STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	
DODGELAND EDUCATION ASSOCIATION	ARBITRATOR'S DECISION AND AWARD
To Initiate Mediation-Arbitration Between Said Petitioner and	Case VI No. 30289 MED/ARB-1878 Decision No. 20311-A
DODGELAND SCHOOL DISTRICT	

SCOPE AND BACKGROUND

This action arises under the provisions of sec. 111.70 of the Wisconsin Statutes known as the Municipal Employment Relations Act. The Act provides that if a dispute arises in the negotiation of a collective bargaining agreement between a Wisconsin municipality and certain of its employees, which dispute ends up at an impasse, either party may petition the Wisconsin Employment Relations Commission to initiate mediation-arbitration proceedings. Specifically, the statute states:

> "If a dispute has not been settled after a reasonable period of negotiation and after mediation by the commission under sub. (3) or other settlement procedures, if any, established by the parties have been exhausted, and the parties are deadlocked with respect to any dispute between them over wages, hours and conditions of employment to be included in a new collective bargaining agreement, either party may petition the commission, in writing, to initiate mediation/arbitration as provided by this section."

On August 25, 1982, the Dodgeland Education Association (hereafter, "the Union") filed a petition with the Wisconsin Employment Relations Commission wherein it alleged that an impasse existed between it and the Dodgeland School District (hereafter, "the Employer") in their collective bargaining and requested the Commission to initiate mediation-arbitration. Thereafter, a member of the Commission staff, Edmond J. Bielarczyk, Jr., conducted an investigation in the matter and submitted a report of the results thereof to the WERC. Thereupon, the WERC issued findings of fact, conclusions of law and certified that the matter was indeed at an impasse and ordered that mediation-arbitration be initiated for the purpose of settling the dispute or issuing a final and binding award to resolve the impasse. At the same time, the WERC furnished the parties with a panel of certified mediator-arbitrators for the purpose of selecting a single one to resolve the impasse. Finally, on March 2, 1983, Milo G. Flaten of Madison, Wisconsin, was appointed as Mediator-Arbitrator to endeavor to mediate the issues in dispute and, should such endeavor not result in the resolution of the impasse, to issue a final and binding award by selecting either the total final offer of the Union or the total final offer of the Employer. (Wis. Stats. sec. 111.70(4)(cm)6.c. through h.)

After corresponding and phoning regarding a satisfactory time and place, the parties and the Mediator-Arbitrator met at Juneau, Wisconsin, on April 28, 1983, in an attempt to settle the differences between the parties through mediation. Shortly after midnight on April 29, 1983, the Mediator-Arbitrator

concluded that the matter could not be settled through mediation and ordered that an arbitration hearing be held on May 9, 1983. Pursuant to law, the Mediator-Arbitrator duly notified the Commission of that fact.

The arbitration hearing was held at the Dodgeland High School in Juneau, Wisconsin, commencing at 3:30 p.m. on May 9, 1983. The hearing lasted about six and one-half hours, in which eight witnesses testified and 123 extensive exhibits were introduced into the record (many of the exhibits contained more than ten pages each). Post-hearing briefs were filed by the parties and exchanged by the Arbitrator according to an agreed-to timetable. Appearing for the Union was Armin Blaufuss, UniServ Director, Winnebagoland UniServ Unit-South, Fond du Lac, Wisconsin, and for the Employer Attorney David R. Friedman of Madison, Wisconsin.

ISSUES IN DISPUTE

The Employer listed seven issues which it urged should be resolved by the Arbitrator. They were as follows:

1. Teachers' salary;
2. Insurance benefits and coverages;
3. Coaching vacancies;
4. Layoff procedures;
5. Teacher access to personnel files;
6. Extracurricular pay;
7. Miscellaneous monetary items.

The Union (surpisingly) listed the same general issues except that it did not include "coaching vacancies" as an issue.

ISSUE: Salary Schedule

The Union

The Union takes the position that its final offer on the base salary and the salary schedule is more reasonable and, therefore, should be selected by the Arbitrator. The Union's argument is founded on the fact its offer more nearly maintains Dodgeland's historical rank among Dodge County school districts than the Association's.

