

**IN RE ARBITRATION BETWEEN:**

---

**ISD #316, COLERAINE SCHOOLS (GREENWAY)**

**and**

**EDUCATION MINNESOTA, LOCAL 1330**

---

**DECISION AND AWARD OF ARBITRATOR**

**BMS No. 08-PA-0243**

**JEFFREY W. JACOBS**

**ARBITRATOR**

**7300 Metro Blvd. #300**

**Edina, MN 55439**

**Telephone 952-897-1707**

**E-mail: [jjacobs@wilkersonhegna.com](mailto:jjacobs@wilkersonhegna.com)**

**August 18, 2008**

IN RE ARBITRATION BETWEEN:

---

ISD #316, Coleraine Schools (Greenway),

and

DECISION AND AWARD OF ARBITRATOR  
BMS 08-PA-0243  
Failure to Pay Contractual Benefit

Education Minnesota, Local 1330.

---

**APPEARANCES:**

**FOR THE UNION:**

Rebecca Hamblin, Attorney for the Union  
Grievant One  
Grievant Two  
Eileen Grosland, TLC Committee, teacher  
Susan Holm, TLC Committee, teacher  
Joan Barle, TLC Committee, teacher

**FOR THE DISTRICT:**

James E. Knutson, Attorney for the District  
Rochelle Van Den Heuvel, Superintendent of Schools  
William Makinen, former Superintendent of Schools

**PRELIMINARY STATEMENT**

The hearing in the matter was held on June 24, 2008 at 9:30 a.m. at the District Offices at 200 Cole Ave. S., Coleraine, Minnesota. The parties presented oral and documentary evidence at that time and submitted post-hearing Briefs on July 15, 2008 and Reply Briefs dated July 23, 2008 at which point the record was closed.

**CONTRACTUAL JURISDICTION**

The parties are signatories to a collective bargaining agreement for 2005 – 2007. Section 28 provides for binding arbitration of disputes. The arbitrator was selected from a list provided by the State of Minnesota Bureau of Mediation Services.

**ISSUES**

Did the District violate the collective bargaining agreement when it refused to pay the grievants for unused sick leave days up to a maximum of \$5,000.00 pursuant to Section 16 C of the labor agreement? If so what shall the remedy be?

## UNION'S POSITION

The Union took the position that the District violated the labor agreement when it refused to pay the grievants for unused sick leave days up to \$5,000.00 since the employees did not take family health coverage after retirement. In support of this the Union made the following contentions:

1. The language of Section 16 C of the labor agreement provides as follows:

Insurance option for employees not using the family plan after retirement shall be reimbursed by the District for unused sick leave days up to a maximum of \$5,000.00. The employee must make an irrevocable decision prior to the actual date of retirement.

2. The Union argued that this language is clear and unambiguous and means that any employees who choose not to take the family plan health insurance coverage is entitled to receive up to \$5,000.00 in unused sick leave days. This would be true even if the employee in question did not have family health coverage or had single coverage prior to retirement. The two affected grievants were long-term teachers working for the District and who qualified for the maximum benefit of \$5,000.00 in unused sick leave since they did not elect family health coverage after retirement.

3. In Grievant One's case she had no coverage of her own but instead had family coverage through her husband. Upon her retirement she submitted a letter dated June 1, 2007 in which she advised the District of her retirement at the end of the 2006-2007 school year. She also referenced the language Section 16 C and indicated that "I shall be reimbursed by ISD 316 for unused sick leave days up to a maximum of \$5,000.00 because as an employee I do not use the family plan for health insurance." See Union exhibit 2. The District refused to accept this letter and advised the grievant that the Board would not accept that letter. Accordingly, she submitted a different letter without that language in it and filed a grievance over the question of her entitlement to the unused sick leave days.

4. Grievant Two was in a somewhat different situation in that she had single coverage prior to her retirement. She kept her single coverage after retirement and did not elect to take family plan coverage after retirement. As such, under the language she also qualifies for the unused sick leave benefit.

5. The Union argued that the language does not require an election or waiver of anything. All that it requires is that the employee not take family coverage after retirement; it makes no difference if they had it prior to their retirement nor does it make any difference if their spouse happens to have it after their retirement. The language is clear and unambiguous and requires the payment of unused sick leave if the employee does not take family plan coverage after retirement. Since both grievants in this case did not elect family plan coverage after retirement they are entitled to the benefit.

