
In Re the Arbitration between:

BMS File No. 16-PA-0754

Independent School District No. 544,
Fergus Falls, MN,

Employer,

**GRIEVANCE ARBITRATION
OPINION AND AWARD**

and

Fergus Falls Education Association,

Union.

- Pursuant to **Article 16** of the collective bargaining agreement effective July 1, 2015 through June 30, 2017 the parties have brought the above matter to arbitration.
- The grievance was submitted on January 4, 2016. At the time the grievance was submitted the 2013-2015 collective bargaining agreement was in effect but the parties were negotiating the 2015-2017 collective bargaining agreement. When the parties agreed upon the 2015-2017 collective bargaining agreement, it was made retroactively effective to July 1, 2015.
- James A. Lundberg was selected by the parties to serve as their neutral arbitrator from a Minnesota Bureau of Mediation Services list of arbitrators.
- A hearing was conducted on June 23, 2016 in Fergus Falls, Minnesota.
- There are no procedural issues before the arbitrator and the grievance is properly before the arbitrator for a final and binding determination.
- Closing briefs were submitted by e-mail transmission on July 22, 2016 and the record was closed.

APPEARANCES:

FOR THE EMPLOYER

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FOR THE UNION

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ISSUE:

As stated by the Union:

Whether the Fergus Falls School District violated Article 7, Sections 1, 2 and 4 of the Master Agreement between the School District and the Association by refusing to provide Ellen Anderson a contribution toward her monthly health insurance premium?

If so, what is the appropriate remedy?

As stated by the Employer:

Did the Employer's health insurance contribution for Ellen Anderson violate Article 7, Benefits, Section, Insurance payments, Subd. 1, of the 2013-2015 Master Agreement?

RELEVANT CONTRACTUAL PROVISIONS:

ARTICLE 7 – BENEFITS

SECTION 1 – GROUP MEMBERSHIP

The School District agrees to make available to all teachers defined in Article 3, Section 1 the following insurance protection provided that any such teacher is eligible for group coverage membership those teachers on other than a full-time contract shall receive insurance benefits on a pro rata basis. ...

Subd. 2: *Hospitalization and Major Medical*

For the Agreement year, the School District shall provide hospitalization and major medical protection for a twelve (12) month period for each teacher and eligible dependents at the rate specified in Section 2. ...

SECTION 2 – INSURANCE PAYMENTS

Subd. 1: *... the School Board will contribute:*

A: *Up to \$467 per month for each teacher who elects health-hospitalization coverage to pay health-hospitalization insurance. Teachers shall meet full-time eligibility requirements of Patient Protection Affordable Care Act (PPACA) to be eligible for hospitalization and major medical protection coverage.*

B: *Up to \$10.75 per month to pay for \$50,000 Life insurance. Each teacher may request payroll deduction for additional \$50,000 of life insurance. Any teacher may request to participate in a program to provide for dependent life insurance coverage at the teachers expense.*

C: *Up to \$.062 per \$100 of salary to pay for long-term disability insurance.*

D: *If a teacher chooses not to participate in the school district health coverage the teacher shall lose the amount of any contribution towards the premium for health insurance as identified in “A” above.*

E. *If a teacher chooses a school district health coverage that is less than the benefits shown in “A” above, then the difference between the health insurance premium and the benefit shall belong to the school district and will not be available to the teacher for any purpose or in any manner.*

SECTION 4 – INSURANCE PREMIUMS

The School District shall make payment of insurance premiums for each teacher or to provide insurance coverage for the full twelve (12) month period commencing September 1 and ending August 31. In the event of termination prior to the end of the 183-day contract, said School District payment will be prorated on that portion of the 183-day contract that has been completed.

