THE MATTER OF THE INTEREST ARBITRATION

PROCEEDINGS BETWEEN

RACINE EDUCATION ASSOCIATION,

Association,

and

ARBITRATOR'S AWARD
Case 180, No. 57038
INT/ARB 8609
DECISION NO. 29597-A

RACINE UNIFIED SCHOOL DISTRICT,

Employer.

Arbitrator: Jay E. Grenig

Appearances:

For the Employer: Frank L. Johnson
Director of Employee Relations

For the Association: Robert C. Kelly, Esq.
Kelly & Petranech

I. BACKGROUND

This is a matter of final and binding interest arbitration pursuant to Section 111.70(4)(cm)6 of the Wisconsin Municipal Employment Relations Act for the purpose of resolving a bargaining impasse between Racine Education Association ("Union" or "Association") and the Racine Unified School District ("District" or "Employer"). The District is a municipal employer within the meaning of the Act. The Association is the exclusive collective bargaining representative of certain District employees, including health care coordinators.

On November 27, 1998, the Association filed a petition with the WERC requesting the WERC to initiate final and binding arbitration pursuant to the Wisconsin Municipal Employment Relations Act. Following an investigation, the WERC determined that

an impasse within the meaning of Section 111.70, Wis.Stats., existed between the Association and the District. Thereafter, the parties submitted their final offers and the Commission issued an order on April 16, 1999, requiring that arbitration be initiated for the purpose of resolving the impasse arising in collective bargaining between the parties.

On May 6, 1999, the WERC issued an order appointing the undersigned as the arbitrator in this matter. The matter was brought for hearing before the Arbitrator on July 8, 1999, in Racine, Wisconsin. The parties were given full opportunity to present all relevant evidence and arguments. The hearing was declared closed upon receipt of the parties' reply briefs on November 16, 1999. A copy of the Association's final offer is attached as Exhibit A. The District's final offer is attached as Exhibit B.

Starting with the 1996-97 school year, the District ceased contracting outside for nursing services and hired its own staff. The parties disagreed whether the District's professional nursing staff (six nurses also referred to as "Health Care Coordinators") should be included in the teachers' bargaining unit. The District maintained the nurses were not in the unit, and the Association urged their inclusion and representation. In November 1997, the WERC issued a unit clarification decision holding that the District's Health Care Coordinators were included in the teachers' bargaining unit represented by the Association. The parties were unable to agree on the wages, hours, and working conditions of the Health Care Coordinators and the matter was ultimately submitted to arbitration in this proceeding.

II. SUMMARY OF FINAL OFFERS

The parties have made proposals regarding, among other things, Section 2 (Recognition Clause), Section 7 (Tenure and Fair Dismissal), Section 12 (Teacher Employment and Individual Contracts), Section 10 (Hours and Other Working Conditions), Section 14 (Length of Service), Section 15 (Assignment and Transfer), Section 16 (Evaluations), Section 18 (Compensation), Section 19 (Insurance and Retirement), Section 21 (Sick Leave), and Section 22 (Leave of Absence).

The Association has proposed making its final offer applicable only from the start of the 1998-99 school year. The District's proposal would be applicable in both the 1997-98 and 1998-99 school years.

III. STATUTORY CRITERIA

111.70(4)(cm)

. . .

7. "Factor given greatest weight." In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or

arbitration panel shall consider and shall give the greatest weight to 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. The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.

7g. "Factor given greater weight." In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.

7r. "Other factors considered." In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall also give weight to the following 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.

d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.

e. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes 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 employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes in private employment in the same community and in comparable communities.

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 employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

IV. POSITIONS OF THE PARTIES

A. THE ASSOCIATION

According to the Association, application of the greatest weight factor to this case favors selection of the Association's final offer. It points out that statutorily imposed limitations on District revenues and spending would not be exceeded by selection of the Association's final offer. The Association points out that the employment of nurses in the schools is largely necessitated by the District's obligation under the Individuals with Disabilities in Education Act.

The Association argues that the District has experienced an increase in its three-year student enrollment average that directly increases the District's ability to raise revenues.

Given the minimal difference between the cost of the parties' final offers, the Association says that the District is able to prudently meet the slightly higher economic demand of the Association's offer. The Association argues that the District has not demonstrated that acceptance of the Association's proposal, which effects a proportionately small number of District employees, would cost an amount threatening the budget fund balance so adversely that other deserving areas of the budget will be unduly cut back or sacrificed. It is the Association's position that application of the greater weight criterion favors selection of the Association's final offer. It claims that the strength of the local economy does not appear to present any hindrance too selection of the Association's final offer.

