EDWARD B. KRINSKY, ARBITRATOR
2021 CHAMBERLAIN AVENUE
MADISON, WISCONSIN 53705
(608) 257-1060 OR 231-1898

* *

In the Matter of Mediation-Arbitration Between

SCHOOL DISTRICT OF FALL RIVER

-and-

FALL RIVER EDUCATION ASSOCIATION

* *

Case IV
No. 29513
MED/ARB-1607
Decision No. 19818-A

Appearances: Mulcahy & Wherry, by Steven A. Veazie, for the District

James M. Yoder, Executive Director, South Central United Educators, for the Association

On September 2, 1982, the Wisconsin Employment Relations Commission appointed the undersigned as mediator-arbitrator, pursuant to Sec. 111.70(4)(cm)6.b of the Municipal Employment Relations Act. A mediation meeting was held at Fall River , Wisconsin, on December 2, 1982, which failed to resolve the impasse. An arbitration hearing was held on January 4, 1983, and the record was completed with an exchange by the mediator-arbitrator of the parties post-hearing briefs on February 4, 1983.

The parties did not agree to any modifications of their final offers certified by the Wisconsin Employment Relations Commission. The final offers are as follows:

ASSOCIATION:

1. Article V. G Layoffs

   modify the first sentence to read:
   "If necessary to reduce the number of employe positions (full layoff) or the number of hours in any position (partial layoff) for the forthcoming school year, the provisions set forth in this Article shall apply. Teacher layoffs will be . . ."

2. Appendix A C. Health Insurance

   "The employer agrees to pay up to $147.84 per month toward the family plan health coverage and up to $53.91 per month toward the single

plan health coverage for regular, full time employees.

3. Salary (See attached)

4. All salary and fringe benefit increases shall be paid retroactive to the outset of the 1982-83 school year.

5. Article XII C. Terms of Agreement

modify paragraph #2 as follows:
"The terms of the agreement covering the fiscal year of July 1, 1982 through June 30, 1983 were agreed upon by the Board of Education and the Fall River Education Association _____, 1982 and ratified by the FREA _____, 1982.

PROPOSED SALARY SCHEDULE

	1	2	3	4	5	6	7	8
1	12900	13140	13380	13620	13860	14100	14340	14580
2	13325	13565	13805	14045	14285	14525	14765	15005
3	13750	13990	14230	14470	14710	14950	15190	15430
4	14175	14415	14655	14895	15135	15375	15615	15855
5	14600	14840	15080	15320	15560	15800	16040	16280
6	15025	15265	15505	15745	15985	16225	16465	16705
7	15450	15690	15930	16170	16410	16650	16890	17130
8	15875	16115	16355	16595	16835	17075	17315	17555
9	16300	16540	16780	17020	17260	17500	17740	17980
10		16965	17205	17445	17685	17925	18165	18405
11			17630	17870	18110	18350	18590	18830
12				18295	18535	18775	19015	19255
13					18960	19200	19440	19680
14						19625	19865	20105
15							20290	20530
16								20955

DISTRICT
2nd Final Offer:

1) Add to layoff clause (after second sentence)

The Board may exempt up to two (2) teachers from the seniority requirements, and shall notify the association of the teacher(s) to be exempted at the time of notice of layoffs.

2) Salary schedule
12,900 base

3) Insurance

The employer agrees to pay up to $1581 annually ($131.76/mo.) toward family plan health coverage and up to $602 annually ($50.20/mo.) for single plan health coverage for regular, full-time employees.

The issues in dispute are those relating to layoffs and health insurance.

Layoff Issue: Facts

The existing layoff language is as follows

G. Layoffs

If necessary to decrease the number of teachers for any reason, the School Board may layoff the necessary number of teachers. Teacher layoffs will be by area of certification in which they are currently working, with the teachers having greatest seniority within their area being retained; provided, however, that the teachers remaining are capable and qualified as demonstrated by their past ability and performance to perform the necessary services remaining. No teachers may be prevented from securing other employment during the period he is laid off under this subsection. Such teachers shall be reinstated in inverse order of their being laid off, if qualified to fill the vacancies. Such reinstatement shall not result in a loss of credit for previous years of service. Teachers shall be eligible for recall for 15 months from the date of layoff. No new or substitute appointments may be made while there are laid off teachers available who are qualified to fill the vacancies. The teacher shall be notified at their last address (on file in the office) of an available position. The teacher shall have ten (10) days to accept or reject the contract offer. If the position is rejected, the re-employment rights shall be lost.

