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In the Matter of the Petition of \*  
\*  
Northwest United Educators \*  
\*  
To Initiate Mediation-Arbitration \*  
Between Said Petitioner and \*  
\*  
Clear Lake Joint School District No. 1 \*  
\*  
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Case V  
No. 22541  
MED/ARB-23  
Decision No. 16328-A  
Edward B. Krinsky, Arbitrator

Appearances: Alan D. Manson, Executive Director, for Northwest United Educators  
  
Harold H. Roethel, Consultant, Wisconsin Association of School  
Boards and Ray Smith, District Administrator (and David R.  
Friedman on the Reply Brief) for Clear Lake Joint School District

On May 2, 1978, the Wisconsin Employment Relations Commission appointed the under-  
signed as mediator-arbitrator under Section 111.70(4)(cm)6, Wis. Stats., to select  
the total final offer of one of the above-captioned parties if the impasse between  
them could not be resolved.

Pursuant to a petition by more than five citizens of the jurisdiction and as required  
by the statute, a public hearing was held at Clear Lake, Wisconsin, on July 6, 1978.  
Approximately thirty people were in attendance, of whom approximately ten spoke at the  
hearing. All of the comments were directed to the issue of "fair share", some  
expressing views in favor, some expressing views against.

Following the public hearing the undersigned attempted to mediate the issues contained  
in the parties' final offers. Those mediation efforts were not successful and neither  
party modified its final offer. The mediator-arbitrator notified the parties in  
writing on July 10, 1978, that he would proceed to arbitrate the dispute.

An arbitration hearing took place at Clear Lake on September 6, 1978. At the hearing  
both parties had full opportunity to present evidence, testimony and arguments. No  
transcript of the proceedings was made. Both parties agreed to submit post-hearing  
briefs and reply briefs. The reply briefs were exchanged and the record declared  
closed on November 6, 1978.

Prior to the hearing the District subpoenaed certain Union financial records in  
connection with the fair share issue. The Union did not produce the requested data.  
Rather than take further action to support its request for financial information, or  
further delay the hearing, the District decided not to pursue the matter further.

Final Offers

The final offers of the parties submitted to the WERC and certified to the undersigned,  
are as follows:

Northwest United Educators

Article XII - Compensation

Add Section N:

1. If a teacher is required to write individual education programs (IEP) or attend conferences in connection with IEP's and such activities can only be accomplished outside the normal workday, then the teacher shall be paid 1/8 of his/her daily salary (daily salary is 1/190 of the yearly salary) for each hour of such required overtime.

This section shall become effective upon the date this agreement is signed or July 1, 1978, whichever is later.

For the 1978-79 year, there shall be a cap of \$800 on the amount of money to be paid under this section. No such overtime for 1978-79 shall be paid until June 1, 1979, at which time all valid claims for such overtime shall be totaled. If the total is less than \$800, then the claims shall be paid. If the total exceeds \$800, then the claims shall be paid at a percentage determined by dividing \$800 by the total claims. No overtime for 1978-79 shall be paid on claims received after June 1, 1979.

2. If a teacher is required by the Board to have vocational certification for a Capstone Program in addition to regular DPI certification, the teacher shall be given one (1) credit for each 120 hours of required work experience. Such credits shall only apply to advancement between the B.S. and the M.S. lanes.

#### Article XIV - Salary Schedule

1977-78 Salary Schedule: Same lanes and steps as 1976-77 schedule with a \$9200 base and 4% increments.

1978-79 Salary Schedule: Same lanes and steps as 1976-77 schedule with \$125 between lanes (except MS to MS+16 which shall be \$250), a \$9600 base and 4% increments.

Add to Section A: For the 1978-79 year there shall be 190 contract days with 180 student contact days; the scheduling of these days for 1978-79 shall be negotiated.

Add to Section B,2: For the 1978-79 year the amount to be divided shall be \$3800.00.

Add to Section D: For the 1978-79 year the rate shall be \$6.25 per hour.

Replace Section F with: The District will pay up to \$71/mo. of the health insurance premium for full time certified employees for 1977-78; for 1978-79 the District will pay up to \$83/mo.

Add to Section H: For the 1978-79 year the Board shall pay to the Wisconsin Retirement Fund an amount for each teacher equal to 5% of that teacher's total wages.

#### Article XX - Voluntary Dues Deduction

Replace with:

##### Fair Share

- A. NUE, as the exclusive representative of all the employees in the bargaining unit, will represent all such employees, NUE and non-NUE, fairly and equally, and all employees in the unit will be required to pay, as provided in this Article, their fair share of the costs of representation by the NUE. No employee shall be required to join the NUE, but membership in NUE shall be made available to all employees who apply consistent with the NUE constitution and bylaws. No employee shall be denied NUE membership because of race, creed, or sex.
- B. The employer agrees that effective thirty (30) days after the date of initial employment or thirty (30) days after the opening of school it will deduct from the monthly earnings of all employees in the collective bargaining unit an amount of money equivalent of the monthly dues certified by NUE as the current dues uniformly required

of all members, and pay said amount to the treasurer of NUE on or before the end of the month following the month in which such deduction was made. Changes in the amount of dues to be deducted shall be certified by NUE fifteen (15) days before the effective date of the change. The employer will provide NUE with a list of employees from whom such deductions are made with each monthly remittance to NUE.