With respect to the other factors, the Association says those factors clearly favor selection of the Association's offer. The Association contends that it's recognition clause proposal simply reduces the WERC's unit clarification order to writing in the collective bargaining agreement.

According to the Association, the evidence shows that various professionals in the teachers' bargaining unit, including audiologists, physical therapists, occupational therapists, diagnosticians, speech clinicians, wellness coordinators, all share the same benefits, salary advancement opportunities, and working conditions.

The Association asserts that its proposal relating to the recognition clause does nothing more than spell out the positions currently referenced by citation of WERC unit clarification decisions in the existing agreement. It claims that articulating the positions merely saves someone less familiar with the Agreement the time of looking up past WERC decisions in order to determine the exact positions included within the unit.

Observing that other bargaining unit members have itinerant schedules moving from one school to another during the school day, the Association argues that its proposal would not prevent the District from assigning nurses to more than one school. The Association asserts that the District's only specific objection is the requirement that nurses, like other bargaining unit members, arrive 11 minutes early and remain 15 minutes after students depart.

As to the tenure and fair dismissal language, the Association argues that the District's proposal eliminates certain rights from the good cause provision, and abbreviates the grievance procedure for nurses facing discharge. The District's proposal also eliminates the District's discretion to permit the nurses to regain non-probationary status without the need to repeat the three-year probation upon a return to employment in the District.

Pointing out that the District's proposal defines length of service as "the length of continuous service with the School District in a position requiring Professional Wisconsin DPI certification or length of continuous service in a position within the teacher bargaining group, whichever is longer," the Association says that its proposal defining length of service as the "length of continuous service with the District from the original date of hire in a Health Care Coordinator position" is more reasonable. Stressing that the nurses' positions do not require DPI certification, the Association contends that nurses whose employment with the District predates their accretion into the bargaining unit would receive no credit for the period of employment preceding accretion.

The Association claims that no where in the present agreement's evaluation language is the use of an appropriately tailored evaluation instrument for nurses prohibited. It says that the agreement provides that if the evaluation instrument is to be changed the parties must jointly study a new evaluation instrument. The Association stresses that the agreement does not require that the present evaluation instrument developed for teachers be utilized in evaluating all bargaining unit members.

The District presently contributes an amount equal to 6.2 percent of each teacher's salary to the retirement trust fund. The Association wants the District to contribute this amount to each nurse's retirement trust fund.

B. THE DISTRICT

Having been successful in adding the six Health Care Coordinators to its bargaining unit, the District claims that the Association is now attempting to achieve for the nurses virtually all of the wages, hours, and working conditions that it has won on behalf of teachers over the past 30 years. The District contends that the Association's final offer is an extreme departure from the nurses' status quo and many of the teacher contract provisions will simply not work well with nurses.

According to the District, its proposal is a significant improvement in the status quo of the nurses. It says that some teacher contract provisions were not included in the District's offer without some modification, because the provisions would not work well with nurses or would carry a price tag that would be unreasonable under the circumstances.

With respect to the Recognition Clause, the District argues that the Association has taken the opportunity to inappropriately add to the clause positions that are not subject to this interest arbitration proceeding. The District declares that to "attempt to bootleg something into the teacher agreement unrelated to the determination of wages, hours and working conditions for the newly accreted nurses is wrong and should not be allowed under winner-take-all arbitration."

Turning to Section 7, the District says that its proposal differs from the Association's to the extent that the Association's language assumes the nurses will receive individual employment contracts as teachers do. The District asserts that it did not propose individual contracts because state law provides that only teachers must receive individual contracts.

The District contends the Association's proposal with respect to assignment and transfer is unworkable. According to the District, it is impossible to cover the 32 schools in the District with six nurses if they are required to be assigned under the teacher assignment and transfer language. The District claims that under the Association's offer the displacement and involuntary reassignment language would need to be exercised every day and this would be impracticable.

The Nurse Supervisor testified that the work hours in the Association's proposed Section 10.2 would not work for nurses since five the six nurses are assigned to two different schools each day and those two schools change every day. The Supervisor testified that many schools have different starting and ending times and that if nurses were required to follow this schedule some nurses would have a nine-hour day and others

would only have a seven-hour and 14-minute day. The District's proposal would maintain the status quo.

