

**EDWARD B. KRINSKY, ARBITRATOR**

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In the matter of the Petition of :  
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School District of Sevastopol :  
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To Initiate Arbitration : Case 12 No. 55768 INT/ARB-8314  
Between Said Petitioner and :  
 :  
Sevastopol Education Support Personnel : [ Dec. No. 29454 ]  
Association (Bus Drivers) :  
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Appearances:            Godfrey & Kahn by Mr. Dennis W. Rader, for the District         
                           Bayland UniServ by Mr. Miguel Salas Executive Director, and Ms.  
Suzanne Dishaw Britz Associate Director, for the Association.

By its Order of October 22, 1998 the Wisconsin Employment Relations Commission appointed Edward B. Krinsky as the arbitrator to issue a final and binding award, pursuant to Sec. 111.70(4)(cm)6. and 7. of the Municipal Employment Relations Act, to resolve the impasse between the above-captioned parties by selecting either the total final offer of the [District] or the total final offer of the [Association].

A hearing was held at Sturgeon Bay, Wisconsin on January 11, 1999. A transcript of the proceeding was made. The parties had the opportunity to present evidence, testimony and arguments. The record was completed with receipt by the arbitrator of the parties' reply briefs on March 31, 1999.

The dispute involves wages and health insurance for the period July 1, 1997 through June 30, 1999 for the eleven employees in the bus drivers' bargaining unit. The difference in total cost between the final offers for the two year period is less than one thousand dollars, with the District's offer costing more than the Association's offer. Essentially what is at issue is how the dollars are to be allocated between wages and insurance.

The parties agree that for the first year wages will increase 3%, resulting in an hourly rate of \$ 11.04 for regular bus routes, and \$ 8.69 for special trips. The District's final offer would increase wages 4.3% in the second year, resulting in an hourly rate of \$11.51 for regular bus routes and \$ 9.06 for special trips. The Association's final offer would increase wages 1.5% in the second year, resulting in an hourly rate of \$ 11.21 for regular bus routes and \$ 8.82 for special trips..

With respect to insurance the parties' final offers, retroactive to July 1, 1997 are as follows:

DISTRICT Article VIII

B. The Board will contribute \$ 276.74 per month for a single health insurance plan and \$ 290.00 per month for a family plan, July 1, 1997 through June 30, 1998. The Board will contribute \$ 280.48 per month for a single health insurance plan and \$ 307.53 per month for a family plan, July 1, 1998 through June 30, 1999. The difference between the insurance premium and the Board's contribution shall be paid by the employee by payroll deduction.

D. The Board shall contribute \$ 14.51 per month for dental insurance coverage, July 1, 1997 through June 30, 1998. The Board shall contribute \$ 15.92 per month for dental insurance coverage, July 1, 1998 through June 30, 1999. The difference between the insurance premium and the Board's contribution shall be paid by the employee by payroll deduction.

ASSOCIATION Article VIII

B. The Board will contribute \$ 276.74 per month for a single health insurance plan and \$ 290.00 per month for a family plan. The dollar amounts for the 1998-99 contract year will be adjusted to reflect a Board payment of 60% of the family and 100% of the single insurance premium expressed in a dollar amount. The difference between the insurance premium and the Board's contribution shall be paid by the employee by payroll deduction.

D. The Board shall contribute \$ 14.51 per month for a single dental plan for 1997-98. The dollar amounts for the 1998-99 contract year shall be adjusted to reflect payment of 50% of the single dental insurance premium expressed in a stated dollar amount. The difference between the insurance premium and the Board's contribution shall be paid by the employee by payroll deduction.

The parties agree that their offers should be viewed in relationship to comparable school districts, but they are not in complete agreement about which districts are comparable. Sevastopol is in the Packerland Athletic Conference. Both parties view the Conference as comparable, but the Association limits the comparables to just those districts in the Conference whose bus drivers are unionized.

Having read the parties' arguments, it is the arbitrator's view that all of the districts in the Packerland Conference are appropriate for use as comparables: Algoma,

Gibraltar, Kewaunee, Luxemburg-Casco, Oconto, Oconto Falls, Southern Door and Sturgeon Bay. The question of unionized status may come into play in deciding how various comparisons should be weighed. It should be noted that one of the factors enumerated in the statute is comparability with private employees. The fact that some of the districts in the Conference contract their bus driving to private companies does not make them inappropriate as comparables, although their status may affect how the comparisons are weighed.

