

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-56-04

(UNFAIR LABOR PRACTICE)

LINCOLN COUNTY)	
EDUCATION ASSOCIATION,)	
)	
Complainant,)	RULINGS,
)	FINDINGS OF FACT,
v.)	CONCLUSIONS OF LAW
)	AND ORDER
LINCOLN COUNTY SCHOOL)	
DISTRICT,)	
)	
Respondent.)	
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The Board heard oral argument on June 29, 2005, upon Complainant's and Respondent's objections to a proposed order issued by Administrative Law Judge (ALJ) Carlton Grew on May 18, 2005. The parties submitted a fact stipulation in lieu of hearing on January 24, 2005. The record closed with receipt of briefs on March 7, 2005.

Barbara J. Diamond, Attorney at Law, Smith, Diamond & Olney, 1500 N.E. Irving, Suite 370, Portland, Oregon 97232-4207, represented Complainant.

Bruce A. Zagar, Attorney at Law, Garrett, Hemann, Robertson, Jennings, Comstock & Trethewy, P.O. Box 749, Salem, Oregon 97308-0749, represented Respondent.

On November 18, 2004, the Lincoln County Education Association (Association or LCEA) filed this unfair labor practice complaint alleging that the Lincoln County School District (District) violated ORS 243.672(1)(g) by refusing to comply with the terms of an arbitration award issued by Arbitrator Amedeo Greco on November 4, 2004. The

award ordered the District to resume payment of full health insurance premiums for eligible retirees and repay them for premiums they had paid.

The arbitration took place pursuant to this Board's order in *Lincoln County Education Association v. Lincoln County School District*, Case No. UP-27-02, 20 PECBR 571, (2004). This Board issued its final order in that case on, April 7, 2004, holding that the grievances were "arguably arbitrable" and ordering the District to proceed to arbitration, 20 PECBR at 591. The District did not appeal that decision, and the parties arbitrated the case. The District's refusal to comply with the resulting arbitration award is the basis for the Association's complaint in this action.

The issues are: (1) Did the Arbitrator exceed his authority or violate public policy in issuing his award, or was the District's refusal to implement the award a violation of ORS 243.672(1)(g)? (2) Should this Board order the District to pay a civil penalty or to reimburse the Association's filing fee? (3) Should this Board order the District to pay interest on amounts owed to retirees?

RULINGS

Admissibility of Association's request to clarify arbitrator's award: In a letter dated November 17, 2004, 13 days after the arbitrator issued his award, the District stated that it would not comply. On November 19, the Association requested that the arbitrator clarify his award. The District opposed the request. The Arbitrator issued a ruling on the request on January 6, 2005. Arbitrator Greco discussed and explained his award, and ruled that, in light of the posture of the case, the most appropriate disposition was for this Board to remand the matter to the Arbitrator for clarification. The Association sought to introduce the arbitrator's ruling into evidence, and the District objected.

Our analysis in an action to force compliance with an arbitration award is generally focused on the award itself. *Washington County Police Officers' Association v. Washington County*, Case No. UP-76-99, 19 PECBR 100, 113-14 (2001); *rev'd* 181 Or App 448, 45 P3d 515 (2002), *rev allowed* 334 Or 491, 52 P3d 1056, 1057 (2002), *rev'd and rem'd* 335 Or 198, 63 P3d 1167 (2003); *aff'd* 187 Or App 686, 69 P3d 767 (2003). Here, the arbitrator declined to formally clarify the award without the consent of both parties. However, the ruling on the motion to clarify is relevant to the Association's request for a civil penalty. The ALJ properly admitted the arbitrator's ruling and the letters from the parties regarding that ruling as well as the related Ruling on Request to Clarify Award as to the civil penalty only.

Arbitration exhibits and exhibits, briefs, transcript, and Board order in UP-27-02.

The District sought to introduce into evidence the exhibits from the arbitration record. The District's proffered evidence included the exhibits, briefs, transcript, memoranda in aid of oral argument, and Board Order in Case No. UP-27-02, and the decisions of other arbitrators. With the exception of the parties' successive labor contracts, the Association objected to the receipt of the District's proposed exhibits.

Evidence presented to the arbitrator in an arbitration proceeding is *not* admissible in proceedings to compel compliance with an arbitration award. *See Portland Association of Teachers and Jim Hanna v. Portland School District 1J*, Case No. UP-64-99 18 PECBR 816, 821 (2000); *AWOP 178 Or App 634, 39 P3d 292, 293 (2002)*; *rev den 334 Or 121, 47 P3d 484 (2002)*. The ALJ properly admitted into evidence the parties' 1992-1995, 1995-2000, and 2000-2005 collective bargaining agreements. The ALJ properly admitted the parties' briefs and written submissions as to the civil penalty issue only. The ALJ properly denied admission of the remaining exhibits.

The remaining rulings of the ALJ have been reviewed and are correct.

FINDINGS OF FACT¹

1. The District is a public employer. The Association is a labor organization and the exclusive representative of a bargaining unit of licensed teachers employed by the District.

2. On November 4, 2004, Arbitrator Amedeo Greco issued an arbitration award.² The award stated as follows:

"AWARD

"1. That the grievances are substantively arbitrable.

"2. That the District has misinterpreted Article 24 of the agreement and has violated the terms of the parties' early retirement plan when it stopped providing medical

¹The Findings of Fact are based upon a stipulation by the parties and exhibits received into evidence.

²We set forth the opinion and award in full in Appendix A.

coverage to early retiree's spouses when the spouses reached 65 years of age.

- "3. That the District has misinterpreted Article 24 of the agreement and has violated the terms of the parties' early retirement plan when it stopped providing medical coverage to early retirees and/or their spouses because they were on Medicare.
- "4. That the District has misinterpreted Article 24 of the agreement and has violated the terms of the parties' early retirement plan when it required early retirees to pay about \$114.60 per month for their health insurance coverage.
- "5. That the District shall immediately take all of the remedial action related [below].
- "6. That in order to resolve any disputes relating to the application of the remedy, I shall retain remedial jurisdiction indefinitely."

Recognizing that a two-year delay had already taken place in resolving this matter, the arbitrator directed certain remedial actions be taken

"as soon as possible. Specifically:

- "1. The District shall immediately resume paying for all affected retirees all of the health insurance premiums for the medical coverage provided for in the early retirement plan, and it shall continue to pay the full cost of all such premiums until retirees reach 65 years of age.
- "2. The District by November 22, 2004, shall pay each affected retiree all of the premiums they have been required to pay up to the present time. The District by November 22, 2004, also shall furnish the Association, in writing, with the names, addresses, and telephone numbers of all retirees who have been required to pay any part of their health insurance premiums and it shall

list the total amount of premiums paid by each retiree. In that way, the Association can conduct its own independent investigation as to whether the District's information is correct.

- “3. The District shall immediately restore to all eligible retirees and/or spouses the medical coverage they are entitled to receive, and the District shall continue to provide such medical coverage to all eligible retirees and spouses until retirees reach 65 years of age. The District therefore can either pay each and every eligible medical expense thirty (30) days after bills for same have been submitted to the District; or it can establish its own self-funded health care plan if it chooses to do so; or it can bargain in good faith with the Association over how to provide such coverage, provided however, that any such change must be mutually agreed to by the Association and the retirees and thus cannot be unilaterally implemented even if the parties reach impasse. The District will continue to pay for each and every eligible medical expense until any such plan is mutually agreed to.
- “4. The District by November 22, 2004, shall furnish the Association, in writing, with the names, addresses and telephone numbers of all retirees and/or spouses whose medical coverage was dropped before the retiree reached 65 years of age, along with the exact date such coverage was dropped. The District by November 22, 2004, also shall furnish the Association, in writing, with the names, addresses, and telephone numbers of all retirees who retired under the 1992 — 1995 and 1995 — 2000 agreements. In that way, the Association can conduct its own independent investigation as to whether the District's information regarding the dropping of coverage is accurate.
- “5. The Association by December 22, 2004, shall provide the District, in writing, with all bills and expenses it believes the District must pay, along with whatever insurance

premiums have been paid for alternate medical coverage in accord with the insurance caps set forth in Article 20, Sections C, D, E, and F. The Association by December 22, 2004, also shall provide the District, in writing, with whatever other information it believes supports reimbursement for any such claimed expenses.

“6. The District by January 21, 2005, shall reimburse all of the above expenses it does not dispute. If the District disputes any such claimed expenses, it shall state the full basis why it challenges each particular claim by January 21, 2005, and it shall cite all provisions of the prior Red Book Plan or the current plan which it relies upon in support of any such challenges. The District by January 21, 2005, also shall provide the Association, in writing, with whatever other information or documents it believes supports the denial of any claimed expenses.

“7. The parties will have until February 11, 2005, to informally resolve the District’s challenges. If any challenges remain unresolved after that date, I will resolve them.

“8. In order to resolve any disputes which may arise over application of any part of this remedy, and pursuant to the agreement of the parties, I will retain my remedial jurisdiction indefinitely.

3. On November 17, 2004, the District’s counsel wrote to the Association’s counsel, stating that the arbitration award was unenforceable.

4. LCEA has requested that the District comply with the arbitration award. The District refused to comply with any portion of the award.

5. LCEA sought clarification of the arbitration award. The District opposed clarification and refused to join with LCEA in the request for clarification. According to the District, the arbitrator had no jurisdiction to consider the request for clarification since the District was unwilling for him to do so. Nevertheless, the District argued that the arbitrator had exceeded his powers because he had created a contract for which the parties had never bargained that the award required the District to perform illegal acts under ORS 243.303(3),

that the award exceeded the arbitrator's authority, and, finally, that the award violated public policy

6. As noted in Rulings above, on January 6, 2005, the arbitrator issued his Ruling on Request to Clarify Award. In it, Arbitrator Greco found that, (1) he had authority to rule on the Association's request because that was an inherent part of an arbitrator's duties, (2) the District gave no reason why it opposed the request for clarification, but rather argued that the award was unenforceable, and (3) Since the parties disagreed about what the arbitration award meant, Arbitrator Greco should explain what he meant by his award. The arbitrator then did so.

He reaffirmed his award, and stated that "I want to be absolutely clear that the Award merely seeks to make whole all affected teachers and spouses by immediately restoring the status quo ante by fully restoring the medical coverage that was improperly dropped and by relieving all retirees of any future obligation to pay any part of their medical coverage. The District must pay for future eligible medical expenses under the current insurance plan if it chooses not to establish its own self-funded insurance plan and if it chooses not to bargain in good faith with the Association over how to provide such coverage." (Ruling, at p. 7). Arbitrator Greco then concluded that the best way to deal with the issues raised by the Association, in light of the pendency of these enforcement proceedings, was "to have the ERB and/or the courts remand this matter back to me for immediate clarification if they agree that should be done, as that will bring about a much quicker resolution of this matter." *Id.*

CONCLUSIONS OF LAW

1. This Board has jurisdiction over the parties and subject matter of this dispute.

2. The District violated ORS 243.672(1)(g) when it refused to implement the Greco arbitration award.

Standards for Decision

ORS 243.672(1)(g) provides as follows:

*** It is an unfair labor practice for a public employer or its designated representative to do any of the following:

“* * * * *

“(g) Violate the provisions of any written contract with respect to employment relations including an agreement to arbitrate or to accept the terms of an arbitration award, where previously the parties have agreed to accept such awards as final and binding upon them.”

In the *Willamina cases*,³ decided by this Board more than twenty five years ago, ERB adopted its own standards for review of arbitration awards under the PECBA. We stated that this Board would enforce an arbitration award unless it was “clearly shown” that either:

“(1) The parties did not, in a written contract, agree to accept such an award as final and binding upon them (for example, an arbitrator finds no violation of the agreement, but upholds a grievance as constituting an unfair labor practice; and arbitrator exceeds a limitation on his authority expressly provided in the collective bargaining agreement); or

“(2) Enforcement of the award would be contrary to public policy (for example, the award requires the commission of an unlawful act); the arbitration proceedings were not fair and regular, and thus, did not conform to normal due process requirements” *Willamina II*, PECBR at 4099-4100.

We have elaborated on these standards in numerous later cases. For example, in considering the enforceability of an arbitration award, we consider only the award itself:

“* * * The County’s objections, at their core, concern particular aspects of the arbitrator’s interpretation of the contract, and the sufficiency of his discussion and analysis of the evidence. Those matters are not within our province on review. See *PAT and Hanna v. Portland School District*, Case No. UP-64-99, 18 PECBR 816 (2000), *aff’d* 178 OrApp 634, 39 P3d 292 (2002), citing *Brewer v. Allstate Insurance Co*, 248 Or 558,

³*Willamina Education Association 30J and Barbara Crowell Luciano v. Willamina School District* No. 30-44-63J Case No. C-253-79, 5 PECBR 4086 (1980)(*Willamina II*) and *Willamina Ed. Assn. v. Willamina Sch. Dist 30J*, Case No. C-93-78, 4 PECBR 2571 (1980); *rem’d* 50 Or App 195, 623 P2d 658 (1981); *aff’d* 60 Or App 629, 655 P2d 189 (1982) (*Willamina I*).

436 P2d 547, 561-562 (1962).” *Washington County Police Officers’ Association v. Washington County*, Case No. UP-76-99, 19 PECBR 100, 115-16 (2001), *aff’d* 335 Or 198, 63 P3d 1167 (2003).