- C. NUE and the Wisconsin Education Association Council do hereby indemnify and shall save the Clear Lake 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, and in reliance on any list or certificates which have been furnished to the Board pursuant to this Article, provided that any such claims, demands, suits, or other forms of liability shall be under the exclusive control of the Wisconsin Education Association Council and its attorneys.
- D. This provision shall become effective upon the date this Agreement is signed.

#### School District of Clear Lake

The Board of Education of the School District of Clear Lake proposes that all provisions, with appropriate date changes, shall remain the same (except those clauses tentatively agreed upon) as in the 1976-77 collective bargaining agreement, except the following:

#### ARTICLE XIV - SALARY SCHEDULE

1977-78 - \$9200 base with increments equal to 4%  
expressed in dollar amounts

1978-79 - \$9650 base with increments equal to 4%  
expressed in dollar amounts

#### F - INSURANCE

1977-78 - Up to \$750.00 per year for full time  
certified employees

1978-79 - Up to \$850.00 per year for full time  
certified employees

#### Facts and Discussion

The undersigned will consider each issue in dispute and then indicate his decision concerning which final offer should be implemented.

#### Issue #1 - Salary

#### Facts and Parties' Positions:

There is no salary dispute with regard to salary for 1977-78, except that the District expresses salary increments in terms of dollars, while the Union expresses them in terms of percentages.

For 1978-79 the Board offers \$50 more than does the Union on base salary, while the Union offers to increase lanes \$25 more than those of the District, and \$50 more for the MA and MA+16 lanes.

The parties are in agreement that the cost difference between the two proposals is insignificant during 1978-79. Union Exhibit #50 indicates that the salary rank of the District within the Lakeland Athletic Conference is either not affected, or affected only slightly by the parties' proposals.

Discussion: In the arbitrator's view the differences between the parties on salary are so slight as not to affect the outcome of this case. Both offers are fair and reasonable.

#### Issue #2 - Health Insurance

##### Facts and Parties' Positions:

The Union wants the District to pay the full cost of health insurance, which it expresses as up to \$71 per month in 1977-78, and up to \$83 in 1978-79. The District's offer of up to \$750 per year in 1977-78 and up to \$850 per year in 1978-79 is equivalent to about 88% of the premium. This amounts to an annual cost difference of about \$3500 in 1977-78 and \$950 in 1978-79.

The Union justifies its offer on comparisons with other districts. The District looks at comparisons, but also takes the position that employes should have to pay part of their health insurance costs as a matter of principle. The District points out, too, that several of the comparable communities which pay 100% of premiums, pay fewer dollars than the District does.

The figures for the Lakeland Conference which the parties agree are appropriate for purposes of comparison, show that of 11 districts whose contracts for 1978-79 are settled, 5 of the 11 pay less than the District's offer, and 6 pay more. Eight of the districts pay less than what the Union is asking for, and 3 pay as much or more.

Discussion: The District would appear to the arbitrator to be in a middle position in the Conference, whereas the Union's offer would put the slightly above the competition.

The Union argues, however, on this and other issues that the comparison figures used should include more districts than those in the Lakeland Conference. It argues that there are many other districts in the Clear Lake geographic area which are no further away from Clear Lake than some of the districts in the conference, and that they, too, should be considered.

The arbitrator has analyzed the list of districts in the Clear Lake area submitted by the Union and has looked at the ones which are in the same size range (in terms of number of FTE teachers) as those in the Lakeland Conference. These districts are Boyceville, Frederic, Glenwood City, Luck and Webster. These five districts all pay 100% of health insurance and pay dollar amounts in excess of what the District is offering. In all but one case they pay the same or more than what the Union is asking for.

The addition of these districts supports the Union's position, and indicates to the arbitrator that the District's offer on health insurance is below what is being paid by a majority of the districts of Clear Lake's size in the geographic area.

#### Issue #3 - School Calendar

##### Facts and Parties' Positions:

The arbitrator understands the difference between the parties' position on this issue to be that the Union wants added to the contract the words, "the scheduling of these days for 1978-79 shall be negotiated."

Discussion: There was no testimony or evidence presented by the Union at the hearing or in its brief to indicate why the Union believes this change should be made, and the arbitrator has no basis on which to support this proposed change.

