

Telephone (414) 921-6927

JOS. B. KERKMAN

ARBITRATOR

842 STERLING DRIVE, P. O. BOX 629  
FOND DU LAC, WISCONSIN 54935

September 8, 1980

Mr. Alan D. Manson  
Executive Director  
Northwest United Educators  
16 West John Street  
Rice Lake, Wisconsin 54868

Mr. Stephen L. Weld  
Mulcahy & Wherry, S. C.  
Attorneys and Counselors at Law  
409 South Barstow Street  
Eau Claire, Wisconsin 54701

Re: School District of Turtle Lake  
Case XII No. 24915 MED/ARB-482  
Decision No. 17601-A

Gentlemen:

On August 11, 1980, I issued a mediation-arbitration Award in the above entitled matter. Subsequent to the receipt of the mediation-arbitration Award, Mr. Weld wrote me, with copies to Mr. Manson and the Wisconsin Employment Relations Commission, pointing out an inconsistency in the Award, and requesting that I reconsider my decision. On August 28, 1980, I advised Messrs. Weld and Manson that since I considered my jurisdiction terminated I would be unable to clarify the inconsistency unless both parties joined in the request. A copy of my August 28, 1980 letter was served on the WERC. On September 3, 1980, Mr. Manson responded, indicating he was without authority to join in the request for a clarification. Copies of Mr. Manson's letter of September 3, 1980 were served on Mr. Weld and the WERC. On September 5, 1980, Mr. Manson directed the following letter to me, with copies to Weld and the WERC:

In order to avoid the delay in implementing the above award that would be caused by the Employer's announced intention to seek WERC clarification, the NUE-Turtle Lake Unit has voted today to authorize, pursuant to the Arbitrator's letter of August 28, a clarification of the inconsistency.

Since the Employer has made a request for clarification and reconsideration of the Award, and since the Union on September 5 now advises that they join in the request for a clarification of the inconsistency, the undersigned will make the clarification pursuant to the request of both parties.

In his letter of August 19 Mr. Weld directs attention to an obvious inconsistency in the Award, because at page 3 of the Award of August 11 the undersigned found as follows with respect to the health insurance issue:

"Therefore, for the reasons expressed in the award of April 6, 1979, the undersigned concludes that the health insurance premium issue would be decided in the Employer's favor if this issue were standing alone." (emphasis added)

Mr. Weld also points to page 5 of the Award where in my summary and conclusions I state on page 5 the following:

".... that the Union position should be adopted with respect to the issues of lay off procedure, health insurance, salary schedule...."  
(emphasis added)

".....very nearly caused the undersigned to find in favor of the Employer...."

".....(t)he weight of the determinations on each of the issues favors the adoption of the Union's final offer...."

Finally Mr. Weld urges that:

"the District believes that placing the health insurance issue on the Employer's side of the ledger will tip the scales in the district's favor and result in a revised determination that the Employer's position is, in its entirety, the more reasonable of the two final offers."

There is no question that the inconsistency between page 3 of the Award of August 11, 1980, and page 5 of the Award of August 11, 1980, exists. The health insurance issue is one which favors the Employer position, and the Award of August 11, 1980, incorrectly states that the Union position should be adopted with respect to that issue. Therefore, the Award of August 11, 1980, is modified to reflect that the health insurance issue is decided in the Employer's favor.

It now remains to determine what effect the foregoing modification has on the Award in its entirety. The undersigned rejects the Employer's request for reconsideration of the Award in its entirety because the modification provided in the preceding paragraph is ministerial. While the Award of August 11, 1980, inaccurately stated health insurance should be placed in the "union's column"; that inaccuracy was erroneous as to form only. In deliberating and weighing the issues, the undersigned was fully aware at the time of the execution of the August 11, 1980 Award that the health insurance issue had been found for the Employer, even though the writing did not say that. Furthermore, as Mr. Manson correctly notes in his letter of September 3, 1980, ".....a review of the Award indicates that the inconsistency involves a relatively minor item and does not result in a conclusion that the Award itself is in error. Specifically, the insurance issue involves a difference of less than a dollar a month per employee. Where you find for the Employer's insurance position in the body of the Award, in your Summary you listed it with the two major items of salary and layoff on which you found for the Union."; consequently, the removal of the health insurance issue from the Union's side of the ledger to the Employer's side of the ledger would not cause the mediator-arbitrator to change his opinion that "the weight of the determinations on each of the issues favors the adoption of the Union's final offer."

All of the foregoing, then, establishes that there was an inconsistency in the original Award which is now modified and corrected by this letter, however, the inconsistency which is now corrected does not establish a basis for revising the Award in the Employer's favor when all issues are considered. The Award issued on August 11, 1980, remains unchanged where it states that:

The final offer of the Union, along with all tentative agreements previously entered into between the parties, as well as all provisions of the predecessor Collective Bargaining Agreement which remained unchanged, are to be incorporated into the Collective Bargaining Agreement between the parties for the year 1979-80.

This letter, pursuant to the request of the Employer, concurred in by the Union, constitutes a clarification of the Award issued by me on August 11, 1980, and is to be considered an addendum to my Award of August 11, 1980.

Very truly yours,

Jos. B. Kerkman /s/

Jos. B. Kerkman,  
Mediator-Arbitrator

JBK:rr

cc Mr. Morris Slavney, Chairman, Wisconsin Employment Relations Commission,  
14 West Mifflin Street, Suite 200, Madison, Wisconsin 53703