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WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

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In the Matter of Mediation-Arbitration Between

Hamilton School District

-and-

United Lakewood Educators

\* \* \* \* \*

Appearances: Quarles & Brady, by Michael J. Spector, for  
the District

Larry L. Kelley, Executive Director, Lakewood  
UniServ Council-West, for United Lakewood  
Educators

By letter dated March 7, 1978, Hamilton School District, hereinafter referred to as the District, and United Lakewood Educators, hereinafter referred to as ULE, mutually selected the undersigned to be mediator-arbitrator in a dispute existing between them. They stipulated that the mediation-arbitration should follow the procedures set out in Section 111.70, Wisconsin Statutes.

A mediation meeting was held at Butler, Wisconsin, on May 11, 1978. The parties had already reached a three year agreement but one issue remained in dispute. ULE requested that the District implement a fair-share agreement. The District was not willing to agree to a fair-share agreement. The parties respective positions were contained in their last offers which had been submitted to the mediator-arbitrator prior to mediation.

Those last offers could not be changed without mutual agreement to do so.

During the mediation session the parties agreed to modify their final offers. The issue that then remained was what the election standard would be in an election in October, 1978 to determine whether a fair-share agreement would be implemented retroactive to the beginning of school in the 1978-79 school year.

On June 12, 1978, an arbitration hearing was held at Butler, Wisconsin, at which time both parties had full opportunity to present evidence, testimony and arguments in support of their positions. No transcript of the proceedings was made. Both parties agreed to submit post-hearing briefs and optional reply briefs. Both parties submitted post-hearing briefs. ULE submitted a reply brief.

The revised last offers of the parties are as follows. The principal difference between them is in the standard which will determine the election. The parties have agreed to ask the Wisconsin Employment Relations Commission to administer the election:

ULE FINAL OFFER:

I. FAIR SHARE AGREEMENT

- A. Membership Not Required: Membership in any employe organization is not compulsory. Employes have the right to join, not join, maintain or drop their membership in any employe organization as they see fit.

B. Fair Share,

The Association, as the exclusive representative of all employes in the bargaining unit will represent all such employes, Association and non-Association, fairly and equally, and all employes in the unit will be required to pay, as provided in this article their fair share of the costs of representation by the Association. No employe shall be required to join the Association, but membership in the Association shall be made available to all employes who apply consistent with the Association constitution and bylaws. No employe shall be denied Association membership because of race, creed, color or sex.

The employer agrees that effective thirty (30) days after the date of initial employment or thirty (30) days after the opening of school, beginning with the 1978-79 school year, it will deduct from the earnings of all employes in the bargaining unit as specified above, the total amount of dues certified by the Association as the current dues uniformly required of all U.L.E. members, and pay said amount to the treasurer of the Association on or before the end of the pay period following the pay period in which such deduction was made. Members may pay their dues by one check if desired and the Association shall notify the employer as to persons who have paid by one check so that the dues shall not be deducted per this Agreement.

Annual changes in the amount of dues to be deducted shall be certified by the Association no later than the 5th school day after the 1st day students are in school.

The Board and the Association agree that members of the bargaining unit who are employed less than 1/2 time will pay one half ( $\frac{1}{2}$ ) the dues required of employes employed 1/2 time or more.

The employer will provide the Association with a list of employes from whom such deductions are made along with the first monthly remittance to the Association, and shall inform the Association in writing of any subsequent changes.

The Fair Share Dues will be deducted in ten (10) equal installments beginning with the September 30 paycheck or as specified in paragraph 2 above.

The Association and the WEAC do hereby indemnify and shall save the Hamilton School District Board of Education harmless against any and all claims, demands, suits, or other forms of liability including court costs that shall arise out of or by reason of action taken or not taken by the Board, which Board action or non-action is in compliance with the provisions of this Agreement provided that any such claims, demands, suits, or other forms of liability shall be under the exclusive control of WEAC and its attorneys.

Forfeiture of this Fair Share Agreement or Voluntary Dues Deductions shall be governed by the provisions of Wis. Stat. 111.70 and any amendment that may attach thereto.

1. Fair Share (non-U.L.E.) members will not be required to pay political action committee dues assessments that are refundable through the organization. The Association will provide the Board with a list of non-Association, Fair-Share members.
2. All Fair Share members will have the right to a voice and a vote on any contract ratification.

