

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

INDEPENDENT SCHOOL DISTRICT NO. 152, MOORHEAD, MINNESOTA

and

EDUCATION MOORHEAD

BMS Case No. 15PA0009

(Health Insurance Contract Language Grievance)

Appearances:

Ann R. Goering, Attorney at Law, Ratwik, Roszak & Maloney, P.A., 720 Second Avenue South #300, Minneapolis, MN 55402 appeared on behalf of Independent School District No. 152, Moorhead, Minnesota.

Debra M. Corhouse, Attorney at Law, Education Minnesota, 41 Sherburne Avenue, St. Paul, MN 55403-2196 appeared on behalf of Education Moorhead.

ARBITRATION AWARD

Independent School District No. 152, Moorhead (herein the District or Employer) and Education Moorhead (herein the Union or EM) are Parties to a collective bargaining agreement (CBA) which provides for the final and binding arbitration of certain disputes. The Union filed a request with the Minnesota Bureau of Mediation Services for arbitration of a grievance concerning contract language for health insurance. The Parties selected Paul Gordon to serve as Arbitrator. Hearing in the matter was held on December 18, 2014 and March 4, 2015 at the District Office in Moorhead, Minnesota. No transcript was prepared. The Parties filed written briefs and arguments on April 7, 2015 when the record was closed.

ISSUES

The Parties did not stipulate to a statement of the issues. The Union stated the issues at the hearing as:

Is the written agreement between the Parties, Joint Exhibit 3, enforceable?

If so, what shall the remedy be?

The Union stated the issues in its brief as:

Did the District violate the negotiated agreement between the parties when it failed to contribute \$750/month toward retiree health premiums for those teachers who retired in 2014?

If so, what shall the remedy be?

The District stated the issues at the hearing as:

Does a review and execution of a collective bargaining agreement by all parties constitute a waiver of an objection to a disputed term?

Does an employer's statement of its intentions towards retirees and plans to explore possibilities constitute a language item to be included in a collective bargaining agreement?

The District did not include a statement of issues in its brief. At the hearing the Parties agreed that the Arbitrator would formulate the issues best reflected by the record. The case centers on the language contained in Joint Exhibit 3, which is a Tentative Agreement (TA) signed by a member of the respective bargaining teams. The Union's issues in its brief contains what it feels is ultimately the result that is provided for by the language in the TA. The District's issues focus on whether the provisions of the TA ever became binding as part of the collective bargaining agreement. The Union's statement of the issues at hearing is broad enough to cover the other variations of the issues stated by the Parties, and best reflects the record.

RELEVANT CONTRACT PROVISIONS

In this case the provisions of the Joint Exhibit 3 TA are not included in the written CBA that was ultimately ratified, approved, and signed by the Parties as Joint Exhibit 1. Joint Exhibit 3 will be set out here as a contested provision, followed by provisions from Joint Exhibit 1.

Contested Provision

SCHOOL DISTRICT PROPOSAL

September 17, 2013

Retiree Health Insurance

The intent of the district's proposal is the alignment of the health plan offerings available for retirees to match those offered to actively employed teachers and to convert the district's contribution for retirees to an equivalent dollar amount indexed to the overall percentage increase to district insurance plans to be used toward post employment health insurance. The district would also like to explore the possibility of offering each pre-2012 retiree an actuarial equivalent amount based on the estimated annual premium and number of years until Medicare eligibility contributed to a Health Reimbursement Arrangement (HRA) such that the retiree may purchase health insurance from any available source.

Approved by:

/s/ Wayne Kazmierczak
School District

10/8/13
Date

/s/ David Kanuch
Education Moorhead

10/8/13
Date

Joint Exhibit 1 Provisions

ARTICLE 2: DEFINITIONS

* * *

Section 10. **Meet and Negotiate** – Means the performance of the mutual obligations of the School Board and the Exclusive Representative to meet at reasonable times, including, when possible, meeting in advance of the budget-making process, with the good faith of entering into an agreement with respect to terms and conditions of employment; provided, that by such obligation neither party is compelled to agree to a proposal or required to make a concession.

Section 11. **Contract Grievance** – Means a dispute or disagreement relating to the interpretation or application of any term or terms of this Contract, employing all steps set forth in this Contract, including arbitration if requested by the Exclusive Representative.

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ARTICLE 3: SUCCESSOR NEGOTIATIONS

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Section 3. This Contract shall be binding upon both parties, including successor School Boards, the Exclusive Representative and all teachers for the duration of the Contract, and shall not be subject to expansion, revision, or deletion unilaterally. Any amendment shall be subject to ratification by the School Board and Exclusive Representative in the same manner as required by the law for adoption of this original Contract provided that the bargaining committee shall be empowered to effect temporary accommodations to resolve special problems.

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ARTICLE 11: CONTRACT GRIEVANCE

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Section 3. **Procedure**

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Step 4. – If the Exclusive Representative is not satisfied with the disposition of the grievance by the Board, or if no disposition has been made within the time period provided above, the grievance may be submitted to arbitration before an impartial arbitrator. If the parties cannot agree as to the arbitrator within ten (10) working days from the notification date that the arbitration will be pursued, he/she shall be selected through the Bureau of Mediation Services in accordance with its rules, which shall likewise govern the arbitration proceeding. The fees and expenses of the arbitrator shall be shared equally by the parties.

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ARTICLE 36: EARLY RETIREMENT POLICY

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Section 8. Subd. 1. **Insurance Premiums for Retired Teachers** – The District will pay premiums on district approved health insurance coverage for teachers retiring after May 1, 1974, with ten (10) or more years of service with the District and who retire prior to age 65, and who are between the ages of 55 and 65 and whose first day of work is prior to July 1, 2010. All teachers hired after July 1, 2010 will have the option to purchase a district health insurance plan of their choice up to up to Medicare eligibility at their own expense upon retirement. For current eligible teachers retiring prior to June 30, 2011, the district will pay the cost of the \$10 Copay Plan. For current eligible teachers retiring prior to June 30, 2012, the district will pay the cost of the \$500 deductible plan. For current eligible teachers retiring after June 30, 2012, the district shall contribute \$653/month towards the cost of a district provided health insurance plan of the teacher's choice. If any retiree chooses a plan option that offers a qualified savings account (ex. Health Savings Account (HSA) or Voluntary Employees' Beneficiary Association (VEBA) and if that plan's premium is lower than the district contribution, the difference between the premium and the district contribution may be put into the teacher's qualified savings account not to exceed applicable IRS guidelines and within district limits. The district shall put \$1,200 of the district's contribution into the designated qualified savings account on the date that coincides with the August payroll. The monthly district contribution towards health insurance will be adjusted accordingly to reflect the \$1,200 contribution into a qualified savings account. If a retiree moves to an insurance plan option that offers a qualified savings account with an effective date of January 1 of the given year, the district shall put \$1,200 of the district's remaining contribution into the designated qualified savings account on the date of the January Payroll; beginning with January and for the months remaining in the contract year, the monthly district contribution towards health insurance will be adjusted accordingly to reflect this contribution.

