

SYSTEM BOARD OF ADJUSTMENT

**IN THE MATTER OF INTEREST
ARBITRATION**

OPINION AND AWARD

between

OSHKOSH AREA SCHOOL DISTRICT

**Case 60 No. 65001
INT/ARB-10499
Dec. No. 31626-A**

and

**NON-TEACHING EDUCATION ASSOCIATION
(FOOD SERVICE UNIT)**

APPEARANCES:

On Behalf of the Union: Andrew J. Phillips, Attorney – Kindt, Phillips, Friedman and Fremgen, S.C.

On Behalf of the District: William G. Bracken, Labor Relations Coordinator – Davis and Kuelthau, S. C.

I. BACKGROUND

On April 18, 2005, representatives of the Non-Teaching Education Association (Food Service Unit) hereinafter referred to as the “Association” and the Oshkosh Area School District Board of Education hereinafter referred to as the “District”, “Board” or “Employer” exchanged proposals on matters to be included in a successor agreement for 2005-2007. The existing agreement was set to expire on August 15, 2005.

On July 27, 2005, the Association filed a petition requesting that the Wisconsin Employment Relations Commission (WERC) initiate final and binding arbitration pursuant to Section 111.70(4)(cm)6 of the Wisconsin Statutes. The Commissioner's investigator, conducted an investigation which concluded that the Parties were deadlocked in their negotiations. Final offers were exchanged by the Parties and submitted to the investigator. Upon receipt of the final offers, the investigator notified the Parties that the investigation was closed and informed the WERC that the Parties remained at impasse. On February 28, 2006, the WERC issued its Findings of Fact, Conclusions of Law. Certification of Results of Investigation and Order Requiring Arbitration. The Parties were furnished a panel of arbitrators and, ultimately, they selected the undersigned as the Arbitrator for these proceedings.

A hearing was held June 21, 2006. The proceedings were transcribed. Post hearing briefs and reply briefs were filed, the last of which was received September 11, 2006.

II. FINAL OFFERS AND ISSUES

The principle issues are: (1) the dollar amount the Employer should contribute toward the cost of the single and family health insurance premiums and (2) the amount wage rates ought to be increased. There are also some secondary issues concerning the number of paychecks that should be issued per

year for employee earnings and the duration of the contract.

Concerning health insurance, the Parties in the predecessor contract had agreed to expressed the Employer's contribution as a flat dollar amount rather than, as they had done for a number of years, a percentage of the premium. The stated dollar amount of the Employer's contribution in the prior contract was \$425 (single) and \$960 (family) per month.

For 2005-2006 the Union proposes that the Employer's contribution for the single premium be \$490 and \$1112.00 for family per month. For this same period, the Employer proposes it pay \$465 single and \$1030 family per month. The actual monthly premium rates for the POS Plan was \$591.10 (single) and \$1171.82 (family).

For 2006-2007 the Union proposes a \$539 Employer contribution for single coverage and \$1223 per month for family coverage. The Employer proposes a flat dollar contribution of \$461 for single and \$1040 per month for family coverage. The actual monthly premium for the POS Plan was \$656.12 (single) and \$1303.06 (family).

Considering wages, the Union proposes the wage steps/rates under the prior contract be increased 1% for 2005-2006 and that the resulting rates be increase by 2% for 2006-2007. The Employer's proposal is an increase of 2% and 3% respectively.

Under the prior contract, employees had the contractual right to choose whether to receive their school year earnings paid over 21 pay periods or spread out over the summer months by receiving 26 paychecks. The Union seeks no change in this regard. The Employer wants the 26 week option eliminated so all employees would have 21 pay periods.

Last, concerning duration, the Union proposes contract duration dates of August 16, 2005 to June 30, 2007. The District's proposal reads as follows:

This agreement shall be effective the first day of the fall term 2005 and shall remain in full force and effect until June 30, 2007. However, the prior school year's rate of pay will be in effect throughout the summer program regardless of whether the summer program extends into the next contract year.

