

WISCONSIN EMPLOYMENT RELATIONS COMMISSION
 BEFORE THE MEDIATOR-ARBITRATOR

MAR 26 1984

-----)	WISCONSIN EMPLOYMENT
In the Matter of the Arbitration Between)	RELATIONS COMMISSION
)	
SHEBOYGAN EDUCATION ASSOCIATION)	Case L
)	No. 31829
and)	Decision No. 20975-A
)	MED/ARB-2330
SHEBOYGAN AREA SCHOOL DISTRICT)	
-----)	OPINION AND AWARD

Appearances:

For the Association: Richard Terry, Executive Director,
 Kettle Moraine UniServ Council,
 Sheboygan.

For the Employer: Jon E. Anderson, Esq.,
 Mulcahy & Wherry,
 Sheboygan.

BACKGROUND

On June 27, 1983, the Sheboygan Education Association (referred to as the Association) filed a petition with the Wisconsin Employment Relations Commission (WERC) requesting that the Commission initiate mediation-arbitration pursuant to Section 111.70 (4) (cm) (6) of the Municipal Employment Relations Act (MERA) to resolve a collective bargaining impasse between the Association and the Sheboygan Area School District (referred to as the Employer or School Board) concerning a reopener to the parties' collective bargaining agreement which will expire June 30, 1984.

On September 8, 1983, the WERC found that an impasse existed within the meaning of Section 111.70 (4) (cm). On September 20, 1983, after the parties notified the WERC that they had selected the undersigned, the WERC appointed her to serve as mediator-arbitrator to resolve the impasse pursuant to Section 111.70 (4) (cm) (b-g). No citizens' petition pursuant to Section 111.70 (4) (cm) (6) (b) was filed with the WERC.

By agreement, the mediator-arbitrator met with the parties in Sheboygan, Wisconsin, on November 22, 1983 to mediate the above impasse. When no agreement was reached in mediation, the arbitration hearing was held the same evening by prior request of the parties. At the arbitration hearing both parties were given a full opportunity to present evidence and arguments. Post hearing briefs were filed by both parties.

ISSUES PRESENTED

Although this impasse concerns a limited reopener covering salary schedule and insurance for the 1983-84 school year, there are a number of differences between the parties' final offers in four areas: salary schedule, health insurance, long-term disability insurance and dental insurance.

Salary Schedule

Board Offer: Increase the BA base on the current salary structure to \$14,500 for the first semester.

Increase the BA base on the current structure to \$14,780 for the second semester.

Association

Offer: Increase the BA base on the current structure to \$14,800 for the full contract year.

Health Insurance¹

Board Offer: Alter current benefits provided as follows:

Increase the individual major medical deductible from \$50 per year to \$100 per year.

Association Offer:

- Improve the current benefits provided as follows:
1. Eliminate the 270-day waiting period for pre-existing conditions and removal of tonsils and adenoids.
 2. Change nervous and mental care coverage in the Basic plan from 70 days to 365 days per admission.
 3. Outpatient and emergency care benefits:

Change first aid emergency care from 48 hours to 72 hours.
 4. Change \$10,000 surgical maximum to unlimited surgical payments.
 5. Major medical coverage: Diagnostic X-ray and laboratory exams: Change \$50 per year for X-rays and lab exams to full coverage.
 6. Add chiropractic services coverage.

Long-Term Disability Insurance

Board Offer: Provide a long-term disability plan with a benefit of 66-2/3% of salary after a 90-day waiting period. This reflects a reduction from a waiting period of 180 days.

Association Offer:

Provide a long-term disability plan following a 90-day waiting period with a benefit of 80% of salary for the first six months of the disability and 67% of salary thereafter.

Dental Insurance

Board Offer: Retain status quo.

Association Offer:

Change dependent coverage to age 25 from age 23.

STATUTORY CRITERIA

Under Sec. 111.70 (4) (cm) (7) the mediator-arbitrator is required to give weight to the following factors:

- A. The lawful authority of the municipal employer.
- B. Stipulation of the parties.
- C. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- D. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services and with other employes generally in public employment in the same community and in comparable communities and in private employment in the same community and in comparable communities.

1. The parties have agreed to: dependent coverage to age 25, full "usual and customary" fee ambulance service coverage, and full outpatient x-ray and radiation therapy for cancers.