Dependent coverage at the expense of the teacher may be offered as an option to the retiring teacher. Contributions toward the single premium will continue until retiree is eligible for Medicare. The option for teachers to obtain the benefits of this Article shall be renegotiated at the end of this Contract period.

* * *

BACKGROUND AND FACTS

Bargaining the CBA

In 2013 the Parties were bargaining over the terms of their 2013-2015 CBA. In the background of those negotiations was the District's interest in moving to self-funded status for health insurance purposes. The Parties discussed this in a general sense and negotiated over reducing the number of plans offered. They understood that the exclusive representative of the largest number of employees was needed to move to self-funded status. Part of the District's interest was to be able to reduce the number of plans it offered and reduce administrative expenses. Both Parties recognized that potential changes to health insurance benefits would be of interest to current teachers, future retirees, and current retirees and could be a reduction in value of the benefit. The Union was interested in prioritizing compensation for veteran teachers and improve retiree health contributions. As usual, both Parties had other interests and proposals during the negotiations.

On June 10, 2013 the Union proposed the contribution for health care benefits for current teachers be increased by \$25 for the first school year and an additional \$25 for the second school year. There was no proposal to increase retiree contributions at that time.

On June 25, 2013 the District made proposals to eliminate the \$500 deductible plan effective July 1, 2014 but current retirees on that plan would be allowed to stay on it. The Parties realized that current retirees could keep the plans they had even if the plan was no longer available to current teachers or future retirees, and only change if they wanted to. At the same session the District also proposed that there be no increase to its health insurance contribution.

The District proposal to eliminate the \$500 deductible plan was reduced to writing in a similar form as the TA at issue in this case. However, that referenced an attached Memorandum of Understanding which more fully set out the details of the elimination of the \$500 deductible plan effective July 1, 2014, but allowing those enrolled in the plan by June 30, 2014 to remain on that plan. The TA and Memorandum of Agreement did not mention any changes in the dollar amount toward the premium the District contributed for health care coverage.

That Memorandum of Agreement was later modified to add more detail to a one time incentive to leave the \$500 deductible plan. Again, the revised Memorandum of Agreement did not mention any changes in the dollar amount the District contributed toward the premium for health care coverage.

At the July 11th session the District addressed retiree health insurance, stating the District would be developing language that would remove reference to a specific plan, and that would allow the District to work with retirees to provide more competitive plans and/or provide a contribution to an HRA, as well as eliminate the \$10 copay plan for retirees.

At the July 22th session the Parties discussed self-funding and the elimination of the \$500 deductible plan. The Union stated it did not want to cloud the waters and unnecessarily create the connection between elimination of a plan and moving towards self-funded insurance. Both sides agreed that it would be best to allow the process of potentially moving to a standalone self-funded health insurance plan play out before further meaningful discussion about insurance related items could occur. They did not discuss retiree health insurance proposals at that time.

At a September 17th bargaining session the Union presented a revised health insurance proposal. The Union was interested in the District increasing retiree health care contributions to match the single contribution of current teachers. For current teachers, it proposed the addition of \$0 to the contribution amount for single and family plans for both the 2013-2014 school year, as well as the addition of \$25 to the contribution amount for both single and family plans for both the 2014-2015 school year. It also proposed an increase in retiree health care contributions to \$750/month in year one and \$775/month in year 2. The existing CBA provided for District contributions for current teachers of \$750/month single coverage, and to retiree health care at \$653/month for those eligible teachers retiring after June 30, 2012. The Union proposal was in writing and dated 9/17/2013.

After several caucuses the District proposed to eliminate the \$500 deductible plan. It also made the proposal at issue in this case, the contested provision Joint Exhibit 3. The District provided its proposal in writing, Joint Exhibit 3, and when doing so, Mr. Kazmierczak said to the Union bargaining team, "it would make them happy". The minutes for that meeting reflect Mr. Kazmierczak stating that "this proposal provided more flexibility for retirees. This also provides a benefit to the District and employees when the retiree chooses and utilizes a plan that is not sponsored by the district."

The District further proposed that as to benefits: Year one \$0 addition to the District health insurance contribution and, year two \$0 addition to the District health insurance contribution.

The Parties then discussed the elimination of the \$500 deductible plan and other unrelated matters. They did not discuss the retiree health insurance proposal. They then caucused.

Upon return the Union stated that EM was agreeable to the retiree health insurance language proposal. District negotiator Kazmierczak stated that the District would develop more specific language. The Union also stated it was agreeable to removal of the \$500 deductible plan, but reiterated its concern about eliminating it through negotiations and encouraged the District to consider dealing with this through the health insurance committee.

On September 24th the District responded to some open items. The District proposed some modification for the elimination of the \$500 deductible plan including the one-time monetary incentive to leave the plan. The District's proposal on benefits was no increase. The Parties had some further discussion about the need to use a Memorandum of Agreement for removal of the \$500 deductible plan.

On October 1st the Parties presented proposals and negotiated over salary, insurance benefits, and some other language issues. The Union was agreeable to the elimination of the \$500

deductible plan with incentive pay, and proposed 0/0 on insurance. The District proposed 0/0 additional health insurance, and added some details of incentives to discontinue the \$500 deductible plan. By this time, salary was the only other remaining large issue. After some caucusing, the District presented a revised counterproposal for salary increases and the same insurance proposals. The Union then accepted the District counterproposal for a tentative agreement. Retiree health insurance benefits were not specifically discussed.

At no time after making the September 17th proposal did the District or Mr. Kazmierczak prepare or present any additional language or documents in reference to Joint Exhibit 3 which he said he would do after presenting it to the Union.

