BEFORE THE ARBITRATOR

In the Matter of the Final and Binding Interest Arbitration Dispute between

FOND DU LAC SCHOOL DISTRICT

and

FOND DU LAC SECRETARIAL/INSTRUCTIONAL ASSISTANT ASSOCIATION

WERC Case 57, No. 56970, Int/Arb-8588
Decision No. 29627-A

APPEARANCES:

For the Association: Armin Blaufuss, Director, Winnebagoland UniServ, P.O. Box 1195, Fond Du Lac, WI 54396.

For the District: Edgarton, St. Peter, Petak, Massey & Bullon, Attorneys, by Mr. John A. St. Peter, 10 Forest Avenue, P.O. Box 1276, Fond du Lac, WI 54936-1276.

ARBITRATION AWARD

The Association has represented a bargaining unit of full-time and part-time secretarial and clerical employees for many years. The previous collective bargaining agreement expired June 30, 1997. On August 26, 1997 the Wisconsin Employment Relations Commission issued a certification, following a new election, as a result of which the Association began to represent instructional assistants and interpreters as a part of the same bargaining unit. The admission of 90 instructional assistants and interpreters enlarged the unit from approximately 50 to approximately 140. On November 9, 1998 the Association filed a petition with the WERC requesting arbitration pursuant to Sec. 111.70(4)(cm)6, Wis. Stats. Efforts to mediate the dispute by a staff member of the Commission were unsuccessful, and an impasse investigation was closed by the Commission's order for binding arbitration dated May 18, 1999. The undersigned Arbitrator was appointed by Commission order dated June 24, 1999. A hearing was held in this matter in Fond du Lac, Wisconsin, on August 12, 1999. Pre-hearing and post-hearing briefs were filed by both parties, and the record was closed on September 27, 1999.

Statutory Criteria to be Considered by Arbitrator
Section 111.70 (4) (cm) 7

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 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 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. Stipulation 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 employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.
e. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in the public employment in the same community and in comparable communities.
f. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees in private employment.
g. The average consumer prices for good and services, commonly known as the cost of living.
h. The overall compensation presently received by the municipal employees, 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.

The Association's Final Offer

The Association's final offer is attached as Appendix A to this Award.

The District's Final Offer

The District's final offer is attached as Appendix B to this Award.

Discussion

I will first assess the reasonableness of the parties' positions on an issue by issue basis, and then turn to the overall assessment in order of the statutory criteria.

Comparables

In the Association's initial brief, it argues that the Fond du Lac School District has historically compared itself to other school districts, citing 1992-93 and 1999-2000 school year budget documents, and noting that in bargaining with its teachers, the District has historically compared itself to 9 school districts in the Fox Valley, following a 1985 interest arbitration decision in which Arbitrator Robert Mueller held that the school districts of Appleton, Oshkosh, Neenah, Menasha, Kaukauna, and Kimberly should be included along with the District's preferred comparables of Green Bay, Manitowoc, and Sheboygan. In the District's initial brief, the District contends that internal comparables should be considered, but that there has been no showing of a history of relationship between non-certified employment units and teachers' settlements, and that for practical purposes, the internal comparable of choice is the custodial bargaining unit represented by AFSCME. Among external comparables, the District cites a 1986 arbitration award in the secretarial bargaining unit by Arbitrator Stanley Michelstetter as accepting three external comparables, namely Moraine Park Technical College, the City of Fond du Lac, and Fond du Lac County as primary, with the North Fond du Lac School District as a less important comparable. The District argues that these continue to be the primary comparables, and contends that the Fox Valley athletic conference is an inappropriate comparable group because the District draws from a labor market far more restricted geographically than the extent of that grouping. The District further argues for the use of three private employers as comparables, namely St. Agnes Hospital, Giddings and Lewis, Inc., and Mercury Marine.

In its post-hearing brief, the Association cites a 1983 Glendale School District award by Arbitrator Sharon Imes as supporting its argument that comparability groupings used for teachers should also be used for clerical employees within the same districts, and argues that the District's use of residency areas is misleading, because while 90% of secretaries and instructional assistants live "locally" within the District's definition, 88% of the teachers also do so. In its post-hearing brief, the District notes testimony at the hearing to the effect that 90 percent of all the unit's members reside within ten miles of the City of Fond du Lac, and argues that many of the school districts identified in the Association's exhibits are more than 30 miles from Fond du Lac. The District argues that the use of an athletic conference as a set of comparables for non-certificated units was recently rejected in a Manitowoc Schools award by Arbitrator June Weisberger. The District contends that the 1986 group of comparables should be accepted, because altering a previously-established comparability group encourages parties to go "comparables shopping" in future.

