
 *
 In the Matter of the Mediation-
 Arbitration of
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 *
 BOARD OF EDUCATION, OAK CREEK-
 FRANKLIN JOINT CITY SCHOOL
 DISTRICT NO. 1
 *
 -and-
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 *
 OAK CREEK EDUCATION ASSOCIATION
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Case XVI
 No. 22929 MED/ARB-94
 Decision No. 16406-A
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 AWARD

INTRODUCTION

The Board of Education, Oak Creek-Franklin Joint City School District No. 1 (hereafter Board) petitioned the Wisconsin Employment Relations Commission for mediation-arbitration pursuant to Wisconsin Stat. Section 111.70 to resolve a collective bargaining impasse between the Board and the Oak Creek Education Association (hereafter Association). Arlen Christenson of Madison, Wisconsin was appointed mediator-arbitrator and an initial meeting was scheduled for Oak Creek, Wisconsin, on August 25, 1978. After mediation proved unsuccessful the parties agreed to proceed to arbitration on the same day, waiving their rights to withdraw final offers. An arbitration hearing was held on August 28, 1978, at which time both parties had full opportunity to present evidence and argument. Post hearing briefs were received by the arbitrator by September 27, 1978.

APPEARANCES

Mark F. Vetter, Attorney at Law of Mulcahy & Wherry, S.C., appeared for the Board

James Gibson, WEAC UniServ Council #10, appeared for the Association.

FINAL OFFERS

Duration

Board Position

The Board has proposed to modify Article XXV, Duration of the Agreement, to provide for an agreement which would become effective August 15, 1978 and expire on August 14, 1980.

Association Position

The Association has proposed to modify Article XXV, Duration of the Agreement, to provide for an agreement which would be in effect from August 15, 1978 to August 14, 1979.

Calendar

Board Position

The parties customarily negotiate a calendar one year in advance of the school year concerned. The Board's proposed calendar for 1980-81 includes the following: 188 contract days--180 contact days, 3 holidays, 3 work days, 1 parent-conference day, and 1 in-service day. The Board's proposal sets forth the same number of days as have been agreed upon for the 1978-79 and 1979-80 school years.

Association Position

As a result of its position on the duration of the agreement, the Association has not put forth a proposal concerning the 1980-81 school year calendar.

Extra Pay and Hourly Rate

Board Position

The Board is proposing a Five and One-Half Percent (5.5%) across the board increase to the extra-curricular schedule for the 1979-80 school year. The Board is also proposing to increase the hourly rates for summer school, drivers' education and extra pay by Five and One-Half Percent (5.5%). The hourly rate for these activities would be Eight Dollars and Forty-Four Cents (\$8.44) during the 1979-80 school year.

Association Position

Since the Association is only proposing a one year calendar, it has not presented a proposal on extra-curricular and hourly pay.

Teacher Work Day

Board Position

The Board has proposed that the following new section be added to Article XXI, Teaching Conditions:

21.6 Teacher Work Day: The regular scheduled hours of a teacher work day shall be as follows:

- A. Senior High School - 7:30 a.m. to 3:30 p.m.
- B. Junior High School - 7:55 a.m. to 3:55 p.m.
- C. Elementary School - 7:30 a.m. to 3:00 p.m.
- D. Shepard Hills - 8:05 a.m. to 3:35 p.m.

This section is not intended to eliminate the teachers' obligation to work additional hours beyond the teacher work day which are required by either this agreement or by existing Board policy.

Association Position

The Association has proposed that the following new section be added to Article XXI, Teaching Conditions:

21.6 Teacher Work Day: The regular scheduled hours of a teacher work day will be as follows:

- A. Senior High School - 7:30 a.m. to 3:30 p.m.
- B. Junior High School - 7:55 a.m. to 3:55 p.m.
- C. Elementary Schools - 7:30 a.m. to 3:00 p.m.
- D. Shepard Hills - 8:05 a.m. to 3:35 p.m.

Elementary teachers may also be required to attend faculty meetings beyond the work day not to exceed two hours each month. Junior and Senior High School teachers may also be required to attend faculty meetings beyond the work day not to exceed one hour each month.

Health Insurance

Board Position

The Board has proposed maintaining the structure of the health insurance article in the same format as is set forth in Article VI, Insurance, 6.1 in the 1977-78 collective bargaining agreement. It is the Board's proposal to pay all of the increased costs of the health insurance premium for the employees in the bargaining unit during both of the years of the proposed agreement. However, any employee covered by any other insurance program(s) who wishes to

participate in the District's single plan program, shall be required to pay Four Dollars (\$4.00) per month for the cost of the premium. Such payments shall be required only if the other plan under which the employee is covered provides "comparable" coverage.

