

**THE MATTER OF ARBITRATION BETWEEN**

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<b>Independent School District, #319, Nashwauk-Keewatin, MN</b>	)	<b>BMS Case No. 07-PA-1203</b>
	)	
<b>“District”</b>	)	<b>Issue: Retiree Health Benefits</b>
	)	
<b>and</b>	)	<b>Hearing Date: 10/12/07</b>
	)	
<b>Education Minnesota, Local No. 1444,</b>	)	<b>Brief File Date: 11/09/07</b>
	)	
<b>“Union”</b>	)	<b>Award Date: 01/07/08</b>
	)	
	)	<b>Mario F. Bognanno,</b>
	)	<b>Labor Arbitrator</b>

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**JURISDICTION**

The above-captioned matter was heard on October 12, 2007, in Nashwauk, Minnesota. The parties appeared through their designated representatives. Each party was afforded a full and fair opportunity to present its case. Witness testimony was sworn and subject to cross-examination. Exhibits were introduced into the record. Timely post-hearing briefs were submitted on or about November 9, 2007, and the matter was taken under advisement. The parties waived the provision in Article VII, Section 6 of the Collective Bargaining Agreement (CBA) indicating that the arbitrator should endeavor to decide the case within 15-days of the hearing. (Joint Exhibit 1)

**APPEARANCES**

**For the Union:**

Jess Anna Glover	Attorney-at-Law
Mary Jane Damjanovich	President, Education Minnesota, Local No. 1444
James Poole	Education Minnesota Field Staff

John Stewart

Retired Teacher and Grievant

**For the District:**

John Colosimo

Attorney-at-Law

Robert Bestul

Superintendent, ISD No. 319

John Klarich

Former Superintendent, ISD No. 319

**I. BACKGROUND AND FACTS**

Many of the relevant facts are not in dispute. The District and the Union are parties to a longstanding CBA. Over the years the parties have bargained for benefit packages, including medical and health insurance, severance pay, workers compensation and so forth. At dispute in this case is whether the Grievant, John Stewart, a retired school teacher, is entitled to certain health care benefits as a “retiree” under the terms of the 2005 – 2007 CBA.

Before retiring, the Grievant had approximately 35 years of teaching experience. He was first employed by ISD No. 319 in 2004, working as a substitute teacher; he became a regular teacher in academic year 2005 – 2006; and he retired from District employment at the close of academic year 2006 – 2007, after working as a regular teacher for two (2) years.

The instant dispute pertains to Article XVII – Fringe Benefits – and, specifically, to the following part of Section 5 B:

**Section 5 B. Eligible Retirees**

The employer agrees to pay the full deductible and premium for a single plan for retirees until Medicare eligible.

The Grievant retired from the District in May 2007 at the age of 56. In a letter dated May 24, 2007, the Grievant requested that the District continue his “...

single plan for health insurance beginning June 1, 2007 until age 62 when ... [he will become] eligible for Medicare as per Article XVII, Section 5 of the master contract.” (Union Exhibit 1(a) In a letter dated May 25, 2007, John Klarich, the then District Superintendent, denied the Grievant’s request, observing that “...a retiring teachers must have 15 years of service in the District and is (sic) age 55 or older.” (Union Exhibit 1(b)) On the Grievant’s behalf, the Union formally grieved the matter on May 30, 2007. (Union Exhibit 1(c) The Union maintains that since the Grievant is a “retiree” and is otherwise eligible (i.e., ineligible for Medicare), he is entitled to the health care benefit provided under Section 5 B. On the other hand, the District contends that the sub-section heading “Eligible Retiree” is defined in Article XVII, Section 10 which identifies eligibility to mean a teacher with 15 years of service in the District and who is at least 55 years of age. On July 19, 2007, the ISD No. 319 Board of Education voted 4 – to – 1 to deny the Grievant’s request; thereafter, the parties were unable to resolve their dispute; and the matter proceeded to the instant arbitration. (Union Exhibits 1 (g) – (j))

## **II. THE STATEMENT OF THE ISSUE**

The parties stipulated to the following statement of the issue:

Whether the District violated Article XVII, Section 5 B of the 2005 – 2007 Collective Bargaining Agreement when denied Mr. Stewart retiree health insurance benefits? If so, what is an appropriate remedy?