The District has laid off teachers since 1979 because of declining enrollment. Under the existing contractual layoff language, Superintendent Rubert testified, the District was forced to layoff an outstanding teacher with a Masters degree and certification in EEN, LD, ED and EMR. The District had no flexibility since

it was required to layoff in order of seniority.

Under the District's final offer, Rubert testified, the District could exempt such a teacher from layoff. The current layoff language has been in the Agreement for just one year, and the District is not satisfied with it since it does not safeguard educational quality adequately.

The District offered in negotiations to modify the existing language to have an evaluation system in addition to seniority for determining layoffs but the Association rejected the offer, Rubert testified.

Rubert testified also that the Association's proposed partial layoff language would have caused problems had it been in the Agreement when layoffs were necessary in the past, since it might have required a senior teacher to replace a teacher in an area where the senior teacher had no experience. Moreover, Rubert testified, the Association's offer is ambiguous in that it appears to require that one teacher's job be wholly eliminated before considering the layoff of another teacher. The District needs more flexibility than that, he testified.

Board President Sauer testified that the main purpose of the District's proposed layoff language is to allow the District to retain more outstanding teachers.

The following additional facts concerning layoffs are taken from the Association's exhibits.

In 1982-83 the District totally laid off 2 teachers, and partially laid off 8 teachers of which 4 were voluntary after the District asked for volunteers. Of the Dual County Athletic Conference Districts, 5 of the 10 schools have some contract language governing partial layoffs. The District is among the 5 which do not have such language. None of the 10 districts have exemptions from the layoff procedure such as those proposed by the District. The Association also presented evidence concerning 4 additional districts which it deems comparable because they are within 10% of the District's equalized valuation per pupil and number of pupils. They are: Alma, Ithaca, Plum City and Seneca. One of these districts has a partial layoff provision, and none of them have exemptions from the layoff procedure.*

---

*The parties agree on the relevance of the Dual County Conference Schools although the Association makes comparisons with additional schools. The mediator-arbitrator has found the conference schools to be appropriate for comparisons, and he notes that consideration of the additional schools does not affect the outcome of this case.

Health Insurance Issue: Facts

Union chief negotiator Mroz testified that in 1981-82 the Association explored the possibility of getting health insurance from another carrier at a lower cost so that more money might be made available for teacher salaries. It decided that WEA Trust was preferable to the then existing WPS arrangement, and the District agreed to have WEA Trust be the carrier. After the collective bargaining agreement was implemented, the Association discovered that the WPS policy was better in certain respects. The District then agreed to the Association's request to let the teachers pay the additional dollars that would be necessary to change back to a WPS policy. Prior to this new arrangement the District had paid a dollar amount equivalent to the full cost of the health insurance premium, and the District would have paid the full cost of the WEA-Trust premium had that insurance policy been maintained in effect.

Superintendent Rubert testified that the cost difference between the parties' final offers on health insurance is $4300. The District is concerned however that it will incur additional costs if it pays for the full cost of health insurance, since some individuals who had the District's policy dropped it when they had to begin paying for some of it, and they might want it again.

In 1981-82, after acceding to the Association's request, Rubert testified, the District paid approximately 90% of the cost of health insurance, and it proposes to do the same thing for 1982-83. Rubert testified that the District's economic offer is already a generous one, and particularly in terms of area economic conditions, in which agriculture and industry have been declining.

Board President Sauer testified that it would be "unconscionable" to give a 9.7% increase being asked by the Association, rather than 9% offered by the District, which he also testified was "unreasonable," in view of area economic conditions.

Association exhibits show that in the Dual County conference, as of 11-30-82, all 9 of the other districts pay 100% of the single person premium. Six of the districts pay 100% of family premium. One other district pays 90% and two others pay 78% and 80%. The four other districts regarded by the Association as comparable pay 100% of single and family premiums.

The District concurs with the Association's data on health insurance, except that its exhibit notes that two of the districts and their unions have agreements which express the employer payments in terms of dollars, not percentages. The actual dollars paid for family health insurance premiums by the conference districts varied widely in 1981-82, from a Board

share of $99.90 to $153. The District ranked sixth, paying $116.36 as the Board's share.

Layoffs - Discussion

The Association argues that in view of the history in the District of making numerous partial layoffs, there is a need for an orderly procedure for determining how they should be made. The Association points out that 5 of the Dual Conference schools have such a procedure.

The Association argues also that adoption of the District's two exemptions proposal would make the contractual layoff procedure meaningless, because the number of teachers in any one area of certification is so small that teachers would not be protected against the District picking anyone that they wanted to layoff. None of the comparison districts have an exemptions provision in the layoff language, and the Association sees no justification for one.