III. ARGUMENTS OF THE PARTIES (SUMMARY)

A. The Union

The Union presents its case by analyzing, in sequence, the statutory criteria. However, as a general matter, it is their position that, while their final offer reasonably addresses the employee's wage and benefit concerns, the Employer's final offer actually creates confusion, takes away benefits without providing "quid pro quo" or identifying some compelling need, and negatively impacts long-term employees working in valued health insurance benefit positions.

Concerning the first two criteria (7 and 7a) the Union argues that no evidence exists upon which the District could argue or the Arbitrator could conclude that these factors should be given controlling weight. To the contrary, all

of the evidence demonstrates the robust nature of the Oshkosh Area School District Food Service's budget. The Food Service Department operates like a business and has been in a surplus mode every year and neither final offer would alter that.

Concerning the 'lawful authority of the District's' criteria, the Union takes the position that it is within the lawful authority of the District to accept and abide by the terms of the Association's final offer. They note this issue or criteria was not an issue raised by any of the parties during negotiations, mediation, the investigation or at the arbitration hearing and, therefore, the Arbitrator must find that lawful authority exists to award the Association's final offer if otherwise more reasonable. They say much the same thing about the District's financial ability to pay. The evidence demonstrates that the separated Food Service fund budget has run at a surplus for the last two school years. Even if the projection for 2006-2007 is wrong, it wouldn't be hard to make up for a shortfall by raising prices since lunch prices in Oshkosh are the lowest among all of the external comparables.

The Union presents a comparability analysis that combines the statutory factors d, e and f arguing that comparisons to employees performing similar services, public employment generally and private employment favor the Association's offer.

More specifically, it is asserted that the health insurance premium co-pay offer by the District, in its final offer, lacks both external and internal support. The

District is asking its employees to significantly pay more (per month) for health insurance than any of the comparable employees. And, while the Union's offer is significantly better, it doesn't put health insurance eligible employees in as good of position as they have been, in comparison to either their internal or external counterparts. In making these comparisons, they contend their selection of comparables (Kaukauna, Menasha and Neenah) is most appropriate.

The Union notes that, while they agreed with the District in the last negotiations to pay a fixed dollar amount, the other districts paid a percentage (90%, 95% and 100% respectively). Ultimately, the District is offering fixed dollar amounts which changed from the prior contract of (effectively) 95% to slightly less than 88%, in the first year of the contract, and approximately 80% in the second year of the contract. These amounts are, without precedent, based on an internal basis and an external comparable basis. The net effect is to drop the Oshkosh unit from a tie from second to dead last in the Fox Valley Athletic Conference in health insurance benefits. Much the same is true even if the employers' secondary comparable group is considered. Under the District's first year proposal, the amount an employee will be required to pay more than double any other employee (approximately \$60.00 versus \$140.00 per month) and quadruples in the second year of the agreement (approximately \$65.00 versus approximately \$260.00 per month).

Regarding internal comparables, the Union notes these settlements occurred

after the instant final offers were certified. This suggests they should be given little weight. Even if considered there is no internal pattern supportive of the Employer's offer. Other units agreed to plan changes but the agreements did not require employees to pay a larger percentage towards their own health insurance. In this case, it was, essentially, acknowledged that neither party (during the course of negotiations) considered or offered a plan design change as a means to control health insurance costs. Thus, since the District is not proposing a plan design change as a means of controlling costs, it cannot credibly argue that its proposal is consistent with some internal pattern with respect to health insurance changes.

On the other hand, the Union's offer is more consistent internally because it does involve a concession. While the other units in the Oshkosh Area School District remained at a 95/5% payment level, the Association's offer results in a 94.9/5.1% (in the first year) and a 93.9/6.1% (in the second year).

The Union takes a similar position regarding wages. The Association's offer is closer to what other units agreed to internally and externally. In fact, in the first year of the contract, nearly all of the schools (except Kaukauna and New London) provided wage increases higher than both the District's and the Association's. The low of all other schools was 2.0% and the high 5%. In the second year of the contract, both the District's and the Association's wage offers have relatively equal comparability (of those settled) with one school at 2.0%, two schools at 3.0% and one school at 4.5%. The District's offer, while higher, takes away all the wage

increase (and more) from employees eligible for health insurance and gives it to those who are not (in the form of wages). The Union's offer is more consistent with the wage increases in other units. The NTEA (representing the teachers) had an across the board wage increase of .5% in the first year and an across the board wage increase of 2.5% in the second year. The paraprofessional's wage increases in year one was zero and \$0.25 per hour in the second year. The same is true when the effective wage increase is considered (i.e. step advancement is considered).