- E. The average consumer prices for goods and services, commonly known as the cost-of-living.
- F. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits received.
- G. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- H. Such other factors, not confined in the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

POSITIONS OF THE PARTIES

The Association

In determining which of the parties' final offers regarding salary is more reasonable, the Association argues that the arbitrator should utilize a "traditional" benchmark analysis and give it determinative weight.

Further in applying this analysis, the Association believes that the following school districts should be selected as the appropriate comparables: Fond du Lac, Green Bay, and Manitowoc, districts within the Fox Valley Athletic Conference. Unlike the Employer's "very broad" and illogical grouping of numerous school districts, the Association argues that its selected school districts are appropriate because of their geographical proximity and similarities in enrollment, staff size, equalized tax rate, equalized valuation per pupil, state aid, etc. Moreover, in a previous interest arbitration between these parties, both parties argued for the Athletic Conference as the primary comparable although each party also offered additional, different comparables. Arbitrator Joseph Kerkman concluded that "in the bargaining process the parties historically have compared themselves to other Athletic Conference schools" and that is particularly appropriate in the light of well established arbitral authority favoring the use of the athletic conference as a primary comparable, according to the Association.

Accordingly, the Association applies a traditional benchmark analysis for a period beginning with 1979-80 and finds that at most benchmarks (BA minimum, B A-7, B A maximum, M A minimum, M A-10, M A maximum, and schedule maximum) Sheboygan ranks last. In fact, the Association concludes that its offer only maintains the status quo.

Although the Association argues that prevailing wage rate increases within comparable school districts are a more accurate measure of cost of living increases, it also looks to CPI data (either CPI-U, Milwaukee, or CPI-Small Metropolitan) and asserts that, either way, there has been a serious loss of spendable income for bargaining unit members over the past five years. Thus, the Association concludes that the Employer's final offer widens the disparities between the Sheboygan School District and the pattern of settlement in the comparable districts. In the Association's view, this

failed to support its position diminishing the existing major medical deductible. Further, the Employer has failed to rebut Association arguments that the Association's proposed additional insurance benefits are either commonly found in the appropriate comparables or have a reasonable price tag, approximately \$16,000 for chiropractic coverage, 365 day nervous and mental care, and unlimited surgery maximum. (The total cost for all insurance benefits sought by the Association, including some also offered by the Employer, is between \$34,000 and \$35,000.) The Association points to the fact that the difference between the rates charged and the deposit rate required by the carrier is \$109,000 (composed of both Employer and employee contributions) and this will belong to the Employer if the experience rate is under the deposit rate. For the Association, this is an additional equity argument supporting the Association's position herein on insurance.

The Association concludes by objecting to the Employer's split schedule as confusing and difficult to implement and disruptive for future salary negotiations; referring to "A Nation at Risk" and the recognized national need to attract qualified teachers and pay them a competitive salary; and noting recent workload increases.

In response to Employer arguments, the Association reiterates its rejection of the Employer's comparables, its support of Manitowoc's average per teacher settlement as an appropriate comparable, and its opposition to the Employer's split salary schedule which the Association believes is misleading because it appears to provide equity while failing to provide dollars. It also voices its objection to the Employer's belated "difficulty to pay" arguments and points out that high insurance costs may be attributable to the Employer's selection of the health insurance carrier and its failure to purchase such insurance directly. While supporting the merits of its insurance proposal, the Association restates its position that the wage proposals herein should be determinative, not the insurance proposals, as argued by the Employer.

In view of all of the above, the Association concludes that its offer should be selected.

The Employer

The Employer rejects the Association's approach to comparables as "narrow and rigid" and contends that its selection of thirteen comparable school districts (Fond du Lac, Oshkosh, West Bend, Appleton, Green Bay, Manitowoc, Menasha, Neenah, Howards' Grove, Kohler, Sheboygan Falls, Two Rivers and Plymouth) is more appropriate particularly because Sheboygan, despite its size, has a low equalized value per pupil and a broader comparative pool is needed to provide sufficient data as to salary schedules and insurance benefits.

The Employer then points to the local economic situation it has been facing including severe and prolonged unemployment which is only now moderating, record delinquent 1983 property tax payments, low local private sector wage increases (including Kohler's two tier wage structure), a 1984 wage freeze agreement for two of the larger city bargaining units, and the significant moderation of inflation increases in the last eighteen months.