6. The Union argued that the District's interpretation of the language, at least regarding employees whose spouses work for the District, results in a penalty to those employees. A person whose spouse works for a different employer and who has family coverage could elect not to take the District's family plan after retirement and receive the sick leave payment whereas an employee whose spouse works for the District is placed at a significant disadvantage. The Union argued that penalizing District employees could not have been the intent of the parties when negotiating this language.

7. The Union also pointed to several prior instances where the benefit was paid to retiring employees under virtually identical circumstances. The Union asserted that this demonstrates a clear practice of allowing the benefit even if the affected employee either did not have coverage of their own or had single coverage after retirement. See Union exhibit 1.

8. The Union pointed to the situation presented by Lieschen Hecimovich, which was almost identical to that presented by the grievant. She elected single coverage upon retirement and was also married to another teacher in the District. He also elected single coverage upon his retirement and was paid the \$5,000.00 benefit. Ms. Hecimovich retired, took single coverage and asserted a right to the benefit. The District initially declined to pay the benefit but later, after she filed a grievance, the Board reversed the Superintendent and paid the \$5,000.00. See Union exhibit 4.

9. The initial denial had been based on the alleged failure to make an “irrevocable decision” prior to retirement. After the board decided to pay Ms Hecimovich’s claim however, the District’s business manager indicated “the Board agreed that absent a decision by Lieschen to elect coverage prior to retirement meant that she had made an irrevocable decision to waive family coverage.” See District exhibit 3. Accordingly, both grievants in this matter have made an irrevocable decision within the meaning of the language.

10. The Union also pointed to the testimony of Joan Barle, who had been directly involved in the negotiations of this language. She indicated that the original language contained the words “spousal benefits.” That concerned her so the language was changed from “employees “choosing not to use spousal insurance benefits after retirement” to the current employees “not using the family plan.” This was done to make it clear that a person did not have to be married and have a spouse in order to qualify for the language. It was also inserted to make it abundantly clear that one did not have to have family coverage themselves prior to retirement in order to qualify for this benefit.

11. The essence of the Union’s argument is that only individuals who keep family coverage and, those who are covered under the labor agreement’s 403B language, are disqualified from the benefit conferred by Section 16 C. If an employee elects not to have family plan coverage under the terms of the language they are entitled to the payment of sick leave.

The Union seeks an award requiring the District to pay the grievants unused sick days up to \$5,000.00 pursuant to Section 16C. The Union also requested statutory interest on any sums awarded.

**DISTRICT’S POSITION:**

The District’s position is that there was no contract violation and made the following contentions:

1. The District relied on the same contract provision but argued that it gives rise to a very different result. The District argued that the cited language requires that the affected employee must have family coverage *prior* to their retirement and waive that in order to save the District money over time. That quid pro quo is in exchange for the payment up to \$5,000.00 of unused sick leave.

2. The District asserted that the grievants do not qualify since neither had family coverage of their own prior to retirement. The District argued that they therefore gave nothing up in exchange for the sick leave payments and are thus not eligible to receive what would be in essence a gratuity from the District.

3. In the grievant's case, her husband, who still works for the District and still has family coverage. Therefore she is "using the family plan after retirement" within the meaning of that language and is thus ineligible for the payment.

4. Further, the District pointed to the language of Article 16, Section D and noted that in the case of employees who are 65 and older, they must take certain specified coverage noted in that language. In the grievant's case, she was over age 65 upon retirement and was required to take the coverage listed in Section D. As such, the District argued, she was not therefore eligible to receive the sick leave payment called for in Section C.

5. The District further argued that Minn. Stat. 471.61, subd. 2 b prevents the grievant from taking family coverage. The District argued that since the statute prevents teachers over age 65 from taking family coverage the clause at issue here can only mean that teachers must give up family coverage that they already had upon retirement in order to qualify for the benefit.

6. The District distinguished the instances where people received the payment in similar circumstances. In Ms. Hecimovich's case, the Board gave her the payment but made a mistake in doing so. Former Superintendent Makinen testified he recommended against paying the sick leave and disagreed with the notion that opting to take the payment equated with a waiver of family coverage.

