ARBITRATION OPINION AND AWARD

In the matter of the arbitration between:

PUBLIC SCHOOLS

and

Union

Case Number**: Groty # 5**
GR: Insurance Benefits

ARBITRATOR – C. KEITH GROTY

Appearances:

Employer
Attorney
Superintendent
Business Manager
Bookkeeper

Union
Union Representative
Grievant
Witness
Witness
Witness

Hearing Held: May 19, 2006

Time: 10:00 a.m.

Place: School District Administrative Offices

Pertinent Contract Clauses

MASTER AGREEMENT
September 1, 2003 – August 31, 2006

ARTICLE 26 – INSURANCE BENEFITS

The following benefits are made available by the Board to the members:

The board shall provide, without cost to the employee, for a full twelve month period for the employee's entire family, the following ***Insurance*** *program. When appropriate,* ***Insurance*** *and Medicare premiums will be paid on behalf of eligible employees, spouses, or dependents. Employees electing health insurance shall receive the benefits listed in Plan A.*

Plan B. Employees Not Electing Health Insurance
Bargaining unit members not electing health insurance coverage shall have available the amount of the ***Insurance*** *single subscriber premium on an individual basis. The member may choose to purchase any of the* ***Insurance*** *Variable Options and/or Financial Services (Financial Services) Annuities with this amount. Any amounts exceeding the Employer subsidy shall be payroll deducted. An open enrollment period shall be provided whenever premium subsidy amounts change for the groups. The Board shall adopt and maintain a qualified Section 125 Plan for the purpose of IRS compliance.*

Benefits are prorated on 40 hours per week.

Statement of the Facts

The grievant was a full-time employee prior to the 2005-2006 school year. His position as bus mechanic was reduced to half-time status or eight hundred (800) hours per year. At the same time, the grievant was given the duty of snow removal for a total of four hundred (400) hours per year to be paid at the maintenance/custodian schedule rate. This was combined to make a total of twelve hundred (1200) hours to be done on an eight (8) hour per day basis for a total of one hundred fifty (150) days during the school year. In order to complete the compensation package, the District prorated the fringe benefits, including sick leave and health insurance, at the rate of one hundred fifty (150) days divided by one hundred eighty (180) days in the school year. The grievant received notice of this employment relationship in a letter sent to him by the superintendent and entered as exhibit four (4).

A grievance was filed on September 2, 2005 alleging that the contract had been violated at Article 26 because the insurance benefits were being prorated on one hundred eighty (180) days of work rather than based on a forty (40) hour work week. The remedy sought was to make the grievant whole by reinstating his insurance benefits and applying it to an annuity in lieu of insurance from September 1, 2005 forward. The matter was denied

through the grievance procedure and submitted to arbitration under the terms of the collective bargaining agreement. A hearing was held at the date and time above. There are no procedural issues baring a finding on the merits in this case.

Finding and Conclusions

The union argues that the grievant should have received a full, that is 100% pro-ration of his health insurance benefits in each week that he worked forty (40) hours. Further, that having established this full pro-ration status, the grievant should have received full health insurance benefits or in lieu of benefits an amount toward an annuity for the entire school year.

The employer responds that using a pro-ration of one hundred fifty (150) days based on a school year of one hundred eighty (180) days is a reasonable method by which to calculate the pro-ration of health insurance benefits. Further, they argue that the grievant did not contest the fact that all his sick leave and holiday compensation was prorated using this same formula. It is argued that to provide the grievant with full health insurance because he works some weeks of forty (40) hours is an unreasonable interpretation of the provisions of the contract and the intent of the parties. The employer asserts that this work arrangement is a new combination of positions not used by the District in the past, and therefore creates a situation

without precedence in the application of the contract language. In trying to accommodate the grievant by combining the two part-time positions, the District accepted the grievant's proposal of one hundred fifty (150) eight (8) hour days as opposed to prorating his part-time status per week.

In response, the union argues that the contract language is clear and unambiguous in stating that the pro-ration of benefits is to be done based on a forty (40) hour week. No other method of pro-ration is acceptable in light of this language.

Findings and Conclusions

The Association's claim that the only way to calculate the part-time pro-ration of the grievant's health insurance benefit is by looking to a forty (40) hour week assumes the language on pro-ration establishes a right to full-time benefits regardless of whether the person is employed on a full- or part-time basis.

The contract language in the benefits section states that "benefits are prorated on forty (40) hours per week." It does not say that someone working forty (40) hours one week gets full benefits and when working a lesser number of hours another week gets no or prorated benefits for that week. The language establishes the factor to be used when prorating benefits. The District converted this to a normal eight (8) hour work day to

arrive at the formula of one hundred fifty (150) days over one hundred eighty (180) days or eighty-three (83) percent of the full benefit. If they had used hours rather than days it would have been stated as twelve hundred (1,200) hours over fourteen hundred forty (1,440) hours also equaling eighty-three (83) percent.

The Association argues, however, that it should be on the basis of the weeks in which the grievant worked forty (40) hours. When reviewing the calendar of the grievant's work year as provided in evidence (Exhibit 6), there are ten (10) weeks in which the grievant did not work forty (40) hours. Using this formula would result in thirty-four (34) weeks over forty-four (44) weeks for seventy-seven (77) percent of full-time. The weeks in which the grievant worked less than forty (40) hours could be pro-rated and added to the forty-hour weeks. The outcome in any of these scenarios would reflect the fact that the grievant was not a full time employee and was not entitled to full-time health insurance benefits.

The arbitrator believe it's the intent of the parties to give pro-rated benefits to part-time employees. I do not believe it was the intent to provide full-time benefits to part-time employees. I believe the parties intended to establish a measure of a full-time equivalent employee so that persons employed part-time would get a "prorated" benefit. Since the normal and

regular schedule is set by days and hours during the normal work week this was the formula by which it was stated. It does not say that a person who is a part-time employee gets full benefits in those weeks where they work forty (40) hours and less or no benefits in the other weeks. The method established by the Board is a reasonable application of the contract language. If the parties wish to attempt a different procedure, it should be worked out through negotiations and not arbitration.

As for the grievant's claim to any lost benefits. He declined to sign the required forms because he disputed the District's interpretation of the contract. Since the arbitrator has determined that the District's application of the ambiguous contract language was reasonable, the grievant has no claim to lost benefits. He took unilateral action by refusing to sign the forms. If the grievant believed he had a right to a greater benefit than was being offered, he had the obligation to sign the form and take what was offered including paying for a prorated share of the insurance. The grievant should have filed his grievance for the additional disputed amount. To preserve his rights, if any, he should have signed the forms and filed his grievance. He waived any future rights with his actions. The grievant resorted to "self help" by refusing to sign the form. By taking matters into

his own hands, he gambled on the correctness of his position and waived any right to the benefits retroactively.

Award

The method by which the Employer prorated the health benefits for the grievant was a reasonable application of the ambiguous contract language. Grievance denied.

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C. Keith Groty, Arbitrator

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Date