This Board has described its review of arbitration awards as follows:

“Because of the strong public policy favoring arbitration, our review of an arbitrator’s award is limited in scope. ‘The guiding principle * * * is that arbitration awards should be subject only to sparing review, in the interest of promoting the efficiency and finality of arbitration as a decision-making process for parties who contract to use it.’ *Fed. of Ore Parole Officers v. Corrections Div.*, 67 Or App 559, 563, 679 P2d 868, *rev den*, 297 Or 458 (1984). In furtherance of these interests, ‘this Board will not engage in a “right/wrong” analysis’ of an arbitrator’s award, [*State of Oregon,*] *Department of Corrections [v. AFSCME Council 75, Local 2623*, Case No. AR-1-92], 13 PECBR [846] at 858 [(1992)], and it will not conduct ‘an inquest into the arbitrator’s analysis,’ *Oregon Department of Transportation v. OPEU*, Case No. AR-1-98, 17 PECBR 814, 825 (1998). Factual errors or misinterpretation of the contract, no matter how clear, will not suffice to overturn an arbitrator’s award. ‘As is often stated in arbitration enforcement cases, it is the arbitrator’s interpretation of the contract terms which the parties bargained for, and it is that interpretation to which the parties are now bound.’ *Clatsop Community College Faculty Association v. Clatsop Community College*, Case No. UP-139-85, 9 PECBR 8746, 8761-62 (1986).

The same standards apply to review of an arbitrator’s decision about the scope of his or her authority. *Beaverton Education Association v. Washington County School District No. 48*, Case No. C-119-83, 7 PECBR 6496 (1984); *rev rem’d* 76 Or App 129, 139, 708 P2d 633 (1985); *rev den* 300 Or 545, 715 P2d 62 (1986).

We also apply the principles of limited review to the remedy awarded by an arbitrator. This Board has recognized that “an arbitrator has substantial discretion in devising a remedy. We do not engage in right/wrong. It is “immaterial whether this Board would agree with the arbitrator’s conclusion regarding the appropriate remedy. This Board has enforced awards upon a finding that the remedy was “tailored to the violation and grounded in the

contract.’ *In the Matter of the Arbitration of a Dispute Between Service Employees International Union, Local 503, Oregon Public Employees Union v. State of Oregon, Office of Services for Children and Families*, Case Nos. AR-3/4-03, 20 PECBR 829, *State of Oregon, Oregon Department of Transportation, Department of Motor Vehicles v. Oregon Public Employees Union*, Case No. AR-1-98, 17 PECBR 814, 825 (1998), *Woodburn Education Association and Bradford v. Woodburn School District No. 103C*, Case No. C-126-83, 7 PECBR 6509 (1984); and *North Clackamas Education Association v. North Clackamas School District No. 12*, Case No. C-275-79, 5 PECBR 4107 (1980).

Arbitral Authority

The District argues that the arbitrator’s decision is not enforceable in part because the arbitrator “did not find a violation of the 2000-2005 collective bargaining agreement under which the grievance was filed.” The District also argues that the Association “stipulated throughout all of this proceeding and the underlying proceedings that the District did not violate the 2000-2005 collective bargaining agreement.”⁴ The arbitrator specifically concluded that “the District has misinterpreted Article 24 and that it has violated the terms of the early retirement plan as set forth in the prior 1992-1995 and 1995-2000 agreements.” To the extent that the District argues that the 2000-2005 collective bargaining agreement set aside the District’s obligations to retirees, we rejected this argument in UP-27-02, and the arbitrator rejected it as well. To the extent the District continues to contend that the grievances were somehow defective, this argument is one that was properly made to the arbitrator and one which we will not consider again.

The District also argues that the Association and retirees have no arbitral remedy for breaches of prior, expired contracts, and that the District’s actions did not breach the current contract. Again, we rejected this argument in UP-27-02, and the arbitrator rejected it as well.

As the Court of Appeals has stated, “[i]t is not unusual for a collective bargaining agreement to include provisions that cannot be fully implemented during the term of the contract. Such provisions essentially establish a contractual status quo that usually will be carried into successor agreements unless the parties agree otherwise.” *Executive Department v. FOPPO*, Case No. UP-74-87, 10 PECBR 157 (187); *rev’d* 92 Or App 331, 758 P2d 410 (1988).

⁴This alleged stipulation does not appear in the stipulation of facts, the award, or our Findings of Fact in Case No. UP-27-02, which the District did not appeal. The Association states that it has consistently argued that the District “misinterpreted” Article 24 of the 2000-2005 collective bargaining agreement to cut off retiree benefits.

Further, this Board has held that some contract obligations survive the expiration of the labor contracts in which they were created, and that these obligations may be challenged through a grievance procedure in a subsequent labor contract then in effect. Here, see *McMinnville Education Association and Mid-Valley Bargaining Council v. McMinnville School District #40*, Case No. UP-78-94, 16 PECBR 107, 124 (1995) (*McMinnville II*); *McMinnville Education Association and Mid-Valley Bargaining Council v. McMinnville School District #40*, Case No. UP-71-95, 16 PECBR 481 (1996) (*McMinnville I*); and *McMinnville Education Association and Mid-Valley Bargaining Council v. McMinnville School Dist #40*, Case No. UP-4-97, 17 PECBR 539 (1998) (*McMinnville III*).

In his decision, the arbitrator ruled that the medical coverage benefit available to retirees was clearly intended to survive the collective bargaining agreement. In *McMinnville Education Association and Mid-Valley Bargaining Council v. McMinnville School District #40*, (*McMinnville II*), this Board addressed whether the district violated the collective bargaining agreement by changing the health insurance benefits for its retired teachers. This Board concluded that the contract benefit was enforceable even though the claimed breach occurred after the expiration of the contract in question. This Board found that the contract article at issue was “clearly intended by the parties to survive the collective bargaining agreement.” and to give an opposite “construction of the contract is illogical, because it renders the sections [providing benefits after the contract term] meaningless.” 16 PECBR at 124. The arbitrator here found similarly and we concur.

In his award, the arbitrator framed, considered, and resolved the issues before him as follows:

- “1. That the grievances are substantively arbitrable.
- “2. That the District has misinterpreted Article 24 of the agreement and has violated the terms of the parties’ early retirement plan when it stopped providing medical coverage to early retiree’s spouses when the spouses reached 65 years of age.
- “3. That the District has misinterpreted Article 24 of the agreement and has violated the terms of the parties’ early retirement plan when it stopped providing medical coverage to early retirees and/or their spouses because they are on Medicare.

“4. That the District misinterpreted Article 24 of the agreement and has violated the terms of the parties’ early retirement plan when it required early retirees to pay about \$114.60 per month for their health insurance coverage.”

In UP-27-02, this Board found that the Association’s grievances against the District for violations of the early retirement provisions in previous labor agreements and of the 2000-2005 labor contract were arguably arbitrable and within the power of the arbitrator to decide on lawful grounds.⁵

⁵The Findings of Fact in Case No UP-27-02 include the following:

“16 On March 20, the Association filed a grievance asserting that the District violated Article 24 by failing to provide medical insurance coverage ‘to District retired [sic] and spouses ‘until and including the month in which the teacher reaches the age of 65 years.’”⁴ (Underlining in original.) On April 1, the District denied the grievance, asserting that the Association, retirees, and retirees’ spouses were not proper grievants; the District also denied the grievance on the merits.

“* * * * *

⁴ The Association grievance quoted language that appeared in Article 24 of the parties’ 2000-2005, 1995-2000, 1992-1995, and 1989-1992 collective bargaining agreements.

“* * * * *

“21. In October 2002, the Association filed a grievance alleging that the termination of White’s medical insurance coverage violated Article 24 of the contract. The District denied the grievance, stating that White did not have standing to file a grievance; the 2000-2005 contract’s Red Book plan provided that a retiree’s insurance coverage terminates when an individual is eligible for or covered by Medicare; and White was covered by Medicare.

“On October 28, the Association processed the grievance to the next step. In November and December 2002, the District denied the grievance, stating that neither the Association nor White, as a retiree, was a proper grievant.

“* * * * *

“28. In addition to the grievances that give rise to this dispute, two other grievances over the Red Book plan have arisen under the 2000-2005 agreement. One involved coverage for an active teacher; the other involved coverage for teachers who retired during the term of the 2000-2005 agreement. Both grievances went through the grievance

In his Opinion and Award, the arbitrator concluded that the District had misinterpreted the 2000-2005 labor contract and violated the early retirement program provisions in prior labor contracts. That decision was within his proper authority.

Public Policy

Standards for Decision

The District argues that the award violates ORS 243.706(1), which states that “any arbitration award that orders the reinstatement of a public employee or otherwise relieves the public employee of responsibility for misconduct shall comply with public policy requirements as clearly defined in statutes or judicial decisions.” That statute is not applicable to this case.

The District also contends that the award violates ORS 243.303(3) and that statute’s underlying public policy. The “public policy” exception, on which the District relies, is “exceedingly narrow.” *In the Matter of the Arbitration Between State of Oregon, Department of Corrections v. AFSCME Council 75, Local 2623*, Case No. AR-1-92, 13 PECBR 846, 855 (1992). In order to prevail, the District must “clearly show” that the award requires it to commit an unlawful act. (*Willamina I and II*). We do not consider the general public policies which the statute may express. *In the Matter of the Arbitration Between State of Oregon, Department of Corrections v. AFSCME Council 75, Local 2623*.

ORS 243.303 provides:

“* * * (1) As used in this section:

“(a) ‘Health care’ means medical, surgical, hospital or any other remedial care recognized by state law and related services and supplies and includes comparable benefits for persons who rely on spiritual means of healing.

“(b) ‘Local government’ means any city, county, school district or other special district in this state.

“(c) ‘Retired employee’ means a former officer or employee of a local government who is retired for service or disability, and who received or is receiving retirement benefits,

process and concluded in arbitration.” 20 PECBR at 582-84, emphasis in original.

under the Public Employees Retirement System or any other retirement system or plan applicable to officers and employees of the local government.

“(2) The governing body of any local government that contracts for or otherwise makes available health care insurance coverage for officers and employees of the local government shall, insofar as and to the extent possible, make that coverage available for any retired employee of the local government who elects within 60 days after the effective date of retirement to participate in that coverage and, at the option of the retired employee, for the spouse of the retired employee and any unmarried children under 18 years of age. The health care insurance coverage shall be made available for a retired employee until the retired employee becomes eligible for federal Medicare coverage, for the spouse of a retired employee until the spouse becomes eligible for federal Medicare coverage and for a child until the child arrives at majority, and may, but need not, be made available thereafter. The governing body may prescribe reasonable terms and conditions of eligibility and coverage, not inconsistent with this section, for making the health care insurance coverage available. The local government may pay none of the cost of making that coverage available or may agree, by collective bargaining agreement or otherwise, to pay part or all of that cost.

“(3) A local government and a health care insurer *may not create a group solely for the purpose of rating or of establishing a premium* for health care insurance coverage of retired employees and their dependents *that is separate from the group for health care insurance coverage of officers and employees* of the local government and their dependents. Nothing in this subsection prevents a local government from allocating rates or premiums differently among retired employees and their dependents and officers and employees of the local government and their dependents once the rating or premium is established.” (Emphasis added)

Here the District argues that, by implementing the arbitrator’s award, it would violate ORS 243.303(3) because it would require the District to “create a group [of retired

employees] solely for the purpose of rating or of establishing a premium for health care insurance coverage.”

This argument is singularly unpersuasive. Arbitrator Greco directed the District to “make whole” those retirees who had been damaged by the District’s misinterpretations of the contract. The District was given substantial leeway in performing its obligations under the award. The arbitrator did not require that the District create a “separate group of employees” for any purpose.

For all of the reasons outlined above, we hold that the District violated ORS 243.672(1)(g) when it refused to comply with Arbitrator Greco’s award in this case. We now turn to the remedy portion of our order.

Remedy

The appropriate remedy in this case is to make whole those retirees who Arbitrator Greco found had been damaged by the District’s misinterpretation of applicable contract language. In crafting his award, Arbitrator Greco established a schedule of specific steps the District was to take, at specific times, to remedy its contract misinterpretation. He went on to state that “In order to resolve any disputes which may arise over application of any part of this remedy, and pursuant to the agreement of the parties, I will retain my remedial jurisdiction indefinitely.” (Finding of Fact 2).

The only question is where this Board will exercise its jurisdiction to craft a remedy independent of the arbitration award, or remand the matter to Arbitrator Greco for further proceedings. We have found that the District unlawfully failed to comply with the arbitrator’s award. The award provides that the arbitrator will retain jurisdiction indefinitely of disputes regarding remedy. In order to fully enforce the arbitrator’s award, and except as set forth below, we remand this matter to Arbitrator Greco so that, as soon as practicable, he may revise the District’s schedule for compliance.

We are very aware of the passage of time in this case. This Board will grant an expedited hearing at any time subsequent to this order, if the arbitration award is not implemented in accordance with Arbitrator Greco’s directives. OAR 115-35-068(2).

Payment of Interest to Retirees as Make Whole Remedy

In addition, the Association has argued that the District be ordered to pay interest on amounts owed to the retirees in order to make them whole for the District’s refusal to comply with the arbitration order. “Adding interest to a monetary remedy will

effectuate the law's proscription of contract violation in that it will reduce any benefit an employer might gain by holding funds from the date of the breach to the date of satisfying an order; similarly, interest is necessary to make any employee (*sic*) whole for the loss of use of the funds." *Oregon School Employees Association, Chapter 84 v. Redmond School District 2J*, 6 PECBR 4726, 4739 (1981).

The District is ordered to pay interest to affected retirees in the amount of 9 percent per annum from November 4, 2004, the date of Arbitrator Greco's award to the date the award is implemented in its entirety.

CIVIL PENALTY

Standards for Decision

The Association has properly plead its request that this Board award a penalty against the District. This Board has authority under ORS 243.676(4)(a) and OAR 115-35-075, to award a a civil penalty of up to \$1000 to a prevailing party under appropriate circumstances. In relevant part, OAR 115-35-075 authorizes the award of a penalty when:

"The Board finds that the party committing an unfair labor practice did so repetitively, knowing that the action taken was an unfair labor practice and took such action disregarding that knowledge; or that the action constituting an unfair practice was egregious."

The language of the rule is disjunctive: a penalty may be justified based on repetitive unfair labor practices, or a single egregious unfair labor practice

In order to show that a violation was 'repetitive' a "complainant typically must prove " * * * the existence of a prior Board order involving the same parties that establishes that prior, similar activity was unlawful." *AOCE v. Oregon Department of Corrections Case No. UP-7-98*, 18 PECBR 64, 74 (1999).