**III. RELEVANT CONTRACT PROVISIONS**

**Article XVII FRINGE BENEFITS**

**Medical and Hospital Insurance**

Section 1 Establishment of VEBA with Health Reimbursement

Arrangement for Active Employees and Eligible Retirees

Effective September 1, 2005, Employer shall make available a VEBA Plan and Trust described in summary and attached hereto as VEBA Attachment #1, to all qualified bargaining unit members and eligible retirees who exercise their option to enroll in the high deductible health insurance program offered by this negotiated contract...

\* \* \*

Section 5 Employer Contributions to the Health Reimbursement Plan

A. Active Employees

The employer agrees to pay the full deductible and premium for each single plan and the full deductible and 90% of the premium for each family plan under VEBA 100 Plan A.

B. Eligible Retirees

The employer agrees to pay the full deductible and premium for a single plan for retirees until Medicare eligible. Retirees may enroll in a family plan by paying the difference in deductible and premium between the single and family plans until Medicare eligible...

\* \* \*

Section 10 Retiring teachers: If a teacher retires or dies with 15 years of service in the district and is age 55 or older, severance pay will be given to the teacher in an amount to be determined at the date of their retirement or death...

**IV. POSITION OF THE UNION**

The Union maintains that the grievance should be sustained for several reasons. First, the Union argues that the controlling language is clear and unambiguous. The Union contends that the Grievant is a “retiree” under Article

XVII, Section 5 B and he is otherwise “eligible” for the benefit. In other words, nothing in Section 5 B precludes the Grievant from receiving the described benefits. The Union further argues that eligibility for health benefits should be liberally interpreted in favor of employees, given their contemporary socio-economic importance.

Second, the Union argues that the District’s reliance on Article XVII, Section 10 is misplaced. The Union contends that Section 5 B (health insurance) and Section 10 (severance) are not related, cross-referenced, nor dependent on one another. Thus, the Union urges, there are absolutely no contractual “links” between these sections, as the District suggests. Rather, each section provides for a distinct benefit with distinct eligibility criteria. The Union further argues that under Minnesota law health insurance benefits are distinct from severance benefits. (See: Minn. Stat. § 471.61, subdivision 2a and Minn. Stat. § 465.72)

Third, the Union argues that the parties’ negotiating history and past practices support its interpretation of the CBA. The Union points out that the two (2) benefits have been bargained separately for years and that it was only during the 2007 – 2009 negotiations that the District attempted to define the term “eligible retiree” consistent with Section 10.<sup>1</sup> (Union Exhibits 5 – 9 and 4, respectively) Next, the Union contends that, in fact, a past practice does not exist which controls this case. The Union contends that a past practice must “be a consistent response to a recurring set of facts that leads to the conclusion that the practices intended the response to be the proper and correct response to that

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<sup>1</sup> The 2007 – 2009 CBA, Article IV – Definitions now includes a new Section 6 that defined an Eligible Retiree as “... a teacher who is 55 years of age and has 15 years of service to the district.” (Union Exhibit 4).

set of facts.” *Princeton Education Ass’n v. ISD #477, Princeton Public Schools*, BMS Case #03-PA-243 (Arbitrator Jacobs, 2003). (The arbitrator ruling that severance and health insurance benefits were separate and finding past practices were not controlling). The Union contends that the evidence is insufficient to establish a controlling past practice. Based on the record of evidence, the Union requests the undersigned sustain the instant grievance and make the Grievant whole.