In making his decision the arbitrator is required to consider and weigh the factors set forth in the statute. The statute includes the "factor given greatest weight" which is "any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer." In the present proceeding, neither party has argued the applicability of this factor, or presented data in reference to it. Thus, the arbitrator does not favor either final offer more than the other when taking account of the "factor given greatest weight."

The statute also identifies the "factor given greater weight," requiring the arbitrator to consider and "...give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the [other] factors specified..." In the present proceeding, neither party has argued the applicability of this factor, or presented data in reference to it. Thus, the arbitrator does not favor either final offer more the other when taking account of the "factor given greater weight."

Several of the "other factors considered" at subsection 7r of the statute were not specifically addressed by either party, and the arbitrator does not favor one final offer more than the other when weighed against these factors: (a) the lawful authority of the municipal employer; (b) stipulations of the parties; (c) the interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement; (g) the average consumer prices for goods and services, commonly known as the cost of living. (h) the overall compensation presently received by the municipal employees....; (i) changes in ...circumstances during the pendency of the arbitration proceedings; (j) such other factors...which are normally or traditionally taken into consideration...

The remaining factors were addressed by the parties in their presentation of evidence and arguments. These factors are: (d) comparison of wages, hours and conditions of employment of the municipal employees...with [those] of other employees performing similar services; (e) comparison of wages, hours and conditions of employment of the municipal employees...with [those] generally in public employment in the same community and in comparable communities; (f) comparison of the wages, hours and conditions of employment of the municipal employees...with [those] of other employees in private employment in the same community and in comparable communities.

The first issue in dispute is the wage increase for the second year of the Agreement. The employees involved are part-time bus drivers. Because bus drivers in the comparable school districts have a variety of scheduling and pay bases the parties have

made certain assumptions in order to make meaningful comparisons, but they have not agreed to one another's assumptions.

For its wage comparisons, the Association assumes that drivers work a three hour day, which generates the following daily pay:

| <u>District</u> | <u>1996-97</u> | <u>1997-98</u> | <u>1998-99</u> |
|-----------------|----------------|----------------|----------------|
| Gibraltar       | \$ 36.27       | \$ 37.35       | \$ 38.37       |
| Oconto Falls    | 36.98          | 38.77          | 40.67          |
| Southern Door   | 37.29          | 38.16          | 39.42          |
| Sturgeon Bay    | 39.27          | 40.44          | 41.64          |

The rate for Oconto Falls assumes pay for an average 35 mile round trip.

These figures allow the following comparisons to be made:

|             |       |       |                              |
|-------------|-------|-------|------------------------------|
| Median rate | 37.14 | 38.47 | 40.05                        |
| Sevastopol  | 32.16 | 33.12 | 33.63 - Assn<br>34.53 - Dist |
| Difference  | -4.98 | -5.35 | -6.42 - Assn<br>-5.52 - Dist |

These figures show that for each of the comparison years, Sevastopol is ranked last in comparison to these districts. Both final offers result in the deterioration of the daily rate in relationship to the median in 1997-98 in comparison to 1996-97. That deterioration continues under both final offers in 1998-99, but the deterioration is much greater under the Association's final offer than under the District's final offer.

The Association presents data showing the cents-per-hour wage increases given by the comparable districts:

| <u>District</u> | <u>1997-98 increase</u> | <u>1998-99 increase</u>  |
|-----------------|-------------------------|--------------------------|
| Gibraltar       | \$ .39                  | \$ .40                   |
| Oconto Falls    | .37 + .015 per mile     | .25 plus .02 per mile    |
| Southern Door   | .29                     | .42                      |
| Sturgeon Bay    | .39                     | .40                      |
| Sevastopol      | .32                     | .17 - Assn<br>.47 - Dist |

The Association argues:

The Bus Drivers have proposed the lowest cents-per-hour increases of any of the external comparables. The significantly lower wage offer in 1998-99, combined with the unit's already low comparable ranking, is more than enough

to justify the requested increase in the Board payment toward family health insurance.

The District makes similar comparisons, but assumes a four hour day and a trip of 46 miles. It argues that these comparison are the appropriate ones, because bus drivers in Sevastopol work a four hour day.

The District presents data for all of the Conference districts. The arbitrator agrees with the Association that where data are available for unionized employees, those comparisons are more meaningful as they reflect bargained outcomes, in contrast to non-unionized comparisons where the employer has the right to make unilateral decisions about its pay arrangements.

