STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 168, AFL-CIO To Initiate Mediation-Arbitration Between Said Petitioner and KENOSHA UNIFIED SCHOOL DISTRICT NO. 1	:	Case LXXXVII No. 29923 MED/ARB-1748 Decision No. 19882-A

APPEARANCES

Bruce E. Schroeder, Schroeder, Ventura, Dowse & Wagner, on behalf of Service Employees International Union, Local 168, AFL-CIO

Clifford Buelow, Davis, Kuelthau, Vergeront, Stover, Werner & Goodland, on behalf of Kenosha Unified School District No. 1

On September 23, 1982 the Wisconsin Employment Relations Commission (WERC) appointed the undersigned Mediator-Arbitrator pursuant to Section 111.70 (4)(cm) 6 b. of the Municipal Employment Relations Act (MERA) in the dispute existing between the Kenosha Unified School District No. 1, hereafter the District, Board, or the Employer, and Service Employees International Union, Local 168, AFL-CIO, hereafter the Union. Pursuant to statutory responsibilities, the undersigned conducted a public hearing and mediation proceedings between the parties on December 8, 1982 which failed to result in voluntary resolution of the dispute. The matter was thereafter presented to the undersigned in an arbitration hearing conducted on December 21, 1982 for final and binding determination. Post hearing exhibits and briefs were filed by both parties by March 16, 1983. Based upon a review of the evidence and arguments, and utilizing the criteria set forth in Section 111.70 (4)(cm), Wis. Stats., the undersigned renders the following award.

SUMMARY OF ISSUES

The dispute covers the agreement between the parties for the 1982-1983 and 1983-1984 school years. Essentially, the only substantive issue in dispute is salaries. In that regard the Union has proposed a 7.5% wage increase in 1982-83, and a 7% increase in 1983-84. The total value of the increases contained in the Union's proposal, including increased health insurance costs which have been agreed upon, is 9.24% in 1982-83, and 9.03% in 1983-84, based upon a projected 30% increase in health insurance costs. The District, on the other hand, has proposed a .05% wage increase in 1982-83, which would amount to a total package increase of 2.8%. In 1983-84, the District recommends that the contract be reopened on the following issues: Hours and Overtime, Holidays, Vacations, Sick Leave and Funeral Leave, Civic Duty Leave of Absence, Compensations, Insurance, and Car Allowance.

The parties also disagree on what the appropriate comparables should be.

POSITIONS OF THE PARTIES

Union Position

The Union submits that its offer is more reasonable than the Board's when compared to settlements between itself and other employers in

the area, namely the Kenosha Public Library Board and Gateway Technical Institute (GTI), which are the appropriate comparables in this proceeding because the employees involved have similar responsibilities and skills. Additionally, insofar as Gateway is concerned, Arbitrator Zel Rice used the school district as the GTI comparable in his arbitration award between the Union and GTI in 1981.

As to the settlements in these comparables, the Library Board and the Union settled in 1982 for a 6% increase and a COLA roll up of $996.48/year. GTI settled for 6½% salary increase in 1982-83, 7½% wage increase for 1982-83 and 7% for 1983-84. The District's proposal is extremely low in comparison.

The District argues that its offer is actually a "package" which includes health insurance increases and that its final proposal is actually worth 2.8%. However it is important to note that the increased health insurance costs, which have been experienced by everyone across the country, have not resulted in a concommitant rise in coverage or benefits. Additionally, both GTI and the Public Library Board have absorbed health cost increases in addition to the wage increases referred to above.

This Board, on the other hand, has actually only proposed a 0.5% wage increase for the first year with a reopener for the second year. The first year proposal is patently outrageous, considering the fact that CPI increases have been approximately 3.8%. The second year proposal gives nothing to the employees except uncertainty.

The Board has also seen fit to calculate the costs of the final offers as of February 16, 1982, which preceded a significant reduction in the number of employees in the unit. Thus, the actual costs of the final offers are significantly less than the Employer has suggested.

Finally, while the Board has stated it will not lay off unit employees for one year, there has been an obvious threat of future layoffs. While the District has painted a picture that its offer must be considered more favorable because it will not lay off for one year, the Arbitrator must recognize that the Union recently granted the Board new layoff contract language which gives it more flexibility in making layoffs of the custodial staff in the future.

District Position

The Board submits that its first year offer of 2.8% total package is more reasonable than the Union's when it is compared with other settlements it has made with the aides, carpenters and painters. These should be the comparables which the arbitrator gives most weight to and these settlements are very close to that of the Board's final offer.

The Union argues that the Arbitrator should only look at the wage offers of each party. However, in comparison to the other comparable settlements, the Union has obtained full health costs paid by the Board while the aides increased the amount of their contribution, the Board pays a fixed amount toward the carpenters' health benefits, and the painters absorb the full cost of their health insurance. Thus, the lower wage improvement the Board has offered this Union is directly related to the fact that the Union indicated its preference for full coverage of health insurance costs by the Employer. Thus when the total value of each package is compared, it is the Employer's contention that the offer is equivalent to the three other settlements it has achieved with other District employees.