II. The above Fair Share Agreement shall become effective under the following provisions:

- A. The WERC will conduct a referenda on October 11, 1978 as to whether or not the above Fair Share Agreement shall be included in the 1977-80 Master Agreement.
- B. A majority of eligible bargaining unit employees must vote in favor of the Fair Share Agreement for it to become effective.
- C. Provided a majority of eligible bargaining unit employees vote in favor of the Fair Share Agreement, it shall become effective with the 1st date of the 1978-79 School Year.
- D. Provided a majority of eligible bargaining unit members do not vote in favor of the Fair Share Agreement, the previous Dues Deduction provisions will be continued in the 1977-80 Master Agreement

and the Association will have two (2) weeks after the certification of the Referenda Results to submit appropriate Dues Deduction Authorization Forms to the District Office for Deduction purposes.

DISTRICT FINAL OFFER

HAMILTON SCHOOL DISTRICT  
FINAL OFFER  
MEDIATION-ARBITRATION  
June 12, 1978

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The Board proposes a "fair share" election on the following basis:

- 1) A secret ballot election shall be administered by the W.E.R.C. between 8:00 A.M. and 5:00 P.M. on October 11, 1978, with each eligible teacher voting at his/her home school, or at such other location as may be determined by the W.E.R.C.
- 2) All members of the bargaining unit, full-time and part-time, shall be eligible to vote, with a final eligibility list determined by the W.E.R.C. seven (7) days prior to the election in accordance with its applicable rules.
- 3) The question on the election ballot shall be the following:  
  
'Shall a fair-share payment equal to the unified dues (ULE, WEAC and NEA) paid by ULE members (presently \$ \_\_\_\_\_), including such increases or decreases as may occur from time-to-time, be deducted automatically from the payroll checks of all non-ULE members of the bargaining unit?'
- 4) Absentee ballots shall be admissible in accordance with W.E.R.C. rules.
- 5) If the number of affirmative votes cast in the election is two-thirds or more of those eligible to vote, the following language shall be added to the 1977-1980 Master Contract between the Hamilton School District and ULE, effective August 24, 1978:

'316. VOLUNTARY DUES DEDUCTION AND FAIR SHARE

- A. Membership Not Required. Membership in any employe organization is not compulsory. Employes have the right to join, not join, maintain or drop their membership in an employe organization as they see fit.
- B. ULE, as the exclusive representative of all bargaining unit members, will represent all such employes, ULE and non-ULE, fairly and equally. No employe shall be required to join the ULE, but membership shall be made available to all employes who apply consistent with the ULE constitution and bylaws. No employe shall be denied ULE membership because of race, creed, color or sex.
- C. Voluntary dues deduction for ULE members other than part-time teachers teaching less than 1/2 time or less than 1/2 of the school year.
  1. The Board shall deduct from the earnings of bargaining unit members who are members of the ULE all dues payable to the ULE, the Wisconsin Education Association and the National Education Association, in accordance with written authorizations which are both voluntary and individual. The individual written authorizations shall be in a form agreed upon by the Board and the ULE.
  2. The ULE shall provide the names of the teachers and the amount to be deducted by the fifth school day after the first day students are in school. The Board shall pay all monies deducted to the ULE treasurer no later than the 10th day of the month following the month in which the deductions are made.
  3. The payroll deductions shall commence with the September 30 payroll, in equal installments.

4. The provisions of this section 316(C) shall not take effect prior to October 12, 1978.

D. Fair Share.

1. All members of the bargaining unit who are not ULE members shall pay to the ULE, in accordance with this Section 316, their proportionate share of the cost of the collective bargaining process and contract administration.
2. The Board agrees that effective thirty (30) days after the date of initial employment or on September 30, as appropriate, beginning with the 1978-79 school year, it will deduct from the earnings of all employees in the bargaining unit who are not members of ULE, the total amount of dues annually certified by ULE to be the non-member's proportionate share of ULE's cost of the collective bargaining process and contract administration. The annual certification shall be made no later than close of business on the fifth school day after the first day students are in school. The amount so certified shall be deducted in equal installments. The Board shall pay said amount to the ULE treasurer no later than the 10th day of the month following the month in which the deductions are made.
3. Members of the bargaining unit who are employed less than 1/2 time will pay one half (1/2) the dues required of employees employed one half (1/2) time or more.
4. The Fair Share dues will be deducted beginning with the September 30 paycheck or as specified in paragraph 2 above.
5. The ULE and the WEAC do hereby indemnify and shall save the Board harmless against any and all claims, demands, suits, or other forms of liability including

attorneys' fees and court costs that shall arise out of or by reason of action taken or not taken by the Board, in accordance with this Section 316, provided that any such claims, demands, suits, or other forms of liability shall be under the exclusive control of WEAC and its attorneys.