ARTICLE 4 – SCHOOL DISTRICT RIGHTS

Section 3- Effect of Laws, Rules and Regulations

The Exclusive Representative recognizes that all teachers covered by this Agreement shall perform the teaching and non-teaching services prescribed by the School Board and shall be governed by the laws and regulations of the State of Minnesota, and by the School Board rules, regulations, directives and orders issued by properly designated officials of the School District. The Exclusive Representative also recognizes the right, obligation and duty of the School board and it's duly designated officials to promulgate rules, regulations, directives and orders from time to time as deemed necessary by the School Board insofar as such rules, regulations, directives and orders are not inconsistent with the terms of the agreement and recognizes that the School District, all employees covered by this agreement and all provisions of this agreement are subject to the laws of the State of Minnesota and Federal laws, rules and regulations of the State Board of Education and valid rules, regulations and orders of state and federal governmental agencies. Any provision of this agreement found to be

in violation of any such laws, rules, regulations, directives or orders shall be null and void and without force and effect.

FACTUAL BACKGROUND:

The grievant, Ellen Anderson, was a full time teacher (special education) in the Fergus Fall, Minnesota School District (IDS No. 544) during the 2015-2016 school year. Grievant's husband, Roy Anderson, was also employed as a full time teacher (library/media science) by the School District. Between 2011 and December 2015 Ellen Anderson and Roy Anderson enrolled in two (2) distinct School District health insurance policies and the District made separate monthly contributions to their health insurance premiums at the rate agreed upon in the collective bargaining agreement. Ellen Anderson elected the single coverage available to full time District teachers and Roy Anderson elected family coverage for himself, Ellen and their three children.

Historically, the School District has employed very few married couples. Currently there are four (4) married couples in the School District. In the up coming school year there will be only two (2) married couples employed by the School District for the 2016-2017 school year.

Married couples employed by the School District have regularly elected to enroll in separate health insurance policies offered by the School District and have taken advantage of the Employer's premium contributions to two (2) policies.

When the Andersons reviewed the deductibles and co-pays for insurance policies offered by the School District for the year 2016, they determined that the deductibles and out of pocket expenses for the family policy and single coverage

policy were so high and the premium contribution so low that it was no longer cost effective for them to elect a family policy and a single coverage policy. Instead, Ellen Anderson cancelled her single coverage plan on November 12, 2015.

On November 13, 2015 Ellen Anderson sent an e-mail message to Mark Masten, the District's business manager saying:

"I am requesting that my current insurance premium benefit of \$375 (with adjustments made after future settlements in negotiations occur) be applied to my husband's family insurance premium, Roy Anderson. He is also an employee of ISD #544."

On December 5, 2015 Ms. Anderson followed up on her request. Mr. Masten responded that the School Board was working on the issue.

On December 14, 2015 Mr. Masten informed Ms. Anderson that her request was denied and wrote the following:

Article 7, Section 2 Subdivision D of the Master Agreement says the teacher shall lose the contribution towards premium when the teacher chooses not to participate in the school district health coverage. The Board's interpretation of this language is that you provided the district with a signed form electing to not participate in the plan. Your enrollment in a family plan was via Roy's election to participate in a family plan.

On January 4, 2016 the Association filed a grievance over the School District's denial of Ellen Anderson's request. Because the request had already been denied by the School Board, the parties agreed that the steps in the grievance process would

be waived and the matter brought to arbitration for a final and binding determination.

SUMMARY OF ASSOCIATION'S POSITION:

The Union argues that the meaning of the language used in the collective bargaining agreement is clear and unambiguous. Ellen Anderson meets all of the contractual requirements necessary to receive the benefit of a contribution toward her health insurance policy found at **Article 7, Section 2** of the collective bargaining agreement. Ms. Anderson is a full time employee, a fact that is not in dispute. She also "elected" to participate in a family health insurance plan with her husband. According to Merriam Webster's Dictionary "elect" means "(1) to select (someone) for a position, job, etc., by voting;" or (2) "to choose to do (something)." Under the dictionary definition or any definition of the term "elect", Ellen Anderson elected to participate in the family health insurance plan through the School District. She and her husband jointly selected the plan. The Andersons jointly pay the employee costs of the plan. Ms. Anderson elected to participate in the family plan because having two plans resulted in paying additional out of pocket expenses for two deductibles instead of one. Ms. Anderson receives health insurance coverage available through the School District. Based upon the plain meaning of the language used in **Section 2 of Article 7** of the collective bargaining agreement, the School District should be required to contribute \$467 per month toward the insurance premium of the family insurance policy under which she is covered.