The Union further argues that GTI and the Public Library Board should be comparables in this proceeding. The Library Board has never been a comparable with this unit in the past. As for GTI, while the Union cites the Rice award to support its contention, it is important to note that Arbitrator Rice spoke in terms of the

District being the leader in this relationship and GTI following, not vice versa. Further, the Board believes GTI is not comparable because 1) GTI's Board is appointed, not elected; 2) GTI is located in three counties with approximately 50% of its blue collar employees employed outside of Kenosha County; 3) very few comparable employees, all of whom are unskilled, are employed by GTI, while the District has many more employees, several of whom are highly skilled; and 4) the corruption allegations directed toward the GTI Board are indicative of fiscal irresponsibility not found here.

The only possible outside comparable which might be relevant is Kenosha County. The County settled with its AFSCME employees for a COLA clause but, more significantly, a wage freeze. The County and SEIU settled on a 7.5% wage increase but bargained out a COLA provision, and also reduced county health benefit payments. These settlments are much closer in value to the Board's offer than the Union's.

The Board's second year offer for a reopener is also more reasonable than the Union's since a reopener allows the parties to bargain for an agreement in tune with the economy at that time. At a time when the economy's future is so speculative and potentially volatile, it is unfair to both parties to make economic committments on a two-year basis at this time.

Further the state of economy at this time weighs heavily in favor of the Board's proposal. Nationally, the average private sector wage settlements is only 3.3%, a far cry from the Union's 9.3% total package. More importantly, the state of the economy in Kenosha, with record high unemployment, strongly mitigates in favor of the Board's final offer.

The Arbitrator should also consider as supportive of the reasonableness of the Board's offer the fact that the Board has voluntarily decided not to institute planned layoffs for unit employees for one year.

Lastly, if the pattern of District settlements is broken, such a result would have the potential of doing harm to the collective bargaining process between this Board and the Unions it must deal with. The increase which this Union proposes is over three times the two-year increases of the other settled District groups. The Union should not be able to get through med/arb what it never could have negotiated with the Board.

Discussion

Several issues have been raised by the parties which are pertinent to the relative reasonableness of their respective salary proposals.

One of the most significant issues in dispute is over the actual value of each party's proposal. In this regard the undersigned believes it is fair and reasonable not to consider the value of the proposed wage improvements alone. Instead, in determining the relative reasonableness of the proposals, one must consider the total value of benefits received by employees affected by the proposals. In this dispute the parties have agreed upon continued 100% Employer coverage of health insurance costs, which increased during the 1982-83 school year by more than 30%. Thus, unit employees covered by such insurance have received insurance benefits costing more than $41 per month more for family coverage and approximately $16 per month more for single coverage. The undersigned cannot ignore these increased costs, nor should the affected employees. They are a legitimate factor to be inclued in determinations which must be made concerning the value and relative reasonableness of the parties' proposals.

In addition, although the Union submits that the District's costs under each proposal are not as great as it asserts because it reduced its unit workforce in the 1982-83 school year, the

undersigned does not believe that such changes in the size of the workforce are relevant to costing determinations absent the existence of an inability to pay argument by an employer, which issue has not been raised herein. In determining the value of proposals for improved salaries and fringe benefits, the undersigned is of the opinion that what counts most and what is most relevant is the value of improvements actually received by affected employees.

In this instance, the Employer's costing procedure results in a relatively accurate valuation of the parties' proposals in that it attempts to portray what unit employees who worked for the District in 1981-82 and 1982-83 will actually receive, including not only wage improvements, but the increased value of continued fully covered health insurance. Based upon the Employer's costing it would appear, as indicated above, that the value of the Union's 82-83 proposal is approximately 9.2% while the value of the District's 82-83 proposal is about 2.8%. Projections about 83-84 costs are clearly more difficult since insurance costs are not yet ascertainable. To be sure, the value of the total package proposed by the Union will exceed 7%.

One difficulty that the foregoing analysis causes relates to the comparisons which the Union submits should be made by the undersigned in this proceeding. In that regard the undersigned believes that the comparables proposed by both parties are relevant to the disposition of the instant dispute; however, data has not been submitted which reliably portrays the total value of improved benefits in the comparables which have been suggested by both parties, other than in the case of the settlements with the three other District units which has been proposed as appropriate comparables by the Employer. Because of the lack of complete and reliable information regarding the actual value of many of the settlements referred to herein, the undersigned believes that the most reliable and relevant comparisons which can be made based upon the evidence contained in this record pertaining to comparable County, City, and GTI employees would be of their actual wage rates. Such a comparison of wage rates of comparable employees (employees in the area with similar skills and responsibilities) would seem to be most appropriate in these circumstances since a voluntary pattern of settlements with other District employees which is in accord with the District's offer herein has been established, and since such general settlement patterns normally are given considerable weight in assessing the reasonableness of final offers unless it can be demonstrated that they would result in harsh or inequitable results if applied to the employees in question.