The Employer believes that particular attention should be given in this proceeding to its insurance expenditures reflected both as to the amount already allocated to these costs as well as the increases contained in its final offer. Indeed, the Employer argues, particularly since implementation of the School District's second semester salary schedule places the Sheboygan School District so very close to the Association's offer and the key comparables, that the "real issues" in this proceeding are the insurance proposals. Before turning to the insurance issues, the Employer notes its objection to the consideration of the Manitowoc School District as a comparable solely because, since early 1978, Manitowoc has not followed a regular salary schedule.

As to the parties' offers on insurance, the Employer believes that each party must prove a compelling need for the changes it proposes. The School District justifies its proposal to increase the deductible from \$50 per year to \$100 by pointing to the high total Employer contribution to health insurance for 1982-83 and 1983-84, under either party's final offer (only Fond du Lac exceeds Sheboygan). The Employer believes that its proposed deductible is further supported by public and private sector comparability data, including

all three of the Association's comparable school districts, Green Bay, Fond du Lac and Manitowoc. Many of the employers had recently increased their employees' financial contributions to health care costs, including the City of Sheboygan. The School Board also supports its improvement in eligibility for disability payments (from 180 to 90) by comparability data in the record.

Turning to the Association's final offer which includes numerous improvements in health, dental and disability insurance, primarily financed by the Employer, the School Board argues that these constitute a "wholesale expansion" and are "wholly unsupported" in the record. Further, no serious problems were demonstrated with present coverage to justify the Association's additions to coverage and cost. In addition, they run counter to health care containment measures which emphasize that health care consumers should become increasingly aware of health care costs by co-insurance and other direct payments or cost sharing by participants.

In rebuttal to the Association's arguments, the Employer emphasizes that its split salary schedule offer provides teachers with a "lift" which brings second semester wages to a point "nearly identical" with that of the Association's final offer. Also, the Association's traditional benchmark analysis fails to take into account increments, longevity pay, and the actual location of teachers on the salary schedule. As for the Association's private sector comparables, the Employer concludes these are incomplete and need to be adjusted appropriately for the shorter school year, in any case.

For all the above reasons, the Employer believes its final offer to be more reasonable and urges its selection.

DISCUSSION

The first disputed issue that must be decided in this proceeding is which school districts constitute the appropriate comparables. But for certain reservations noted below, the undersigned believes that the Association's choice of Green Bay, Fond du Lac and Manitowoc are appropriate as the prime comparables. Unlike some of the Employer's proposed comparables, they share basic relevant characteristics in addition to geographical proximity. Moreover, they have been used by the parties historically and were determined to be appropriate in a prior award by arbitrator Joseph Kerkman. In this proceeding, however, exclusive use of these comparables present special difficulties since at the time the record herein was closed, only final offers were available from Green Bay² and Manitowoc, while admittedly a comparable, does not have a regular salary schedule suitable for a traditional benchmark analysis. Thus, as to wages, this comparability pool contains 1983-84 settlement information from Fond du Lac, final wage offers from Green Bay, and average teacher salary increase data from Manitowoc (where there are no increments). For the undersigned, in view of the obvious limitations of this small pool of relevant data, additional comparability data must also be considered, although such additional data merits less weight than data discussed below from the prime comparables, Fond du Lac and Green Bay (and to a lesser extent, Manitowoc).

Looking solely at salary schedules or wage increases alone (excluding increments and lane changes) the cost of the Employer's offer is approximately 5% and the Association's offer is approximately 6.2%. Using a traditional benchmark approach, the Association demonstrates that Fond du Lac increases range for almost 7.5% to over 9% with five out of the seven benchmarks at approximately 7.5%. The final offers from Green Bay are 5.3% for the Employer's wage offer only and 7% for the Association's³ The Manitowoc 1983-84 settlement provided for a \$1450 dollar increase (but with no increments),

2. After reply briefs were submitted in this proceeding, the Association brought to the arbitrator's attention that there had been a settlement in the Green Bay School District. Since the Employer objected to reopening the record for this purpose, the arbitrator rejected the Association's request to include 1983-84 Green Bay teachers' settlement data.

3. According to the Association, the Green Bay School District's final offer was 5.3% on the base, 6.6% total wages and 7.3% total package. The Green Bay Education Association's final offer was 7% on the base, 8.5% total wages and 9% total package.

calculated by the Association to be approximately 7%. Thus, using 1983-84 data from Fond du Lac, Green Bay and Manitowoc, Fond du Lac and the Association's final offer in Green Bay supports the Association's final offer herein while Manitowoc (considering the flat dollar increase with no increments) at 7% is more similar to the Employer's final offer calculated at 6.7% total salary than to the Association's final offer calculated at 7.9% total salary. The Green Bay School District's final offer also supports the Employer's final offer.