It is the Union position that during the negotiations, the Union made its proposal for improved retiree health insurance contributions and did not withdraw it because the Union bargaining team was under the understanding that the District had accepted it in exchange for the Union's agreement to limit plan choice going forward. It was the Union's understanding that an agreement to restrict future retirees to accessing only those plans available to active employees would address the District's concern about future plan alignment. It was the Union negotiators' understanding that the language of Joint Exhibit 3 requires them going forward to give up the benefit that a retiree could continue in the plan he/she had at retirement, and in exchange for that concession, have equivalent contribution amounts for retirees and actives. The Union believed the District had offered to align the contributions in exchange for a restriction of retiree plan options and, thus quickly settled the rest of the CBA. Without believing there had been changes for retiree insurance benefits, the Union would have continued to negotiate.

During the negotiations the District consistently maintained the position that there would be no increase in benefits. It was under the understanding that there would be no increase in the amount it contributed to any benefit, including retiree health insurance. It did not intend that its retiree health insurance proposal be included as part of the CBA. But, it did want a written document supported by the Union in researching possible changes to insurance policies of retirees.

Mechanics of the Bargaining

During contract bargaining the District took notes or minutes of their sessions and later exchanged them with the Union to be reviewed for accuracy and to be signed as approved. As in past bargaining, that was done in this case. Neither Party had any objections or concerns with accuracy of the notes on any matter material herein.

Since at least 2001 as the Parties negotiated the CBA, proposed changes in language would be identified and made by underlines or bolding, and strikeouts. This process was generally used during negotiations when presenting and going over specific sections and language in the CBA. The TAs of the Parties typically contained these underling/strikeout provisions. These would then be incorporated into the CBA in its entirety and ratified or adopted by the Parties. Typically, the District would make the changes and provided a copy to the Union before the CBA was ultimately ratified and adopted. The same process was used in the year at issue here. At no time were the provisions of Joint Exhibit 3 reduced to an underlined/strikeout version of Article 36, Section 8, Subd. 1 of the CBA.

The chief negotiators for the Parties meet on October 8, 2013 to sign the TAs. In preparation for this, the District prepared a summary document and provided it to the Union chief negotiator. It contained a cover page marked “CONFIDENTIAL” which listed and summarized 10 items. Item 4 referred to retiree health insurance and read:

Retiree Health Insurance

No change in district contribution to retiree health insurance. Agreement reached on potential changes, see attached document.

The summary document has several attachments. One of them was the Memorandum of Agreement to a possible reduction on health insurance benefits that would eliminate the \$500 deductible plan. Another was Joint Exhibit 3. There was a revised salary schedule. The remaining attachments were underling/strikeout versions of CBA articles. There was no underlined/strikeout version of Article 36, Section 8. Subd. 1 that related to the retiree Health insurance proposal.

The Union chief negotiator received the confidential document and all of its attachments. He did not review it. He did not understand the District would assert it had not agreed to increase future retiree health insurance contributions. The confidential document was not distributed by the Union to its general membership.

The District then sent a draft of the CBA in its entirety to the Union with the underline/strikeout provisions. The draft did not include any changes to Article 36, Section 8, Subd. 1. For Insurance Premiums for Retired Teachers it retained the language: “... the district shall contribute \$653/month toward the cost of a district provided health insurance plan of the teacher’s choice.” The draft did make the other changes noted in the attachments to the confidential document.

The Union bargaining team reviewed the proposed CBA. It contacted the District and indicated it had a few changes, most of which are dates. The Union did not make any mention of retiree health insurance contributions.

The District School Board received the same confidential document and attachments, and the proposed CBA with the underling/strikeout provisions and voted to approve the CBA.

The Union Bargaining Team meet with its Membership and went over a PowerPoint presentation regarding the terms of the 2013-2015 contract. That presentation contained references to current tentative agreements including retiree health care. It stated

Retiree Health Care

- There is a proposal to align the health plan contribution available for retirees to match those offered to actively employed teachers. This would be an increase of \$97 at the current rate.
- Explore the potential for retired teachers to take funds to the Health Care Exchange.

The Union membership did not review the summary confidential document, its attachments or the proposed CBA. The Union ratified the CBA and executed it in November of 2013. The Union did not show the District its PowerPoint presentation or discuss its content with the District.

A Retirement Raises the Issue

In 2014 Union members, herein Teacher K, and his wife submitted retirement notices. Teacher K had been at the Union meeting where the PowerPoint presentation had been given and then voted for the contract. Before submitting his retirement notice he spoke with the Union chief negotiator Dave Kanuch about retiree health insurance benefits and was told, consistent with the PowerPoint presentation, that the District contribution would be increased. Teacher K thought that meant retirees would get the equivalent of \$750 per month towards a health insurance plan, and any additional money beyond the cost of the plan would go to an HSA to be used for future supplemental insurance expenses. Based on that, Teacher K and his wife decided to retire.

Before actually submitting his retirement notice to the District, Teacher K was concerned about the timing of giving the notice and the settlement of the CBA. Notice was due in February. In January, after discussing retirement with some other teachers, Teacher K noticed on-line that the retiree contribution was “\$653”. The other teachers discussed this with District personnel, and were told it was \$653. The teachers told that to Teacher K. Teacher K then contacted Mr. Kanuch about this. Mr. Kanuch told Teacher K that the District was mistaken, and for some reason the change did not get into the CBA. Mr. Kanuch showed Teacher K a copy of what is now Joint Exhibit 3 and they both felt it provided for an increase in the contribution for retirees to what current teachers got. Teacher K thought that the language in the CBA would be changed, and he and his wife put in their retirement notices to the District and the State. Teacher K did not talk to anyone from the School District administration who told him the retiree contribution would increase to \$750. He did not talk to the District Human Resources Director about this.

After retiring, the District made contributions of \$653 per month toward Teacher K’s health insurance plan, which covered the premium. He had been on a \$1200 deductible plan and switched to a \$5000 deductible plan. The District did not pay him or for him any moneys beyond that for health insurance. This left Teacher K feeling unappreciated after a long career in a challenging teaching position for the District.

On March 28, 2014 the Union filed a grievance over retiree health insurance contributions. It stated in pertinent part:

Date Grievance Occurred:

January 28, 2014

On January 28, 2014, it was brought to the attention of Education Moorhead that Article 36. Section 8, was not modified as had been agreed to in the bargaining process of the 2013-15 Master Contract. A meeting was held with the District and Education Moorhead on February 19, 2014 regarding this issue. At that time the District was unwilling to adjust the language to reflect what was agreed upon in bargaining thereby creating a hardship for teaching staff retiring this year and into

the future. The District and Education Moorhead agreed to and signed timeline of Step 2 of the grievance process, extending the deadline to 14 March, 2014 and then again, extending the deadline to 28 March, 2014.

