in Article XI, B. a. It did not include the provision requiring that the Security Point of Service plan be the same one as was in effect April 1, 2008, as was included in the teachers' agreement. Similarly in Article XI, Section B. 3, the parties did not specify any deductible. The parties contemplated the same employee deductible, but did not necessarily contemplate that the plan deductible be identical. Accordingly, the better view is that these provisions do reserve to the Employer the right to make changes in the existing Security Plan as long as it remains "equivalent." Similarly, there is no express or implied provision requiring that the Employer pass any savings on to the employees during the term of the agreement or between the disputed agreement and the simultaneously negotiated agreement.[9] Under these agreements, the HSA system is "equivalent." The Employer did not violate the NEST 1 or NEST 2 agreements by making the disputed changes.

4. Remedy for NPEA Agreement Violation

The gravamen of the teacher dispute really is as to how to allocate the savings from the change. As the Union stated in its brief:

> The obvious remedy would be to order the District back to the pre-high deductible HRA plan and to let the negotiations begin

The "equivalent plan" provision does not specify how any savings should be allocated between the Employer and the employees. The "equivalent plan" provision does not specify how any savings should be allocated between the Employer and the employees. Ordinarily under similar provisions, any savings belong solely to the Employer unless the collective bargaining agreement expressly or impliedly allocates them in a different way. I conclude that the provision of Section 14.1 A 5 requires that they be allocated between the parties. The better view of Section 14.1 A 5 is that it was negotiated upon the mistaken assumption that there were no other savings available in the move to the Security Health plan. The parties also specifically dealt with potential increases in health premiums during negotiations by suspending the provisions of Section 14.1 A 2.[10] Thus, the disputed change is not designed to deal with unanticipated circumstances, but is primarily related to correcting what should have been done at the

[9] No opinion is expressed, however, as to how the Employer's right herein would affect future negotiations.
[10] This was done in the "Letter of Understanding" appended to the agreement quoted above.

time the parties negotiated the change to Security. The "equivalent" provision does not supersede Section 14.1 A 5 as to allocating the proceeds of the savings. Accordingly, the Employer violated Section 14.1 A 5 when it implemented a higher deductible on the Security Health plan and retained all of the savings therefrom. While a resolution of the allocation of those savings is not easy, it is both possible and a better result. I will afford the parties a period of 60 days to attempt to allocate those savings themselves. If they do not, I will conduct further proceedings to do so.

INTERIM AWARD

The Employer did not violate the NEST 1 or NEST 2 actions by invoking the HRA provision in dispute. The Employer violated Section 14.1 A 5 of the teachers' agreement when it instituted the change. The parties shall attempt to determine the appropriate allocation of the savings. If either party requests that I conduct further proceedings to determine the appropriate allocation in writing, with a copy to the opposing party within sixty days (60) days of the date of this interim award, I will proceed to determine the appropriate remedy.

Dated at Madison, Wisconsin, this 19th day of August, 2011.

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

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