Furthermore, the Union argues, the Union's final offer, if implemented, would maintain that classical rank among Dodge County school districts.

The Union also argues that over the past five years, the Dodgeland salary schedule for teachers has consistently lost purchasing power due to inflation. It goes on to say that both the Association and the District's final offers continue this trend. However, the Union contends, the Association's final offer results in a lesser loss and, thus, should be selected.

The Union then takes the position that the interests and welfare of the public are clearly reflected in the Association's final economic offer. That is, it goes on, most well-known news magazines and newspapers favor higher wages for teachers.

Not only that, the Union contends, professional salaries in private industry are all way above those of the teachers in the Dodgeland District. These differences, the Union avers, cannot be airily dismissed by stating that the teachers work a shorter work year than do private professionals. For, the Union contends, the percentage difference in a work year for those in private industry and that of teachers is only 5.15 percent, while the difference in compensation exceeds that figure by a substantial amount.

The Employer

The Employer, on the other hand, takes the position that while the percentage package of the Union concededly comes closer to the percentage packages of other districts within Dodge County, rankings are not absolute. Furthermore, the mediation-arbitration procedure, the Employer goes on, does not require that a district maintain the exact same ranking every year.

Even conceding the Association's comparables are valid, argues the Employer, it would require only minor changes in the Board's offer to change its rankings. In fact, the Board goes on, less than $200 added to its offer would change the ranking in most cases, and in no case would more than $362 be needed to make a change in ranking. The Board contends such minor amounts of money do not show a serious erosion of the District's historic ranking with any set of comparables that an independent observer wishes to use.

The Board argues next that from the data presented at the hearing, it appears that Dodgeland's longevity schedule is the most generous of all of the Eastern Suburban athletic conference schools.

Finally, the Employer argues that monetary issues in this dispute are secondary to the language issues of the contract and urges that the Arbitrator's decision not turn entirely on the monetary aspects of the dispute.

Discussion

Both sides seem to focus their attention on comparability with other districts. That is, they feel the most reasonable final offer will be the one which puts the Dodgeland School District in a more favorable light when compared to other school districts in the area.

On one hand, the Union contends that the school districts to compare are those to be found in Dodge County because of the close geographic proximity within an established governmental and economic entity.

On the other, the Employer urges the most comparable entity should be the Eastern Suburban Conference Athletic League.

While the Union also touches on comparables involving the districts within the Cooperative Educational Service Agency (CESA), and a bit on such other items as the Consumer Price Index and to wage settlements in the private sector, its main emphasis is in comparing Dodgeland with other school districts. The Employer, likewise, bases its argument on comparing Dodgeland to wages in other districts. The only thing to be decided, then, is which set of comparables is the more valid.

This observer is inclined to agree with the Union that the Wisconsin Interscholastic Athletic Association should not be the entity to determine a school district's comparables. Additionally, the Eastern Suburban Conference, the Employer's comparison basis, has districts which are geographically dispersed in contrast to the geographical proximity of the Dodge County districts. Furthermore, Dodgeland has only recently been divorced from the Flyway Conference and placed into the Eastern Suburban Conference. The only other Dodge County school district in the Eastern Suburban Conference is Hustisford.

Thus, it is apparent the most reasonable comparison standard to be used by an outside observer would be the one

proferred by the Union. This is because Dodge County has the most homologous economic and sociological characteristics.

Using that criterion, the Union's final offer on the issue of salaries is clearly the more reasonable. That is, the final offer of the Association more nearly maintains Dodgeland's historical rank in Dodge County than does the Employer's. For instance, using the benchmarks employed by both sides, the Employer's offer would drop Dodgeland's comparative rank two places for teachers holding a B.A. degree at the minimum pay level, one place at the B.A. maximum, two places at the M.A. Step 10, one place at the M.A. maximum, and two places at the maximum for the entire pay schedule. On the other hand, while the Union's offer would result in a two-place drop at the B.A. minimum, a one-place drop at the M.A. maximum, and a one-place gain at the schedule maximum, it more nearly preserves the traditional rank of the Dodgeland School District within the county, while the Employer's offer clearly diminishes its rank amongst Dodge County districts.