#### Issue #4 - Pay for Extra Duties

##### Facts and Parties' Positions:

The Union supports its demand for expanding the extra duty pay pool from \$3500 to \$3800 by pointing to the rising cost of living and suggesting, although not providing details, that there are more activities than previously for which the pool is divided. The District notes that in the last contract the pool was raised from \$2000 to \$3500 and that on a per duty basis the average pay for 1977-78 was \$18.23 per duty. The District asserts that this rate is far above what comparison districts pay for such duties.

Discussion: In the arbitrator's view the Union has not adequately supported its position that the extra duty pool should be increased.

#### Issue #5 - Pay for work of less than five hours per day

##### Facts and Parties' Positions:

The Union asks that the hourly rate be raised from \$5.75 to \$6.25 for work of less than five hours per day. It justifies the increase by citing the rise in the cost of living. The District contends that the only job affected by this rate has not been filled since there is currently no program for it.

Discussion: In the arbitrator's view the Union has not adequately supported its position that the rate of pay for less than five hours of work per day should be increased.

#### Issue #6 - Wisconsin Retirement Fund

##### Facts and Parties' Positions:

The Union asks that the District pay the full 5% share of the employee's contribution to the Wisconsin Retirement Fund. It calculates the cost of this benefit for 1978-79 at \$4700 more than the District is offering. The Union supports this demand on the basis of comparisons with other districts in the Lakeland Conference and in the Clear Lake area. The District opposes paying more than the \$550 it has offered because in its view only teachers at the top of the schedule would benefit.

Union Exhibit #36 shows that of the 12 Lakeland Conference districts on which there is data available for 1978-79, 9 pay the 5% share asked by the Union, and 2 districts pay a larger dollar amount than that offered by the District. Only one conference district pays less than what the District is offering.

Discussion: In the arbitrator's view the comparisons both within and outside the Lakeland Conference clearly support the Union's position on the issue of retirement contribution.

#### Issue #7 - Payment for IEP

##### Facts and Parties' Positions:

The Union views its request for payment for preparation of IEPs as a small dollar item, but one which is important to the teachers who are affected. The cost is further minimized, according to the Union, because 70% of the costs would be reimbursed to the District by the State. Such a benefit, in the Union's view, would also allow the District to require a teacher to work outside of the school day, which it sees as being in the public interest in carrying out the IEP program so that conferences with parents can be held outside of the regular school day if necessary. The Union notes that the CESA #4 labor agreement provides for extra payments for IEPs for 11 special education teachers, 4 of whom serve Clear Lake. The Union contends that the Clear Lake special education teachers should be given the same opportunity, and the Union notes that the District's existing extra-curricular schedule provides for payment for teachers whose activities require that they work outside of regular school hours.

At the hearing the parties stipulated to the written statement of special education teacher Patzwold who stated therein that in 1977-78 he spent approximately 25 hours working on IEPs about half of which he did outside of the regular school day.

High School Principal Greschner testified that he has never ordered teachers to attend meetings outside of the regular school day, or to meet with parents outside of the regular school day in connection with IEPs, nor has he required that they write IEPs outside of normal working hours. He stated that in his view there is adequate time during the normal working day for teachers to do IEPs.

Area Special Education Director Blahauvietz testified that in Clear Lake it now takes about one hour to write an IEP and that the time required gets shorter with experience. He testified he thought there was time for such work during the regular school day.

In addition to the testimony of its witnesses, the District cites the fact that no other Lakeland Conference districts pay extra for work on IEPs. The District also objects to the wording of the Union's final offer which arguably would leave the question of whether such work were required of a teacher up to the individual teacher, not members of the administration.

Discussion: In the arbitrator's view, the Union has not demonstrated sufficiently that writing of IEPs and the other activities connected with preparation of IEPs cannot be done during the normal school day at the present time. This, coupled with the fact that other area districts with the exception of CESA #4 do not have such a benefit, persuade the arbitrator that the District's position on this issue should be supported.

#### Issue #8 - Capstone Program

##### Facts and Parties' Positions:

The Union asks that a teacher required by the District to have certification for a Capstone Program should also be given credit for advancement on the salary schedule for the work experience required for certification. The Union notes that this is a very small monetary item affecting only 2 or 3 teachers. The Union also cites a tentative agreement reached with the Lake Holcombe district to provide this benefit for Capstone teachers.

The District objects to the Union's demand for credit for Capstone work experience, citing several bases for its objections. These include the lack of such payment among comparison districts, the fact that many teachers have dual certification and have paid for obtaining it themselves and don't get extra credits on the salary schedule for it, and the fact that the District might be burdened with having to continually pay teachers extra for Capstone credits even if subsequently there is no Capstone program in effect. The District also cites the fact that granting the Union's request would provide an exception to the salary schedule in which advancement on the schedule is now accomplished only by earning graduate credits.