Pointing out that the evaluation form in the collective bargaining agreement would not be appropriate for the nurses, the District urges that the Association's proposal to apply the teacher evaluation language to the nurses is unreasonable. The District contends that the nurse evaluation form is the most appropriate for effective evaluations.

With respect to compensation, the District argues that, if the law intended for accreted employees to automatically fall under provisions that others in the unit already have, the court in *Wausau School Dist. v. WERC*, 157 Wis.2d 315, 459 N.W.2d 861 (App.1990), would not have ruled that accreted employees are considered eligible for a new contract and are entitled to interest arbitration.

The District notes that both parties propose improving the nurses' health plan by switching them to the teachers' health plan that has more benefits than the administrator's health plan that the nurses are currently under. The District states that its proposal improves the wage $18.25 per hour wage rate to $18.94 for the first year and to $19.66 the second year. The District calculates this as 3.78 percent increase the first year and a 3.80 percent increase the second year or a lift of 7.58 percent over the life of the two year contract. It points out that the Association's wage increase seeks a 12.25 percent increase over the present wage rate.

It is the District's position that parties who attempt to change the status quo of the working conditions of existing employees have the burden of demonstrating a need for such change and that a quid pro quo was given in appropriate cases.

V. FINDINGS OF FACT

A. FACTOR GIVEN GREATEST WEIGHT—STATE LAW OR DIRECTIVE LIMITING EXPENDITURES OR REVENUES

Following passage of the 1993-1995 State biennial budget act, Wisconsin school districts must comply with limits, or caps, on their collection of certain revenues. Property tax revenues and general state aid are among the funds subject to such revenue limits. Other sources of revenue, such as categorical aid, are not subject to limitation by statute.

The District's Business Manager projected that most likely the District would be making budgetary reductions to stay within revenue caps and the budgetary reductions might total about 3 to 3.5 million dollars.

In some cases the District is able to bill Medicaid for the provision of "related services" provided by nurses to eligible students under IDEA. The record fails to indi-

cate the amount by which the average Medicaid reimbursement received by the District might offset the cost of employing the six nurses.

The District presented evidence regarding the current fund balance and the lowering of its bond rating in 1998. The primary effect of the lowering of the District's bond rating is to increase the cost of short-term borrowing. Apparently the low fund balance was due to the District's being required to pay wage increases retroactive six years. The actual labor contract settlement resulted in a higher cost than the District had budgeted. In both June 1998 and June 1999, the fund balance was reported as $3,800,000.

Student enrollment is instrumental in calculating the amount of revenue a school is allowed to raise for each fiscal year. The District experienced declining enrollments for the school years beginning 1993-1996. However, in September 1999, the District's enrollment showed an increase. Averaging the District's previous three years' enrollment, indicates the District's revenue raising ability has increased rather than decreased.

The difference between the two final offers is approximately $36,000 (assuming placement of the nurses on the 1998-99 bargaining unit salary schedule as full-time employees), which is slightly less than one-half of one-tenth of one percent (0.049%) of the total expenditures for salaries in the school year ending in 1999. As five of the six nurses presently are employed to work only six-hour days, if the District placed these five employees on the 1998-99 salary schedule as .75 FTE, the cost difference between the two parties' final wage offers is less than $400.

The District's Business Manager suggested that the District's current fund balance indicates an inability to absorb any unexpected costs. He also testified that he did not know what financial impact acceptance would have on the fund balance.

B. FACTOR GIVEN GREATER WEIGHT—LOCAL ECONOMIC CONDITIONS

The unemployment rate in Racine has steadily declined through 1997. The downward trend changed in May 1998 when the rate increased from a record low of 3.1 percent to 3.2 percent. The Wisconsin Department of Workforce Development has reported that there was a strong growth in the labor force during 1998. From 1996 through 1997, the per capita income grown in Racine County exceeded the rate of growth for both the State of Wisconsin and the United States. The rate of income growth was 5.5 percent higher than the statewide average—seventh highest in the state.

C. THE LAWFUL AUTHORITY OF THE EMPLOYER

There is no contention that the Employer lacks the lawful authority to implement either offer.

D. STIPULATIONS OF THE PARTIES

While the parties were in agreement on many of the facts, there were no stipulations with respect to the issues in dispute.