**Provisions of the Master Agreement Violated:
At least, but not limited to:**

- ∞ Article 36, Section 8, Insurance premiums for Retired Teachers.
- ∞ Article 6-Maintenance of Standards

Relief Sought:

1. The language in Article 36, Section 8 will be modified to reflect what was agreed to during the bargaining process for the 2013-15 Master Contract.

The District denied the grievance at all steps of the process, contending the contract was negotiated in good faith. This arbitration followed.

Further facts are as appear in the Discussion.

POSITIONS OF THE PARTIES

The Union

In summary, the Union argues that the District clearly manifested its intentions to permit already-retired teachers to remain on the plans they were on and to add contract restrictions for future retirees only. The Union clearly manifested its intentions to prioritize compensation for veteran teachers and to improve the retiree health contribution. Based upon the Union's belief that the District had offered to align the contributions in exchange for a restriction on retiree plan options, it quickly settled the rest of the CBA. Teacher K and his wife both submitted retirement notices when they believed the health insurance contributions had increased.

The Union argues that the Parties signed an agreement, and its language should be given meaning. The Union's understanding of the language is the only explanation that gives the language meaning – equivalent contributions for actives and retirees in exchange for restricting plan options for those same future retirees. The District's understanding leaves the language meaningless. It acknowledged the Parties have no authority to alter benefits for those already retired. To simply put the Union on notice that the District would be approaching individual retirees to offer a chance to change plans would similarly be meaningless. There is no reason for this to be part of a signed agreement with the Union as the District undisputedly has the authority to make such offers without an agreement. There would be no purpose for the language because the District could continue to exercise their managerial rights to bargain directly with already-retired teachers to alter their vested benefits.

The Union argues the language reinforces it must be read to provide a negotiated benefit. Going clause by clause, the term “proposal” through the parties’ documents reflects the practice that this term refers to proposals to change the terms of the CBA. The parties appear to agree that “alignment” means to make them the same, but dispute the term “retirees”. This can only refer to future retirees as: the parties don’t have the authority to change plans offered to those already retired; the District has repeatedly indicated it does not intend to do so unilaterally; the District had the authority to request past retirees make a change and some have already done so; the District did not use the modifier “pre-2013” for retirees, when it elected to do so in the second sentence of the provision; the district needs limiting language for future retirees as current language does not do so. To convert the contribution for retirees to an equivalent dollar amount can only mean that the benefit for future retirees would convert from the set dollar amount to an amount with a built-in escalator that is equivalent to what the active teachers receive; the District’s claim that it would be converting a set \$653 dollar contribution “to an equivalent dollar amount” of \$653 is nonsensical, or does not convert if applied to pre-2012 retirees. Indexed to the overall percentage increase provides that increases to actives would apply to retirees as well. There does not appear to be any dispute that the additional sentence (re: HRA) provided for the exploration of a change in benefits for already-retired teachers with \$10 co-pay plan or \$500 deductible options. Reading the text of the District’s proposal as a whole reinforces that the District offered the first part to amend existing contractual benefits and that only the second part of the language was an indication of an exploration.

The Union further argues that The District should be held to its manifested intentions and not be advantaged by its silence. The Union’s understanding of the language should prevail. Citing Elkouri & Elkouri, *HOW ARBITRATION WORKS* (7TH ED. 2012, at 9-6, 7) and the *RESTATEMENT OF CONTRACTS (SECOND)*, interpretation of disputed language is the ascertainment of the meaning of an agreement or term thereof as intended by at least one party. Intention is what the party manifests, not a different undisclosed intention.

Where the parties have attached different meanings to an agreement or term thereof, it is interpreted in accordance with the meaning attached by one of them if at the time the agreement was made that party did not know or had no reason to know, of any different meaning attached by the other, and the other knew, or had reason to know the meaning attached by the first party.

Id. A party that makes a contract knowing of a misunderstanding is sufficiently at fault to justify that party’s being subjected to the other party’s understanding. (Id.) That is exactly the case we have here. On September 17, 2013 the District put together its proposal to eliminate future retiree plan choice and the Union’s proposal to increase retiree health insurance contributions, a proposal the Union “would be happy with.” The District knew the only thing the Union would be happy with would be an increase in retiree health insurance contributions. The Union team agreed to the proposal, believing the District offered to increase the retiree contribution in exchange for their agreement to limit retiree plans going forward. The comment that the Union would be happy was that either Kazmierczak believed he was proposing to equalize the contributions for retirees and actives, or wanted the Union to believe he was agreeing to do so. The District’s current explanation has nothing for the Union to be happy about. The District did not tell the Union the language was not an agreement to do anything and was simply a notice of something it had the authority to do,

and something the Union had no authority to agree to prevent. Neither did the District tell the Union in this instance it was using the agreement format for something it did not consider an actual agreement.

The District should not be advantaged by remaining silent about its intentions until hearing. Arbitrators consider the intent manifested during negotiations by their communications and responsive proposals, citing Elkouri & Elkouri. Union testimony was uncontroverted that the first time they heard Dr. Kazmierczek explain the language as he did in hearing was at hearing. Neither he nor the District gave that explanation to the Union prior to hearing. Kazmierczak never actually testified that he did give such an explanation to the Union. Absent an explanation, the Union was left with the District's manifested intentions to propose plan alignment language, counter proposing right after the Union proposed to increase contributions, stressing plan alignment for cost reduction, indicating no required change in plans for past retirees and, promising the Union would be happy. The District should be bound by these intentions. Principles of good faith and fair dealing should not permit the District to injure the Union's rights to the fruits of its agreement. The District should be prohibited from offering for the first time at hearing a different explanation that provided no benefit to the Union and would likely anger its retired members. The Union would never have agreed to such language proposed that way. The Union's understanding should prevail and the retiree contributions should be increased.

The Union also argues that the District's after-the-fact confusion as to the language's meaning should similarly not be used to render the language meaningless. Dr. Kazmierczak gave different explanations of his language in the December and March hearings. Going back and forth about how "retiree" was defined, this inconsistent understanding by the District key witness to language he authored should not render the language meaningless. The clear Union understanding should be honored. Similarly, the Board Chair's explanation and conflation of two separate provisions reinforces the drafter's lack of clarity but should not be used to disregard the Union's understanding.

