In Re the Arbitration Between:

BMS File No. 15-PA-0058

Independent School District No. 709,
Duluth, MN,

Employer,

GRIEVANCE ARBITRATION OPINION AND AWARD

and

AFSCME Council 5, Local 66,
Paraprofessionals,

Union.

- Pursuant to **Article 13** of the collective bargaining agreement effective July 1, 2011 thorough June 30, 2013, which has been extended through negotiations, the parties have brought the above captioned matter to arbitration.
- The grievance was submitted on June 2, 2014 and the issue was expanded by written notice dated June 11, 2014 based upon the June 4, 2014 Step 2 response to the June 2, 2014 grievance notice.
- The parties selected James A. Lundberg as their neutral arbitrator from a list of arbitrators provided by the Minnesota Bureau of Mediation Services.
- An arbitration hearing was conducted on November 24, 2014 in Duluth, Minnesota.
- The parties agree that the matter is properly before the arbitrator for a final and binding determination.
- The Employer contends that the grievance was not timely submitted.

- Briefs were submitted by e-mail transmission on December 5, 2014 and December 8, 2014 and the record was closed.

APPEARANCES:

FOR THE EMPLOYER
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FOR THE UNION
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ISSUES:

I. ***Whether the grievance was timely filed with the Employer?***

II. ***Whether the Employer violated Article 20, Section 1, when it did not provide information regarding insurance changes to the Union upon request.***

III. ***Whether the Employer violated Article 20, Section 1 of the collective bargaining agreement, when it unilaterally changed the insurance eligibility requirement from 20 hours per week to 24 hours per week.***

RELEVANT CONTRACT PROVISIONS:

ARTICLE 13, Grievance Procedure, Step 1:

The aggrieved employee shall present his/her grievance within twenty (20) days of the time the employee knew or through the use of [or] reasonable diligence should have known of the act, event, or default of the School District, School Board, its employees, agents or contractors, which is alleged to be a violation, misapplication or misinterpretation of the terms of this Agreement.

ARTICLE 20, Insurance And Hospitalization Coverage

Section 1 – Eligibility. The School District shall make available to each employee within this bargaining unit who regularly works twenty (20) or more hours per week during the school year the same group health insurance as is or are available to employees within the teacher bargaining unit of the School District and their dependents. The School District shall make the same Employer contributions for employees in this bargaining unit and their dependents as are paid for employees within the teacher bargaining unit.

Any change to the coverage of the School District health insurance policy (as contracted with the School District's contribution to the premium), negotiated by the exclusive representative of the Duluth Federation of Teachers, during the term of the contract shall be promptly presented to the Union. Employees covered by this contract shall then vote on these changes.

Employees do not have to be enrolled in the medical/hospitalization insurance to be eligible for long-term disability, life insurance, and dental insurance.

FACTUAL BACKGROUND:

On April 22, 2014 the Union submitted a request for information regarding Duluth Federation of Teacher's contract negotiations. The request was made by e-mail transmission and said the following:

> As the Teachers are voting on their contract this week, we would like to begin contract negotiations. Please provide all available negotiation dates for May and June, including day time hours.

Also, please provide the health insurance negotiated by the Teachers as the Para bargaining unit will need to vote on that as well.

A second request for information regarding insurance changes was made by the Union on April 29, 2014. By e-mail dated May 6, 2014, the Employer informed the Union that the health care information would be provided after the School Board acted on the teacher's contract. The correspondence from the Union pointed out that the collective bargaining agreement requires a vote over the insurance changes.

The Union notified the Employer by e-mail dated May 12, 2014 that documentation of insurance changes had not been provided. The request included a statement reminding the Employer that the collective bargaining agreement requires Union ratification of any insurance changes.

On May 19, 2014 the Union informed the Employer that it had not received notice of changes in health insurance and the Open Enrollment period was scheduled to end soon. The Union again asserted that changes needed to be voted upon by the bargaining unit, before they could be implemented. On the 19th of May, 2014 the Employer responded by e-mail correspondence saying "Do you see a vote on the health plan as being done separately and prior to our contract negotiations?"

On May 20, 2014 the Union informed the Employer that the information over changes needed to be provided to the Union and voted upon and the vote would be separate from negotiations. In it's correspondence the Union cited **Article 20, Section 1** of the collective bargaining agreement, which says "Any change to the coverage of the School District health insurance policy (as contracted with the School District's contribution to the premium), negotiated by the exclusive

representative of the Duluth Federation of Teachers, during the terms of the contract shall be promptly presented to the Union. Employees covered by this contract shall then vote on theses changes."