Analysis

While there is some merit in the District's "labor market" approach, and while there is obvious reason to avoid upsetting established comparables groups absent some new circumstance warranting such a change, the short list of comparables established in 1986 became markedly less appropriate once the instructional assistants were added to the bargaining unit. Not only was there but a single school district among the four employers previously used as comparables in Arbitrator Michelstetter's award, but Arbitrator Michelstetter himself noted that the North Fond du Lac School District was a less relevant comparison than the other three because it was so much smaller than the Fond du Lac district. The other three employers then used as comparables, meanwhile, do

not employ instructional assistants at all, while instructional assistants today constitute well over half the bargaining unit. The 9 districts in the Fox Valley used by the Association, meanwhile, have been used before by both parties in connection with the teachers, and while labor markets are known to be more tightly defined geographically for non-certified employees than for teachers, an athletic conference has often been accepted as a comparable grouping even for non-certified employees. I conclude that the Fox Valley 9 school districts become the primary appropriate comparables here, with the 1986 group of four comparables falling in relative relevance to a secondary position.

Work year

In its initial brief, the Association argues that the District established a 182 day work year for instructional assistants in the recent past, and that the Association's proposal merely mirrors the District's practice, including an agreed-upon calendar for 173 days and nine more days which are scheduled by the building administrator involved. The District's initial brief argues that the long-standing practice of the District is consistent with its own proposal, in that the District has had unilateral authority to schedule instructional assistants for many years. The District argues that instructional assistants are hired to assist teachers, and their job responsibilities must correspond with the teachers' calendar. The Association's proposal, the District argues, opens the possibility that in future, the calendars will not coincide, putting the District in an untenable position. The District argues that its final offer is supported by the majority of both the Association's and the District's comparables, arguing that the work year is at the discretion of the District in North Fond du Lac, Kaukauna, Kimberly, Menasha and Neenah.

In its reply brief, the Association contends that on a number of occasions, the District has reduced hours of work or length of work year for instructional assistants, without reducing any other support staff group. The Association contends that the District is seeking an unqualified ability to cut these employees' work year, while its own proposal ensures that instructional assistants will be available to work on days when classes are being held.

Analysis
I find this item to be of minor importance, essentially because it is unlikely that the Association would "shoot itself in the foot" by insistence on a calendar which forced the District to employ instructional assistants on dates markedly different from the teachers' dates. The external comparables appear to be roughly evenly split, and the Association's proposal does reflect the District's past practice. Yet I find the District's proposal to be the more reasonable, simply because instructional assistants must expect that teacher calendars will control. This becomes a small weight in favor of the District's final offer.

Transfer rights
In its initial brief, the Association argues that its proposal reflects the pattern of rights of secretaries and instructional assistants in the comparable districts. The Association notes that several different principles are involved—the circumstances under which secretaries should be permitted to transfer into vacant secretarial jobs, the circumstances in which instructional assistants should be permitted to transfer into vacant instructional assistant jobs, and what should be the rights of each group to transfer into an open position in the other. The Association contends that in internal openings within either group, under the Association's proposal the District must give preference to the senior applicant among two internal bidders only if their qualifications are essentially the same. Similarly, the Association contends, an employee who bids "out of category" is entitled to the position only if qualifications compared to a new hire are essentially the same. The Association contends that it has responded to the District's concerns as expressed in the negotiations, in several of the tentative agreements. By introducing a statement of qualifications in the notice of vacancy, the Association contends, the District can now set forth standards that can be used to justify its decision with respect to transfer, as well as specify to employees more accurately what it will take to qualify for a vacant position. By agreeing to limit the District's requirement to post a notice of vacancy for a particular position to once every 120 calendar days, the District has been relieved of some of the work involved, and by restricting an employee from bidding for a posted position for at least 24 months after being selected for a position within the unit, whether or not the employee actually accepted the position, the Association argues, it has accommodated the District's interests. The Association contends that the need for employees to have "out of category" bidding rights is demonstrated by the fact that 26 of the 55 secretarial employees were employed as instructional assistants first, and that the District has fallen far short of the practice among comparable school districts in accommodating employees' needs for job advancement and transfer flexibility.