E. THE INTERESTS AND WELFARE OF THE PUBLIC AND THE FINANCIAL ABILITY OF THE UNIT OF GOVERNMENT TO MEET THESE COSTS

This criterion requires an arbitrator to consider both the employer's ability to pay either of the offers and the interests and welfare of the public. The interests and welfare of the public include both the financial burden on the taxpayers and the provision of appropriate municipal services. There is no contention that the District lacks the financial ability to pay either offer.

The public has an interest in keeping the District in a competitive position to recruit new employees, to attract competent experienced employees, and to retain valuable employees now serving the District. Presumably the public is interested in having employees who by objective standards and by their own evaluation are treated fairly. What constitutes fair treatment is reflected in the other statutory criteria.

F. COMPARISON OF WAGES, HOURS AND CONDITIONS OF EMPLOYMENT

The purpose in comparing wages, hours, and other conditions of employment in comparable employers is to obtain guidance in determining the pattern of settlements among the comparables as well as the wage rates paid by these comparable employers for similar work by persons with similar education and experience.

The evidence shows that other employees in the bargaining unit, including audiologists, physical therapists, occupational therapists, diagnosticians, speech clinicians, wellness coordinators, and psychologists all share the same benefits, salary advancement opportunities, and working conditions. All these specialists have duties and demands distinct from teachers in some respects, but the District does not have separate addenda for their working conditions, hours, and wages. All, except the Health Care Coordinators, are salaried employees, although their salaries are determined by different salary schedules. The District bargaining units that have settled for 1997-98 and 1998-99 received 2.5 percent increases each year.

Comparing the District with the nine largest districts in Wisconsin (Appleton, Eau Claire, Green Bay, Janesville, Kenosha, Madison, Milwaukee, Sheboygan, and Waukesha). Seven of these nine districts employ nurses. (Janesville and Eau Claire utilize the services of nurses employed by county health departments.) Five of the seven districts report that registered nurses are included in the teachers' bargaining unit and are

paid a salary as opposed to an hourly wage. In four of these five districts, the nurses are placed on the same salary schedule as that used for teachers and they receive the same benefit package. The largest salary increase for nurses in the 1998-99 school year was 3.96 percent in Appleton.

The Nurse Supervisor testified that nurses tend to be salaried if they supervise and are paid on an hourly basis if they do not supervise. The evidence shows that private sector nurses in the Racine area are paid on an hourly basis. District nurses are presently paid an hourly wage. The mean hourly wage for registered nurses in Racine County is $18.83.

G. CHANGES IN THE COST OF LIVING

Both offers would result in wage increases greater than the increase in the cost of living as measured by the Consumer Price Index for All Urban Consumers.

H. OVERALL COMPENSATION PRESENTLY RECEIVED BY THE EMPLOYEES

In addition to their salaries, employees represented by the Association receive a number of other benefits. While there are some differences in health and welfare benefits received by employees in comparable public employers, it appears that persons employed by the District generally receive benefits equivalent to those received by employees in the comparable municipalities.

I. CHANGES DURING THE PENDENCY OF THE ARBITRATION PROCEEDINGS

No material changes during the pendency of the arbitration proceedings have been brought to the attention of the Arbitrator.

J. OTHER FACTORS

This criterion recognizes that collective bargaining is not isolated from those factors which comprise the economic environment in which bargaining takes place. See, e.g., *Madison Schools*, Dec. No. 19133 (Fleischli 1982). There is no evidence that the District has had to or will have to reduce or eliminate any services, that it will have to engage in long term borrowing, or that it will have to raise taxes if either offer is accepted.

VI. ANALYSIS

A. INTRODUCTION

While it is frequently stated that interest arbitration attempts to determine what the parties would have settled on had they reached a voluntary settlement (See, e.g., *D.C. Everest Area School Dist. (Paraprofessionals)*, Dec. No. 21941-B (Grenig 1985) and cases cited therein), it is manifest that the parties' are at an impasse because neither party found the other's final offer acceptable. The arbitrator must determine which of the parties' final offers is more reasonable, regardless of whether the parties would have agreed on that offer, by applying the statutory criteria. In this case, there is no question regarding the ability of the Employer to pay either offer. The most significant criterion here is a comparison of wages, hours and conditions of employment.

B. DISCUSSION

1. FACTORS GIVEN GREATEST WEIGHT AND GREATER WEIGHT

Although the District suggests it might have to reduce the budget or might even run deficits, it does not point out the concrete steps it would actually have to take should the Association's offer be selected. It is not possible to speculate as to the District's likely budgetary action in the future. See *Oregon Sch. Dist. (Educational Assistants)*, Dec. No. 28724-A (Levine 1997).

