BEFORE THE ARBITRATOR

In the Matter of the Arbitration of an Impasse Between WAUKESHA COUNTY TECHNICAL COLLEGE and WAUKESHA COUNTY TECHNICAL EDUCATORS ASSOCIATION	:	Decision No. 29987

Appearances:

Leigh Barker, Director, United Technical College Council; Stephen Pieroni, Attorney, Wisconsin Education Association Council, for the Association.

Robert W. Butler and Lisa Soronen, Staff Counsel, for the College.

ARBITRATION AWARD

On October 3,2000, the Wisconsin Employment Relations Commission (WERC) issued Findings of Fact, Conclusions of Law, Certification of Results of Investigation and Order Requiring Arbitration ordering final and binding arbitration of an impasse within the meaning of Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act (MERA), (Case 102 No. 58810, INT/ARB-9016, Dec. No. 29987). On January 11, 2001, the parties advised the WERC that they selected the undersigned Arbitrator. On January 22, 2001, the parties advised the WERC that this arbitration would be pursuant to a voluntary impasse resolution procedure, in lieu of the statutorily specified procedure, as allowed by the MERA.

The parties' voluntary impasse resolution procedure adopts the MERA requirement that the arbitrator must resolve the parties' impasse by adopting the final offer of either the labor organization or the municipal employer on all disputed issues.

A hearing was held in Waukesha County, Wisconsin, on January 23, January 24, February 22, March 13, and March 14, 2001. A transcript was made of the proceedings. Briefs were exchanged on August 6 and August 27, 2001. On approximately October 30, 2001, the parties submitted a stipulation of facts.

The instant impasse is over the terms of a collective bargaining agreement for the 1999-2001 contract term.

THE BARGAINING UNIT

The pertinent collective bargaining unit consists of teaching and other professional personnel and has been covered by collective bargaining agreements since approximately 1967. Historically this unit has included educators who teach credit or adult basic education classes during the day, but not those who do so only in the evening. The day-time personnel have a full-time workload, or a 50% to full-time workload (referred to as Part-time II employees), or a less than 50% workload (referred to as Part-time I employees).[1]

THE FINAL OFFERS

The parties' final offers are both extensive and comprehensive. The Association, contrary to the College, would include prohibitions against discrimination based upon age and sexual orientation in the agreement. In the agreement's second year the Association would maintain the status quo whereby the College pays the full premium for health and dental insurance and reimburses certain deductibles. The College would reduce that obligation to 97% of the premium and the employees would not be so reimbursed. As to wages in the second year, the College offers a 4% increase to the salary schedule and associated rates, whereas the Association also proposes 3.5% increases. Also, the parties differ over caps on the health and dental premiums to be paid by the College, and certain earned credit payment rates for Part-time II instructors.

In addition to these, there is a constellation of conflicts between these offers that derives from the parties' differences over the contractual treatment of Part-time I instructors.

BARGAINING UNIT BACKGROUND

The WERC addressed the status of these employees in a representation case decision issued on February 25, 1999.[2] It found as follows:

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[1]Not included in the bargaining unit are hundreds of instructors who teach in the evening or non-credit courses. There are counselors in the unit, but they are not covered by this controversy.

[2]Waukesha County Technical College, Case 3, No. 14667, ME-661; Case 99, No. 56024, ME-3650; Dec. No. 11076-C.

> The existing daytime/credit or daytime/ABE unit consists of approximately 160 full-time employes, 40 employes who work between 50% and 100% of a full-time workload (contractually identified as Part-Time II employes), and 100 employes who work less than 50% of full time workload (contractually identified as Part-time I employes). Under the parties' contract, the full-time employes are fully covered by various provisions contained therein and the Part-time II employes are covered by most contractual provisions, including placement on the full-time employe salary schedule on a prorated basis. Part-time I employes receive a bargained hourly wage ($18.70 to $27.20 depending on the type of class taught and the employe's years of service) but all other provisions of the contract are inapplicable to them. The College pays the approximately 550 non-unit teaching employes the same hourly wage as is received by Part-time I employes. [3]

The Association proposed that there be two units to include separately those employees working more and less than 50% time, and to include in those units most of the employees previously excluded from the unit. The College contended that neither of those units would be appropriate bargaining units, and favored the maintenance of the existing unit.