The Association argues that the intent of **Article 7, Section 2, Subdivision 1(D)** is to exclude only those teachers who do not receive insurance coverage from

the School District. Ellen Anderson does receive health insurance coverage from the School District. She “elected” to be covered under the same family policy, which her husband elected.

While the Employer argues that it has never in the past provided two contributions to one family policy, the negative past practice they contend developed, cannot override the plain meaning of the collective bargaining agreement. “The best evidence of [the parties] intention is generally found in the words which the parties themselves employed to express their intent.” **Richard Mittenthal, *Past Practice and the Administration of Collective Bargaining Agreements*, 59 MICH. L. REV. 30, 41 (1961).**

The School District cannot credibly claim that Ellen Anderson stopped participating in School District health coverage on January 1, 2016. She remained enrolled in a family health plan offered by the District based upon the enrollment form she completed with her husband, she carries her own insurance card, she continues to receive the same level of coverage as her husband. In fact, the enrollment instructions for the PEIP insurance plans offered by the School District refer to the ability of family members to select different primary care clinics. The grievant continued to participate in a School District health insurance plan. The clear intention of **Article 7, Section 2 Subdivision 1(D)** is to exclude only those teachers who do not receive health insurance coverage from the School District. The exclusion does not apply to the grievant.

The limitation in **Subdivision 1(D)** of the **Article 7, Section [2]** does not resemble the specific limitation found in the collective bargaining agreement

recently reviewed by Arbitrator Miller in ***Education Minnesota Detroit Lakes and ISD 22, BMS Case No. 16-PA-0404 (2016)***. The contract reviewed by Arbitrator Miller said *“The District’s contribution for single and family coverage is toward premiums for each full-time teacher employed by the District who qualifies for and is enrolled in the District’s group health and hospitalization plan.”* The agreement states further, *“teachers who are members of the same family are not entitled to duplicate coverage.”* No such limitation exists in the contract between Fergus Falls Education Association and ISD District No. 544.

In ***Education Minnesota Wrenshall and ISD 100, BMS Case No. 14-PA-0752 (2014)***, Arbitrator Ver Ploeg found that no past practice existed, as the School District could only cite one married couple several years ago, where the same practice had occurred and there was no evidence that the Association knew of the practice. In the same decision, which involved contract language similar to the language found in the Fergus Falls contract, Arbitrator Ver Ploeg said *“the Grievant’s services for the District and its students are separate from those provided by her husband. There is no basis for treating the Grievant and her spouse as a single entity for purposes of receiving a contractual benefit.”*

The Association asks the Arbitrator to follow Arbitrator’s VerPloeg’s decision in the ***Wrenshall*** case. First, the language in both cases is nearly identical. The term “elect” is used in the Fergus Falls contract and “enroll” is used in the Wrenshall contract. Second, no past practice exists in either case.

The Association recognizes that it proposed language during negotiations that would have clarified the meaning of the health-hospitalization section. It is the

Associations' position that the proposal was redundant and not an attempt to change the meaning of the agreed upon provision.

The elements necessary to prove the existence of a "Past Practice" are a practice that is " (1) unequivocal; (2) clearly enunciated and acted upon; and (3) readily ascertainable over a reasonable period of time as a fixed and established established practice accepted by both parties." *Elkouri and Elkouri, How Arbitration Works 608 (6th ed. 2004) quoting Celanese Corp. of Am. 24 L.A. 168, 172 (Justin, 1954).* The School District can not rely upon a past practice, as no teacher other than Ellen Anderson has ever asked to have her/his contribution applied toward the same insurance policy as his or her spouse in the past twenty (20) years.¹

The Association contends that a ruling in favor of the grievant in this case will not result in unbudgeted costs for the School District. When the contract was negotiated, the cost of the contract was calculated assuming all teachers would choose a District health-hospitalization insurance plan.