Association Position

It is the Association's proposal to maintain the present contract language in Section 6.1.

Dental Insurance

Board Position

The Board has rejected the Association's proposal to include dental insurance in the collective bargaining agreement.

Association Position

The Association has proposed that a new section be added to Article VI, Insurance. The new section would read as follows:

The Board will pay the full cost of single and family group dental insurance in accordance with benefits attached in Appendix ____.

Bd. Exh. 16 represents the details of the Association's proposed dental plan and the monthly rates for single and family plan coverage under the plan.

Salary

Board Position

During the first year of the agreement the Board has proposed to raise the base salary from \$9,736 to \$10,645. In the second year of the agreement, the Board has proposed to raise the base from \$10,645 to \$10,870. The Board also has proposed that salary increases be distributed on the salary schedule to remedy salary deficiencies at some levels. The Board has proposed the deletion of Section 23.8 of Article XXIII, Salary Schedule relating to longevity payments. The Board has proposed that this section be replaced with a new Step 14 on the salary schedule. The new step is set forth as part of the Board's salary proposal.

Association Position

The Association has proposed to increase the base salary for the 1978-79 school year to \$10,350. The Association has also proposed that the structure of the salary schedule be modified. The Association has proposed to retain the present contract language in Section 23.8 relating to longevity. Section 23.8 in the new agreement would read as follows:

Section 23.8. Each employee who was at the highest step on the salary schedule during the preceding school year shall be paid, in addition to the salary stated on the salary schedule, an additional sum equal to 2% of the stated salary amount.

Discussion

Among the criteria the arbitrator is required by statute to consider is the wages, hours and conditions of employment of employes performing similar services in comparable communities. Both parties rely heavily on evidence of comparability

but they disagree on what communities are comparable for the purposes of the statutory criteria. The Board argues that comparisons should be limited to six adjoining communities while the Association would prefer to include three additional nearby communities. Comparability is clearly a matter of degree. Every community in the state is comparable to Oak Creek in some respects but some are obviously more comparable than others. The Board, for example, expanded its comparisons to 28 Milwaukee metropolitan area communities for some purposes in its presentation of evidence. I do not find it necessary to decide whether the Board's six communities or the Association's ten are "comparable." Evidence relating to wages, hours and conditions of employment in each will be considered and assigned the weight I believe to be appropriate as will appear in the discussion of the issues.

The parties' negotiations have left five issues to be resolved in this proceeding by the selection of one or the other final offer. The five issues are: 1) The duration of the agreement (whether one or two years), 2) the provision of Board paid dental insurance, 3) the salary level and structure, 4) the payment of health insurance premiums (whether or not some employees should be required to pay \$4.00 a month for single coverage) and 5) the language governing the teacher work day.

Duration

The Board's final offer would provide for an agreement effective from August 15, 1978 until August 14, 1980. The Association would have a one year agreement. As a part of its proposed two year package the Board would continue a school calendar substantially the same as the parties have agreed to for the current academic year, a 5.5% across the board increase in compensation for extracurricular hourly activities, and a salary increase package amounting to just under 8% for 1979-80.

The Board argues that a two year agreement is preferable because it will reduce the amount of time and effort necessarily devoted to negotiations. A longer term contract, the Board argues, will promote stability in labor relations. Moreover the Board contends, the trend in the District as shown by the two year agreements in 1973-75 and 1975-77 is toward longer term agreements. Finally the Board argues that comparable districts are increasingly choosing to enter into longer term agreements.

I do not find the Board's arguments persuasive that a two year agreement should be imposed. In these times of inflation and uncertainty about wage and price restraints and other economic conditions a long term contract, particularly one that fixes salaries, is strictly a gamble. That is no doubt one of the reasons that all but one of the agreements negotiated in comparable districts that have more than a one year duration provide for a salary reopener in the second year. The Board's proposed 8% salary increase in 1979-80 may be quite adequate as viewed from the perspective provided by another year of experience. If, on the other hand, the second year salary level coupled with the inability of the Association to negotiate any improvements in fringe benefits or terms of employment turns out to be inadequate in the light of subsequent events the two year agreement may have a very damaging effect on labor relations. If the longer term agreement were part of a voluntary agreement the situation might well be different. A "locked up" two year agreement is just too speculative, however, to be imposed. On this issue I find the Association's final offer to be the more reasonable.