In *Rogue Community College Classified Employees Association, Chapter 152 v. Rogue Community College*, Case No. C-54-84, 9 PECBR 8484 (1986), this Board awarded a civil penalty in a case in which the union alleged that, first, the college communicated directly with bargaining unit members during collective bargaining negotiations; and, second, that the college unilaterally adjusted the wages of two bargaining unit members.

The parties had appeared previously before this Board in *Rogue Community College Classified Employees Association Chapter 152, Oregon School Employees Association v. Rogue Community College*, Case No. C-159-83, 7 PECBR 6351 (1984). There, we held that the College had communicated during negotiations with two bargaining unit members who were not on the negotiating team; and had unilaterally increased the salary of those two members without the Association's agreement. In the second *Rogue Community College* case, the Community College admitted to the same actions that this Board found unlawful in the earlier proceeding. We determined that the Community College's course of conduct was "repetitive"; and awarded a civil penalty to the Association. We reasoned that "we have a clear intent of the College to violate the law. There can be little doubt of the College's knowledge of the continued wrongfulness of its actions and we are convinced that the extraordinary sanction of a civil penalty is here justified to deter the continuation of such action." 9 PECBR 8494.

Similarly, in *AFSCME Council 75, AFL-CIO and Bob Haphey and Carl Bonietti v. Linn County, Linn County Sheriff's Office and Sheriff Art Martinak*, Case No. UP-115-87, 11 PECBR 631 (1989), this Board awarded *AFSCME Council 75* a civil penalty of \$500. Complainants contended that Linn County Sheriff's Office and Sheriff Martinak violated the PECBA when they terminated two employees and refused to rehire them, based on the employees' union activities. We held that the Linn County Sheriff's Office had violated the Act as alleged. Moreover, we found that its behavior was "repetitive, *i.e.*, more than one position and more than one employe were involved." This Board also concluded that "the refusal to hire Haphey and Bondietti was egregious; it struck at the heart of the PECBA policy to obligate public employers to recognize the right of public employees to form and freely participate in the activities of labor organization." 11 PECBR at 656.

Multnomah County Corrections Officers Association v Multnomah County Sheriff's Office and Multnomah County, Case No. UP-83-87, 10 PECBR 667 (1988), involved a complaint by the Association that the Sheriff had refused to provide information to it, prior to the Association's filing of a contract grievance. This Board found that the Sheriff had not provided the information in a timely manner, in violation of ORS 243.672(1)(e). The Association sought a civil penalty against the Sheriff. We held that a civil penalty was justified because the conduct alleged was "'repetitive' and in self taken in disregard of the knowledge that the action was unlawful. The refusal to give the union [a requested document] took place less than a month after this Board had found such a refusal to be unlawful under the PECBA. We cannot believe that * * * agents of the County forgot our holdings in just three weeks." 10 PECBR at 674.

By contrast, ERB did not award a civil penalty in *McMinnville Education Association and Mid-Valley Bargaining Council v McMinnville School District #40* Case.

No. UP-4-97, 17 PECBR 539, 547 (1998), even though it was the third time the Association and District had litigated questions related to the District's allegedly unlawful treatment of benefits to which its retired teachers were entitled. This Board held that each time the parties came before it, the issues were different and new and, therefore, not repetitive.

We now turn to previous cases in which we have determined whether "the action constituting the unfair labor practice was egregious." OAR 115-035-075(1)(a). In *East County Bargaining Council v. David Douglas School District*, Case No. UP-84-86, 9 PECBR 9184, 9194 (1986), *supplemental order* 9 PECBR 9354 (1987) we gave "the term "egregious" its dictionary definition, as "conspicuously bad" and synonymous with "flagrant." In that case, the District had unilaterally changed teacher-student contact time without completing good faith bargaining on the matter. We found that the District's position was "nicely summed up in one sentence of the October 14, 2005 memorandum it sent to parents: 'The district decided to increase the school time at the beginning of the year in the belief the educational needs of children should take precedence over the collective bargaining process.'" 9 PECBR at 9194-9195. We found the District's unilateral action to be both conspicuously bad and flagrant, noting that "It is this near-total disregard for well-established statutory and case law that sets this case apart from other unilateral change cases. *Id.*, at 9195, n. 7.

In *Hood River Employees Local Union No. 2503/AFSCME Council 75/AFL-CIO v. Hood River County*, Case No. UP-92-94, 16 PECBR 433 (1996), this Board concluded that, in bargaining with the Union, the County's had committed a per se violation of ORS 243.672(1)(e). We also found that the County had separately violated subsection (1)(e) by engaging in surface bargaining. This Board awarded the Complainant a civil penalty in the amount of \$1000, stating that "the County's conduct in this case showed such a flagrant disregard for its PECBA duties, and, was so far removed from the standard of good practice under the PECBA, that it was egregious." 16 PECBR 455.

To determine whether the District's unlawful acts in this case are "repetitive" or "egregious" we must first review the procedural history of this case, and how it is intertwined with *Lincoln County Education Association v. District*, Case No. UP-14-04, 21 PECBR 20 (2005) (hereafter "the *Becera* case").

In 2002, the Association filed its complaint in Case No. UP-27-02, alleging that the District was unlawfully refusing to arbitrate three grievances regarding retiree benefits under the same contract that is at issue in the present case. Among other things, the District argued that the dispute was not covered by the language of the grievance and arbitration procedures contained in the 2001-2005 contract. That is, the District claimed that the grievances were not substantively arbitrable. This Board issued its final order in that case on

April 7, 2004, holding that the grievances were “arguably arbitrable,” and ordering the District to proceed to arbitration. In reaching this result this Board determined that the Association’s grievances under the 2001-2005 contract now before us were substantively arbitrable.

We declined to assess a civil penalty against the District on the basis that the District had at least a colorable argument that the grievance procedure would not cover grievances under expired contracts. We also declined to order reimbursement of the Association’s filing fees.

In March 2004, before the parties proceeded to arbitration under our April 2004 order in Case No. UP-27-02, the Association filed its unfair labor practice complaint in the *Becera* case. In it, the Association sought a declaration that the District violated subsection (1)(g) of the Act when it terminated Anna Becera; and in the alternative, that the District violated subsection (1)(g) when refused to arbitrate the Association’s grievance regarding this termination.

In October 2004, the District and the Association presented their cases to Arbitrator Greco pursuant to our order in Case No. UP-27-02. In November 2004, the arbitrator ruled in favor of the Association and against the District. The District refused to comply with the award, alleging that it was beyond the authority of the arbitrator and contrary to public policy. In November 2004 the Association filed the present unfair labor practice complaint. It was heard on January 25, 2005.

Meanwhile, in the *Becera* case, the District argued to the Administrative Law Judge that the 2001-2005 contract did not cover Ms. Becera. Therefore, according to the District, it had not violated the Act when it terminated her, nor when it refused to process the grievance contesting her termination. On September 29, 2004, the Administrative Law Judge found that the *Becera* grievance was substantively arbitrable, and directed the District to arbitrate it. Both the District and the Association objected to the Administrative Law Judge’s proposed order.

We heard both parties’ objections on January 26, 2005. At that time the Association sought a determination that the District had violated the contract when it terminated Ms. Becera. The Association did not wish to go to arbitration because of the District’s course of conduct in connection with the retiree benefits dispute which first came before us in Case No. UP-27-02. The Association argued that, even though we had ruled the Association’s grievance arbitrable, and the arbitrator had ruled that the District had wrongly treated its retirees in 2002, the District still was not paying the proper benefits to retirees. Instead its refusal to comply with the arbitration award required a second round of

proceedings before ERB. The Association was unwilling to go through this rigamarole in the *Becera* case. For its part, the District also did not wish to go to arbitration. Its position was, and would remain, that Ms. Becera was not covered by the contract. If the arbitrator decided otherwise, the District would refuse to comply with the arbitration award.

In our Interim Order of February 9, 2005, this Board acceded to the wishes of the parties and remanded the case to the ALJ for a determination on the merits of the contract dispute. On June 5, 2005, the ALJ concluded that the District had violated the labor contract. The District filed objections. In our Order of September 9, 2005, this Board determined that the District had violated the contract – and hence ORS 243.672(1)(g) – when it laid off Ms. Becera. We directed the District to reinstate her, with back pay and benefits. We declined to assess penalties against the District, noting that the District had argued that the Becera grievance was not substantively arbitrable; and that the determination of substantive arbitrability was for this Board.⁶

We now return to the present case, UP-56-04. We find that the District's conduct in this case is "repetitive" as that term is used in OAR 115-35-075. The present case involves the same parties as the *Becera* case; and, as in Case No. UP-27-02, the District did not appeal the decision in *Becera*. Case No. UP-56-04 involves the same contract—and the same contract grievance procedures — that were at issue in the prior proceedings. Further, the District has taken essentially the same position in all three cases: it is the District's prerogative, not that of an arbitrator, to determine whether a grievance is covered by the contract. The District has refused to proceed to arbitration unless ordered to by this Board. In Case No. UP-27-02, This Board held that the retiree benefits grievance was substantively arbitrable. Thereafter, the arbitrator ruled that the grievance was arbitrable, and that the District had breached the contract. The District nevertheless refused to comply. In the *Becera* case, the District not only refused to go to arbitration, it also gave notice that it would refuse to comply with an arbitration award issued pursuant to Board order, on grounds that Ms. Becera was not covered by the contract.

In short, we have concluded that the parties in this case are the same as in the cases discussed above. The contractual issues are the same as well. The District's position had remained constant. The only remaining question is whether the District knew that its

⁶Our decision not to impose a penalty on the District in the *Becera* case is not inconsistent with the result which we reach here. In that case, this Board determined substantive arbitrability and contract liability in one proceeding, based on the wishes of both parties to the case. In this case, we directed the parties to proceed to arbitration in Case No. Up-27-02. The issue of substantive arbitrability was determined in that proceeding, not in the case currently before us. Alternatively, while the District's conduct in the *Becera* case may not have been the last straw for penalty purposes, the District's conduct in the case now before us surely is.

actions were unlawful when it refused to comply with the Greco arbitration award in November, 2004. We hold that it did. At that time, the District had received our guidance in Case No. UP-27-02. As earlier discussed, this case presents no complex or unique questions of law. The District has made no new arguments to us, but instead has merely reprised its arguments in prior cases between the parties. Its arguments are contrary to well-settled law in this area, as discussed below.

We established the standards for substantive arbitrability more than 17 years ago in *Luoto v. Long Creek School District 17*, 9 PECBR 9314 (1987); *aff'd* 89 Or App 34, 747 P2d 370 (1987); *rev den* 305 Or 576, 753 P2d 1382 (1988). Indeed, we applied those standards in our decision in Case No. UP-27-02 and found that the arbitrator had jurisdiction to decide the Association's retiree benefits grievance.

Similarly, we established our standards for review of an arbitrator's award more than 25 years ago, in (Willamina II and III). We have since made it abundantly clear that we do not conduct a "right/wrong" review of an arbitrator's award. The narrow scope of the "public policy" exception, under the Willamina standards and under ORS 243.706(1), is also not new law. *Washington County Police Officer's Association v. Washington County*, Case No. UP-79-99, 19 PECBR 100; *aff'd* 333 Or 198, 63 P3d 1167 (2003).

We hold that the conduct of the District which constituted an unfair labor practice is also "egregious." The District's continued and unjustified refusal to comply with the grievance and arbitration provisions of the 2001-2005 contract "strikes at the heart of the policies of the PECBA" concerning the resolution of disputes pursuant to agreed upon contractual procedures. ORS 243.650(5) states that "It is the purpose of ORS 243.650 to 243.782 to obligate public employers, public employees and their representatives to enter into collective negotiations with willingness to resolve grievances and disputes relating to employment relations and to enter into written and signed contracts evidencing agreements resulting from such negotiations."

This policy has been embodied in the language of ORS 243.672(1)(g) itself, which makes it an unfair labor practice to "violate the provisions of any written contract with respect to employment relations including an agreement to arbitrate or to accept the terms of an arbitrator's award where previously the parties have agreed to accept such awards as final and binding on them."

While not repudiating the grievance and arbitration procedures set forth in the 2001-2005 contract in a technical sense, the District, nevertheless, has done the best it could to render those procedures endless, excessively expensive, and, thus useless. Its obstructive tactics in this case, viewed in light of its course of conduct and the positions it took in Case

UP-27-02 and in the *Becera* case, more than justify our imposition of a penalty against the District here.⁷

This Board awards a civil penalty of \$1,000 to be paid to the Association within 30 days of the date of this order.

Reimbursement of Filing Fee

The Association also requested reimbursement of its filing fee. OAR 115-35-075(3) gives this Board the discretion to order reimbursement of a filing fee to a prevailing party in a case where a complaint or answer is found to have been frivolous or filed in bad faith. The requirements of this rule are difficult to meet. *Westfall v. Rust International*, 314 Or 553, 559, 840 P2d 700 (1990), in which the Supreme Court declined to impose sanctions on an attorney for filing frivolous pleadings. We have awarded the Association a penalty against the District. This alone is insufficient to require us to award the Association reimbursement of its filing, and we decline to do so.

ORDER

1. The District shall cease and desist from refusing to accept the terms of the Greco arbitration award. In order to fully enforce the arbitrator's award, we remand this matter to Arbitrator Greco so that, as soon as practicable, he may revise the District's schedule for compliance.

2. To avoid future delays, this Board will grant an expedited hearing at any time subsequent to this order, if the arbitration award is not implemented in accordance with Arbitrator Greco's directives. OAR 115-35-068(2).

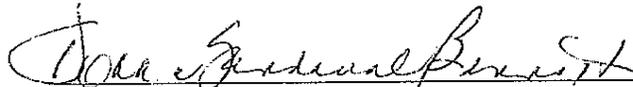
3. The District shall pay interest to affected retirees in the amount of 9 percent per annum from November 4, 2004, to the date the Greco arbitration award is implemented in its entirety.