They present the following:

<u>Bargaining Unit</u>	<u>2005-06</u>	<u>2006-07</u>
NTEA	2.2%	3.05%
Teachers	2.1%	3.42%
Paraprofessionals	0.30%	2.42%
Food Service (Association)	2.44%	3.27%
Food Service (District)	3.47%	4.30%

While the higher wage increase, under the Employer's offer, might seem tempting it is too insignificant to consider it as "quid pro quo" for the drastic increases in monthly health insurance payments for a good number of the employees. The Union presents an illustration as to what the offers would do to one employee's paycheck. This employee would have \$554.00 of net taxable pay under the Association proposal in the first year, whereas he/she would only have \$478.00 of net taxable pay if the Board's proposal was accepted. In the second year, the wage loss would be even more significant than the first year. If the Association's proposal is accepted, the employee's net taxable pay would be approximately

\$546.00 whereas it would only be \$375.00 if the Board's proposal were accepted.

The Union next turns to the other issues in the Employer's final offer. Concerning the Employer's mandatory 21 pay period, the Union views this as a significant change in the status quo. They term it the "death knell" to the District's final offer due to the fact it has no comparable support internally or externally and also because the District failed to justify why it needs to have its proposal included in the contract. They present a detailed analysis in regards to this last point. Moreover, the mechanics of the system weren't fully discussed during negotiations.

The Union also states the most alarming impact of the 21 pay period is the impact it will have on employee health insurance payments under the Employer's offer. Employees are required to pay for health insurance year round and since they will receive only 21 biweekly paychecks instead of 26 spread over the entire year, there will be 8 weeks (4 payroll periods), under the District's proposal, where they will not receive wages and, thus, will not be able to have the health insurance deducted. There is no guarantee in the language of the District's offer to support the off-hand remark, in their exhibits, that the employee's health insurance costs "could be set up to be paid over 10 months instead of paying a big chunk in May."

Similarly, the Union maintains that the District's duration proposal lacks both external and internal support. On the other hand, the Association believes that

its proposal is more reasonable and consistent with both the internal and external comparables. They believe their offer is less confusing because there is no two week time lag and there are no multiple effective dates for various provisions as there are under the District's provisions. It is argued, there is great advantage in having the contract year correspond to the Food Service fiscal year.

Last, it is argued that the Association's final offer is more reasonable after analyzing and considering other factors typically considered when negotiating wages, hours and conditions of employment through the voluntary collective bargaining process (Wisconsin Statutes, Section 111.70 (4)(cm)7j. The Union believes that overall, the Association's proposal is a much better attempt at preserving the benefits enjoyed by the employees and provides a wage increase while, at the same time, being considerate of the overall budgetary issues. The District's offer creates more problems than it solves.

B. The District

The District notes its calculation of the total difference in the Parties' proposals, including step movement, is very similar to the Union's figures. The net difference between the Union's more costly health insurance proposal and lower wage proposal and the total of the Employer's proposal is \$20,495. Respectively, the Union's offer on a percentage basis is an increase of 5.2% in 2005-2006 and 4.8% in 2006-2007. The District's proposal represents a 4.3% and 3.7% increase, respectively. The District stresses, in this case, the importance of total package

comparisons. They also analyze the proportion of benefits to salaries noting that in 2004-2005 fringe benefits were equal to 45% of salary. If the Union's offer is accepted the ratio of fringe benefits to salary would increase to 52%. Under the District's offer, fringe benefits would equal 46 percent of salary. They argue the Union cannot justify increasing the fringe benefits/salary ratio especially since the Parties agreed to a "cap" on health insurance in the last Contract.

