

Opperwall #5

AMERICAN ARBITRATION ASSOCIATION
VOLUNTARY LABOR ARBITRATION

In the matter of the arbitration between:

Union,

-and-

Employer

Grievant: Union

Issue: Insurance Payments - Summer

Contract Provision: Article 18 Section 1, C.2

Arbitrator: Kathleen R. Opperwall

ARBITRATION OPINION AND AWARD

The parties agreed to submit this grievance to arbitration through written briefs and joint exhibits, without holding an arbitration hearing.

ISSUE

Did the Employer violate Article 18, Section 1, C.2 of the parties' contract by only paying the health insurance premiums for bargaining unit members for 10 months, even though they performed work in 11 months, including parts of June and August.

GRIEVANCE RECORD

The bargaining unit includes the full time and regularly scheduled part time food service, secretary/clerical, and paraprofessional aides who are employed by the Employer. The issue involves the payment of health insurance premiums for the summer months when school is out of session and the bargaining unit members are not working.

The key contract language in dispute is found at Article 18, Section 1, C.2, and reads as follows:

Health insurance premiums for eligible employees will be paid for the months worked (normally up to ten months). School year employees returning for the following school year must continue their insurance (including health coverage, and vision/dental if they have elected other than single-subscriber coverage) for the period between school years (normally two months) at their own expense and must make payment through payroll deduction, or as otherwise agreed by the Employer, for such period.

The grievance was filed on October 12, 2005 by Employee 1, the President of the Union (hereafter Union). The grievance was filed as a Union grievance and alleged the following:

Misapplication of Article 18, Section 1, C.2. See attached letter dated October 12, 2005.

The attached letter was addressed to Superintendent 1, and stated the following:

In response to your letter dated October 3, 2005, it is the Unions premise that the contract clearly states that "health insurance premiums for eligible employees will be paid for the months worked." It is also our belief that contract language has not been applied correctly for a number of years.

During the negotiation process the Union discussed the misapplication of this language and tried to correct the problem. Unfortunately, we were unable to come to a consensus on this issue.

I have been advised by MEA staff that discussion of the misapplication of the insurance language (referenced on the attached grievance form) during the negotiation process constitutes an end of the Union's agreement with the past practice application.

It is the Union's expectation that the Employer pay for the health insurance premium for eligible employees for the months worked as per contract language.

The grievance sought the following relief:

Back payment of all monies deducted in error for the 2005-2006 school year and immediate cessation of said deductions.

Superintendent 1 responded to the grievance with a letter dated October 17, 2005, which included the following:

The Administration is denying the grievance as we feel we are following the language of Article 18, Section 1, C.2 when it is read in its entirety.

It is my understanding that the Union proposal, during the negotiation process, for the Board to pay 11 months of the health insurance premium was an issue that the union brought to the table. We are lead to believe that introducing a proposal during the negotiation process does not mean that it constitutes an end to past practice unless both sides agree to the proposal.

The grievance was appealed to arbitration on or about November 7, 2005. On May 1, 2006 the parties' written briefs and the following joint exhibits were submitted to the arbitrator:

- J1 Excerpt from 1997-2000 Collective Bargaining Agreement, Article 18, Section 1.A-C (page 30)
- J2 2002-2005 Collective Bargaining Agreement, including Letter of Understanding re 2002 Negotiations
- J3 2005-2008 Collective Bargaining Agreement, including Letter of Understanding re 2005 Negotiations
- J4 Correspondence between Superintendent 1 and Union President Employee 1, 09/26/05 – 10/03/05
- J5 Grievance Chain
- J6 Negaunee School Employer Calendars, 2002-2003 through 2005-2006 School Years
- J7 Collective Bargaining Notes of School Board Member Board Member 1, 07/26/05 and 08/08/05 sessions
- J8 Collective Bargaining Notes of Supt. Superintendent 1, 07/26/05 session
- J9 2000-2001 Contract Proposals from Negaunee UNION
- J10 Insurance Premium Data, 1999-2000 through 2005-2006 School Years (data summary only)
- J11 Excerpt from 2000-2002 Collective Bargaining Agreement, Article 18, Section 1.A-C (pages 25-26)

Joint Exhibit 4 includes the correspondence between Union President Employee 1 and Superintendent 1 which preceded the filing of the grievance. In her letter of September 26, 2005, Employee 1 explained the issue as follows:

The employee who contacted me, and I am assuming there may be others, works into the month of June and returns to work by mid August. It is the Unions understanding that this employee and others like her should only be paying their health insurance premium for the month of July; since it is the only month which they are not working.

Superintendent 1's response, dated October 3, 2005, included the following:

Under past practice, the employee has paid two months of the premium for the eight to twelve weeks that they did not work in the summer, thus the 10 months of premium paid by the school district and the two months in which the employee paid the premium.

Joint Exhibit 10 shows the dollar amounts of the premium sharing between the Employer and bargaining unit members. For the 1999-2000 school year, the Employer paid \$2,396.80 per eligible bargaining unit member, and those members receiving single coverage paid 5479.34. By the 2005-2006 school year, the Employer's annual premium share had increased to 55,094.53, and the bargaining members' annual cost had increased to 51,092.20 for single coverage. The premium sharing was handled by payroll deduction, with the bargaining unit members' costs being deducted from their payroll checks during the school year.

Joint Exhibit 6 was the school calendars for the 2002-2003 through 2005-2006 school years. This exhibit shows that the length of the school year remained stable during this period. The last day for students varied from June 4 to June 9 during this period, and the first day back for students varied from August 25 to August 31.