In its initial brief, the District contends that the Association is attempting a major inroad on the District's management right to fill vacancies with the most qualified applicants. The District contends that the Association's final offer contains a requirement that it hire an internal applicant if he or she meets the minimum qualifications and training for the vacant position, regardless of the qualifications of all outside applicants. The District characterizes its current language as a "relative ability" clause and the Association's proposal as a "sufficient ability" clause. The District argues that under a clause such as the Association's proposal, comparisons between applicants are unnecessary and improper, and the job must be given to the senior bidder if he or she is competent, regardless of how much more competent another bidder may be. The District contends that among the public employers which have been argued as comparables, Moraine Park, Kaukauna, Appleton and Menasha have language similar to the Association's final offer, while North Fond du Lac and

the City of Fond du Lac require the employer to consider unit members before outside applicants, Neenah and Oshkosh have "relative ability" clauses, and Kimberly and Fond du Lac County have no restrictions on management rights.

In its reply brief, the Association contends that the District has the right to establish the qualifications for any position under the language newly agreed upon, and that with this in place, "sufficient" ability should be all that is required. The Association cites testimony in the record at the hearing to the effect that the District's application of seniority, and the hiring of external candidates over qualified internal candidates, have caused problems. The Association also contends that the ability to transfer, if qualified, to vacant positions has become increasingly important to instructional assistants because of the District's decision to create 4-hour positions. The Association contends that current qualified instructional assistants should have the right to transfer to the few 6-hour positions that can be expected to become available in the future, and that if there is more than one person meeting whatever qualifications the District chooses to establish, the most senior person should get the position.

In its reply brief, the District contends that the Association has entirely failed to offer any quid pro quo for the significant change in the status quo which it seeks. The District argues that the Association's witnesses also failed to establish any need for the change, by the clear and convincing evidence which numerous arbitrators have required to support such a significant language change. The District notes that it has consistently rejected proposals to replace the current "most qualified" criterion with a "minimum qualified" criterion since at least the middle 1980s. The District argues that its long-standing practice of seeking the most qualified person for an opening, whether the applicant is internal or external, is actually supported by the testimony of two of the Association's witnesses, noting that both Diane Diedrich and Connie Thome testified that they have been promoted because they demonstrated that they were the most qualified person in contention for a given job.

Analysis

I do not find that the Association's proposal entirely replaces the former vacancy standard with a "minimum qualifications" standard, as the District argues. Rather, the Association's proposal uses the "if qualified" standard when only one internal applicant is competing for a new opening with outside applicants. But if two or more instructional assistants apply for an instructional assistant opening, or two or more secretaries apply for a secretarial opening, the senior employee must be given the position only if qualifications are "essentially the same". This remains a type of "relative ability" clause, in which the essential change has been to provide preference for internal employees over new hires.

The parties presented evidence with respect to 15 roughly similar bargaining units, including both parties' preferred lists of comparables. All of these are relevant to this particular issue, and more so than the internal comparables, which necessarily involve other types of employees. Upon review of the contracts involved, as well as the parties' summaries, I conclude that three of them provide for "seniority if qualified" or similar language formulations which can be characterized as "strongly in favor of seniority." Seven have various formulations of mixed/relative standards, and four have no

seniority preference. But overwhelmingly, they provide for one form or another of priority for internal applicants over outsiders.

Here, the evidence adduced by the Association at the hearing did not show a pattern of abuse by the district, but it did show that the District has regularly used its contractual right to hire from outside in preference to internal applicants, and the evidence did not suggest that the grounds for doing so were in all cases as appropriate as the District would have it. Meanwhile, the fact that 26 current secretaries started out as instructional assistants, along with the fact that the District's change in hiring patterns for instructional assistants makes transfers within that group increasingly unlikely to be desirable to an employee, demonstrates that employees have a strong interest in being able to bid for positions outside of their current workgroup and to be given some preference in that process. The fact that overwhelmingly, districts comparable to Fond du Lac have found language similar to the Association's to be language they can live with makes the proposed change less demanding of a quid pro quo and additional rationale than the District claims. This is particularly so because in the likely instances where more than one employee from within the same workgroup is bidding, the standard remains as it was; seniority controls only if qualifications are "essentially the same". By contrast, read literally, the existing language does not guarantee preference to an existing employee even if equally qualified to an outsider, unless two or more existing and bidding employees have such skills—a somewhat strange and rare formulation. I conclude that the Association has demonstrated some basis for a change in the existing language. This is, however, a change of significant proportions, and the Association offered only a minor quid pro quo, in the form of an agreement to limit the frequency of posting and bidding. For that reason, I conclude that on balance, the District's offer on this issue is slightly preferable.