The District argues that in a small school district such as this one (30.625 FTE teachers and 369 students) "administrators and board members recognize who the outstanding teachers are," and the exemptions thus have "the advantage of avoiding a prolonged and possibly demoralizing process of publicly evaluating all teachers in order to select the teacher(s) to be exempted."

The District argues that the proposed exemptions will provide needed flexibility, and will not destroy the basic seniority system. In addition, the District argues:

> It must be emphasized that with a total of 30.625 FTE teachers in the District, it will be difficult to make future layoffs without eliminating entire educational programs. For this reason, the District must retain maximum flexiblity to make layoffs which will not injure the quality of the educational programs which will continue to be offered. The other significant point is that even under the Board's proposal, seniority must be strictly observed in selecting teachers for layoff, aside from the two exemptions. In the elementary division, the most senior teacher will not be laid off unless nine of the eleven less senior teachers are laid off first (see Exhibit 39). In practice this will never happen, short of closure of the entire school district. In addition, if a less senior teacher is exempted from a layoff at one point in time, and another layoff is necessary later, the District must either use one of the two exemptions again or layoff

that particular teacher. In other words, the two exemptions exercised at the time of the first layoff are not cumulative with respect to future layoffs.

The District argues also that its exemptions proposal is basically in keeping with layoff language in other Dual County Conference districts which recognize factors other than senority, e.g., performance evaluations, capabilities, and qualifications. The Association argues, however, that the District already has such flexibility and protection in the existing layoff language.

The District argues that the Association has not presented adequate justification for its proposal to add language to the contract requiring that partial layoffs or reductions in hours be by seniority. The fact that half of the districts in the conference have such language is not a sufficient justification, in the District's view.

Given the small size of the District, the Association's proposal would "compound scheduling problems and conflicts" if further reductions were necessary. It would make it increasingly difficult for the District to maintain a "quality, and comprehensive educational program," the District argues in its brief.

The mediator-arbitrator is faced with a difficult decision with regard to the layoff language. Neither party offers to maintain the status quo. The District's offer makes the layoff language less restrictive, and the Association's makes it more restrictive.

The existing layoff language provides for layoff within an area by senority. However, the teachers remaining after the layoff by seniority must be "capable and qualified as demonstrated by their past ability and performance to perform the necessary services remaining."

This language was arrived at through collective bargaining between the parties. They recognized seniority as the factor that would govern layoff provided the remaining teachers were capable and qualified. The Association proposes to continue that language. The District does not.

The District emphasizes that the students and public were not well served by this language in that an outstanding teacher had to be let go. Presumedly the teachers who were kept were capable and qualified, although arguably not as outstanding as the low seniority teacher who was let go.

The parties have sought to balance such matters as seniority, capability and qualifications, and these factors were all present and should have been anticipated when the existing language was negotiated. It is appropriate, of course, for the parties to attempt to modify the language where one or both of them are dissatisfied. It is the nature of the District's proposed modification which is at issue here.

The District proposes to be able to exempt two teachers from the seniority requirement. Instead of a clearly defined, orderly system of layoff, the District's proposal would enable it to select any two teachers for layoff, for any reason. It would require the teachers, Union and public to depend entirely on the District's good judgment and fairness in making its decisions which would bypass the seniority of the teacher(s) laid off as a result of the exemption(s). The by-passed teacher(s) would have no contractual protection or basis on which to challenge the District's actions.

The District's exemption proposal is a significant change from the status quo and one for which there is not adequate justification to merit the mediator-arbitrator's support. The one example given of the layoff of the outstanding teacher is not a sufficient basis, nor is there a basis in the comparable school districts for such a proposal. The District argues largely based on the contention that its proposal is in the interest of the public. It is also the case, however, that the District was the representative of the public in prior negotiations when it agreed to the existing layoff language. Neither proposal can be said to be more in the public interest than the other. Retention of outstanding teachers is an important consideration but so is fairness to teachers who continue in the District's employ.

The Association's proposal specifically extends to partial layoffs, the layoff procedure now applicable to layoffs of teachers. Although it is the case that there have been numerous partial layoffs in recent years, there is no evidence that the District has accomplished those reductions in an unfair manner. Were this the only issue, the mediator-arbitrator would opt for the status quo, but that option is not available because the choice insofar as the layoff provision is concerned is to favor either the Board's exemptions language or the Association's partial layoff language.

In the mediator-arbitrator's opinion there is more to recommend the Association's layoff language. It is compatible with the existing language governing full layoffs, i.e., the partial layoffs are to be by seniority in the area of certification, provided that teachers remaining are capable and qualified. Another point in the Association's favor in the mediator-arbitrator's view is that there are several districts in the Dual County Conference which have provisions for partial layoffs, unlike

the case of the District's exemptions proposal which is not in effect elsewhere in the District.