The District, throughout its brief, emphasizes this "cap". In the prior contract, the Employer's contribution toward health insurance was expressed as a percentage (95%) of the premium. However, the Employer increased wages 20% over two years and changed the contribution to a flat dollar cap. The District's proposal, it is argued, maintains the integrity of the last bargain by maintaining the cap on health insurance. The Parties also agreed to increase the number of hours necessary to be eligible for District-paid health insurance from 3.75 to 6 hours. In contrast, they assert the Union's offer restores the 95% district contribution to health insurance stated in dollar amounts. In terms of dollars, the District's offer provides a combined two-year total increase of \$444 and \$960 per single and family participants, respectively, versus the Union's \$1,728 for single and \$3,156 increase for family health insurance premiums. The District's offer provides a fair and reasonable increase given the cap that was bargained in the last contract. The Union's offer is excessive. Thus, the Union's new health insurance contributions reflect an increase of 15.8% in the first year and 10% in the second year.

On a percentage basis, the Union's final offer amounts to a 95% District contribution towards health insurance in the first year and 94% District contribution in the second year. They stress repeatedly this nullifies and waters down the dollar cap that was just bargained, in addition to being guilty of simply requiring the District to maintain its 95% contribution to health insurance, rather than make any substantive changes to the plan itself. Indeed, other internal groups have moved to a different Point-of-Service Plan with different co-insurance amounts and deductibles. While these settlements occurred after the final offers were submitted in the food service case, the point is clear--the Food Service Union did nothing to attempt to soften the blow of the relatively high health insurance increases received by the District over the two-year Contract.

The District makes a number of ancillary arguments supporting their major point that their offer maintains the integrity of the last bargain to "cap" insurance premiums. A description and summary of these supporting arguments follows:

1. The overall level of health insurance premiums justifies the District's offer which provides a modest increase in the dollar caps to define the District contribution to health insurance. They track the dramatic increases in District premiums over the last eight years and note how they outpace the CPI.
2. The Union's offer essentially requiring a 95% contribution not only undermines the last agreement but does not provide the District with a quid pro quo for doing so. This is important they say because the cap represents the status quo which is being altered by proposing to continue a contribution level of 95% in the first year and 94% in the second year. In short, the Union's final offer makes a mockery of the fixed-dollar cap the parties voluntarily bargained.
3. Despite bargaining a cap, the Union's offer increases the proportion that health insurance comprises of salaries. Under the status quo, health insurance as a

percent or salary in 2005-2006 amounted to 28.6%. Under the District's offer this ratio will increase to 29.6% in the first year and decrease slightly in the second year to 28.7%. This mirrors the 28.6% status quo ratio found in the 2004-05 contract.

4. The District's offer on health insurance compares favorably to the external comparables. This is true, they submit, with regard to the primary external comparables (Menasha and Neenah) and the secondary comparable group which they believe is necessary to consider given the small primary comparable group. As background, they note (importantly in their view) that there are only 12 employees that are taking health insurance of the 16 that are eligible. Thus, only 16% of employees in the bargaining unit take health insurance. This is a small portion of the total 76 employees in the bargaining unit. According to the terms of the contract, employees are eligible for health insurance if they work six hours or more per day or .8 FTE. They compare this to Neenah and Menasha in two respects. Single premiums in Menasha and Neenah average \$355.88 while the average family premium is \$924.25. Compare these premiums to the District's low-priced Point-of-Service Plan single premium rate of \$517 and family premium of \$1,171.82. The Point-of-Service Plan in the District is \$161.49 per month above the Menasha and Neenah average and \$247.57 per month above the Menasha and Neenah average family premium. For the more expensive Managed Care Plan in the District, the monthly single premium is \$591.10 while the family premium is \$1,331.34. It is the dollar amount and not the percentage that is critical. Although they note even the Union's proposal comparable Kaukauna only contributes 90% of the single or family premium. The District's final offer of 88% expressed in percentage terms is closer to Kaukauna than the Union's offer of 95%. The second respect they believe the primary comparables support their offer is the amount of premium contribution made by the District for part-time employees. In Oshkosh, food service employees who work six or more hours per day receive the same contribution as a full-time employee working 7.5 hours per day. There is no proration. Menasha and Neenah prorate their health contributions based on an employee's time. They submit this is precisely the reason why the District bargained a fixed-dollar amount limiting its contribution. So in both respects the District does more than the comparables. This problem is says presented the perfect opportunity for the Union to prorate the District's contribution as is done in Menasha and Neenah. Thus, instead of proposing creative solutions such as prorating benefits for part-time employees and by not doing so the District says the Union preserves the existing unfair arrangement and perpetuates the District's 95% contribution for those part-time employees – unlike the practice found in any of the primary comparables. They also criticize the Union for not adopting other less expensive plans or making plan changes. The fact, even with the caps the District's contribution to health insurance for both full-time and part-time food service employees vastly exceeds the monies paid in comparable districts. The health premium in Oshkosh is \$161 above the average monthly single premium and \$248 above the average monthly family premium. The District says much the same thing about their secondary comparables. Additionally, they note the average district contribution in the secondary