ISSUE: Insurance

In its Final Offer, the Employer proposes the following language:

> "The Board will provide a group health insurance plan for employees. The Board shall pay the individual and family premium for each full-time employee who wishes to participate in said plan."

The Union, in its Final Offer, proposes the following language:

> "The Board shall contract with an insurance carrier ... with equal to or better than the benefits, coverage and specifications outlined in Appendix ... "

Concerning part-time employees, the Employer's Final Offer states:

> "For part-time employees, the Board will pay a prorated cost of the insurance premiums. The Board will continue to pay the full insurance premium cost for the 80% music teacher who was hired for the 1982-83 school year so long as the teacher continues to be employed at 80% or more of the time."

In its Final Offer concerning part-time employees, the Union proposes the Employer should pay the full insurance premium for all eligible part-time employees, working 50% or more of the time. The Union's Final Offer states specifically:

> "The Board shall pay the individual and family premium in full for each employee who is eligible and wishes to participate in the plan."

Positions of the Parties

The Union

The Union takes the position that by continuing to pay the full health insurance premium for all employees, the Association's final offer merely maintains the previous contractual standard and nothing more. The Union continues that by providing language stating that the Board will merely provide a group health, disability income or dental program, the Employer can change or switch insurance benefits or coverages at its will or caprice.

However, in its Final Offer, the Union continues, it specifically requires that the district must provide the existing coverages and benefits so there will be no doubt about it. In other words, argues the Union, its offer maintains the status quo at the present time.

Similarly, contends the Union, its request to continue the practice of the Employer paying the full insurance premium for all eligible part-time employees is merely a continuation of the present practice.

The Employer

The Employer, too, states that it has no plans to change the insurance specifications and coverage which were in existence the previous year.

On the subject of a prorated premium for part-time people, the Employer argues that it is not fair to full-time people to receive a benefit that is equal to that of the part-time people. The Employer goes on to argue that full-time people are entitled to more benefits than part-time people as a reward for working full time and as an incentive to keeping them working full time. One of those incentives, argues the Employer, is for full-time employees to receive complete payment of their insurance premiums. It avers that paying part-time people a full insurance premium causes the incentive for people to work full time to be taken away. Additionally, the Board argues that its proposal is in line with standard practice of other such employers regarding payment of insurance premiums for part-time people.

Discussion

This observer agrees with Arbitrator Vernon, who held in the Northwood School District Case, WERC-Dec. No. 19939-A (5/83), that the employer cannot unilaterally change insurance coverage without incurring a grievance for breach of contract or without further bargaining on the subject.

However, by changing the coverage on part-time employees to correspond, prorata, to the number of hours worked by that part-time employee, the Employer is clearly taking back a benefit already bargained for by the parties. Traditionally, "take-backs" are frowned upon in interest arbitration. In the area of employee health insurance, however, that traditional concept has been dramatically altered. For instance, many employers are now insisting on language which provides a dollar cap, or ceiling, on insurance coverage rather than using general language as "100% coverage" or "full coverage."

In this case, however, the Employer has not retreated on coverage and its Final Offer still provides that the Employer will pay the full individual and family premium for each full-time employee.

The only recognition given to the scandalously escalating insurance costs is in the Employer's proposal to pay only the prorata amount of insurance premium that compares to the hours actually worked by the employee (except the 80% music teacher).

In this observer's eye, the most important aspect of the insurance question in the comparison of the two Final Offers is that the Employer is willing to continue to pay the full premium for the health, long-term disability and dental insurance of its employees.

Perhaps the requested changes for pro-rata coverage concerning part-time employees is indeed a "take-back," but to this observer, it is not an unreasonable one compared to the continuation of the full premium benefits.