The record fails to demonstrate that implementation of either final offer will require the District to eliminate student services or activities or programs. Additionally, nothing in the record establishes that selection of either final offer will force the District to raise revenues above those permitted by law or to exceed statutory spending limitations. Cf. *Black River Falls School Dist.*, Dec. No. 29002-A (Vernon 1997).

However, a low fund balance in and of itself to defeat selection of a party's more costly final offer in an interest arbitration proceeding. The District must show an actual connection between the two. See *Oregon School District (Educational Assistants)*, Dec. No. 287424-A (Levine 1997) (district may have strong point in claiming that budget fund balances are already below safety margin, but it fails to explain how it applies to the instant case). It is not appropriate to base a decision here on speculation as to what the fund balance may be in years beyond the term of the agreement at issue here. *Madison Metropolitan School Dist.*, AAA Case 51 390 00496-95-S (Nathan 1996).

Because of the minimal difference between the cost of the parties' final offers, there appears to be no sufficient difference to justify significant weight being placed upon either the greatest weight or the greater weight criterion. See *Waupaca County (High Unit)*, Dec. No. 28850-A (Petrie 1997). Because of the small number of employ-

ees in this dispute, acceptance of either offer would not result in a budget increase that would threaten the District's budget fund balance so adversely that other deserving areas of the budget will have to be unduly cut back or sacrificed. *Oregon School Dist.*, Dec. No. 28724-A (Levine 1997).

Where, as here, the tax base is expanding, per capita income looks good, and the property tax levy rank is among the lowest, arbitrators have afforded the greater weight under the greater weight criterion to favor the union's final offer. *Columbia County (Courthouse and Human Services)*, Dec. No. 28997-A (Tyson 1997).

2. SECTION 2—RECOGNITION CLAUSE

While the two offers word the recognition clause differently, neither would result in the inclusion or exclusion of persons who are not presently members of the bargaining unit. Accordingly, this issue has no meaningful impact on the determination of which party's offer is the more reasonable.

3. SECTION 7—TENURE AND FAIR DISMISSAL

While the parties' offers with respect to tenure and fair dismissal differ in a number of respects, they both provide the nurses with just cause protection after the completion of the probationary period and both provide for binding arbitration of discharge grievances. Both proposals are reasonable.

It has not been demonstrated why individual contracts would be a benefit to the nurses or a burden to the district. Teachers have individual contracts because they are mandated by state law.

4. SECTION 10—HOURS AND OTHER WORKING CONDITIONS

Presently, preparation time is not provided for nurses. Both proposals provide preparation time for teachers. The Association's offer would provide 140 minutes per week. The District's proposal would provide a reasonable amount of time as set by the Nurse Supervisor. The Nurse Supervisor testified that preparation would be given at times that are not disruptive to the school. In her opinion, two or three hours per week would be reasonable. The Association's proposal relating to preparation time is more reasonable than the District's. By specifying the number of minutes of preparation time, the likelihood of disputes over unequal treatment are eliminated and the likelihood of grievances relating to preparation time is reduced.

The Association has not given a persuasive reason as to why nurses, whose duties are different than classroom teachers, should have the same starting and ending times as classroom teachers. The District's proposal is more specifically drafted to address the work of nurses and is more reasonable than the Association's proposal.

With respect to assignment and transfer of nurses, the District proposes to maintain the status quo. Under the Association's proposal, nurses would be assigned to specific schools and they can either post out after serving in that school for five academic semesters or be displaced and involuntarily reassigned.

5. SECTION 14—LENGTH OF SERVICE

Regarding length of service, both proposals expand the definition to include nurses who do not have DPI certification. The Association expands the definition to include all continuous service with the District from the original date of hire in a Health Care Coordinator position, while the District's expands the definition to include all continuous service in the teacher's bargaining unit. While there are obviously differences between the two offers, the differences are not so significant as to be determinative in this proceeding.

6. SECTION 15—ASSIGNMENT AND TRANSFER

The District's offer regarding assignments preserves the status quo. The Association's offer (to use the language applicable to teachers in the current teacher collective bargaining agreement) would change the current practice relating to assignment of nurses. The Association has not shown compelling reasons to change the status quo. Accordingly, the District's offer on this issue is more reasonable.