7. The District also pointed to the waiver form developed for this purpose that clearly states that it is an Application for “in Lieu of” Insurance benefit. That form, signed by several of the individuals cited by the District who received the sick leave payments in the past, also clearly indicates that the sick leave payment is in lieu of the family coverage. The District argued that the unambiguous import of this form is that the teacher must give something up in order to receive the payment of sick leave. Without that “in lieu of” waiver there is no obligation to pay the sick leave.

8. The District also pointed to the contract between AFSCME and ISD 316 that provides for exactly this sort of “in lieu of” payment in Article XXVI of that contract, See District exhibit 4. That language provides as follows: In lieu of insurance option, for married employees holding two single plans and choosing not to use espousal insurance benefits after retirement, the employee shall be reimbursed by the School District for unused sick leave days up to a maximum of \$5,000.00.”

The District seeks an award denying the grievance in its entirety.

#### **MEMORANDUM AND DISCUSSION**

The underlying facts giving rise to these combined grievances were for the most part undisputed. The grievant was a teacher in the Greenway Coleraine School District for some 10 years but has been a teacher for many more than that. She is married to John Peterson who is still a teacher in the Greenway Coleraine School District. He carries family coverage that also covers the grievant as well. Accordingly, the Union acknowledges that when he retires, and if he continues the family coverage at that time, he will not be entitled to the unused sick leave benefit pursuant to Section 16, C. The grievant never had coverage of her own, single coverage or family coverage, and has at all times relevant to this proceeding had health insurance coverage under her husband’s plan.

When the grievant retired however she simply elected to stay on her husband's family plan health coverage. When she retired she at first submitted a letter dated June 1, 2007 in which she advised the District of her intention to retire at the end of 2006-07 school year. That letter also contained a request for the payment of unused sick leave up to a maximum of \$5,000.00 pursuant to Section 16 C of the labor agreement. She testified credibly that the person in the business office told her that the District would not accept the letter with that language in it so she drafted another letter with the paragraph about unused sick leave deleted. This was also dated June 1, 2007 but was apparently in fact drafted a day or so later. The District accepted that letter. The grievant then filed a grievance when her request for unused sick leave was denied.

The grievant also testified credibly that upon her hire the former superintendent told her specifically that if she decided not to take family coverage she would receive the payment of unused sick leave pursuant to the provision of the labor agreement under dispute here. She assumed that the District would pay her the unused sick leave if she elected not to take family health coverage upon her retirement. There was no evidence that anyone told her that there was any sort of quid pro quo for that unused sick leave or that she would be required to have had family coverage before her retirement.

The grievant was also a teacher in the Greenway Coleraine School District for many years as well. Her situation was slightly different in that she elected to carry single coverage for her tenure as an active employee of the District. She also retired in June of 2007 and elected not to take family health coverage and also asserted a right to her unused sick leave under Section 16 C. That too was denied and the grievances were consolidated for hearing. It was undisputed that both grievants had enough unused sick leave to merit the maximum \$5,000.00 payment called for if they qualified for it.

The dispute was over whether the language cited above works to require the payment of the sick leave in these cases. As always, in any case involving the interpretation of contract language one must start with the language itself.

The language appears on its face to be clear and unambiguous it provides simply that “Insurance option for employees not using the family plan after retirement shall be reimbursed by the District for unused sick leave days up to a maximum of \$5,000.00. The employee must make an irrevocable decision prior to the actual date of retirement.” It does not make reference to “in lieu of” or require a waiver of any other type of insurance as a prerequisite for the payment of the unused sick leave benefit. Certainly it could since the labor agreement between the District and AFSCME does, but this language does not, and it is this agreement that governs the rights of the teachers.

Neither does the language of Section 16 C require that an employee actually have the family coverage prior to retirement. It requires on its face that the employee not use the family plan upon retirement as the sole criterion for receipt of the sick leave benefit.

The District pointed to several prior iterations of the contract between these parties going back several contract periods. These provisions do not alter what is in this contract and only further strengthen the Union’s argument that what the parties intended was exactly what *this* contract says - nothing more and nothing less.

The District argued that the language implies that there be such a waiver of family coverage and that implicit in the language is a requirement that the affected employees have family coverage before retirement so they can effectively give something up as a pre-requisite for receipt of the unused sick leave. The District argued quite adamantly that this only makes sense; otherwise there would be little financial incentive for the District to pay out up to \$5,000.00 for teachers who have never had family coverage in the first place.