Layoff and recall

In its initial brief, the Association notes that there is no dispute with respect to the layoff and recall rights of secretaries, and that the dispute centers on the notice to be given to instructional assistants other than child-specific assistants prior to layoff, bumping rights, and recall rights particularly for EEN assistants. The Association contends that a hierarchy that places interpreters at the top, followed by child-specific assistants, EEN assistants, and regular education assistants, appropriately reflects skill differences and is particularly shown as appropriate based on the comparison with the Fox Valley school districts, which the Association contends provide for recall of instructional assistants in inverse order in which they were laid off, with only one exception. The Association also contends that it has answered a District concern for the qualifications of emotionally disturbed students' aides by providing that the District need not recall any assistant to an ED position if that assistant has not had experience with ED students in the last five years.

In the District's initial brief, it argues that only one employer, among either party's lists of comparables (Appleton) lacks a qualification condition for recall of special education instructional assistants and child-specific instructional assistants. The District contends that special education places unusual amounts on the experience and skills of the instructional assistants, and that the assumption that an instructional assistant who was once qualified is forever qualified is absurd.

In its reply brief, the Association contends that a hierarchy of skills is recognized in the District's own layoff proposal and in its placement and advancement proposal, despite the District's attempt

to denounce it for purposes of bumping. The Association also contends that contrary to the District's contention via its witnesses' testimony that the specific categories were so distinctive there was no overlap, the exhibits demonstrated that: the CDS instructional assistants work one-on-one with students; an interpreter is found on the list of one-on-one instructional assistants; at least three one-on-one instructional assistants are considered EEN instructional assistants; regular instructional assistants are assigned to work with EEN students on a regular basis because of the District's inclusion initiative; and other examples of such overlaps. In its reply brief, the District contends that its inclusion initiative is occurring in only a limited number of the District's buildings, while inclusion of the disabled students into a regular classroom can occur only when that is feasible for the particular student, and that District witness Kelly Noble testified convincingly that it is incorrect to claim that an interpreter is qualified to be a child-specific assistant or an EEN assistant. The District also argues that there is no compelling need for the Association's recall proposal because since 1982 there has only been one layoff, and that involved a one-on-one child-specific employee.

Analysis

Because there has only been one layoff of one, child-specific employee since 1982, I conclude this is a relatively minor item. I agree with the District's contention that requirements for instructional assistants working with special education have been becoming more stringent, and therefore I find the District's proposal more appropriate. In view of the relative unlikelihood of its ever being applied, however, it is only a minor weight in favor of the District's offer.

Placement and advancement

The Association contends in its initial brief that placement at category II of the wage scale has occurred under a number of circumstances other than the employee involved having a four-year college degree, citing several examples in which an associate's degree, qualification as an LPN, two years of college plus some work experience, proficiency in Braille, and the like, qualified an employee for inclusion in that category. The Association contends that its proposal mirrors this history, while the District's proposal fails to reflect the full variety of qualifying experience which it has accepted in the past. The Association also contends that its proposal as to advancement mirrors the general practice, in which movement from category I to category II has occurred in as few as three years and as many as 10, but that only two of 12 instructional assistants advanced to category II advanced after the sixth year. The Association argues that it has accommodated a District interest in further training by permitting the District to require in-service or child care courses as a condition to moving to classification II, but argues that the District proposal, for practical purposes, requires not only a school principal's recommendation, but also a commitment to get an associate or college degree in child care, which is far disproportionate to the wages paid at category II. The Association contends that its proposal, which adds criteria beyond what the District has sometimes required in practice, is the more reasonable. As to anniversary dates, the Association contends that after it had originally proposed changes to anniversary dates and withdrawn them because of District resistance, the District included in its final offer a change in anniversary dates which will hold up a wage increase for an employee hired on July 2 for almost two years, without any discussion of this proposal at the bargaining table.