7. SECTION 16--EVALUATIONS

The evaluation instrument used for evaluating teachers is obviously unsuited for the evaluation of teachers. Although the collective bargaining agreement presently allows the District to make changes in the evaluation instrument after joint study with the Association, adoption of the Association's evaluation proposal would most likely result in months of study before a mutually acceptable evaluation instrument for nurses could be developed. On the other hand, the District's proposal would permit the development of an evaluation instrument relevant to nurses. If the instrument is inappropriate, the Association could grieve the use of the instrument. The District's offer is slightly more reasonable than the Association's on this issue.

8. SECTION 18—PROFESSIONAL COMPENSATION

The Association's position that nurses should be paid a salary like other employees in the bargaining unit rather than an hourly wage is persuasive. All other employees in the bargaining unit, including speech therapists, occupational therapists, psychologists, audiologists, physical therapists, diagnosticians, speech clinicians, wellness coordinators, receives a salary rather than an hourly wage. However, the reasonableness of the compensation proposals must be determined with respect to the actual rate of compensation as compared to other employers rather than the method of compensation.

The evidence shows that the District's proposal would result in an hourly wage rate that compares favorably with the hourly wage rates received by nurses in Racine County. According to the evidence, the District's offer would result in a wage rate that exceeds the mean for registered nurses working in Racine County. The District's percentage wage increase also compares very favorably with the percentage increases received by nurses in the comparable districts. Only one district among the comparable districts provided nurses with a higher percentage increase.

The District's proposed increase of 3.78 percent and 3.80 percent (a lift of 7.58 percent after two years) greatly exceeds the cost of living as measured by the Consumer Price Index. It is also significantly higher than the wage increases agreed to by the two bargaining units in the District that have settled their contract disputes. On the other hand, the Association's proposal would result in an increase of 12.25 percent over the present wage rate. This increase far exceeds the percentage increases received by Districts in the comparable districts. It also is more than double the wage increase received by District bargaining units that have settled.

Inasmuch as the District's proposal would result in a wage rate comparable to that received by registered nurses employed in Racine County and the District's proposal would result in percentage increases substantially closer to the percentage increases in the comparable districts and in settled bargaining units in the District, the District's compensation proposal is more reasonable than the Association's.

9. SECTION 19—INSURANCE AND RETIREMENT

The parties have proposed the same offers regarding insurance and retirement except for the amount of the Employer's contribution to the retirement trust. The Association proposes an increase to 6.2 percent—the same percentage teachers receive—in the Employer's contribution to the retirement trust. The District proposes 5.8 percent—the amount required by the state and the amount presently received. While teachers receive a 6.2 percent contribution, no compelling reason has been given as to why the status quo with respect to nurses should be changed. The District's proposal is slightly more reasonable with respect to this issue.

Both proposals would result in substantial improvements in the health benefits received by the nurses.

10. SECTION 21—SICK LEAVE

There are no significant differences between the parties' respective offers on this issue.

11. SECTION 22—LEAVE OF ABSENCE

The District proposes modifications of this section to fit in with the hourly wage scheme for nurses. If the District's final offer is selected, then the District's proposal on this issue will be appropriate; if the Association's final offer is selected, the Association's proposal will be appropriate. Thus, the reasonableness of this proposal is closely related to which final offer is ultimately selected.

C. CONCLUSION

The Arbitrator cannot divide the parties' offers, but must select one or the other of the parties' total offers. Regrettably, the parties did not reach agreement on many of the issues in dispute. A voluntary agreement would have enabled the parties themselves to come up with solutions to the various problems associated with the accretion of the nurses into the teachers' bargaining unit. Because the Arbitrator is confined to selecting one or the other offer, which ever offer is selected will most likely result in problems in applying contract language to nurses—problems that could have been avoided by the parties' solving these problems themselves.

The key issue in this dispute is the compensation to be paid the nurses. As discussed above, the District's proposal is more reasonable than the Association's. The Association's offer would result in a wage increase of approximately 12.25 percent. Neither internal comparables nor external comparables support a wage increase of 12.25 percent, even taking into account that this would be an increase over the wage rate of two years ago. The rate of increase and the hourly wage proposed by the District is closer to that of the internal and external comparables. Accordingly, it is concluded that the District's final offer is more reasonable than the Association's.

VII. AWARD

Having considered all the relevant evidence and the arguments of the parties, it is concluded that the District's final offer is the more reasonable final offer. The parties are directed to incorporate into their collective bargaining agreement the District's final offer together with all previously agreed upon items.

Executed at Delafield, Wisconsin, this twenty-eighth day of December, 1999.

_____

Jay E. Grenig