4. The District shall pay a civil penalty to the Association in the sum of \$1,000 within 30 days of the date of this Order.

⁷In *Oregon Nurses Association v. Oregon Health & Science University* Case No. UP-3-02, 19 PECBR 684 (2002), we declined to assess a penalty against OHSU. We reasoned that OHSU has not acted in knowing disregard to its legal obligations under the PECBA. We also noted that the case presented issues of first impression for this Board. The OHSU case is thus distinguishable on two grounds: the District acted in knowing disregard to its obligations under the Act, and, this is not a case of first impression.

5. The District shall sign the attached Notice to Employees and shall post a copy of it for a period of 30 days in a prominent place in each District building, and shall mail a copy to each of the affected retirees.

DATED this 23rd day of December 2005.



Donna Sandoval Bennett, Chair

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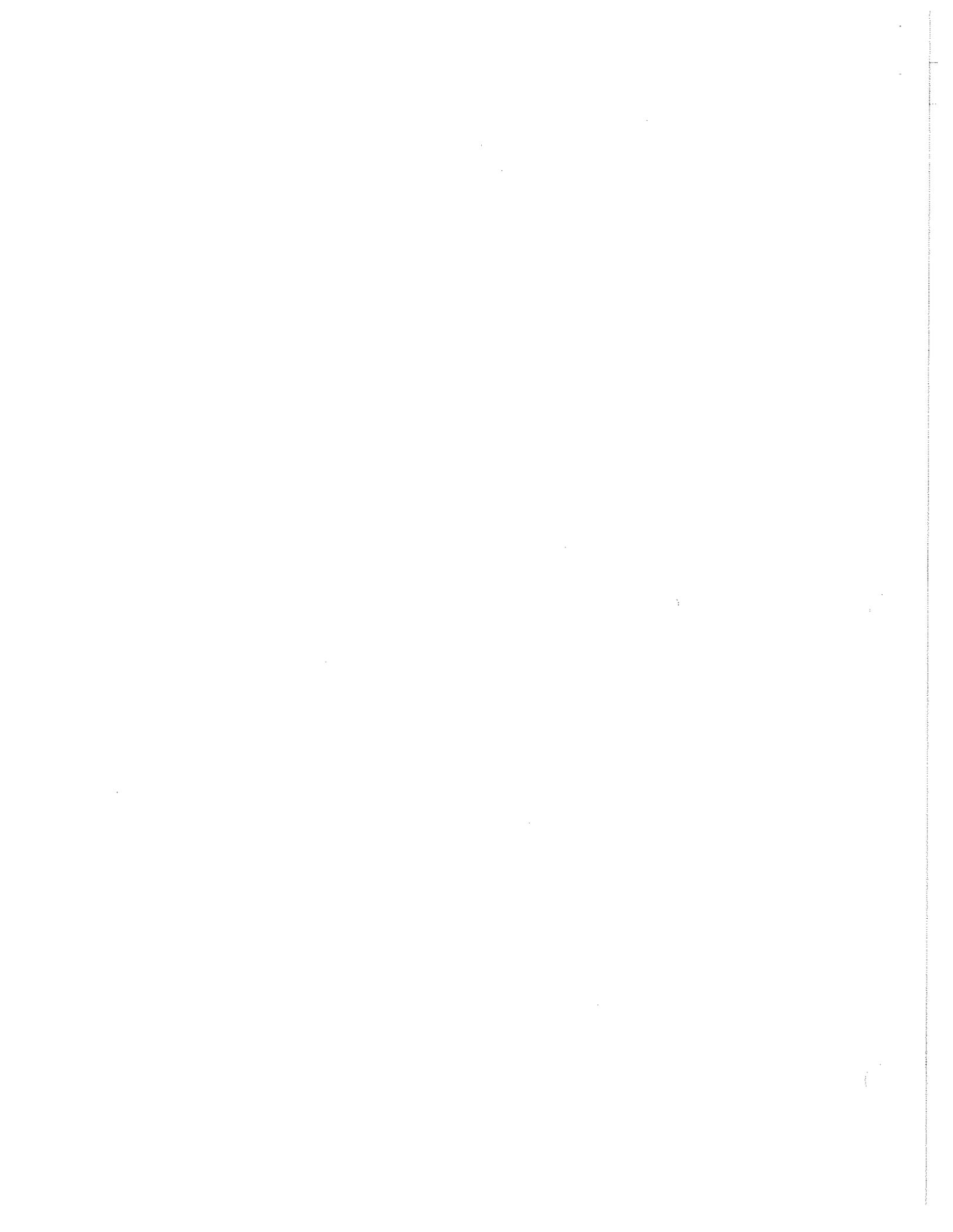
Paul B. Gamson, Board Member



James W. Kasameyer, Board Member

*Member Gamson recused himself from this matter.

This Order may be appealed pursuant to ORS 183.482.



BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

LINCOLN COUNTY EDUCATION ASSOCIATION

and

LINCOLN COUNTY SCHOOL DISTRICT

Retiree Spouse Coverage Grievance

Retiree Janice White Medicare
Grievance

Retiree Medical Insurance Premium
Cap Grievance

Appearances:

Smith, Diamond & Olney, by Ms. Barbara J. Diamond, on behalf of the Association.
Garrett, Hemann, Robertson, Jennings, Comstock & Trethewy, by Mr. Steven E. Heiron,
on behalf of the District.

ARBITRATION AWARD

The above-captioned parties, herein "Association" and "District," are signatories to a collective bargaining agreement, herein "agreement," which provides for final and binding arbitration. Pursuant thereto, hearing was held in Newport, Oregon, on September 30, 2004. The hearing was not transcribed and the parties there presented oral arguments in lieu of filing post-hearing briefs. The parties there agreed that I should retain remedial jurisdiction if the grievances are sustained.

Based upon the entire record and the arguments of the parties, I issue the following Award.

ISSUES

I have framed the issues as follows:

1. Are the grievances substantively arbitrable and, if so:

2. Did the District misinterpret Article 24 of the agreement and violate the parties' early retirement plan when it stopped providing medical coverage to early retirees' spouses when the spouses reached 65 years of age and, if so, what is the appropriate remedy?

3. Did the District misinterpret Article 24 of the agreement and violate the parties' early retirement plan when it stopped providing medical coverage to early retirees and/or their spouses because they are on Medicare and, if so, what is the appropriate remedy?

4. Did the District misinterpret Article 24 of the agreement and violate the parties' early retirement plan when it required early retirees to pay about \$114.60 per month for their medical coverage and, if so, what is the appropriate remedy?

BACKGROUND

This dispute centers on whether the District violated the terms of the early retirement plan in effect for early retirees¹ when it made certain changes in the plan in 2002. The Association filed three separate grievances over those changes in 2002, but the District refused to go to arbitration. The Association then filed an unfair labor practice charge with the Oregon Employment Relations Board, ("ERB"), which determined that the District's refusal to arbitrate those three grievances violated ORS 243.672(1)(g) because the grievances were "arguably arbitrable."²

¹ Unless otherwise stated, all references herein to "retirees" are to the early retirees who retired early under the terms of the prior 1992 – 1995 and 1995 – 2000 agreements. Such references therefore do not include any teachers who retire early under the terms of the current 2000 – 2005 agreement, or any other agreement.

² Lincoln County Education Association v. Lincoln County School District, Case No. UP-27-02, (April 7, 2004). In doing so, the ERB overruled that part of an administrative law judge's decision which found that the District's actions also violated the terms of the parties' agreement. The administrative law judge's decision is not part of this record.

This Award therefore is not being written on an empty slate, which is why the parties have stipulated into the record the materials adduced in the earlier unfair labor practice case, along with certain other materials. That also is why the parties did not call any witnesses at the September 30, 2004, hearing.

Given the extensive background in the unfair labor practice case, I asked the parties at the hearing whether they disputed any of the factual findings set forth in Findings of Fact 1-28 in the ERB's decision. The Association stipulated that all of those facts are correct except for footnote 6/ which erroneously refers to an interest arbitration proceeding when, in fact, that was a fact-finding proceeding. While the District did not stipulate that the Findings of Fact were correct, it was unable to identify any which were incorrect and it added that it is "within my capacity" to find them accurate. Since my review of the record does not reveal any errors in the ERB's Findings of Fact except for the matter referenced in footnote 6/, I hereby adopt and incorporate by reference all of those Findings of Fact into this Award except for footnote 6/.

The parties at the hearing also agreed to the following factual stipulations:

There is no evidence in the record as to whether the parties in negotiations leading up to the 1992 - 1995 and 1995 - 2000 agreements ever discussed whether the medical coverage for retirees could change in the future.³

Between 1995 - 2000, retirees did not pay any health insurance premiums for their medical coverage even though active teachers during that period paid higher health insurance premiums when those premiums were raised.

³ The parties had earlier agreed to an early retirement pilot plan in their 1989 - 1992 agreement.

At the outset of the negotiations for the current 2000 -- 2005 agreement, neither party made any written or oral contract proposals which expressly referred to the retirees already retired.

Throughout the course of the subsequent negotiations, none of the District's representatives ever told any Association representatives, either orally or in writing, that: (1), the District wanted to drop medical coverage from those retiree spouses who were 65 and older; (2), the District wanted to drop medical coverage from those retirees and/or spouses who were receiving Medicare; or (3), the District wanted retirees to pay a co-payment toward their health insurance premiums.

The parties in those negotiations never expressly discussed the level of benefits for existing retirees and/or whether they should be changed during the term of the new agreement.

The District in those negotiations never told the Association that the then-pending proposed contract language now found in Article 24 of the agreement covered existing retirees, with the District claiming here that that language "reasonably infers" that. In addition, the District never referred to the existing retirees and said words to the effect: "This is our understanding. What is yours?"

There is no evidence in this record as to whether the District then costed-out the savings to be generated by dropping medical coverage for existing retirees.

The Association in those negotiations proposed significant changes in the health insurance plan then in effect which was provided by Blue Cross-Blue Shield and which was

known as the JBL&K Plan. The Association did so because of the overall premium cost of that plan and because the Association agreed with the District that the parties should secure the best health insurance at a reasonable price.

In order to bring about such changes, the parties met with marketing representative Peggy Honyak who represents Regents Blue Cross-Blue Shield of Oregon. Honyak at that time presented the parties with a chart entitled "Oregon School Boards Association Insurance Trust Medical Plan Comparison Chart" which compared the benefits of the five or so different health insurance plans being considered and which were offered by the Oregon School Boards Association, ("OSBA"). There was no reference in that chart to current retirees and what affect any of those plans would have on current retirees.

Honyak distributed information about those plans, including what is called the "Red Book Plan," (R. 2). Although the Union did not stipulate that its representatives then received the Red Book Plan, it did not deny that they had done so. As a result, and because of Honyak's testimony in the unfair labor practice proceeding shows that she passed out the Red Book Plan, I find that she passed it out to the Association's representatives.

The Red Book Plan stated in pertinent part on p. 62:

When You Lose Retiree Eligibility

If you are retired, your coverage will end on the last day of the monthly period that you turn 65, or on the first day of the monthly period that you become eligible for Medicare, whichever happens first.

When Your Dependents Lose Eligibility If You Are Retired

If you are retired, coverage for your spouse will end on the last day of the monthly period that he or she turns 65, is granted a decree of divorce, or on the first day of the monthly period that he or she becomes eligible for Medicare, whichever happens first. (Bold face in original).

The Red Book Plan did not contain any specific reference as to what rights and benefits existing retirees were to have under that Plan.

The Association told the District that it would agree to the Red Book Plan and the District ultimately agreed that that Plan would replace the prior plan. When compared to the prior JBL&K plan, the Red Book Plan was less expensive; covered fewer services and expenses; had a higher deductible; and had a higher employee stop-loss.

The parties ultimately reached a tentative agreement which included the Red Book Plan, and the Association and the District ratified that agreement on or about October 10, 2001, and October 18, 2001, respectively. The parties formally signed the agreement on October 18, 2001.

The Red Book Plan became effective November 1, 2001, and the District continued to pay the full health insurance contributions it had been making for retirees before the agreement was executed, and retirees and their spouses continued to receive the medical coverage they had been receiving at no cost.

By memo dated January 7, 2002, (C-6), Charles A. Rhoads, the Director of Business Services, informed retirees:

TO: EARLY RETIREES

**FROM: CHARLES A. RHOADS, Director of Business Services
LINCOLN COUNTY SCHOOL DISTRICT**

SUBJECT: HEALTH BENEFITS - UPDATE

Enclosed you will find the medical benefit plan book for your current health benefits. If you elected to have dental and/or vision that information is also enclosed.

There is another change in the current medical plan that the District was made aware of after the plan was put into effect and we want to make sure that you, as retirees, are also aware of this change. Health benefits for your spouse will end

when they turn 65 – not when the retiree turns 65 as it has been previously. For those spouses who were already 65 when we changed plans, OSBA BCBS has agreed to extend coverage until February 28, 2002. This will give you time to find a supplemental insurance, whether it is through BCBS or not.

Attached you will find a letter from the District's Agent-of-Record, Nancy Hawkins, who is with JBL&K. Please give them a call if you have any questions regarding your benefits or if you need help locating supplemental insurance.

The District and the Association subsequently discussed the situation with insurance agent Honyak, with the District asking for a six-month extension for retirees which the carrier rejected.

Rhoads testified without contradiction at the unfair labor practice hearing that the OSBA made the decision to exclude from coverage any spouses who were 65 years or older, and any teachers or spouses who were on Medicare. That represented a change to the prior plan which covered a retiree's spouse up to the time the retiree reached 65 years of age and which also covered retirees and their spouses even if they were on Medicare. As a result of these changes, an unknown number of retirees and/or their spouses lost the medical coverage they had previously received.

Under the Red Book Plan, active teachers with spouses over 65 years of age received medical coverage.