comparables amounts to 75% towards the single premium and 74% towards the family premium in 2005-06. On a percentage basis, under the District's offer, it will be contributing 88% toward the Point-of-Service single and family premium. The Union's offer calls for the District to contribute 95% of the single and family Point-of-Service premium. These amounts become even more dramatic when the comparison is made for employees working only six hours per day. They also look at private sector comparisons which are, in their opinion, particularly important because many school districts contract their food service to private companies such as Aramark and Chartwells. Under Aramark employee contributions are significant – ranging from \$75 to \$224 per month for the single premium and \$245 to \$538 per month for the family premium, depending upon which of the three health plans is selected. Under Chartwells employees pay anywhere from \$30 to \$139 per month towards the single premium and \$134 to \$397 per month towards the family premium. They cite national averages too.

The District's next major argument relates to the internal settlement pattern which they assert is best matched by their offer while the Union's offer exceeds it by a wide margin. Again, they focus on "total package". There are three other units: (1) clerical and custodian, (2) teachers, and (3) paraprofessionals. The District examined the 2003-2005 settlements which show the great advantage to the Food Service Unit due to the health insurance quid pro quo. Concerning 2005-2007 it is noted that on a total package basis, the average two-year total package increase is 4.4% among the internal comparables. Thus, the District's offer is about .4% below the internal settlement pattern while the Union's offer is .6% above. Clearly, the District's offer best matches the internal settlement pattern. They presented a chart which shows (they believe) that the Union's offer is radically out-of-line with the internal comparables. The Union's total package figure would be the highest among internal units. Moreover, the Union, on the other hand, does not really care about the overall total package. It is trying to

obtain a high wage increase and improve and restore the District's contribution to health insurance premiums to the 95% level it enjoyed in the past. In contrast, two other units took a 0% and one a .5% increase and adopted a new point of service plan which includes higher co-pay, moving from 10% to 20% in Level 2 and 20% to 30% in Level 3. Deductibles were also increased under the point of service plan.

The District also looks at the wages-only aspects of the offers noting that the District's wage proposal is higher than the Union's and best matches the external settlement pattern. The District says it is concerned about wage slippage, remaining competitive wage wise and hiring and retention for employees working less than 6 hours per day. This is due, in part, to the fact that at nearly every benchmark, including minimum wage, maximum wage with no longevity, maximum wage with longevity at ten years, maximum wage with longevity at 20 years and the maximum wage including maximum longevity, the District's wage offer is slightly below the comparable average. The Union's offer, the District says, is worse, moving in the wrong direction and does nothing to close the existing gap between Oshkosh and Menasha and Neenah. The District does a similar analysis for the secondary comparables. Regarding the private sector they note that at Aramark wages increases have been in the 2.5% to 3.5% range. Again, right in line with the District's offer. They again express the concern that the Union's offer will lead to hiring and retention problems and that under the Union's

offer, wages will erode against any of the relevant comparables.