That may all be true but the contract language does not say that. Moreover, while the terms of the labor agreement are many times subject to a quid pro quo this is anything but an exact science. Trying to divine what specific benefit was traded or negotiated or compromised in exchange for what is never completely clear.

Here there was no such evidence and no indication that this language was negotiated with any specific intent or expressed representation by either party regarding the quip pro quo posited by the District. Without such evidence the language must be interpreted on its face. It is not out of the realm of possibility that the benefit conferred by this language, which actually pays out accumulated, earned but unused sick leave accumulated by the teachers, was negotiated as a benefit for the teachers who have worked long enough to be able to accumulate that much sick leave. There may have been a multitude of reasons why this language appears there but that is not strictly germane to this discussion. The language says what it says; it is not for the arbitrator to pass on the wisdom of it or whether it will or will not save the District money in the long run. The role of the arbitrator is to interpret the language and rule on what it says and therefore how it is to be applied to the facts presented.

Applying this plain, unambiguous language to these grievants reveals a clear result. In the grievant's case the fact that she had single coverage prior to her retirement is not relevant to the determination of entitlement to the benefit. She did not elect family coverage after her retirement and is therefore entitled to the payment of unused sick leave. She is not "using" the family plan.

The grievant's case is slightly different but the result is the same when applying the language to her situation. The District argues that she is "using" the family plan since her husband has family coverage through the District.

Several things support the Union's view here. First, the language refers to "employees not using the family plan." While a somewhat painful reading of that could be rendered such that an employee who is subject to someone else's family plan is "using" the family plan, the much more sensible reading of the language is that the "employee" referred to in the language is the retiring teacher, not the retiring teacher's spouse.

Second, as the Union points out, interpreting the language in the way the District seeks would be to treat retiring teachers differently based on marital status. While the arbitrator has no jurisdiction to determine whether such an interpretation is a violation of state or federal anti-discrimination law, it appears that such an interpretation could well go down that road. Where there are two plausible interpretations of contract language, the one that does not result in a potential violation of state or federal law is the one most appropriately selected. Moreover, it is unlikely that the parties intended that employees who were married to other District employees would be granted a lesser benefit than those who were not. If the grievant's spouse worked for another employer with family coverage and retires from that position and keeps it, there would be little doubt that the grievant would be entitled to the benefit.

The District further argued that a person who never had health coverage prior to retirement should not be entitled to the benefit. As noted above however there is nothing in the language requiring that a teacher have family coverage before retirement as a prerequisite to receipt of the benefits called for in this language. The analysis of that scenario is therefore no different for the grievant than for the grievant. The District also asserted that Section 16 D requires retiring employees over the age of 65 to take the listed coverage in that article.

Based on this the District argues that those employees are not entitled to the benefit. The two sections do not however appear to be tied together in any way. Certainly the language of Section C could have been drafted or amended to make it clear that persons over age 65 who retire and who are subject to Section 16 D do not get the benefits. Again, the language does not provide for that; it speaks in terms of "any" employee and does not distinguish between retirees over or under age 65.

It further argued that Minn. Stat 471, subd. 2 b prohibits teachers in this situation from taking family coverage and argued that there is nothing for them to give up and thus no reason at all for the District to grant this benefits to teachers in this scenario. That statute provides in relevant part as follows:

Subd. 2b. **Insurance continuation.** A unit of local government must allow a former employee and the employee's dependents to continue to participate indefinitely in the employer-sponsored hospital, medical, and dental insurance group that the employee participated in immediately before retirement, under the following conditions:

(a) The continuation requirement of this subdivision applies only to a former employee who is receiving a disability benefit or an annuity from a Minnesota public pension plan other than a volunteer firefighter plan, or who has met age and service requirements necessary to receive an annuity from such a plan.

(b) Until the former employee reaches age 65, the former employee and dependents must be pooled in the same group as active employees for purposes of establishing premiums and coverage for hospital, medical, and dental insurance.

(c) A former employee may receive dependent coverage only if the employee received dependent coverage immediately before leaving employment. This subdivision does not require dependent coverage to continue after the death of the former employee. For purposes of this subdivision, "dependent" has the same meaning for former employees as it does for active employees in the unit of local government. ...