The District has never made any effort to self-fund an insurance plan to cover the retirees and spouses who lost their medical coverage under the Red Book Plan.

Honyak testified at the unfair labor practice hearing that "nothing in [the Red Book Plan] prohibits . . ." such a self-funding mechanism. While the District claims that this statement has been taken out of context, I find that it is fully consistent with the overall thrust of her testimony and that it, in fact, accurately reflects her views.

The District effective March 1, 2002, discontinued providing medical coverage for retiree spouses 65 years or older, and the Association then filed a grievance protesting the District's actions.

The District effective October 1, 2002, discontinued providing medical coverage for retirees and spouses who were on Medicare, and the Association then filed a grievance protesting the District's actions.

The District in September 2002, informed all retirees that they would have to pay \$114.60 in monthly premiums for their medical coverage. Nothing in the Red Book Plan capped health insurance premiums for retirees. That marked the first time retirees were ever required to pay any part of the monthly health insurance premiums since the early retirement plan went into effect. This change, which the Association grieved, affected an unknown number of retirees.

The District has continued to pay retirees the stipend provided for under the retirement plan in effect when they retired.

The OSBA on November 1, 2003, terminated the Red Book Plan. Following discussions with the Association, the District unilaterally imposed another health insurance plan, which the Association grieved and submitted to arbitration. Arbitrator Philip Tamoush subsequently ruled that the District had violated the agreement and he ordered the District to implement

another health insurance plan offered by the OSBA known as "Plan A \$100 Deductible," (Joint Exhibit 1), and the District has done so.⁴ That plan, which is currently in effect, has not changed the status of the retirees and spouses who earlier lost their medical coverage.

In addition to the above stipulations, the record establishes the following:

The 1992 – 1995 and 1995 – 2000 agreements, (C-1, 2), stated in Article 24:

"A. In order to qualify for the early retirement program, a teacher must be qualified for retirement under PERS rules and regulations. Additionally, the teacher must have completed at least ten (10) consecutive years of full-time teaching experience with the Lincoln County School District.

"B. The District shall provide monthly payments equal to one and one-half percent (1 1/2%) of the yearly salary the retiree would have received if fully employed the following year. Such compensation shall be provided for 60 months or until age 62, whichever occurs first.

"C. Early retirement benefit. The District shall pay the premiums for medical insurance coverage only for the early retiree and spouse on the medical insurance program then in effect for the members of the bargaining unit. The coverage shall commence the first month after the teacher retires and shall continue until and including the month in which the teacher reaches the age of 65 years. In the event the teacher dies before reaching the age of 65 years, the surviving spouse will continue to receive the District's insurance payment (for single coverage) until the time the deceased teacher would have reached the age of 65 years."

The 1995 – 2000 agreement also stated in Article 24, Section D:

"D. Effective July 1, 1996, through June 30, 1997, the percentage stipend set forth in B will be reduced to 1.3%. Effective July 1, 1997, the percentage stipend will be reduced to 1.25%. Effective July 1, 1998, the percentage stipend will be reduced to 1.15%. Effective July 1, 1999, the percentage stipend will be further reduced to 1.00%.

The 2000 – 2005 agreement, (R-1), stated:

"A. In order to qualify for the retirement program, a teacher must be qualified for retirement under PERS rules and regulations. Additionally, the teacher must have completed at least ten (10) consecutive years of full-time teaching experience with the Lincoln County School District.

⁴ Lincoln County School District and Lincoln County Teachers Association, (Tamoush, July 9, 2004).

"B. The District shall provide monthly payments equal to 1% of the yearly salary of the retiree on the date of retirement. Such compensation shall be provided for 60 months or until age 62, whichever occurs first.

Effective the date of execution of this Agreement, this stipend will be discontinued.

"C. Retirement benefit. The District shall pay up to the 'cap' as set by the provisions of Article 20, Fringe Benefits and Other Allowances then in effect for the retiree at the time of retirement for medical insurance coverage only for the retiree and spouse on the medical insurance program then in effect for the members of the bargaining unit. This District contribution will not change for the balance of the retiree's retirement. The coverage shall commence the first month after the teacher retires [sic] and shall continue until and including the month in which the teacher reaches the age of 65 years. In the event the teacher dies before reaching the age of 65 years, the surviving spouse will continue to receive the District's insurance payment (for single coverage) until the time the deceased teacher would have reached the age of 65 years or until the surviving spouse reaches 65 years, whichever occurs first. This insurance contribution for retirees will be prorated for retirees who were part-time teachers at the time of retirement.

"The teacher must notify the District at least six months prior to the time of retirement.

"This Retirement Benefit (insurance) will cease as of June 30, 2005, and will not be considered to be part of the status quo. However, nothing prevents the Association from proposing supplemental retirement proposals for the successor collective bargaining agreement.

"D. Effective July 1, 2000, no provision of this Article will be applicable to bargaining unit members hired on and after July 1, 2000.

"E. Notwithstanding the provisions of section C, above, members of the bargaining unit who have at least a full ten years of continuous and contiguous bargaining unit service to the District on July 1, 2002, and who retire under full PERS benefits within ten years from July 1, 2002, will be eligible for the following benefit:

"The District shall pay up to the contribution rate then in effect on the date of the retiree's retirement for the retiree for medical insurance coverage only for the retiree and spouse on the medical insurance program then in effect for the members of the bargaining unit. This District contribution amount, or rate, will not change for the balance of the retiree's retirement. The coverage shall commence the first month after the teacher retires and shall continue for up to seven years or until and including the month in which the teacher reaches the qualifying year for Medicare whichever occurs first.***" (Underlining in original.)

Retirees are not members of the bargaining unit and they have not been members of the bargaining unit since the time of their retirements.

No retirees authorized the Association to bargain on their behalf in the negotiations leading up to the current agreement, and the District in those negotiations never told any retirees that medical coverage for them and/or their spouses could be eliminated, or that they could start to pay part of the monthly health insurance premiums.

The District on or about September 7, 2001, issued a "Negotiations Update", (R-10), which quoted one of the District's Board members as saying: "The only way the District could afford the package for working teachers was to reduce and eventually eliminate the benefits for future retirees who no longer provide services to our students."

Rhoads on October 18, 2001, issued the following memo, (C-4), to all retired teachers:

October 18, 2001

TO: ALL LINCOLN COUNTY SCHOOL DISTRICT RETIRED
TEACHERS

FROM: CHARLES A. RHOADS, DIRECTOR OF BUSINESS SVCS

SUBJECT: HEALTH BENEFITS BENEFIT CHANGES

With the approval of both the classified and licensed contracts, the District is in the process of moving all eligible retirees to the new health insurance coverage effective November 1st. Fortunately, since everyone will be on the same plan, Blue Cross Blue Shield will be able to "roll over" those currently receiving health benefits through the District onto the new plan without having to fill out new forms. The new Plan Number is: 092000297.

The Early Retirement Article of the contract provides a two-party medical only insurance coverage that is the same as what the bargaining unit has. The OSBA Red Book Plan I, traditional plan rate is \$429.95 for a two-party medical coverage.

Below are additional options that you may wish to participate in:

	<u>One-Party</u>	<u>Two-Party</u>	<u>Family</u>
Medical Coverage -	-	-	77.75
Prescription Coverage -	27.55	63.30	74.65
Dental Coverage -	28.05	52.50	92.40
Orthodontia Coverage -	.70	1.80	14.75
Vision Coverage -	5.80	15.00	17.20
Naturopathic Coverage -	2.35	4.75	6.60

NOTE: You may now include dependents that are between the ages of 23 and 25 - FYI dependent children can now remain on your policy until age 25 if going to school or you provide 50% or more of their support.

If after reading the above you decided that you want elect (sic) one of the above options, please fill out the enclosed BCBS/OSBA Enrollment form, the LCSD Election form, attach a check for the additional options and mail it to the District Office, to the attention of the Payroll Department on or before **October 31st**! If we do not receive your payment by October 31st we will not be able to make any changes to your coverage.

If you have any other questions, please contact either Sue Lemaster at (541) 265-4414, or Sharon Rogers at (514) 265-4416.

Retirees were subsequently "rolled over" in that fashion.

POSITIONS OF THE PARTIES

The Association maintains that the grievances are arbitrable because it can file them on its own behalf and that retirees therefore need not be parties to those grievances; because the grievances all claim that the District has misinterpreted Article 24 of the current agreement; because it has standing to arbitrate over whether vested medical coverage can be unilaterally discontinued; and because a strong public policy favors the arbitration of labor disputes. It also contends that a retiree's medical coverage is vested and thus cannot be unilaterally changed; that it never agreed in negotiations to any of the changes made by the District; that those negotiations

only centered on future early retirees and thus did not address the coverage of current retirees who were "not on the radar screen"; that nothing in the Red Book Plan addresses whether past retirees can continue their coverage; and that the District's own documentation reveals that the District only learned after negotiations about the Red Book Plan's exclusions for retirees and/or their spouses. The Association also asserts that the District was required to maintain the existing medical coverage for retirees and their spouses regardless of what the Red Book Plan provided; that there is no merit to the District's claim of impossibility; and that the District's actions were "opportunistic after the fact grabs" to save money. The Association asks for a "full and complete" make-whole remedy which includes full reimbursement for all eligible medical expenses, along with reimbursement for all health insurance premiums needed to pay for alternative medical coverage; an order requiring restoration of the lost medical coverage; and any other remedy I deem appropriate.

The District claims that the grievances are not arbitrable because retirees are not in the bargaining unit and that the Association does not represent them; because retiree benefits are not vested and cannot be grieved; and because the Association's alleged claim of detrimental reliance cannot be enforced in arbitration. It also claims that "both parties" knew that the Red Book Plan did not cover existing retirees; that the parties in negotiations bargained over this issue and agreed to the changes in dispute; and that the language in Article 24 and the Red Book Plan in any event supports its position. It adds that retirees' benefits are not "immutable" and can be changed because prior agreements referred to the plan "then in effect," thereby establishing that the early retirement benefits represent variable benefits which can be changed in

negotiations. It also asserts that "central" to this case is "the question of vestedness", and that there is a difference between vested pension benefits which cannot be changed and the retirement benefits in issue which can be changed.

DISCUSSION

Before turning to the specific issues in dispute, it must be noted at the outset that the record in this proceeding is extremely voluminous, involving as it does a plethora of materials, all of which have been reproduced in two separate binders, each of which is about two inches thick. As a result, it is simply impossible to here address all of these materials. It suffices to state that I have read and considered all of them, and that what follows here represents the most salient aspects of this dispute.

The first issue that must be decided is whether the three grievances are substantively arbitrable under Article 11 of the agreement, entitled "Grievance Procedure," which states in pertinent part:

PURPOSE

The procedure set forth in this Article is to secure, at the lowest possible level, impartial, expeditious, orderly, and equitable solutions to grievances which may from time to time arise affecting teachers and their rights. Both parties agree that these proceedings will be kept as informal and confidential as may be appropriate at any level of the procedure.

A. Definitions

1. Grievance

A grievance is a claim by a teacher or the Association that the terms of the Agreement have been misinterpreted, inequitably applied or violated.

2. Grievant

A teacher, group of teachers or the Association making the claim or presenting the grievance.

3. Party in Interest

A "party in interest" is the person or persons making the claim and any person who might be required to take action or against whom action might be taken in order to resolve the claim.

4. Hearing

A meeting at which parties in interest and those officially involved may be present, including the right to submit evidence, to call witnesses, to cross-examine, and/or to present arguments.

5. Immediate Supervisor

The person having the immediate authority to act in regard to the grievant and the grievance.

C. Levels

5. Level Four

a. Grievances not settled at Level Three of the grievance procedure may be appealed to arbitration with the written approval of the Association provided written notice of a request for arbitration is made to the Superintendent within twenty (20) days of receipt of the answer in Level Three.

g. To the extent permitted by law, pursuit of a grievance through binding arbitration under this article shall constitute a waiver by the grievant of any right to seek

redress for the contract misinterpretation(s), inequitable application(s) and/or violation(s) alleged in the grievance in any other judicial or quasi-judicial forums.⁵

There are several notable things about this language:

It states under "Purpose" that the parties are committed to the "expeditious" resolution of their disputes at the "lowest possible level," thereby establishing that disputes are to be resolved within the framework of the grievance-arbitration procedure, rather than through other procedures which are not as "expeditious" and which are at a higher level.

In addition, a grievance is defined as "a claim by a teacher or the Association that the terms of the Agreement has been misinterpreted, inequitably applied or violated" (Emphasis added). The Association therefore can make a "claim" on its own without needing "a teacher" or a "group of teachers" to do so. Any such "claim" also covers the entire agreement because the face of the grievance-arbitration procedure does not exclude any terms of the agreement from its coverage.

It also defines a "Grievant" as "A teacher, group of teachers or the Association making the claim or presenting the grievance" (Emphasis added). Hence, the Association can grieve over the administration of the agreement even if no individual teachers do so.

And, Level Four enables all such grievances to proceed to arbitration, as there is no limiting language to the affect that only some, but not all, grievances can be arbitrated.

⁵ The prior 1992 -- 1995 and 1995 -- 2000 agreements, (C-1, 2), also contained nearly identical language, thereby showing that if the grievances herein are arbitrable under the current language, they also would be arbitrable under the prior language. The only change to the prior language was expanding the time in which the superintendent could respond at Level Four from ten to twenty days.

Level Four also states that "pursuit of a grievance through binding arbitration under this article shall constitute a waiver by the grievant of any right to seek redress . . . in any other judicial or quasi-judicial forums," thereby recognizing that use of the arbitration procedure forecloses duplicative litigation in other forums.

All of the above support the Association's arbitrability claim because this forum represents the most "expeditious" means of resolving this dispute without going to a higher level; because the Association itself can file a grievance on its own and thus does not need an individual teacher or a group of teachers to do so; because the Association's three grievances claim that the District has "misinterpreted" Article 24 of the current agreement which deals with early retirement and that the District has violated the terms of the retirement plan; because no part of the agreement excludes disputes over the early retirement plan from the grievance-arbitration procedure; and because resolution of the grievances here will avoid duplicate litigation.