The District also takes the position that the Union's "low ball" wage offer does not equate or offset the additional cost of their excessive health insurance demand. The cost of the Union health insurance proposal is \$38,160 and the difference in additional wages proposed by the District amounts to \$15,305. Moreover, few people are affected by health insurance (only 12 of 16 eligible employees take insurance) whereas 64 out of 76 do not and, therefore, the larger/later group will do better under the District's proposal. The District also, early in its brief, asked the Arbitrator to take into account the fact the Parties also have bargained a profit sharing plan (in 1999-2000) which has resulted in between \$.12 and \$.75 per hour in additional, one-time salary adjustments. These one-time, profit-sharing amounts are not reflected in the total package costings. Thus, the total package figures are understated. The maximum profit sharing payout of \$.75 per hour (which occurred in 2004-2005) represents an additional salary increase of about \$300 to \$1,000 per year for employees in the bargaining unit.

The District addresses other relevant statutory criteria as follows:

- (1) The District's offer is in the best interest and welfare of the public because it takes into account fiscal, economic and political realities. The reality is that the national, state and local economy is still in the midst of recovering from a recession. The state is running at a deficit and the local taxpayer has less money.
- (2) The District's offer is above the cost of living and should be preferred on this factor.
- (3) The District does not believe in this specific case that the greatest weight factor involving revenue controls and the greater weight factor of local economic

conditions favor either party. This is because the food service operation is unique because the food service budget operates as a separate fund from the District's regular operational budget. The latest figures from the District show that there is a positive fund balance in the food service operation. There was a projected profit of about \$102,000 for fiscal year 2005. Moreover, neither party presented any significant information on the local economic conditions. Therefore, the Arbitrator has no evidence before him that would be of any assistance to him in evaluating either of these factors' impact on either offer.

The District also addresses the other aspects of its proposal. First, they contend the District's 21 pay period policy proposal is reasonable, conforms to sound business practices and will end confusion among employees. The current system is confusing because it is based on the estimated yearly salary divided by 21 or 26 pay periods. So, if there is unpaid time off, adjustments must be made. The new system is preferable because under the duration clause is a minor issue and the District's proposal, employees would be paid every two weeks based on the previous two weeks that they actually worked.

Last, the District contends the duration clause is a minor issue and they do not believe that the duration clause should affect the outcome of this dispute. It relates to a two-week gap between August 16 and the first day of the term. The District's status quo offer avoids confusion about summer pay (for those that work).

IV. OPINION AND DISCUSSION

At the outset, the Arbitrator must address factor 7 (the factor given greatest

weight) set forth in Wis. Stats. Section 111.70(4)(cm)7. The statute requires the Arbitrator to express and account for his consideration of this particular factor. The statute goes on to direct the Arbitrator to consider factor 7g referred to as the “factor given greater weight” and in doing so give greater weight to the economic conditions in the municipal Employer’s jurisdiction than any of the factors listed in 7.r.a through j.

In this case, the Parties essentially agree that the evidence, in this particular case, does not lend itself to the ordinary application of either factor 7 or 7g. The evidence is scant, in this record, and the District plainly acknowledges these factors favor neither party. This is in large part due to the fact the District endeavors and has had success in operating the food service program as if it were a stand alone for-profit business. This is not, however, to ignore the economic reality that if it were to operate at a “loss”, the shortfall would have to be made up from tax related reserve funds. Nonetheless, both the District and the Union deserve great credit in their creative and cooperative approach to managing the delivery of food services directly. One of the innovative management tools is a “management oversight council” made up of Union and Administration representatives that assist the Food Service Director in meeting the Department’s mission and goals including operating surpluses (profits) which, in turn, are shared with employees. Significantly, they do this at a lower cost than any school in their athletic conference.

The Arbitrator only wishes the Parties were as enlightened, creative and cooperative in addressing other mutual challenges such as health insurance. In short, the Arbitrator believes both Parties have failed to reasonably address this issue in this bargain. So, the Arbitrator (as a result of the ‘either/or’ nature of final offer interest arbitration) is left to determine which of the unreasonable final offers is less so.