The WERC's decision is as complex as the facts presented to it and the various alternative contentions and counter-arguments presented by the parties. Clearly the WERC felt constrained by the parties' positions and their history and saw the matter as one in which its various important decision-making criteria were, at least ostensibly, in conflict, so that challenging judgments and balances among those criteria were required. Ultimately, the WERC concluded, "it is apparent that an overall unit passes muster", but not without recognizing that such a unit would "combine employees with presently differing wages, hours and conditions of employment," and that "an overall unit does not run afoul the bargaining history criterion inasmuch as it disrupts the existing bargaining relationship." This conclusion rejected the College's argument that an overall unit was inappropriate "because the interests of the full-time faculty will be submerged."

The WERC ordered an election among all regular full-time and regular Part-time unrepresented professional employees to determine whether they desired to be represented by the Association within a bargaining unit including all other represented professional employees. The subsequent vote indicated that those employees wished to remain unrepresented.

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[3]Of course, the numbers and rates found were appropriate as of the time of this finding. The record herein indicates approximately 150 full-time, 40 part-time II and from 120 to 230 part-time I personnel. Apparently, about 300 part-time I employees are employed in the course of a year and about one-half of those teach three credits or less per semester.

Thus, the WERC proceedings while they, as it turns out, left the parties' historic bargaining unit essentially intact displayed the disparity of treatment among its members by the collective bargaining process and maintained the status of the Part-time I personnel.

THE ASSOCIATION POSITION

The Association, in response to dissatisfaction with such treatment expressed to it by the Part-time I unit members, has proposed to the College and now includes in its final offer a substantial number of contract terms to bring those employees much greater contractual coverage.

Thus, the Association would include the Part-time I unit members under the contract's fair dismissal, non-renewal and discipline provisions, including its probation period terms; layoff and recall provisions; seniority provisions; instructional workload formula; supportive instructional activities and additional assignments provisions; grievance and educator rights procedure; Wisconsin Retirement Fund provisions; professional organization dues benefits; pre-employment physical exam provisions; work week and calendar provisions; teaching assignments provisions; and aides assignment provisions.[4] Each of these provisions may be further described in terms of their particular subsections and terms.

THE COLLEGE POSITION

The College, on the other hand, while raising numerous objections in general and in particular, has agreed to some additional contractual coverage for Part-time I personnel. It counts over 70 elements of increased coverage in the Association's offer and over 20 items that it has accepted. Many of the latter, as the Association emphasizes, would not usually be recognized as employee benefits or rights. They include such provisions a recognition, master contract dates, management rights, negotiations, fair share and savings clause terms. On the other hand, they also include some elements of the workload, seniority, vacancies, and grievance procedure provisions, among others.

In support of its rejection of the remaining coverage proposed by the Association, the College emphasizes "the interest and welfare of the public" in avoiding "a new rigid formality in the relationship between the College and Part-time I instructors which would not benefit students" as well as the cost of such coverage, the need for additional administrative operations and the consequential effect of discouraging potential instructors from seeking employment by the College.

Central to this argument is consideration of the needs of individuals who are skilled potential instructors mainly employed elsewhere who, if accommodated, may bring their experience to bear on instruction; and the somewhat fluid demand of potential students for instruction that is currently valuable. The College urges that harmonizing the needs of such instructors and students is interfered with by "formal" processes which encumber the College as it quickly adjusts its offerings. Contractual provisions requiring consideration of seniority, layoff and recall and termination rights are intended to inhibit judgments, provide standard processes and otherwise impose strictures upon employers. That is their essential value. This employment

[4]This listing is admittedly an imperfect reflection of the Association's position. A precise description of the comprehensiveness of its proposal would require incorporation of the proposal in the instant document.

setting, however, derives its value from flexibility and rapid response. Typically, the Part-time I instructors turn-over at a substantial rate each semester, and many of them, provide only one

three-credit class per semester. This implies the appropriateness of distinct treatment when compared to the employment stability and workloads of Full-Time and even Part-time II personnel.

The College also contends that some of the particular revisions proposed by the Association are "problematic" because they are poorly crafted especially as they might be applied to Part-time I instructors. Many of these criticisms emphasize the sporadic employment that is common among Part-time I personnel.