Moreover, the District itself asserts that the reference to "teacher" in Article 24, Section C, includes retirees because it claims that it is entitled to cap the premiums for retirees' medical coverage under that language. The parties therefore certainly have a disagreement over whether the District has misinterpreted that language.

The record also establishes that the parties have never agreed in the past to not arbitrate disputes involving the early retirement plan, just as they have never agreed to not arbitrate the language found in Article 24 of the agreement.

When weighing questions of substantive arbitrability, it is well established that: "Doubts should be resolved in favor of coverage." See Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574, 582-83 (1960). A broadly worded arbitration clause like the one found herein also creates a strong presumption favoring arbitrability. See Nolde Brothers, Inc. v. Local 358, Bakery & Confectionery Workers Union, AFL-CIO, 430 U.S. 243, 252 (1977).

Nolde centered on whether disputed severance pay constituted an accrued or vested benefit which could be submitted to arbitration after a contract's termination. In finding that the grievance was arbitrable, the court, at 249, reiterated there is "no reason why parties could not, if they so chose to agree to the accrual of rights during the term of an agreement and their realization after the agreement had expired," quoting John Wiley & Sons v. Livingston, 376 U.S. 543, 555 (1964).

That is what happened here when the parties agreed in their prior 1992 - 1995 and 1995 - 2000 agreements that active teachers had accrued the right to retire early because of their many years of service and that they could exercise that right after those prior agreements expired. The early retirement here therefore is akin to the vested severance pay found in Nolde because here, like there, employees earned a protected benefit which kicked in only after their employment terminated.⁶

⁶ See Bunn-O-Matic Corp., 70 LA 34, (Tolent, 1978), which held that severance pay constitutes an accrued benefit, and Chicago Web Printing Pressmen Local 7 v. Chicago Tribune, 657 F. Supp. 351, (N.D. Ill. 1987), which held that vacation pay constitutes an accrued benefit. It is thus clear, as a contractual matter, that parties can agree in contract negotiations that pension benefits are not the only benefits that can accrue and be vested after a collective bargaining agreement has expired.

The District nevertheless argues that the grievances are not substantively arbitrable because the retirees are not in the bargaining unit and are not covered by the current agreement, and because their retirement benefits are not vested.⁷ The District acknowledged at the September 30, 2004, hearing that it never before raised this particular defense.

That led the Association to ask - two full years after the District first refused to submit the grievances to arbitration - "how many times do we have to sit around the table" before obtaining a ruling on the merits of the grievances. The Association also charged the District with "the worse kind of callousness" and with "playing games" by now raising this defense.

The District's claim overlooks the fact that the retirees are not needed to file a grievance under Article 11, Sections A.1. and A.2., of the agreement which expressly give the Association the right to file a grievance on its own behalf. As a signatory to the current agreement, the Association thus asserts that the District has "misinterpreted" Article 24 by relying on what happened in the last round of negotiations as justification for making the changes in issue and by thereby violating the terms of the retirement plan.

The Association has an institutional interest in grieving this issue because that is the only way it can protect the integrity of the early retirement plan it previously negotiated with the District, and because grieving is the only way it can protect the integrity of the current retirement plan it has negotiated with the District. For if the Association is not allowed to grieve and arbitrate over what has happened to these retirees, it also would lack the ability to grieve and arbitrate over what may happen to active teachers who retire early under the current retirement plan.

⁷ The District makes no claim that the grievances are not procedurally arbitrable.

District Superintendent Irv Nikolai in an April 1, 2002, letter to Association President Chris Boyle claimed that the Association could not file a grievance because the grievance "does not relate to Association rights. . . ." (C-9).

To the contrary, the grievances do relate to the Association's "rights" because the Association is the party that has negotiated all of the disputed language, and because it is the Association, and not the retirees, who has signed the various collective bargaining agreements which give the Association the right to grieve and arbitrate any dispute relating to the misinterpretation and/or violation of those agreements.

The Court of Appeals ruled in The Association v. City of Portland, 181 OR. App. 85, 45 P. 3d 162, rev. den. 334 OR 491, 52 P. 3d 1056, (2002), that a union can file a grievance on behalf of retirees and their spouses. In doing so, the court stated:

"The subject of retiree health benefits is undisputedly one of the issues covered by the bargaining agreement. Moreover, the underlying dispute regarding retiree health benefits is a 'complaint' or a 'grievance' arising out of the application of Article 18 of the CBA." (181 OR. at 93).

"if the Association could not grieve retiree health insurance disputes, there would be no remedy under the CBA for a violation of the City's obligation to make available to a retired employee . . . the same medical, dental, and vision coverage offered to active employees." (181 OR. at 93).

"The CBAs primary focus on the right of active employees does not necessarily mean that the parties did not intend to permit the Association to grieve any other type of dispute arising out of the CBA, regardless of what it affects." (181 OR. at 94).

The ERB cited Portland, *supra*, and quoted this language when it ruled that the District was required to submit the three grievances herein to arbitration. The ERB also cited its earlier decision in McMinnville Education Association and Mid-Valley Bargaining Council v. McMinnville School District, Case No. UP-78-94, 16 PECBR 107 (1995), (“McMinnville I”), wherein it ruled that a union could file a grievance involving retirees because a breach of contract constitutes an “injury” to a contracting party that is actionable under ORS 243.672(1)(g) or (2)(d).

The ERB thus concluded that the District had to submit the three grievances herein to arbitration because:

“The parties’ 1992 – 1995 and 1995 – 2000 contract grievance procedures contain no terms that we could interpret, with positive assurance, to exclude retiree grievances from the process. The parties agreed to arbitrate claims that the Agreement’s terms had been misinterpreted, inequitably applied or violated. The retirement provisions are among the Agreement’s terms.” (*Id.*, at 18).

The District claims that McMinnville I is inapplicable because the Association is “bringing this action on behalf of retirees” who are not in the bargaining unit and because the parties in McMinnville I had not reached any new agreement regarding retiree benefits.⁸

This claim is without merit because: (1), the Association, as a party to the agreement, has an institutional interest in protecting the medical coverage it has negotiated on behalf of retirees; (2), the Association, as a party to the agreement, has an institutional interest in making sure that Article 24 of the current agreement is not misinterpreted and that it is properly applied; and (3), for the reasons state below, the parties in their last negotiations never, in fact, agreed to change retirees’ medical coverage.

⁸ See the District’s prior November 12, 2003, Memorandum In Aid Of Oral Argument, herein “Memorandum”), to the ERB in Case No. UP-27-02, p. 2.

The District also tries to distinguish Portland, supra, on the ground that “The grievance procedure in the current case is much narrower in scope.”

The District is wrong. Even though the agreement here does not refer to “any grievance or complaints” as did the language in Portland, the language here makes it absolutely clear that a grievance can be filed over all of the terms of the agreement.

The District also asserts that the ERB in 18 PECBR 732 ruled that the retirees in the Portland, like here, “have no rights under the grievance procedure”.⁹ The ERB’s decision, however, was overturned on appeal, with the court ruling that a union can file a grievance on behalf of retirees, which is exactly what has been done here.

The District also argues that the provisions of any early retirement plan cannot ever be grieved because affected retirees are outside the bargaining unit and because their benefits are not vested. Hence, in the District’s view, all provisions of a collective bargaining agreement can be grieved and arbitrated except one: those relating to early retirement.

The District offers no bargaining history in support of this view because none exists.

It also cannot point to one single piece of evidence in this record – nary an iota nor a scintilla – showing that the parties have ever agreed to exclude such an important issue from the grievance/arbitration procedure.

The District similarly fails to offer any plausible explanation of why an early retirement plan should even be bargained over if a union lacks the means to enforce its provisions when it is applied to early retirees who, by definition, are no longer members of the bargaining unit after they retire.

⁹ Memorandum, at 4.

And, it avoids mentioning what will happen if its position on arbitrability is sustained: Current teachers then will know that any early retirement plan in effect at the time of their possible early retirement will not be worth the paper it is written on because the District can, in its view at least, ignore its provision at will without any recourse on a retiree's part.

In light of all of the above, my review of the record establishes that there is no basis upon which to exclude the three grievances herein from the contractual grievance arbitration procedure and that they are all substantively arbitrable.

Arbitrator Leroy J. Tornquist made a similar ruling in Southern Oregon Bargaining Council v. Rogue River School District (2004). There, he found that a grievance dealing with retiree benefits was substantively arbitrable because "Here, as in Portland Fire Fighters and Lincoln County there are no provisions in the grievance procedure that expressly exclude retiree disputes from arbitration", and because the grievance there concerned the "application or interpretation" of the early retirement provisions contained in the agreement. (Id., at 22-23).

Turning now to the merits of the grievances, the District claims that the Association in negotiations bargained over the changes in issue and agreed to them and that, moreover, even if the Association did not do so, the disputed language in the current agreement and the Red Book Plan allowed the District to make the changes in dispute.

The record on this score establishes that:

One, none of the District's representatives, either orally or in writing, ever told the Association in negotiations that it wanted to make the changes in dispute and they similarly never made any proposals to that effect.

Two, the parties in those negotiations never once discussed the then-existing retirees and/or what effect the new agreement would have on them. That is why, for

instance, the District on September 7, 2001, issued a "Negotiations Update" which did not mention current retirees, but which, instead quoted one of the District's Board members as saying: "The only way the District could afford the package for working teachers was to reduce and eventually eliminate the benefits for future retirees who no longer provide services to our students," (Emphasis added), (R-10). Every single piece of evidence in this record establishes that the parties in negotiations did, indeed, only address future retirees.

Three, the District's representatives in negotiations never once mentioned the effect of Article 24 and/or the Red Book Plan on current retirees or referred to current retirees and told the Association's representatives words to the effect, "This is our understanding. What is yours?"

Four, there is not one single piece of evidence in this record that the District's representatives in negotiations ever discussed among themselves any of the changes in dispute, which is something they most assuredly would have done if this issue were on the bargaining table.

Five, neither the OSBA nor insurance agent Honyak ever told the parties in negotiations that the Red Book plan would adversely affect the coverage of existing retirees.

Six, nothing in the Red Book Plan expressly stated that medical coverage for then-existing retirees would have to be dropped.

Seven, the District itself recognized upon execution of the agreement in October 2001 that the then-existing retirees and eligible spouses would continue receiving their medical coverage. That is why the District continued to pay the full health insurance

premiums for such coverage for several more months, as it believed that the retirees were being rolled over to the Red Book Plan without any change in their status, which is also what the Association believed.

That is why Director of Business Rhoads by memo dated October 18, 2001, (C-4), informed all retirees:

"Fortunately, since everyone will be on the same plan, Blue-Cross Blue Shield will be able to 'roll over' those currently receiving health benefits through the District into the new plan without having to fill our new forms."

It thus is pellucidly clear that the parties never even negotiated over any of the changes in issue; that the Association then never agreed to any such changes; that the District itself recognized upon execution of the agreement that medical coverage for retirees and eligible spouses had to continue; and that the District itself also believed that all retirees and eligible spouses would be rolled over to the new plan and be covered, just as they were covered under the prior health plan.

Any doubt of that, and there is none, is dispelled by Rhoads' subsequent January 7, 2002, letter to retirees, (C6), which serves as a dagger to the very heart of the District's case.

Rhoads - who participated in the negotiations leading up to the 2000-2005 agreement and who therefore was fully aware of what had transpired in negotiations - thus told retirees in his letter that their spouses no longer would receive health insurance once they reached 65 years of age because that represented:

“Another change in the current medical plan that the District was made aware of after the plan was put into effect and we want to make sure that you, as retirees are also aware of this change.” (Emphasis added).

“After the plan was put into effect. . .?”

How can that possibly be “after the plan was put into effect” when the District claims that the Association agreed to that very change in the negotiations which concluded months earlier?

In addition, how can that possibly be when the District claims that the language in the Red Book Plan clearly provided for that change when the District’s own representatives, who certainly must have read the Red Book Plan, did not reach that same conclusion months earlier and when Rhoads himself had earlier stated that existing retirees would be rolled over and covered by the new plan?

The District makes no attempt to answer those critical questions because it knows that it cannot offer any reasonable explanation as to how Rhoad’s letter squares with its theory of the case.

I therefore find that Rhoads wrote what he did on January 7, 2002, because he and the District knew that the parties had never bargained over this issue in negotiations, and because he and the District also knew that the language in the Red Book Plan did not put the Association or the District on notice that medical coverage for certain spouses would be dropped.

Rhoads and the District at that time also knew that the Association in negotiations had never agreed that medical coverage was to be dropped for retirees and/or spouses who were on Medicare and that nothing on the face of the Red Book Plan alerted either the Association or the District that coverage could be dropped in such circumstances. That is why Rhoads did not refer

to this second issue in his January 7, 2002 letter, and that is why the District waited months to later announce that second change. It therefore can be inferred, and I so find, that Rhoads and the District were made aware of this second issue only "after the plan was put into effect. . . ."

There thus is no merit to the District's claims that the Association agreed to the changes in medical coverage during negotiations, or that the Association had prior notice of the medical changes mandated by the Red Book Plan.

Absent any such agreement, and absent notice from the Red Book Plan before the 2000 - 2005 agreement was executed that its plan called for dropping such medical coverage, there is no basis to find that the Association ever agreed to waive or forfeit the continued medical coverage that is called for under the retirement plan and the parties' prior 1992 - 1995 and 1995 - 2000 agreements.

For, it is well established that:

Forfeitures are not favored by arbitrators in interpretation of collective bargaining agreement

Comment:

A forfeiture is the loss of some right, often as a penalty for failure to perform an obligation. For example, an employer or a union may fail to sign a form in the grievance procedure exactly as prescribed by contract. When a contractual term is susceptible of several interpretations and one could result in a forfeiture while another reasonable interpretation would not the interpretation that avoids a forfeiture or a penalty is preferred by most arbitrators. It is an ancient maxim of contracts that the law abhors forfeitures. Arbitrators generally reason that a fundamental goal of contract interpretation is to gain for the parties the benefit of their bargain and not to penalize anyone.