The District asserts many times in many ways that the Union’s insurance proposal tries to do away with and undermine the Parties agreement in the last round of bargaining to “cap” the Employer’s health insurance contribution. Indeed, this point is virtually, if not literally, stressed and emphasized more so than any other point. Indeed, in the summary of their sixty eight page brief their first summary point is:

When is a cap not a cap? Under the Union’s offer. The Union’s offer seeks to restore the 95 percent District contribution to health insurance that was given up in the last contract. The District provided two huge wage increases of 10 percent in each of the last two years of the last contract to establish a fixed dollar amount limiting the District’s health contribution. Instead of working with the District to spend within the cap (or within a reasonable increase in the cap) the Union does not even attempt to bargain a different plan or plan design. Rather, it simply raises the dollar cap to restore a 95 percent contribution by the District. The District’s offer maintains the integrity of the cap and would require the Union to deal with the insurance issue.

Elsewhere in their brief, they state “. . . there is an inherent trade off between wages and benefits.”

With this last comment the Arbitrator fully agrees. He agrees, too, that the total package perspective is critical as a general matter and, in particular, under the

statutory scheme. It is particularly important given the last bargain between the Parties. The Arbitrator also believes, however, the Union recognizes this inherent link between wage costs and benefit costs--although perhaps not to the degree it should have. This is evidenced by the fact they have made a significantly lower wage proposal than the Employer.

On the other hand, the Arbitrator strongly believes the District misinterprets or misunderstands the results of the last bargain as a “cap” on Employer health insurance contributions and they misconstrue the Union’s proposal as a return to a 95% Employer contribution. Without a doubt, the Parties changed the language on health insurance and eliminated the expression of the Employer’s contribution as a percentage of the premium. And there is no debate that this is a significant change. However, the Parties did not agree on a ‘hard cap’ never to be changed. Instead, they agreed to a flat dollar amount for the term of the contract.

The importance of this is clear. It puts the focus on dollars and makes the link between salaries and benefits more clear. It allows the Employer to escape the tyranny of ever increasing health insurance premiums especially acute when they are starting out at a fixed percentage of the premiums during the status quo period. When dollar amounts are used, it seems employees would be less inclined to take Employer contributions for granted.

Certainly, the format utilized by the Parties to express the Employer’s

contribution creates a maximum for the term of the contract. Yes, in that limited sense it is ‘a cap.’ The old flat dollar amount is no more of a ‘cap’ and deserves no more presumption than any particular wage rate in the bargaining for any particular subsequent contract period. It is the dollar amount for the contract term (until changed again by the Parties) and it is subject to negotiations in the next round of bargaining. The Union, so long as it expresses its proposed Employer contribution as a flat dollar amount, doesn’t face any special burden, in this case, any more than the Employer. The District got what it paid for in the last bargain. It became untethered from the bond of contributions based percentage increases which tend to shift the burden to the Employer to change its amount. As with wage rate changes and wage level changes, both Parties have the burden of persuasion to justify its offer as most consistent with the statutory criteria and, therefore, most reasonable. This is not to say “percentages” aren’t useful for comparison purposes and don’t creep into the discussion. However, they don’t control under the current form of the health insurance language and clearly if the Union were to argue that its dollar amount is more reasonable merely because it equates or approximates 95% of the premium such an argument standing alone is not entitled to any persuasive weight.

It is ironic, indeed, that even though they bargained away one ‘percentage’ the District used another to attack the Union’s position. Apparently, without any basis in contract language or bargaining history, the District complains the Union’s

flat dollar proposal upsets the 2004-2005 percentage or ratio of fringe benefits to wages. Yet, such a ratio has never been bargained and there is no evidence such a principle has guided or instructed the parties in bargaining.

Be that as it may, the District has convinced the Arbitrator that it has an insurance problem that needs to be addressed. As they noted the, POS family premium in 2005-2006 in Oshkosh was \$1171 per month which is \$247 more per month than the average of the family premiums in Neenah and Menasha.

The question is which offer most reasonably addresses this need in the context of the other issues and traditional criteria/considerations.

The offers are relatively upside down. The Union proposes a lower wage increase trying to buy a higher Employer health contribution. The District proposes a higher wage increase trying to buy a lower Employer health contribution. The offers are actually quite close on a total package basis (approximately \$21,000 apart). Relative to the internal bargaining groups/comparables, the Union and Employer offers are both off the mark by nearly the same relative distance. It is particularly relevant to look at the total package increase because it focuses on the bottom line dollars (regardless of how health insurance contributions are expressed). The average total package increase, internally, was 4.4% (4.7% for paraprofessionals, 4.1% for clerical/custodian agreement and 4.3% for teachers). The District's offer to the Food Services Group is 4.0% and the Union's is 5.0%. Therefore, the Union increase is .6 of one

percent higher than the internal average while the District increase is .4 of one percent lower than the internal average.