Dental Insurance

The Association's final offer includes a provision for a dental insurance plan with premiums fully paid by the Board. The proposal is entitled WEA Insurance Trust Dental Plan VII and provides for 80% payment of most dental costs except for orthodontia which would be covered at 50%. The Association argues that dental insurance is a fringe benefit which is becoming more and more prevalent in comparable school districts. In support of this argument the Association points out that among the nine districts it considers comparable, five have a dental insurance program. Moreover, the Association argues, dental insurance is an unresolved issue in each of the remaining four districts. In addition the largest private employer in Oak Creek, Delco Electronics Corporation, provides dental insurance to its employees.

The Board points out that no other employees of the school district receive Board paid dental insurance as a fringe benefit. Moreover, only three of the six districts the Board considers comparable provide any form of dental insurance. And only two pay the full cost of premiums. The Board also surveyed 28 districts "in and around the Metropolitan area" and found that only 10 of the 1977-78 collective bargaining agreements provided any dental coverage. Finally the Board contends that the Association's position that the Board should pay 100% of the cost of dental insurance is both inconsistent with existing practice with respect to insurance coverage and unreasonable. The health insurance language of the agreement has never been framed in terms of 100% Board paid premiums. To do so is contrary to the principle of partial employee contribution and a dollar limitation on Board insurance costs which the Board has always insisted upon.

I find this issue to be a stand-off. The use of comparables in relation to dental insurance may illustrate one of the reasons the Association has chosen nine nearby school districts for comparison while the Board prefers to limit comparison to six. Two of the three disputed districts include a dental insurance program among the benefits provided by the collective bargaining agreement. Thus a majority of the districts advanced by the Association as comparable provide dental insurance. If the comparison is limited to those cited by the Board the percentage falls to 50% (3 of 6). It is significant to note, however, that dental insurance remained an unresolved issue in all of the other districts at the time of the hearing. It has obviously been identified by the teachers as one of their principle bargaining issues. It would therefore be surprising if, when this round of bargaining is over, a solid majority of districts in the Oak Creek area did not have dental insurance as one of their contractual benefits. It is also significant that the Association's proposal for 100% Board payment of premiums is not commonly included in other agreements. The majority provide for some employee contribution. The Association argues that it would have been willing to negotiate this issue but the Board would not. Whether or not that is true it does not go to the issue of the appropriateness of the respective offers under the statutory criteria. The Association's final offer does, however, limit the cost which the Board must assume. The attached "dental plan" is a part of the offer and the rates listed there constitute a limitation on what the Board would have to pay if the Association's final offer were adopted.

Salary

The Association contends that the Oak Creek teachers are in a "poor comparative salary position" and require a substantial salary increase to avoid a further decline in this position. The Association points out that 66% of the Oak Creek teachers received salaries in 1977-78 which ranked lower than fifth among the 10 districts the Association considers comparable and 46% ranked 8th or lower. Although Oak Creek salaries are relatively high at the top of the schedule they are extremely low at the bottom and in the middle ranges. The result is that their "cumulative earning power over an entire career is lower than it would be in most other districts.

The Board's offer, the Association argues, would improve this competitive position. If the school board offers in other comparable districts which were on the table at the time of the hearing in this arbitration were all implemented the Oak Creek Board's offer would rank 6th among the 8 comparable districts for which data were presented in terms of salary alone and last in terms of increase in total compensation.

The Association also contends that the existing salary structure should be changed to build in "some type of rational mathematical relationship between the salaries at each step of the schedule." While expressly not proposing an "index system" the Association contends that its offer is more rational in these terms in that it reduces the "random" nature of the movements from step to step on the schedule.

Finally the Association argues that its proposed salary increase is justified by the increase in the Consumer Price Index in recent months. The index shows that consumer prices have been rising at an increasing rate in recent months. In this connection the Association asks that the arbitrator take official notice of the increases in the consumer price index since the date of the hearing.

The Board recognizes that Oak Creek salaries are relatively low in some areas of the salary schedule. Consequently, it proposes that the money available for salary increases be distributed to build up those areas, with a lesser increase being provided where the district ranks relatively high. The exception to this principle in the Board's offer is at the beginning steps of the schedule where salaries are relatively low, but the Board, because it is having little trouble hiring new teachers, does not feel the need to improve the District's competitive position.