Assuming no unconscionability or violations of public policy are present, parties are generally free to negotiate the kind of agreement they deem to be responsive to their needs. This might include a "forfeiture" clause. But it is for the party who asserts a contractual claim of a forfeiture or penalty to bear the burden of proving such a meaning. Unless a contractual term supporting the claim is expressed with unmistakable clarity, a presumption arises that the parties

did not intend it to be interpreted as effecting a forfeiture. Doubts are generally resolved against a forfeiture or rights. (Emphasis added.) See *St. Antoine, Ed., The Common Law of the Workplace, The Views of Arbitrators*, (BNA, 1998), pp. 75-76.

The medical coverage here initially came about because the retirees and the District entered into a quid pro quo: In exchange for teachers having worked a certain number of years and retiring early, the District agreed to provide medical coverage to retirees because the District hoped to replace the higher paid retirees with lower paid teachers. It therefore was well understood between the parties and retiring teachers that retirees and their spouses would receive medical coverage until the retirees reached 65 years of age, and that such coverage would be provided to such retirees as Janice White and their spouses even though they might be receiving Medicare benefits at that time.

The retirees fulfilled their quid by having worked a certain number of years and by retiring when they did, and the District up until 2002 fulfilled it quo by providing such coverage.

The District now is trying to renege on its quo by claiming that the changes were mandated by the Red Book Plan and that it is free to perpetuate those changes because Article 24 of prior agreements stated that the parties could bargain over the "insurance program then in effect for the members of the bargaining unit." The District thus seizes upon the word "then" to argue that all aspects of the retirement plan can be changed in subsequent negotiations.

The District misinterprets Article 24 and what the prior plans actually provided.

Both the 1992 - 1995 and 1995 - 2000 agreements provided in pertinent part in

Article 24, Section C:

C. Early Retirement Benefit. The District shall pay the premiums for medical insurance coverage only for the early retiree and spouse on the medical insurance program then in effect for the members of the bargaining unit (Emphasis added).

There is a difference between medical insurance "coverage" which determines which individuals are to be covered by the provisions of a health insurance plan and a medical insurance "program" which determines the cost and what level of benefits are to be provided to individuals so covered. As a result, it is entirely possible to agree to not change "coverage" while at the same time agreeing to change a "program's" benefit levels, which is exactly what the parties agreed to between 1992 -- 2000.

For here, coverage was all important to retirees because they retired after the District agreed in Article 24, Section C, of the prior 1992 - 1995 and 1995 - 2000 agreements that:

"The coverage shall commence the first month after the teacher retires and shall continue until and including the month in which the teacher reaches the age of 65 years." (Emphasis added).

Period.

There is nothing in either of those two agreements establishing that such medical coverage for retirees can ever be changed. That is not surprising because teachers retire early upon the express understanding that medical coverage for them and/or their spouses will be in place for a certain length of time, which is usually pegged to when retirees reach 65 years of age. In that way, they are guaranteed insurance coverage until Medicare kicks in at age 65. That, after all, was the quo they received in exchange for their quid, i.e., working for a certain number of years and retiring earlier than necessary so the District could perhaps save money by hiring replacements at lower salaries. The District therefore cannot now renege on its quo after fully enjoying the retirees' earlier quid.

In other words, a deal is a deal. The District thus is contractually required to honor the deal it earlier entered into with the retirees, which means that it is required to maintain the medical coverage in effect when the retirees retired under the terms of the prior 1992 – 1995 and 1995 – 2000 agreements. It also means that the District was required to maintain such medical coverage even after it was told by the OSBA that the Red Book Plan excluded from coverage retiree spouses 65 years or older and retirees and/or spouses who are on Medicare, as neither the Red Book Plan nor any other insurance plan can supercede and negate the mandated medical coverage provided for in the prior 1992 – 1995 and 1995 – 2000 agreements.

Teachers who retired under the prior agreements thus retired early under contract language stating:

“The District shall pay the premiums for medical insurance coverage only for the early retiree and spouse on the medical insurance program then in effect for the members of the bargaining unit.” (Emphasis added).

There is nothing discretionary about the term “shall pay”. It means that the District will fulfill that obligation without fail. This language therefore constitutes an iron-clad guarantee that medical coverage would be offered to all retirees up until their 65th birthday.

Such mandated coverage constitutes a vested benefit because it represents payment for a retiree’s past service in working for the District for a certain number of years and for a retiree’s agreement to retire early; because it continues after the earlier agreements have expired; and because it is not contingent upon any subsequent eventuality.

Such medical coverage represents the same kind of vested pension benefits that employees regularly receive in other circumstances because vested pension benefits, like the medical coverage here, are predicated on an employee's past service and thus cannot be abrogated.

The retirees here therefore fully performed their end of the bargain, which is why their right to receive medical coverage became vested at the time of their early retirement and which is also why subsequent changes to benefit levels could not interfere or impair their right to continue receiving medical coverage. See Crawford v. Teachers' Ret. Fund Ass'n, 164 OR. 77, 86-88, 99, P. 2d, 729 (1940), wherein the court ruled:

"When there has been full performance on the part of the plaintiff, . . . her rights became vested and no subsequent change in the by-laws could interfere with or impair such rights."

See also Oregon Police Officers' Assn. V. State, 323 OR. 356, 918 P. 2d. 765, (1996), which cited Crawford and other cases upholding the vested nature of certain retirement benefits, and which also stated:

"Once the employee performs services in reliance on the employer's promise to afford a particular benefit on retirement, the employer is contractually bound to honor that obligation." (918 P. 2d, at 777).

Indeed, the ERB has already determined that an early retirement provision was enforceable after the contract expired because it provided for benefits after the term of the contract. See McMinnville I., supra; McMinnville Education Assn. and Mid-Valley Bargaining Council v. McMinnville School District No. 40, Case No. UP-71-95, 16 PECBR 16/481 (1996), at 161 487, N.3.

The District claims that the medical coverage here is not vested under the analysis used in Turner v. Local Union No. 302, Int'l Bhd. Of Teamsters, 604 F.2d 1219, (9th Cir. 1979), which in its view, "has many parallels with the current case."¹⁰ It thus points out that the court in Turner found that none of the documents "made any representations as to the length of the period during which these benefits would continue to be paid other than throughout the term of this agreement". (Id., at 1225). The court thus differentiated between a vested pension plan and non-vested health and welfare benefits on the following ground: "Pension plans are paid from an actuarially predetermined fund and are guaranteed for life. Health and welfare benefits are negotiated periodically and are paid from a fund consisting of employer contributions and last only the life of the collective bargaining agreement." (Ibid).

Turner is not dispositive of how the agreements here must be construed because this case involves a matter of contract interpretation rather than a matter of federal law. Moreover, this case differs markedly from Turner because the 1992 – 1995 and 1995 – 2000 agreements here, unlike the agreement there, made it very clear that medical coverage would continue until a date certain – i.e., when retirees reached 65 years of age. In addition, the medical coverage here did not "last only the life of the collective bargaining agreement" which was the situation in Turner,

¹⁰ Memorandum, at 5.

but rather, well past the life of the prior 1992 – 1995 and 1995 – 2000 agreements, a point recognized by the District itself since it has provided medical coverage to retirees after the 1992 – 1995 and 1995 – 2000 agreements expired.

Moreover, the court in Turner added: “Under well established contract principles, vested retirement rights may not be altered without the pensioner’s consent, . . .” (Id., at 1224), and that “there is no evidence that appellant was advised by the collective bargaining agreement, the trust agreement, or any plan brochure that health and welfare benefits would be paid for the rest of his life,” (Id., at 1225, N. 8).

Here, by contrast, retirees were told by the prior 1992 – 1995 and 1995 – 2000 agreements that medical coverage would be provided up until a retiree’s 65th birthday, thereby guaranteeing that such medical coverage would extend beyond the expiration dates in those agreements.

The District also relies on Arbitrator Leroy J. Tornquist’s decision in Lincoln County Education, (Ronald Doubt, Grievant), and Lincoln County School District, (2002), wherein Arbitrator Tornquist ruled that the District did not violate the agreement when it refused to extend medical insurance coverage to the grievant under the Red Book Plan after the grievant had earlier declined coverage offered by the prior health plan and signed a written waiver to that effect. Arbitrator Tornquist found that the Red Book Plan excluded anyone who had declined earlier coverage, thereby requiring any such individual to wait at least six months before he/she could be covered by the Red Book Plan. He thus found that the grievant knew that he was waiving insurance coverage, (Id., at 15), and that “the Association had a chance to read the terms and conditions of the Red Book Plan I with all of its ‘inclusions and exclusions’ before it signed the collective bargaining agreement.” (Id., at 16).

That case, though, centered on what medical coverage an active teacher would receive, which was an issue the parties bargained over. The record here, however, establishes that the parties never bargained over whether then-current retirees would ever lose their coverage. Moreover, while the "inclusions and exclusions" of the Red Book Plan specifically covered active teachers, nothing given to the Association ever indicated that current retirees would lose their coverage under that plan. In addition, and as related above, the District itself never had such notice before the agreement was executed since: (1), Rhoads told retirees on October 18, 2001, that they would be rolled over to the new Red Book Plan; (2), the District then continued to pay for such coverage; and (3), Rhoads acknowledged on January 7, 2002, that he and the District had learned of the Red Book Plan's exclusions only "after the plan was put into effect. . . ." In addition, the grievant in that case had specific knowledge that he was waiving insurance coverage. Here, none of the retirees ever had such knowledge.

The District also cites Arbitrator Douglas R. Collins' decision in Lincoln County Education Association and Lincoln County School District, (2003), wherein he ruled that Article 24 of the agreement gave the District the right to alter a long-standing practice relating to when active teachers could become eligible for "full PERS benefits" (R-35). In doing so, Arbitrator Collins found:

"The Association was made aware of the import and effect of Article 24, Section E, before the Agreement was ratified. Indeed, the Association's leadership candidly explained the problem to their members prior to voting to ratify the tentative agreement." (Id., at 15).

The District relies on the Collins Award to claim:

"An arbitrator has already decided, therefore, that the parties created new limitations in the early retirement provision and once that agreement changed, the past practice is no longer enforceable. This decision should likewise serve to preclude relitigation of the issues in this case."¹¹

The "new limitations" in that case, however, only centered on Article 24, Section E, of the agreement because that was the only language before Arbitrator Collins. He therefore never discussed, let alone ruled upon, what effect negotiations had on any other sections of Article 24. That is why he did not address what effect any new language in Article 24 had on existing retirees and that is why that case has no bearing on this case.

The District also cites Arbitrator Leroy J. Tornquist's decision in Southern Oregon Bargaining Council v. Rogue River School District, (2004), wherein he ruled that the school district did not violate the agreement when it required retirees to purchase dental and vision insurance in order to receive full family medical benefits. Arbitrator Tornquist found there was no contractual requirement requiring the district to pay the dental insurance for the retirees; that there was no binding past practice which required the district to do so; and that: "There is no claim that the Council was unaware of the new rules and regulations that would apply to the parties after switching from OEA Choice Insurance to the OSBA/Regence Blue Cross/Blue Shield program" (Id., at 26).

But here, there is a claim that the Association was unaware of how the Red Book Plan would adversely affect existing retirees before it signed the agreement and there is clear proof to

¹¹ See the District's April 10, 2003, Closing Argument to the ERB in Case No. UP 27-02, pp. 11-12.

support its claim because Rhoads admitted in his January 7, 2002, letter that he and the District were unaware of these adverse effects until "after the plan was put into effect. . .". The notice that was found in Rogue River School District, therefore cannot be found here.

In addition, the contract language there stated: "This language shall not include dental, vision, life or long-term disability." Hence, there was clear contract language expressly excluding dental insurance from medical coverage. Here, there is clear language stating that retirees and their eligible spouses are to receive coverage until retirees reach 65 years of age.

Arbitrator Tornquist made a passing reference to ORS 243-303 (3)(a) which states:

"A local government and a health care insurer may not create a group for health insurance coverage of retired employees and their dependents that is separate from a group for health care insurance coverage of officers and employees of the local government." (Id., at 23-24).

He did not, however, elaborate on this point. In addition, he never indicated that there was any kind of expert testimony in the record before him over this issue.

Here, on the other hand, insurance agent Honyak testified without contradiction that "nothing in [the Red Book Plan] prohibits. . ." the District from enacting a self-insurance plan.

The District contends that it cannot enact a self-insurance plan and that the changes mandated by the Red Book Plan made it impossible for the District to continue to offer medical coverage to retirees and their spouses because no other plan provides for such coverage.

The District also raised an impossibility claim before Arbitrator Philip Tamoush in Lincoln County School District v. Lincoln County Teachers Association, supra. There, the District argued that cancellation of the Red Book Plan left it no choice but to unilaterally implement, after engaging in mid-term contract negotiations with the Association, another health insurance plan which contained a higher deductible than the Red Book Plan and which provided fewer benefits.

Arbitrator Tamoush rejected the District's impossibility claim and ruled:

The notion of "impossibility" in layman's terms; here refers only to the fact that the District argues that the elimination of the Red Plan as a named and identifiable program, renders it unable to continue the negotiated fringe benefit. However, in adopting in its final offer, the new OSBA Plan A, with \$200 deductible, it is clear that the District does not at all argue that it is unable to implement a fringe benefit. If so, then the nature of the fringe benefit offered is an attempt to reduce the benefit originally negotiated. The District's position is indeed an "opportunistic" approach to allow it to negotiate a reduction of benefits at the mid-term of an agreement, rather than indicating that it has no obligation to continue to offer any benefit at all, which really is the essence of the "impossibility" defense. The OSBA, in this case, has determined that in order to assist in the management of its member districts, it would eliminate certain benefits, notwithstanding that they had been negotiated in good faith by the parties here. To some extent, this smacks of an element of collusion between school districts and the OSBA to permit districts to get out of their previously bargained obligations.