In both Sturgeon Bay and Gibraltar there are minimum and maximum rates. The arbitrator does not know how many drivers receive the minimum rate and how many the maximum rate, nor does he know how drivers in other districts would be placed on those wages scales if they were subject to them. The arbitrator is willing to assume, in the absence of evidence to the contrary, that more drivers are at the maximum rate than at the minimum rate. The following table, using the maximum rates, shows the daily rates calculated by the District for the unionized comparable districts:

| <u>District</u> | <u>1996-97</u> | <u>1997-98</u> | <u>1998-99</u> |
|-----------------|----------------|----------------|----------------|
| Gibraltar       | \$ 48.36       | \$ 49.80       | \$ 51.16       |
| Oconto Falls    | 31.22          | 32.65          | 34.07          |
| Southern Door   | 37.29          | 38.16          | 39.42          |
| Sturgeon Bay    | 52.36          | 53.92          | 55.52          |

These figures allow the following comparisons to be made:

|             |       |       |                             |
|-------------|-------|-------|-----------------------------|
| Median rate | 42.83 | 43.98 | 45.29                       |
| Sevastopol  | 42.88 | 44.16 | 44.84- Assn<br>46.04 - Dist |
| Difference  | -.05  | +.18  | - .45- Assn<br>+.75 - Dist  |

These figures show that in each of the three years Sevastopol is ranked third in comparison to the other unionized districts. In relationship to the median rate, there is deterioration under the Association's final offer, resulting in pay below the median rate, while the position of Sevastopol under the District's final offer is above the median and continues to improve.

The District presents data for the other Conference districts, whose bus drivers are non-union or are employees of a private contractor. The percentage increases for 1997-98 are: Algoma (2.5%); Kewaunee (2.5%); Luxemburg-Casco (2.2%). The

agreed upon increase in Sevastopol was 3.0%, which is greater than the increases in these districts.

For 1998-99 the increases in these districts for bus drivers are: Algoma (2.7%); Kewaunee (2.7%) and Luxemburg-Casco (2.2%). These increases are compared to the increases for bus drivers of 4.3% offered by the District and 1.5% offered by the Association. The District's offer is greater than those given in these districts, while the Association's is smaller than the increases given in these districts.

The District's data show that the daily rate which both parties are offering to the bus drivers in both years is above the daily rates paid in Algoma Kewaunee and Luxemburg-Casco, as was the case also in 1996-97.

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| District        | 1996-97  | 1997-98  | 1998-99                      |
|-----------------|----------|----------|------------------------------|
| Algoma          | \$ 29.50 | \$ 30.21 | \$ 31.00                     |
| Kewaunee        | 29.50    | 30.21    | 31.00                        |
| Luxemburg-Casco | 38.42    | 38.42    | 38.42                        |
| Sevastopol      | 42.88    | 44.16    | 46.04 - Dist<br>44.84 - Assn |

The arbitrator is concerned about the appropriateness of both parties' assumptions in making their comparisons, although he has not developed assumptions which are more appropriate. The District is correct that comparisons are properly made based upon four hours of work per day, which is how its drivers are scheduled. The Association notes, however, that drivers in Oconto Falls work three or more hours per day, and those in Southern Door and Sturgeon Bay work three hours per day. Thus, three hours per day is arguably a better basis for comparison. The District bases its figures on an assumption that drivers in the various districts drive 46 miles per day. Testimony at the hearing makes clear that the 46 mile figure is simply an assumption, and does not reflect either the average miles driven by Sevastopol's drivers or the miles driven by drivers in other districts. The arbitrator does not know how the comparisons would be affected by use of some other mileage figure.

Data are presented also for other bargaining units and employee groups within the Sevastopol District. For 1997-98 the 3.0% increase agreed upon for bus drivers is higher than the percentage salary increase given for teachers (2.5%) and support staff (2.4%). For 1998-99 the support staff increase has not yet been determined. For teachers the increase in 1998-99 is 2.9%, compared to the increases for bus drivers of 4.3% offered by the District and 1.5% offered by the Association. Percentage increase figures for non-union employees [i.e. confidential secretaries] and administrators are not presented.

The second issue in dispute is health insurance. The parties' Agreement for 1996-97 specifies that the District pay monthly premiums for health insurance of \$ 235.74 for family coverage and \$ 198.72 for single coverage. The parties agreed for 1997-98 that the District's contribution would be \$ 290 and \$ 276.74. For 1998-99 the District has

offered to make its contribution \$ 307.53 and \$ 280.48. In dollar amounts the Association's offer calls for the District's contribution to be \$ 369.04 and \$ 280.48.