Further, the Arbitrator is aware that the Union has its eye on the time in the not-too-distant future when the Employer may begin cutting back on the hours of its employees, thus making a great deal more of its teaching staff on a part-time basis. Because of this, the Union is undoubtedly fearful that in the future a good many of its employees will be part-time and therefore only be receiving prorata insurance benefits. That situation, however, has not been reached yet, although it will have to be fully addressed in the future.

Nevertheless, taking all of the arguments of the parties into consideration, it is this observer's opinion that the Employer's final offer regarding insurance is the more reasonable.

ISSUE: Coaching Vacancies

Final Offers

The Association proposes to change the existing contract language on coaching vacancies. The first section, paragraph E of Article V, proposes a change in language with regard to how long a coach is expected to continue coaching after the submission of his resignation. The second change, Article V, paragraph F, deals with the filling of coaching vacancies.

The Employer resists the proposed changes and requests that the current language be retained in the contract.

Discussion

While the final offer of the Union appears to request a change, its own witness, Athletic Director Mr. Rampanelli, admitted he could see no difference between the Union's proposal and the existing contract language.

Furthermore, the Union in its brief, page 56, states that it was incorporating in its Final Offer the Employer's filling coaching vacancy and coaching resignation procedures which have already been in place for a number of years. Again, at page 57, the Union admits its offer merely maintains the status quo.

Inasmuch as the Union makes no request other than to maintain the status quo with respect to coaches' resignations and the filling of coaching vacancies, and the Employer wants to continue with the present language, this outside Arbitrator certainly will not change that which has been negotiated and bargained for over a period of at least eight years. In effect, both sides have agreed the Employer's Final Offer with regard to the filling of coaching vacancies and the handling of coaches' resignations is the more reasonable one.

ISSUE: Teacher Layoff Procedures

Final Offers

The Union proposes several changes in the contract language concerning layoffs. The thrust of those changes, however, is four-fold: (typist's note: four?)

(1) A redefinition of what the term "layoff" means. The Union Final Offer wants part-time teachers included under the reduction of hours provision, whereas the current contract (and the one proferred by the Employer) only applies to full-time teachers.

(2) A new explanation of the term layoff procedures in which the Union wishes to make it certain that absolute strict seniority, with certain exemptions, would be observed.

(3) The Union request that the contract be changed so that the Union would be given adequate notice when the Employer intends to eliminate or reduce a position.

(4) A change in the paragraph which exempts from layoff a more junior teacher with extracurricular skills or experience.

In addition, the Union apparently requests that the Arbitrator review a provision of the present contract concerning collecting unemployment compensation and declare it to be illegal.

Discussion

The Arbitrator will discuss the last point first.

The recall provision of the contract which the Union desires to have declared illegal (found in Article VII, G) reads as follows:

> "LAYOFF. Where a teacher is collecting unemployment compensation from the District, said teacher must accept recall to a part-time position or forfeit all recall rights, or voluntarily forego further unemployment compensation benefits in order to retain recall rights."

It is the underlined portion of the foregoing paragraph which the Union wants declared illegal.

While the Arbitrator is inclined to agree that such a provision seems to violate the Unemployment Compensation law of the state, and while the Arbitrator is trained as an attorney, he feels that it would be more appropriate to question the legality of the provision with the Unemployment Compensation division itself. This observer is inclined to feel the request of the Union for a declaration in the provision is premature.

Next comes the request of the Union concerning exempting from layoff a teacher with skills or experience which would allow him or her to fill an extracurricular position. In this regard, the District Administrator was asked at the hearing what would happen if a person exempt from layoff due to the fact that he or she had skills which would fill an extracurricular position were retained on the payroll. The District Administrator answered succinctly that "in that event, the next junior employee would be laid off."

This, of course, is exactly the procedure the Union desires and has requested. If the language of the present contract is to be so interpreted, this observer can see no reason for making a drastic change. In fact, the testimony of Joan Lemke, Association President in 1981-82, stated that when the Employer failed to follow the strict seniority provisions of the contract and the Union complained, the intervention resulted in a solution which both sides were happy with. In other words, the Union complained that the contract was being violated and the Employer responded and both sides worked things out in a satisfactory manner.