The Union argues that if the Arbitrator does find the language to be ambiguous, that ambiguity should be held against the District. Ambiguities must be held against the drafter. The District drafted the substantive language and also the agreement format with signature lines for both parties. This promotes careful drafting and accurate disclosure, citing Elkouri & Elkouri. This is also equitable because the party at fault is the one against whom the ambiguity is construed. The District should not profit from its lack of care in drafting. The Union's understanding gives substantive meaning to the signed agreement made during the negotiations process.

The Union argues the Parties reached an enforceable agreement in retiree health insurance contributions. The District took multiple steps to indicate its language on retiree health was a negotiations proposal, which would mean upon agreement it was enforceable, citing several minutes and agenda entries. In discussions of the Parties on the grievance, Ms. Dehmer stated the purpose of the signed agreement was a Memorandum of Agreement, and that it was supposed to be an agreement. The District thus conceded that Joint Exhibit 3 is an agreed upon MOA, which makes it equally enforceable as the CBA. On November 21, 2013 Dr. Kazmierczak wrote both the District and Education Moorhead have wrapped up negotiations so the proposals that were agreed upon should remain intact. The District promised during negotiations it would develop more

specific language and never did, so the fact that the agreement at issue was not put into strike/underline format for easy insertion into the CBA should not be held against the Union. Under good faith and fair dealing the District should not be permitted to omit the language from the CBA that it edited and then not honor the signed agreement. The signed agreement from September 17 went in front of the School Board in the packet of TAs when it voted. The voting bodies represented by the parties at the negotiations table agreed to it as well.

The Minnesota Public Employment Labor Relations Act (Ch. 179A) contains the public policy behind the public bargaining law. It is to “promote order and constructive relationships” between employees and employers. To do this employers and unions are required to negotiate and the “result of that bargain be in written agreements.” The Parties have such an agreement in Joint Exhibit 3, regardless of whether it was republished in the CBA. If it isn’t upheld it will disrupt the labor relations of the parties and allow the employer to be rewarded for failing to follow through on a promise and agreement. The CBA emphasizes the legal obligation to meet and negotiate with the good faith of entering into an agreement. The CBA explains the Parties have agreed the Contract shall not be subject to expansion, revision or deletion unilaterally. Agreements and amendments should be honored and not unilaterally deleted. Because the parties reached and enforceable agreement in negotiations, the District is obligated to contribute \$750 per month toward retiree health premiums starting in 2014.

The Union requests the grievance be sustained by giving the Union the benefit of its bargain and making the retirees whole.

The School District

In summary, the School District argues that the retiree proposal was not intended to be in the CBA. The intent was to contact retirees and obtain individual agreements with them about potential plan options, and to have retirees on the same plans as offered to active teachers. The purpose of raising the retiree proposal with the Union was to build support for the idea in that insurance is a sensitive topic and the District felt the Union needed to understand the potential impact on retirees. It always maintained to the Union that there would be no increase in insurance benefit contributions.

The District argues the Arbitrator lacks authority to add language to the contract. There was no underlining of language indicating an intent to change the CBA and no reference to an Article in the CBA. The Board did not vote to include the retiree proposal in the CBA or to increase retiree insurance contributions. The Union is asking the Arbitrator to insert new language into the CBA. The Arbitrator lacks authority to do that. The grievance is governed by Article 11 of the CBA, which provides for proceeding through the Minnesota Bureau of Mediation Services in accordance with its rules. Those rules provide the arbitrator has no authority to add to the terms of an existing contract. Minn. R. 5510.5170 subd. 3. Notes and documents can be used to interpret contract language, but arbitrators cannot subtract from or add to existing language of a CBA, citing INDEPENDENT SCHOOL DISTRICT NO. 2154, EVELETH/GILBERT AND EDUCATION MINNESOTA, BMS CASE NO. 05-PA-269 (ANDERSON, MARCH, 2006). The Union’s grievance is based on a document other than the CBA itself, which is improper and it is outside the four corners of the CBA, citing GREATER MINNESOTA AFSCME COUNCIL 65 AND VIRGINIA REGIONAL MEDICAL CENTER, BMS

CASE NO. 11-HA-935 (FRANKMAN, OCTOBER, 2011) and MINNESOTA RIVER VALLEY SPECIAL EDUCATION COOPERATIVE AND MINNESOTA RIVER VALLEY EDUCATION ASSOCIATION, BMS CASE NO. 05-PA-588 (TOENGES, FEBRUARY, 2006). What the Union seeks is contrary to well-established principles of labor law. A party may not obtain through arbitration what it could not acquire through negotiation, citing Elkouri & Elkouri, HOW ARBITRATION WORKS, 9-27 (7TH ED. 2012). The award must draw its essence from the CBA itself or else it constitutes legislation rather than interpretation and won't be enforced by the courts. Here, the Union proposed an increase to retiree health insurance, which the District did not agree. The proposal (which does not mean what the Union is claiming) was never ratified by the Board or included in the final negotiated agreement.

The District further argues that a tentative agreement is just that - tentative. The flaw in the Union position is that any tentative agreement is just that – tentative. In this case there wasn't even a true tentative agreement, but simply a proposal to explore options with retirees. That the language was not in the final version of the CBA is dispositive. Under Minnesota Law, Minn. Stats § 123B.02, subd. 1, no agreement is final until it is approved by a majority vote of the School Board, and no tentative agreement can be binding without ratification. Staff representations cannot supplant the School Board's legal authority, citing INDEPENDENT SCHOOL DISTRICT NO. 485, ROYALTON AND ROYALTON FEDERATION OF TEACHERS, BMS CASE NO. 12-PN-1309 (LATIMER, MAY, 2013).

Decisions of the Minnesota Court of Appeals supports the conclusion a tentative agreement is unenforceable. Applying longstanding principles of contract law under the objective theory of contract, the Court in AFSCME, COUNCIL #14 V. CITY OF ST. PAUL, 533 N.W. 2D 523 (MINN. CT. APP. 1995) stated “[t]here can be no contract where the parties’ actions indicate an expectation that something remains to be done to establish contractual relations.” Id. p. 627. The Court stated:

Here, the words and actions of both parties indicated that the tentative agreements were exactly that: preliminary agreements subject to final approval by the parties... In other words, the terms of the documents and the actions of the parties contemplated that the agreements could be approved *or* rejected by either side. The record is clear that all parties expected something remained to be done after the tentative agreements had been drafted before contractual relations could be established.