The parties' disagreement involves more than the dollar amounts, however, because the Association's final offer for 1998-99 is expressed partially in percentage terms and calls upon the District to pay 60% of the family premium and 100% of the single premium, expressed in a dollar amount. The language in the Agreement was not expressed in percentage terms in 1996-97 and 1997-98, but it is undisputed that the District's contributions amounted to 45% of family premium and 86.5% of single premium in 1996-97, and 50% of family premium and 100% of single premium in 1997-98. (The parties agree on the dollar amounts to be paid by the District for dental insurance. The Association's final offer for 1998-99 makes reference to the contribution in percentage terms, which the District's final offer does not).

The issue of whether insurance is expressed as dollars vs. percentages was discussed at the hearing. The District did not argue there that the Association's reference to percentages was a change in the *status quo* (although it made such arguments in its briefs), even when the Association stated its view that there was no change in the *status quo*. For this reason, coupled with the fact that the Association's final offer states that the insurance premiums will be expressed in dollar terms, the arbitrator does not view this issue of dollars vs. percentages as being of great significant in this case.

It should be noted also that at the present time three of the eleven members of the bargaining unit have family insurance coverage under other collective bargaining agreements because of the hours which they work for the District in those units in addition to their bus driving. Only three of the remaining eight bargaining unit members are covered by the family insurance which is at issue here and are affected by the amount of the District's contribution towards the premium.

For the comparable districts whose bus drivers are unionized, the District shows the following for 1997-98, based on the assumption that the employee works 720 hours annually:

| <u>District</u> | <u>Percentage of Health Insurance Paid by District</u> |
|-----------------|--|
| Gibraltar:      | 75%  |
| Oconto Falls:   | 61%  |
| Southern Door:  | 45%  |
| Sturgeon Bay:   | 0%   |
| Median          | 53%  |
| Sevastopol      | 50%  |

The Sturgeon Bay bus drivers are not eligible for insurance unless they work 900 hours per year. Only those Oconto Falls bus drivers who work 4 hours per day qualify for insurance. None of the other (non-union) comparable districts (Algoma, Kewaunee, Luxemburg-Casco) provide health insurance for their bus drivers.

The District views its payment of the equivalent of 50% of the insurance premiums as comparing favorably with the other Conference districts, even if only the unionized ones are considered, and it notes further that health insurance is "...a benefit which is not even enjoyed by a majority of the drivers in the ...Conference."

The District shows the employee contributions for health insurance in dollar terms in 1997-98. The District included Sturgeon Bay in its exhibit, but the arbitrator has omitted Sturgeon Bay because the drivers are not eligible for insurance unless they work 900 hours. Thus, for the unionized districts which provide family health insurance for drivers, the employees' contribution is:

|                    |           |
|--------------------|-----------|
| Gibraltar          | \$ 142.41 |
| Oconto Falls       | 185.26    |
| Southern Door      | 319.00    |
| Median             | 185.26    |
| Sevastopol         | 290.00    |
| Relation to Median | -104.74   |

If there are Sturgeon Bay bus drivers who work the requisite number of hours and opt for family coverage, they must pay the full cost of the family insurance, \$ 569.62. The bargaining unit drivers in Sevastopol, while disadvantaged in relationship to the three unionized comparables which offer health insurance, are much better off than those unionized drivers in Sturgeon Bay who are not eligible for health insurance unless they work the requisite hours for eligibility and then have to pay the full cost.

The Association presents data showing the health insurance arrangements for other groups within the Sevastopol school district. For the support staff unit, as well as non-union personnel, the District pays 92% of the family premium. For teachers, it pays 90%, and for administrators 100% of the family premium. The Association argues that no differentiation is made within these groups for part-time employees; *i.e.* these employees are eligible for coverage and payments by the District whether they are full-time or part-time (support staff are eligible if they work more than twenty hours per week). The District argues that positions in these employee groups "are not, by nature of their positions, part-time employees but are full-time employees." There was no evidence presented which indicates that there are employees hired part-time by the District who are receiving family health insurance with a 90% or higher contribution by the District.

The District also presented data for fifteen other school districts in Northeast Wisconsin to support its argument that most districts do not have unionized bus drivers and do not offer their drivers health insurance. The Association objects both to the non-representative sampling of districts and their lack of relevance as comparables. The arbitrator gives little weight to these data because, according to the testimony of the

District's witness, "I just picked some [districts] out of the State." There is no stated rationale for how these districts were selected for comparison.