The Association asks that the grievance be upheld and the School District be ordered to pay Ellen Anderson \$467 per month together with interest from January 2016 through August 2016.

SUMMARY OF EMPLOYER'S POSITION:

The Employer argues that the "plain meaning of **Article 7**" leads to the conclusion that the School District is not obligated to make a contribution for Ellen Anderson to the Family Health Insurance premium, under which Ms. Anderson receives Health Insurance Benefits. The collective bargaining agreement clearly and

¹ Testimony of Mark Masten, Business Manager for ISD No. 544.

unambiguously states that the District shall pay \$467 toward a District health insurance plan “elected” by the teacher. Ms. Anderson simply did not “elect” a District health insurance plan. She could have elected, as she has in the past, either a single coverage plan or a family plan and the District would have contributed up to \$467 toward the premium. However, Ms. Anderson did not “elect” either plan. She simply became a dependent on her husband’s policy. Ms. Anderson did not sign any documents upon canceling her single health-hospitalization insurance coverage. Ms. Anderson’s signature was not required on any form to be covered under Roy Anderson’s family health-hospitalization insurance. Ms. Anderson did not select, chose or pick anything with respect to the Roy Anderson family health insurance. Hence, by not “electing” health-hospitalization insurance coverage Ms. Anderson chose not to participate in health – hospitalization coverage and is not entitled to insurance contribution under **Article 7, Section 2 Subd. 1 (A)** of the collective bargaining agreement.

If the arbitrator finds the language of **Article 7** to be ambiguous, he should apply the past practice of the parties. The School District has consistently not allowed the Employer contribution to a teacher who has not elected health-hospitalization insurance coverage. Historically, teachers have “waived” the benefit by not claiming it. The Employer’s interpretation and implementation of the requirement that a teacher “elect” their own health-hospitalization insurance coverage has been in existence of more than a decade. The practice has been clearly stated and followed by the parties. The practice of only allowing the contribution to teachers who elected their own health-hospitalization insurance coverage has been

fixed and there are no examples of deviation from the practice. Hence, past practice supports denial of the grievance.

The Employer looks to the same arbitration awards cited by the Association and points out that all of the cases but the ***Wrenshall Case BMS 08-PN-0752***, were decided at least in part by past practice. Past practice favors the Employer's position in this case and the contract language in the ***Wrenshall Case*** does not include a requirement that the teacher "elect" health-hospitalization insurance coverage, as agreed upon at **Article 7, Section 2, Subdivision 1 (A)** of the Fergus Falls contract.

The Employer also argues that in the Fall of 2015 the Union attempted to negotiate into the Master Agreement the benefit it is attempting to gain through arbitration. The attempt to change the collective bargain agreement was unsuccessful and the arbitrator should not allow the Association to gain in grievance arbitration what it was unable to obtain through negotiations.

The Employer asks that the grievance be denied.

OPINION:

The grievance raises a contract question that has not been addressed in the past by ISD No. 544 and Education Minnesota. Consequently, no past practice has developed and no past practice is available to use in construing the contract provisions in question. At least in the past twenty (20) years no teacher in the Fergus Falls School, other than the grievant, has asked the School District to apply his/her insurance premium benefit to a family policy under his/her spouses name. The facts necessary to establish a long standing past practice are not present in this case.

The relevant contract language and the circumstances in this case are very much like the relevant contract language and the circumstances reviewed by Arbitraor Ver Ploeg in the **Wrenshall Case BMS 08-PN-0752**, which was cited by both parties to this grievance arbitration.

The **Wrenshall** contract at **Article IX, Section 1, Subd. 2** provides for School District premium contribution “*for all full-time teachers employed by the School District who qualify for and are enrolled in the School District group health and hospitalization plan and who qualify for family coverage.*” The comparable provision in the Fergus Falls contract says at **Article 7, Section 2, Subd. 1**... *the School Board will contribute: (A) Up to \$467 per month for each teacher who elects health-hospitalization coverage to pay health-hospitalization insurance.*” Both contracts provide for School Board contribution toward the insurance premium of eligible or qualified teachers. The **Wrenshall** contract requires that the teacher be enrolled in the program and Fergus Falls requires that the teacher elect coverage.