Accordingly, since these wage comparables are not only limited but do not clearly support either party's wage offer, the undersigned believes she must scrutinize other comparables and analyze the insurance proposals to determine the appropriate outcome in this proceeding. In looking beyond the prime comparables, the undersigned notes that she does not agree with the Employer's argument that the Employer's second semester "lift" makes the parties' wage proposals so similar that the differences in insurance proposals should determine the outcome herein. The insurance proposals and other comparables are important in determining the outcome of this arbitration proceeding only because the prime comparables are inconclusive. It is not due to "similarities" as to wage offers, however.

Although the Employer proposes numerous comparable districts in addition to the Association's more limited pool already discussed, not all the Employer's comparables merit consideration even in a secondary grouping of comparables, in the judgment of the undersigned. Among the numerous school districts listed by the Employer, the following four appear most similar to Sheboygan and the already discussed Athletic Conference comparables: Appleton, Neenah, Oshkosh and West Bend. Unfortunately there is no 1983-84 salary data concerning either Appleton or West Bend. As for Neenah and Oshkosh, data from the former (5.3%) favors the Employer's final wage offer while data from the latter (6.4%) favors the Association's final wage offer.

It should be noted that comparability data covering Sheboygan County and Sheboygan city employees favors the Employer's final offer although the undersigned believes that lesser weight should be given to these comparables than to the two groupings of school districts already discussed.

The undersigned further believes that the following is also relevant. The Sheboygan School District has a high equalized tax rate and a low equalized value per pupil, factors which support the Employer's position herein.

Since the variety of comparable salary data discussed above does not clearly favor one side or the other, it is necessary to turn to the other issues in this proceeding. As to the insurance proposals of the parties, the arbitrator concedes that there may be differing burdens upon a party proposing to remove a contract benefit in contrast to one wishing to add a contract benefit. Comparability data may be sufficient to support the latter, but not to require the former. In this case, comparability data does not support the Association's position of increasing substantive coverage.⁴ While the Association has a valid argument when it notes that the selection of the carrier unilaterally by the Employer may have added to rather than reduced insurance costs for both Employer and unit members, its argument that the difference between the stated and deposit rates constitute a "slush fund" available for new employee benefits is speculative and premature. Only experience will provide the answer to whether these now escrowed funds are needed or not to meet existing insurance liabilities. Accordingly, as to the insurance proposals, the School Board's proposals are more reasonable.

Two final comments, one specific and one general, seem appropriate. It may turn out that the outcome of this proceeding will produce a lower wage level than would have been the case if the Green Bay School District settlement had occurred earlier and became part of the record of this proceeding. That is certainly a possibility in any proceeding where there are few comparables available prior to the closing of the record. It also may occur when the parties reach an early voluntary settlement or negotiate a multi-year contract. (It should also be noted that the opposite, a very high wage level,

4. The most costly new benefits proposed by the Association are in connection with nervous/mental care, diagnostic X-rays, and chiropractic coverage.

is also a risk facing the parties.) The opportunity to redress such situations exists, however, during the next round of collective bargaining for a successor agreement.

More generally, this arbitration concerns only a limited reopener to a two year collective bargaining agreement. Such reopeners should not be expected to become the major vehicle for a significant realignment for one bargaining unit vis-a-vis other comparable bargaining units. While Sheboygan teachers understandably do not appreciate their low ranking in relationship to other members of their Athletic Conference, based upon the record herein, this limited reopener has not presented an appropriate opportunity to effectuate substantial improvements in the historical salary or insurance status quo. A 9% Association package (including a substantial increase in insurance coverage without clear need or comparability) is difficult to justify except under unusual circumstances which have not been demonstrated in this proceeding.

AWARD

Based upon the statutory criteria set forth in section 111.70(4)(cm)(7) of MERA, the evidence and arguments of the parties, and for the reasons discussed above, the mediator-arbitrator selects the final offer of the Employer and directs that it be incorporated into the parties' existing collective bargaining agreement along with already agreed upon items.

Dated: March 19, 1984
Madison, Wisconsin

June Miller Weisberger
Mediator-Arbitrator