Id. In that case the City Council did not approve the tentative agreements and the court correctly held the tentative agreements were not binding. And in MINN. TEAMSTERS PUB. & LAW ENF. EMPL. UN. V. COUNTY OF ST. LOUIS, 726 N. W. 843 (MINN. CT. AP. 2007) the Court held the alleged failure to abide by the terms of a tentative agreement was not the proper subject of a grievance as it did not violate any term of the CBA. The fundamental issue was whether the CBA displaces the earlier negotiations, including the terms of tentative agreements that were not incorporated into the CBA. The Court stated:

Because the CBA represents the final agreement between the parties and because there is no claim of fraud, duress, bad faith, mutual mistake, lack of authority, or special circumstances that affect the application of traditional contract law to this

area of public employer labor agreements, we conclude that the county did not violate the parties' agreement, and we uphold the district court's grant of summary judgment based on its ruling that the county did not breach the CBA.

Id. at 849. The Court concluded that the "dispute did not arise out of the contract, but rather out of the tentative agreement and letter agreements that preceded the CBA. Both the law and the CBA limit the grievance to terms within the contract." Id. At 848. The instant grievance is no different. The proposal was not included in the final, approved CBA. The Board voted on the CBA itself with the strike outs and underlined changes. The retiree proposal was not intended to be contract language and was not in the CBA. It was simply documentation to gain support in researching the possibility of changing insurance possibilities for retirees. The dispute does not arise out of a term within the final CBA and is not the proper subject of a contract grievance under the CBA.

The District also argues the interpretation of the retirement proposal. Even if the Arbitrator had authority to add language to the CBA, the language of the retiree proposal does not mean, and cannot reasonably be interpreted to mean, what the Union claims. The Union claims the first sentence is binding but agrees the second sentence of the same paragraph is not. This is unreasonable. A proposal is or is not intended to change a CBA. "[L]ike to explore" is not an enforceable term; neither is the "intent" to do something. As to alignment of the health plan offerings available for retirees to match those offered to actively employed teachers, all teachers retiring after June 30, 2012 were limited to the plans offered to "actively employed teachers" already, per Article 36, Sec. 8, Subd. 1. Therefore, there was no need for alignment of plan for teachers who remained employed after June 30, 2012. Union negotiator Kanuch admitted under Article 36, Sec. 8 Subd. 1, the District could not have been referring to active teachers in its proposal because teachers retiring after June 2012 were already limited to contributions to a "district provided insurance plan" so for those employees, there would not have been any need to align health plan offerings. The proposal then addresses how, after a retiree moved to a different plan, the contribution would be calculated because the premium might be less on a different plan. The District wanted to "hold harmless" the retirees. To do that it would convert the contribution for retirees (the full premium for their respective plans) to an equivalent dollar amount (monthly premium amount) and index that to the percentage increase to the District plans (annual % increase). Retirees were those who had retired prior to June 30, 2012 and were receiving a contribution which was not a fixed dollar amount – that could be converted to a dollar amount. Under the CBA, for those retiring after June 30, 2012 the District shall contribute \$653/month toward the cost of a District plan of the teacher's choice. There is no manner to "convert" the set dollar amount to an "equivalent dollar amount". It is clear the District could only have been referring to pre-2012 retirees in its retiree proposal. Mr. Kanuch testified that "convert" meant to change a contribution to an equivalent dollar amount, and acknowledged for post-2012 retirees, there was already a dollar amount specified.

The District argues that the language is not ambiguous so as to be construed against the District. It cannot be interpreted in the manner the Unions wants. There is nothing that can be "converted" in the way they seek. The proposal must be read in the context of the actual CBA. Bargaining history shows the District's intent and interpretation is accurate. Rather than a response to the Union insurance proposal, the District retiree proposal was raised in concept as early as July 11, 2013. Mr. Kazmierczak did explain it as noted in the minutes of the September 17th minutes.

It was to provide flexibility for retirees, providing a benefit to the District and employees when retirees utilize a plan not sponsored by the District. Nowhere did he reference an increase in contribution amounts. The Union signed off on the minutes. It had the obligation to raise the issue and clarify the minutes if it felt there had been an agreement to increase contribution amounts. The Union chief negotiator had a copy of the summary of the agreements which stated no change in district contribution to retiree health insurance. A draft CBA followed which the Union went over carefully enough to note minor errors in dates. The Union simply made assumptions. Negotiation team members did not ask what the language meant. The District proposal that would make them “happy” also included a 5.24% wage increase over two years. For a Board member to be “excited” about the proposal to mean it offered active employees a larger contribution following retirement is without logical support. The excitement was over the option for those who had retired being cashed out to allow use of dollars to pick their own plan. There are no facts to support the Union’s interpretation of the retiree proposal. Nowhere in the proposal or any tentative agreement does the amount \$750 appear, nor was there reference to insurance contribution increases. The Parties negotiated with good intentions. The Union made assumptions and failed to ask questions.

The District requests that the grievance be denied.

DISCUSSION

The issues in the case require deciding if Joint Exhibit 3 is enforceable as a written agreement between the parties. The main contention of the Union is that Joint Exhibit 3 is an agreement to modify Article 36, Section 8. Subd. 1 of the CBA so that the District is required to pay \$750 per month toward retiree health premiums. Joint Exhibit 3 states:

SCHOOL DISTRICT PROPOSAL

September 17, 2013

Retiree Health Insurance

The intent of the district’s proposal is the alignment of the health plan offerings available for retirees to match those offered to actively employed teachers and to convert the district’s contribution for retirees to an equivalent dollar amount indexed to the overall percentage increase to district insurance plans to be used toward post employment health insurance. The district would also like to explore the possibility of offering each pre-2012 retiree an actuarial equivalent amount based on the estimated annual premium and number of years until Medicare eligibility contributed to a Health Reimbursement Arrangement (HRA) such that the retiree may purchase health insurance from any available source.

Approved by:

/s/ Wayne Kazmierczak

/s/ David Kanuch

School District

Education Moorhead

10/8/13
Date

10/8/13
Date

The issues require a decision as to what, if anything, did the Parties agree to in Joint Exhibit 3, and if there is an agreement is it enforceable as part of the CBA or otherwise.

The Union argues that the Parties signed an agreement which should be given the meaning the Union understood and, the District should be held to its manifested intentions and not be advantaged by its silence. Both Parties cite general rules of contract in arguing whether Joint Exhibit 3 is an enforceable agreement. The Union argument relies in large part on a reference to the Restatement of Contracts (Second) in Elkouri & Elkouri, HOW ARBITRATION WORKS (7TH ED. 2012 AT 9-6):

Where the parties have attached different meanings to an agreement or term thereof, it is interpreted in accordance with the meaning attached by one of them if at the time the agreement was made that party did not know or had no reason to know, of any different meaning attached by the other, and the other knew, or had reason to know the meaning attached by the first party.