The Board strongly opposes the introduction of the index concept into the salary structure. Indexing, the Board points out, reduces the ability of the Board to negotiate modifications in salary structure to reflect the need, for competitive or equity reasons, to modify the relationships between levels on the salary schedule. The Board also points out that a 1976 fact finding award supports this view.

Wage settlements with other bargaining units in the district have ranged from 5.5% for custodians to 7.3% for food service employees. The Board's proposed 7.6% increase in teacher salaries compares favorably with these settlements. On the other hand, the Board argues, the Association's proposed 10.2% increase is unreasonable in the light of these other settlements.

The Board also argues that the Association's salary proposal is unreasonable in comparison with settlements and offers in other comparable school districts. The average percentage increase proposed by employers and unions in districts the Board considers comparable is 8.1%. This compares with the Board's 7.6% much more favorably than the Association's 10.2%. In fact, the Board points out, the Association's offer is a full 1% higher than any other offer on the table. The average dollar increase proposed in these districts is \$1,212 per teacher. The Board's proposal is \$90 less than this and the Association's is \$293 higher.

Salaries must not be considered in isolation from other elements of compensation. The Board argues that in terms of total compensation Oak Creek teachers fare well by comparison with other districts when they reach the higher experience and training levels of the salary schedule. Although they start out low (last among seven in the Board's comparisons) they can progress, for example in the BA lane, to second by the fifteenth year of the schedule.

With respect to the consumer price index the Board argues that its offer is the more reasonable in the light of the past performance of the index and reasonable projections into the future. The Board's offer of a 7.6% salary increase exceeds the 6.1% increase in the consumer price index for the Milwaukee area between May 1977 and May 1988 (the latest figures available at the time of the hearing) and matches the Board's projection of 7.6% from August 1977 to August 1978.

The Board's brief emphasizes that it recognizes the need to improve the relative position of Oak Creek salaries. It rejects the arguments, however, that it should be compared with the top paying districts. "The Board . . . maintains that its proposed changes to the salary schedule represent a practical and realistic good faith effort to commence a 'catch up' process and carry it through for a minimum of two years."

I view the Board's proposed salary increase as too low and the Association's as too high. The Board's proposal was a reasonable attempt to keep pace with the cost of living on the basis of what was known at the time of the hearing. The Board's proposed distribution of the increase among the various levels of the salary schedule was also a reasonable attempt to shore up the schedule where it was weak and to make the best use of a limited number of dollars. The Board's salary offer fails, however, to deal with the mutually recognized need to improve the relative position of the Oak Creek salaries. Its salary proposal would barely keep pace with comparable districts. In fact, Board figures show that its offer is slightly below average among comparable districts. In view of the recent developments in the cost of living (of which I take official notice) the Board's offer would also result in a failure to meet the rising cost of living.

The Association's offer of a 10.2% increase, on the other hand, is substantially too high. It is higher than that proposed in any other comparable district and significantly higher than that received by any other bargaining unit in the district. When the Association's salary offer is coupled with its fully paid dental insurance proposal the result is a total compensation package which is not justified by settlements in comparable districts and which exceeds the cost of living increase for the past twelve months. Even recognizing the need for an additional amount of increase to catch up with other comparable districts, the Association's offer attempts to do too much in one year.

Health Insurance Premium

The Oak Creek school district is the only district among those cited as being comparable in which the employees pay a portion of the cost of family health insurance coverage. The Board pays 100% of the cost of single coverage and between 74% and 90.7% of the cost of family coverage depending upon length of service. The Board argues that the result of this structure is that a highly disproportionate number of teachers carry the single coverage which costs them nothing. One of the reasons for this, the Board hypothesizes is that many married teachers whose spouses have comparable health insurance coverage in connection with their employment carry single coverage anyway because it is costless. The Board proposes to eliminate most of this coverage by requiring such teachers to pay \$4.00 a month. This, the Board contends, will reduce the cost of insurance for everyone.

The Association objects to this change pointing out that one of the reasons teachers whose spouses have comparable insurance elsewhere want to maintain single coverage under the school district policy is to maintain their insurability in case coverage under the spouse's policy is lost for one reason or another. In addition the Association argues that maintaining single coverage may be important because of the additional major medical coverage it provides. The Association also contends that the Board proposal would cause serious administrative problems related to the determination of whether or not a teacher had "comparable" coverage under another policy. Finally the Association argues that the Board has not established the need for this change. The reasons advanced by the Board are largely speculative.