In summary of his conclusions in this matter, the undersigned believes that the District clearly violated Article 20 when it implemented a "final offer" position on fringe benefits that was substantially different and less than the benefit negotiated by the parties in the original agreement. The affirmative defense of "impossibility" was not reached here. The breach of the collective bargaining obligation and continuation of benefits cannot be excused. The District is implicitly obligated to continue its previously negotiated benefit structure, absent agreement of the Union. (Id., at 11).

He therefore ordered the District to immediately implement the Association's "final offer" which called for a health insurance plan that had the Red Book Plan's prior level of benefits.

The record here also establishes that the District took an "opportunistic" approach when - "after the plan was put into effect" - the District belatedly learned that the Red Book Plan did not provide for medical coverage for certain retirees and their spouses.

That, though, did not relieve the District from its continuing obligation to provide for all of the medical coverage guaranteed to retirees when they retired. The District therefore was

required to provide such coverage through other means such as offering to pay for all or part of the insurance premiums retirees had to pay for alternative medical coverage for either themselves or their spouses; or establishing a self-insurance plan if that is possible, or reimbursing retirees for all the medical expenses they incur for the medical services provided for under the prior Red Book Plan and the present plan. In other words, it had to make a good faith effort to replace the lost medical coverage because that was the deal it had earlier agreed to. That, it did not do.

I therefore find that the District has misinterpreted Article 24 and that it has violated the terms of the early retirement plan as set forth in the prior 1992 – 1995 and 1995 – 2000 agreements when it stopped providing medical coverage to those spouses who reach 65 years of age and to those eligible retirees and spouses who are on Medicare.

The District also has misinterpreted Article 24 and has violated the terms of the retirement plan as set forth in the prior 1992 – 1995 and 1995 – 2000 agreements when it required retirees to pay about \$114.60 per month for their medical coverage, as the record establishes that the parties never even bargained over this issue in their last negotiations, let alone agreed to it.

The District therefore cannot require retirees to pay for any part of their current medical coverage because the parties' 1992 – 1995 and 1995 – 2000 agreements both stated that the District must pay the entire premium for such coverage.

This ruling is consistent with the ruling made by Arbitrator Gary L. Axon in Southern Oregon Bargaining Council and Jackson County School District No. 6, Central Point, Oregon, (2002). There, he held that the school district violated the parties' agreement by requiring early retirees to contribute towards the cost of their health insurance premiums. In doing so, he found there was no across-the-table discussion on the topic of caps for retiree health insurance.

payments", (Id., at 12), and that the school district had to continue paying full premiums because that agreement stated it "will pay" certain specified benefits which represented "mandatory language" (Id., at 14). That is the identical situation here.

Indeed, the District itself recognized between 1992 – 2002 that it had to pay the full medical insurance premiums for retirees even though active teachers were required to pay premiums above the caps established in the respective 1992 – 1995 and 1995 – 2000 agreements. The District's actions during that ten year period thus shows that the District well understood that that represented part of the quo it had to pay in exchange for a teacher's quid, i.e., that retiree's early retirement after working for the District for a certain number of years.

Turning now turn to the question of remedy, I find that the District must make whole all affected teachers and spouses and that it must immediately restore the status quo ante by fully restoring the medical coverage that was improperly dropped and by relieving all retirees of any future obligation to pay any part of their medical coverage.

The District therefore shall reimburse all affected retirees for all the premium contributions they have been forced to pay under the Red Book Plan and the current plan, along with reimbursing them for all eligible medical expenses they have paid for themselves and/or their eligible spouses from the time the District terminated their medical coverage up to the time such medical coverage is fully restored.

The District also shall reimburse all affected retirees for the health insurance premiums they have had to pay for themselves and/or their spouses to replace the medical coverage that was improperly taken away, and the District shall continue to reimburse such premiums up to the time such coverage is fully restored. The District therefore shall reimburse all such affected

retirees up to the insurance premium caps set forth in Article 20, Sections C, D, E, and F, of the agreement for each year that such insurance premiums have been paid, with the District's reimbursement climbing for each year as set forth under this contract language.

Given the two-year delay that has already taken place in resolving this matter, it is imperative that this make whole remedy be effectuated as soon as possible. The parties therefore shall follow, unless otherwise mutually agreed to in writing, the following schedule:

1. The District shall immediately resume paying for all affected retirees all of the health insurance premiums for the medical coverage provided for in the early retirement plan, and it shall continue to pay the full cost of all such premiums until retirees reach 65 years of age.

2. The District by November 22, 2004, shall pay each affected retiree all of the premiums they have been required to pay up to the present time.

The District by November 22, 2004, also shall furnish the Association, in writing, with the names, addresses, and telephone numbers of all retirees who have been required to pay any part of their health insurance premiums and it shall list the total amount of premiums paid by each retiree. In that way, the Association can conduct its own independent investigation as to whether the District's information is correct.

3. The District shall immediately restore to all eligible retirees and/or spouses the medical coverage they are entitled to receive, and the District shall continue to provide such medical coverage to all eligible retirees and spouses until retirees reach 65 years of age. The District therefore can either pay each and every eligible medical expense thirty (30) days after bills for same have been submitted

to the District; or it can establish its own self-funded health care plan if it chooses to do so; or it can bargain in good faith with the Association over how to provide such coverage, provided however, that any such change must be mutually agreed to by the Association and the retirees and thus cannot be unilaterally implemented even if the parties reach impasse. The District will continue to pay for each and every eligible medical expense until any such plan is mutually agreed to.

4. The District by November 22, 2004, shall furnish the Association, in writing, with the names, addresses and telephone numbers of all retirees and/or spouses whose medical coverage was dropped before the retiree reached 65 years of age, along with the exact date such coverage was dropped. The District by November 22, 2004, also shall furnish the Association, in writing, with the names, addresses, and telephone numbers of all retirees who retired under the 1992 -- 1995 and 1995 -- 2000 agreements. In that way, the Association can conduct its own independent investigation as to whether the District's information regarding the dropping of coverage is accurate.
5. The Association by December 22, 2004, shall provide the District, in writing, with all bills and expenses it believes the District must pay, along with whatever insurance premiums have been paid for alternate medical coverage in accord with the insurance caps set forth in Article 20, Sections C, D, E, and F. The Association by December 22, 2004, also shall provide the District, in writing, with whatever other information it believes supports reimbursement for any such claimed expenses.

6. The District by January 21, 2005, shall reimburse all of the above expenses it does not dispute. If the District disputes any such claimed expenses, it shall state the full basis why it challenges each particular claim by January 21, 2005, and it shall cite all provisions of the prior Red Book Plan or the current plan which it relies upon in support of any such challenges. The District by January 21, 2005, also shall provide the Association, in writing, with whatever other information or documents it believes supports the denial of any claimed expenses.
7. The parties will have until February 11, 2005, to informally resolve the District's challenges. If any challenges remain unresolved after that date, I will resolve them.
8. In order to resolve any disputes which may arise over application of any part of this remedy, and pursuant to the agreement of the parties, I will retain my remedial jurisdiction indefinitely.

In light of the above, it is my

AWARD

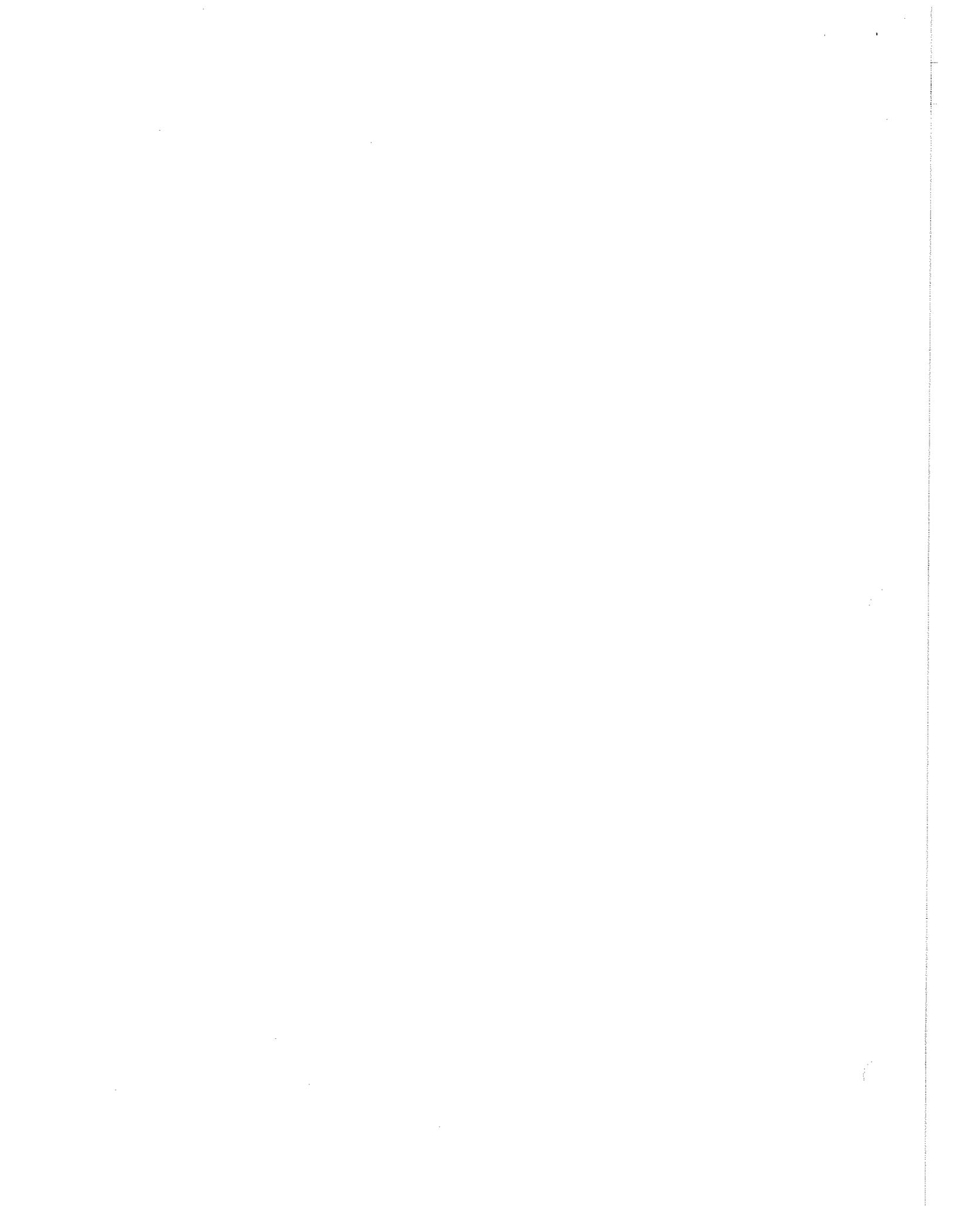
1. That the grievances are substantively arbitrable.
2. That the District has misinterpreted Article 24 of the agreement and has violated the terms of the parties' early retirement plan when it stopped providing medical coverage to early retiree's spouses when the spouses reached 65 years of age.
3. That the District has misinterpreted Article 24 of the agreement and has violated the terms of the parties' early retirement plan when it stopped providing medical coverage to early retirees and/or their spouses because they were on Medicare.

4. That the District has misinterpreted Article 24 of the agreement and has violated the terms of the parties' early retirement plan when it required early retirees to pay about \$114.60 per month for their health insurance coverage.
5. That the District shall immediately take all of the remedial action related above.
6. That in order to resolve any disputes relating to the application of the remedy, I shall retain remedial jurisdiction indefinitely.

Dated at Madison, Wisconsin, this 4th day of November, 2004.

Amedeo Greco /s/

Amedeo Greco, Arbitrator





NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE STATE OF OREGON EMPLOYMENT RELATIONS BOARD

PURSUANT TO AN ORDER of the Employment Relations Board in Case No. UP-56-04, Lincoln County Education Association v. Lincoln County School District, and in order to effectuate the policies of the Public Employee Collective Bargaining Act (PECBA), we hereby notify our employees that:

Lincoln County Education Association (LCEA) filed an unfair labor practice complaint alleging that the Lincoln County School District (District) violated the PECBA. The Employment Relations Board found that the County had unlawfully refused to follow a decision of an arbitrator reinstating certain payments for medical insurance benefits for retirees and their spouses.

ORS 243.672(1)(g) provides that it is an unfair labor practice for a public employer to "[v]iolate the provisions of any written contract with respect to employment relations including an agreement to arbitrate or to accept the terms of an arbitration award, where previously the parties have agreed to accept such awards as final and binding upon them."

The District's refusal to obey the decision of the arbitrator violated its duty to comply with the agreements it has made, in violation of ORS 243.672(1)(g). The District's violation of ORS 243.672(1)(g) in this regard was repetitive and egregious within the meaning of OAR 115-35-075.

The Employment Relations Board ordered Lincoln County to: (1) cease and desist from violating ORS 243.672(1)(g) by refusing to obey the arbitrator's decision; (2) restore retirees to the position they would have been in had the District not failed to comply with its obligations to retirees and had it followed the arbitrator's decision when it was issued, and pay interest at the rate of 9 percent per annum on the sums owed retirees from November 4, 2004 until the District fully complies with the Arbitrator's decision; (3) Pay a civil penalty to the Association in the sum of \$1000.00; and (4) post this notice and mail a copy to each affected retiree.

The District will comply with the Order of the Employment Relations Board.

EMPLOYER

Dated _____, 2005

By:

Employer Representative

Title

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED

This notice must remain posted in each employer facility in which bargaining unit personnel are employed for 30 consecutive days from the date of posting and must not be altered, defaced, or covered by any other materials. Any questions concerning this notice or compliance with its provisions may be directed to the Employment Relations Board, 528 Cottage Street N.E., Suite 400, Salem, Oregon, 97301-3807, phone 503-378-3807, ext. "0."