The context of making the proposal, the ongoing negotiations and ratification process and, the language of the proposal itself have to be examined to determine what the Union knew, or should have known, about the meaning attached to Joint Exhibit 3 by the District.

It is important to consider the bargaining context in which the District made the proposal that is Joint Exhibit 3. This was one of a number of proposals and counter proposals being exchanged by the Parties. Joint Exhibit 3 deals with retiree health insurance plans and the conversion of the Districts' contribution for retirees to an equivalent dollar amount which is then to be indexed to increases in District insurance plans. The Parties differ as to what the specific clauses in the first sentence of the proposal means. Other proposals were exchanged by the Parties as to an increase in District contributions for retiree health insurance. The Union initially sought increases for both active and retiree contributions. The District consistently proposed that there be no increases in benefits and there be no increase in retiree contributions. On September 17th when the District made the retiree health insurance proposal, it also proposed as to benefits that there be \$0 addition to the District health insurance contribution for year one and year two. These two different proposals were clearly stated to the Union. The \$0 contribution proposal is not consistent with increasing retiree contributions. These two proposals show that the District did not intend to increase contributions for health insurance and, that it did not intend Joint Exhibit 3 to be a change in the CBA.

On September 17th when the Union told the District it would accept the retiree health insurance proposal, District negotiator Kazmierczak stated that the District would develop more specific language. This is a clear indication that something additional needed to be done to complete work on the proposal. Even if that simply meant putting the proposal into an

underlined/strikeout format, as argued by the Union, the specific language would still need to be agreeable to both parties to become an agreement. This indicates that the details of aligning health plans and indexing of contributions still needed to be worked out, and that the proposal as it was not a final expression of agreement.

And, as the District points out, the retiree health insurance proposal was made when the District also proposed a 5.24% wage increase over two years, something the Union could be happy about. Payment of an actuarial amount to retirees to use for health insurance plans of their choice could also be something for them to be happy about.

It is also important to consider the confidential document that contained a summary of the negotiations and TAs. That document at Item 4, Retiree Health Insurance, clearly stated: “No change in district contribution to retiree health insurance.” At this point the TAs had not yet been signed as approved, and the final CBA had not yet been adopted and signed by the Union and the Board. Item 4 is another clear expression that the District did not intend to increase retiree contributions by its proposal, and that it did not intend Joint Exhibit 3 to be a change to the CBA. It is a manifest intention and statement of the meaning the District attached to Joint Exhibit 3. The Union admits it did not review this confidential document. If it had, it would be very difficult to believe the Union would not have noticed this direct contradiction to what it claims the proposal means in terms of contributions. The District cannot be faulted for the Union failure to review the document. At that point the matter could have still been raised with the District for clarification or further negotiation. The Union simply did not do that.

The confidential document contained underlined/strikeout versions of the parts of the CBA that were to be changed. It did not have a version for Article 36, Section 8. Subd. 1. This is another indication that the District did not intend to change retiree contributions from \$653. Again, the Union did not raise this with the District.

Item 4 of the confidential document also made reference to the retiree health insurance proposal: “Agreement reached on potential changes, see attached document.” The attached proposal is Joint Exhibit 3. Here, the District is pointing out that it considers the proposal to be about “potential” changes. Potential changes are not definite promises to make changes. The District characterization of the proposal as an agreement on potential changes is consistent with the District having told the Union on September 17th that the District would develop more specific language. Once more, the Union did not review the document and did not raise with the District this contradiction with what it contends it understood the proposal to mean.

The District then gave the Union a draft of the revised CBA which contained the underlined/strikeout changes to the CBA, and there were no changes to Article 36, Section 8. Subd. 1. This is yet another indication by the District that it did not mean to change retiree contributions or that Joint Exhibit 3 was to be a change in the CBA. The Union reviewed that document. It did not bring to the attention of the District that the Article had not been changed as it thought it should.

Based on the bargaining history and the mechanics of the document exchange, the Union should have known that the District did not mean for the proposal to result in an increase in retiree health contributions in the CBA. Rather than the District benefiting by its silence as to

understanding and meaning, the fact is the Union did not bring to the District's attention the obvious difference in the District drafted documents and what the Union understanding was. The Union drafted its own PowerPoint presentation language and did not share that meaning with the District. The District did not know and had no reason to know of a Union misunderstanding. The District cannot be faulted for that.

Besides this bargaining history, the nature and language of Joint Exhibit 3 itself is instructive.

It is noted that the proposals that make up the various TAs in the 2013 bargaining are for the most part similar in form and format. Most are accompanied by the underlined/strike out parts of the CBA that are intended to be changed. In this case, the proposal at issue did not have an underlined/strike out version. Also, in these negotiations there was another proposal to eliminate the \$500 deductible plan. That proposal was signed as approved like all the other proposals. It referenced agreement to the terms of an attached Memorandum of Understanding. That Memorandum of Understanding was a more detailed, specific set of terms detailing the elimination of the \$500 deductible plan. The Parties even discussed whether the elimination of the \$500 deductible plan should come out of the insurance committee rather than a product of CBA negotiations. This shows the Parties understood that simply agreeing to a proposal and signing it as approved does not mean that the proposal itself is binding as part of the CBA or otherwise. Rather, it shows that these parties sometimes knew and understood that a proposal could be a general statement that needed more specific detail, more specific language, before it would serve as an actual agreement or promise to do something. The fact that Joint Exhibit 3 was initiated as a proposal and latter signed by the head Union negotiator as approved by the Union does not alone mean it became a binding agreement.

The undersigned is persuaded that the language of Joint Exhibit 3 indicates it was an expression of an intent to do something in the future, rather than a binding promise to do something in the CBA. Reading the proposal as a whole, it has two sentences. Both Parties agree the second sentence is not an enforceable agreement as it is a mere expression that the District would like to explore a possibility. This adds context to the first sentence. If the second sentence is an expression of a future intent to explore something, it follows that the use of the phrase "The intent of the district's proposal" is likewise forward looking and an expression of an intent to do something in the future that is not yet specific; not a present intend to make a binding promise. It is more consistent that these two sentences are expressions of future intentions and actions rather than one being meant to be a binding promise and the other one not.