ASSOCIATION REPLY

The Association replies that there is inconsistency between the College's point-of-view now and its position in the representation case where it contended for a nearly all-inclusive unit. It states, "the unifying theme underlying the College's position in both the election case and in this case is that the College's arguments are designed to unduly restrict the bargaining power of the Part-time I instructors." Now that these employees are included in this unit, in large measure due to the College's position in the representation proceeding, the College is obliged to "treat them as full members of the bargaining unit."

Such matters as seniority, layoff and recall rights, grievance procedure access and "just cause" protections are basic, the Union asserts; and the very substantial changes proposed for these employees are not disproportionate considering that, in a sense, they are seeking a "first contract." That the Union did not previously press for such improvements should not be a bar to their sharing the benefits enjoyed by others with whom they have been found to share a "community of interests." These employees should be integrated into their unit, and it should be recognized that the Association is not proposing "a massive increase in compensation or the addition of paid benefits comparable to those enjoyed by Part-time II and full-time members."

The Union also presents specific arguments specific to the College's contentions regarding the particular deficiencies of the provisions proposed to be added to the coverage of the Part-time I employees.

ANALYSIS

In the view of the undersigned, the issues surrounding the coverage of the Part-time I employees eclipse the other differences between the parties' offers. They represent a fundamental conflict usually resolved by legal authorities in a representation proceeding or by the parties in a negotiated agreement and this implies that their determination should not be influenced by a preference for either parties' position on other less basic issues. In any case, the Arbitrator finds that the parties' differences on the other issues, while significant, are not of such a magnitude that their determination should not be subsumed by these issues. The parties' positions on the other issues are all arguable and do not represent a broad gulf between the College and the Association.

The Arbitrator is most impressed by the WERC's emphasis on its endorsement of the instant bargaining unit as an appropriate unit rather than the most appropriate unit. The WERC made its decision within the confines of the parties' positions, as well as applicable law and the relevant facts.

This unit is a mixture of constituent employment arrangements that remain distinct and resistant to uniform treatment. This seems to be undenied and should not be underestimated. The conflict here is over exactly which collective bargaining agreement terms should be applied to all unit members and how some such terms should be tailored to correspond to the distinctions among their employment arrangements.

The Arbitrator is impressed that if this sharing and tailoring is not very carefully done it will risk the place of the College in both the labor market and in its consumer market; that the College will, as it argues, lose the flexibility and agility that it needs to compete successfully.

On these public policy grounds, the undersigned prefers the final offer of the College. However, this preference is not without recognition of the validity of the Association's basic argument that greater applications of the labor agreement's rights and benefits are the natural corollary of the unit determination sought and achieved by the College; or of the proposition that the Association must achieve this expansion through interest arbitration, if negotiations are not successful.

The Arbitrator recognizes that many of the rights and benefits that the Association would obtain for the Part-time I employees are both conventional and justifiable; at least when they are carefully crafted to fit the peculiar circumstances of such employees. In some instances the Arbitrator shares the College's concerns over the need to more carefully tailor such terms, and in others the proposed provisions seem appropriate for implementation without undue conflict.

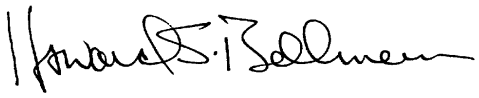
However, the undersigned would not adopt such new terms and conditions without strong evidence that they are, not only well crafted; but sufficiently comparable to those of similar employees at other, competing, colleges so as to mitigate any competitive disadvantage.

Among the six colleges to which the Association looks for comparability in this respect, there are only three with represented under-50% personnel, and only one of those has an overall unit as at the College. The labor agreements of the three colleges include some provisions similar to those sought by the Association, but there are material discrepancies and the separation of the units at two of the three colleges is also material. (Indeed, this separation apparently occurs in an even greater number of colleges within the entire State VTAE system.) The Arbitrator is simply not disposed to conclude that the College as a competitive enterprise, which has covered its part-timers as it has for decades, should be required by this award to revise this coverage on the basis of such comparability data. The Arbitrator is also mindful that all of these colleges compete with other, often private-sector, providers of training.

AWARD

On the basis of the foregoing, and the record as a whole, and having fully considered all of the applicable factors specified at Section 111.70(4)(cm)7 of the Municipal Employment Relations Act, it is the determination of the undersigned Arbitrator that the total final offer of the College should be, and hereby is, selected.

Signed at Madison, Wisconsin, this 26th day of December, 2001.



Howard S. Bellman
Arbitrator