The parties agree on the costing of their total packages.. They agree that the total package for 1997-98 is an increase of 6.2% over 1996-97. The District's total package increase for 1998-99 is 3.8%. The Association's total package increase for 1998-99 is 3.12%. The District's final offer has a slightly higher cost, with the dollar difference between the total packages being \$929.62.

District data show that the total package for its teachers was 3.8% in 1997-98 and 3.8% in 1998-99. For support staff the total package was 4% in 1997-98. There is no settlement for 1998-99. No total package data are shown for non-union employees or administrators.

Although describing the bus drivers as "grossly underpaid," the Association has opted for a very small second year wage increase in order to induce the District to increase its health insurance contribution. The Association's primary emphasis is on internal comparability, and specifically the fact that the District contributes a much smaller amount towards family health insurance for bus drivers than it does for any of its other employee groups. The Association argues, "The Union's offer for a small increase in the Employer contribution to family health insurance is nothing more than a small step toward internal equity..." Even under its final offer, the Association argues, bus drivers will still pay \$ 200 per month more for family insurance than any other District employee in 1998-99. Under the District's final offer, the Association argues, bus drivers will pay more than \$ 300 more than any other employee.

The Association emphasizes that under the District's offer, those bus drivers who have family insurance will suffer a loss in take home pay, since the increase in dollars which they must contribute to insurance exceed the dollars of their wage increases. The Association expects this problem to be significantly worse in the future as health insurance costs go up faster than wages.

To this argument, the District responds:

The employer *offers* its employees the benefit of health...insurance; there is absolutely no requirement employees take it. If they believe their take-home pay is such that their decision to have health insurance is a burden, then drop the insurance...If the cost is too high and the need for insurance is more important, then the drivers must go out and look for employment which offers a higher paid contribution toward health insurance. The problem is, those drivers will find that they will have to work more than four hours a day to achieve that higher premium contribution.

The District argues that, "requiring districts to pick up a higher tab on benefits for part-time employees is absolutely unwarranted."

The Association argues that its position is justified also in relationship to external comparables and notes specifically that in unionized districts whose employees are eligible for insurance, the average contribution by the employer is 60%. In this regard, the Association argues that four hours is the eligibility standard for insurance in Gibraltar and Oconto Falls, as it is in Sevastopol, and both of those districts make a considerably higher contribution to family insurance than does the District.

The District argues that its final offer is more in line with what the comparable districts are paying, both in terms of wages and insurance contributions, and therefore is more reasonable than the Association's final offer.

The arbitrator notes, as the District points out, that in its wage arguments the Association opts for comparisons with unionized bus drivers who work a three hour day, but in its insurance arguments the Association view the appropriate comparison as being with unionized bus drivers who work a four hour day. Although, as previously stated, the arbitrator is somewhat unsure of which comparisons are most reliable in painting a true picture of conditions for bus drivers, it is his view based on reviewing the exhibits and arguments, that the District's four hour comparison for both wages and insurance should be used rather than the Association's three hour comparisons for wages and four hour comparisons for insurance.

The arbitrator has concluded that both parties' final offers are fair and reasonable. The cost difference between the offers is small and does not affect the outcome. The District's final offer provides a larger wage increase which leaves it in a more competitive position than does the Association's final offer and also benefits all of the employees in the bargaining unit. The Association's final offer allocates more resources to family health insurance than does the District's offer. It is not clear that the District needs to increase its payments of health insurance for bus drivers to remain competitive, as under its offer its payments are more generous than those of two of the four unionized comparables, and all of the non-unionized one. With respect to the internal comparables, the Association's arguments would be more persuasive if it were shown that other employees of the District were working twenty hours per week or less and the District were paying more for health insurance on their behalf than to the bargaining unit. Moreover, at the present time there are only three bus drivers in the bargaining unit who would benefit from the increased family contribution. While raising the District's contribution to the dollar equivalent of 60% might result in additional employees opting for family coverage, there is no evidence presented on that point and it is a matter of speculation.

The arbitrator is required by statute to select one final offer in its entirety. Given that requirement, it is his conclusion that there is more support for the District's final offer than for the Association's offer.

Based upon the above facts and discussion, the arbitrator hereby makes the following AWARD:

The final offer of the District is selected.

Dated this \_12th\_ day of April, 1999 at Madison, Wisconsin

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Edward B. Krinsky  
Arbitrator