The parties' contract includes the following provision at Article 6, Section 1.A concerning the length of the work year:

The normal work year for school-year employees shall be in accordance with the school-calendar plus holidays. The normal work year for ten- (10) month employees shall be in accordance with the school calendar plus paid holidays and may include two (2) weeks before and two (2) weeks after the school year. The periods prior to the start of school and following the end of school may be adjusted by mutual agreement of the building principal and the affected employee. If DO employee in that classification is available, the employee who normally does the work will be obligated to work.

Applying this language to the summer of 2005, in conjunction with the school calendar, means that a bargaining unit member could be required to work as late as June 23, 2005, two weeks past the last day of school, and could be required to return as early as August 16, 2005, two weeks before the start of the 2005-2006 school year.

POSITIONS OF THE PARTIES

It was the Union's position that the parties' contract is clear in stating that the Employer is responsible for paying the health insurance premiums for the months worked by eligible bargaining unit members. The school calendar shows that bargaining unit members do work part of the month of June as well as part of the month of August. The only month they do not work is July. Therefore, the Union argued, the Employer should be paying for eleven months of premiums, not ten months.

It was the Employer's position that the contract language calls for a ten month/two month sharing of premiums. Even if the contract language were ambiguous, the parties have an established past practice of interpreting the contract in this manner, over a period of many years under identical, contract language. The Employer also argued that the Union was trying to achieve through arbitration what it had not been able to achieve through bargaining.

DISCUSSION AND DECISION

The key contract language is found at Article 18, Section 1, C.2, and reads as follows:

Health insurance premiums for eligible employees will be paid for the months worked

(normally up to ten months). School year employees returning for the following school year must continue their insurance (including health coverage, and vision/dental if they have elected other than single-subscriber coverage) for the period between school years (normally two months) at their own expense and must make payment through payroll deduction, or as otherwise agreed by the Employer, for such period.

This provision has been included in the parties' last four contracts, those covering the years 1997-2000, 2000-2002, 2002-2005, and 2005-2008. This contract language has not been changed during this time period.

The parties focused on different parts of this contract provision. The Union focused on the language that the premiums will be paid "for the months worked." The Employer focused on the language that the months worked were "normally up to ten months," and that the period between school years was "normally two months."

The Union argued that the contract language was clear, and required the Employer to pay the premiums for any month in which the employee worked. I do not, however, find this language to be completely clear or unambiguous. Obviously, it lead to this dispute. The Union is interpreting "for the months worked" as being the same as "for any month in which work is performed!" That is not, however, how the contract reads. In addition, the contract language does not require that the months worked coincide with calendar months.

When contract language is ambiguous it is appropriate to look to the past practice of the parties, to see how they have applied the language in the past. It is commonly stated that the past practice of the parties is evidence of how they intended their contract to be interpreted. In this case, the same contract language was in effect for eight school years before the grievance was filed at the beginning of the 2005-2006 school year. During that time period, the language was interpreted as requiring the Employer to pay for 10 months of premiums, and requiring the employees to pay for 2 months of premiums. This practice is consistent with the contract's

references to 10 months worked and 2 months between school years. This consistent practice over a period of many years is strong evidence that the parties intended Article 18, Section 1, C.2 to be interpreted in this manner.

There was no evidence that the bargaining unit members have been working more weeks in recent years. The school calendars which were submitted show that the school year has remained stable, at least during recent years. The calendars show that June 9, 2005 was the last day for students for the 2004-2005 school year, and August 30, 2005 was the first day back for students for the 2005-2006 school year. This resulted in an eleven and one-half week summer break for the students. Pursuant to Article 6, Section 1.A (quoted above at page 5), bargaining unit members can be required to work for up to two weeks after the end of the school year and two weeks before the beginning of the next school year. Employee 1's letter of September 26, 2005, stated that the bargaining unit members were working into the month of June and returning to work by mid August. This still leaves a 2 month summer break, from mid-June to mid-August. The Union did not argue that the bargaining unit members were working more than 10 months. Instead, the argument was that they were working in both June and August. Article 18, Section 1, C.2 states that the Employer will pay the premiums "for the months worked (normally up to 10 months)." This language does not require that the months worked coincide with calendar months. It is my conclusion that the contract language is consistent with paying 10 months' premiums for employees whose work year is basically 10 months, even though they do perform work in parts of 11 months.

Evidence was also presented that during two rounds of bargaining the Union proposed increasing the Employer's share of the health insurance premiums. During the 2000 negotiations, the Union proposed that the Employer pay the premiums for the whole year. This proposal was

not accepted by the Employer, and did not become part of the contract. In 2005, the Union proposed that the Employer pay the premiums for one of the summer months. The Employer rejected this proposal, and the contract was settled without this change. This bargaining history is not conclusive in itself, because a party can propose clarifying language without conceding what the existing language means. However, in this case, this bargaining history is consistent with the parties' past practice, and does give additional support to the Employer's position.

In summary, it is my conclusion that there is some ambiguity in the language in Article 18, Section 1, C.2. It is therefore appropriate to consider the parties' past practice over the years that this language has been in their contract. The established practice has been for the Employer to pay the health insurance premiums for 10 months for employees who work basically 10 months, and do not work from mid-June to mid-August. Based on the contract language, considered together with this past practice, it is my conclusion that no contract violation was established.

The grievance is denied.

A handwritten signature in black ink, appearing to read "Kathleen R. Opperwall".

Kathleen R. Opperwall, Arbitrator

Dated: June 2, 2006