On the face of it the Board's proposal on health insurance is difficult to justify. The Oak Creek District is now the only district in the area which does not pay 100% of the cost of family health insurance coverage. The Board's proposal would make it the only district which does not pay 100% of the cost of single coverage. The justification for this position is that it will result in a saving by causing many teachers currently taking the single coverage benefit to drop it. That conclusion, however, is at least subject to some doubt. The evidence presented at the hearing, while suggestive that many teachers might follow the path indicated by the Board, is far from conclusive. The Board's proposal may be an innovative means of dealing with the rising costs of health insurance. Before such innovation should be ordered in an arbitration award, however, a more solid basis for change should be established. I am also concerned, as is the Association, with the administrative problems associated with this approach. The standards for determining comparability and the procedures for applying those standards are likely to pose substantial difficulty. On this issue I conclude that the Association's position is the more reasonable.

Teacher Work Day

The parties have agreed to include in the collective bargaining agreement for the first time language specifying teacher's regularly scheduled hours. They cannot agree, however, on language describing the obligations of teachers to attend faculty meetings, conferences and the like outside these regularly scheduled hours.

The Board argues that its language is preferable because it does not change present policy and because it retains the necessary flexibility in scheduling. The Board also argues that the Association's language is too restrictive in the number of hours permitted and in limiting the required attendance outside regular working hours to faculty meetings. Present practice, the Board points out, permits scheduling conferences during these times as well. Existing Board policy is spelled out in the Board's policy manual and provides that one hour a week may be used at the discretion of the administration for faculty meetings and conferences.

Administrators have seldom, if ever, used the full one hour a week permitted, but the Board believes it necessary to retain the flexibility to do so. Finally, the Board argues that the Association proposal is more restrictive than the contract language in comparable districts.

The Association contends that its language provides all the time the administrators will need for faculty meetings outside regular hours. The practice in the District has been not to use more of the available time than the Association's language would permit. The Association also argues that the Board's language is too imprecise. It does not define "existing Board policy." Although the Board contends in this proceeding that existing Board policy is that stated in the policy manual, it has not been willing to incorporate the language of the manual into the collective bargaining agreement. Finally the Association argues that the Association proposal will give the Board more flexibility than that provided by the contract language in any of the other comparable districts.

One of the principle disputes with respect to this issue is what the contractual limitations on scheduling meetings and conferences are in other comparable districts. The record contains evidence of the contract language in 5 other districts. One contract limits such meetings to 2 hours a month, one seems to permit 4 such meetings a year and three have no specific contract language dealing with meetings or conferences outside the regular work day. In two of those districts, however, the contract does contain language specifically defining the teacher work day. I concur in the Association's view that in those circumstances it is at least likely that the administration cannot require attendance at any meetings outside the regular work day. It is of course possible that bargaining history, past practice or other contract language might lead to the opposite conclusion. Probably the only firm conclusion one can draw from the evidence concerning comparable districts is that the only two contracts having express language on this matter are more restrictive of the rights of the administration than the Association's proposed language would be. On the whole it seems clear that the contract language in comparable districts tends to support the Association's position on this issue.

CONCLUSION

I find the Association's final offer to be the more reasonable on three of the five issues in dispute. On the matter of payment of premiums for single health insurance coverage, the language governing the teacher work day and the duration of the contract the Association's positions are more consistent with the statutory criteria. On the issue of dental insurance I find that I am unable to make a defensible choice between the two offers. The evidence supports the conclusion that a provision for dental insurance should be included in the agreement but does not support the 100% employer paid plan included in the Association's final offer. I find myself in approximately the same position with respect to the two offers on salary. The Association's offer is substantially too high. The Board's offer is lower than the evidence would justify. However, if I were to decide this matter on the basis of salary alone I would choose the Board's final offer. In fact, however, the matter is not to be decided on the basis of salary alone. The offers must be weighed in terms of all five of the issues.

When both final offers are considered in their entirety the choice comes down to one between a one year agreement with a salary increase that is higher than it should be but is otherwise reasonable and a two year agreement with a more reasonable, though lower than justified, salary increase and deficiencies in three of the five issues in dispute. I conclude that the one year agreement is preferable. Not the least of the reasons for this choice is that the parties will have the opportunity to negotiate a new agreement next year with, one would hope, a better knowledge of controlling economic factors.

AWARD

The Association's final offer is hereby adopted as the Award in this proceeding.

Dated this 8th day of November, 1978.

Arlen Christenson /s/
Arlen Christenson, Arbitrator