Discussion: The arbitrator has considered the arguments of both parties on this issue and in his view the Union has not shown that payment for Capstone credits is generally given by school districts in the Lakeland Conference, or elsewhere. The arbitrator does not view the merits of one party's arguments with regard to whether such payments should be granted as more persuasive than the other's, but in view of the lack of data on comparison districts the arbitrator does not feel he has a sound basis for supporting the Union's position, despite the small amount of money involved.

#### Issue #9 - Fair Share

##### Facts and Parties' Positions:

The remaining item to be considered is the Union's demand that the collective bargaining agreement contain a fair share provision. It is clear from the parties' presentation at the hearing, the public hearing, the mediation, and the written briefs, that this issue is central to the impasse and the one on which both parties place a great deal of importance.

The Union supports its demand on several bases. It cites the fact that its membership has decreased from 40 in 1972-73 to 25 in 1977-78 at the same time that the Union's obligation to represent all employes has continued. The Union cites the District's opposition to establishing a working relationship with the Union and the District's discomfort with the concept of collective bargaining and exclusive representation. The Union argues that stability is needed in the labor-management relationship in Clear Lake and that such stability cannot be achieved where there are major segments of the teaching staff which do not support the Union financially. It cites the advantage to the public as well as the labor-management relationship of having a uniform voice for the teachers.

In addition the Union cites the fact that in the CESA #4 area, 14 of the 26 districts now have fair share agreements, and that the pattern is increasingly in the direction of including fair share agreements in contracts.

The District argues against fair share. It does not want to be a party to compelling non-members to join the Union. While the District is not arguing the legality of such an arrangement, it is concerned that implementation of the Union's offer by the arbitrator would subject the District to possible prohibited practice charges stemming from the Browne decision by the Wisconsin Supreme Court. The District contends that implementation of a fair share agreement would only serve to exacerbate the already strong feelings dividing teachers and the community resulting from a strike by the Union in 1973. The District cites the fact that many teachers have chosen not to join the Union apparently because the Union has not persuaded them that it is in their interests to do so, and the District does not feel that the Union has demonstrated why the District should now agree to a fair share arrangement. The District cites the fact that only 4 of 14 districts in the Lakeland Conference have agreed to fair share arrangements.

Discussion: This arbitrator has indicated in prior decisions that he is not opposed philosophically to fair share agreements. The Wisconsin Legislature, too, was not opposed to fair share agreements and authorized such arrangements where negotiated. It did not require the implementation of such arrangements, however.

It is the arbitrator's view that this issue should not be decided on a philosophical or ideological basis as some arbitrators have done, but rather that it should be considered in the context of the bargaining and the statutory criteria for the arbitrator's decision.

In other cases, this arbitrator has awarded fair share where comparisons with other groups of employes deemed relevant indicate that fair share agreements are the general rule, and where a high proportion of the employes in the bargaining unit seeking the fair share agreement are already members of the union. The arbitrator is much more reluctant to grant fair share where it is not clearly justified by comparisons and/or where the support for the bargaining agent is marginal and the award of fair share by the arbitrator might produce a significant change in the balance and in the labor-management relationship.

It is better for a labor-management relationship, in the arbitrator's view, for all or most employes in the bargaining unit to support the bargaining agent, whereas factionalism makes the bargaining agent's job more difficult and costly and leads to instability. However, the arbitrator does not view it as appropriate to impose a fair share agreement by arbitration in a situation like the one in Clear Lake at the present time where it is very unlikely that a fair share agreement could be voluntarily negotiated and where at most a bare majority of the teachers favor it.

The latest comparison data presented for the Lakeland Conference on the fair share issue is contained in Union Rebuttal Exhibit No. 49, which indicates that there is agreement or tentative agreement on fair share in 5 of the 14 Lakeland district, and modified fair share in a sixth district. When the arbitrator adds the other districts used earlier, that is, five nearby districts of the same size as those in the Lakeland conferences, 2 of the 5 (Frederic and Luck) have fair share, while 3 do not (Boyceville, Glenwood City and Webster). Thus it appears that in the immediate area a growing number of districts of the size of those in the Lakeland Conference have fair share, but not a majority. In the geographic area of CESA #4 a bare majority, 14 of 26 schools, now have fair share.

Given these comparisons, and the current situation in Clear Lake, it is the arbitrator's view that at this time the District's position should be supported although not for the philosophical reasons expressed by the District, and fair share should not be awarded.

Award

In summary, the arbitrator has considered the evidence and testimony presented at the arbitration hearing and in written briefs, and in light of the statutory criteria for decision-making has concluded that the final offer of the District is more reasonable at this time than the Union's final offer.

The arbitrator therefore awards in favor of the final offer of the District.

Dated this 12th day of December, 1978.

Edward B. Krinsky /s/  
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Edward B. Krinsky, Arbitrator