In the District's initial brief, it contends that its final offer improves existing placement and advancement criteria to the benefit of instructional assistants, and that the Association has shown no reason to liberalize the placement and advancement criteria even further. In its reply brief, the Association takes issue with the District's characterization on its final offer as being favorable compared to instructional assistant past practice, and contends that of the 19 EEN instructional assistants hired in 1991 or earlier, all of them were placed in classification II by the present day, while 13 of 16 regular instructional assistants hired in 1991 or earlier have achieved that status. The Association contends that the District failed to produce any evidence contradicting the Association's assessments of past practice, and is now clearly proposing a substantial restriction of advancement and placement opportunities for instructional assistants.

Analysis

Based on the documents in the record, it appears that the Association's proposal better matches the wide variety of circumstances in which instructional assistants have qualified for category II in the past. The District's proposal, therefore, constitutes in effect a proposal for change in the status quo, even though the status quo was previously non-union for this work group. I do not find that the District has offered any persuasive rationale or any quid pro quo for this change, and while the differences between the parties' proposals are not great, this becomes a minor weight favoring the Association's final offer. The District did provide a rationale for calculating employees' advancement dates as of July 1(a new and more rigid computer accounting program it has adopted after its former program's vendor went out of business.) But this is a matter of management convenience rather than necessity, the District does not appear to have brought this to the bargaining table for discussion, and more employees appear to have been disadvantaged than helped by it. This issue also becomes a minor weight favoring the Association's offer.

Employee WRS contribution

The Association contends that its proposal accurately reflects the District's past practice, including District payment of amounts varying from 5.8 percent to 6.4 percent during the 1994-97 collective bargaining agreement, even though that Agreement required the District to pay 6.2 percent exactly. The Association contends that during the past several collective bargaining agreements, the parties have inserted the percentage which represented the employee contribution at the time of settlement, but that if during the term of the agreement that amount fell, the District would reduce its payment to the required amount without a grievance being filed, conversely increasing its payment without demur to the amount required, if the amount rose. The Association argues that the District had the same arrangement with the teachers' bargaining unit, but that in 1997-99 bargaining, the District and the Teachers' Association recognized this practice and wrote into the contract that the District pays the full share of the employee contribution. The Association contends that the appropriate action here is to write the practice into the contract just as the District did with the teachers, and that there is no justification for the District's offer, which would put on the Association the onus to negotiate again anytime the percentage rate was on an upswing.

This issue was not specifically addressed in either of the District's briefs or in the Association's post-hearing brief.

Analysis

It is difficult to know what to make of an issue which parties would bring to interest arbitration even after agreeing on one set of language, and then cheerfully and mutually ignoring it for years. Yet the fact remains that the District has agreed in connection with the teachers' contract to the language change the Association seeks here, and no District witness contradicted the Association evidence to the effect that the District has in practice paid the full amount of the WRS contribution regardless of what it said in the contract. Under the circumstances, I conclude that the Association's proposal is the more reasonable.

Insurance benefit eligibility

In the Association's initial brief, it argues that this issue arose because of a unilateral District action which had the effect of discontinuing the major fringe benefit for almost all future instructional assistants. Up to that date, the Association argues, the District had a long-standing practice of assigning secretaries and instructional assistants sufficient hours to qualify for benefits—a minimum of 30 hours per week, or six hours per day. On May 28, 1998, without notice to or bargaining with the Association, the District began to replace vacant six-hour instructional assistant positions with four-hour positions. The four-hour positions are not eligible for benefits. The Association argues that in 1996-97 the District had 73 instructional assistant positions, of which two were for fewer than six hours per day; and that the same number was true for 1997-98. Virtually all new hires since then in the instructional assistant category have been for fewer than 6 hours daily. The Association contends that setting the standard for eligibility for health and dental insurance at 17 ½ hours per week is consistent with the teachers collective bargaining agreement (which provides for full benefits at that level). The Association also notes that in July, 1996 it was under the impression that what was then the secretaries' bargaining unit was under a "me-too" agreement with the District with reference to health insurance benefits, and that under this agreement a part-time secretary had been denied health insurance improperly because the teachers' eligibility requirement was 17 ½ hours. The Association notes that upon the District's objection that there was no contract violation in the District refusing health insurance for that employee, the Association was forced to concur. The issue of hours to be worked for health insurance eligibility thus arose even before the District's May, 1998 unilateral change. The Association argues that among the Fox Valley schools, prorated benefits for part-time secretaries and instructional assistants are the pattern, with employees eligible for prorated benefits at between 17 ½ and 20 hours per week of employment, and full benefits paid at levels varying from 17 ½ to 40 hours per week, with the average hours per week for full benefits being approximately 32. The Association contends that teachers make up over 50 percent of the District employees, and administrators all receive full insurance benefits, while the custodians, who are under an insurance eligibility standard of 30 hours, are in almost all cases afforded full benefits of that level since there are few part-time employees in that bargaining unit.