**V. POSITION OF THE DISTRICT**

The District argues that the Grievant is not entitled to the retiree health care benefit for several reasons. First, the District argues that the Grievant was informed when he was hired that he would not be eligible for certain retiree benefits. Second, the District argues that the phrase “Eligible Retiree” must be interpreted in the full context, including past practices, the parties’ intent, and contract language included in the parties’ Fringe Benefits article. The District argues that it was always the parties’ intent that an eligible retiree is one who has taught in the District for 15 years and achieved the age of at least 55, as indicated in Article XVII, Section 10. The District further argues that it has never afforded employees, such as the Grievant, the now sought-after retiree health care benefit. Next, the District argues that the Grievant’s request would result in a harsh and unreasonable interpretation of the CBA and should be avoided. Based on the record, the District requests the undersigned to deny the instant grievance.

**VI. OPINION**

The controlling inquiry in this case is whether the District properly determined that the Grievant was not an “eligible retiree” under Article XVII, Section 5 B. The starting point is the language itself. Article XVII is entitled “Fringe Benefits” and Section 5 provides in part,

Section 5 Employer Contributions to the Health Reimbursement Plan

A. Active Employees

The employer agrees to pay the full deductible and premium for each single plan and the full deductible and 90% of the premium for each family plan under VEBA 100 Plan A.

\* \* \*

B. Eligible Retirees

The employer agrees to pay the full deductible and premium for a single plan for retirees until Medicare eligible. Retirees may enroll in a family plan by paying the difference in deductible and premium between the single and family plans until Medicare eligible.

The record indicates that the Grievant retired effective May 1, 2007. At that time, the Grievant was 56 years old. In addition, while the Grievant has approximately 35 years service as a teacher, he began employment with the District as a substitute teacher in 2004 and a regular teacher in 2005. The record further reflects the following relevant bargaining history. The 1991 – 1993 CBA included a health insurance premium benefit whereby the District would pay up to \$250 per month for “retired teachers” until they reached the age of 65. (Union Exhibit 5) That CBA also included severance pay for teachers who retired or died with 15 years of service and at least 55 years of age. The 1993 – 1995 CBA provided that the District would pay 100% of premiums for single coverage up to the age of 65 for “retired teachers”. (Union Exhibit 6) That CBA also included a separate

severance benefit dependent on the “15-years of service and 55-year of age” (hereafter 15:55) rule. The relevant language in the 1995 – 1997, 2001 – 2003 and 2003 – 2005 CBAs contained language similar to that referenced in the 2003 – 2005 CBA. (Union Exhibits 7, 8 and 9)

The 2005 – 2007 CBA (the agreement here in dispute) contains several changes to the Fringe Benefits article. The changes include the establishment of a federally approved VEBA Plan and Trust for health insurance. As quoted above, that language indicates that “all qualified bargaining unit members and eligible retirees...” may participate in the health care plan. (Emphasis added). Section 5 B then details the rights of eligible retirees. Section 10 of Article XVII also includes a severance benefit, which is dependent on the 15:55 rule. Mary Jane Damjanovich, President, Local Union No. 1444, testified that the changes to Article XVII were significant and that the benefits for health care and severance are separate and not intertwined. Moreover, the Union points out that the parties did not define the term “eligible retiree” in the definition clause of the CBA (until their next round of bargaining in 2007).

Initially, the undersigned rejects the Union’s argument that the District’s desire to define an “eligible retiree” as a teacher with 15 years of service in the district and who is age 55 and older, as manifest during the parties’ 2007 – 2009 round of bargaining, is somehow dispositive in this case. The fact of the matter is that it was prudent for the District to seek that modification because it believed that said modification was the parties’ intent. Moreover, parties should be allowed to bargain away problems that may indeed recur.