6. Forfeiture of the provisions of this section shall be governed by applicable provisions of the Wisconsin Statutes.
  7. All Fair Share members of the bargaining unit shall have the right to vote on any contract ratification.
6. If the number of affirmative votes cast in the election is less than two-thirds of those eligible to vote, no 'fair share' language shall be included in the 1977-1980 Master Contract, without prejudice to the right of ULE to renew its 'fair share' request in negotiations for Master Contracts subsequent to the 1977-1980 period, and the language of Section 316 of the 1975-77 Master Contract shall be included in the 1977-1980 Master Contract.

Facts:

The parties have had a collective bargaining relationship since 1964. Fair-share was not included in the 1974-75 or 1975-77 labor agreements although it was a central item in the negotiations.

In 1976 ULE sought to become the successor to the then existing Hamilton Education Association. The District did not grant ULE voluntary recognition. During the litigation that followed all parties agreed that the WERC should conduct a representation election, which was held in 1977. The results were as follows:



Total number eligible to vote	249
ULE	115
Hamilton District Educators	91
No representation	0

ULE indicated that its present membership is 161.

District Exhibit #1 contained the results of a survey made by the District of some 49 Wisconsin school districts. Of these districts 21 have fair-share agreements. Respondents to the survey were asked what percentage of the staff were members of the labor organization when fair-share was implemented, and in all but two cases the membership figure was estimated to be at or above 90%. Of those districts surveyed which had fair share agreements, 8 had been implemented only after an election had been held. The voting standards varied. In one case it was 50.1% of those voting. In three cases it was 50 or 50.1% of those eligible to vote. In another case it was 2/3 of those voting, and in two cases it was 2/3 of those eligible to vote. In another case it was 80% of those voting provided a majority of those eligible to vote did so. The ULE exhibits showed that 4 of 7 Lakewood-West locals (of which ULE is a part) have fair-share agreements and 11 of 14 Lakewood East and West locals have fair-share. ULE exhibits showed that of 29 school districts in Milwaukee and Waukesha Counties, 16 have fair share. ULE exhibits also showed that the WERC has conducted 24 fair-

share elections among teachers since 1971. These elections had variable voting standards. Approximately 3 had a standard of a majority of those voting, 14 had a standard of a majority of those eligible to vote, 2 had a standard of 2/3 of those voting, and 2 had 2/3 of those eligible to vote. The rest used higher percentages either of those voting or those eligible.

Positions of the Parties:

District: The position of the District may be summarized as follows:

In contending that the voting standard should be 2/3 of those eligible, rather than 50% of those eligible the

District cites the following factors:

- 1) Chapter 111.70 Wis. Stats., does not include a specific election standard for initial fair-share elections. The District contends that it was the legislative intent that the voting standard be set by the parties (or the arbitrator) on a case by case basis.
- 2) "Fair-share is an issue significantly different than any other negotiated by the District and ULE . . . Unlike salary, fringe benefits or working conditions, fair-share makes an involuntary payment of a large amount of money to three different private associations an unavoidable, pre-condition to District employment . . ."
- 3) District statistics indicate that in almost all cases where fair-share agreements have been negotiated there has been a

significantly higher proportion of teachers belonging to the union at the time of negotiation of the fair-share agreement than is the case with teachers in the District. It is significant, according to the District, that in a recent representation election approximately 36% of those eligible to vote, voted for representation by a labor organization other than ULE.

According to the District,

those 91 teachers constitute a minority whose fundamental interests are entitled to a two-thirds election standard protection prior to a virtually irrevocable, involuntary imposition of compulsory payments to three private associations with whose objectives they may disagree.

Using a majority of those eligible standard, the District contends, the ULE cannot conceivably lose the election whereas the District opts for a voting standard where the outcome "is not stacked one way or the other."

4) In districts which have agreed with their teachers to have a fair-share election a significant number have used as the election standard two-thirds of those eligible to vote, and this includes two of the districts in Lakewood UniServ-West.

5) The District cites many examples in the U.S. Constitution, and in Robert's Rules of Order, and in State statutes, in which a 2/3 voting standard is used where "the result of the election may be government imposition of a compulsory monetary payment or some other fundamental change in position affecting particular individuals or the general public."