In the District's initial brief, it argues that its proposal maintains the status quo with respect to health insurance, while the Association's proposal represents a radical change. The District represents that "all other" non-certificated bargaining units of the District require that an employee work 30 hours per week to qualify for health, dental and LTD insurance, and 15 hours per week to qualify for life insurance. The District argues that the internal comparisons should be more persuasive, while teacher benefits reflect the employment market for professionals and are irrelevant compared to other non-certified employees. The District contends that the Association is proposing a significant change in the status quo, while numerous arbitrators have required that such

a party must establish a compelling need for the change, demonstrated by clear and convincing evidence that the proposal reasonably addresses a need for the change, and must also demonstrate that a sufficient quid pro quo has been offered or that other comparable groups were able to achieve the provision without the quid pro quo.

The District calculates the cost of prorated benefits at a minimum additional annual cost to the District of $53,103.36 and a maximum of $114,546.48. The District acknowledges that this calculation is based on "all 21 unit members who work less than six hours per day choosing either a single plan resulting in the minimum cost or all 21 unit members choosing the family plan resulting in the maximum annual cost." The Association, the District notes, has proposed a lower wage increase than the District, apparently as a proposed quid pro quo, but the District contends that the savings for the District below its own wage proposal for 1998-99 amount to only $18,510, far short of the annual cost of the benefits sought. Furthermore, the District argues, such a new benefit has an extended financial cost because "undoubtedly, once inserted into the contract the benefit will continue indefinitely." The District contends that among the primary external comparables, Moraine Park has no instructional assistants, while it pays prorated insurance premiums for secretaries who work at least 25 hours per week and full premiums for secretaries who work 37 ½ hours per week, while employees below 25 hours per week are not eligible for insurance. The District also notes that in the City of Fond du Lac, the employer pays the full cost of single health insurance coverage for permanent part-time employees working less than 1,560 hours per year, but that the employee must pay the difference between the single and family coverage, while in Fond du Lac County, the employer pays 75 percent of family or 85 percent of single premiums for part-time employees working at least 20 hours per week. With respect to school districts within the athletic conference, the District argues that Appleton appears closest to the Association's offer, but requires proration based on a 35 hour workweek rather than the 30 hour work week in Fond du Lac, while Kaukauna appears closest to the District's offer. The District argues that among its 3 major private sector employers used as comparables, none prorates insurance if the minimum threshold is not satisfied, while the lowest threshold is 20 hours per week, for payment of a single premium only.

In its reply brief, the Association contends that the District has speculated about the cost of insurance in the future, but that prior to May, 1998 the District had a standing commitment to insurance benefits for virtually all of its instructional assistants. Since that date, the District has created 11 4-hour positions which were previously part of a 6-hour position, and the Association calculates that these are equivalent to 5 ½ positions with full benefits. The Association takes issue with the District's projection of health insurance costs, contending that the District has failed to mitigate these costs by what would have been the costs of the 5 ½ "benefited" positions which were eliminated, and the Association calculates that if all employees occupying those positions were single, their insurance premiums for the first year would be $20,800.10, while if they had dependent coverage, the cost would be $44,866.87. This would leave a "new cost" of $18,909.18 for single coverage, to a maximum of $40,788.06 if all the new positions took dependent coverage.

But even this, the Association argues, overstates the likely cost. The Association notes that based on past District experience, only about 70 percent of the bargaining unit's members are enrolled in health insurance, while prorated benefits act as a deterrent to taking insurance benefits. The

Association contends that if 8 of the 21 employees hired to work less than six hours do not take health insurance due to the out-of-pocket costs, the cost the District has calculated will be reduced by approximately 38 percent, and that the "projected" cost of health insurance for 1999-2000 over the 1998-1999 costs is reduced to 8.3 percent. The Association notes that District business manager George Anderson testified that an 8 percent increase in health insurance could be funded for 1999-2000 without going into the fund balance. The Association argues that hardship to the District is not shown, and that since under the Association's proposal the cost of the extended benefits begins to be felt only on July 1, 1999, the parties can deal with the costs in the 1999-2000 round of collective bargaining, where it belongs.