In this case as well as in the **Wrenshall Case BMS 08-PN-0752**:

- There is no evidence to support the proposition that a teacher must always pay something toward a health insurance policy.
- A teacher is required to cover the difference between the District’s contribution and the amount owed.
- Neither agreement limits the School Districts premium contribution for two full-time teachers employed by the District to one contribution toward their family policy.

- There is no basis for treating the grievant and her spouse as a single entity for purposes of receiving a contract benefit, since the services each teacher provides the District are separate services. (see page 10 of **Wrenshall** decision)

In this case the School District argues that Ms. Anderson did not “elect” School District health-hospitalization insurance, because Ellen Anderson did not fill out the paper work. Similarly, the Wrenshall School District argued that the grievant did not “enroll”, because the grievant had not filled out the paperwork. Arbitrator Ver Ploeg found “*it is more reasonable to adopt the insurance industry’s standard terminology by which any person covered under a policy is characterized as ‘enrolled’.*” **Wrenshall Case BMS 08-PN-0752** p. 10. The circumstances and language are so similar in the two cases that this arbitrator believes that the decision in the **Wrenshall Case BMS 08-PN-0752** should be followed.

Beyond the similarities with the **Wrenshall Case BMS 08-PN-0752** there is support for the Union’s position. Ellen Anderson sent an e-mail on November 13, 2015 to the School Business Manager saying, “*I am requesting that my current insurance premium benefit of \$375 (with adjustments made after future settlements in negotiations occur) be applied to my husband’s family insurance premium, Roy Anderson. He is also an employee of ISD #544.*” Ms. Anderson was definitely “electing” to be covered by a School District family insurance policy, based upon the plain meaning of the term. In this situation the School Board’s financial commitment for each teacher is limited to a \$467 per month contribution and the contract does not

require a specific level of contribution by the teacher. **Article 7, Section 2, Subd. 1** (E), says:

If a teacher chooses a school district health coverage that is less than the benefits shown in "A" above, then the difference between the health insurance premium and the benefit shall belong to the school district and will not be available to the teacher for any purpose or in any manner.

In drafting (E) the parties used the term "chooses" not "elects", and Ms. Anderson definitely choose be insured under the same the School District family health insurance coverage as her husband. Since the cost of the contract was determined without taking a reduction in cost for full-time teachers who are married, the choice of being covered under the same School District health insurance family policy as her husband is consistent with the School District's budget.

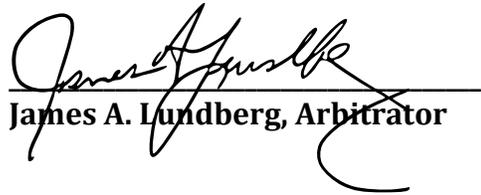
The parties did not raise any discrimination arguments in this arbitration and there is sufficient basis to uphold the grievance without considering additional arguments. However, the collective bargaining agreement at **Article 4, Section 3**, requires compliance with Minnesota Law. **Minnesota Statutes Chapter 363A**, prohibits discrimination in compensation based upon marital status. The arbitrator believes that the Employer's position in this case denies compensation (contribution to health insurance premiums) to certain employees based exclusively upon marital status and is inconsistent with the purpose of **Article 4, Section 3** of the collective bargaining agreement.

The grievance should be upheld.

AWARD:

- 1. The grievance is hereby upheld.***
- 2. The Employer is directed to pay grievant Ellen Anderson back-pay for the months of January through August 2016 at the rate of \$467 per month.***
- 3. Interest shall be paid on the back-pay award.***
- 4. The arbitrator will retain jurisdiction over the remedy for a period of 120 days.***
- 5. If the parties are unable to agree upon the appropriate amount of interest, they are directed to submit their written arguments over interest to the arbitrator and the arbitrator will adopt one of the proposed arguments.***

Dated: August 18, 2016.


James A. Lundberg, Arbitrator