The difficulty for the District is that this case is not governed by Minnesota law per se but rather the plain terms of the contract between these parties. Certainly nothing in the statute prohibits the district from paying the benefit provided for in Section 16 C of the labor agreement. Moreover, the contract clause could not be clearer in requiring the sick leave benefit to be paid under certain specifically listed conditions. Once those conditions are met the benefit is due. Had the parties desired to condition this payment on something else, as the district asserted it should have, then those conditions could certainly have been set forth in the language. It should be noted too that if the District's interpretation is accurate, it is difficult to see how any teacher over age 65 would ever qualify for this benefit. Certainly contract clauses must mean something and to apply the interpretation urged by the District would work to the exclusion of any teacher over age 65. This is not set forth in the language nor implied by the rest of the Section and the arbitrator can read no such limitation into that language.

The District further argued that Section 16D prohibits employees over age 65 from receiving family coverage. The language does not say that either. That language provides simply that “In the case of a retiree, age 65 and older, the Board shall pay one hundred percent (100%) of the Arrowhead Pro-Care Senior Gold single subscriber policy up to \$152.00.” The Board is also required to pay for group health insurance pursuant to Section 14 D for retirees under the age of 65. There is no exclusion from family health coverage in this language for employees over age 65. Neither is there an exclusion for employees age 65 or older in Section 16C. Thus despite the District’s well asserted position and as tempting as it might be to read such a requirement into the contract, the arbitrator in a grievance setting cannot do so. It must be for the parties to negotiate for themselves.

The outcome in this matter is governed by the clear and unambiguous terms of the parties' contract and the evidence presented here. The fact that she cannot apparently take family coverage, even if true, would not disqualify her from the benefits under the plain terms of the contract. The contract says and means that if the retiring teacher chooses not to elect family coverage they are entitled to the \$5,000.00 benefit. The District further argues that there must be something to revoke and that the implication of the language is that the teacher must wave something in order to get something. That provision is simply not in the contract however. There is no requirement whatsoever that anything be revoked as a precondition of receipt of the benefits provided for in this language.

Even though the language itself is clear and unambiguous there was further convincing evidence that the District has in fact paid similarly situated employees in the past. Several employees have in fact been paid this very benefit in similar if not identical situations under the very same language. One employee, Leischen Hecimovich, was paid the benefit even though she too was married to another District teacher and did not have family coverage prior to her retirement.

The District initially denied the benefit but on appeal of her grievance eventually granted it. The Board paid this benefit even over the objection of the former Superintendent. There could hardly be any clearer message sent by the District about what this language means than that. It should be noted that there were other teachers who were also paid the benefits even though they either had only single coverage or had no coverage at all prior to retirement.

The District asserted that the contractual language must be interpreted in light of its intended purpose and that the intended purpose was to save the District money when teachers retired. There is some cogency to that argument in general but here there was little evidence of what the intended purpose really was. Moreover, there are several ways in which that purpose could be accomplished and still be consistent with that purpose and still result in the payment of the sick leave benefit. Because the benefit provided is accumulated earned sick leave that the teacher accrued but did not use during active employment the District could well save money by not having to pay this during the employment. Accordingly, not having to pay sick leave and thus not having to paying substitutes, could effectuate the purpose of “saving money” as well. This benefit is certainly an incentive for that to occur. The point here is that the District’s argument that the language must be interpreted in light of its intended purpose does not carry the day since there is no one single obvious purpose behind this language. Moreover, as noted above, the bargaining history of this particular language supports the Union’s claims more than the District’s on this record.

The 1997-1999 contract had a provision as follows: Section 16 C. “Insurance option for those choosing not to use spousal insurance benefits after retirement shall be reimbursed by the District for unused sick leave days up to a maximum of \$5,000.00.” This was changed in the 1999-2001 contract as follows: “Insurance option for employees not using the family plan after retirement shall be reimbursed by the District for unused sick leave days up to a maximum of \$5,000.00. The employee must make an irrevocable decision prior to the actual date of retirement.”

The District argued that the change to the phrase “for those choosing not to use spousal insurance benefits” to “employees not using the family plan” changed only the fact that the prior language applied only to spousal insurance benefits. The Union argues that there is nothing in the language providing that only the teachers that give up family coverage are eligible for the benefit. The Union’s argument is that the language neither says nor means that.