The District is correct when it argues that the Association's language will further decrease its flexibility in making appropriate assignments if further reductions of staff are required. The mediator-arbitrator does not view such decreased flexibility as sufficient reason to not implement the Association's proposal. It continues to be the case under the Association's proposal that remaining teachers must be capable and qualified. If they are not, the District need not follow seniority.

Discussion: Health Insurance

Prior to 1981-82, and including the 1981-82 health insurance arrangement originally negotiated, the District paid the dollar equivalent of 100% of health insurance. As described above, the District then acceded to the Association's request to change the carrier and let the teachers pay the extra premium. Under the new arrangement the parties paid a higher premium, and the District's share was the equivalent of 90%. In agreeing to the Asscciation's request the District made no pledge either to continue with the same insurance carrier or to revert to 100% payment of the premium.

It is correct that most of the other districts in the Dual County Conference pay 100% of the premium, and that fact would normally weigh strongly in favor of an Association offer asking the District to pay 100%.

The present situation is different, however. The Association was in the same position (i.e., 100% District payment) as the other districts when it chose to request and than accept the equivalent of a 90% payment, and without securing any understanding of what would happen later. The result in 1981-82 was a total premium higher than what the District had agreed to pay.

Given this bargaining history, it is the mediator-arbitrator's view that the District's position has greater justification than the Association's on the health issue at this time. Moreover, in terms of the dollars paid per teacher for health insurance, the District's offer retains the relative ranking of the District in the Dual County Conference at 6 of 10 whereas the Association's offer would improve the ranking to 3 of 10, and in the mediator-arbitrator's opinion, there is no persuasive justification for the Association's position. The mediator-arbitrator does not view it as appropriate for the Association to ask for and voluntarily agree after the contract is signed to less than 100% District payment of health premiums, and in the next bargaining ask the District and the mediator-arbitrator to restore what it has voluntarily given up.

Conclusion

Under the statute the mediator-arbitrator must select the final offer of one party in its entirety. As can be seen from the above discussion, if the arbitrator were free to choose by issue, each party would win one. The difficult task is to weigh them in favor of one party.

This decision must be made in light of the statutory criteria, which have been considered by the mediator-arbitrator as the background for his discussion of the issues. The mediator-arbitrator does not regard the application of criteria (a), (b), (c), (f), or (g) as favoring either party's offer. That is, there is no question of (a) the District's lawful authority in this matter, and neither offer is shown to be "better" in terms of (b) the parties' stipulations, (c) the interests and welfare of the public, (d) the teachers' overall compensation, or (f) changes in circumstances during the pendency of the arbitration. Although the District presented testimony and evidence about the poor state of the economy, there was no showing that the District does not have the financial ability to meet the costs of the Association's proposal.

Criterion (e) is the "cost-of-living". The District's final offer is slightly less expensive than the Association's and thus is closer to the cost-of-living increase during the year preceding the effective date of the conract. Both parties' offers are 9% or higher and there is less than 1% difference between them. This factor weights in favor of the District's offer, but not heavily.

Criterion (d) deals with comparables, which favor the Association's position on layoff language, and health premiums viewed in percentage terms. In dollar terms, the comparables favor the District's position insofar as it maintains the status quo in conference ranking, at approximately the median of the other districts.

Criterion (h) deals with "such other factors . . . which are normally or traditionally taken into consideration . . .," and these have been discussed above.

The mediator-arbitrator has concluded that the Association's final offer is less undesirable than the District's final offer. As undesirable as it is for the mediator-arbitrator to impose additional costs on the District for health insurance, where the District is already offering a 9% increase and the Association voluntarily settled for 90% of premium in the preceding year, it is more undesirable for the arbitrator to impose exemptions from seniority language on teachers who are now fully protected by seniority, who secured that seniority protection voluntarily

from the District just a year previously, and where the District's proposal gives it complete discretion to layoff as it chooses with no contractual standard and with no precedent for such an arrangement in other comparable districts. The Association's partial reduction proposal, although not something the mediator-arbitrator views as particularly justified by the record, is in keeping with the existing seniority language for layoff and does not alter the basic conclusions reached here.

Based on the above facts and discussion, the mediator-arbitrator makes his award in favor of the Association's final offer.

Dated at Madison, Wisconsin this 21st day of February, 1983.

Edward B. Krinsky

Edward B. Krinsky, Mediator-Arbitrator