In its reply brief, the District argues that despite the Association's attempts to impeach or qualify the District's projected costs for the health insurance proposal, the $18,510 savings represented by the Association's lower wage offer fails to constitute an adequate quid pro quo, because it falls far short of even the minimum additional cost and because that cost will continue into future years. The District contends that the economic and political environment in which the District must operate has radically changed, and that the "greatest weight" factor requires that greatest weight be given to the fact that revenue controls exist, not whether the employer has the ability to pay the union's offer. Based on record testimony to the effect that it is necessary to maintain the fund balance at its current level in order to retain the District's bond rating through Moody's, the District argues that it is inappropriate to use the fund balance to fund ongoing costs, and that under revenue caps, no other sources are available sufficient to replace equity as a revenue source. Student enrollment has been decreasing since 1994, and because the money for increased health insurance cannot come from fixed costs, only program services (books and materials, computers, etc.) or the salary/fringe benefits of other employees, are available as the source. The District argues that ultimately, someone will have to be laid off in order to fund the new benefits for instructional assistants.

Analysis

Extending health insurance benefits to part-time employees who did not previously have such rights is clearly a change in the status quo. The size of the change, however, is called into question by the fact that until the District unilaterally changed its pattern of hiring instructional assistants, virtually all instructional assistants were entitled to health insurance and other benefits covered by the Association's proposal. The Association's calculation that of the 21 four-hour positions created since May, 1998, eleven were previously part of six-hour-or-better positions appears well grounded. I conclude that while the Association must demonstrate sufficient reason for the change and a sufficient quid pro quo, the fact of the District's May, 1998 change and its clear intent to replace employees with benefits, over time, with employees who have none, constitutes partial grounds for such a change.

I find neither of the internal comparables to be highly significant on this issue. While the Association has configured the cutoff point in its proposal to match the teachers' contract language (although in recognition of the better part-time benefits teachers generally get, it has proposed pro rata insurance contributions after 17 ½ hours per week of employment, while a 17 ½-hour teacher gets this benefit in full) this is insufficient to demonstrate that the teachers' collective bargaining agreement should be used as a baseline, because teachers' terms of employment must take into account a different and more competitive employment market, and because the teachers have plainly

enjoyed the 17 ½ hour standard for a considerable time. The fact that the custodians have a 30-hour standard is a more persuasive internal comparable.
Though I find the custodians' contract more relevant than the teachers', the Association has a point with its contention that the hours cutoff point is of less relevance to that unit, virtually all of whose members meet the higher level. Meanwhile, the pattern among the external comparables is significant, and is overwhelmingly in favor of the Association's proposal. Instructional assistants in all but one (Menasha) of the Fox Valley 9 districts are entitled to employer-paid health insurance benefits, usually prorated for part time employees. While 17.5 hours per week is lower than the cutoff for a number of these units, this is not by a large margin, and Green Bay uses a slightly lower standard while Appleton uses the same standard the Association proposes here.

The Association, I find, has offered a quid pro quo of significant proportions, making a wage proposal for the second year which is significantly below the District's proposal, while deferring the impact of the health insurance proposal until the end of the collective bargaining agreement.[1] Furthermore, I find the District's costing rationale to be extremely improbable. In District's exhibits D. 19 and D. 20, the District has plainly adopted the commonly-used "cast forward" method of costing, which in this instance has the effect of costing health insurance based on a baseline year of 1996-97, i.e. a year in which it was the practice for the District to hire instructional assistants only for periods of six hours or greater per day, and to extend them health insurance benefits. All of the District's costing of both proposals assumes a continuation of this condition. Yet the District's cost for the Association's proposal shown in D. 28 calculates both "minimum" and "maximum" figures as if these represented "new money." Furthermore, as the Association argues, the District's costing entirely fails to take into account the probability that many part-time employees will not accept health insurance for which they have to pay so much out of pocket. The Association notes that the District's own calculation in D. 19 shows 124 employees as taking either family or single health insurance, or 72.5 percent, and argues reasonably that if this is the pattern among employees who are granted full-time benefits, the pattern is likely to be for relatively fewer part-time employees to take those benefits since they will have to use anywhere up to 48 percent of their earnings to pay the premiums.