As noted above, the parties have negotiated several versions of this language over time so it was apparent that these parties have given considerable thought to this provision. This only strengthens the Union’s claim that this result is exactly what the parties bargained for. It is axiomatic in labor relations that the result in a particular case is governed by what the parties negotiated for themselves and not what might make economic sense to one party after the fact. If the parties desire a change in this result a change can certainly be negotiated into the language during the next round of bargaining but it is not for the arbitrator in this setting to add or delete language now.

Moreover, with regard to the grievant’s situation, the District actually has the language it seems to want in this contract in the AFSCME contract as noted herein. That language provides as follows: “In lieu of the insurance option, for married employees holding two single plans and choosing not to use spousal insurance benefits after retirement, the employee shall be reimbursed by the School District for unused sick leave days up to a maximum of \$5,000.00.” This language of course has the “in lieu of” language in it whereas the teacher contract at issue here does not.

Such language would certainly have provided more contractual support for the District’s arguments here and if that language was in this contract the result might well be different. It is not however and the expressed intent of the language in this contract supports the Union’s claim that the only condition for receipt of the unused sick leave benefit is that the teacher not take family coverage after retirement. There is not, as noted herein, any condition that the teacher have family coverage prior to retirement and give it up.

Significantly too, in the negotiations for the 2007-2009 contract, the District proposed a change in the language of Section 16C from what it currently says to language that would have read as follows: “Insurance option for employees eligible to change from a family plan to a single plan or no insurance after retirement shall be reimbursed by the District for unused sick leave days up to a maximum of \$5,000.00. The employee must make an irrevocable decision prior to the actual date of retirement. This only applies to employees who have held a family plan in their name for at least five years prior to retirement.”

A cursory review of this language reveals that it would have been tailor made for this very scenario and provides almost precisely the contractual support the District would have needed to prevail. The stark reality though is that this language was rejected by the Union and does not appear in the contract. In addition, it is a well-established tenet of contract interpretation in labor relations that a proposal made and withdrawn by one party can be used as evidence of contractual intent of the language that remains in place. This is not to say that such evidence compels the result on its own but is a strong piece of evidence of contractual intent of the language that is in the 2005-07 contract.

Here the evidence showing that this proposal thus made, rejected by the Union and withdrawn, demonstrates considerable support for the Union’s contention here that the existing language does not require any sort of election of coverage prior to retirement. Neither does the existing language require that the retiring teacher have family coverage prior to retirement and then give it up as a condition of receipt of the sick leave benefits provided for in Section 16 C.

The totality of the evidence thus shows that the language says exactly what it means: that the teacher simply is required not to use the family plan coverage as a condition of receipt of the unused sick leave benefit. It is not for the arbitrator to effectuate this change in this setting.

Finally, there was an issue with respect to whether the grievants had made the irrevocable choice prior to retirement. It was more than abundantly clear that the grievant did as her original June 1<sup>st</sup> letter showed. Moreover, as the letter from the School's Business manager, Roy Trousdell, showed after the Hecimovich grievance was settled and paid by the Board, "absent a decision to elect family coverage prior to retirement meant that she [Ms. Hecimovich] had made an irrevocable decision to waive family coverage." Here the very same notion applies. It was clear that both grievants made an irrevocable choice not to elect family coverage when they retired. They were also not apparently given anything to sign in this regard but that too is somewhat moot given the interpretation noted above.

Here, the facts are clear, the relevant contract language is clear and the practice of the parties is clear. The fact that this results in a cost to the District does not govern the result. Accordingly, the grievances are granted and the District is ordered to pay the grievants for unused sick leave days up to a maximum of \$5,000.00. The Union requested statutory interest on the payments ordered and argued that the District's position was frivolous and unjustified. While on this record the district's position did not find contractual or evidentiary support it can hardly be said to have been frivolous or interposed for the sole purpose of delay. Further, there is no contractual support for a claim of pre-award interest on any monetary award rendered in this matter. Accordingly, that claim is denied.

### **AWARD**

The grievance is SUSTAINED. The District is ordered to pay the grievants for unused sick leave days up to a maximum of \$5,000.00. As note above, the Union's claim for pre-award interest on the sums awarded herein is denied.

Dated: August 18, 2008

---

Jeffrey W. Jacobs, arbitrator