The substance of the proposal indicates it is not to be included in the CBA. The Union is correct in that the proposal would be meaningless as part of the CBA if it merely meant the District could contact current retirees and discuss plan changes with them, as it had the right to do that anyway and had in fact done so. That the proposal would then not have the meaning the Union seeks and, in fact be meaningless under the CBA, is an indication that the District did not intend it to be part of the CBA. It does add credence, however, to the District statements and desire to get some type of Union agreement to help support the District's efforts in making retiree health care changes available to current retirees. The Parties had ongoing discussions about how to approach retirees about possible changes in plan offerings and the concept of an actuarial determined HRA

payment. Both Parties recognize that some type of showing of Union support for that would be beneficial in gaining retiree participation, even if Union agreement was not legally required. To have an agreement as a general statement of Union support for the concepts does not make it a binding promise to increase contributions for retiree health plans.

The Union argues that to align health insurance plan offerings for retirees with those for active teachers would be to increase the amount of District contribution for retirees to that of active teachers, to \$750 per month from \$653. But to align plans is not the same thing as contributions. The District offers several different health insurance plans. Some are available to current teachers and some plans are only available to those who have already retired. The plans are what is covered by the respective policies. Each of those plans has a different cost. The District makes a contribution towards the cost of the plans. The District contribution is not the plan itself. To align plans does not mean to align contributions. The proposal does not say the District will increase the amount of its retiree contribution to that of active teachers. It could have easily said that if that is what the proposal meant. The Parties have previously negotiated specific dollar amounts the District would contribute to active teacher and retiree health insurance as the existing CBA and previous CBAs demonstrate. They could have done that here, too, to match the District contributions for retirees and active teachers. They did not do that. This indicates increasing contributions for retirees is not what the language means. Rather, the proposal says it would index the contribution to the overall percentage increase to District insurance plans and pay that additional amount for retiree health insurance.

The District makes a good point about the nature of a tentative agreement being just that, tentative. A tentative agreement does not become part of the CBA unless it is adopted into the CBA itself. That did not happen in this case. The Union had the proposed CBA document with the proposed changes that did not contain the increase in retiree health insurance contributions. The Union made its own representations to the membership and in doing so it included language in its PowerPoint presentation that simply is not in the proposal. The Union thereafter voted on and signed the CBA that it either knew or should have known did not contain the change. It should have known it because the draft did not have the change and the confidential document with its attachments did not have the change. That document stated the opposite. The documentation and the steadfast proposals of the District that there be no increase in benefits demonstrates that the meaning of its proposal in Joint Exhibit 3 was not to increase retiree health insurance contributions.

The Union had the above several reasons to know the meaning attached by the District to Joint Exhibit 3. There is no basis to interpret the proposal in accordance with the meaning attached by the Union when applying the principle of the Restatement of Contracts (Second). Contrary to the argument of the Union, the manifest intention of the District was that there be no increase in retiree health benefits. It did not remain silent. It put this in writing several times in several ways in documents it supplied to the Union before the CBA was ratified and adopted. The Union did not ask any questions about the proposal, even when it had the confidential document, its attachments and the final draft of the CBA before adoption and ratification. The District reasonably did not know the meaning the Union was attaching to the proposal. Nothing in the record demonstrates bad faith by the District. Joint Exhibit 3 is not an agreement that requires the CBA be changed to reflect an increase in retiree health contributions.

The Union argues that its approval of the retiree health insurance proposal is an enforceable agreement to change the amount of retiree contributions provided for in the CBA, that the TA requires the CBA be changed to reflect the increase. The District contends that a TA is not enforceable because it is not part of the CBA, but only “tentative”. Minnesota case law supports the District. Tentative agreements by their nature must be approved by the labor organization and the governing body. That is why they are termed and understood to be tentative agreements derived during negotiations that are subject to final approval by the parties. They can be approved or rejected by either side. Unless a tentative agreement is approved by both sides, the tentative agreement is not binding. See, *AFSCME, COUNCIL #14 v. CITY OF ST. PAUL*, 533 N.W. 2D 523 (MINN. CT. APP. 1995). Such unapproved tentative agreements are not part of the CBA and grievances are limited to the terms within the CBA. See, *MINN. TEAMSTERS PUB. & LAW ENF. EMPL. UN. v. COUNTY OF ST. LOUIS*, 726 N. W. 843 (MINN. CT. AP. 2007). Here, the District School Board had the confidential document, its attachments and the complete draft version of the CBA. It voted to adopt the draft CBA. The Union membership did not review the confidential document or its attachments although they were sent to the chief negotiator. The Union Bargaining team did have the complete draft version of the CBA and only had some minor date clarifications to make with the District before the membership voted to adopt the CBA. Joint Exhibit 3 never became part of the final CBA that was actually approved and ratified by both Parties. It is not binding as part of the CBA.

The undersigned is persuaded that Joint Exhibit 3 is not enforceable as part of the CBA and it is not enforceable as a standalone agreement. It was not intended and does not mean that District contributions for retiree health care are to be raised to \$750 per month or otherwise match the District contribution for active teachers.

The Union argues that any finding of ambiguity in the language should be construed against the District and held against the District. This argument does not help the Union. It presupposes the proposal is a binding agreement. The above discussion demonstrates it is not. Moreover, given the above bargaining history, the forward looking nature of both sentences in the proposal, the language of the proposal itself, the difference between plans and contributions and, given the express statement that more specific language would be prepared, the undersigned is persuaded that even if the proposal were found to be ambiguous, its interpretation would favor the District and not support the meaning the Union seeks. This is so even if the District did draft the language. Who is the drafter is only one aspect of interpreting language that might be ambiguous. In this case it is not dispositive.

Joint Exhibit 3 is not an enforceable agreement and is not part of the CBA. It does not require the District to contribute \$750 per month toward retiree health premiums. Teacher K did not rely on communications from the District in making his decision to retire. He knew the District was of the opinion that the retiree District contribution would be \$653 per month. He relied on statements and interpretations of the Union. There is no basis to find the District liable to Teacher K, his spouse, or any other teacher who may have retired in 2014 for increases in its contribution for their health care. The District did not violate the CBA or a binding agreement under Joint Exhibit 3 when it did not pay retiree health benefits in the amount of \$750 per month, but rather paid 653 per month for those teachers who retired in 2014.

Based upon the record and the arguments of the Parties, I issue the following

AWARD

1. The grievance is denied and dismissed.

Dated this 5th day of May, 2015 at Racine, Wisconsin.

Paul Gordon, Arbitrator