Since part-time employees have not been offered those benefits, it is impossible to be certain how many would take them, and the result is that it is impossible to cost this proposal exactly. What is clear, however, is that the District's costing greatly overstates the probable effect on the District's budget. The Association's figures, meanwhile, may not be borne out in practice, but at least reflect a recalculation to take into account the savings achieved by the District from its May, 1998 change which do not appear in the District's calculations. Given that Association exhibit A. 56, which calculates the financial disincentives to employees who work less than full-time, stands unrebutted

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[1] In its initial brief, the District questioned the propriety of the Association's proposal because it would not take effect until July 1, 1999, but it appears that subsequently, the parties have in effect agreed not to argue this question. I therefore will not address it.

by any evidence from the district, I find it probable that even at the high end (i.e. assuming that all of what would have been six-hour positions would qualify for family health insurance, and also that all of the replacement four-hour employees also qualify for family health insurance) the Association's net additional cost calculation of $32,970 is likely to exceed the actual cost. I note, by comparison, that District's exhibits D. 19 and D. 20 show the District's proposal for 1998-99 as being $22,300 greater overall than the Association's proposal. Finally, the fact that the Association has deferred its proposed change to the end of the contract means that even granting that there is justice in the District's concern for the future cost of this proposal, the District nets an offsetting savings in advance, which continues to accrue. The District also remains free to bargain wages for 1999-2000 and beyond according to the actual cost of pro rata health insurance for part-time employees, once that cost is known. I conclude that the Association has met its burden to demonstrate by clear and convincing evidence a need for the proposed change and an appropriate quid pro quo.

The Statute's Weighing:

The "greatest weight" and "greater weight" provisions of the statute are not brought into play by this proceeding. While the District has argued that the mere fact of revenue caps should be applied against the Association's proposal, this amounts to a generic argument of little persuasiveness in a setting in which the Association has proposed a new benefit which in effect restores a unilaterally removed benefit to much the same population of employees, the Employer's costing is suspect, and the Association has proposed a quid pro quo which actually reduces the cost of its final offer significantly below the cost of the Employer's final offer during the period which is within this Arbitrator's direct purview.

Subsection b. of subsection 7r. requires a valuation of other agreements reached in the course of this collective bargaining round. The District has argued that this Agreement reflects thirteen new benefits and language changes to the Association's advantage, compared to the status quo. The Association contends that eight of these "improvements" merely reflect the codification of what were already existing practices with the previously unrepresented instructional assistants, while one represents a concession by employees and three are minor improvements. I find that by and large, the Association has made its case. One new holiday, however, deserves to be recognized as a new benefit; it is duly costed in the District's overall costing. Under subsection c., while the District avers that the Association's health insurance proposal will be impossibly expensive for the future, I conclude that the District's calculations have exaggerated the likely future cost to a large degree, and for the term of this collective bargaining agreement, the District's proposal is significantly more expensive than the Association's. Under subsection d., the external comparables favor the Association with respect to health insurance and other benefits, and also favor the Association's proposal on transfer rights to the extent that it concerns competition between existing employees and new hires. With respect to the remainder of the Association's transfer rights proposal, the external comparables are essentially neutral, as they are for the recall provision. Under subsection e., for the varying reasons expressed above issue by issue, I find the internal comparables conflicting and/or unpersuasive with respect to most of the issues, while slightly favoring the District's offer on health insurance. Subsection f. provides a very minor weight favoring the District on the benefits issue, but it is of little relevance because the private employers cited do not

employ the same type of employees who now constitute a majority of this bargaining unit. Subsections g., h., i. and j. were not significantly argued by either party.

Summary

The work year, layoff and recall, placement and advancement, and WRS contribution issues are of minor importance compared to transfer rights and insurance. The first two of these four items slightly favor the District's offer, while the latter two slightly favor the Association's offer. On transfer rights, the District's proposal is slightly preferable, essentially because even though the Association makes a strong case for the most important element of that proposal, i.e. preference for existing employees over new hires, the Association has not demonstrated a pattern of abuse and has offered only a modest quid pro quo. But as to the benefits issue, the Association's proposal is clearly superior, and this is clearly the most important issue at stake between the parties. I conclude that on balance, by a small margin the Association's proposal better meets the statute's demands.

For the foregoing reasons, and based on the record as a whole, it is my decision and

AWARD

That the final offer of the Fond du Lac Secretarial/Instructional Assistant Association shall be included in the 1997-1999 collective bargaining agreement.

Dated at Madison, Wisconsin this 23rd day of November, 1999.

By_____
Christopher Honeyman, Arbitrator