On June 2, 2014 the Union filed a grievance alleging violation of **Article 20, Section 1** of the collective bargaining agreement. The grievance alleged that the Employer had not provided information regarding insurance changes, as had been requested.

In the June 4, 2014 Step 2 response to the June 2, 2014 grievance, the Employer said that the Duluth Teachers Federation contract did "not result in any changes to the coverage." Hence, the Employer did not believe that the Union would have a need to vote. The response also said "the DFT (Duluth Teachers Federation) did agree to change the health insurance eligibility threshold fro .5 FTE to .6 FTE. The last sentence of the first paragraph of **Article 20, Section 1** states that the District "shall make the same Employer contributions from employees in this bargaining unit and their dependents as are paid for employees within the teacher bargaining unit." According to the School District, the contribution to health insurance premiums for the bargaining unit members would be made on the same basis as the contribution made to teachers. In simple terms, the new teacher contract provided for premium contribution if an employee was working 24 hours per week rather than 20 hours per week and the School District intended to provide insurance and make premium contributions on the same basis for the Paraprofessionals.

After receiving the Step 2 grievance response from the Employer, the Union submitted an amended grievance statement claiming violation of **Article 20** of the collective bargaining agreement, which said:

> The District has not supplied any of the insurance changes to the Union as required by contract. Further the District plans to implement new standards for Paras to be provided health insurance (District Response to Step 2).

The parties were unable to resolve the dispute and the matter was brought to arbitration.

ISSUE #1 - Was the grievance timely?

The Union made a series of requests for information for which it has a right to receive under **Article 20, Section 1** of the collective bargaining agreement. There is no record of any direct correspondence by the Employer in response to the information requests, until the STEP 1 grievance response. The argument that articles published in the Duluth newspaper and notice of open enrollment constitute responses to the information requests by the Paraprofessional bargaining unit, is simply rejected by the arbitrator. The Employer did provide a direct response to the Union's request, after the grievance was filed. In the correspondence leading up to the grievance, the Employer indicated that information would not be forthcoming until the Teacher Contract was voted on by the School Board. It is very clear from the sequence of events that the Employer knew what AFSCME was requesting and did not provide a response, until after the grievance was filed.

The Union took reasonable steps to obtain information that it must have under the collective bargaining agreement. Following the May 19, 2014

correspondence by the Employer, the Union had some reason to believe that the Employer might not willingly provide the information requested. Hence, the grievance dated June 2, 2014 was timely filed.

The Employer was immediately and in a timely manner placed on notice of the Union's amended grievance. The Employer notified the Union by letter dated June 4, 2014 that it did not believe there were any health insurance changes that required a Union vote and that the Employer would pay health care premiums for employees who meet the teacher eligibility threshold of .6 FTE (24 hours), rather than the 20 hour threshold established in the Para contract.

The Union timely responded to the Employer's STEP 2 response by amending the grievance on June 11, 2014 based upon new information provided by the Employer on June 4, 2014. The grievance in the above matter was timely submitted in accordance with the grievance provision of the collective bargaining agreement.

SUMMARY OF UNION'S POSITION OVER ISSUES #2 AND #3:

The Union argues that the Paraprofessional contract requires notice of changes to health insurance coverage or premium contribution and a vote by the bargaining unit over any changes.

In fact, the Employer unilaterally changed the eligibility requirement for health insurance premium payments for Paraprofessionals. The Employer unilaterally determined that it would no longer pay premiums for employees who work at least 20 hours per week. The participation and contribution threshold was changed to 24 hours per week. The effect of the change is to provide insurance coverage to a smaller group of employees. According to the collective bargaining

agreement the Union must be notified of any change to the insurance coverage and the change must be voted upon by the Union.

The plain language of the collective bargaining agreement directs that employees covered by the Paraprofessional contract, who work 20 hours per week, are eligible to participate in the health insurance plan. The Employer unilaterally changed the eligibility requirement from 20 hours per week to 24 hours per week, without notice and without a vote on the provision by the Union, as required by the collective bargaining agreement. While no current Paraprofessional has lost coverage due to the change, the plain language of the contract should be upheld.

SUMMARY OF EMPLOYER'S POSITION OVER ISSUES #2 AND #3:

The Employer argues that the collective bargaining agreement applies only to changes in "health coverage" negotiated by the School District and the DFT. The School District had no contractual obligation to "present" any coverage changes that were unilaterally imposed by PEIP, the insurance program. The changes were not the product of negotiations and the contract provision requiring presentation of information to the Union applies only to "coverage" issues not to eligibility issues. Moreover, the Union had "prompt and reasonable" access to all relevant information regarding health insurance.