ULE: The position of the ULE may be summarized as follows:

In contending that the voting standard should be a majority of those eligible to vote, rather than 2/3 of those eligible, ULE cites the following factors:

- 1) While 111.70, Wis. Stats., does not have a voting standard for an initial election, the voting standard for termination of a fair-share agreement is a majority of those eligible to vote.
- 2) In the statistics cited by both the District and ULE most districts which have fair-share agreements have negotiated them without an election, and in only a minority of those cases has the election standard been higher than a majority of those voting or eligible to vote.
- 3) In an arbitration case involving Sheboygan County and its Sheriff's Department, where a fair share election standard was one of the issues, arbitrator Haferbecker supported the Union's position that the standard should be a majority of those voting, and he referred to that standard as "reasonable and in accord with common democratic practice . . ."
- 4) The Union's proposed election standard is more stringent than that used in electing school board members. In countering the District's arguments about the common use of a 2/3 voting standard, the ULE reply brief states:

Contrary to the supposed "common thread" being two-thirds regarding 'compulsory monetary payment', the real common thread is often no voice at all, as in the case of the Federal Income Tax, or a voice only through representation as in applications of the Constitutions of the Federal and State governments. In the latter cases, the compulsory mandatory payments are usually determined by committees or commissions that do not include the entire group of elected officials, often includes large numbers of persons not elected but appointed, and invariably includes provisions for the decision-making process of these groups to be determined by simple majority vote within these groups. . . ."

Discussion:

In making a binding arbitration award, the arbitrator is bound by statute to consider the criteria for decision-making which are spelled out in the statute. In their presentation and briefs the parties did not focus on these criteria, and with good reason because most of them have no relevance to the narrow issue that the parties have asked the arbitrator to decide. The arbitrator has considered the dispute in light of all of the statutory criteria, and he believes that the only ones which may be of some relevance to the dispute are "the interests and welfare of the public . . ." and "comparison of the . . . conditions of employment of the employes involved in the arbitration proceeding with the . . . conditions of employment of other employes performing similar services and with other employes generally . . . ."

In the arbitrator's view, either party's offer satisfies the interests and welfare of the public. Fair-share agreements are

authorized by state statute without the requirement of an election. Thus, it is in the interest and welfare of the public to have a fair-share agreement for teachers, or not to have one. Neither voting standard is offensive to the "interests and welfare of the public . . ." as the arbitrator sees it, and both parties have pointed in their briefs to common uses of majority and two-thirds voting standards.

The voting standard for a fair-share election is not addressed in the statute because there is no necessity to have an election for an initial fair-share agreement. Parties can and do negotiate such agreements without holding an election. Where they decide to hold an election the voting standard is up to them. The legislature had addressed the voting standard in providing for the termination of a fair-share agreement. If a sufficient showing of interest is made to the WERC to have an election, the voting standard for such an election is a majority of those eligible to vote in the election, the same standard proposed by ULE.

The parties stipulated at the hearing that approximately 35-40% of school districts in Wisconsin have a fair-share agreement, and the great majority of those agreements have been reached voluntarily and without an election.

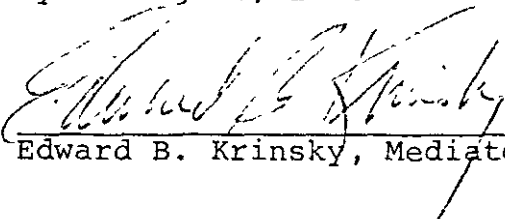
It is reasonable to look at the voting standards which have been used in those cases in which a fair-share election has been held. The ULE exhibit showing WERC-conducted fair-share elections

demonstrates that the voting standard in by far the largest number of cases has been a majority of those eligible to vote, the standard that ULE proposes to implement here. It is true, that some of the districts affiliated with Lakewood UniServ have agreed to fair-share elections using a two-thirds of those eligible standard. There is nothing offensive to the arbitrator about that more restrictive standard, but the arbitrator is impressed by the fact that most fair-share elections have used a lower voting standard.

In summary the lack of a restrictive voting standard in the statute for initial fair-share elections, the existence of a majority of those eligible standard in the statute for termination of a fair-share agreement, the fact that most fair-share agreements are arrived at voluntarily without an election, and the fact that most elections where they have been held have used a standard of a majority of those eligible to vote, all persuade the arbitrator that the ULE proposed voting standard is a more reasonable one than the District's proposed voting standard. Both are reasonable, but under the circumstances the ULE's standard is more reasonable.

Based on the foregoing facts and discussion the arbitrator makes his Award in favor of the ULE final offer.

Dated this 11<sup>th</sup> day of August, 1978.

  
Edward B. Krinsky, Mediator-Arbitrator