While it can be said the District is closer to the average and, therefore, it should be selected as most reasonable, and while it could be said it addresses the health insurance problem and, therefore, should be selected, and while the Arbitrator believes it heads the Parties in the right direction (mitigating the Employer's health insurance cost) it does so in the wrong way.

It is wrong, in this case, under these facts to solely address the health insurance problem by solely shifting premium costs to the employees. These employees, of this bargaining unit, are the low wage earners in the District and can afford it least of all. To so dramatically shift premiums to this magnitude in such a short period of time is more shocking and unreasonable than it is unreasonable to ask the District to absorb, from its operation, the \$21,000 difference in the offers. This is particularly true since the operation has been successful in generating profit sharing dollars and the impact of selecting the Union offer on profitability will not be felt just by the Employer but, generally speaking, will also be felt by the employees. It will affect their share of the profits. The impact could also be partially absorbed by increasing already low lunch prices.

The Employer's offer would require an employee taking health insurance in 2006-2007 to pay \$183 more a month (to a total of \$263) for health insurance than under the Union's final offer. Even for a full time cook this represents an

extremely large portion of the employee's gross pay, which, in one example given by the Union, would be \$1252 per month. The reduction in the gross wage under the Board's proposal would be nearly 15% of their gross wage. The impact on net take home would be more dramatic. An additional deduction of nearly \$200 per month for an employee taking home a net paycheck of around \$1000 simply hurts. Keep in mind, too, these employees do not work the entire year but premiums are due year round. In addition to this hurt, the Employer wants to complicate employees' budgeting by mandatorily requiring checks to be issued over 21 pay periods. While the Employer says, informally, it would address this issue, their final offer is silent. The time to perfect such defenses is more persuasively in the language of the final offer.

Yes, the higher Employer premium required under the Union's offer hurts the District too. But this is the choice left to the Arbitrator. The Employer is in a slightly better position to absorb this pain. Moreover, and more importantly, it is more reasonable to select the Union's final offer because the burden of insurance and the sacrifice required of the District and employees relative to the internal groups is relatively more comparable under the Union's offer than it is under the District's offer. The relative internal disparity in employee/employer contributions would be dramatic under the Board offer.

The Arbitrator recognizes that these other groups agreed to plan changes and

accepted lower percentage wage increases, but these base wages are higher to begin with. Moreover, the District's complaint that the food service unit didn't propose plan changes to reduce the premium and shift costs to insurance users or proration changes is rather hollow for the obvious fact. The District didn't propose any of these changes either. If these are solutions, the Arbitrator can't choose them if they aren't in the District's final offer.

Instead, the District chose to address the cost issue solely in premium shifts and dramatically so. The District argued, in effect, to agree with the Union would entrench the Union encouraging them to stonewall future changes. The District says pressure needs to be applied to get the Union to change. Many, if not all, the points the District made about the Union, in this regard, could be reversed. If the District is allowed to address the issue by merely shifting premium cost, what incentive in bargaining will they have to look at other measures such as plan changes and, proration.

The Arbitrator is not letting the Union off the hook. As noted, they are not being allowed to reverse the agreement to express the Employer's contribution as a flat dollar amount. It is obvious that they understand the link between insurance and wages as they asked for a substantially lower wage increase than offered by the Employer. They also are not in denial that insurance is their burden in part to bear.

They made a concession on health insurance eligibility in the last bargaining round by raising eligibility from 4 to 6 hours per day.

Indeed, the Union could have done more in this case. However, the Employer relatively does too much too fast and, relatively speaking, does it in such a way it would discourage other needed types of changes in the future. The final offer of the Union is selected.

AWARD

The final offer of the Union is selected.

Gil Vernon, Arbitrator

Dated this ____ day of November, 2006.