The Union next contends that the language of Section 5 B is clear and free from ambiguity and simply needs to be applied. At first glance the position of the Union is well taken. The Union implicitly argues that the tests for retiree eligibility are twofold: Is the teacher retired? If yes, then is the retired teacher Medicare eligible? If no, then the Article XVIII, Section 5 B benefits ought to be forthcoming. Further, pursuant to Article VII, Section 6, "The Arbitrator shall have no power to alter, add to, or subtract from the terms of this contract." As a general statement of arbitral law, the arbitrator is not authorized to re-write the parties' agreement nor is (s)he allowed to somehow dictate a result that may appear more "fair or reasonable".

On the other hand, the District argues that the phrase "eligible retiree" should be interpreted to lead to a reasonable conclusion and that the phrase is ambiguous. The undersigned indeed concludes that the phrase "eligible retiree(s)" is ambiguous, as used in the Article XVII, Section 1 with reference to VEBA and as the heading to Article XVII, Section 5 B. Although the term "retiree" is easily defined to include the Grievant, the term "eligible" is not so easily defined. An "eligible retiree" could simply be the employee-retiree who is otherwise eligible to enroll in the health care plan. Or, the term could mean more. What defines "eligibility"? Does Section 5 B simply apply to all "retirees" under the age of 55, as asserted by the Union? Disturbingly, such a narrow definition would allow nonsense outcomes. Under this definition, for example, a (single plan) teacher with only one (1) year of service in the District who is 27 years of age would be "eligible" to receive thirty-five (35) years of District-paid health

insurance premiums: clearly this is nonsense and, as the District persuasively argues, an absurd outcome. Accordingly, to be “eligible” for Article XVII, Section 5 B benefits, it is not sufficient for one to be merely “retired” and to be under 55 years of age. The parties’ intended meaning of the phrase “eligible retiree” may be more expansive than that. Accordingly, the phrase “eligible retiree” must be defined through principles of contract interpretation.

The undersigned rejects the District’s argument that Article XVII, Section 10 necessarily defines the term “eligible”. That clause is indeed separate and includes an entirely different benefit, as the Union persuasively argues. At the same time, the District correctly points out that the parties’ past practices could be used to indicate the intended interpretation of language in question. In order to give meaning to contract language the identified practice should: (1) be unequivocal; (2) acted upon by the parties; and (3) identified over a reasonable period of time.

The record in this case indicates that since at least the 1991 – 1993 CBA, teachers retiring from the District arguably have been eligible for retiree health care benefits that are akin to the current CBA’s benefits. (Union Exhibit 5) In addition, former Superintendent Klarich testified that for several years the retiree health care clause has been consistently applied *per* the 15:55 rule. In fact, Mr. Klarich testified that the District has never granted the referenced benefit to retired teachers who did not meet the 15:55 criteria. Moreover, Mr. Klarich testified that over the years numerous teachers have approached him to discuss retirement and specifically to determine whether they were eligible for the health

insurance premium benefit. In response to such inquiries, Mr. Klarich testified his answer was uniformly “no” when the inquiring teacher failed to meet the 15:55 criteria. Further, Mr. Klarich testified that even employees who were close to being eligible, for example, 55 years of age and 13 years with the District, were denied the health care retiree premium benefit. Although the Union contends that it did not acquiesced to this interpretation by the District, it is clear that this interpretation has existed since 1991. Further, Mr. Klarich testified under cross-examination that he would regularly “refer” the inquiring teachers who did not meet the 15:55 rule “to the Union because [he] was prohibited from negotiating with them on an individual basis”. Critically, the Union did not challenge this testimony. The undersigned concludes that this practice is the best evidence for defining the phrase “eligible retiree”. Consequently, as discussed above, the parties are found to have adopted the 15:55 rule to give meaning to Article XVII, Section 5 B, which is consistent with the position of the District.

## **VII. AWARD**

For the reasons set forth above the instant grievance is denied. The District did not violate the terms of the CBA when it determined that the Grievant was not entitled benefits under Article XVII, Section 5 B therein.

Issued and Ordered on this 7<sup>th</sup>  
day of January 2008.

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Mario F. Bognanno, Arbitrator