The Employer notified all district employees of changes by e-mail correspondence and during informational meetings on May 12, 2014. Moreover, the notice of Open Enrollment was provided to the Union. Hence, the Union was on notice of changes, even though, the changes did not involve coverage and were not the product of negotiations between the School District and the DTF. The Employer

also argues that information regarding changes was provided through articles that appeared in the *Duluth News Tribune* that discussed negotiations between the School District and the Duluth Teacher's Federation. There is no evidence that the Employer failed to turn over any information required by the collective bargaining agreement.

In addition to arguing that the grievance over the eligibility issue was untimely, the Employer argues that **Article 20** of the collective bargaining agreement is a "me too" provision that requires the Employer to provide the grievants with health insurance identical in every respect to the health insurance received by the Duluth Teacher Federation's. The practice of providing all bargaining units with identical health insurance serves the important function of providing a uniform health care benefit for all district employees. Providing a uniform benefit is a well-established practice that has long been followed by the District and all bargaining units.

According to the Employer the proper interpretation of **Article 20, Section 1** involves a two-step inquiry. First, the employee must work twenty (20) hours or more per week to be eligible for health insurance. If an employee works at least twenty (20) hours per week, a comparison must be made with similarly situated teachers to determine whether Employer contribution for insurance is available. In this case, the teacher contract says that teachers who work less than .6 FTE are not eligible for health insurance from the School District and the School District does not need to contribute toward premiums. Hence, Paraprofessionals who work less than

.6 FTE are not eligible for health insurance or premium contribution by the Employer.

By agreeing to the "me too" language of the collective bargaining agreement, the Union has recognized that the teachers have more bargaining power with the District and are, therefore, able to negotiate a better deal on health insurance. The Union should not be able to file a grievance simply because it disagrees with the result of the teachers' negotiations.

OPINION:

The grievance in this case must be sustained based upon the plain meaning of **Article 20, Section 1** of the collective bargaining agreement. The parties negotiated a provision requiring the Employer to provide notice of insurance changes and a twenty (20) hour eligibility standard for participation in the health insurance plan and Employer contribution for eligible employees.

The School District unilaterally changed the terms and conditions under which it will provide health insurance and contribute to health insurance premiums for Paraprofessionals, without providing information to the Union as requested. The Union made specific requests of the Employer for information in order to determine whether any changes in the Duluth Teacher's Federation contract would affect the insurance coverage provided for under the Paraprofessional Contract. In fact, a narrower group of employees were provided for under the new DTF contract but the Employer did not provide specific information regarding the change to the Union.

Article 20, Section 1 specifically directs that Paraprofessional employees who work twenty (20) hours are eligible for insurance coverage and contribution. The change in eligibility under the DTF contract does not change the eligibility provision under the Paraprofessional contract. The parties specifically agreed that eligibility for insurance coverage and Employer contribution for Paraprofessionals is available if an employee works twenty (20) hours or more per week. The School District may not unilaterally change the terms and conditions of a negotiated agreement and the arbitrator has no authority to rewrite the contract. Hence, the grievance must be upheld.

AWARD:

I. ***The arbitrator finds that the Employer failed to provide information to the Union regarding insurance changes as required by Article 20, Section 1 of the collective bargaining agreement.***

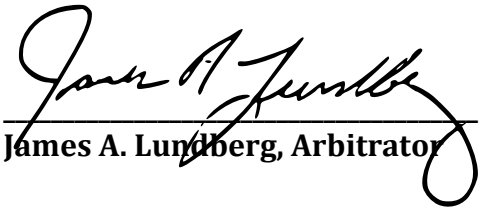
II. ***The arbitrator finds that the Employer unilaterally changed the negotiated terms and conditions of Article 20, Section 1 by unilaterally imposing a 24 hour per week eligibility standard for receipt of health insurance and Employer premium contribution to health insurance for Paraprofessionals.***

III. ***The collective bargaining agreement requires the Employer to provide health insurance and premium contributions for Paraprofessionals who work 20 hours per week or more.***

IV. ***The Employer is hereby directed to provide health insurance and premium contributions for Paraprofessionals who work twenty (20)***

hours per week or more, unless or until there is a change in the agreement of the parties.

Dated: January 7, 2015



James A. Lundberg, Arbitrator