From testimony at the hearing, it seems that the contractual layoff procedure was not always strictly observed in the past. However, from the language of the present contract, it would seem that a grievance could be satisfactorily processed if it happens again.

The request of the Union that it be given adequate notice when the Employer intends to eliminate or reduce a position certainly seems reasonable. However, testimony at the hearing

was that such notice is being given at the present time wherever possible.

All in all, it appears that the present contractual language provides adequate safeguards for the teachers regarding the observance of seniority in layoff and rehiring situations, or at least that the Employer's Final Offer on the subject is the more reasonable.

ISSUE: Teacher Files

In its Final Offer, the Union wants contract language to eliminate the twice-per-school-year restriction on teachers reviewing their personnel files.

The Employer, on the other hand, wishes to keep the present language which restricts the teacher to two views of their files per year.

Discussion

From the testimony at the hearing, it appears that both sides are facing a bogeyman who does not exist. That is, the Employer was asked how many requests were made by teachers to look at their personnel files last year, and the answer was "I think about two." Yet the Union still claims it is being unfairly hampered.

On the other hand, the Employer wants the access to be tightly restricted even though there were only two requests in the entire year. Why the restriction when no problem has arisen?

It is the Arbitrator's feeling that a teacher's personnel file is his or her own property as much as it is the Employer's. For this reason, the Arbitrator is of the opinion the teacher should have unlimited access to his or her own records.

Nonetheless, the restrictions of sec. 103.13(2), Wis. Stats., are equally clear. Those restrictions state: "The employer shall grant at least 2 requests by an employee in a calendar year, unless otherwise provided in the collective bargaining agreement, to inspect the employee's personnel records as provided in this section." (Emphasis mine.) The implications of this language, in all probability, mean that the Employer can legally restrict access to the personnel records to two such viewings if it chooses to do so.

Both sides appear to be fighting imaginary enemies on this question, however. Two requests in a single year do not appear to this observer to be inundating the District Office with such requests. On the other hand, no evidence in the record was presented that showed a refusal by the office to allow such an inspection.

Until a crying need can be shown, this observer is inclined to go along with the present language of the contract.

ISSUE: Extracurricular Pay for Ms. Stewart

The Union takes the position that the Arbitrator should defer any decision regarding unequal employment pay for Virginia Stewart to whatever decision is made by the Equal Employment Opportunity Commission. (Its original decision is being appealed.)

On the other hand, the Employer wants to insert language into the contract which would comply with the Equal Employment Opportunity Commission's original ruling.

Discussion

This issue appears to be another nebulous one. That is, the Employer wants to comply with the rules of the Equal Employment Opportunity Commission, and the Union wants the decision on extracurricular pay for Virginia Stewart to abide the decision of the Commission. It appears to this observer that no matter what his decision is, the appeal of the EEOC decision will be the determinant on this issue. No arbitrator can upset a ruling of the EEOC.

The Board, having made a good-faith effort to meet the discrimination objection, has made the more reasonable Final Offer.

ISSUE: Miscellaneous Pay Provisions

The Union has made certain requests to raise the pay for teachers obtaining college credits and pay for extra duty activity.

The Board frankly states that it does not believe the miscellaneous monetary items will make a difference in the outcome of this proceeding. Therefore, it makes no defense of its position and the Arbitrator will, therefore, find the Union's position on the issue of miscellaneous pay provisions to be the more reasonable one.

CONCLUSION

Based upon the rankings and the comparisons of the schools of Dodge County, the Arbitrator found that the Union's Final Offer on the monetary issues was the more reasonable one.

In all other regards, however, the Arbitrator found the Final Offer of the Employer to be more reasonable.

Therefore, based upon the above findings and conclusions, and taking into consideration the factors to be considered as enumerated in sec. 111.70(4)(cm)7., Wis. Stats., it is the Decision and Award of the Arbitrator that the total Final Offer of the Employer is more reasonable than the total Final Offer of the Union.

Milo G. Flaten

Dated: August 2, 1983