In this instance the Employer's proposal clearly is supported by its settlements with other District employees. The fact that said employees have chosen to opt for larger wage increases and less insurance coverage does not negate their comparability with the total economic package proposed by the Employer herein.

The state of the economy in Kenosha with its double digit unemployment and the significantly diminished rate of inflation which occurred during the year preceding the effective date of the instant contract - which, if the Milwaukee CPI is utilized, amounted to a 2.8% increase - supports the relative reasonableness of the District's position in that the affected employees would not lose real income to inflation, and in addition, such a settlement would not likely be construed as a manifestation that the employees in question are insulated from the impact the recession has on all of the citizens and taxpayers in the community.

One question remains to be answered however before any final determination can be made regarding the reasonableness of the parties' offers, and that is how the wage proposals compare to the actual wages paid to comparable employees in the area. For the reasons discussed above, if the Employer's wage proposal results in comparable wages which are not inequitably out of line, then its final offer merits adoption. However, if it results in inequitably low wages, based upon such comparisons, then a more difficult

question is presented, for the Union would have a much stronger case based upon comparability.

Because the wage data contained in the record evidence was not specifically addressed or explained by the parties, the undersigned wishes to note initially that certain assumptions had to be made in construing relevant contactual provisions pertaining to wages which may in a few instances be in error. However, in spite of these possible errors of interpretation, the undersigned is persuaded, based upon the totality of the evidence in the record, that the District's proposed wages are significantly out of line based upon comparable wage rates in the area.

For example, using the Custodian-Second Shift wage rates as a basis for comparison, the following wage comparisons would appear to be relevant:

Kenosha School District

	Range
'81-'82	$7.39/hr. - $7.69/hr.
'82-'83	
Union	$7.94/hr. - $8.26/hr.
District	$7.43/hr. - $7.73/hr.
'83-'84	
Union	$8.50/hr. - $8.84/hr.

Kenosha County

'83	$9.11/hr. - $9.32/hr.
'84	$9.81/hr. -$10.03/hr.

GTI

'82-'83	$7.91/hr. - $8.24/hr.
'83-'84	$8.46/hr. - $8.82/hr.

Library

No apparent Second Shift differential	
Most current rate available	$8.51/hr. - $9.09/hr.

City of Kenosha

	Building Maintenance Helper I	Building Maintenance Helper II
7/1/82	$8.13/hr. - $8.47/hr.	$8.75/hr. - $9.09/hr.
1/1/83	$8.78/hr. - $9.13/hr.	$9.42/hr. - $9.77/hr.
6/83	$8.91/hr. - $9.27/hr.	$9.56/hr. - $9.92/hr.

The foregoing data makes it manifestly clear that under the District's salary proposal the District's custodian's wages would be significantly below the going rate in any of the relevant comparables, and that even the Union's proposed rate would be significantly lower than the County's, the City's, and the Library's rates this year. Based upon the significant disparity in wages that would result if the Board's first year proposal were adopted, the undersigned must conclude that for the 82-83 school year, the Union's proposal is more reasonable than the District's even though it is inconsistent with the pattern of settlements the District has reached with its other employees. Interestingly, in the same regard, there is a conspicuous absence in the record concerning the settlement and/or position of the District in the teacher negotiations for 1982-83 and the consistency thereof with the alleged District-wide settlement pattern which has been submitted herein.

Relevant to the foregoing conclusion is the fact that there has been no showing by the District that the fringe benefits of the employees involved herein are sufficiently superior to those afforded

comparable employees in the area to justify the relatively inferior wage rates it has proposed. Nor has there been any showing that selection of the Union's offer will impose economic hardships on the District which will result in either cuts in programs or services and/or inequitable increases in taxes.

Having concluded that the Union's first year proposal is the more reasonable of the two, the undersigned must now address the issue whether a reopener on economic issues, or a 7% wage increase plus the increased costs of fringe benefits for 1983-84, is more reasonable under these circumstances. Competing legitimate interests clearly come into play in the disposition of this issue. Supporting the Union's position are stability and predictability in the relationship, plus the comparability of the wages it has proposed with the wages that have been agreed upon in three other comparable units in the area. On the other hand, the District is quite correct in pointing out that in this rather volatile and precarious economy, the parties should have an opportunity to make important economic decisions based upon current economic conditions and determinants. In balancing these competing interests, the undersigned believes that since two major comparable settlements are in, and since the Union's wage proposal is comparable with those settlements, in terms of what comparable employees will actually be paid, and based upon the undersigned's conclusion that the District first year wage proposal would result in an inequitable disparity of wages among comparable employees during that year which would probably have to be rectified in subsequent rounds of negotiations, the undersigned believes that the Union's two-year proposal, when viewed in its entirety, should be adopted as the more reasonable of the two submitted herein.

For all of the foregoing reasons, the undersigned hereby renders the following

ARBITRATION AWARD

The final offer submitted by the Union herein shall be incorporated into the parties' 1982-1983 and 1983-1984 collective bargaining agreement.

Dated at Madison, Wisconsin this 13th day of May, 1983.

Byron Yaffe, Arbitrator